

September 2017

Notifiable incidents for MHF sites

The *Health and Safety at Work Act 2015* and the *Major Hazard Facility Regulations 2016* both have duties for operators of Major Hazard Facilities to notify certain events to WorkSafe.

Requirements of the Health and Safety at Work Act

Section 56 requires operators to notify WorkSafe New Zealand of any notifiable events. There are three types of notifiable events in the Act:

- deaths
- notifiable injuries or illnesses, and
- notifiable incidents.

These are defined in Sections 23, 24 and 25 of the Act. We have guidance on how to interpret these regulations on our website: www.worksafe.govt.nz/worksafe/notifications-forms/notifiable-events

Important points to note under the *Health and Safety at Work Act* are:

- that for an incident to be notifiable, there must have been serious risk to a worker or other person's health and safety due to immediate or imminent exposure to a hazard that arose from an unplanned or uncontrolled incident. Being put at serious risk does not necessarily mean that they were harmed in any way.
- that if a notifiable incident occurs, the scene must not be disturbed until an inspector releases it formally. This may be through a site visit or alternatively may be through a phone or email communication.

More information on notifications made under the *Health and Safety at Work Act 2015* can be found at: www.worksafe.govt.nz/worksafe/notifications-forms/notifiable-events

Requirements of the Major Hazard Facility Regulations

Notifiable incidents are defined in the regulations as being any type of incident that fits into the categories in Regulation 33. These are:

- an unplanned event (other than a false alarm) that requires the emergency plan to be activated
- an event that does not cause, but has the potential to cause a major incident
- damage to, or failure of, a safety critical element that requires intervention to ensure it will operate as designed.

For an incident to be notifiable under the *Major Hazard Facility Regulations*, a worker or other person **does not** have to have been exposed to serious risk to their health and safety.

An unplanned event, other than a false alarm, that requires the emergency plan to be activated is referring only to the emergency plan that is required by Regulation 31 and activated under Regulation 31(7). This means that for this category to apply the emergency response plan must have been activated in response to an event that could reasonably be expected to lead to a major incident.

An event that does not cause, but had the potential to cause a major incident, includes events where:

- there was a loss of containment of specified hazardous substances or
- such a loss of containment could have occurred, and
- in other circumstances the event could have resulted in exposure of multiple people to serious risk.

Other circumstances could include, for example, considering if more people could have been present, if the failure and subsequent loss of containment could have been worse, or if escalation of the event could have occurred. If you are not sure whether an incident falls into this category, the best course of action is to notify WorkSafe.

Damage to or failure of a safety critical element should be reported if the failure required repair or replacement of the safety critical element, or an associated piece of plant or equipment, to ensure that the safety critical element would function as it was designed to. However, if the failure was to a fail-safe state, then this does not need to be reported to WorkSafe.

During the transitional period through to 4 April 2018, an operator may not have completed identification of

all safety critical elements. It is our expectation that if an item of equipment fails, an assessment is made of whether the item is a safety critical element in order to determine whether the failure is reportable.

What is required after an incident is notified to WorkSafe?

Some **notifiable incidents** at major hazard facilities may be notifiable under **both** the *Health and Safety at Work Act* and the *Major Hazard Facility Regulations*. If this is the case, it is necessary to fulfil the requirements of both pieces of legislation. Only one notification to WorkSafe needs to be made, but the operator will need to declare that they are notifying under both pieces of legislation. The table below sets out the requirements under each piece of legislation.

REQUIREMENT	HSWA 2015	MHF REGULATIONS 2016	HSWA 2015 AND MHF REGULATIONS 2016
Notification	Call 0800 030 040 or you may use the form: Notifiable illness, injury or death or Notifiable incident Notify us using the fastest means possible and as soon as possible. Please state in the notification that you are notifying an incident at a Major Hazard Facility site. Keep records of all notifiable events.	Call 0800 030 040 or you may use the form: Notifiable incident – Major Hazard Facilities Notify us using the fastest means possible and as soon as possible. Please state in the notification that you are notifying an incident at a Major Hazard Facility site. Keep records of all notifiable events.	Call 0800 030 040 or you may use the form: Notifiable incident – Major Hazard Facilities Notify us using the fastest means possible and as soon as possible. Please state in the notification that you are notifying an incident at a Major Hazard Facility site. Keep records of all notifiable events.
Scene preservation	Required.	Not required.	Required.
48-hour written report	Only required if requested by WorkSafe.	Only required if requested by WorkSafe.	Only required if requested by WorkSafe.
Initial (7-day) report	Not required.	Required – you may use the form available on the website.	Required – you may use the form available on the website.
Final (30-day) report	Not required.	Required – you may use the form available on the website.	Required – you may use the form available on the website.
Other requirements	There may be requirements placed on the operator after an incident. For example, a duty holder review.	Corrective actions set by the operator themselves or the MHF inspector may be required to be closed out.	Corrective actions set by the operator themselves or the MHF inspector may be required to be closed out.

How to notify

Notification cannot be emailed directly to an inspector or to the MHF inbox. Instead an operator must either ring 0800 030 040 or may complete the relevant form and email it to: healthsafety.notification@worksafe.govt.nz

Other notification duties

Operators should note that an incident may also be reportable under other legislation such as the Pressure Equipment, Cranes and Passenger Ropeways Regulations 1999, the Pipelines Regulations 1999, the Gas Act 1992, the Electricity Act 1992 or the Geothermal Energy Regulations 1961.