

16 September 2025

Ms Sharon Thompson
Chief Executive
WorkSafe New Zealand

Dear Ms Thompson

**Chlorine gas non-compliance, liquid oxygen and class 5's generally
Water Treatment Plant X and IXOM's hardwood cradles**

We have, unfortunately, another example which shows many of WorkSafe's recurring faults in action:

- No-one at WorkSafe has anything appropriate about combustible wood supplied with gaseous chlorine (such as, for example, demand cessation of the practice).
- The Inspectorate did nothing about the deplorable state of non-compliance, no doubt because they lack the skills and the drive to do so.
- Compliance Monitoring did nothing because the Inspectorate did nothing (a recurring problem) and probably also because they too lack the requisite skills.
- The most technical people WorkSafe have been unable to even correctly identify all the key issues (making them morbidly unable to do their jobs), let alone progress them.
- WorkSafe seems to not even realise that NZ is not Australia and what goes for compliance in any other country is not the test in NZ (an odd problem) – the NZ regulations are the law.
- Calling a representative from IXOM in Australia for a chat is inappropriate when it has supplied combustible wood with chlorine gas, yet this is about as much as WorkSafe did (and, on top, appears to have been beguiled into believing that all is well in Rome when evidently all is not).

If WorkSafe can't understand the NZ rules, then it cannot administer them. This example shows WorkSafe's failure to administer at every point of contact with the issues, from the Inspectorate, to Compliance Monitoring, to Technical and others. If WorkSafe's most technical people can't decipher the rules when the issues are delivered to them on a plate, WorkSafe's administration won't get any better.

If I were running **BOC**, being as they are on the receiving end currently of the notices in the South Island about non-compliance, I'd want to know why IXOM's non-compliance leads to no enforcement. BOC is supplying a different class 5 (liquid oxygen) to hospitals and WorkSafe has threatened to prohibit supply due to non-compliance. IXOM is supplying to water treatment facilities. So why is one big supplier being treated differently from another? On a side note, WorkSafe is apparently highly concerned that these issues will leak into the public domain. WorkSafe is a public entity, and its actions must always be held up to public scrutiny. If this situation falls foul of the Minister's ambitions, then there needs to be a public debate about her directives to WorkSafe, not some backroom work-around of legislative requirements that circumvents unconstitutionally WorkSafe's administration of the law.

The most telling feature of IXOM's NZ team from my direct interaction with them was just how little they knew late last year about the NZ compliance regime for the one product they sell in NZ. It would make for good listening wouldn't it – a conversation between WorkSafe and IXOM about how they meet all NZ compliance requirements, given that neither side of the conversation has exhibited, at least in my interactions with them and through OIA responses, shown inadequate understanding of NZ requirements.

A. Setting the Scene – WorkSafe Presentation 2021

During the phase when WorkSafe conducted discrete training seminars for certifiers, Matt Anderson ran one on class 5 substances in 2021. His opening slide stated:

- *We have noticed from processing compliance certifier applications that evidence for Part 12 requirement is not consistently recorded.*
- *Ensuring the safe storage and use of oxidisers requires some unique controls.*
- *These differ from the controls for flammable substances.*

No doubt he was being euphemistic because I'll bet he knew that most certifiers with class 5 authorisations didn't know what they were doing, something that we have unearthed on a location-by-location basis from the top of the north to the bottom of the South Island, particularly during the last 12 months, three years after Matt Anderson's wake-up call. His choice of words provides the signal – if he felt the need to say “these differ from the controls for flammable substances” he was clearly pitching the seminar at those whose attendance was not due to them being well versed in the requirements – a bit like saying “cricket is a summer sport in NZ. The grounds are too wet in the winter”.

His presentation covered the requirements for installed equipment and the prohibitions on incompatible substances, obvious and important topics, which have resurfaced.

Mr Anderson has since left, and I wonder whether he left in his wake a hole when it comes to understanding class 5 compliance requirements at WorkSafe. It certainly seems to be so.

B. Setting the Scene – Water Treatment Plant X – A Case Study in Everything Wrong at a Class 5 Location

The issues I am referring to specifically arose at a water treatment plant (**WTP X**) whose compliance was deplorable. They had, of course, been certified annually without issue by the same certifier whose clients have this one recurring same characteristic – not compliant, but not not certified (an intentional double negative). Business is not so recurring when you don't certify your clients' locations. There was evidence of the PCBU simply believing what it had been told by an incompetent certifier, a familiar recurring issue. That WorkSafe leaves incompetent certifiers in the field is the other recurring issue.

Our certifier's refusal on the basis of a dozen or so material items of failure followed the predictable cycle:

- Our report was greeted with the horror (but not the concern) that unknowing PCBUs often display.
- A notification of refusal was issued to WorkSafe.
- We attempted to work through options with the PCBU.
- The PCBU did nothing other than appoint new certifiers.
- WorkSafe's inspectorate appears to have done nothing useful and evidently did not even visit the location (maybe they're not allowed to drive the 25 minutes from Hamilton to conduct the inspection? More likely, they couldn't find anyone skilled enough to go).
- The new certifiers issued a compliance certificate, albeit a conditional one (but this does not explain how the aspects of chronic failure were rectified). The Inspectorate was somehow acquiescent in this phase (but you'd wonder what rules the parties were following).
- A complaint was made to WorkSafe about all certifiers who had issued certificates to this very non-compliant location.

- WorkSafe's Compliance Monitoring's "triage" of these complaints led to nothing of any substance.

Up until this point, this was the same script that plays out every week at WorkSafe. I mean what could possibly go wrong? I imagine this is what Jamey Bowring thought on the day he was exploded 140 metres to his death after welding atop a lethal petroleum tank, not that he had any inkling of the death trap that lay in wait for him. Who believes that WorkSafe New Zealand ever does anything appropriate in the years that follow when presented with massive failure, 16 years ago (Pike River), 10 years ago (Salter/Bowring), six years ago (Whakaari) or today?

Contemplate the WTP X situation - and its various entry points into WorkSafe's orbit - from **a common-sense perspective**, starting from the receipt of a notification of refusal to issue a certificate which has a long and detailed list of major non-compliance matters, most of which would have required major structural changes at the workplace to address them. Remember that the information that WorkSafe has on file for WTP X is (i) 10 consecutive years of certification (ii) a refusal and (iii) new compliance certificates issued about a month later. Someone is dreadfully wrong at least! So who? And if you are the regulator and you are given an itemised list of failures, wouldn't the reasonable and diligent regulator send someone to site who was sufficiently expert in class 5s to assess all issues and report back? That WorkSafe didn't do this shows, yet again, that they avoid issues, directly violating the very reason they exist. Operating in some orbit of pure fantasy, despite Matt Anderson knowing that certifiers didn't understand class 5s (he was right), the resolution of all compliance issues at WTP X was the appearance of another compliance certifier's certificate. That is about as sane as believing that Pinocchio lives up the street.

Nine times out of 10, WorkSafe's belief in fantasy/Pinocchio and the option of taking the easy way out leads to dead-ends on compliance and complaints. This means that nine times out of 10, the hazard that innocent workers like Jamey Bowring walked into in 2015, are left unchecked, in some very real game of Russian roulette that WorkSafe is running like a mischievous croupier. Then there are the tens of thousands of workplaces that WorkSafe never goes to, or never sends anyone competent to, a topic for a further open letter.

While WorkSafe was closing down every avenue that could lead to rectifying problems and holding stakeholders to account at WTP X, my team was working hard on the technical issues, which led to DGC commissioning a report from the foremost expert in the country. Our particular focus was on IXOM's (hardwood) cradles. It seemed that no-one before us (WorkSafe included, certifiers and chlorine suppliers) had ever turned their minds to the issues. As diligent certifiers, we needed to come up with a technical position on the issues. As an aside, there are several major hazard facilities that take delivery of IXOM chlorine in tanks held in place by hardwood cradles. No-one I assume would be surprised that WorkSafe's Major Hazard Facilities team is also completely unaware that there are material compliance issues. The expert we appointed prepared a detailed report (**Expert Report**) focusing on:

- whether the hardwood cradles were compatible with chloring (they aren't);
- what the options are (not many) and;
- the risks associated with deteriorated cradles such as we had encountered at WTP X ("they are combustible").

I shared this Expert Report with WorkSafe in the interests of waking them up from the somnambulatory state that they call administration of the regime. Their view appears to be that if four people who don't know the rules agree, then there is no issue (because there is a compliance certificate). My view is

different – compliance needs to be investigated and proved or disproved. How non-compliance is enforced is a different matter.

What gets nearly entirely lost when WorkSafe spins in its own unique orbit is that there are real world issues for suppliers and PCBUs. Assume for a minute that we are right and that WTP X is still non-compliant and the non-compliance causes catastrophic failure. When the insurers figure this out and deny a claim, who is left with the loss? There are several candidates – the PCBU, the supplier and the compliance certifiers. This is an aspect that WorkSafe needs to be mindful of. Yes, the commercial world is not their bailiwick, but they need to be more orthodox in terms of identifying, analysing and acting on such issues. There is never a victimless scenario. Parties deserve to have an opportunity to manage their risks. Here is a point of alignment with the Minister’s aspiration for what WorkSafe could do a lot better.

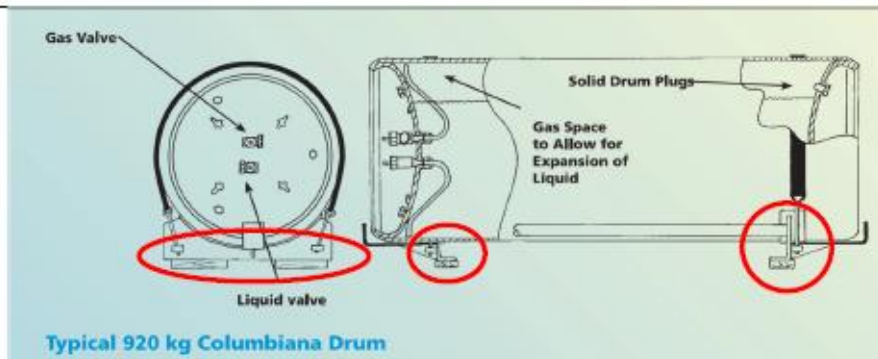
There is a rather eerie similarity with the reg 11.33 issue that arose in 2019. WorkSafe cuddled up to the PCBUs, couldn’t get the technical issues right and acquiesced in the heavy non-compliance that was occurring. We broke WorkSafe out of their dream state by proffering up a legal opinion from one of the country’s elite law firms after we saw through OIA responses the internal nonsense that had caused the entire senior team at WorkSafe to come up with the wrong answer. Some of the same actors are playing the same fiddle on the IXOM issues....

C. Photos and a Schematic of the Way Chlorine is Delivered by IXOM

The photos on the following page show what we are talking about.



Liquefied chlorine drum transportation cradle base timber skids



D. The Issues

It is highly relevant that there were more than a dozen material items of non-compliance at the PCBU's locations, especially WTP X. It is highly relevant that WorkSafe did nothing about them. However, I have narrowed the issues in this letter to the hardwood cradles that IXOM supplied to WTP X. The photo on the following page has been widely circulated at WorkSafe.

Because we are dealing with an Australian supplier, we can start by applying the "pub test" and asking questions "mate, could you use these sticks of wood to start your barbie?" "Absolutely mate!" "But mate it's special Australian hardwood" "Mate, that's as dry as xxxxx and you bet ya bottom dollar I could start the fire with that." Love em or not, the Aussies are blessed with common sense such as one encounters at the local boozier.

Deteriorated Cradles at WTP X



chlorine drum transportation cradle base timber skids examples of shredded or splintered timber

IXOM's views, which I have heard directly and indirectly, are that:

- The cradles are made from an Australian hardwood
- The hardwood is not combustible (and this is stated in an Australian standard)
- What goes in Australia must be good enough in NZ (try bowling underarm over here fellas!)

and, therefore, there is no issue with the cradles.

I am not disputing the first two points. It's nice that, when in excellent condition, that they are not combustible, but that is not the end of the issues in NZ.

I add, after digging into my old corporate finance skill sets, that IXOM's NZ business stands out as a very high yielding cash cow for a corporate group that does not have so many of these in the fold, yet it maintains a very high annual cash distribution. Old-style cash cows are best if there is virtually no capital investment as I suspect has been the case in NZ. Corporate entities that walk the tight rope of high debt, tight cash flow and high distributions really don't want major capex projects disturbing the balance because the stock price is often geared to no negative surprises.

There is an easy first issue with WTP X. The hardwood cradles were in very poor condition and the Expert Report concluded that, in this state, the wood was combustible. **Thus, we had a compliance 101 SOS that should have gone out with an immediate enforcement notice.** Even if WorkSafe didn't know this at the start of 2025, they certainly knew it when they circulated internally the Expert Report. Yet, there is no evidence that WorkSafe did anything about it (yes the ghosts of a flailing regulator inspecting the Pike River mine still walk the corridors in Wellington). For a separate publication, WorkSafe's command tree from the Head of Inspectorate to Head of Operations to Chief Executive have less than one year's average experience in either health and safety or WorkSafe, and they are being squeezed by a Minister who doesn't want anything getting in the way of businesses (having opportunities to operate regardless of their non-compliance).

NZ is not Australia and the rules with which suppliers and PCBUs must comply in NZ require that there be no incompatible material in both the installed equipment and the controlled zone, points reinforced by Matt Anderson's presentation. It is insufficient that hardwood cradles are not combustible on this side of the Tasman.

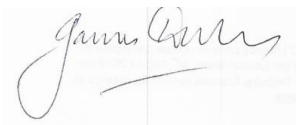
There are several aspects to what WorkSafe's team of experts – Technicall is a new word coined at WorkSafe for the repository of technical knowledge, a group that also taps into other "experts" at WorkSafe:

- WorkSafe does not have a product expert (to inform the discussion about hardwood cradles).
- WorkSafe did not ask for permission to contact the expert DGC commissioned the Expert Report from, nor to the best of my knowledge did they contact him.
- WorkSafe focused exclusively on the issue that IXOM exclusively focuses on – that the hardwood cradles are not combustible, apparently missing all others.
- WorkSafe made no contact with us despite our open invitations to involve our many experts in the discussion of the compliance considerations. We could and would have assisted materially.
- In nearly four months, WorkSafe has not produced one internal document – memorandum, considered email etc – where WorkSafe brings its view of all relevant issues into one place. Thus, these issues will be a surprise for you, Sharon, because your organisation has not alerted you.

The actions of WorkSafe boiled down to calling IXOM and being told that there are no safety issues. If this is what passes for administration of the regime, then that is why I say BOC should pick up the phone and simply assure WorkSafe that its non-compliance issues pose no safety issues. Indeed, every PCBU in the country should do that. if WorkSafe is completely redefining the way compliance is policed with Ministerial blessing, NZ can do as some political factions want and largely do away with the police. Isn't the observable WorkSafe approach to simply ask the accused whether they did anything wrong? I am sure there will be some widows and mothers of dead sons who will have a view about whether this is adequate. Death is a very real state after all.

WorkSafe must improve – www.wsmustimprove.co.nz

Sincerely



James Dunphy
Managing Director