

15 November 2022

Enaex Australia Pty Ltd

Feedback on the Safe Work NSW Discussion Paper - *Separation Distances for Solid Ammonium Nitrate in NSW* - October 2022

Enaex Australia Pty Ltd appreciates and thanks SafeWork NSW for the opportunity to provide feedback on the Discussion Paper – *Separation Distances for Solid Ammonium Nitrate in NSW* - October 22.

Background

Enaex Australia is a subsidiary of Enaex SA which is part of the Sigdo Koppers group based in Chile. With a global footprint, Enaex SA manufactures technical grade ammonium nitrate at the Prillex production plant in Chile with an annual production capacity of 850,000 tonnes.

In March 2021, Enaex SA completed the acquisition of Downer Blasting Services (DBS) which now operates as Enaex Australia (Enaex). The acquisition of DBS represented a significant foreign investment into Australia with close to \$AUD100 million invested to date and an expanding workforce.

Enaex Australia operates five ammonium nitrate emulsion manufacturing and ammonium nitrate handling and distribution facilities within Australia. This includes the Ammonium Nitrate Emulsion manufacturing facility located at Mount Thorley, NSW.

Mount Thorley Manufacturing Facility

The facility is located in the northern section of the Mt Thorley industrial area, which is zoned IN3 (Heavy Industrial). Enaex currently has over 40 staff working out of our Mount Thorley facility.

The site has an existing development application approved by the Singleton Council, it has an environmental licence issued by the NSW EPA, and is licensed by SafeWork NSW for the storage of Ammonium Nitrate (AN) and Ammonium Nitrate Emulsion (ANE).

The site is also classified and licensed as a Major Hazard Facility (MHF) with a supporting safety assessment aligned to the NSW Hazardous Industries Planning Advisory Paper No. 4 *Risk Criteria for Land Use Safety Planning* (HIPAP 4).

As an MHF, the site is subject to ongoing regulatory scrutiny with annual verification audits and site assurance visits from various NSW regulatory agencies to validate ongoing compliance. Enaex is committed to working with the regulatory agencies and the communities in which we operate to ensure continual improvement while meeting stakeholder expectations.

The Mount Thorley manufacturing facility has been operating safely for many years and pre-dates the encroachment of neighbouring industrial facilities. Over the years, the licensed quantities for AN storage at site has been reduced voluntarily by at least 70%.

Since the acquisition in 2021, Enaex has invested considerable capital into the Mount Thorley facility to enhance manufacturing efficiencies and production, including site and building works to improve traffic management and site amenities, among other things. The site improvements and production efficiencies are not linked to any increase of licensed storage quantities.

Feedback and Impacts

Enaex Australia has a number of contracts to supply various mine sites in NSW with ANE, AN and other products related to blasting services. The supply of ANE from our Mount Thorley facility is critical to the ability of our customers' ability to produce coal.

These mines are leading producers of high quality thermal and metallurgical, supporting regional areas in NSW with employment and community-based partnerships, along with global exports contributing millions in taxes and royalties.

The proposal by SafeWork NSW to prescribe separation distances focused on consequence without due consideration of likelihood, and the intention to apply this retrospectively, could effectively result in the closure of our Mount Thorley manufacturing facility, not to mention the AN facilities operated by other industry stakeholders, removing security of supply for the NSW mining sector.

With Mount Thorley as the cornerstone of our ANE manufacturing and supply across NSW and into the southern states, the possibility of closure would threaten the viability of the entire organisation. Without a sustainable alternative in terms of suitable locations within NSW, the only available option would be to transport ANE into NSW from our ANE manufacturing facility in Queensland.

Transitioning supply chain logistics from a long-established manufacturing facility in close proximity to mining customers in NSW to a road transport freight task with B-double combinations travelling long distances from Queensland, presents an even greater risk to the communities of NSW that live alongside the transport corridor and share the highways.

Enaex Australia is a member of the Australia Explosives Industry Safety Group (AEISG) and has been part of the industry push to work with all regulators to achieve consistency in the regulation of explosives and precursors across Australia. The proposed application of a consequence-based framework through prescribed quantity distances is inconsistent with the risk-based approach alternatives adopted by corresponding authorities including MHF regulators.

At a briefing to AEISG members in Newcastle, SafeWork NSW advised that the AN discussion paper would soon be released for comment and emphasised that no existing licensed storage site in NSW

would be impacted. It's disappointing to note that no consideration has been given to existing sites that have been operating without incident for many years.

The current storage of AN that is licensed and administered by SafeWork NSW operate safely under stringent regulatory requirements and a rigorous approach to safety and risk management. The references to international incidents involving AN and the need to keep the NSW community safe misses the point that existing regulatory controls would not have permitted or given rise to the situations that allowed these incidents to occur.

The Beirut explosion of 2020 is often quoted as justification for a consequence-based approach, but what is always left out of the discussion is that the storage of AN at the port of Beirut, with incompatible materials, was a decision made by the Beirut authorities, a decision which no Australian regulator would have sanctioned in any Australian port, let alone a licensed storage facility.

If SafeWork NSW are of the belief that community safety can only be achieved through a consequence-based approach with mandated separation distances, how is the location of fuel service stations that receive, store and dispense large volumes of flammable dangerous goods, with residential communities located directly against the service station boundary fence, consistent with this approach.

At the recent industry consultation in November 2022, SafeWork NSW advised that the proposal would not apply to mine sites. There is no clarity on what is being proposed for AN storage on mine sites, especially those sites that do not comply with the proposed approach.

This confirmation contradicts the stated objective of a consistent approach in NSW in regulating the storage of AN.

Response to Consultation Questions

Consultation Question 1 - Do you have concerns about the storage of ammonium nitrate in or around your local community? If yes, what are your concerns?

Enaex Australia does not have concerns on the storage of AN at the MT Thorley Facility. As a licensed storage facility and as an MHF, we are subject to stringent regulatory controls and the facility has operated safely in this location for many years.

Facilities across NSW have been storing AN safely for many years under existing legislation without major incident, testament to industry working with regulators to best practice and continuous improvement in the safe storage and handling of AN.

The incident examples mentioned have significant differences and circumstances not relevant to the current NSW context and application of NSW Regulations. We do not allow for non-compatible materials to be stored in the same location of AN in NSW and the inclusion of these events in the Discussion Paper can be misleading to those who may not be well informed on the current regulations.

Accordingly, we do not believe the current storage arrangements should be cause for concern.

Consultation Question 2 - Does the proposal incorporate appropriate measures to manage the risks associated with the storage of ammonium nitrate?

The proposal to move to a simplistic separation distance approach based solely on consequence is not supported. The references to the Beirut port and other incidents involving AN are not reflective of the current storage of AN and the proposed changes are not justified.

The discussion paper references an alignment with other states, however, fails to identify that other states that currently prescribe separation distances for AN have provisions to risk assess the situation and use controls (including, but not isolated to, separation distances) to demonstrate appropriate management.

NSW have proposed a minimum distance requirement, developed in the absence of other controls. Industry effectively employs a variety of controls, such as fire deluge systems, early detection systems, drainage systems, etc. which, in conjunction with separation distances and segregation of products, are sufficient controls to manage risk.

Consultation Question 3 - How can ammonium nitrate storage facilities located near residential and commercial areas be made safer?

This implies that SafeWork NSW hold concerns over the safety of existing AN facilities located near residential and commercial areas. As a member of AEISG, Enaex Australia is committed to working with the regulatory agencies and the communities in which we operate to ensure continual improvement while meeting stakeholder expectations.

Industry has been limited with encroachment on buffer zones. While the current facilities maintain adequate controls, if this encroachment continues it would be difficult to maintain current storage arrangements. SafeWork NSW should work closely with industry stakeholders to review land zoning and planning arrangements around existing facilities, setting aside dedicated areas for new facilities.

Consultation Question 4 - What will be the impacts on industry and the community if the NSW Government's proposal is adopted?

As indicated previously, if this proposal is adopted it will threaten the viability of our Mount Thorley facility and indeed the company. Our ability to supply and meet contractual obligations will be impacted and the financial implications for Enaex Australia and our employees would be enormous. The supply contingency would be to transport product from our manufacturing facility in Queensland creating a substantial increase in risk and cost. The flow on impacts to our suppliers and our mining customers would be substantial with consequences for regional communities and the NSW economy.

Consultation Question 5 - What is an appropriate transition period to provide to existing sites which may have difficulty complying with prescriptive separation distances? What other strategies should be considered to enable existing sites to comply with prescriptive separation distances?

Given the magnitude of the proposed changes, there is no appropriate transition timeframe that could be applied, it must be considered on a case-by-case scenario depending on the impacted facility. If the proposal is adopted, the transition timeframes must be commensurate with the timeframe associated with government compensation funding for lost investments, the ability to source alternative locations compliant with the requirements, relocation of employees and potential sourcing of new employees, seeking planning approvals, community and regulator consultation periods, construction and commissioning periods for a new storage facility.

Consultation Question 6 - What barriers are there for existing facilities moving or relocating ammonium nitrate stores within sites, to comply with prescriptive separation distances?

The obvious barrier would be finding suitable land areas on which to re-establish facilities and achieve compliance with the proposed separation distances, while maintaining a sustainable supply chain and manufacturing a cost-effective end product.

Consultation Question 7 - Are there any unintended consequences associated with the NSW Government's proposal, for industry and/or communities located within the vicinity of an ammonium nitrate storage facility?

There will be many unintended consequences with the SafeWork NSW proposal including the closure of many existing facilities. The responses from the industry consultation forum indicates that the full consequences of the proposal have not been analysed and putting it forward for consultation appears to be the only measure that has been taken so far to understand consequences.

If the proposal is applied and existing production / storage facilities in NSW are closed as a consequence, alternate supply will be through imports or interstate. Either way, this will result in more AN and ANE transport across longer distances to support the mining industry.

The cost to regional communities, the mining industry and in turn the NSW economy will be substantial. While it was indicated that the scope of the proposed changes does not include mine sites, an unintended consequence of the proposal will be the direct and indirect impact of the proposed separation distance on the mining industry.

The adoption of changes under the Explosives Act and/or Explosives Regulation will come with the expectation that all PCBU's who store and use explosive products to adhere to or at least consider and document why they are not adhering to a recognised standard as a suitable control to manage risks across any site.

Consultation Question 8 - Do you think the prescriptive separation distances will achieve the desired safety outcome?

We do not believe that the proposed application of prescriptive separation distances will achieve the desired safety outcomes. It will increase risk in other areas as outlined above in our response on unintended consequences.

What is being proposed is out of alignment with requirements already in place in other Australian mining jurisdictions.

Consultation Question 9 - Are there other costs that the proposal should consider, such as socio-economic costs?

The retrospective application of this proposal should definitely consider the socio-economic costs, the deterrence to investment in NSW especially foreign investment, the impacts to regional communities, lost employment, the impacts to suppliers and other small businesses that play an important part in supporting the industry.

Consultation Question 10 - What measures can be taken to offset the potential economic impact of some within the industry?

SafeWork NSW should reconsider the need for reform and work with industry stakeholders to address any agreed gaps.

The most obvious measure is that the proposal should not be implemented or at the very least, it should not be implemented retrospectively.

Consultation Question 11 - Do you have any further comments regarding the NSW Government's proposal and the storage of ammonium nitrate in NSW?

Following on from the industry consultation meeting, it appears that the consequential impacts of this proposal does not appear to be well understood or appreciated by SafeWork NSW. There is a lack of awareness of the magnitude of this proposal, the supply chain impacts, disruption to the minerals industry, and the financial impact on the state of NSW is significant – all of this at a time when the industry is already faced with global supply chain challenges and disruptions.

Citing examples of past industrial incidents (predominantly from overseas) involving different product, conditions, standards, controls, practices and the level of government oversight to those in place in NSW does not justify the proposed changes.

The inclusion of these events infer that the industry across NSW is not properly regulated which is not the case. Including these references in the Discussion Paper is misleading to those that may not be well informed on the current NSW legislative requirements.

Recommendations

SafeWork NSW should NOT adopt the proposed separation distances as detailed in the 'Separation Distances for Solid Ammonium Nitrate in NSW Discussion Paper, dated October 2022'.

SafeWork NSW should consider an appropriate risk-based approach, such as the AEISG Code of Practice – Storage and Handling of Solid Ammonium Nitrate, Edition 1, June 2022.

SafeWork NSW should undertake a comprehensive review of its proposal including but not limited to the significant cost burden and associated implications upon the NSW AN supply chain, Minerals industry and ultimately the NSW community.

SafeWork NSW should review the need for such reforms, consider the existing controls that are in place across the industry and work with the industry in a risk-based approach to address any gaps.

SafeWork NSW should develop a comprehensive assessment of the impacts of the proposal, in consultation with industry, taking into consideration the flow on effects to the whole AN supply chain and the extensive work of AEISG that includes separation distances calculated using a scientific basis. The release of this assessment would be accompanied by a Regulatory Impact Assessment of costs / benefits of the various options and be subject to detailed targeted industry consultation.

Should any transitional period be required for potential changes in the future, it should be commensurate with the timeframe associated with sourcing new locations, seeking planning approvals, community and regulator consultation periods, construction and commissioning periods for a new storage facility.