Application for an enforceable undertaking

Part 4, Health and Safety at Work Act 2015

The commitments in this application are offered to WorkSafe New Zealand by

Dominion Salt Limited

New Zealand Government

WORKSAFE NEW ZEALAND | MAHI HAUMARU AOTEAROA

WORKSAFE

Application for an enforceable undertaking

FORM

Part 4, Health and Safety at Work Act 2015

The commitments in this application are offered to WorkSafe New Zealand (*WorkSafe*) by

Dominion Salt Limited

Name of the person or persons who will be signing this undertaking in section 4:

Brett Hobson, General Manager

On behalf of: Dominion Salt Limited

This enforceable undertaking is given on the day and date that it is accepted and signed by WorkSafe. The undertaking and its enforceable terms will operate as a legally binding commitment on the part of the person from the date it is given.

Do not refer to the victim by name in this document. Please refer to the victim/worker/employee/ volunteer/or other term as appropriate.

WorkSafe respects your privacy and is committed to protecting personal information. The information provided in this document is for the purpose of an undertaking given to WorkSafe under Part 4 of the *Health and Safety at Work Act 2015*. This information will be managed within the requirements of both the *Privacy Act 1993 and the Official Information Act 1982*.

There is an expectation that WorkSafe will generally publish the undertaking in full on its website.

TERM	DEFINITION
Contravention	An action which offends against the *Health and Safety at Work Act 2015* and/or any Regulations made under it. It includes both health and safety contraventions. A contravention also includes an alleged contravention.
HSMS	A Health and Safety Management System.
Person	An individual who or a legal entity which has a duty under the *Health and Safety at Work Act 2015* and can give a written undertaking. The term includes individuals, each partner in a partnership, corporations, trustees of trusts, and crown organisations.
Health and Safety legislation	*Health and Safety at Work Act 2015* and associated regulations.
Enforceable undertaking	An enforcement pathway that allows a duty holder to voluntarily enter into a binding agreement with WorkSafe. The agreement outlines actions the duty holder will undertake to address the contravention. It is expected to deliver activities which benefit workers, the wider industry or sector and/or the community as well as acceptable amends to any victim(s).

1. GENERAL INFORMATION

1.1 Details of the person/persons/ entity giving the undertaking

Name of person(s) making this undertaking: (in all cases complete with the name(s) of those who are signing this undertaking under Section 4)

Name of entity:

Dominion Salt Limited

(*Dominion Salt*)

Type of legal entity: Company

Nominated contact person:
Brett Hobson

Physical address: 89 Totara Street, Mt Maunganui, New Zealand

Postal address: Same as above

Work phone: (07) 575 6193

Mobile phone: 021 493 124

Email: brett.hobson@domsalt.co.nz

Industry: Manufacturing

Dominion Salt has 120 full time and 7 part time employees. At the Lake Grassmere Site there are 44 full time and 2 part time employees.

Description of the products and services provided by the business or undertaking:

Dominion Salt's salt works were established at Lake Grassmere in 1942. Dominion Salt produces salt for use in a diverse range of industries from consumer to pharmaceutical and agriculture to food production. Its products are supplied internationally to over 30 different countries.

Dominion Salt is guided by a vision to provide customers with a great experience and protect its unique assets for the future. It also has four key values which are Safety, Teamwork, Excellence and Ownership.

Comments:

1.2 Detail of the alleged contravention

WorkSafe New Zealand (*WorkSafe*) has charged Dominion Salt with alleged offences under the Health and Safety at Work Act 2015 (*Act*). They arise from an incident involving switching operations when power was reconnected to power lines that formed part of its private network, which had been damaged and isolated following the Kaikoura earthquakes.

WorkSafe has alleged Dominion Salt breached the duties imposed under s 34(1) and s 36(2) of the Act.

The specific steps that WorkSafe alleges are summarised below; WorkSafe alleges Dominion Salt should have:

(a) Communicated to Marlborough Lines, when Dominion Salt asked to have power reconnected to its private network, that the contractor it had engaged had not yet completed work.

(b) Specified which parts of the network should be reconnected and had appropriate entry controls in place for access to Dominion Salt's private network.

(c) Had appropriate work management processes in place to ensure that tags and locks were not removed without appropriate authorisation.

(d) Had appropriate information-sharing processes in place between Dominion Salt and Marlborough Lines and any third parties including contractors.

1.3 Detail the events surrounding the alleged contravention

Dominion Salt operates salt works at Lake Grasmere. This covers a total area of 1,416 hectares which includes an extensive pond system where seawater is taken in and evaporated as part of the salt production process. There are a number of pump stations throughout the ponds to control the flow of water and protect against other adverse events such as flooding. Those pump stations and Dominion Salt's other facilities on site are powered by an 11kV electricity network, which is privately owned by Dominion Salt.

Marlborough Lines is the owner and operator of the wider Marlborough electricity reticulation network. The network comprises some 3,000 kilometres of 11 kV electricity distribution lines.

On 14 November 2016, severe earthquakes known as the Kaikoura Earthquakes occurred. This caused serious damage to Marlborough Lines' network as well as the Dominion Salt private network.

Dominion Salt engaged a local contractor (*WPS*), who is independent of Marlborough Lines, to undertake emergency works. WPS inspected the private network and isolated the damaged areas. With those isolations in place power could be restored to some pumps and the factory while further repair work was scoped for later completion.

Marlborough Lines was involved in managing extensive emergency repairs across its network. As a consequence of the widespread damage the part of the Marlborough Lines network that supplied the salt works was without power. Marlborough Lines also isolated the private network by opening a switch which disconnected the supply to the private network. This ensured that, when power returned to the main network, it would not automatically liven Dominion Salt's private network.

In the afternoon of Monday 14 November, a senior manager at Dominion Salt (*manager*) contacted Marlborough Lines to say that the salt works was without power and there was damage to its network. The manager specified the particular isolations which had been put in place on the private network and that Dominion Salt had a contractor on site.

Following WPS' implementation of appropriate isolations on the private network Dominion Salt's manager completed checking the rest of the equipment on-site to ensure it was safe for power to be restored. He then contacted Marlborough Lines to confirm they were able to have power to be restored. This was not immediately possible and he continued to ring to check when power could be expected. Rain was forecast later in the week making the pump system critical to protect the salt harvest. It was not until midday on Wednesday 16 November that power was restored to the section of Marlborough Lines network that supplied power to the salt works.

At 12.10pm on 16 November, an operator from the Marlborough Lines control room (*operator*) contacted the Dominion Salt manager. An excerpt from the call is below:

> Operator: *Good, I'm just ringing to let you know I've just relivened the main line out at Grassmere and I'm just ready to close the switch into the Saltworks so just giving you guys a heads up so you don't get caught out by surprise.*
>
> Manager: *Okay thank you very much for that*
>
> Operator: *but yet everything is all good to liven there I understand? so,*
>
> Manager: *Yes, we've got everything turned off, yip so we should be good to go*

The operator then instructed a Marlborough Lines linesman (*linesman*) to close the switch that connected the Marlborough Lines network to Dominion Salt's private network.

The linesman went to a power pole near the turn off from State Highway 1, which is where the networks are connected. He removed the Marlborough Lines padlock, the Marlborough Lines "do not operate tag" that was in place and then closed the switch. This caused the private network to be electrified. The linesman confirmed these actions to the control room. The operator then instructed the linesman to proceed to close switches on Dominion Salt's private network.

The linesman drove over a kilometre to the entrance to Dominion Salt's premises. He proceeded past the office buildings and factory towards the pond system stopping to ask directions at the final portacom. The linesman continued and was able to locate a switch on the private network. He removed the "do not operate" tag but because the padlock belonged

to WPS, was unable to open the padlock with his key. He did not inform the control room of this and instead cut the padlock and proceeded to close the switch. While power briefly flowed; the circuit breaker immediately re-opened. The linesman tried closing it once more unsuccessfully. Electricity flowed briefly through the lines each time before the circuit breaker tripped.

The linesman contacted the operator to advise he was having difficulty closing the switch. The operator advised she would arrange assistance and another Marlborough Lines employee was organised to come to the salt works.

Around the same time the manager and WPS' director were meeting on site. When the WPS director saw men working on the private network he had isolated he approached them, asked what they were doing and why the WPS padlock had been removed. The isolation controls were reinstated and a formal re-livening process was completed once the required repair work had been completed.

1.4 Detail any enforcement notices issued that relate to the alleged contravention as detailed in term 1.2

DATE	NOTICE TYPE	NOTICE NUMBER	CONTRAVENTION OR PROHIBITED ACTIVITY	ACTION TAKEN IN RESPONSE TO NOTICE
N/A				

1.5 Detail the rectifications to the workplace or work practices made as a result of the alleged contravention (1.2), events (1.3) and the enforcement notices issued (1.4)
Dominion Salt has undertaken the following steps since this incident:

(a) Previously there has been no formal written agreement between Dominion Salt and Marlborough Lines. To reduce the risk of different work systems being used on the Dominion Salt private network, Dominion Salt and Marlborough Lines have entered into a Network Management Agreement. This agreement sets out Marlborough Lines responsibilities for:

a. Operational control of Dominion Salt's network;

b. Fault response; and

c. Maintenance (including assets condition checks).

(b) Formalising the arrangements this way ensures the same protocols that apply to the wider lines network in Marlborough are applied to Dominion Salt's network. This will reduce the risk of any similar incidents of misunderstanding occurring in the future.

(c) Dominion Salt has also worked with Marlborough Lines on an extensive capital works program to improve the capability of its private network. This reduces the need for urgent maintenance or repair and improves the safety of the network overall.

(d) Dominion Salt has proactively been trialling 'WorkWell', a programme run by the Nelson-Marlborough District Health Board. Its participation in this program has now been formalised and it will be rolled out to staff over the next two years as staff work through the eight wellbeing modules. This programme will cost Dominion Salt around $15,000 per year.

1.6 Total amount of money spent on rectifications
$350,000 to date has been spent upgrading the private network.

The costs for formalising the Network Management Agreement are not included in this total.

1.7 Detail the injury sustained or illness suffered by victim(s) or other(s) as a consequence of the contravention or, (as applicable) the *potential* for fatal injury or future fatal illness
There was no illness or injury sustained or harm suffered by any person or persons.

For a brief moment electricity flowed through the damaged lines. Had someone been working on the lines, without appropriate isolation controls, there was the potential for serious injury or a fatality.

1.8 Detail any offer of amends or payments made to the victim(s) who sustained injury or suffered illness (the total monetary amount here is also to be included in the table at 3.12.3)
N/A

1.9 Detail any consultation with the victim(s) as to their views on whether an enforceable undertaking would be an acceptable alternative to prosecution
N/A

1.10 Detail any consultation with unions/sector/industry as to their views on whether an enforceable undertaking would be an acceptable alternative to prosecution

Given the time constraints it has not been practicable to engage in broad consultation on whether an enforceable undertaking would be an acceptable alternative to prosecution. The Electrical Engineers Association (*EEA*) has confirmed it would be supportive of this type of initiative.

1.11 Detail the support provided or proposed by the person to the victim(s), other(s)

DATE	DESCRIPTION OF SUPPORT	COMMENTS
N/A		

1.12 Detail any current HSMS implemented and maintained by the person

Dominion Salt currently maintains a health and safety system that conforms to AS/NZS 4801. By 1 July 2022 Dominion Salt plans to have transitioned to the ISO 45001, the international standard for health and safety systems.

Previously, when ACC was running the WSMP program, Dominion Salt held a Tertiary accreditation for many years.

Dominion Salt has always employed dedicated health and safety professionals to facilitate high safety standards, which are governed by a health and safety policy. This policy cascades to a large volume of standard operating procedures, safe work methods, a training database, employee inductions, on-site supervision, health and safety committees at both sites, monthly health and safety committee meetings, an annual health and safety strategy meeting, regular area hazard reviews, stop cards for any reporting including near misses and sharing learnings between the two New Zealand sites and the wider Salt Group in Australia and Indonesia.

Dominion Salt has an internal auditing program in place to monitor adherence to requirements and identifying areas for improvement. Health and safety is a permanent agenda item for both the weekly senior leadership team meetings and the weekly site leadership team meetings. Dominion Salt recognises leadership and culture as the key to nurturing a positive health and safety climate and continues to invest in these areas regularly undertaking staff alignment and engagement surveys. The continual upskilling of the QHSE coordinators and health and safety committee members via internal and external courses and coaching in health and safety and its philosophy are tangible examples of Dominion Salt's commitment to safety.

To bring in new ideas and foster continuous improvement, the health and safety strategy facilitates site visits for health and safety committee members to other company sites and Dominion Salt hosts reciprocal visits. The sharing of health and safety knowledge and expertise is not limited to Dominion Salt, it extends to the Salt Group (Australia and Indonesia).

1.13 Detail the level of auditing undertaken on the HSMS, including compliance audits and audit frequency.

The Dominion Salt health and safety system is subject to internal auditing as per the internal audit schedule. As a part of Dominion Salt's health and safety strategy additional audits are undertaken and set annually by the health and safety committee members.

1.14 Detail the consultation undertaken or proposed to be undertaken, in relation to this undertaking

Dominion Salt has approached the EEA regarding involvement in preparing the specific work stream to benefit industry arising from this incident. The EEA has confirmed that it is comfortable supporting this proposal. Mr Bob Taylor (past chair of EEA) has also expressed his support for a project of this nature.

The draft Enforceable Undertaking has been provided to the Dominion Salt health and safety committee for review. They have confirmed they are supportive of the initiatives that have been identified and consider this is a proper resolution for this matter.

2 GENERAL TERMS

The person acknowledges and commits to the general terms set forth in the sub-terms below.

2.1 Acknowledgement that WorkSafe alleges a contravention occurred as detailed in term 1.2

Dominion Salt acknowledges that WorkSafe alleges a contravention of its duties under sections 34(1) and (2) and 36(1)(a) of the Act.

2.2 Statement of regret that the alleged contravention occurred

Dominion Salt takes its health and safety obligations seriously and regrets any allegation it has failed to meet the high standards expected of businesses. It is committed to continuing to be proactive in ensuring the safety of its workers and its workplace.

2.3 Statement of the reasons why, on balance, the person considers this undertaking is the most appropriate response to the contravention

Dominion Salt considers that this enforceable undertaking proposal is the most appropriate response to the contravention for the following reasons:

(a) The incident arose out of an unusual set of circumstances following a large natural disaster.

(b) The alternative of a Court prosecution will not achieve the same level of desirable outcomes (there will be no educative process of the kind contemplated or additional training for workers).

(c) Dominion Salt has an excellent safety record and has adopted the highest levels of responsibility towards safety.

(d) No injury occurred and the risk (if any) was presented no more than momentarily.

(e) The activities Dominion Salt has undertaken to complete will increase knowledge and awareness within the industry. Particularly for private network owners around operation control and fault response and health and safety obligations.

(f) Dominion Salt considers itself to be highly respected within its related industry sectors and wishes to lead in terms of health and safety. It liaises with a significant portion of business and accordingly any advances and developments that arise from this undertaking will have benefits that extend beyond Dominion Salt.

2.4 Statement of commitment that the behaviour, activities and other factors which caused or led to the alleged contravention has ceased and will not reoccur

Dominion Salt understands how important it is to learn from this incident. It is committed to ensure that this will never reoccur which is demonstrated by the formal Network Agreement it has entered into with Marlborough Lines.

2.5 Acknowledgment of the policy published by WorkSafe for the acceptance of an undertaking

Dominion Salt has read and understood the Enforcement Undertaking Operational Policy.

2.6 Acknowledgement that this undertaking will be published and publicised in full

Dominion Salt acknowledges that the undertaking will, if accepted, be published on WorkSafe's website in full and referenced in WorkSafe material.

2.7 Statement of the person's ability to comply with the terms of this undertaking and meet the projected costs of the activities

Dominion Salt has the financial capability and the capacity to comply with the terms of this undertaking.

In the event of impending receivership, liquidation or sale of the entity, Dominion Salt will advise Worksafe of the relevant circumstances and capacity to comply with the outstanding terms of this undertaking.

2.8 Statement outlining any relationship between the person and any corporations, officers, employees, contractors, proposed beneficiaries of donations or scholarship or other recipient of financial benefit contained in this undertaking

Other than those individual workers who are receiving training as part of the undertaking Dominion Salt is not aware of any connection between any proposed beneficiaries or its own officers, employees or contractors. As direct recipients include community venues it is anticipated that employees will benefit indirectly through that aspect of the undertaking.

2.9 Acknowledgement that the person may be required to provide a statutory declaration

Dominion Salt acknowledges that it may be necessary for WorkSafe to obtain a statutory declaration outlining details of any prior convictions (safety related) outside of New Zealand and that it will provide such declaration if required by WorkSafe.

2.10 Statement of commitment from the person to participate constructively in all compliance monitoring activities for this undertaking

1. It is acknowledged that responsibility for demonstrating compliance with this undertaking rests with the person.
2. Evidence to demonstrate compliance with the terms will be provided to WorkSafe by the due date for each term.
3. The evidence provided to demonstrate compliance with this undertaking will be retained by the person until advised by WorkSafe, that this undertaking has been completely discharged.
4. It is acknowledged that any failure to meet the due date for an enforceable term will result in the matter being escalated and may lead to enforcement action.
5. It is acknowledged that WorkSafe may undertake other compliance monitoring activities to verify the evidence and compliance with an enforceable term, and cooperation will be provided to WorkSafe.
6. It is acknowledged that WorkSafe may initiate additional compliance monitoring activities, such as inspections, as considered necessary at WorkSafe's expense.
7. It is acknowledged that details of all seminars, workshops and training conducted by a non-registered training provider must be notified to WorkSafe, by email, at least one week prior. Notification should include time, date, location and the trainer/facilitator.

3 ENFORCEABLE TERMS

Dominion Salt acknowledges all activities set forth in the enforceable terms below must be auditable and include a date for completion and an estimated cost for each activity.

The person commits to performing the activities below diligently, competently and by the respective completion date.

3.1 A commitment by the person to perform activities that will ensure the ongoing effective management of risks to health and safety in the future conduct of its business or undertaking

Dominion Salt commits to continuing to perform regular internal and external audits of its health and safety systems. Senior Management will continue to take an active part in audits and will work with employees to identify any improvements that can be made.

The continued encouragement of worker participation and regular reporting from health and safety committee meetings will enable management to have confidence that risks to health and safety are managed in an ongoing and proactive way.

As part of the evolution of health and safety system management Dominion Salt has committed, as at 20 May 2020, to using ISO45001 as the standard for its HSMS with an aim of being accredited within 24 months (by 1 July 2022).

3.2 A commitment by the person to disseminate information about this undertaking to workers, and other relevant parties

Dissemination will be achieved by doing the following:

- An email will be sent upon the acceptance of the undertaking announcing it to all Dominion Salt employees.
- The undertaking will be discussed at Dominion Salt's health and safety meetings that immediately follow its execution.
- The undertaking will be shared with the Salt Group in Australia.
- The undertaking will be published on Dominion Salt's website for 12 months beginning as soon as possible after the date on which it is accepted by WorkSafe, and after that period the undertaking will be made available to workers, customers and other stakeholders on request.

Dissemination will occur by: 31-07-2020

3.3 Activities to be undertaken to promote the objectives of the health and safety legislation that will deliver benefits for workers and/or work and/or the workplace

Activity	Cost	Timeframe
Additional training for all site staff on lockout procedures.	$2,000	6 months
Targeted electrical safety training for the services manager and site electrician.	$5,000	6 months
Attendance by two site managers at the next Energy Users Conference.	$4,000	12 months
Train the Trainer Training (EMA) for 2 QHSE co-ordinators.	$4,000	6 months
Total	**$15,000**	

3.4 Activities to be undertaken to promote the objectives of the health and safety legislation that will deliver benefits for the wider industry or sector

ACTIVITIES Outline the activity and the expected outcomes	**COST** **($)**	**TIMEFRAME**
Funding a gap analysis report of the incident by EEA with key issues, learnings and improved safety practice - including duties held by Persons Conducting Businesses or Undertakings. This will be shared with private network owners/electricity distribution companies/contractors and other industry stakeholders. The EEA, as part of their general guidance review process, will also update other relevant EEA safety guidance material to reflect the learnings and improved safety practice from this incident. The material will be provided to Marlborough Lines who will assist with publicising it either directly to electricity authorities or as part of its presentation.	$20,000	9 months
Total estimated cost of benefits for industry	**$20,000**	

3.5 Activities to be undertaken to promote the objectives of the health and safety legislation that will deliver benefits for community

ACTIVITIES Outline the activity and the expected outcomes	**COST** **($)**	**TIMEFRAME**
Funding the installation of residual current devices for community venues in the Marlborough region.	$5,000	6 months
Total estimated cost of benefits for the community	**$5,000**	

3.6 Where Worksafe considers appropriate in the circumstances, undertaking a SafePlus Onsite Assessment

Further information about SafePlus can be found here: https://worksafe.govt.nz/managing-health-and-safety/businesses/safeplus/about-safeplus/

The suitability of a SafePlus assessment will be determined by the Enforceable Undertakings Panel when your application is considered.

In addition to the total cost below (3.7) all costs of SafePlus Onsite Assessment will be met by the person making this undertaking. The fee charged for an onsite assessment is commercial matter between your business and the Safe Plus Accredited Assessors that you commission.

3.7 Minimum spend

Dominion Salt Limited commits to a minimum spend of $40,000 for this undertaking.

Dominion Salt Limited agrees to spend any residual amount arising from an original term not being completed or being less costly than estimated in this undertaking. Agreement on how to spend this residual amount will be sought from WorkSafe.

Dominion Salt Limited acknowledges the minimum spend comprises of the:

TOTAL COST	**MINIMUM SPEND**
Financial amends paid to victims (if applicable)	N/A
Benefits to workers/others	$15,000
Benefits to industry	$20,000
Benefits to community	$5,000
Estimated cost of the undertaking Plus GST (if any)	**$40,000**

4. EXECUTION

Authorised representative of an organisation

Undertaking given by: Brett Hobson

In my own right and in my capacity as General Manager

of Dominion Salt Limited

On the 12th day of June 2020.

Signature of the person giving the undertaking:

Undertaking given before me:

Witness name: Michael Kaatan

Witness address:

10 Pandora Place
Tauranga

Witness signature:

5. ACCEPTANCE

This undertaking is accepted by WorkSafe.

On the 5th day of June, 2020.

Signature of person accepting the undertaking:

S. Humphries

Name of WorkSafe representative: (General Manager, WorkSafe (or delegate))

Undertaking given before me:

Witness name: Cordell Weir

Witness address:

86 Customhouse Quay
WGTN

Witness signature: