

## MEMORANDUM OF UNDERSTANDING

### Regarding

### Administration, Investigation and Enforcement Actions Arising Under the Dangerous Goods Safety Management Act and the Environmental Protection Act as they Relate to Hazardous Materials

THIS MEMORANDUM OF UNDERSTANDING is made, this \_\_\_\_\_ day of \_\_\_\_\_ 2004

BETWEEN: the DEPARTMENT OF EMERGENCY SERVICES ("DES")

AND the ENVIRONMENTAL PROTECTION AGENCY ("EPA")

for the purpose of facilitating an understanding of the roles and responsibilities of the Environmental Protection Agency and the Department of Emergency Services (the PARTIES) with respect to the administration and enforcement of the *Environmental Protection Act 1994* ("the *EP Act*") and the *Dangerous Goods Safety Management Act 2001* ("the *DGSM Act*") as they relate to hazardous materials.

#### Interaction of legislation

1. The PARTIES to this Memorandum of Understanding:
  - 1.1 ACKNOWLEDGE that the object of the *EP Act* is to protect Queensland's environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends ('ecologically sustainable development');
  - 1.2 ACKNOWLEDGE that the object of the *DGSM Act* is to protect the safety of persons and to prevent harm to property and the environment from hazardous materials;
  - 1.3 ACKNOWLEDGE that the *DGSM Act* operates in parallel with and in addition to the requirements of the *EP Act*, that DES enforces its Major Hazard Facility (MHF) specific requirements and that enforcement requirements specific to Dangerous Goods Locations and other places have been delegated or devolved to other Agencies – as described in Appendix 'A';
  - 1.4 ACKNOWLEDGE that the *DGSM Act* contributes to the prevention and/or management of environmental harm mainly through the requirements it

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establishes for the safe storage and handling of hazardous materials and the management of any sudden loss of containment;

- 1.5 ACKNOWLEDGE that the potential for hazardous materials to cause environmental harm can be mitigated by appropriate environmental management and planning;
- 1.6 AGREE that the DES and EPA will provide mutual support and will use their best endeavours to ensure that the combined skills and resources of the two Departments are available to manage hazardous materials to minimise or prevent harm arising from those hazardous materials within the State of Queensland.
- 1.7 AGREE that, without limiting the application of either Act, the *DGSM Act* will provide for the safe storage and handling of hazardous material whilst the *EP Act* will be the preferred means for providing for the prevention and/or management of environmental harm arising from hazardous materials

### **General inter - agency co-operation and interaction**

- 1.8 ACKNOWLEDGE the benefits of using a coordinated approach across government and AGREE to consult on the development or amendment of hazardous materials policy, standards, legislation and advisory papers;
- 1.9 AGREE to provide for audit and inspection services in response to accidents and complaints at MHFs within their respective legislative jurisdictions.
- 1.10 ACKNOWLEDGE the importance of a co-operative approach to the application of the *EP Act* and the *DGSM Act* to MHFs, and undertake to:
  - a. expeditiously notify and fully inform the other PARTY of major accidents at MHFs;
  - b. share information on actual or potential environmental harm and acute safety risks arising from MHFs ;
  - c. participate in the investigation of major accidents at MHFs and share relevant information;
  - d. inform the other PARTY when a decision is made to relinquish involvement in an investigation of a major accident at an MHF;
  - e. strive to undertake all monitoring and investigative tasks with the maximum efficiency and the least disruption to industry and the community; and
  - f. consult on any application for the release of each other's information under Freedom of Information (FOI) legislation.
- 1.11 ACKNOWLEDGE that the EPA will refer all external requests for information and advice relating to the control of MHFs or the safe management of hazardous materials at MHFs to the DES unless the request relates exclusively to the matters administered under the *EP Act*; and

- 1.12 ACKNOWLEDGE that the DES will refer to the EPA all requests for information and advice on matters administered under the *EP Act*.

### **DES jurisdiction**

2. The EPA ACKNOWLEDGES that the DES is the lead agency for the management of hazardous substances and is primarily accountable for co-ordinating the administration of the *DGSM Act*. The DES is responsible for maintaining the *DGSM Act* and its regulation and will consider any suggested amendments to the *DGSM Act* that may be referred to the DES by the EPA.
3. The DES AGREES to facilitate access to technical advice on hazardous materials and the Chemical Hazards and Emergency Management Unit (CHEM Unit) within the DES and AGREES to provide a list of key contacts in this regard via Appendix 'B' of this MoU and the CHEM Unit website.
4. The DES AGREES to provide training (including materials and reference documentation), to relevant EPA staff on the operation of the *DGSM Act*.
5. The DES AGREES to consult with the EPA on environmental issues prior to declaring any consultation zone under section 180 of the *DGSM Act* for any MHF.

### **EPA jurisdiction**

6. The DES ACKNOWLEDGES that the EPA is the lead agency for all matters of environmental management in Queensland and is primarily accountable for the administration of the *EP Act*. The EPA is responsible for maintaining the *EP Act* and subordinate legislation and will consider any suggested amendments to the *EP Act* that may be referred to the EPA by the DES.
7. The DES AGREES that under the *EP Act*, the EPA has jurisdiction over environmental management issues and the audit of environmental management systems.
8. The DES may seek technical and professional advice on environmental management from the EPA.

### **Audits and Inspections of MHFs under the DGSM Act**

9. The PARTIES AGREE, subject to privacy, commercial and legal considerations, to exchange technical, legal and administrative advice in support of MHF audits and investigations.
10. The PARTIES AGREE that:
  - a. the DES will convene MHF audit teams from a range of participating agencies and will facilitate and co-ordinate the activities of each audit team for joint inspections and audits;

- b. the audit team leader will normally be drawn from the Agency whose core responsibilities most closely match the nature of the facility in question;
- c. the EPA will assign appropriate officers from the region in which the MHF is located to the audit teams;
- d. EPA participation will be limited to the audit of physical facilities against the site safety report prepared for the *DGSM Act* (without limiting the EPA's ability to act under the provisions of the *EP Act*) and any pre and post audit work directly associated with the audit;
- e. without limiting the EPA's right to pursue any action under the *EP Act*, any clear breach of the *EP Act* identified by EPA officers during the course of an audit shall be brought to the attention of the audit team;

### **Major accidents at MHFs**

11. The PARTIES AGREE that in the event of a major accident at an MHF, the CHEM Unit will assume a co-ordinating role and that the MHF Team Leader may call on the EPA to perform or assist with those functions under the *EP Act* for which they have jurisdiction (see Appendix A).
12. The PARTIES AGREE that the Agency receiving advice of a major accident at an MHF is to notify the other Agency (see Appendix B for contact details) as soon as the incident is assessed as having the potential to cause environmental harm or represents a danger or causes harm to persons, property or the environment.
13. The PARTIES AGREE that for major accidents at MHFs, the DES will facilitate the organisation of post incident debriefing sessions.
14. The PARTIES AGREE that each Agency will be responsible for its own costs arising from the investigation of offences and any subsequent prosecution.
15. The PARTIES AGREE that where a joint investigation is undertaken, a copy of all reports prepared by one PARTY will be forwarded to the other PARTY.

### **Term and Revision of Memorandum**

16. The PARTIES AGREE:
  - i. that this MoU shall have a term of three years from commencement (date of execution);
  - ii. to formally review this MOU within three months of the third anniversary of its execution unless, by mutual agreement, it is reviewed at an earlier time;
  - iii. that the MOU will continue in force past the agreed expiry date if a review referred to in (ii) has commenced;

- iv. that this MoU may be varied or modified at any time by mutual agreement of the PARTIES in writing;
- v. that this MOU may be terminated at any time by mutual agreement of the PARTIES; and.
- vi. That the MOU has no legal standing and its sole purpose is to clarify the roles and responsibilities of the PARTIES in the administration and enforcement of their respective legislation and to establish a framework to foster co-operation between the PARTIES.

**Execution of Agreement**

SIGNED on behalf of the } \_\_\_\_\_  
ENVIRONMENTAL PROTECTION AGENCY } Director-General

in the presence of:

\_\_\_\_\_ signature  
Witness (print name)

Date

SIGNED on behalf of the } \_\_\_\_\_  
DEPARTMENT OF EMERGENCY SERVICES } Director-General

in the presence of:

\_\_\_\_\_ signature  
Witness (print name)

Date



**RESPONSIBILITIES AT PLACES OTHER THAN MAJOR HAZARD FACILITIES**

AREA OF APPLICATION  (Class refers to the classification of dangerous goods within the ADG Code)		DEPARTMENTAL RESPONSIBILITIES		
		Environmental Protection Agency and Local Government where devolved under <i>EP Act</i>	Chemical Hazards and Emergency Management (CHEM) Unit	Others under forms of authority noted
1.	Storage and Handling of:  Class 1 (Explosives)	No jurisdiction under the <i>DGSM Act</i> .  Full jurisdiction under the <i>EP Act</i> for relevant Environmentally Relevant Activities (ERAs).	No jurisdiction under the <i>DGSM Act</i> .	Full jurisdiction under the <i>Explosives Act 1999</i> and the <i>DGSM Act</i> to the Department of Natural Resources & Mines (NR&M) (Explosives Directorate).
2.	Storage and Handling of:  Class 2 (Gases)	No jurisdiction under the <i>DGSM Act</i> .  Full jurisdiction under the <i>EP Act</i> for relevant ERAs.	DES staff assist (if requested).	Full jurisdiction under the <i>Gas Act 1965</i> to NR&M (Gas Examiner).  Shared jurisdiction under the <i>DGSM Act</i> to NR&M (Gas Examiner) plus Division of Workplace Health and Safety (DWHS) for non-technical issues (e.g. placarding).

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AREA OF APPLICATION  (Class refers to the classification of dangerous goods within the ADG Code)		DEPARTMENTAL RESPONSIBILITIES		
		Environmental Protection Agency and Local Government where devolved under <i>EP Act</i>	Chemical Hazards and Emergency Management (CHEM) Unit	Others under forms of authority noted
3.	Storage and Handling of:  Class 3 (Flammable Liquids)  Combustible Liquids	EPA has no jurisdiction under the <i>DGSM Act</i> .  The EPA and Local Government have full jurisdiction for environmental harm under the <i>EP Act</i> for relevant ERAs.  Local Government has full jurisdiction for safety management under Part 4 of the <i>DGSM Act</i> .	DES staff assist (if requested).	Shared jurisdiction under the <i>DGSM Act</i> as follows:  Class 3 - Local Government plus DWHS for non-technical issues (e.g. placarding).  Combustible Liquids – Local Government plus DWHS for non-technical issues (e.g. placarding).
4.	Storage and Handling of:  Class 6.2 (Infectious Substances)	Full jurisdiction under the <i>EP Act</i> for relevant ERAs	No Jurisdiction	Queensland Health has full jurisdiction under the <i>Health Act 1937</i> .
5.	Class 7 (Radioactives).	No Jurisdiction.	No Jurisdiction.	Full jurisdiction under the <i>Radiation Safety Act 1999</i> to Queensland Health.

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AREA OF APPLICATION  (Class refers to the classification of dangerous goods within the ADG Code)		DEPARTMENTAL RESPONSIBILITIES		
		Environmental Protection Agency and Local Government where devolved under <i>EP Act</i>	Chemical Hazards and Emergency Management (CHEM) Unit	Others under forms of authority noted
6.	Storage and Handling of:  Class 4, Class 5, Class 6,  Class 8, Class 9.	No jurisdiction under the <i>DGSM Act</i> .  Full jurisdiction under the EP Act for relevant ERAs.	DES staff assist (if requested).	Full jurisdiction under the <i>DGSM Act</i> to DWHS
7.	Accident or incident at a non-workplace.	EPA/Local Government staff assist (if requested).	Full jurisdiction under <i>DGSM Act</i> to DES	DWHS staff assist (if requested)
8.	Accident or incident at a workplace.		DES staff assist (if requested).	Full jurisdiction under <i>DGSM Act</i> and <i>Workplace Health and Safety Act 1995 (WHS Act)</i> to DWHS.
9.	Accident or incident cleanup.	EPA/Local Government staff assist (if requested).	DES staff assist (if requested).  QFRS or Police controlling authority for direct initial action.	DWHS has no clean up role.

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AREA OF APPLICATION		DEPARTMENTAL RESPONSIBILITIES		
		Environmental Protection Agency and Local Government where devolved under <i>EP Act</i>	Chemical Hazards and Emergency Management (CHEM) Unit	Others under forms of authority noted
10.	Major accident at a non-workplace.	EPA/Local Government staff assist (if requested).	Full jurisdiction under <i>DGSM Act</i> to DES.	DWHS staff assist (if requested).
11.	Major accident at a MHF.	Shared Jurisdiction. Each Agency acts within the jurisdictions indicated under the direction (initially) of the controlling authority (QFRA, Police) at the incident scene.		
		EPA/Local Government staff act within/apply the jurisdiction of the <i>EP Act</i> .	DES staff act within/apply the jurisdiction of the <i>DGSM Act</i> .	DWHS staff act within/apply the jurisdiction of the <i>WH&amp;S Act</i> .
		Officers co-operate, share information and support a team approach.		
12.	Major accident or incident cleanup.	EPA/Local Government staff assist (if requested)	DES staff assist (if requested). QFRS or Police controlling authority for direct initial action.	DWHS has no clean up role
13.	Emergency Response	EPA officers have no emergency response role – provision of advice (if requested).	Advisory role as authorised under the <i>DGSM Act</i> .	DWHS has no emergency response role.

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AREA OF APPLICATION		DEPARTMENTAL RESPONSIBILITIES		
		Environmental Protection Agency and Local Government where devolved under <i>EP Act</i>	Chemical Hazards and Emergency Management (CHEM) Unit	Others under forms of authority noted
14.	Complaints emanating from a Queensland workplace concerning dangerous goods safety.	No jurisdiction under the <i>DGSM Act</i> .	Assist by providing information if requested.	Full jurisdiction under <i>DGSM Act</i> and the <i>WHS Act</i> to DWHS.
15.	Complaints emanating from a Queensland workplace concerning placarding.	No jurisdiction under the <i>DGSM Act</i> .	Assist by providing information if requested.	Shared jurisdiction under <i>DGSM Act</i> to DWHS, NR&M, & Local Govt.
16.	Complaints relating to environmental protection.	Full jurisdiction under the <i>EP Act</i> .	Assist by providing information if requested.	No jurisdiction under the <i>DGSM Act</i> or the <i>WHS Act</i> .
17.	Investigation of dangerous goods incidents and subsequent prosecution.	Investigate according to EPA procedures for prosecution under the <i>EP Act</i> at the discretion of the EPA.	Assist by providing information, technical support and policy advice if requested.	Investigate according to DWHS procedures, to prosecution under either <i>DGSM Act</i> or <i>WH&amp;S Act</i> .
		Where the incident is of interest to all, the parties will confer and settle on a single statute under which to proceed with a prosecution.		

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**CONTACT DETAILS  
FOR  
THE DEPARTMENT OF EMERGENCY SERVICES**

For Dangerous Goods Safety Management issues contact:

**The Chemical Hazards and Emergency Management (CHEM) Unit**

Location:

Block C, Level 2  
Emergency Services Complex  
Cnr Park and Kedron Park Rds  
Kedron QLD 4031

Postal:

GPO Box 1425  
Brisbane QLD 4001  
Fax: (07) 3247 8433  
Phone: (07) 3247 8444

Homepage: <http://www.emergency.qld.gov.au/chem>

**For information and advice:**

**Phone: (07) 3247 8444**

and ask for:

Manager, Dangerous Goods; or

Manager, Major Hazards; or

Manager, DGSM Legislation and Co-ordination.

Homepage: <http://www.emergency.qld.gov.au/chem/about/staff.htm>

**For emergencies: Call 000 in the first instance.**

**CONTACT DETAILS  
FOR  
THE ENVIRONMENTAL PROTECTION AGENCY**

To report environmental incidents contact:

**The Pollution Hotline: 1300 130 372**

The EPA Pollution hotline is a 24-hour statewide service for reporting pollution incidents such as:

- chemical spills;
- oil spills;
- sewage dumping;
- fish kills;
- water pollution; or
- tyre fires.

It works like the 000 emergency number to ensure the incident you call in gets immediate attention from the nearest EPA office.

For other Environmental Protection issues contact:

**The Environmental Protection Agency (EPA)  
Environmental Operations Division**

Location: 11<sup>th</sup> Floor, 160 Ann Street, Brisbane

Postal: PO Box 155, Brisbane Albert Street. QLD 4002

Fax: (07) 3227 7677

Phone: (07) 3227 6435

Homepage: <http://www.epa.qld.gov.au>

**For information and advice:**

**Phone: (07) 3227 6435**

and ask for: Director, Systems and Support

**For emergencies:** Call **000** in the first instance.