Public Submissions on Improving Health & Safety Management in the Underground Mining Industry

DEPARTMENT OF LABOUR
SEPTEMBER 2008
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Interested Individual

Submitter A

(*Submitter A's name and identifying details have been withheld to protect personal privacy)
Range of approaches

Safety Case

A safety case is unnecessarily complicated and time consuming for anything other than very large scale mine developments. Given the size of the industry it would be used infrequently and no corporate knowledge would be built up and no expertise exists among the regulators to police it. All of the items contained in it would be a requirement under a risk based legislative framework.

License to perform

It seems to be very restricted and does not address the scenarios involved in the recent fatalities. It is more important that the person operating or managing the mine has adequate qualification in the first place. This should include risk management qualifications.

Third party monitoring

A good idea to ensure a regular external review of the overall mining operations given that the monitor has the proper expertise and the agreed scope. Inspections by the regulator are confined by the regulation which is very restrictive and does not cover day to day decisions in regard to the workings or planning of future workings. The inspector educates, enables, engages and enforces in relation to health and safety, not mining engineering. Many of the smaller mines do not have sufficient resource or expertise to allow them to carry out the functions required of them to a high standard and this lack of mining engineering expertise leads to unsafe conditions. This is exacerbated by the lack of adequate legislation which would ensure that they confront the problem whilst giving the Inspector leverage to ensure a safe method of work is adopted.

Notification Regime

If we work on the premise that all mining activities are dangerous then we reach the conclusion that all activity should be notified. There is a requirement for notification of proposed workings to be made to Crown Minerals for the coming year. This could be developed into a Mine Development Plan containing features such as adjacent workings, method of work, ventilation, gas management, fire fighting provision, self rescuer caches etc etc and accompanied by the associated risk assessments. The bigger the mine the bigger the plan. This would help bridge the gap between a Safety Plans, Licenses and Monitoring with permission being sought prior to application of the plan and incorporating defined review periods.

Supporting Guidance

There has been a need for increased guidance material for some time. People within the department have been aware of this but for whatever reason this has not happened. The ACOP has been available for a number of years indeed it was in the public domain but withdrawn at the behest of Solid Energy who probably saw as it as unnecessarily onerous. It was not a great document but it was better than nothing and
could have been developed. It at least started to introduce risk management elements into the management of mines. Whilst the NZ legislation is risked based it does not provide the mechanisms or guidance necessary to allow those who have to apply it, both the employers and the regulators, to do so effectively.

Amending regulatory coverage

The regulations were put together in a hurry, were ill thought out and have never been tested in law. They cover only a fraction of what goes on underground and leave the user looking for answers which they invariably find through using either the NSW or Queensland legislation. Due to the lack of expertise and appropriate manning within the Dept of Labour amendments to the legislation are difficult to impossible leaving it as a lame duck. NSW has been able to successfully align their Mining legislation with their risk based Workplace legislation and would be a good model for comparison. Queensland’s Mining legislation has remained independent and boasts the safest mining industry in the world. The complexity of the legislation however is much greater than the NZ model which has no requirement for the risk based safety management system elements of risk assessment, principal hazard management plans, SOP’s etc.

Employee participation

This system operates in the Queensland mining industry with SSHR’s and ISHR’s. The SSHR’s operate at mine level with a commitment required from the mine in regard to training. I believe that there is sufficient requirement within the existing legislation to ensure that the equivalent position is available to the NZ miners. A short mapping exercise would confirm this. The gap would appear to be in the nature and a extent of the training required. Correspondence with the CFMEU would detail the training requirements. Provision of ISHR’s however, is another matter. Given the size of the industry and the make up of the union it is difficult to see how they would be able to support a full time, fully trained Safety and Health Rep for the mining industry. It may be that they with industry support may seek third party monitoring.

Health and Safety Inspections

Underground Mines are the most inspected of any workplace in the country. The same standards of inspection should apply to them as to any other workplace. The danger is that the mines are micromanaged and the Dept becomes responsible by default every time an incident occurs at a mine. The frequency and quality of inspection is not a lot different from those undertaken in Australia. The resource of the Australian Mines Inspection Department is however much greater and contact occurs at all levels of the organisation with operators and in more specialised areas such as engineering, electrical, occupational health and ergonomics. The Dept of Labour’s Mining Inspectors have had a self imposed inspection scheme in place for many years which was risk based. Changes in manning, location, job structure, budget, introduction of legislation etc made this difficult to achieve. Any changes must be properly resourced. It comes back to proper risk management of the mines by the mines. They have had since 1992 to self police safety and have made little progress. Any knee jerk reaction to increased inspection regimes would be wrong. The quality of the inspections or the
inspectors for that matter is up to the Dept but as you know resources and availability are an issue.
Ancillary Mining Service Provider

Tony King
RESPONSE FORM: IMPROVING HAZARD MANAGEMENT WITHIN THE UNDERGROUND MINING INDUSTRY

The Department of Labour wants to know your views on approaches and options to improve the ways hazards are identified and managed in the underground mining industry. You can answer the questions in the form provided in the paper, use the online form found at www.dol.govt.nz, or submit a statement about your views.

Responses are due by 5pm, 06 June 2008 and can be sent by post, email or fax to:

Review of Underground Mining
Workplace Health and Safety
Department of Labour
P O Box 3705
Wellington 6140
Fax: 04 499 0891
Email: undergroundundergroundmining@dol.govt.nz

If you have any questions about the consultation process, please contact undergroundmining@dol.govt.nz

Details of respondent

Name: Tony King
Address: PO Box 80 111
Phone (optional): 03 341 8888
Email (optional): tony@optionone.co.nz

I am responding:

☐ as an individual yes
☐ on behalf of an organisation

Organisation/business name (if applicable):

__________________________

Please tick the box below that best describes you for the purposes of this consultation:

☐ Employee
☐ Small business (up to 10 staff)
☐ Medium business (11 to 50 staff)
☐ Large business (over 50 staff)
☐ Business representative organisation/industry group
☐ Trade union
☐ Community group
☐ Training organisation
☐ Other (please describe) Interested person, consultant to Mining Industry

This submission can be made public
I am a mining engineer and qualified underground coal mine manager with experience as a miner, supervisor (deputy), undermanager, mine manager (5 years at Huntly East Mine), corporate H&S manager, general manager responsible for multiple mines, consultant to mining and related industries and a director of large contracting and infrastructure companies.

My views on these proposals are shaped by the following principles:-

1 Mining occurs when a company decides to do so for profit (with only trivial exceptions)
2 The owners/directors/managers make that decision knowing that mining is a potentially hazardous (and potentially catastrophic) undertaking
3 All owners/directors/managers WITHOUT EXCEPTION due to size, skills or anything, must make that decision to enter (or continue) mining knowing that they must accept and manage and factor in that risk and with it the associated costs.
4 There is NO right to mine in a way that cuts costs or short circuits best practice just because a mine is small or a deposit is marginally economic.
5 The overwhelming responsibility for safety lies with the directors and managers of the company that has CHOSEN to mine, and which controls the resources and decision making necessary to do it safely or not.
6 The secondary responsibility lies with EVERYONE AS INDIVIDUALS who works in and around the mine. Their everyday actions and inactions, combined with proper management practices will determine whether a mine is actually safe or not.
7 The government has a proper, necessary and constructive role as regulator and enforcement agency to ensure that which should be done, is done.
8 There is no place for other parties such as check inspectors or unions to be given statutory roles as that can only confuse or dilute the accountabilities above.

I was a mine manager during the transition from the time of mining inspectors, check inspectors and prescriptive regulations through into the performance based regime of the HSE Act. That coincided with a strong desire on the part of senior management to achieve a large step change in safety results as the old regime of regs, inspectors and check inspectors was not driving any systematic improvement. Initiatives taken around such non-mandated things as things behaviour change, proceduralised approach to workplace task performance, skills training and motivation have resulted accident rates falling to 1/10th of pre HSE Act levels.

TELL US WHAT YOU THINK

We would like to hear what you think of each of the individual options and would be grateful if you could answer the questions following each of the options.

Safety case

1 Do you think the safety case regime would work well for underground mining to improve the ways hazards are identified and managed? Why/why not? Yes with qualifications. Mining companies with well developed and comprehensive
HS management systems should be able to have them approved as safety cases without needing to reformat or recast them. This can be a matter of judgement for DOL. Mining companies without them should prepare a safety case that includes among other things how they will obtain and pay for the specialist skills or advice that large companies have in house. (see principle 4 above). If companies choose not to (or can’t afford) to develop mine specific comprehensive systems, to contract or hire specialists and generally resource proper H&S management then they should not be operating. We can expect that companies and contractors will emerge with products and services to help smaller operations put in place these plans and systems and support their implementation and use.

What do you think are the main benefits and costs of this option?Mine and company specific systems with evidence that issues have been addressed and that essential services eg geologists, surveyors, mining engineers, electricians etc, have been identified and confirmed available.

What do you think of the variations and features proposed? Can you add any more?If the DOL wants to have mining inspectors, then it must front up with enough qualified, competent inspectors that they can receive, consider, compare and ultimately APPROVE safety cases, and subsequently audit and enforce compliance. Safety cases should be comprehensive and not selective to ensure no gaps or omissions arise.

Overall the safety case regime leaves responsibility for HOW safety is achieved where it belongs i.e. with the company. Preserving to the extent possible existing high standard h&S management systems (where they exist) will minimise time diverted from safety initiatives in the field, retraining of staff etc. However the threshold for what constitutes an acceptable safety case should be high.

If the safety case approach is not adopted, then emphasis must be given to Option 3 i.e. Health and safety management systems and major hazard management plans

Licensing regime

Do you think the licensing regime would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?Not especially. The companies’ H&S management system should cover off (and in a more targeted way) the matters that licenses would attempt to do in a generic way. Licenses automatically authorising people to do things could be seen as cutting across the better practice of specific risk assessments for that activity within any mine. Unit standards could be developed to give generic relevant qualifications but the activities should still be subject to specific assessment and approvals and competency processes signed off by management.

What activities should require a licence?

Should the licence be a one-off type, or valid for a certain period of time?

What would the appropriate qualifications or knowledge be?

What do you think are the main benefits and costs of this option?

Can you think of any variations and features that would enhance this option?

Third-party monitoring system
10 Do you think a third party monitoring system would work well for underground mining to improve the ways hazards are identified and managed? Why/why not? *This is possibly a useful process to allow unusual or specialised activities to be undertaken in smaller mines that do not have the expertise themselves and to circumvent the need to prepare a safety case for one-off type operations.*

11 What activities should require monitoring?

12 Who would a suitably qualified person be?

13 What do you think are the main benefits and costs of this option?

14 Can you think of any variations and/or features that would enhance the option?

Notification regime for certain high-risk activities

15 Do you think a notification regime would work well for underground mining to improve the ways hazards are identified and managed? Why/why not? *This is a useful part of the audit/enforcement role of the DOL. The DOL cannot bring its consideration to bear on an activity if it does not know it is going on. The dept should have the opportunity to check that proposed activities are covered by the safety case, or management system, review the risk assessment carried out (or even participate in it).*

16 What activities should be included? *Almost any activity that is unusual for any site. Eq a mine that regularly does welding underground should not have to notify. But a mine that has done no welding for several years should. It is the change from routine, and doing things that have not been done before that constitutes significant hazards.*

17 What information should be required? *Where when and how, who has been involved in the risk assessment? Not why, they don’t need to justify the decision, just show they have risks covered.*

18 What do you think are the main benefits and costs of this option? *The main benefit is that it will force management to ensure they have fully addressed the risks and hazards and have proper systems and training in place. No issue for a well organised and resourced operations*

19 What do you think of the variations and features proposed? Can you add any more? *On-line is good so long as the message gets through to busy inspectors on the road. These types of activities may be time critical to the operator.*

Health and safety management systems and major hazard management plans

20 Do you think this option would work well for underground mining to improve the ways hazards are identified and managed? Why/why not? *These plans are the core of H&S management. They also represent the guts of a safety case regime.*

21 What should be detailed in the systems?
22 What hazards should require a plan, and what should the plan include? Every hazard that is identified with emphasis on high probability or high consequence hazards.

23 What do you think are the main benefits and costs of this option? If all hazards are identified and appropriate controls put in place then this is the greatest single step that can be made to improve safety.

24 Are there any differences between large and small underground mines that would lead to different requirements in the systems and plans? No, not if the principle that there can only be one minimum standard of safety for mines is accepted.

**Increased supporting guidance**

25 Do you think this option would work well for underground mining to improve the ways hazards are identified and managed? Why/why not? A good safety management process should identify hazards with more accuracy and specificity and develop controls to deal with them, far more comprehensively than any code of practice would. The more you try to develop detailed COP's the greater the risk that they substitute for deliberate organised consideration of individual situations with all the variations that they come in. Guidelines however are more constructive (in that they try to say what you should do) than regulations that often only say what you can't do, or constrain the options an operation has to do something.

26 What ACOP development process would you prefer? (For example, should it be written by industry and unions, the Department of Labour, or developed by industry, unions and government together?)

27 What areas would you like to see specific guidance on?

28 What do you think are the main benefits and costs of this option?

29 Can you think of any variations and features that would enhance the option?

**Extending the coverage of the Mining Underground Regulations**

30 Do you think this option would work well for underground mining to improve the ways hazards are identified and managed? Why/why not? In my view the uselessness of prescriptive regulations (along with check inspectors) is evident by comparing accident statistics from the pre HSE period with results today. Mines typically have accident/injury rates today only 1/10th of the Pre HSE rates. Regulations run the risk of a mindset that says “if its not prohibited by the regs then it must be ok”?

31 What do you think are the main benefits and costs of this option? I think there are no benefits even though the costs are low.

32 What gaps do you think currently exist in the regulations that need addressing?

**Amending the Mining Administration Regulations**

33 Do you think this option would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?

34 What do you think are the main benefits and costs of this option?

35 What impact do you think this option would have on smaller mines?
Employee participation requirements

This is the worst and least necessary or desirable part of these proposals.

Any half competent or organised H&S management system will encourage and provide for the frequent and intensive involvement of the people who do the actual work, in assessing and managing risks.

Introducing these check inspector roles confuses and diminishes the primacy of the obligation on the company and its managers to provide for safety. It also cuts across the clarity that exists for the DOL’s own role in audit and enforcement.

These roles in the past often resulted in H&S issues becoming industrial issues. Many mining operations have trouble getting workers to actually stop doing hazardous activities. The image of the company or manager who has a "damn safety" or "production at any cost" that is implied by this notion is completely anachronistic.

Further it is highly unlikely that check inspectors - with the technical, operational and professional skills and experience to allow better judgement than the managers, supervisors and technical specialists that large mines typically have - will be available.

Whatever this proposal is trying to achieve would served by having more and better DOL inspectors undertaking audit and enforcement work a lot more frequently than at present.

36 There are four possibilities to improve employee participation under this option:

a Amending primary legislation to include a check inspector regime. See Above

b Amending current regulations to include a modified version of a check inspector regime, with powers reframed as duties and certain aspects removed. See Above

c Incorporating certain aspects of the check inspector regime into the existing options in this paper on safety cases, hazard management plans and employee participation ACOPs. See Above

d Creating an employee participation ACOP. As some forms of employee participation are best practice anyway, this is the preferred approach if it is deemed that anything is necessary in this regard.

It is worth reviewing recent incidents and thinking about whether a check inspector regime would have made one scrap of difference. I submit that improved standards of risk assessment and consequential management plans combined with regular DOL inspections would have been far more beneficial than anything under this section.

Think about each possibility separately. Do you think they would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?

37 What do you think are the main benefits and costs of each possibility?

38 What impact do you think each possibility would have on smaller mines?

Requirements for health and safety inspectors
Do you think this option would work well for underground mining to improve the ways hazards are identified and managed? Why/why not? Yes, I think mandating the frequency of inspections will result in a larger pool of inspectors on the job, assurance that all mines have proper H&S plans in place and most importantly that they are being followed and new hazards identified and managed.

What do you think are the main benefits and costs of this option? see above

What could the legislation specify regarding health and safety inspector visits?

I think monthly visits to small mines that generally lack the resources and organisational discipline present in large mines would be appropriate, with say 2 monthly visits to larger operations.

Can you think of any variations and features that would enhance this option? A requirement for visits to include consideration of 1-3 month horizon activities planned for the mine. i.e. the focus should be on looking forward to what will happen at the mine in the near future not just auditing past performance against the HSE plan.

In addition, we would like to know your views on the following:

### Additional questions

1. What do you think are the main health and safety issues facing the underground mining industry today that need addressing? Getting uniformly high standards and practices in place across the whole industry.

2. The Department of Labour notes that mine plans are a key health and safety resource for underground mining. In particular, plans of old mine workings are critical to mine safety. There is currently no coordination on the availability and use of these plans, or of their maintenance. Do you think it would be of value to implement a system to ensure all plans are available to those who require them? If so, do you have any suggestions on how this could be done? Ideally a virtual/digital model could work. IF regardless of who owns or holds plans they should be initially catalogued, and then digitized with data freely available. DOL could facilitate Crown Minerals taking a lead on this through already well developed spatial database systems Crown Minerals operate.

3. What combinations of options do you think would be effective for the industry to improve the ways hazards are identified and managed in the underground mining industry?

4. Can you think of any options that are not mentioned here that would be effective in improving the ways hazards are identified and managed in the underground mining industry?

5. Have we left anything out of Appendix 1?

6. Can you think of anything else that would help improve the ways hazards are identified and managed within the underground mining industry?
Please note that any submissions that you make may be the subject of a request under the Official Information Act 1982. To assist the Department of Labour with the processing of any such requests, please indicate at the beginning of your submission whether or not you would like the contents made a matter of public record.

43 Any further comment?
Ancillary Mining Service Provider

Dave Stewart
RESPONSE FORM: IMPROVING HAZARD MANAGEMENT WITHIN THE UNDERGROUND MINING INDUSTRY

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Review of Underground Mining
Workplace Health and Safety
Department of Labour
P O Box 3705
Wellington 6140
Fax: 04 499 0891
Email: undergroundmining@dol.govt.nz

If you have any questions about the consultation process, please contact undergroundmining@dol.govt.nz

Details of respondent

Name: David Stewart
Address: PO Box 409, Blenheim 7240
Phone (optional): 027 277 6203
Email (optional): minserv@xtra.co.nz

I am responding:
✓ as an individual
☐ on behalf of an organisation
Organisation/business name (if applicable): Minserv International Ltd
________________________________________

Please tick the box below that best describes you for the purposes of this consultation:
☐ Employee
✓ Small business (up to 10 staff)
☐ Medium business (11 to 50 staff)
☐ Large business (over 50 staff)
☐ Business representative organisation/industry group
☐ Trade union
☐ Community group
☐ Training organisation
☐ Other (please describe)
TELL US WHAT YOU THINK

We would like to hear what you think of each of the individual options and would be grateful if you could answer the questions following each of the options.

Safety case

1  Do you think the safety case regime would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?

Yes, the Safety Case proposal has benefits subject to the following:
  • It must be kept specific to the operation concerned
  • It must be developed under the umbrella standards and requirements of Industry Codes of Practice and / or Industry Best Practice guidelines
  • The conditions and standards specified must be meet prior to the operation commencing
  • It must be monitored by the Inspectorate to ensure the operation is in compliance with the regime developed
  • There must be a quick response time established so that the company are not compromised because of delays in evaluating and approving the proposal

2  What do you think are the main benefits and costs of this option?

The benefits are as follows:
  • It establishes standards and operational criteria the company is expected to practically meet before any work commences; and
  • As the above must be implemented / enacted prior to the operation starting then the financial commitment has to be provided for

3  What do you think of the variations and features proposed? Can you add any more?

Licensing regime

4  Do you think the licensing regime would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?

This may be useful in some instances. The only time it would be usefully applied is for activities that are outside of the Safety Case initially presented and the scope and contents of the Health & Safety Management Plan or the companies own established procedures and management framework.

In other words this should be an exception for one off unique and potentially hazardous activities and for no other reason.

5  What activities should require a licence?

See above

6  Should the licence be a one-off type, or valid for a certain period of time?

See above
7 What would the appropriate qualifications or knowledge be?

*Depends on the activity but clearly the onus is on the company / operator to ensure competent people are carrying out the tasks*

8 What do you think are the main benefits and costs of this option?

9 Can you think of any variations and features that would enhance this option?

**Third-party monitoring system**

10 Do you think a third party monitoring system would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?

*This is already required that is why we have certificates of competency and approved handler test certificates etc. I think extending this is undermining the already well established statutory requirements and ‘competency’ standards, which if they were adequately enforced at all times, would address this problem.*

*It also suggests that the responsibility can be passed to a ‘third party’ and therefore remove the responsibility from the owner / operator.*

*Better to leave the responsibility with the company / operator and if they want to bring in external ‘third party’ support and assistance then they have that option.*

11 What activities should require monitoring?

12 Who would a suitably qualified person be?

13 What do you think are the main benefits and costs of this option?

14 Can you think of any variations and/or features that would enhance the option?

**Notification regime for certain high-risk activities**

15 Do you think a notification regime would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?

*If the licensing was introduced for one off, high risk activities then notification would occur as a matter of course. The Dept of Labour would issue the licence and therefore will obviously have received all the information they need otherwise the licence would not be issued.*

16 What activities should be included?

17 What information should be required?

18 What do you think are the main benefits and costs of this option?

19 What do you think of the variations and features proposed? Can you add any more?

**Health and safety management systems and major hazard management plans**

20 Do you think this option would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?
Yes, absolutely. I do not know why H&S Management Plans, including Hazard Management Plans have not been required by the Dept of Labour (and OSH) before now. The Health & Safety in Employment Act and Regulations have been quite specific about H&S and hazards since 1992.

The problem is they law has not been enforced so what is suggested is not a new concept, it is essential and should always have been necessary. Most operations have H&S Management Plans of some sort, and most are quite specific with regard to policy and procedures covering the full range of operational and reporting requirements.

21 What should be detailed in the systems?
I have not got the time or space to specify all that a H&S Management Plan should contain but I prepared a document entitled 'Benchmark Guidelines For Health and Safety in Small Underground Coal Mines’ Minserv International Ltd 2006 for the Dept of Labour, and that covers what I consider are the requirements

22 What hazards should require a plan, and what should the plan include?
Refer to above

23 What do you think are the main benefits and costs of this option?

24 Are there any differences between large and small underground mines that would lead to different requirements in the systems and plans?
The structure and format will be much the same but the detail in the content will vary and will increase the more complex the operation becomes

Increased supporting guidance

25 Do you think this option would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?
There is already a series of generic Codes of Practice in the system developed by MinEx with major contribution from the larger mining companies. These documents are generally OK but are basically umbrella guidelines. Each operation needs to develop its own H&S Management Plan. This is not hard to do, and is not costly it just needs to be done!

26 What ACOP development process would you prefer? (For example, should it be written by industry and unions, the Department of Labour, or developed by industry, unions and government together?)
Refer to above

27 What areas would you like to see specific guidance on?

28 What do you think are the main benefits and costs of this option?

29 Can you think of any variations and features that would enhance the option?

Extending the coverage of the Mining Underground Regulations

30 Do you think this option would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?
The H&S Employment Act and current Regulations are quite adequate. If we revert to extending the Mining Regulations we may as well go back to the old 1979 Regs and update them. But, I believe we have grown past all that.

Enforcing H&S Management Plans, Codes of Practices available and the Safety Case requirements should be adequate to meet any of the required standards and procedures.

The main problem is the current legislation is not being adequately enforced and checks and balances followed up; for example Mines Inspectors are required by law to enforce the Act and advise on health & safety matters in the industry. This means:

- The Mines Inspectors have to be knowledgeable and know what to look for and what to advise on; and
- There needs to be enough of them so they can inspect operations regularly; and
- The Dept of Labour needs to raise the status and remuneration of the positions so that competent and experienced people will stay in the role; and
- The overwhelming bureaucratic regime that prevails in Govt Departments needs to be rationalised so that more resources are put into front line activities

31 What do you think are the main benefits and costs of this option?

32 What gaps do you think currently exist in the regulations that need addressing?

Amending the Mining Administration Regulations

33 Do you think this option would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?

There is an issue with deputy certificate of competency because the EXITO training curriculum does not include some essential operational unit standards. There are 2 options:

- Increase the scope of deputy training requirements; or
- Legislate so the minimum standard for managing any UG operation is underviewer CoC for coal mines and A Grade tunnel for tunnels.

I think the latter is easier and probably more practicable. The deputy CoC and B Grade tunnel CoC can still be used at supervisor level which is what they were originally developed for and which are most of the applications now.

34 What do you think are the main benefits and costs of this option?

35 What impact do you think this option would have on smaller mines?

Not a major impact. The owner / operator / manager will just have to extend their knowledge which is a good thing not a bad thing.

Employee participation requirements

36 There are four possibilities to improve employee participation under this option:
a Amending primary legislation to include a check inspector regime.

No. I do not believe reverting to the old Check Inspector regime will do anything. My underground mining history was with check inspectors and it usually ended up in a management/union wrangle about all sorts of issues and genuine health & safety was not the major agenda item. This is a union initiative and is a step back 20 odd years. We have all grown older and wiser I hope.

b Amending current regulations to include a modified version of a check inspector regime, with powers reframed as duties and certain aspects removed.

The current H&S in Employment Act has adequate provision and legal requirements for H&S Representatives. These representatives have legislative power to carry out H&S inspections and bring issues directly to the Inspector and management now.

The problem is the current legislation is not being applied to its full potential. I suggest that before any further change is introduced that the amendments to the H&S Act be fully explored by the CTU and managers and they start working in 'Good Faith'.

Reverting to the old system will not make the situation any better. Full use of current legislative power and flexibility will.

c Incorporating certain aspects of the check inspector regime into the existing options in this paper on safety cases, hazard management plans and employee participation ACOPs.

d Creating an employee participation ACOP.

I am not sure why employees need their own ACOP. The ACOP’s developed now and all company management plans, standards and procedures are developed with employee participation anyway. Essentially these are for all employees (including the managers)

Think about each possibility separately. Do you think they would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?

37 What do you think are the main benefits and costs of each possibility?

38 What impact do you think each possibility would have on smaller mines?

If small mines had H&S Management Plans, standards and procedures specific to their operation, and were developed with the employee and management teams, which by their nature they would be, then I cannot see why it should be difficult for a small operation to comply.

Requirements for health and safety inspectors

39 Do you think this option would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?
I am confused with this proposal. The H&S Employment Act 1992; Clause 30 states quite clearly the function of Inspectors. There is no confusion with this, it says:

a) To help employers, employees, and other persons to improve safety at places of work etc; and

b) To ascertain whether or not this Act is being and will be complied with; and

c) To take all reasonable steps to ensure the Act is being complied with; and

d) All other functions conferred under this Act or any other enactment.

It is the legal responsibility of the Dept of Labour to ensure the resources, inspectorate regime, level of expertise and so on, is available to meet the legal requirements.

New legislation is not required in my opinion. Resources and the finance and the will to apply these resources are required.

40 What do you think are the main benefits and costs of this option?
41 What could the legislation specify regarding health and safety inspector visits?
42 Can you think of any variations and features that would enhance this option?

In addition, we would like to know your views on the following:
Additional questions

1. What do you think are the main health and safety issues facing the underground mining industry today that need addressing?
   - A more robust inspectorate regime
   - Requirement for enforceable and enforced H&S Management Plans for all operations
   - Training obligations enforced so that competent employees and managers are competent and are not appointed because of convenience or because there is nobody else

2. The Department of Labour notes that mine plans are a key health and safety resource for underground mining. In particular, plans of old mine workings are critical to mine safety. There is currently no coordination on the availability and use of these plans, or of their maintenance. Do you think it would be of value to implement a system to ensure all plans are available to those who require them? If so, do you have any suggestions on how this could be done?
   - Yes, it is necessary
   - How to do it - somebody will have to coordinate a nationwide search through records and create a national register with location and person to contact when access is required; and
   - Any operation working in proximity of old workings will be authorised by the Dept of Labour to access the register to identify the plans that are relevant; and
   - The owner of these plans must make copies available within a specified time

3. What combinations of options do you think would be effective for the industry to improve the ways hazards are identified and managed in the underground mining industry?
   - This has been answered above

4. Can you think of any options that are not mentioned here that would be effective in improving the ways hazards are identified and managed in the underground mining industry?

5. Have we left anything out of Appendix 1?

6. Can you think of anything else that would help improve the ways hazards are identified and managed within the underground mining industry?

Please note that any submissions that you make may be the subject of a request under the Official Information Act 1982. To assist the Department of Labour with the processing of any such requests, please indicate at the beginning of your submission whether or not you would like the contents made a matter of public record.

43. Any further comment?

In my opinion the current legislation is adequate, it just has not been enforced adequately, has become too bureaucratic in its application, and has not been used to its full potential.

More legislation is not the answer, the answer lies in ensuring existing operations and companies comply with the legislation that already exists.
Interested Individual

Peter Ewen
(Referred to as Submitter B in the submissions Report)
June 2, 2008

Peter Ewen
18 Morpeth Street
Rapahoe
West Coast

To Workplace Policy Group

Submission on:

Improving Health and Safety Hazard Management
In Underground Mining Industry

Having read the department’s draft document I make the following submission as an interested individual.

I do so from the position as a journalist, feature writer of many mining issues, a past employee of the industry and author (Strongman Three Score and More — 2006). Enclosed with my compliments is a copy of that as part of my submission.

Being familiar in an historical sense with the previous Mines Inspectorate regime and the Coal Mines Act (1979), along with changes which followed in the late 1990s, the mere fact that there is now this process, it perhaps highlights gaps and shortcomings with that which was changed during this period.

The focus of putting emphasis on mining employees taking more of a lead role in health and safety and day-to-day workplace decision making in relation to risk, is one that is actually fraught with some peril itself. This is certainly so with the less well resources operators.

Bigger industry players have more access to internal expertise and resources and so they are not necessarily the main concern. However, as history has shown us many times, they are not immune from the ‘shortcut’ mindset of both employees and management that often leads to disaster.

There have been several multiple mining death incidents (for reference herein I only use the figure of four deaths or more, per incident) on the West Coast, going back to the Brunner disaster of March 26, 1896, which claimed 65 lives. This remain NZ’s worst industrial workplace accident, and long may it remain so.

However, by far the greater number of mining deaths, are single fatalities.

Within the boundaries of the old West Coast Inspectorate district alone — that being Buller/West Coast — in all mining, some 325 deaths have occurred in a period a little over 130 years.

Any revision of the regulations associated with mining must focus on the role of the Inspector.

To improve workplace safety in mines, this role must certainly be more one of where more visits to mines actually takes place.

It’s human nature to take shortcuts and with the absense of Inspectors on regular mine visits, this is a significant reason for the concern-problem we now have today. Unfortunately, mining is not alone with this fact.

I draw your attention to cutbacks and changes to industry inspection and watchdog roles that the aviation (CAA) and maritime regulators had that in the end, led to pilot Michael Bannerman’s air crash that claimed eight lives in Canterbury on June 6, 2003, and the Kotuku fishing boat tragedy off Bluff that claimed six on May 13, 2006.

Both were the result of a deficiency on the part of the regulator to follow up checks and inspections of an operator. In Bannerman’s case no fewer than 20 concerns had been raised about his operation.

Much was known at a high level on matters relating to these incidents yet only after these examples had claimed lives did authorities start to do their job and only then did legislation to a large degree, revert back to what it was before these tragedies occurred. Both were avoidable if the regulator, and others, had carried out their intended function and not ignored reds flags that were raised.

With mine visits by Mine Inspectors, previously a large mine would routinely have three such visits a
month (quoting directly, Harry Bell, former New Zealand Chief Inspector of Coal Mines), and smaller mines, at a minimum, once a month, but often more.

The frequency of visits by an Inspector today must be increased. The present situation is simply ridiculous. The suggested visit to every mine, of once every three months, is arguably too long a period given the numbers of mines now being so few. There is no excuse for not having these visits more often.

For example: With the existing legislation presently, an Inspector is actually required to only visit smaller mines once in nine months — Stated at Greymouth Court in evidence in regards to the fatality that occurred at the Black Reef Mine. Given there was only three working mines in the Grey district at the time, this is completely illogical as it obviously invites those very shortcuts, omissions that parties are trying to avoid that often leads to tragedy.

Having completed considerable research into multiple West Coast mining deaths, only one incident when nine were killed at the Dobson mine on December 3, 1926, could be attributed to being the result of ‘just one of those things’ or the ‘freak event’.

It is generally accepted that this incident was the result of frictional sparking that ignited gas — caused by falling stone in a rise working place with gas present.

Every other major West Coast incident and many more throughout the country, have been the result of parties at a fateful point in time simply not adhering to mining regulations learned from past tragedies. This includes 19 at Strongman in January 19, 1967, and four at Boatmans, Reefton, on September 18, 1985.

I itemise issues below as I see them that any revision should focus on. They are not in any order of importance.

My comment on the role Inspectors must play is, though, I feel the most important of all factors to ensure industry improvement.

1. Competent v Qualified:

   I feel the department should reject outright, the use of the term ‘competent’ as it relates to a person who may be able to undertake certain duties in an underground situation. The focus should be on ‘qualified’.

   The difference between competent and qualified is that there is far too bigger range/scope of interpreting what one actually means alongside the other in regard to skill-set to undertake or make a call on a specific task. For example — In simple terms — I may be a ‘competent’ person to wield a hammer to great affect, but that does not make me on its own ‘qualified’ to build say the Otira viaduct or a sound, waterproof dwelling. A past emphasis on ‘competent’ has resulted in several tragedies both here and overseas. The focus should be on ‘qualified’ with industry experience.

2. Check Inspectors:

   The benefits of having worksite check inspectors are many, yet any such role should not be overstated. Working in conjunction with an independent third-party monitor such as an Inspector all in the industry have confidence in, is the capital plus for all parties in any underground mining situation. Any check inspectors role should be a co-operative relationship between mine management, employees, and an objective independent Mines Inspector.

   Historically, check inspectors and management have had a stormy relationship given the era, but with proper focus and respect for each party’s goal/intentions, workplace safety can certainly be strengthened, but so to avoid anything other than workplace safety enhancement, this is where the balancing role of an independent Inspector is so important.

3. Mine Plans, both historic and current:

   Relocating all mine plans of a particular mining area to an off-region location, as happened recently with Greymouth’s records being shipped to Wellington, was simply an absolute no-brainer. The logic defies commonsense and should not have occurred. All such plans and accompanying documents should be
retained and returned to the district they actually relate to for ease of reference for safety purposes for all industry stakeholders to use to enhance knowledge of past mine workings that could be potential hazards and a risk to mine employees.

4. Management of smaller mines:

A person holding a Deputy’s ticket is completely adequate for smaller mining operations of less than six employees. Change I believe is not required here if the function of an Inspector who actuallys visits on a regular basis, is to be enhanced, as it must.

Likewise, those having an Underviewers ticket as per the old requirements of the Coal Mines Act, is more than adequate for any employee numbers above that of a Deputy, but below that requiring a Mine Managers’ Certificate. Interesting, this was not the case in relation to a more recent mining fatality on the West Coast, yet a Department spokesperson in reply to a media request at the time, stated something that was not actually correct in her reply that related to wording contained in the old legislation. The numbers’ argument for those in charge having an Underviewer’s certificate was incorrect and did not tally with wording in the old Act that stated all employees at a mine (Section 125 (c) — CMA 1979 — ‘In every coal mine in or about which more than 8 but not more than 10 men ... ’etc) and not just those who may be underground were considered in the number of employees at a particular site that an Underviewer could be manager of, yet it was passed off as being the same wording as the old Act. That was not the case. A relatively minor matter but incorrect nevertheless for it meant a lowering of standards from what historically had been the accepted.

5. Electrical:

Risk in relation to calls on underground electrical plant installation with regards safety is a matter to be considered.

Today it can be a case of doing something because less employees in today’s present mining environment would be aware of it given the absence of electrical mine inspectors of the old regime model care of — (Section 9 — CMA 1979).

Like any company’s environmental focus, in the past it has often been a case of ‘whatever we can get away with’ that finds currency with management. That can still be the case. The difference, however, with such an attitude with regards electrical matters is that it can potentially have tragic consequences. And who watches the watchers. Presently, no one really.

This situation can seriously compromise workplace safety.

In saying that, the Energy Safety Service (ESS) is now that body for mining, however, the knowledge of actual underground electrical risk by actual decision makers at the mine, is often decided on during a risk assessment stage — often by persons not electrically trained nor qualified.

However, this process, I’ve been reliably informed, has at times been compromised as it can be occasionally more an excuse in trying to instal something by management that would not have actually been permitted under the previous electrical regime.

The ESS has very competent staff in their particular field, but whether that extends to actual hands-on knowledge of underground hazards associated with a working coal mine is doubtful.

It comes back to the ‘competent’ vs ‘qualified’ argument.

There is risk with such a situation. I believe this, potentially, results in an unacceptably higher ‘serious harm’ risk to underground mine employees.

Mr Paul Neames, now retired, several years ago proposed draft guidelines based on those operative in NSW, be adopted to firm up what does appear to be a loose end. Previously mines had the Electrical Mines Inspector of the Inspectorate but they too, have been consigned to history with industry change.

There is a risk that this matter is one that has been overlooked in the revision of mine safety that is presently been undertaken. This issue, I feel, should be included in this review.

If one wants an example of the real risk of ignoring the electrical factor with underground mining, the Canadian Westray disaster of May 9, 1992, that claimed the lives of 26, is a thought-provoking case.
6. Mines Inspectors

Genuine Mines Inspectors must be engaging and visible, like a policeman on the beat, to deter any non-compliance. Becoming so after yet another tragedy, is simply pointless and a sad reflection that past lessons have not been the unfortunate examples that we should have gained industry knowledge from.

In Closing:

Clearly several legislative changes to various Acts, were ill-considered a decade ago and this is why concerns have now rightly arisen.

You have a duty to ensure the best outcome for mining employees is obtained with this current revision process. I wish you well in your deliberations.

Interesting the closing date for submissions towards this goal — June 6 — is ironically, not just the date Michael Bannerman flew his plane into the ground short of Christchurch’s airport. The date is a famous one being D-Day — aka Normandy, 1944.

One hopes the department’s D-Day, be it Decision Day, is one that will ultimately result in considerably improvements for all within the industry.

Many would take comfort from the fact you give prominence to industry examples from our mining neighbours across the Tasman in your discussion document. The Australian code, essentially, is what our mining standards should be modelled on.

The best mining law in the world, though, will not prevent all industry deaths, but by not doing all but your best to improve on the present, lamentable situation with this opportunity before you, you will be judged harshly if one of our tomorrows has a preventable disaster that could have been avoided by doing the right thing now.

That, firstly, can come to fruition by giving more authority/clout to genuine Mines Inspectors, and secondly, by developing a working checkman’s inspector role that garners employee confidence that their workplace safety will not be compromised by the perennial mining threat of lurking incompetence.

Yours

[Signature]

Peter Ewen
IMPROVING HEALTH AND SAFETY HAZARD MANAGEMENT IN THE UNDERGROUND MINING INDUSTRY.

SUBMISSION BY CROWN MINERALS TO DEPARTMENT OF LABOUR

BACKGROUND

1. The Department of Labour is currently seeking feedback on a range of approaches to improve the identification and management of hazards in the underground mining industry. Submissions on the discussion paper ("Improving Health and Safety in the Underground Mining Industry") close on 6 June 2008.

2. Crown Minerals would like to submit some comments on improving health and safety hazard management in the underground mining industry. The comments are somewhat outside of the scope of the detail of the discussion paper, but have some key connections with the issues involved.

CROWN MINERALS

3. Crown Minerals, a group within the Ministry of Economic Development, is the government agency that manages New Zealand's state-owned oil, gas, mineral and coal resources known as the Crown mineral estate. Crown Minerals is responsible for the efficient allocation of prospecting, exploration and mining rights, the promotion of the mineral estate to investors, and ensuring that the Crown receives a fair financial return for the use of its mineral estate.

4. The Crown (on behalf of all New Zealanders) owns all in-ground petroleum, gold and silver and approximately half of the in-ground coal, non-metallic and other metallic minerals including industrial rocks and building stones.

REGULATION OF UNDERGROUND MINING

5. Crown Minerals regulates mining activities carried out under mining permits granted under the Crown Minerals Act 1991 and, through the transitional provisions of that Act, mining activities carried out under extant mining licences granted under both the Coal Mines Act 1979 and the Mining Act 1971. Accordingly, it has close liaison with the operators of all of New Zealand's underground mines: Huntly East, Spring Creek and Terrace (Solid Energy), Roa (Roa Mining), Pike River Coal, Favona (Newmont) and Frasers (Oceana Gold). In addition, there are several other licences and permits that Crown Minerals administers that cover dormant (inactive) underground coal mines, and it is also processing applications for some smaller underground coal mines.
6. Under the above legislation, Crown Minerals receives plans of underground workings and/or annual summary reports detailing mining activities undertaken. Crown Minerals carries out regular site visits to mines and also maintains databases of all mines and quarries. At the present time we are developing a GIS database of underground mine workings for resource management purposes.

7. As was demonstrated by the Black Reef mine tragedy, a knowledge of historic mine workings is critical to underground mine safety. Crown Minerals believes that more could be done to capture and improve the accessibility of underground mine plans that show present and historic workings.

8. To this end, Crown Minerals has recently begun discussions with Bob Hill of Department of Labour to explore efficiencies of data sharing, information sharing concerning mining operations, and the storage and accessibility of mine plans.

CONCLUSION

9. Crown Minerals wishes to bring these initiatives to the attention of DOL’s Workplace Policy Group, particularly the issue of accessibility of mine plans. Health and Safety in underground mines is reduced if all concerned have access to reliable mine plans with all relevant information marked on. We would like for this important issue to be given due consideration during this consultation process.

10. To develop an information base of old workings and maintain it is a significant project on which Crown Minerals would be interested in cooperating with Department of Labour.

Submission Contact

Matthew Brown
Acting Manager, Minerals Unit
Crown Minerals Ministry of Economic Development
P O Box 1473
Wellington

DDI: (04) 474 2609

Email: matthew.brown@med.govt.nz
Union

EPMU
NZ Engineering, Printing & Manufacturing Union

Submission to the Discussion Paper
Review of Underground Mining

To the Workplace Policy Group
Department of Labour
P.O. Box 3705
Wellington

5 June 2008
Improving Health and Safety Hazard Management in the Underground Mining Industry

The union is concerned about the number of fatalities and serious injury that occur in NZ mines. The mining environment is hazardous and consequences can be catastrophic. There is a long history of mining disasters that have a large capacity for damage, loss and multiple fatalities.

Historically there have been many mining disasters in NZ and consequently miners were given the right to elect their own safety representatives (check inspectors), who had special responsibilities in safety. The check inspector was removed from the statues during the reforms in the early nineties but miners have warned against removing this checking function and have lobbied strongly for re-instatement. These calls have become stronger after the recent disasters at the Black Reef mine and Te Roa. Recent changes to the Health and Safety in Employment Act have not filled this gap.

Hazards in underground mining include: general physical, chemical, safety and ergonomic hazards such as noise, vibration, chemicals, airborne hazards (gases, vapors, dust, fumes, mist), diesel fumes, falling materials, slips trips falls, musculoskeletal injuries, flammable coal dust, repairable dust, mine fires, inrush of water, gas or other material, electricity, methane explosion, machinery, equipment fall from roof, face or side, moving machinery, compressed air, cranes and lifting gear, explosives and shot firing.

The high hazard - high consequence environment requires specific measures that go beyond compliance with the minimal regulations we have in New Zealand.

It also provides the basis for the union’s case that worker participation in underground mining needs to be strengthened and expanded throughout legislation.

The union calls for greater prescription (Regulation and ACOP) where this makes sense but also supports the concept of safety cases and licensing provided the safety case is developed in genuine consultation with the workforce and that the license is conditional on adherence to the control measures prescribed in the safety case. Non compliance with the safety case should allow the Department of Labour to withdraw the license.

The union agrees that there is a problem in underground mining. Current practices that link production and bonus payments for managers are particularly problematic and in some instances create a culture of fear and intimidation.

Employee participation

The union suggests that employee participation is improved thought the re-institution of the concept of a check inspector.
The union proposes a mixture between the option b and c as outlined in the discussion document:

- Amend the regulation to provide for the election of the check inspector by all employees who work underground and who is an employee usually working underground
- Has at least 5 years experience
- Holds at least a coal mine deputy certificate

and has the following functions (this will provide consistence with other legislation)

- To immediately order the withdrawal of employees from the mine or that part of it believed to be dangerous to life or injurious to health (determined by the check inspector), or to immediately order the discontinuance of any dangerous practice
- To evacuate the mine in emergency situations
- To support H&S reps and H&S committees in the development of safety cases
- To make recommendation to the mines inspector regarding the granting or withdrawal of a license
- To inspect the mine every two weeks and provide a written report to the mine manager and the union site delegate.

A site check inspector must undertake a relevant course of training at the employer’s expense (currently only available in Australia).

The operator of a coal mine operation must permit the site check inspector for the coal operation to take any time off work, without loss of remuneration or entitlements that is necessary to undertake the training.

**Safety case regime**

The discussion paper proposes a safety case regime (a risk based management system approach to occupational safety and health in mines). This safety management approach involves the identification, mitigation and monitoring of hazards as the central element of managing health and safety in mines.

This approach requires genuine consultation with the workforce.

The employer’s obligation to consult needs to be absolute and the H&S committee needs to agree on the recommendation that are prescribed in the safety case.

The safety case regime shall

- Apply to all underground mines regardless of size
• Address all risks including those to health
• Include detailed consideration of fatigue
• Not normally carry out quantitative risk assessments
• Include guidelines for participation at all stages of the safety case development

**Licensing regime**

The license could be issued on the basis of a safety case presented. The safety case needs to outline what competencies and qualifications are required to operate activities outlined in the case. The competent/qualified person needs to be required to be actually on site and must not delegate.

An example of this would be shot firing, where currently persons can carry out this task where they are “deemed competent”.

The safety case should only be valid for a certain period reflecting the fast change in the mining environment.

The request for a license needs to be made by the H&S committee.

The check inspector could make a recommendation to the Department of Labour to withdraw the license.

The license needs to be valid for a certain period of time only.

**Third party monitoring system**

The unions agrees that such a system could improve H&S in underground mining and should include air quality and fatigue as well as muscular skeletal hazards. Monitoring should be carried out by competent and impartial providers.

**Notification system for certain high-risk activities**

The inspector should be required to check physically and sign off before commencement.

**Health and safety management systems and major hazard management plans**

The union agrees that this requirement could be strengthened and expanded as a requirement in the Mining Underground Regulations. This needs to be supported by an approved Code of Practice on hazard management.

**Ways to amend regulatory coverage**

The union agrees but this needs to have an input from experienced miners and also include the Australian experience.
Amending the HSE (Mining Administration) Regulations 1996

The union supports this proposal.
Ancillary Mining Services Provider

McConnell Dowell
5 June 2008

Review of Underground Mining
Workplace Health and Safety
Department of Labour
PO Box 3705
Wellington 6140

RE: Review of Underground Mining
Workplace Health and Safety

Enclosed please find a completed response to the "Improving Health and Safety Hazard Management in the Underground Mining Industry" discussion paper issued in March 2008.

McConnell Dowell Constructors Ltd is involved with a variety of underground construction projects, including works associated with underground mines. As a responsible company we have already adopted an extensive Risk Management system that is based on the identification of all major hazards and the management of them. In addition, we have been involved with the re-writing of the Underground Code of Practices with their supporting guidelines and have employee participation in our safety plans and initiatives.

We strongly recommend that the Industry Approved Code of Practice with guidelines supporting the H&S Management systems and Major Hazard Plans is adopted as the appropriate way of managing safety in the underground mining industry.

Yours faithfully,

Roger McRae
General Manager.
RESPONSE FORM: IMPROVING HAZARD MANAGEMENT
WITHIN THE UNDERGROUND MINING INDUSTRY

The Department of Labour wants to know your views on approaches and options
to improve the ways hazards are identified and managed in the underground
mining industry. You can answer the questions in the form provided in the paper,
use the online form found at www.dol.govt.nz, or submit a statement about your
views.

Responses are due by 5pm, 06 June 2008 and can be sent by post, email or fax
to:

Review of Underground Mining
Workplace Health and Safety
Department of Labour
P O Box 3705
Wellington 6140
Fax: 04 499 0991
Email: undergroundmining@dol.govt.nz

If you have any questions about the consultation process, please contact
undergroundmining@dol.govt.nz

Details of respondent

Name: Joe Edwards, Construction Mgr, McConnell Dowell Constructors Ltd
Address: PO Box 2758 Shortland Street, Auckland 1140
Phone (optional): +64 9 573 6490
Email (optional): joe.edwards@macdow.co.nz

I am responding:
\(\) as an individual
\(\) on behalf of an organisation
Organisation/business name (if applicable):

Please tick the box below that best describes you for the purposes of this
consultation:
\(\) Employee
\(\) Small business (up to 10 staff)
\(\) Medium business (11 to 50 staff)
\(\) Large business (over 50 staff)
\(\) Business representative organisation/industry group
\(\) Trade union
\(\) Community group
\(\) Training organisation
\(\) Other (please describe)
TELL US WHAT YOU THINK

We would like to hear what you think of each of the individual options and would be grateful if you could answer the questions following each of the options.

Safety case

1. Do you think the safety case regime would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?

No, the safety case regime will not work well. There will be delays and timing issues and Del Regulator would need a lot of staff to cover this workload.

2. What do you think are the main benefits and costs of this option?

There would be significant cost increases to both mining companies and Regulator that would inevitably be passed on to the industry. This system requires the initial safety plans put in place well but there is also surely of ongoing safety and risk reviews.

3. What do you think of the variations and features proposed? Can you add any more?

Requiring safety cases to parts of the operation and not to others focuses attention on specific areas and not others that, due to circumstances, are equally as dangerous. There should not be a differentiation between small and large operations with regards to legislation.

Licensing regime

4. Do you think the licensing regime would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?

This system would not work well to improve underground safety. Licensing does not ensure good risks and hazard identification, the key to safe operations.

5. What activities should require a licence?

There are current licence requirements in underground operations, and this is normally extended to plant operators and other trades, over and above the shot firers and ticketed supervisors and mine managers etc. This should not change nor should it be expanded.

6. Should the licence be a one-off type, or valid for a certain period of time?

There should be no change to the current system of licensing.

7. What would the appropriate qualifications or knowledge be?

The current qualified people are appropriate and adequate. The important part of safe work is a robust risk and hazard assessment with appropriate controls put in place and actioned.

8. What do you think are the main benefits and costs of this option?

We see no benefits from the licensing option over those currently gained from the current licences. To adopt this option would increase costs and it is not likely to improve the skill base of people working in mines and underground works.

9. Can you think of any variations and features that would enhance this option?

No. This option is not a preferred option and variations will not improve it.
Third-party monitoring system

10. Do you think a third party monitoring system would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?

No. It would not work well. It is like the licensing option. There is no focus on the risk and hazard assessment and instigation of appropriate controls. This would focus on sections of the work, not the whole operation.

11. What activities should require monitoring?

There should be no changes to the current activities that are required to be undertaken or supervised by suitably trained people.

12. Who would a suitably qualified person be?

There are current qualifications to undertake work and run an operation. There is no need to change these qualifications.

13. What do you think are the main benefits and costs of this option?

There are no improved benefits from those that currently exist. To adopt this option will increase costs and there is a likelihood of shortages of monitoring personnel.

14. Can you think of any variations and/or features that would enhance the option?

No. This is not a good option.

Notification regime for certain high-risk activities

15. Do you think a notification regime would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?

There is likely to be little to no gain of safer work areas with this option. There is certainly going to be increased costs and time delays.

16. What activities should be included?

There should be no change from the current activities requiring notification.

17. What information should be required?

Nothing more than currently required and the inclusion of these activities in the mines' Risk and Hazard plan with appropriate mitigation measures.

18. What do you think are the main benefits and costs of this option?

There are no increased benefits from those currently achieved from the current notification system. To expand it will increase costs for no gain.

19. What do you think of the variations and features proposed? Can you add anything more?

This whole option is not a preferred option and the variations do not enhance anything.
Health and safety management systems and major hazard management plans.

20. Do you think this option would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?

This is the basis of working safety. It identifies issues and allows the planning of measures to work safely by mitigating hazards and risks. It allows a holistic view of the mine as well as detailed review of risky areas. Inspections are easy to review the operation versus the plan and is the plan updated for new hazards.

21. What should be detailed in the systems?

Full details on hazards and a comprehensive system to review, analyse and then control – see below.

There are existing systems adopted overseas in Australia and UK that are fully established and easily transferable, to be adopted for any NZ mine or underground operation.

22. What hazards should require a plan, and what should the plan include?

All hazards need to be identified, reviewed and managed.

The plan needs to include: hazards, cause and consequence, with a ranking and all activities over a prescribed level need to be reviewed with control measures to mitigate the risks, by eliminating, isolating or minimising.

Show those monitors and people responsible for the hazard management and personnel notification.

23. What do you think are the main benefits and costs of this option?

The benefits with this option is that it is a holistic review of the whole underground operation as well as an in-depth review of high risk hazards.

Timing is controlled by the operator and hence costs are best managed. It leaves an easy system for DoL or others to audit over and above the internal audits.

24. Are there any differences between large and small underground mines that would lead to different requirements in the systems and plans?

Yes, but the hazards are the same. It may be possible for smaller operations to purchase a system completed for them, however it will require constant reviews and auditing. This could be sourced from larger mining operations, or independent mining experts. The adoption of an approved Code of Practice and supporting guidelines will assist small operators.

Increased supporting guidance

25. Do you think this option would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?

This option would work well in conjunction with the Health and Safety Management Systems. It should keep compliance costs down for small operators and allows a “best practice” to be put in place through both a CoP and supporting guidelines. These guidelines will give areas for the hazard management systems to focus on and ensure are not applicable.

26. What ACOP development process would you prefer? (For example, should it be written by industry and unions, the Department of Labour, or developed by industry, unions and government together?)

The ACOP and supporting guidelines should be and are written by the industry,
These should then be reviewed by all interested parties and amended as required before adoption by the industry and DoL.

27. What areas would you like to see specific guidance on?
Strata control, ventilation, explosives, plant and equipment, electrical, personnel and underground environment, mine planning, shafts and windings, hazard management and control.

28. What do you think are the main benefits and costs of this option?
These guidelines and CoP set a good standard to adopt and contain a lot of information for small operators. They need to be easy to read and available for all interested parties.

29. Can you think of any variations and features that would enhance the option?
No.

Extending the coverage of the Mining Underground Regulations

30. Do you think this option would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?
No it would not work well on its own and would not be necessary with the adoption of an Approved Code of Practice and supporting guidelines.

An increase in the regulations does not specifically cover all hazards at a mining operation and hence a rigorous HSE hazard management plan still is the best way of managing safety.

31. What do you think are the main benefits and costs of this option?
There would only be cost increases with this system and industry has undertaken the CoP and guidelines hence these changes are likely covered.

32. What gaps do you think currently exist in the regulations that need addressing?
These gaps are covered in the Industry CoP and Guidelines, with the exception of mechanised tunnelling (TBM) guidelines to be added.

Amending the Mining Administration Regulations

33. Do you think this option would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?
We see no issue with this proposed change.

34. What do you think are the main benefits and costs of this option?
There are increased costs with this option for a few smaller mines, however there should be an increased awareness of issues with a better trained manager and likely increased safety.

35. What impact do you think this option would have on smaller mines?
A requirement for increased training and this could take time. There may need to be an adoption period specified of say 2-3 years.

Employee participation requirements

36. There are four possibilities to improve employee participation under this option:
a) Amending primary legislation to include a check inspector regime.
b) Amending current regulations to include a modified version of a check inspector regime, with powers reformed as duties and certain aspects removed.
c) Incorporating certain aspects of the check inspector regime into the existing options in this paper on safety cases, hazard management plans and employee participation ACOPs.
d) Creating an employee participation ACOP.

Think about each possibility separately. Do you think they would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?

a) and b) A lot of the main powers discussed for a Check Inspector already exist, i.e., health and safety representation and to stop work in dangerous situations, as well as reporting hazards. Hence the introduction of a Check Inspector would not improve anything at all.

b) and d) To have approved COP that is available to all will allow people to question practices that do not comply with the ACOP. Involvement of employees in the H&S Hazard Management Plans also improves employee awareness. There is no improvement hence by adding a Check Inspector.

37 What do you think are the main benefits and costs of each possibility?

By adding a Check Inspector to any option increases costs. It will not improve safety, where ACOPs and H&S Hazard Management Plans are adopted and implemented.

38 What impact do you think each possibility would have on smaller mines?

All options would be extremely onerous and costly for small mines and underground operations. In these close working environments, all parties see the issues and hazards and there is likely to be good communications between all parties hence there would be no gain to have Check Inspectors.

Requirements for health and safety inspectors

39 Do you think this option would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?

This option is not likely to improve safety in underground operations on its own. Frequency of visits with nothing to specifically measure against will not pick up problems early. If there was an ACOP with guidelines and an on-site H&S Hazard Management Plan, increased visits may pick up lack of internal auditing and other non-compliances early enough to help. This is not likely to be the case where these systems are well run.

40 What do you think are the main benefits and costs of this option?

There would be increased costs with this system and no gain could be made unless an ACOP with guidelines and HSE Hazard Management Systems are also adopted. And with these latter systems in place and working there would not be any need for increased inspections.

41 What could the legislation specify regarding health and safety inspector visits?

It may be of benefit to increase the visits to smaller mine operations to ensure they are able to adopt the ACOP and instigate the Hazard Management Plans.
42 Can you think of any variations and features that would enhance this option? No.

In addition, we would like to know your views on the following:

### Additional questions

1. What do you think are the main health and safety issues facing the underground mining industry today that need addressing? Implementation of a Code and guidelines, an increasing volume of work with an increasing labour pool that is outstripping training, both experience and technical training. There is also the better implementation of rigorous H&S systems, particularly for smaller operators.

2. The Department of Labour notes that mine plans are a key health and safety resource for underground mining. In particular, plans of old mine workings are critical to mine safety. There is currently no coordination on the availability and use of these plans, or of their maintenance. Do you think it would be of value to implement a system to ensure all plans are available to those who require them? If so, do you have any suggestions on how this could be done? Yes, the system could be improved. The easy way would be for all plans, as they are updated, to be kept by Deo, or another Government organisation and made available to interested parties with reason to review, in some restrictions on access put in place.

3. What combinations of options do you think would be effective for the industry to improve the ways hazards are identified and managed in the underground mining industry? Continuation of existing licensing and notifications with H&S Management Systems and Major Hazard Management Plans and Approved Code of Practice with supporting guidelines.

4. Can you think of any options that are not mentioned here that would be effective in improving the ways hazards are identified and managed in the underground mining industry? No.

5. Have we left anything out of Appendix 17? No.

6. Can you think of anything else that would help improve the ways hazards are identified and managed within the underground mining industry? No.

Please note that any submissions that you make may be the subject of a request under the Official Information Act 1982. To assist the Department of Labour with the processing of any such requests, please indicate at the beginning of your submission whether or not you would like the contents made a matter of public record.

43 Any further comment?
Employee

Submitter C

(*Submitter C is an experienced miner whose name and identifying details have been withheld to protect personal privacy)
MINE SAFETY

The demise of safety in Coal Mines happened with the throwing out of the Coal Mines Act.

There was a saying “The Act” was written in the blood of previous miners.

The next set back was the dismantling of the Mines Inspectorate several years ago.

Coal Corp (Solid Energy) was given the right to write its own safety regulations as the need arose.

Solid Energy works to its own safety regulations but has given itself a way out of having to comply called a “Permit to Work”. This can be signed by a Mine Official. These seem to be used on a very regular basis, where in fact they should only be used in emergency situations.

This is something a Mines Inspector could take a more comprehensive look at.

Hazard and Incident reports can at times disappear into the system and not be acted on within a suitable time frame. In the past, before the Mines Act was thrown out the Deputy was the Safety Man in the section. Dangerous conditions were reported to him and he acted on them straight away. Solid Energy now call their Deputies – Production Supervisors.

Solid Energy’s current policy of everyone takes responsibility for the Safety of the Mine does not work. Someone has to be in charge.

Health and Safety committee meetings are very unsatisfactory with most worker delegates becoming disillusioned with the system very early on and resigning, to be replaced sometimes by very inexperienced people.

These committees do not have an equal representation by Management and Union members.
In the past the Mines Act did not allow Mine Officials to participate in Bonus Systems, the Mine Officials’ main concern was Safety and they needed to be impartial. That is not the case today. With the payment of production bonuses to officials it is to the advantage of these officials to have the mine working with the least downtime and highest production possible.

**Site Check Inspectors**

There is an urgent need for Workers’ Check Inspectors in large mines.

If the situation arises when a miner considers his working place conditions have changed (eg Roof conditions have deteriorated, Gas Problems etc) and is told by a Mine Official to get on with his work he should have the right to call a Check Inspector. <>

If the Check Inspector deems it necessary he then has the right to stop the working place.

In Australia they also have National Check Inspectors and the mine workers think they are a great success.

4 June 2008
Large Employer

Solid Energy
RESPONSE FORM: IMPROVING HAZARD MANAGEMENT WITHIN THE UNDERGROUND MINING INDUSTRY

Final Response to Department of Labour from the MinEx Health and Safety Council, 5 June 2008.

TELL US WHAT YOU THINK

We would like to hear what you think of each of the individual options and would be grateful if you could answer the questions following each of the options.

Safety case

1. Do you think the safety case regime would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?

Minex does not believe at this stage that a safety case regime would be a cost effective measure in relation to the issues identified in the discussion document. In particular the majority of the recent concerns about the safety performance of the underground mining industry have either related to:

- small private mines who lack adequate health and safety expertise and would be unlikely to have the understanding to develop and implement a safety case regime;
- the ACC claims experience which results mainly from "routine" risks like slips and trips or manual handling; rather than catastrophic failures.

We are also concerned at the limited track record of safety case regimes in New Zealand and hence the lack of capacity and capability both amongst the DoL and industry as to how to develop and apply them. The current rail and offshore oil and gas regimes both have versions of safety cases in them but anecdotal experience suggests they have not been applied robustly and add little value in terms of safety regulation.

We note research from the National Research Centre for OSH Regulation at the Australian National University\(^1\) that raises a number of important questions as to when and how to implement an effective safety case regime in mining. Although they are broadly in favour of such an approach this is in the context of a mining industry many times to size of New Zealand’s (and dominated by major mining companies) and in a country where both the onshore and offshore major hazards regimes are much more established.

2. What do you think are the main benefits and costs of this option?

The development of a robust safety case is an expensive and time consuming operation often involving external experts, reviews of current risk management practices and quantified assessments of risk. Whilst these are all worthwhile actions (and indeed have already been implemented by some major operators in the sector), the cost benefit diminishes with smaller scale operations, who are just the people who need to improve their practices.

We therefore believe that appropriate and equitable application of the current framework of laws, combined with a more explicit requirement to have a

documented health and safety system – something which is implicit currently, would be far more effective.

This could be as simple as encouraging/requiring all mine operators to comply with AS/NZ 4804 for example through ACC secondary accreditation, and to adopt the Minex Code Of Practice.

Having a documented health and safety system in any form then provides the basis for systematic auditing of the application of that system (whether internally, by a 3rd party or by the regulator) which is where the real benefit accrues.

3 What do you think of the variations and features proposed? Can you add any more?

Submitting a safety case without requiring DoL approval is one option – this allows the activity to proceed but also allows the regulator to have the option to intervene, ask for more details etc if the risks or track record of the applicant justify it. This is less onerous all round than a formal approval to operate for every mine.

**Licensing regime**

4 Do you think the licensing regime would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?

The critical question here is the added value of the licence and whether there would be a perception that responsibility for managing the risk is in any way being transferred to the regulator who issues it? Recent events (Black Reef) have shown how it is easy to try and blame the inspector for doing, or not doing, something, rather than the operator whose real responsibility it is.

We support specifying competence requirements for certain roles or tasks (as currently exists under the Mining Regulations and various other occupational licensing regimes covering electricians, gas fitters, scaffolders, HSNO approved handlers, etc).

We believe competence requirements are best developed and administered by an ITO (such as EXITO) or independent accreditation body, with industry and regulator input to an accreditation board or governance group, rather than by the regulator itself.

5 What activities should require a licence?

There are two distinct concepts here:
- Licensing the person
- Licensing the activity

Minex believes that it may be appropriate to extend the specific competence requirements beyond the current Manager, Deputy, Underviewer and HSNO approved handler requirements. This could include specific competencies for anyone who works underground, for all those in management or supervisory positions underground and key industry professionals such as mine engineers, surveyors, geologists etc, whose advice is used to make safety related decisions underground.

We also believe that there should be a greater emphasis on Continuous Professional Development (CPD) as well as the acquisition of formal qualifications, such as NZQA standards. These competence requirements should be set by an ITO and feed into an accreditation body with statutory status (like the Health

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2 Health and Safety Management Systems-General Guidelines on Principles, Systems and supporting techniques
Practitioners Registration Board) which issues the occupational licence. The actual competence requirements should be removed from Regulations so that they are more flexible and easier to update as circumstances change. Having to Gazette every change currently is a time consuming and unhelpful process.

It is unclear if there is evidence to show that NSW mines are safer because of the activity licensing regime than other similar mines elsewhere without them.

Possible activities to be licensed in NZ would be those where there is innovation or a need to depart from an established industry standard such as:

- working within 50m (2 chains) of a fault
- working near old workings
- development work in gassy mines
- blind headings beyond a certain length
- introduction of new technology for roof support, explosives, etc

6 Should the licence be a one-off type, or valid for a certain period of time?

Personnel certification should be time limited (say 3-5 years) with renewal based on criteria such as completion of CPD, still working in the industry, etc. Certification might be limited to a certain size or type of mine so a change of job might also require review of the licence.

Activity licences could be one-offs so long as the circumstances or plant remain unchanged.

7 What would the appropriate qualifications or knowledge be?

8 What do you think are the main benefits and costs of this option?

9 Can you think of any variations and features that would enhance this option?

Labour shortages in the industry mean that it is important to be able to bring in miners and managers from other countries. Any personnel certification scheme should recognise overseas qualifications and prior learning, whilst ensuring that there is good understanding of the NZ law and operating environment.

Third-party monitoring system

10 Do you think a third party monitoring system would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?

In principle the use of 3rd party auditors – whether internal or external is good practice to ensure that safety systems are effective in achieving their objectives. The key issue is the availability of sufficient people with the right skills (industry knowledge and experience, knowledge of NZ standards, legislation and auditing). For example, currently there are few, if any, ACC auditors with mining experience who could verify the correct application of the documented h&s system. Even if such people could be identified, the monitoring/audit/certification work would be insufficient to keep them fully engaged; hence they would almost certainly need to do other work for the mining companies with consequent conflicts of interest.

Generic auditors with no mining industry experience would not add much value.

11 What activities should require monitoring?

All aspects of the h&s system should be monitored as part of a standard management system. Periodic involvement of a 3rd party (every 2-3 years)
ensures a degree of independence and objectivity and ensures the systems are kept up to date.

12 Who would a suitably qualified person be?

13 What do you think are the main benefits and costs of this option?

Audit provides assurance to the operator, but takes the onus away from the regulator. If required the regulator could approve/accredit third parties to carry out the audit – as ACC do. However there would need to be an alignment of different audit regimes otherwise multiple system audits for related purposes is inefficient.

14 Can you think of any variations and/or features that would enhance the option?

Notification regime for certain high-risk activities

15 Do you think a notification regime would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?

Notification has to have a clear purpose. There must be an expectation that the regulator will use the information – either to trigger a visit or to confirm key actions have been completed first. Otherwise notification just becomes a meaningless exercise. The notification time period has to be sufficient to allow things to be changed if required. So, for example, requiring 14 days notice to the regulator of the installation of a new shaft or winding gear is unhelpful. Any notification should be at the design stage so the regulator can comment on the design concepts. There may need to be a second notification prior to first use so that correct installation and testing of safety devices can be confirmed – however it would be better to require 3rd party certification (such as under the HSE Pressure Equipment, Cranes and Passenger Ropeways Regulations) rather than to expect the regulator to inspect the equipment.

16 What activities should be included?

Minex believes that notification should be limited to significant, and/or high risk activities such as:

- Opening (or re-opening) a mine
- Significant new developments – but could be included in the requirement to submit an annual mine plan
- Significant changes to the annual mine plan – such as opening a new seam

17 What information should be required?

18 What do you think are the main benefits and costs of this option?

19 What do you think of the variations and features proposed? Can you add any more?

Health and safety management systems and major hazard management plans

20 Do you think this option would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?

As referred to above, Minex believes that good health and safety management plans and systems are essential. These should be based on robust hazard and
risk assessment methods including quantified risk assessment, HAZOP or equivalent where necessary. We believe the system should be documented and audited. Emergency response plans should form part of this.

21 What should be detailed in the systems?

22 What hazards should require a plan, and what should the plan include?

We believe that any proposal in relation to safety management plans should follow the principles in the HSE Act and related standards such as AS/NZ 4804 and 4360\(^3\).

23 What do you think are the main benefits and costs of this option?

24 Are there any differences between large and small underground mines that would lead to different requirements in the systems and plans?

**Increased supporting guidance**

25 Do you think this option would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?

The Department may be unaware of the suite of Codes and guidance recently developed and issued by Minex\(^4\). Minex believes that these documents should be endorsed and supported by the Department as representative of the current state of knowledge within the industry. They also provide a basis for improving standards in small or non compliant mines. Minex would welcome the opportunity to work with the Department to extend the range of guidance available and to consider adopting material from overseas, such as the NSW small mines safety kit.\(^5\)

Minex does not believe that creating ACOPs necessarily adds value as the practical difference between an ACOP and a standard or industry guidance is minimal- especially if the regulator has endorsed or recognised the latter. We are aware of other ACOPs which have been allowed to get out of date and hence no longer represent the current state of knowledge or the preferred means of compliance.

26 What ACOP development process would you prefer? (For example, should it be written by industry and unions, the Department of Labour, or developed by industry, unions and government together?)

27 What areas would you like to see specific guidance on?

28 What do you think are the main benefits and costs of this option?

29 Can you think of any variations and features that would enhance the option?

**Extending the coverage of the Mining Underground Regulations**

30 Do you think this option would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?

Minex believes that the current Mining Regulations (Administration and Underground) are in need of complete review and revision and should be amalgamated into a single set of Regulations. These should follow the principles

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\(^3\) Risk Management


of the HSE Act and be performance based, but also recognise specific standards (such as AS/NZ) which small mines can easily follow. The Regulations should only deal with significant and unique issues in underground mines and not replicate matters covered by the HSE Act or other Regulations. Minex supports the specific proposal to amend the competency requirement for managers of small mines and believes that, if anything, a higher standard of competence is required for someone in sole charge of a mine.

31 What do you think are the main benefits and costs of this option?

32 What gaps do you think currently exist in the regulations that need addressing?

Amending the Mining Administration Regulations

33 Do you think this option would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?

34 What do you think are the main benefits and costs of this option?

35 What impact do you think this option would have on smaller mines?

Employee participation requirements

36 There are four possibilities to improve employee participation under this option:
   a Amending primary legislation to include a check inspector regime.
   b Amending current regulations to include a modified version of a check inspector regime, with powers reframed as duties and certain aspects removed.
   c Incorporating certain aspects of the check inspector regime into the existing options in this paper on safety cases, hazard management plans and employee participation ACOPs.
   d Creating an employee participation ACOP.

Think about each possibility separately. Do you think they would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?

37 What do you think are the main benefits and costs of each possibility?

38 What impact do you think each possibility would have on smaller mines?

Minex is divided over this proposal. The EPMU have clear views on the role of check inspectors and will be making their own submission which specifically addresses this. The other members of Minex believe that the current regime in the HSE Act, as amended in 2002, provides ample opportunity for employee participation and for employees to raise unresolved concerns through hazard notices or refusing to carry out dangerous work. To the best of our knowledge these options have never been needed in this sector and Minex members are committed to engaging with their staff in a spirit of good faith and cooperation on any safety issues that are raised. We do not see the need for an ACOP just for mining, nor for further regulation.

We again emphasise that the particular issues leading to this review arise largely in small mines with no employee representatives and limited capacity to employ check inspectors.
We have a number of concerns about the proposed check inspector regime and how it might work in practice. If the Department has evidence that additional resources are required to monitor the delivery of the health and safety management systems, then an alternative proposal would be for the Department to employ a small number of mine safety officers with the responsibility for acting as the "eyes and ears" of the mines inspectors. These officers would spend the majority of their time in the mines and would have more insight into day to day working practices. Having them as a departmental resource with a statutory function avoids the creation of an "us and them" culture and encourages safety to be seen as a shared responsibility between all those who work in the industry.

Requirements for health and safety inspectors

39  Do you think this option would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?

40  What do you think are the main benefits and costs of this option?

41  What could the legislation specify regarding health and safety inspector visits?

42  Can you think of any variations and features that would enhance this option?

Minex would welcome having a robust, professional, objective, adequately resourced, helpful inspectorate who work with the industry to improve safety. Specifying mandatory visits schedules in Regulations is unlikely to help and would create an expectation that might be impossible to achieve. It also singles out mining as the only industry where this applies which we do not believe is justified by the industry’s performance. Minex would like to see all Mines Inspectors qualified as Mine Managers and subject to the same competency and CPD requirements.

Engaging with employee reps should be part of how a modern regulator works anyway and Minex does not see the need to regulate for this in mining.

If regulation is needed then it should be applicable to all workplaces to support the employee participation requirements in the HSE Act.

In addition, we would like to know your views on the following:
### Additional questions

1. What do you think are the main health and safety issues facing the underground mining industry today that need addressing?

   **Workforce issues** - competence and experience of workers and contractors. Under resourced inspectorate is a subset of this. Difficult geology in NZ makes it hard to adopt new, potentially safer technologies such as long wall mining.

2. The Department of Labour notes that mine plans are a key health and safety resource for underground mining. In particular, plans of old mine workings are critical to mine safety. There is currently no coordination on the availability and use of these plans, or of their maintenance. Do you think it would be of value to implement a system to ensure all plans are available to those who require them? If so, do you have any suggestions on how this could be done?

   Yes, through Crown Minerals as the main repository.

3. What combinations of options do you think would be effective for the industry to improve the ways hazards are identified and managed in the underground mining industry?

   We believe that Minex and the Department (policy and operations) should be working more closely together, jointly agreeing targets and strategies with input, support and understanding of the regulator. The UK Hard Targets initiative in the quarry industry is an excellent example. ([http://www.hse.gov.uk/quarries/index.htm](http://www.hse.gov.uk/quarries/index.htm))

   Industry knows its own circumstances best. The regulator should exercise a constructive challenge function to promote this. Minex does not see any reason to depart from performance based legislative approach in the HSE Act, but would welcome more enforceable standards, best practice guidelines and codes to underpin it. Robust enforcement for the less well performing parts of the sector should also be encouraged.

4. Can you think of any options that are not mentioned here that would be effective in improving the ways hazards are identified and managed in the underground mining industry?

   Encourage a more systematic approach to information sharing both within NZ and internationally. NZ industry is too small to be able to do things on its own. We rely on the regulator to have networks and bring ideas from overseas.

5. Have we left anything out of Appendix 1?

6. Can you think of anything else that would help improve the ways hazards are identified and managed within the underground mining industry?

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Please note that any submissions that you make may be the subject of a request under the Official Information Act 1982. To assist the Department of Labour with the processing of any such requests, please indicate at the beginning of your submission whether or not you would like the contents made a matter of public record.

43 Any further comment?
Employee

Submitter C

(*Submitter C is an experienced miner whose name and identifying details have been withheld to protect personal privacy)
1 Introduction

1.1 The proposals set out in the Discussion Paper issued by the Department of Labour (DOL): “Improving Health and Safety in the Underground Mining Industry” to change the existing regulations under the Health and Safety in Employment Act 1991 (“HSE Act”) will not act to support Solid Energy New Zealand Ltd’s (“Solid Energy”) objective of achieving best practice in the field of health and safety.

1.2 At Solid Energy, we use proven risk management methods to manage all aspects of our business. We have spent much time and effort developing these processes and systems in accordance with New Zealand’s risk management standard AS/NZS 4360. We find that using sound risk management techniques sets a transparent foundation for our business decision making and this is embedded in our overall Integrated Business Framework (IBF), which describes our management systems and operating activities.

1.3 In the Discussion Paper, there are many questions posed around developing solutions to managing hazards in underground mining. But, aside from a general comment stating that the ACC incidence rate is similar to two other industries, no in depth analysis or formal description of the ‘problem’ is presented. Until this is done it is hard to respond in depth.

1.4 The data held by the DOL should be able to reveal what types of hazard are contributing to the incident rate, the profile of those incidents, the identified causes and most importantly, the industry’s true risk profile. This type of information would point towards what mitigations could best treat the risk i.e. the ‘problem’.

1.5 As an important element of our IBF, Solid Energy’s health and safety management system is well developed, subject to continuous improvement with the assistance of internal and external experts and demands significant employee participation.

1.6 Solid Energy also thinks, based on the experience since the enactment of the HSE Act in 1991, that the DOL is not adequately resourced to approve all plans and ensure compliance with those plans.
1.7 Health and safety best practice demands that the mine owner, employer and all employees take individual and collective responsibility for health and safety and that these responsibilities not be transferred to a mines inspector, external auditor or peer reviewer.

1.8 The current regulations can work very well for all operators in the mining industry as long as the regulations are supported by:

- industry developed risk-based Codes of Practice continually reviewed by industry against international best practice standards; and
- mining operations only run by appropriately qualified people, in our view, holding first class mine managers ticket; and
- industry developed standardised training requirements for all employees operating in mining operations supported by continuous education; and
- a well resourced DOL mines inspectorate focused on inspections of high risk areas (inspectors have the power under the current regulations to close operations down); and
- informed DOL mines inspectorate whom receive work plans and programmes from all mining operators which they can review and which they can audit compliance against during inspections.

1.9 The appointment of check inspectors, will, in the opinion of Solid Energy, add nothing to the existing regime for health and safety management and runs the very significant risk of eroding the necessary personal responsibility of each and every person employed in the industry.

2 Background

2.1 Solid Energy is New Zealand’s largest energy producer, primarily from coal but also from renewables (biofuels, biomass and solar) and is New Zealand’s major exporter of coal.

2.2 We operate both opencast (Rotowaro, Stockton, Newvale and Ohai) and underground (Huntly East, Spring Creek and Terrace) coal mines. We currently employ around 800 staff plus contractors’ staff, in total around 1600 people.

2.3 Our underground mines are staffed by Solid Energy employees (except for minor use of contractors from time to time) and at the date of this submission there are 164 staff at the Spring Creek mine, 139 at Huntly East and 23 at Terrace.

3 Solid Energy Safety Record – Underground Coal Mining

3.1 Solid Energy has been operating underground coal mines since its incorporation in 1987.

3.2 In that time we have had 4 fatalities, 3 of which related to the Mt Davy mine (closed after the fatalities in 1999) and one at the Wairakei Mine (closed in 2003) in our underground mines together with one prosecution for serious harm at our Terrace Mine.

(a) Mt Davy Mine
On 10 November 1997 Mr Quinton May was killed by a falling rock when he was operating a drill close to the rib, in the course of constructing a passing bay at the Mt Davy mine. Following investigations into the accident, no charges were brought against the company.

On 4 June 1998 Mr Roydon Stewart and Mr Shaun Jennings were killed following an outburst of gas in drift 2 of the mine. Following investigation, the Occupational Safety and Health Service of DOL recommended that no prosecution action be taken.

Mr Robin Hughes, Chief Inspector of Coal Mines at the time, concluded in his report:

"In examining the evidence available and in discussion with various persons, in particular an expert from GeoGas in New South Wales, it is very difficult to suggest that measures other than those taken would have assisted in the prediction of this event."
(See page 7 of the Coroner's Report 5 March 1999)

He also went on to conclude (page 14 of his report) that there had been no breaches of sections 6, 7, 10, 12, 13 or 14 of the Health and Safety in Employment Act 1992 relating to the actions of Solid Energy; but that there had been a breach of section 19 which requires employees to ensure their own safety and that no action or inaction they may take causes harm to any other person.

The Coroner concurred in this finding:

"… it is apparent to me, from the wide range of the evidence presented at the inquest, that the accident that occurred on the 4th of June 1999 resulting in the deaths of ROYDON JOHN STEWART and SHAUN CONRAD JENNINGS was, in light of the knowledge available to mine management and the miners themselves at that time, an unforeseeable and therefore unavoidable event."
(See page 18 of the Coroner's Report 5 March 1999).

(b) Wairakei Underground Mine

Mr Kingipotiki died in a roof fall while operating a continuous miner in the Wairakei Mine on 8 March 2002. After extensive investigations into the causes of the roof fall Solid Energy pleaded guilty to and was convicted of a breach of s.6 of the Health and Safety in Employment Act 1992. The charge brought and on which Solid Energy was convicted related to improvements in hazard identification and mitigation procedures at the mine and additional training for staff but these technical breaches of the Act were not the cause of the accident. This was acknowledged by the Judge in his sentencing report:

"[5] … And so we are proceeding today on a charge that just involves two things; one is the fact that Robert died and the other is that there are things that Solid Energy acknowledges that it can do better in the future, but there is no link between the two. The failure to do things they are now doing did not cause Robert's death. Nobody will know.

[7] Solid Energy is convicted of this offence. On the basis that Solid Energy will make further amends by paying a further sum of $10,000 to you then, that is to Robert's widow, no further penalty will be imposed."
On 28 October 2003 Mr John Ewen suffered serious injuries as a result of being thrown out of an Eimco 913 LHD loader in the main drift at the Terrace mine.

A prosecution was brought under section 6 of the Health and Safety in Employment Act 1992, to which Solid Energy pleaded guilty, and for which Solid Energy was convicted, fined $25,000 (with orders for court costs of $130 and a contribution of $300 towards the informant’s costs) together with reparations of $35,000 to Mr Ewen for emotional harm.

Over the three-year period to May 2008, with respect to our underground operations, we have reported 14 serious harm incidents to DOL. The physical injuries suffered related primarily to relatively minor hand injuries, with three leg injuries.

We take every accident seriously. As a result of the fatalities that occurred the company has put in place an extensive health and safety system over a number of years (see below for a fuller description). The outcome of our drive to improve our health and safety system is being demonstrated by the fact that we have had no fatalities since 2002 though during that time the number of employees has grown significantly as has the number of man hours worked. And the number of other LTIs is also trending downwards.

The Solid Energy's LTIFR record for the past 10 years is as set out below:

4 Solid Energy's Health and Management System

4.1 The corner stone of our health and safety system is the following health and safety policy:

“Solid Energy New Zealand
Health and Safety Policy
Solid Energy recognises that the health & safety of our people, our contractors and the communities in which we operate is paramount and not negotiable. Therefore:

**Solid Energy’s overall health & safety objective is to achieve safety performance equal to or better than comparable companies in Australasia and to have a positive impact on the health and well being of our people.**

To achieve this we will:

1. Ensure that health & safety is never compromised by any other business objective or activity
2. Consider health & safety planning and management a core business activity and provide adequate resources for health & safety management and programmes
3. Consider health & safety objectives in all business planning and operations
4. Achieve continuous and demonstrable improvement in health & safety performance across all our activities
5. Promote good health and well-being and eliminate the factors that contribute to injury or illness related to our activities.
6. Hold all Solid Energy managers accountable for leading and resourcing programmes to achieve H&S objectives.
7. Expect our people and contractors to be personally committed to having safe and healthy workplaces
8. Consult and involve staff in the development of health and safety policies standards systems and programmes
9. Provide safe working conditions based on legislative requirements
10. Train and support our staff so they can understand the safety and health issues affecting their workplace and the practices that will keep them safe.
11. Require our contractors to have no lesser health and safety standards than ours when working on our sites.
12. Comply with all applicable health & safety legislation and relevant standard practice
13. Report all health & safety incidents and identified hazards and take prompt action when improvements are identified
14. Measure and report our performance against our health & safety objectives, plans and decisions regularly, consistently, honestly and openly”

4.2 Flowing directly from this Health and Safety Policy lies the following elements of our Health and Safety Management System:
(a) A set of core values and beliefs that under-pin the Policy and System.
(b) Information on requirements for legislative compliance.
(c) Leadership requirements and responsibilities.
(d) Requirements for nurturing a positive workplace culture where everyone believes that all injuries are avoidable and where everyone, individually, and as a team, takes responsibility for health and safety.
(e) Requirements for participation and communication.
(f) Continuous improvement through planning, review and evaluation.
(g) Requirements for risk assessment (incorporating hazard management), and incident recording and investigation, so that root causes are identified and addressed.
(h) Requirements for managing injuries ensuring that injured staff receive the best possible support through recovery and rehabilitation.
(i) Ongoing internal and external auditing of our health and safety systems.
(j) Emergency response procedures.
(k) Procedures for managing contractors.

4.3 Health and safety issues are recognised at the highest level in the company, with the Board having a dedicated committee for health and safety.

4.4 Our mines and other businesses are managed by competent and qualified managers who have clear accountability and responsibility for health and safety. Line managers are supported by qualified health and safety specialists at both a corporate and local level.

4.5 At Solid Energy all sites have health and safety committees that meet monthly and in addition, safety issues are regularly addressed with union representatives at all levels. Safety training is made available to representatives in accordance with relevant provisions in the Health and Safety in Employment Act.

4.6 We also have crew (team) meetings regularly that involve all staff. These meetings provide an additional opportunity for staff to raise issues or make suggestions about health and safety matters. In addition Solid Energy communicates regularly with staff via regular toolbox meetings (held at mine sites), newsletters, hazard alerts, posters etc.

4.7 Solid Energy currently holds tertiary status with the Accident Compensation Corporation.

5 Department of Labour Discussion Paper

General Comments

5.1 There seems to be two distinct catalysts behind this paper. One is the recent fatality at the Black Reef mine and the other being the ACC incident rates for aboveground and underground mining.
5.2 With respect to the latter, it should be noted that the statistics quoted on incident rates are mainly a measure of relatively minor injuries such as strains and sprains, which are common in the mining industry because of the amount of manual work involved and the often difficult working environment which occurs, specifically in underground mining. It is also not clear why other extractive industry is included in the statistical data presented, but is not considered to require addressing by the DOL.

5.3 The quoted incident rate in itself is a poor indicator of serious hazards that could potentially result in fatalities, and of the industry's success, or otherwise, in managing such hazards.

5.4 It is legitimate to ask the question whether there is a safety management problem in the underground mining industry as a whole, or whether instead, there is a part of the industry (which operates with limited resources and expertise with respect to health and safety) which is giving rise to concern. If this is the case, then it may be more sensible to target specific measures at that part of the industry rather than the industry as a whole.

5.5 Such targeted assistance could include training and education to be facilitated by the DOL to smaller operators to allow them to meet their current obligations under the law. We note that EXITO already provides many appropriate courses.

5.6 We think that the current regulatory framework under the Health and Safety in Employment Act 1992 is adequate to achieve the DOL’s objective of the effective management of hazards in underground mining. The extent to which this is not being achieved, is in our view, not because there are inadequacies in the legislation but rather because parts of the industry lack both the expertise and resources to achieve the aims of the legislation.

5.7 Also, we think that the DOL has been hampered by lack of qualified resources to carry out its training and enforcement roles under the legislation. In our view, as a minimum, in addition to a tertiary qualification, a Mines Inspector should also have appropriate experience in the field in which they hold responsibility; and also hold a First-class Mine Managers Certificate of Competency.

5.8 We are also of the view that some of the proposals in the paper will have a direct negative impact on health and safety improvements by introducing ambiguity, which is not there at present. We think that one of the strengths of the Health and Safety in Employment Act is the clarity with which it sets down the duties and accountabilities of employers to take all practicable steps to ensure the safety of employees at work. Ambiguity, that will compromise this clarity, is potentially introduced whenever any party, other than management, is also given responsibility for approving systems and plans etc, or in the case of proposals related to the check inspector position, for monitoring “on the job” safety.

5.9 There is also general issue of the source of funding for any of the proposed initiatives in the discussion paper. For companies such as Solid Energy which already have in place a comprehensive health and safety system (which comes at a cost in its own right) to bear any further costs to fund any of the proposed initiatives would in affect be "double dipping".
Comments on Specific Suggestions

I  A New Safety Case Hazard Management System

6  Response

6.1 We are aware that the safety case approach is being used in other countries by regulatory authorities and given that Solid Energy has well developed safety management processes it would not be difficult for us to comply. However we are also of the view that this approach is unlikely to offer any value to what we are already doing, albeit it may offer value to smaller operators.

6.2 We are also aware that such systems require the regulatory authority to have significant qualified resources to implement at both the approval stage and the follow up, enforcement stage. Without sufficient resources this approach will not achieve its goals and is instead likely to be a source of delay and frustration. This aspect has been a common finding in a number of overseas studies. Hence we are strongly of the view that unless resourcing issues are properly addressed first, no attempt should be made to introduce this approach.

6.3 Finding the required resources will be a difficult issue. Resourcing has been a problem for DOL in the past and we have no reason to think that it will be any easier in the future.

6.4 The resourcing problem includes finding sufficient numbers of suitable qualified people, and also funding. On the latter issue, Solid Energy would be particularly concerned if the funding was required to come from the industry because in that case the major cost burden would inevitably fall on the larger companies, whereas the problem lies largely elsewhere – that is with the smaller companies.

6.5 The matter of finding suitably qualified people to fully consider safety cases will always be difficult for DOL. Solid Energy employs specialists in a number of fields including; ventilation, strata control, geology, mechanical engineering, electrical engineering, underground surveying, and safety management processes. In any, or all of these areas, should Solid Energy require additional expertise, this is sourced, generally from Australia. In certain matters, like strata control and ventilation, Solid Energy regularly takes advice from people who are regarded as the best in their areas of expertise in the world. Hence it is difficult to see how DOL would be able to properly assess our systems without access to similar levels of expertise, or to add value.

6.6 If this approach is to be introduced (which we do not necessarily support in its proposed form) it would make sense to combine it with the Work Programme approval process administered under the Crown Minerals Act in respect of licences and permits. Work Programmes already include some information on safety systems and, in the interests of efficiency, we would oppose the establishment of a separate, parallel approval process. Instead the current process should be extended to also meet the goals of the safety case approach, provided that the safety case used a risk-based framework.

II  Ways to Improve Notification of Hazards
7 Comments

Licensing Regime

7.1 It is not clear which high risk activities would be included, or how this would be determined. It is also not clear why risk language is introduced into the Paper at this point, when reference is being made to hazard management – this suggests that the authors of the paper do not understand the very significant differences between hazard and risk management. This is of concern to us.

7.2 We support the suggestion that persons supervising high risk activities must be appropriately qualified however we believe that this requirement already exists under current legislation.

Third Part Monitoring

7.3 With respect to the example quoted, which is the use of explosives, at Solid Energy the supervision is by a qualified employee, not a third party, which is as it should be. The use of a third party is problematic because it introduces ambiguity as to lines of authority and indeed ultimate legal liability for actions taken and any damage that results. If organisations need to import expertise to help supervise activities, these persons need to be integrated into the management structure and effectively become part of the organisation for the period of the activity, not a third party to it.

Notification Regime for Certain High risk Activities

7.4 Notification is already available through the Work Programme approval process mentioned earlier. The bigger issue here is how DOL will obtain the resources to be able to respond effectively. We strongly oppose notification regimes that have no purpose – that is where notifications become merely a paper exercise.

III Ways to Improve Guidance

8 Comments

H&S Management Systems and Major Hazard Management Plans

8.1 This proposal is for operations to be required to provide health and safety management systems and major hazard management plans. As already stated, Solid Energy already has these and it is our view that these are already required by current legislation.

8.2 If the issue is providing guidance to companies in how to prepare management systems and plans it is our view that recognition needs to be given to the work already undertaken by the Industry through Minex. There is also a wealth of mining-specific risk management guidance from within the Australian mining industry.

8.3 Minex has produced Codes of Practice and Guidelines in most of the areas mentioned. If DOL wishes to be involved in this process it is recommended that it engages with Minex on how it can best add value.

8.4 In this respect we support the Minex approach of leaving these documents “unapproved” as this allows flexibility and continuous improvement, and allows
full ownership to be retained by the Industry. However, should DOL wish to introduce an Approved Code of Practice there is already provision for it to do this under current legislation.

8.5 Under this heading a specific question is asked re whether there are differences between large and small underground mines leading to different requirements in systems and plans. We are strongly of the view that the requirements expected of systems and plans should be driven by an assessment of risk and, as a general rule, risks are not determined by the size of the mine.

*Increased Supporting Guidance Including an Approved CoP*

8.6 Refer to our comments in paragraph 7.1-7.5 above.

IV Ways to Amend Regulatory Coverage

9 Comments

*Extending Coverage of the Health and Safety (Mining Underground) Regulations 1999*

9.1 This proposal refers to the need to cover gaps in the coverage of hazards. We are not convinced that such gaps exist. The examples quoted are all already covered by harmonised standards and therefore are already applicable.

9.2 We agree that regulations, like any other instrument require review from time to time. They were last reviewed in 1999 and this suggests that a review in the near future is warranted. We would support a review of the regulations that would bring the legislation into line with international risk management practice.

*Amending the Health and Safety (Mining Administration) Regulations 1996*

9.3 We stated above that risk in an underground mine is not necessarily determined by size. Similarly the qualifications required of a Manager and other key personnel should not be determined by size. Our view is that all Mine Managers should be holders of a certificate of competence as a first-class mine manager.
V  Ways to Improve Employee Participation

10  Comments

10.1 The Health and Safety in Employment Act already has more than adequate provisions covering employee participation. As stated above, we believe that employee participation is absolutely key to a successful health and safety system.

10.2 We believe that our participation arrangements work well, and also, that if there were any concerns held by any party about these arrangements then the opportunity is already present for the concern to be addressed. This might occur through the Site Committee process itself, or through union/management discussion.

10.3 We are strongly opposed to the check inspector concept because we believe it is unnecessary and will be a backward step that will undermine many of the gains that we have made following the introduction of the Health and Safety in Employment Act in 1992. Since then Solid Energy has been working on an ongoing basis to encourage all employees to contribute, and take personal responsibility for safety, rather than to regard it as someone else’s problem.

10.4 This approach has made a significant contribution to improvements in health and safety over this time. Our view is supported by a number of people who have contributed to this submission and who have had first hand experience of working with a check inspector regime in the past, in both New Zealand and Australia.

10.5 We note the following with respect to the check inspector proposal:

(a) The concept is historical and originated at a time when other forms of participation were not available

(b) The proposal suggests that the check inspector should hold a mine deputy and/or gas tester certificate of competence. In Solid Energy all employees are expected to hold the gas tester certificate as part of the competency-based site training programmes that we provide. This means that all employees are qualified to contribute to health and safety at the level envisaged for the check inspector and all have the opportunity via our participation systems.

(c) The role originated at a time when an “us vs them” way of thinking prevailed and we believe strongly that this way of thinking is not only outdated, but is regressive. Instead we believe that current and future success in managing health and safety in our mines is best ensured when there is a spirit of joint endeavour, cooperation and trust between employees and management.

(d)Whilst the check inspector will be qualified at Mine Deputy level the responsibilities of the role are wide ranging. We think that it is unreasonable to expect the role to add value to the broad range of disciplines envisaged. This is even more so when it is considered that these disciplines are generally managed by persons with higher level, specialist qualifications.

(e) The proposal suggests that the role will have a number of powers. All of the powers suggested fall within the current responsibilities of management, safety representatives, or in some cases, the Inspectorate. The role would therefore duplicate responsibilities, and
would introduce ambiguity, and potential conflict. We believe that this will all be counterproductive to our health and safety goals.

10.6 A specific question raised with respect to this option is what impact it would have on smaller mines. This is not a question that will directly impact Solid Energy but nevertheless we suggest that as a general rule all of the concerns mentioned above will still apply.

10.7 In very small mines such as the Black Reef Mine it is difficult to see how the role could have added any value at all. In cases like that it would be expected that the check inspector would need to be external to the mine workforce, in which case we find it difficult to see how this role could offer any value over and above that already provided by the Mines Inspector.

VI Ways to Improve Health and Safety Inspections

11 Comments

11.1 This proposal is for the legislation to be amended to incorporate matters such as the frequency and nature of mine visits. We would be strongly opposed to this. We see these as management issues for DOL to manage and control according to the availability of resources and current priorities. Prescription in this area would be counterproductive.
Sector Group

EMA
RESPONSE FORM: IMPROVING HAZARD MANAGEMENT WITHIN THE UNDERGROUND MINING INDUSTRY

The Department of Labour wants to know your views on approaches and options to improve the ways hazards are identified and managed in the underground mining industry. You can answer the questions in the form provided in the paper, use the online form found at www.dol.govt.nz, or submit a statement about your views.

Responses are due by 5pm, 06 June 2008 and can be sent by post, email or fax to:

Review of Underground Mining
Workplace Health and Safety
Department of Labour
P O Box 3705
Wellington 6140
Fax: 04 499 0891
Email: undergroundmining@dol.govt.nz

If you have any questions about the consultation process, please contact undergroundmining@dol.govt.nz

Details of respondent

Name: Paul Jarvie OH&S Manager, EMA(N)
Address: EMA (N) P. Bag 92066 Auckland
Phone (optional): 09 367 0963
Email (optional): paul.jarvie@ema.co.nz

I am responding:

☐ on behalf of an organisation

Organisation/business name (if applicable): Employers and Manufacturers Association (Northern)

Please tick the box below that best describes you for the purposes of this consultation:

☐ Business representative organisation/industry group

TELL US WHAT YOU THINK

We would like to hear what you think of each of the individual options and would be grateful if you could answer the questions following each of the options.
Safety case

1. Do you think the safety case regime would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?
   a. We feel that the proposed system is really no different than what should be occurring now under the present legislation. The concept of having a case or licence to operate is flawed as there are not enough inspectors to do this work. This system totally relies on inspection and enforcement, and to date this is not occurring. There would need to be more DoL staff and improved qualifications of these staff.
   b. If an approved case was in place how would this effect any court proceedings re the DoL sign off and the employer’s duties to provide a safe work place?

2. What do you think are the main benefits and costs of this option?
   a. Cost would be in gearing up and enforcement. This system’s weakest link is the enforcement angle.

3. What do you think of the variations and features proposed? Can you add any more?

Licensing regime

4. Do you think the licensing regime would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?
   a. This approach has merit in so much as they would be the person in charge of a place of work.
   b. There would need to be a Mining School to attain these qualifications.
   c. How would present long serving miners cope with “new” qualifications?
   d. There would need to be a grandfather clause giving a distant time frame for these qualifications.
   e. How would this licence be seen when court proceedings are being considered?

5. What activities should require a licence?

6. Should the licence be a one-off type, or valid for a certain period of time?
   a. I feel they must be task specific and only valid for at short period of time eg 12 -18 months.

7. What would the appropriate qualifications or knowledge be?

8. What do you think are the main benefits and costs of this option?
   a. The benefits would be in my opinion keeping the licence holder up to date with technology and changes within the entire mining system. I feel all licence holders should attend an industry based refresher/ focus group course for their re licencing.
Can you think of any variations and features that would enhance this option?

**Third-party monitoring system**

10 Do you think a third party monitoring system would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?

a. *How is this different to sect 12 and 13 of the current HASE Act?*

b. *I am not sure how this differs from above. In the discussion document it refers to “approved handlers” (explosives), but is this different from a licence to operate?*

c. *An ACOP could well incorporate all of these requirements.*

11 What activities should require monitoring?

12 Who would a suitably qualified person be?

13 What do you think are the main benefits and costs of this option?

a. *The benefits may be that specific tasks are backed up with specific knowledge and skills. There would need to be a good discussion re which task would fall under such a process.*

14 Can you think of any variations and/or features that would enhance the option?

**Notification regime for certain high-risk activities**

15 Do you think a notification regime would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?

a. *This has merit if the current system is operating well. If there were to be added notifications to the list would the current system be able to cope.*

b. *There could be delays in waiting for an inspector to arrive to sign off this work. Given they are likely to be doing more work this is a potential threat.*

c. *There would need to be more DoL staff to manage such a scheme.*

16 What activities should be included?

17 What information should be required?

18 What do you think are the main benefits and costs of this option?

19 What do you think of the variations and features proposed? Can you add any more?

**Health and safety management systems and major hazard management plans**

20 Do you think this option would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?

a. *The current legislation requires this very system to be in place.*
b. There is no need to add another system for mining.
c. If the current legislation was applied this system would not be necessary.
d. It is wrong to create separate rules and conditions for workplaces given our current enabling and non prescriptive legislation.
e. The present system has enough inherent tools under it to easily cover mining.

21 What should be detailed in the systems?
22 What hazards should require a plan, and what should the plan include?
23 What do you think are the main benefits and costs of this option?
24 Are there any differences between large and small underground mines that would lead to different requirements in the systems and plans?

**Increased supporting guidance**

25 Do you think this option would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?
   a. A mining ACOP is a useful tool to assist miners meet there generic and specific duties under the HASE Act and accompanying Mining Regulations.
   b. It fits well with the present legislation of self regulation, non prescriptive, outcome based and enabling legislation.
   c. A mining CoP developed by the industry is advocated.
   d. A set of Guidance notes or SOP's could append such a document. It is these documents that could be used with (8) above.

26 What ACOP development process would you prefer? (For example, should it be written by industry and unions, the Department of Labour, or developed by industry, unions and government together?)
   a. **It must** be developed by industry stakeholder groups

27 What areas would you like to see specific guidance on?
28 What do you think are the main benefits and costs of this option?
29 Can you think of any variations and features that would enhance the option?

**Extending the coverage of the Mining Underground Regulations**

30 Do you think this option would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?
   a. I am at a loss to understand how Sect 6 (c) of the HASE Act and Regulation 67 doesn’t cover some of this already- Plant and machinery.
   b. Amending Regulations is ONLY as good as the policing of the Regulation, knowledge of the regulation by employers and the means to comply are available.
   c. Merely to amend regulations without support material eg a CoP is fool hardy.
d. I feel the ACOP is well able to cover all these concerns mentioned here.

31 What do you think are the main benefits and costs of this option?

32 What gaps do you think currently exist in the regulations that need addressing?

Amending the Mining Administration Regulations

33 Do you think this option would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?
   a. Agree. That size factor does nothing to represent hazards within the site.
   b. It is irrelevant whether the mine is small or large in terms of hazard and hazard management.
   c. Having a qualified Mine Underviewer grade is good practical step forward.
   d. There would need to be the infrastructure in place for the current coal mine deputy certificate holders to up skill over a prescribed period of time.

34 What do you think are the main benefits and costs of this option?

35 What impact do you think this option would have on smaller mines?

Employee participation requirements

36 There are four possibilities to improve employee participation under this option:
   a. Amending primary legislation to include a check inspector regime.
      a. There is no requirement to amend the current legislation as proposed. Surely this is merely delegating managements’ roles to another person. This is entirely opposite to the principles of the HASE Act.
      b. This proposal would effectively set up a two tier management system for mines.
      c. This proposal is merely prescribing H&S reps functions. This is at odds with the primary Act as it requires a "system to be agreed to by...". If this proposal is acted on the entire HASE Act is undermined in its non prescriptive approach, and self regulation foundation.
      d. The current legislation has been in place since 2003 (H&S Reps) and is working well. The current framework allows for an agreed H&S rep system to be developed. This could be in conjunction with mining ACOP as in (25) above.
   b. Amending current regulations to include a modified version of a check inspector regime, with powers reframed as duties and certain aspects removed.
      a. No. This is against the intention of the HASE Act.
c Incorporating certain aspects of the check inspector regime into the existing options in this paper on safety cases, hazard management plans and employee participation ACOPs.
   a. This has some merits only if it is part of an agreed system under 19 (c) of the amendment Act.
d Creating an employee participation ACOP.
   a. There is NO justification in creating an ACOP for employee participation at all. It is totally at odds with the primary act and its amendments. If this occurs will we then see an ACOP for forestry, fishing, rugby (where the injury rate is higher)

Think about each possibility separately. Do you think they would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?

37 What do you think are the main benefits and costs of each possibility?
38 What impact do you think each possibility would have on smaller mines?

Requirements for health and safety inspectors

39 Do you think this option would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?
   a. Legislation is only as good as it is inspected and enforced. Added to this there must be a shift from employers and employees about what is acceptable and what is not. Inspectors must be given more tools to use when on site. An audit system could be put in place for inspectors to validate OH&S systems being in place AND working.
   b. Greater enforcement tools may be required for inspectors to use.
   c. If the inspectorate is going to be doing more inspections then there must be more staff and more mobile staff to undertake random inspections.

40 What do you think are the main benefits and costs of this option?
41 What could the legislation specify regarding health and safety inspector visits?
   a. All inspections should involve an audit. This could be extensive or random and only look at one or two components of the total system. The audit will verify that the plans or systems are actually working and not just there on paper.

42 Can you think of any variations and features that would enhance this option?

In addition, we would like to know your views on the following:
### Additional questions

1. What do you think are the main health and safety issues facing the underground mining industry today that need addressing?
   - The nature of mining is hazardous but it can be managed to an acceptable level. We do this with every other occupation. It is not acceptable to single out mining and treat it differently. The HASE and its regulations plus the Mining Regulations should be enough to create a safe place and method of work.
   - If the same argument was applied I suggest we would have different rules for a lot more industries?

2. The Department of Labour notes that mine plans are a key health and safety resource for underground mining. In particular, plans of old mine workings are critical to mine safety. There is currently no coordination on the availability and use of these plans, or of their maintenance. Do you think it would be of value to implement a system to ensure all plans are available to those who require them? If so, do you have any suggestions on how this could be done?
   - It is paramount that a data base of mine plans is established. To do otherwise creates a man made hazard and no system really to identify it. I feel the industry needs to work together on this one and over time create and support this data base. The DoL or similar should own and manage the database. This would stop any unfair commercial advantage from occurring.

3. What combinations of options do you think would be effective for the industry to improve the ways hazards are identified and managed in the underground mining industry?
   - An industry ACOP is the first step.
   - Better training of mine managers is next
   - Documented “safe systems of work” come next
   - Inspectors doing their job and on a random basis is then required to maintain the level of implementation.

4. Can you think of any options that are not mentioned here that would be effective in improving the ways hazards are identified and managed in the underground mining industry?
   - The development of a Mining School would slowly improve standards across the board.
   - Engineers undertaking mining work need to think about their ethics and professionalism when engaged in the mining sector.

5. Have we left anything out of Appendix 1?

6. Can you think of anything else that would help improve the ways hazards are identified and managed within the underground mining industry?
General comments.

To create a separate set of regulation for an industry undermined the intention of the Act. If the argument is taken further then many more specific regulations could well be promoted. Forestry, fishing, hair dressing and rugby spring to mind.

I feel the current Act is well able to account for mining. The promulgation of an ACOP is well warranted and fits comfortably with the current regime.

The suggested provision of a COP for mining employee participation is not warranted. It defies logic how a COP will make unwilling employees suddenly proactive and engaged in the process. This is far better dealt with through improved management systems and company culture. You cannot legislate for company culture, culture being the beliefs, attitudes and behaviours of a company.

I feel that what has been presented is a good starting point and I feel that a combination of interventions will evolve. It is strongly suggested to keep the statute side of things as low as possible and build capacity and knowledge in its place.

There can be short term gains but what are being looked for are long term significant changes to attitude and practices. This will only come from knowledge and support.

The inspectorate needs to be up skilled to be able to audit a business practices against what should be occurring. Merely checking a safety system/ plan is not enough.
Sector Group

New Zealand Industry Sector Association (NZISM)
RESPONSE FORM: IMPROVING HAZARD MANAGEMENT WITHIN THE UNDERGROUND MINING INDUSTRY

The Department of Labour wants to know your views on approaches and options to improve the ways hazards are identified and managed in the underground mining industry. You can answer the questions in the form provided in the paper, use the online form found at www.dol.govt.nz, or submit a statement about your views.

Responses are due by 5pm, 06 June 2008 and can be sent by post, email or fax to:

Review of Underground Mining
Workplace Health and Safety
Department of Labour
P O Box 3705
Wellington 6140
Fax: 04 499 0891
Email: undergroundmining@dol.govt.nz

If you have any questions about the consultation process, please contact undergroundmining@dol.govt.nz

Details of respondent

Name: Paul Jarvie National Manager of NZISM
Address: c/o EMA, P Bag 92066 Auckland.
Phone (optional): 09 367 0963
Email (optional): paul.jarvie@ema.co.nz

I am responding:

☐ on behalf of an organisation

Organisation/business name (if applicable): New Zealand Institute of Safety Management. NZISM

Please tick the box below that best describes you for the purposes of this consultation:

☐ Business representative organisation/industry group

TELL US WHAT YOU THINK

We would like to hear what you think of each of the individual options and would be grateful if you could answer the questions following each of the options.
1. Do you think the safety case regime would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?

**Safety case**

**Why:**

Yes, this option could work well as long as the safety case regime was to cover mining activities with high probability and high consequence. In other words, it should be based around a risk management approach. There are several models that could be adopted for this kind of selected method. But the approach needs to be simple, if it’s too hard to do, then it won’t be done (especially by smaller mines with less employees and or resources).

**Why not:**

No, the safety case regime wouldn’t work that well because the current Mines Inspectorate could not handle the bureaucratic effort related to the regime, as the number of Mines Inspectors has dramatically declined over the past decade or so in New Zealand, (only one full-time inspector and one trainee inspector is currently covering all South Island coal mines).

Additionally, there is a potential business risk for the mines, as an approval delay would potentially stop the mine activity and/or production due to the fact that the Mine Inspector couldn’t handle the paperwork related to the safety case regime in a timely manner for all mines.

No, before the concept of such a regime could be implemented the number of inspectors would need to be significantly increased. Unfortunately, these roles historically have not been paid well in mining terms and many experienced people have found the role to be unattractive. DOL struggled for a year to replace a single mine inspector, who quit and then left for Australia after the Tiller Mine tragedy. Where will DOL get more inspectors from?

Additionally, in relation to the suggested licensing and notification regime, that again will cause the same high bureaucratic effort for DOL and the mines, it will not be sustainable over the medium to longer term without additionally resources being allocated to DOL.

2. What do you think are the main benefits and costs of this option?

If a standardised approach were to be implemented across the mining industry – this is possible due to its small size in New Zealand. Then perhaps something that adopted the matrix system with high, medium and low risks/hazards identified it could work. Prior to that, a consultative industry wide approach would have to be adopted. This would have to be supported with appropriate education to achieve a comfortable level of buy-in. This perhaps could be achieved via development of structured training programmes that attract subsidy. Polytechnics, PTE’s, or back even back through EXITO. The main benefit would be that the entire industry is doing the same thing. As knowledge and understanding grew around the use of this newly adopted system, so would conformance to the stated standard. The safety case regime could perhaps be funded through a levy on each unit of mineral produced by the entire mining industry?

3. What do you think of the variations and features proposed? Can you add any more?

If a safety case is approved by an inspector and things go wrong what are the consequences for the inspector and or the company that implemented the case in good faith? Requiring the signature to approve the plan by the inspector, it would be a significant effort for the mining industry to fulfil this regime as there are not enough
inspectors to go around. Thus this is not practicable unless additional resourcing were given to DOL.

**Licensing regime**

4. Do you think the licensing regime would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?

**Why:**

This could only work if the HSE Act were to be amended to include the term a competent person, or qualified person. Next the huge holes or gaps in the current HSE mining regulations 1999, would need to be filled and finally, an approved code of practice that demonstrates at a practicable level how, compliance can be achieved is needed. Currently, the methodologies adopted can be wide open for interpretation. When this is allowed to occur and one departs from the basic mining principles, things will continue to go wrong.

**Why not:**

Unless the legislation amended as above then it could be said that the license regime is only bureaucratic and the examples (shaft sinking, drift and portal development, raise boring) are really inapplicable. For example, in such a small industry, how many of these activities are really expected to take place in New Zealand in the near future? These are all activities related to mostly the development of a new underground mine. In the South Island and with the DOC consent process to contend with, how many are actually planned? If the code of practice is not detailed enough to explain how to achieve compliance with the Act and its mining regulations, what is the real benefit of the licensing regime?

Another drawback if such a process was not managed in the correct manner. Some may interrupt that license regime is potentially similar to statutory regime (Certificates of Competency: e.g.; Mine Manager, Under Viewer, Deputy, Mine Surveyor), that are currently in place (Mining Administration Regulations 1996). Is there any gain to be had from the licensing regime in comparison to the statutory regime? It may get very confusing if current terminologies are used.

5. What activities should require a license?

Gas drainage, dewatering, maintaining adequate ventilation, P5 explosive use, new development through faulted ground or where there are known or suspected areas of bad ground.

6. Should the license be a one-off type, or valid for a certain period of time?

Would suspect that if it went ahead it would be for specific activities or timeframes that are higher risk based.

7. No comment.

8. What do you think are the main benefits and costs of this option No comment.

9. Can you think of any variations and features enhance the option?

If the license regime could be changed into an operating license regime for underground mines. This means that mining companies applying for an operating license need to have certain systems that could be independently audited by either DOL or approved auditors. This license could be granted for say, 5 years, and could cover the whole underground
mine operationally. Then every main section of the mine, including production and development sections, shaft, pit bottom activities would have to meet minimum standards of housekeeping, and discipline issues such as following JSEA’s and SOP’s.

Third-party monitoring system

10. Do you think a third party monitoring system would work well for underground mining to improve the ways hazards are identified and managed? Why/why not? Do you think a third party monitoring system would work well for underground mining to improve the ways hazards are identified and managed?

Why:
No, don’t think this would work that well as it would be very expensive and probably be duplicating a current approach but in a slightly different way.

Why not:
In the current climate, it is probably unreasonable to install such a system as this as it is already in place by virtue of those that hold a statutory responsibility. (HSE Mining regulations 1996). All activities at the mine are currently covered and supervised by person who hold certain statutory responsibilities. These are nationally and in some cases internationally qualified people, who have satisfied the local standard to hold a COC on the mine site.

11. What activities should require monitoring?
See above.

12. Who would a suitably qualified person be?
See above.

13. What do you think are the main benefits and costs of this option?
See above.

14. Can you think of any variations and features enhance the option?
If the current regime is considered as not operating as it should, then further consideration should be given to fixing the current system before scrapping it.

Notification regime for certain high-risk activities

15. Do you think a notification regime would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?

Why: No comment.

Why not:
The notification regime wouldn’t work that well as the Mines Inspectorate could not handle the bureaucratic effort related to the regime, as the number of Mines Inspectors is dramatically low in New Zealand, unless that changed and better resourcing made available the system would not be effective.
Also, there is a potential business risk for the mines owners, as this process could potentially delay the mining activity, due to the fact that the Mine Inspector couldn’t handle the paperwork related to the notification regime in a timely manner for all mines.

16. What activities should be included?
   See above.

17. Who would a suitably qualified person be?
   See above.

18. What do you think are the main benefits and costs of this option?
   See above.

19. Can you think of any variations and features enhance the option?
   See above.

**Health and safety management systems and major hazard management plans**

20. Do you think this option would work well for underground mining to improve the ways hazards are identified and managed? Why/why not? Do you think this option would work well for underground mining to improve the ways hazards are identified and managed?

   **Why:**
   Yes, it could work as it is a systems based approach and over time with the correct levels of education and explanation could be enhanced to a higher level.

   **Why not:**
   The health and safety management systems and major hazard management plans wouldn’t work well if they were not backed up and supported through better regulations and detailed codes of practice. Examples the DOL could consider may be along the MDG series of guidelines that are published in Australia. What ever is done needs to be supported by the inspectorate.

21. What should be detailed in the systems?
   Along the lines of the ACC WSPM or Partnership Programme structure but underpinned by specific management plans for certain hazardous work activities. Dropping out of these would be SOP’s and JSEA’s.

22. What hazards should require a plan, and what should the plan include?
   **Engineering:** Mechanical, Electrical, Defect Management  
   Change Management

   **Technical Services:**  
   Ventilation & Gas, Explosion Suppression, Withdrawal Conditions, Strata Control
Development, Subsidence, Support Rules

Mine Managers Rules:
Licenses, Traffic Management, Loads & Pulling Equipment, Power Loss & Generation, Gas Monitoring Trigger Action Response Plan (TARP)

Environmental: Rehabilitation, Waste Management, Chemicals.

23. What do you think are the main benefits and costs of this option?

Mines would be following a more prescribed formula that deals specifically with the high risk, high consequence risks in the business. Costs would be off-set in reduced insurance premiums, higher morale from fewer incidents and accidents leading to reduced absenteeism.

24. Are there any differences between large and small underground mines that would lead to different requirements in the systems and plans?

Not really because it’s a systems based approach and its covered in definition of all practicable steps in the current Act.

**Increased supporting guidance**

25. Do you think this option would work well for underground mining to improve the ways hazards are identified and managed? Why/why not? Why:

Yes, as code of practices are essential for a good and sensible legislation. Especially, now because the current incomplete mining legislation in New Zealand is ambiguous and wide open to many different interpretations. The current regulations are full of gaps that if permitted to continue will only lead to worsening safety statistics. (Currently 167 events per 1,000 ACC claims are mining industry related).

The only way to improve health & safety and hazard management is by clearing up the problems. Have a requirement for a competent or qualified person in the Act. Support this with better and more explicit regulations and underpin these with appropriate codes of practice and OSH guidelines. A consultative approach needs to be adopted because a prosecutorial jurisdiction, will not be sustainable in the medium to longer term. We all have 20-20 vision after an event. All stakeholders need to participate and work together. Then everybody is committed.

Why not:

26. What ACOP development process would you prefer (For example, should it be written by industry and unions, the Department of Labour, or developed by industry, unions and government together?)

The ACOP should be developed by industry, unions and government. This would bring the highest commitment for the ACOP or guideline development. Also the Polytechnic’s and EXITO should be involved and review and update their training requirements.

27. What areas would you like to see specific guidance on?

- Risk management
- Spontaneous combustion
- Gas management
- Mining methods and strata management
- Mining transport systems and production equipment
• Mine services and infrastructure systems
• Emergency preparedness and response systems
• Ventilation management
• Dust management
• Approach of old workings
• Shafts

28. What do you think are the main benefits and costs of this option?

To have clear and descriptive guidance in the main areas of underground mining, that in time would improve the health & safety and hazard management in the mining Industry in New Zealand.

29. Can you think of any variations and features enhance the option?

Yes, that the DOL adopt a more consultative approach.

Other features which would enhance this option are:

• Health & safety and hazard awareness campaign by the DOL and the government
• Health & safety competitions (Sections of mines are competing in relation to health & safety and hazard management, national prizes for the best health & safety and hazard management performance, health & safety awards for companies and/ or mines)
• Implementation of health & safety and hazard management training by the Polytechnic’s and EXITO

**Extending the coverage of the Mining Underground Regulations**

30. Do you think this option would work well for underground mining to improve the ways hazards are identified and managed? Why/why not? Do you think this option would work well for underground mining to improve the ways hazards are identified and managed?

Why:

Yes, as more descriptive coverage of the HSE (Mining Underground) Regulations 1999 are essential for a good and descriptive legislation. This would dovetail into any Mining ACOP.

Why not: No comment

31. What do you think are the main benefits and costs of this option?

To have a clear and descriptive legislative framework can work with performance based legislation and this approach would improve the health & safety and hazard management in the mining Industry in New Zealand and should occur within a reasonable period of time.

32. What gaps do you think currently exist in the regulations that need addressing?

Gaps, which needs to be addressed:

• Risk management
• Spontaneous combustion
• Gas management
• Mining methods and strata management
• Mining transport systems and production equipment
• Mine services and infrastructure systems
• Emergency preparedness and response systems
• Ventilation management
• Dust management
• Approach of old workings
• Shafts

Amending the Mining Administration Regulations

33. Do you think this option would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?

Why:
Yes, as the upgrade form a mine deputy to a mine under viewer would reflect higher levels of quality of the mine management team. Face time needs to be clearly stated in the regulations and not the gazettes. Mine managers should sit on panels to pass new people coming up through the ranks.

Why not:
A major disadvantage is that there currently is no proper education system for the mining industry (no mining school or university, no approved mining apprenticeships/trainee opportunities etc are limited and only at the initiative of individual mines.). These types of structures over and extended period of time become feeders to the higher qualified roles in the industry. Its also good business because it considers a positive approach toward mine succession planning for an industry with an aging workforce.

34. What do you think are the main benefits and costs of this option?

A major benefit will be that a process is developed that will assure a higher quality of mining professional coming out of a more structured approach going forward. This will have a positive spin off for smaller underground mines in New Zealand as well. It will be found that over time, the more ambitious people will want management experience and probably will get that from roles in the smaller pits to start with.

35. What impact do you think this option would have on smaller mines?

Such a process as described above would have a positive effect on the smaller operators.

Employee participation requirements

36. There are four possibilities to improve employee participation under this option: Employee participation requirements

1. Do you think this option would work well for underground mining to improve the ways hazards are identified and managed?

No

A) Amending primary legislation to include a check inspector regime:

Why: No comment.

Why not:
There is a very high likelihood of abuse of such a regime that has check inspectors at its centre. The unions could also run away with such a system that would eventually ensure that health and safety will fail in that workplace because it was used for political purposes. A check inspector as an employee of the mine who could stop the operations at that mine will lead to interpersonal conflict and potential personal grievance claims through the employment courts. Unions could attempt use the check inspectors to push their demands if they were active union members. The New Zealand mining unions still maintain the older attitude of the British unions. History consider such ideology as being unreasonable, hostile, and not very consultative.

If such a role had no specific requirements in terms of qualifications then the moral requirement to avoid abuse of such power could be manipulated by a union member vote. If they were non-union orientated then they could also be perceived as being spies of the DOL and so on.

No, for such a system to work a check inspector would have to be independent from the mine. But this leads to either having more mine inspectors or consultant check inspectors.

B) Amending current regulations to include a modified version of a check inspector regime, with powers reframed as duties and certain aspects removed:

Why: No comment.

Why not:

This doesn’t make any sense in relation to the improvement of health & safety and hazard management at the mine site for the above reasons.

C) Incorporating certain aspects of the check inspector regime into existing options in this paper on safety cases, hazard management plans and employee participations ACOPs:

Why: No comment

Why not:

No, as above. See explanation above for safety case regime, hazard management plans and so on.

D) Creating employee participation ACOP:

Why:

A) Yes, but it should reflect the whole spectrum of employee participation in relation to safety & hazard management (committees, participation in the ACOP development for the mining industry, safety awards, safety competitions, safety awareness programmes and so on)

Why not: No comment.

37. What do you think are the main benefits and costs of this option?

The only benefit in relation to the employee participation ACOP would be that they face the day to day activities of mining. Therefore, they are the perfect people to assist in the
development of a safe system of work. All other recommendations are non-practical and will not have that much impact on the health & safety and hazard management. A major disadvantage will be that compliance costs in the industry could go through the roof. A balance would need to be found and this would require a consultative approach.

38. What impact do you think this option would have on smaller mines?

This option would most likely not be affordable for smaller mines.

**Requirements for Health and Safety inspectors:**

39. Do you think this option would work well for underground mining to improve the ways hazards are identified and managed?

Why:

Yes, as this will improve the enforcement of the mining regulations and will force every mine to keep up with the health & safety and hazard management requirements.

Why not:

Currently and with no additional resource being given to DOL, it is probably totally unreasonable to implement these requirements for health & safety inspectors. This comment is simply based on the acute shortage of mine inspectors. Before any of this could be considered or implemented then the number of inspectors would need to be significantly increased. The roles don’t pay that well and probably unattractive to qualified individuals. DOL struggled to replace the last mine inspector. Not sure where they will get the extra staff from.

40. What do you think are the main benefits and costs of this option?

The main benefit would be to improve the enforcement of the HSE Act and Regulations in the mining industry. This is mostly related to the hiring of more mine inspectors, therefore it is related to the fact of how much would the NZ government like to invest into the establishment of an appropriate standard for health & safety and hazard management in this industry?

41. What could the legislation specify regarding health and safety inspector visits?

   a. Visit every mine in operation in the inspectors designated region.
   b. Visit very mine on a regular three-monthly cycle

   It should be left with the mine manager and the inspector to sort out what the focus for the visit should be. An audit document could be developed through the consultative process.

42. Can you think of any variations and features that would enhance this option?

1. Yes, to hire more mine inspectors to enforce the legislation

   a. Amending primary legislation to include a check inspector regime.
   b. Amending current regulations to include a modified version of a check inspector regime, with powers re-framed as duties and certain aspects removed.
   c. Incorporating certain aspects of the check inspector regime into the existing options in this paper on safety cases, hazard management plans and employee participation ACOPs.
   d. Creating an employee participation ACOP.
In addition, we would like to know your views on the following:

<table>
<thead>
<tr>
<th>Additional questions</th>
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Please note that any submissions that you make may be the subject of a request under the Official Information Act 1982. To assist the Department of Labour with the processing of any such requests, please indicate at the beginning of your submission whether or not you would like the contents made a matter of public record.

43 Any further comment?
Union

NZCTU
Submission of the
N Z Council of Trade Unions
Te Kauae Kaimahi
to the
Department of Labour

on
Improving health and safety hazard management
in the Underground Mining Industry

P O Box 6645
Wellington 6th June 2008
Introduction

The New Zealand Council of Trade Unions - Te Kauae Kaimahi (CTU) encourages a workplace that nurtures a high value, high skill, high wage economy. The CTU – Te Kauae Kaimahi is the largest democratic organisation in the country, representing more than 350,000 working people. It has a formal relationship agreement, Ture Whakawhanaungatanga, between its National Affiliates’ Council and Te Runanga o Nga Kaimahi Māori o Aotearoa. Because government recognises us, along with Business NZ, as a social partner, our role is to give voice to those people in debate on economic and social development strategies. It is also our role to lead the implementation of those strategies in such a way that everyone benefits, now and in the future.

The CTU – Te Kauae Kaimahi thinks a decent workplace will have key features:

1. It will be highly productive.
2. It will be a centre of lifelong learning, striving to develop the workforce.
3. Workplace practices will be based on fairness and respect.
4. It will have strong networks in the industry and community.
5. It will be healthy, safe and sustainable.

This submission is made within the context of that vision.

Our affiliates

The CTU supports the proposals put forward by the Engineering Printing and Manufacturing Union (EPMU).

Employee participation

Mining is one of New Zealand’s high risk activities. The CTU welcomes the discussion paper on improving health and safety hazard management in the underground mining industry.

Effective worker participation in injury prevention and health protection in the workplace has been identified as the key to successful safety management since the Woodhouse Report. International research has shown that worker participation leads to safer workplaces through the promotion and integration of a safety culture into the workplace. A report prepared by Cardiff University for the Health and Safety Executive (UK) identified prerequisites for effective worker participation, which included:

- A legislative requirement for worker participation
- Effective external inspection and control

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2 Walters, D. A review of the evidence of the effectiveness of representation and consultation on health and safety at work.
- Commitment by senior management to health and safety
- Competent hazard assessments and controls
- Communication between worker representatives and their constituencies

However, even with the legislative support for the employee participation system; training leave for elected health and safety representatives; injury prevention and rehabilitation programmes, workplace accidents and exposures still account for:

- about 700-1000 deaths from occupational disease
- about 100 deaths from occupational injury
- 17,000 – 20,000 new cases of work related disease
- About 200,000 occupational accidents resulting in ACC (Accident Compensation Corporation) claims, about half of which result in disability and about 6% in permanent disability

It is with this research and these statistics in mind that we consider what is deemed an effective health and safety management plan.

The CTU recommends that the revised legislation should have a strong focus on worker participation with regards to three aspects:

- Elected and trained health and safety representatives
- Check Inspectors
- Robust methods for ensuring worker participation at every stage.

What is a competent person?

The question about competencies arises across many of the examples put forward for hazard management in the underground mining industry. It is important before specific ‘competencies’ are decided upon for each scenario, that an agreed definition of ‘competent’ is put forward. Competent may take the form of a qualification, yet the person may be relatively inexperienced and vice versa. It is imperative therefore that such competent workers, when such a definition is agreed upon, are supported within the workplace. Such workers while deemed competent may require additional support being new, inexperienced, migrant or young workers etc and therefore vulnerable.

There is huge scope within these regulations for provision around training and skills improvement within the workplace. ‘Skill’ is a broad definition to include skills, competencies, capacities, capabilities, knowledge, attributes and experience that enable people to do their jobs competently. Innovation, productivity and economic growth rely on sufficient skill levels among New Zealand workers. In our rapidly changing world, having a highly skilled workforce is a necessity. Our future

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will depend upon giving people the opportunity to develop their skills and abilities to the maximum; not just as a strategy for competing in a global economy but as an effective way to tackle family poverty, increase social mobility and improve quality and security of work. Up-skilling the workforce is about integrating learning with improvements in the way workplaces operate and ensuring training complements new and innovative processes towards making the workplace a safer and healthier place for New Zealand workers.

The Skills Strategy hopes to address skill shortages by increasing the level, quality and adaptability of New Zealanders’ skills, including those already in work and those seeking employment. This can be achieved through increasing labour force participation, enhancing the relevance and timeliness of education and training supply, and upgrading the sills of the existing workforce. It can be achieved through improving the use of skills in the workplace. It can also include raising the level of productivity of the workforce through training, technology and workplace organisation.

Unions and workers have a role to play when it comes to identifying what is ‘competent’. There is scope for worker participation, through e.g. the Learning Representative for workers to identify where competencies or skills can be improved to make their job either more productive or safer.

I. A new safety case hazard management system

Safety Case:

There is good scope within the regulations to apply the safety case to activities within the mining industry. In the first 5 months of 2000 four rail workers (member of the Rail and Maritime Transport Union) were killed. They were killed under an ‘approved’ safety system that prescribed ‘reasonable cost’ to the employer under the regulations. This safety system failed to provide for their safety. Following the deaths there was a ministerial enquiry. The recommendations/outcomes were:

- To fully implement risk management model and hazard identification processes
- A need for greater involvement of employees within the health and safety management systems
- Previously productivity had received a greater focus than safety
- The Unions should be formally consulted before every safety audit to ascertain safety issues of concern to employees.
- Section 6H of the Transport Services Licences Act was repealed and a consequential amendment to the Health and Safety in Employment Act was approved.
- The LTSA (Land Transport Safety Authority) and the Department of Labour should develop protocols for working together in the prevention of investigations of rail accidents.

Many of these recommendations can be applied to the proposed Mining regulations. Namely the CTU would make these recommendations:

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That worker representation is an integral part of how safety is managed and this is cited specifically.

That ‘reasonable cost’ is not a consideration with regards to safety management systems.

The CTU also supports the recommendations as per the submission by the EPMU, made on behalf of their members.

II. Ways to improve notification of hazards

a. Licensing Regime

The CTU believes that the authority licensing activities should be deemed the competent authority to issue relevant licenses. E.g. licensing for the use of explosives, may be by the defence forces or the police, or may be subject to resource consent. The CTU believes that activities requiring a licence such as blasting or exploration should be available to the public for comment.

The CTU also recommends that the Check Inspector on behalf of the workers may make recommendations regarding the issue or repeal of a licence.

b. Third-party monitoring system

The CTU strongly endorses monitoring in terms of occupational health monitoring, such as exposures to dusts, noise, vibration, chemicals etc. Parameters for monitoring should not be finite as the nature of work and exposures can vary over time. Workers should be consulted about appointing a third party to monitor occupational exposures and the effect on their health.

The CTU recommends that there should be a mechanism for workers to make suggestions regarding activities which require third party monitoring.

c. Notification regime for certain high-risk activities

The CTU believes that certain activities should be notified in a format which is easily understood and accessible. These activities may include:

- Activities which pose an increased risk to the ‘normal’ activities of a mine.
- Activities which are ‘high risk’.
- Activities which pose a risk or might effect the local community, either through direct impact (e.g. injuries, flooding etc), or activities which might affect services to a local community (e.g. a loss in power, water supply).
- Activities which might effect the environment.
III. Ways to improve guidance

a. Health and safety management systems and major hazard management plans

The CTU believes that all plans and systems should be made available to all workers.

Major hazard plans should be reviewed at regular intervals and when a process changes.

All plans should be written in plain English and all technical terms explained, to ensure that those whose first language is not English or for those with lower literacy can understand the work and hazards involved.

Plans and systems should be drawn up jointly by the management and the workers. This ensures worker participation and improves the safety knowledge within the workplace. It could also be used as a tool to identify potential training needs within the workplace, and the scope to upskill the workforce.

The CTU believes there is scope for auditing of mining activities to occur by a third party, possibly the Department of Labour, in partnership with a worker/union representative.

b. Increased supporting guidance, including an approved code of practice (ACOP) on hazard management

The CTU supports the proposal for an approved code of practice, once it:

- Outlines mechanisms for worker participation as an integral part of all aspects of the document
- Follows international best practice
- Is a practical document
- Leads the way in terms of improving health and safety hazard management in the underground mining industry.

IV. Ways to amend regulatory coverage

a. Extending coverage of the HSE (Mining Underground) Regulations 1999

The CTU supports this proposal, and the recommendation by the EPMU that this should be in consultation with experienced miners.

b. Amending the HSE (Mining Administration) Regulations 1999

The CTU supports this proposal.

V. Ways to improve employee participation
As discussed at the beginning of this submission, worker participation is absolutely crucial to the safe operation of any workplace. The CTU strongly supports the recommendation by the EPMU regarding the role and responsibilities of a check inspector.

The Check Inspector will:

- Be elected by the workers as their representative
- Have at least five years mining experience
- Hold a coal mine deputy certificate

The Check Inspector is NOT a health and safety representative. The Check Inspector is an additional role, and their role and responsibilities must be detailed explicitly within the proposed mining regulations.

The CTU sees the role of the Check Inspector (as per the EPMU submission) as being:

- To have the authority to order the cessation of activities and, if necessary, the evacuation of the mine, where either the activity or the structure is believed to be dangerous and could cause injury.
- To liaise with the mine’s safety manager on a regular basis with regard to safety issues
- To work with health and safety representatives and the health and safety committee
- To make recommendations to the mines inspector regarding the issue or repeal of a licence
- To inspect the mine on a regular interval (every two weeks). The report should be made available to the mine manager and the union site delegate.

The CTU believes that an elected Check Inspector should be supported in the following ways:

- Be adequately resourced to carry out their role
- Be given ample opportunities to receive further training to improve their skills and capacity as a Check Inspector, at the employers expense and without loss of remuneration.

The CTU strongly endorses the prompt completion of the Approved Code of Practice on Employee Participation already underway.

The CTU refers to the ministerial review of the rail industry and agrees that all reasonably practicable steps must be taken to ensure the safety, health and wellbeing of workers while in the workplace, without reasonable cost being an issue.

The CTU holds the view that a productive, healthy, safe and learning workplace is one which values its workers and the work being done, whether the workplace is small or large. It therefore advocates unequivocally strong worker participation.
VI. Ways to improve health and safety inspections

Requirements for health and safety inspectors

The CTU recommends that Department of Labour inspectors inspect mines at regular intervals and whenever an operation changes. The CTU recommends that health and safety inspectors be suitably competent and qualified in the area of mining, and be given opportunities to access further training to improve their knowledge and competencies. The CTU recommends that health and safety inspectors go underground to inspect the mine, with the check inspector and the health and safety representatives.

For further information regarding this submission please contact:

Rosaleen Loughman,
Health and Safety Organiser,
New Zealand Council of Trade Unions – Te Kauae Kaimahi,
P.O. Box 6645,
Wellington
Large Employer

Newmont Gold
6 June 2008

Workplace Policy Group
Department of Labour
PO Box 3705
WELLINGTON

Attention: Hon Trevor Mallard

Dear Mr Mallard,

Thank you for the opportunity to submit comments on the March 2008 discussion paper “Improving health and safety hazard management in the underground mining Industry”. The contents of this submission can be made a matter of public record.

Newmont Waihi Gold operates the Martha Open pit and Favona underground gold mines in Waihi.

Newmont is a leading gold producer with operations on five continents. Newmont is also engaged in the exploration for and acquisition of gold properties in some of the world's best gold districts.

Employing approximately 34,000 employees and contractors worldwide, Newmont operates core assets in North America, South America, Australia, Indonesia, and Ghana, with new mine projects currently being developed. Our mines also produce copper and silver. Newmont is committed to high standards and leadership in the areas of environmental management and health and safety for its employees and neighboring communities.

Potential Options

I. A new safety case hazard management system

We would strongly support the retrospective introduction of a safety case regime that would need to be “approved” prior to commencement or continuation of a mining operation. Also periodically reviewed and resubmitted.

The safety case should;
• Identify the hazards and risks of the operation
• Describe how these risks are controlled
• Describe the management system to be put in place to ensure that the controls and processes are consistently applied
• Describe how the operator will specifically comply with the relevant Acts and Regulations covering their operations

Although the safety case has required ‘approval’ we believe that the ongoing safety of the operation is the responsibility of the operator – not the regulator.

The example used on Pg.12 of the discussion paper highlighting the requirements of Victoria’s safety management system and major mining hazards is a good starting point for the minimum expectations of a safety case submission.

The benefits of the development of a site specific safety case by the mine operator are
• Awareness of NZ’s Act’s and regulations
• Implementation of hazard management systems
• Easily audited by an inspector
• Detail required is commensurate with the hazards associated with the operation
• Prescription is imposed by the operator for compliance and safety of their operation under the current regulatory framework provided

II. Ways to improve notification of hazards

Site non-core activities such as shaft sinking or working near old workings should require notification and resubmittal of the operations safety case. Qualifications and suitability of persons to conduct the activity should be examined during this process. Notification timeframes should be increased to allow due process to occur.

III. Ways to improve guidance

As per above – mandate safety case regime

IV. Ways to amend regulatory coverage

Prescription is imposed by the site operator in the safety case for compliance and safety of their operation under the current regulatory framework provided. This is more in line with the performance based principles of the HSE Act as opposed to prescriptive legislation.

The underground regulations should not need to be prescriptive in nature as they are adequately “covered” by the HSE Act and Regulations

V. Ways to improve employee participation
We feel the current legislation adequately addresses employee participation and allows open communication with management and/or regulators. Would advocate employee participation in safety case development. We feel that any increase in the “inspectorate” would offer more benefit if it was an expansion of the current health and safety field department.

VI. Ways to improve health and safety inspections

Inspect management systems as well as operational facilities.

Inspect compliance with ‘approved’ safety case.

Inspect “administrative” compliance with the current Act and regulations

In conclusion, we support the review of the current legislation in regards to underground mining in New Zealand and would like the opportunity to further expand on our submission.

If our organisation can be of any assistance – please contact myself

Yours sincerely
Glen Grindlay

General Manager
Newmont Waihi Gold
Large Employer

Pike River Coal
RESPONSE FORM: IMPROVING HAZARD MANAGEMENT WITHIN THE UNDERGROUND MINING INDUSTRY

Submission by: Pike River Coal Limited

Contact: Peter Whittall
General Manager, Mines

Date: Friday 6 June 2008

Pike River Coal Limited consents to this document being made publicly available under the Official Information Act.

Executive Summary:

Pike River Coal Ltd (PRCL) believes that the current New Zealand coal mining legislation (predominantly the regulations) is inadequate in some critical areas. Review is needed to appropriately address the current and future needs of the industry and the communities within which the mines operate and draw their labour. Any case for change should be approached in a consultative manner that fully involves all industry stakeholders. Once consensus is reached, a staged implementation should follow.

Unfortunately, several of the options put forward in the DOL discussion paper have the potential to plunge the industry in an unproductive quagmire of bureaucratic administration. PRCL’s view of the draft document is that it ignores, or at least does not seek to address, some of the basic principles of health & safety and hazard management, which are:

- Deal with human attitude to improve behaviour to achieve desired outcomes
- Be fully consultative in the approach
- Ensure commitment through active and full participation
- Be supportive
- Be educative
- Have an effective risk based approach toward safety management
- Keep it simple

It is the view of PRCL that the principal Act needs to be amended to include a requirement for competent or qualified persons. The current mining regulations need to be reviewed to support a more critical risk or hazard review approach with a consequent critical risk management plan system to address the identified risks. A means of then demonstrating compliance needs to be created via the use of detailed codes of practice or detailed guidelines that deal to the real issues as opposed to being politically correct.

The short term strategy should consider and include:

- A planned staged consultative approach;
- Promote a culture of evaluation, consultation and education with the DOL and its inspectorate. The DOL have a role as inspector and compliance auditor but also one of support within the industry to assist transfer and awareness of best practice within health and safety and ensuring that smaller or less resourced operators are not ignorant either of their responsibilities or strategies for providing a safe work environment;
- Increase the coverage and number of mine inspectors via realistic resourcing of DOL;
- Increase education levels by involving stakeholders such as training providers;
- Promote the use of Critical Risk review at each site and the development of a Management Plan System and supporting Standard Operating Procedures to support each Management Plan;
- Start specific health & safety and hazard management mining campaigns and/or awards;
• Setting up an industry based working party to create a staged implementation strategy to move toward the above.
TELL US WHAT YOU THINK

We would like to hear what you think of each of the individual options and would be grateful if you could answer the questions following each of the options.

Safety case

1  Do you think the safety case regime would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?

PRCL believes that a safety case regime would not be a cost effective or pragmatic measure in relation to the issues identified in the discussion document. However if such a regime were to be adopted then it should be inclusive, site based and cover mining activities with high probability, high consequence outcomes. In other words, it should be based around a risk management approach. There are several models that could be adopted for this kind of selected method. But the approach needs to be simple, as if it’s too hard to do, then it won’t be done (especially by smaller mines with less employees and/or available resources).

Our concerns about this option include issues around the current Mines Inspectorate not having the ability to handle the bureaucratic effort required by such a regime. The number of qualified Mines Inspectors has dramatically declined over the past decade or so in New Zealand, (only one full-time inspector and one trainee inspector are currently covering all of the South Island).

There is also potential business risk for the smaller mines in having to hire in expert advice as well as issues such as potential approval delays for the safety case if the Mines Inspectorate couldn’t handle the huge amount of paperwork related to this model in a timely manner.

2  What do you think are the main benefits and costs of this option?

PRCL believe that the development and implementation of this model would be an expensive option to fully implement. Even larger stakeholders may find this difficult to achieve as it will be time consuming. Smaller operations most likely would have to engage external experts or have difficulty in complying with the required standard. This would then require additional resources from DOL to guide the smaller operator through the process.

PRCL therefore believes that a more appropriate and equitable approach is to take steps to ensure the current framework of legislation is adopted along with a requirement in law for each site to develop a documented health and safety management system – this would be far more effective.

This could be as simple as encouraging/requiring all mine operators to comply with AS/NZ 4801 through the ACC secondary accreditation in the WSMP programme.

3  What do you think of the variations and features proposed? Can you add any more?

Submitting a safety case without requiring DOL approval is one option – this allows the activity to proceed but also allows the regulator to have the option to intervene, ask for more details etc if the risks or track record of the applicant justify it. This is less onerous all round than a formal approval to operate for every mine.

Licensing regime

4  Do you think the licensing regime would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?

PRCL believe that this option could only work if the HSE Act 1992 were to be amended to include the term a competent person, or qualified person. Next, the inadequacies in the current HSE mining regulations 1999 would need to be filled and finally, an approved code of

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1 Principles of Health and Safety Management Systems-with Guidance on Systems and supporting techniques
practice that demonstrates at a practicable level how compliance can be achieved is needed in this industry. Currently, the various methodologies adopted by many operators can be open for subjective interpretation. When this is allowed to occur, departure from sound mining principles will continue to put employees at risk. PRCL supports specifying competence requirements for certain roles or tasks (as currently exists under the Mining Regulations and various other occupational licensing regimes covering electricians, gas fitters, HSNO approved handlers, and so on). Further consideration should also be given so that this is further extended to the specification of a standard in health and safety management.

5 What activities should require a licence?
PRCL believe that there are two options in this area;

1. Licensing the specific person by imposing statutory obligations
2. Licensing the individual activity to a specified standard

Currently there are certificate of competency requirements for a Mine Manager, Mine Surveyor, Underviewer, Deputy and requirements under HSNO approved handler for explosives. PRCL supports these current certificates of competency as a primary means of providing safety, industry specific guidance and governance at the operational level. This should be extended to include specific competencies for other mining professionals with equal amounts of responsibility, including electrical and mechanical engineering, mine engineers, geologists and safety practitioners who all must play their part in the development and implementation of a safe system of work. PRCL does not advocate the completion of these competencies as being a prerequisite to employment or appointment as is the case with the current certificate of competence system. While these additional competencies would be opportunities to provide industry specific training, PRCL would also advocate industry specific training be developed for engineering and safety professionals to allow them to be appointed as competent persons at the mine to undertake certain tasks such as development of engineering standards, conduct risk reviews, develop safety management systems and plans.

PRCL also believes that there should be promotion of Continuous Professional Development (CPD) as well as the acquisition of formal tertiary qualifications in New Zealand. These competence requirements should be set by an ITO and feed into an accreditation body with statutory status (like the Health Practitioners Registration Board) which issues the occupational licence. The actual competence requirements should be removed from Regulations so that they are more flexible and easier to update as circumstances change. Having to Gazette every change currently is a time consuming and unhelpful process.

It is unclear if there is evidence to show that NSW mines are safer because of the activity licensing regime than other similar mines elsewhere without them.

Possible activities to be licensed in NZ would be those where there is innovation or a need to depart from an established industry standard such as:

- working within 50m (2 chains) of a fault
- working near old workings
- development work in gassy mines
- single entry headings beyond a certain length
- introduction of new technology for roof support, explosives, etc

6 Should the licence be a one-off type, or valid for a certain period of time?
Due to new mining techniques and technology any personnel certification should be time bound to around 5 years with renewal based on criteria such as completion of specified CPD, activities such as attendance at conferences, delivering industry based papers and with the requirement of still working in the industry.

Activity licences could be one-offs so long as the circumstances or plant remain unchanged. If a standardised approach were to be implemented across the mining industry – possible due
to its small size in New Zealand – it should then consider risk factors associated with the specific activity and may even adopt a standard risk matrix system with high, medium and low risks ratings for hazardous mining activities.

7  **What would the appropriate qualifications or knowledge be?**

Consideration should be given to revamping the school of mining currently operated by Tai Poutini Polytechnic in Reefton. This facility is currently known as the “Digger School” but could, with industry and ITO support, be revamped with a range of courses and subjects being offered up to and beyond under graduate level. This would also back up the current NZQA levels being offered by providing career path opportunities for young mining professionals.

8  **What do you think are the main benefits and costs of this option?**

Such a move will begin a process that is sustainable for the industry in a climate where all operators are dealing with an aging workforce and difficulties in getting experienced personnel.

9  **Can you think of any variations and features that would enhance this option?**

Acute labour shortages in the industry means that importing miners, tradesmen and mining managers at all levels from other countries is now a reality. An industry based stream-lined process similar to the one jointly developed and adopted by PRCL should become the norm. This is called a “Professional Conversation” with a panel of industry and academic representatives and is undergone after completion of a mapping exercise to demonstrate equivalency and relevance of qualifications has taken place.

**Third-party monitoring system**

10  **Do you think a third party monitoring system would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?**

In the current climate, it is probably unreasonable to install a system such as this as it is already in situ by virtue of those that hold a statutory responsibility. (HSE Mining regulations 1996). As above, all activities at the mine are currently covered and supervised by people who hold certain statutory responsibilities. These people have significant levels of experience and are nationally or internationally qualified mining professionals. They have satisfied the local standard to hold a COC on the mine site at which they work.

In principle, the use of a 3rd party auditor – whether internal or external - could be described as being “best practice” and a practicable step all employers should consider. It is a reasonable way of ensuring that safety systems are effective in achieving their objectives. A significant issue is the availability of sufficiently qualified people with the right skill-sets (including industry knowledge and experience, knowledge of NZ standards, legislation and auditing). Even if such people could be identified, the monitoring/audit/certification work would be insufficient to keep them fully engaged; hence they would almost certainly need to do other work for the mining companies with consequent conflicts of interest.

11  **What activities should require monitoring?**

PRCL believe that this should be centred on the adoption and full implementation of a safe system of work. This includes but would not be limited to all aspects of the OH&S management system as well as specialised medium to high risk mining activities. Such an approach would give the employer degree of confidence that systems adopted are robust, transparent and ensures the systems are being used and kept up to date.

12  **Who would a suitably qualified person be?**

A range of qualifications or experiences could define this role. The independence of the auditor could be problematic as the small NZ based mining industry means that industry consultants most likely have an existing relationship with the audited company. An independent and qualified Occupational Health, Safety & Environmental professional may not have the industry knowledge to provide anything other than a compliance audit.
13 What do you think are the main benefits and costs of this option?

Adoption of the accreditation through the current ACC workplace incentive programmes can actually give a cost benefit to individual operators. Such an audit provides assurance to the operator, but takes the onus away from the regulator. If required the regulator could approve/accredit third parties to do or to carry out these types of audit processes. Once again, this system is already in place under the ACC banner.

14 Can you think of any variations and/or features that would enhance the option?

The ACC system could be extended to cover the mining industry at a generic level for Occupational Health and Safety and then drill down into specific high risk mining activities. The regulator could provide a detailed approved code of practice as the template to be used to cover specific areas to a specified standard.

Notification regime for certain high-risk activities

15 Do you think a notification regime would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?

Notification has to have a clear purpose. There must be an expectation that the regulator will use the information – either to trigger a visit or to confirm key actions have been completed. PRCL believe that the notification regime wouldn’t work that well as the Mines Inspectorate could not handle the bureaucratic effort related to the regime. This is because the overall number of Mines Inspectors is dramatically low in New Zealand. Unless that changed and better resourcing is made available then such a system would not be effective.

Additionally, there is a potential business risk for mine operators, as this process could potentially delay the mining activity, due to the fact that the Mine Inspector couldn’t handle the paperwork related to the notification regime in a timely and efficient manner for all mines. If these issues were not addressed then notification would just become a meaningless exercise and another cost of compliance. The notification time period has to be sufficient to allow things to be changed if this is required.

16 What activities should be included?

PRCL believes that notification should be limited to significant, and/or high risk activities such as:

- Opening (or re-opening) a mine
- Significant new developments – but could be included in the requirement to submit an annual mine plan
- Single entry beyond, say, 300m
- Shaft sinking/raising (entering a shaft)
- Use of exothermic material for strata injection
- Cutting & welding in a hazardous zone.
- Significant changes to the annual mine plan – such as opening a new seam

17 What information should be required?

Operational Safety Management Plans underpinned by SOP’s (Safe operational procedures) and supported by JSEA’s (Job Safety & Environmental Analysis).

18 What do you think are the main benefits and costs of this option?

If the action was actively supported and performance measured then over time an attitudinal shift toward the full adoption of a safe system of work would be achieved.

19 What do you think of the variations and features proposed? Can you add any more?
Whatever the final system covered or looked like, it should be standardised across the entire industry (achievable due to its small size). Adoption of risk assessments supported with JSEA’s could also be an option for very small operators as it still emphasises the adoption of a systematic approach.

Health and safety management systems and major hazard management plans

20 Do you think this option would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?

This option is strongly supported by PRCL as it is a systems-based approach and over time, with the correct levels of education and explanation, it is sustainable and could be further enhanced to a higher level. It addresses the essential requirements under the HSE Act 1992, and should be based on robust hazard and risk assessment methodologies including quantified risk assessments and HAZOP assessments.

21 What should be detailed in the systems?

Furthermore, PRCL believes that such a systematic approach should have measurable and documented outcomes that can be audited by the regulator or other external stakeholder. In the interests of effective Occupational Health & Safety, ERMP’s (Emergency Response Management Plans) should also form part of this approach.

22 What hazards should require a plan, and what should the plan include?

Plans could cover:
- Shotfiring & Explosives Mine Inspection System
- Ventilation and Gas Management together unless the operation has gas extraction.
- Engineering Management Plan with separate standards for:
  - Electrical
  - Mechanical
  - Isolation
  - Defects
  - New Equipment
- Mobile Equipment Management Plan
- Explosion Suppression & Fire Fighting
- Inrush
- First Aid
- Engineering: Mechanical, Electrical
- Change Management
- Withdrawal Conditions
- Strata Control
- Subsidence,
- Support Rules
- Traffic Management
- Gas Monitoring
- Waste Management

These suggested plans may be combined for some sites and not required at others. PRCL believes that a comprehensive but not exhaustive list of management plans could be required for each site unless the site demonstrates through risk assessments that the particular risk is so low as to not warrant a separate plan.

23 What do you think are the main benefits and costs of this option?

Mines would be following a more prescribed formula that deals specifically with the high risk, high consequence hazards in the business. Costs would be off-set in reduced insurance premiums, higher morale from fewer incidents and accidents leading to reduced absenteeism. Ultimately this will lead to increased productivity with a highly trained efficient and effective workforce.
It would require the site to be proactive, doing more hazard reviews and determining strategies but be based on the current legislative framework.

24 Are there any differences between large and small underground mines that would lead to different requirements in the systems and plans?

Not really because the smaller operator would just have smaller plans because the risks will be constant throughout the industry. To work effectively, increased supporting guidance most likely would have to be provided.

Increased Supporting Guidance

25 Do you think this option would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?

PRCL believe that creating COP’s, ACOP’s and/or guidelines such as the MDG Guidelines in NSW to be critical to this option. These documents represent the current state of knowledge in the industry and should clearly spell out to the reader a preferred means of compliance. The certainty of knowing that if one can demonstrate conformance to such a standard will be recognised in the courts should ensure compliance for many operators.

It is essential that such COPs or guidelines are developed from within or in conjunction with industry representative bodies so as to ensure relevance and currency.

26 What ACOP development process would you prefer? (For example, should it be written by industry and unions, the Department of Labour, or developed by industry, unions and government together?)

Codes of practice are essential for good and sensible safety legislation. Especially, now because the current incomplete mining legislation in New Zealand is ambiguous and wide open to many different interpretations. The current regulations are full of gaps that if permitted to continue, will only lead to worsening safety statistics. (Currently 167 events per 1,000 ACC claims are mining industry related).

The only way to improve health & safety and hazard management is by clearing up the current problems. This means having the requirement for a competent or qualified persons specified in the Act. Despite the fact that we live in a performance based system of safety laws, change needs to be supported with better and more explicit regulations and underpin these with appropriate codes of practice and OSH guidelines. A consultative approach needs to be adopted because a prosecutorial jurisdiction will not be sustainable in the medium to longer term. We all have 20-20 vision after an event but very few people generally intend to harm anyone. All stakeholders need to participate and work together on this for it to be effective. With this level of buy-in, it will be found that everybody is committed and desired outcomes can be achieved.

27 What areas would you like to see specific guidance on?

PRCL believe that for the benefit of the entire industry the following should be provided. Please be aware that all of this material is already in place and working well in other jurisdictions such as the Australian coal mining industry.

- Shotfiring & Explosives
- Ventilation and Gas Management
- Gas extraction/drainage.
- Engineering Management Plan with separate standards for:
  - Electrical
  - Mechanical
  - Isolation
  - Defects
  - New Equipment
• Mobile Equipment Management Plan
• Explosion Suppression & Fire Fighting
• Inrush
• First Aid
• Engineering: Mechanical, Electrical,
• Change Management
• Withdrawal Conditions
• Strata Control
• Subsidence,
• Support Rules
• Traffic Management
• Waste Management

28 What do you think are the main benefits and costs of this option?
PRCL believe that a consistent approach will be achieved and all stakeholders working from the same page will add value over time.

29 Can you think of any variations and features that would enhance the option?
No

Extending the coverage of the Mining Underground Regulations

30 Do you think this option would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?
PRCL believes that the current Mining Regulations (Administration and Underground) are in need of complete review and revision and should be amalgamated into a single set of Regulations. These should follow the principles set out in the HSE Act 1992 and be performance based, but also recognise specific standards (such as AS/NZ) which small mines can more easily follow. The Regulations need to spell out the requirements in more explicit detail and deal with significant and unique issues in underground mines.

31 What do you think are the main benefits and costs of this option?
There is going to be a significant cost to any option adopted but the main benefit will be a consistent approach based on a continuous improvement model.

32 What gaps do you think currently exist in the regulations that need addressing?
They all need to be reviewed as many find them to be ambiguous because they have never been supported by an approved code of practice.

33 Do you think this option would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?
To have clear and descriptive guidance in the main areas of underground mining, that in time would improve the health & safety and hazard management in the mining Industry in New Zealand.

34 What do you think are the main benefits and costs of this option?
Consultative approach.

35 What impact do you think this option would have on smaller mines?
To get the message across to smaller mines other features that would enhance this option are consideration of:
• Health & safety and hazard awareness campaign by the DOL and the government
• Health & safety competitions (Sections of mines are competing in relation to health & safety and hazard management, national prizes for the best health & safety and hazard management performance, health & safety awards for companies and/or mines)
• Implementation of health & safety and hazard management training by the Polytechnic's and EXITO

Employee participation requirements

36 There are four possibilities to improve employee participation under this option:

a) Amending primary legislation to include a check inspector regime.
b) Amending current regulations to include a modified version of a check inspector regime, with powers reframed as duties and certain aspects removed.
c) Incorporating certain aspects of the check inspector regime into the existing options in this paper on safety cases, hazard management plans and employee participation ACOPs.
d) Creating an employee participation ACOP.

Think about each possibility separately. Do you think they would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?

37 What do you think are the main benefits and costs of each possibility?

PRCL strongly believe that the check inspector variations to be totally inappropriate and not required. We believe that under such a regime there is a very high likelihood of abuse of such a position which will eventually ensure that health and safety will fail in that workplace. When OH&S is used as an industrial (union) tool, it soon becomes ineffective because it is used for political purposes and not to keep people safe.

A check inspector as a fulltime employee of the mine who could stop the operations at that mine will lead to interpersonal conflict and potential personal grievance claims through the employment courts. The existence of this role is at odds with both the roles of the appointed mining officials who are required to ensure a safe working environment and also the promotion and responsibility for safety as it applies to all employees.

If more inspection of the mine is required, independent of the appointed roles at the mine and also the general workforce responsibility, then PRCL believes these additional resources should sit within the DOL inspectorate and maintain independence. NSW implemented additional safety officers within their inspectorate branch. They have the authority to issue improvement notices but not abatement notices and do much of the "leg work" of the Inspector in auditing safety management systems and doing routine inspections.

This system of additional DOL safety officers would be far preferred to a check inspector system.

38 What impact do you think each possibility would have on smaller mines?

PRCL have a number of concerns about the proposed check inspector regime and how it might work in practice. The HSE Act 1992 adequately covers employee participation and gives them certain powers to communicate with the regulators/inspectors. Their views and concerns are taken seriously and a hazard notice to an employer will be considered as being a first written warning thus opening an avenue for infringement notices. PRCL is not aware of these powers or even the right to refuse dangerous work being used in the local area. PRCL is committed to engaging with our team in a spirit of good faith and cooperation on any safety issues that are raised. PRCL does not see the need for check inspectors in our industry when
there is a system already in place that is effective and could be further enhanced with further specialised training by nominated safety representatives.

Requirements for health and safety inspectors

39 Do you think this option would work well for underground mining to improve the ways hazards are identified and managed? Why/why not?

Yes, as this will improve the enforcement of the mining regulations and will force every mine to keep up with the health & safety and hazard management requirements.

40 What do you think are the main benefits and costs of this option?

Currently and with no additional resource being given to DOL, it is probably totally unreasonable to implement these requirements for health & safety inspectors. This comment is simply based on the acute shortage of mine inspectors. Before any of this could be considered or implemented, then the number of inspectors would need to be significantly increased. The roles don’t pay that well and probably remain unattractive to many qualified individuals. DOL took an extended time to replace the last mine inspector. We are not sure where they will get the extra staff from.

41 What could the legislation specify regarding health and safety inspector visits?

- Visit every mine in operation in the inspectors designated region.
- Visit very mine on a regular cycle by agreement

It should be left up to the mine manager and the inspector to sort out what the focus for the visit should be and when it should occur. An audit document could be developed through the consultative process to ascertain the frequency of planned visits. If the company is proactive in its systems and approach to OH&S then the industry would be better served if the inspector did not waste his/her time.

42 Can you think of any variations and features that would enhance this option?

PRCL would welcome having professional, objective, adequately resourced and trained inspectors who add value through their comments or advice. The inspectorate needs to work with the industry to improve occupational health and safety through a consultative approach.

Specifying mandatory visit schedules in Regulations is unlikely to help and would create an expectation that might be impossible to achieve. It also singles out mining as the only industry where this applies which PRCL does not believe is justified.

If regulation is required then it should be applicable to all workplaces to support the employee participation requirements in the HSE Act 1992.

In addition, we would like to know your views on the following:

Additional questions

1 What do you think are the main health and safety issues facing the underground mining industry today that need addressing?

Levels of competence and experience of workers and contractors working underground is of concern. The inspectorate is seriously under manned and under resourced.

2 The Department of Labour notes that mine plans are a key health and safety resource for underground mining. In particular, plans of old mine workings are critical to mine safety. There is currently no
coordination on the availability and use of these plans, or of their maintenance. Do you think it would be of value to implement a system to ensure all plans are available to those who require them? If so, do you have any suggestions on how this could be done?

Yes through the creation of a library containing these documents or contracting this activity to an entity that will maintain these. Crown Minerals would be an appropriate repository.

3 What combinations of options do you think would be effective for the industry to improve the ways hazards are identified and managed in the underground mining industry?

PRCL believes that the DOL should work with industry representative bodies to develop COPs and enforceable guidelines and that the DOL should support the dissemination of best practices throughout the industry.

4 Can you think of any options that are not mentioned here that would be effective in improving the ways hazards are identified and managed in the underground mining industry?

New Zealand should align ourselves more closely with the Australian coal mining industry. We have already used their inspectors to do peer reviews so the first step has already been taken. We should encourage a more systematic approach to information sharing both within NZ and internationally. The mining industry is very small to be able to do things entirely on its own and hope to maintain best practices. Development of relationships and finding synergy with overseas jurisdictions could prove to be very beneficial for everyone. There are a number of Safety Alert (email alerts) and industry forums organised in both NSW and Queensland which the NZ DOL does not have the resources or customer base to initiate. Access to these resources for NZ in a collaborative way would greatly enhance safety in NZ mines. Some of these alerts were passed on by a previous inspector in an ad hoc way but this is no longer the case.

5 Have we left anything out of Appendix 1?

6 Can you think of anything else that would help improve the ways hazards are identified and managed within the underground mining industry?

Adopt all the information that has been put forward for consideration will serve the industry and the inspectorate well.

Please note that any submissions that you make may be the subject of a request under the Official Information Act 1982. To assist the Department of Labour with the processing of any such requests, please indicate at the beginning of your submission whether or not you would like the contents made a matter of public record.

43 Any further comments?

PRCL looks forward to feedback from these submissions and an opportunity for representation on any body formed to review the information from these submissions and to look at proposed strategies. PRCL would be happy to provide a verbal presentation on this submission.
Employee

Submitter D

(*Submitter C is an experienced miner whose name and identifying details have been withheld to protect personal privacy)
Submission – Check Inspectors

After reading the "Final Draft" Ways to Improve Employee participation and the use of Check Inspectors, I believe that the dangers here is that tho’ regulations envisaged would be made too complex. The format should be kept as uncomplicated as possible.

The responsibility for the safe working conditions in any mine is the primary functions of Management, therefore all conditions dangerous to life or injurious to health, or any dangerous practices performed by any person in a mine should first be reported to Senior Management, i.e. Underground Managers. Of course any person, or persons who believes they are in a dangerous environment or have been asked to perform work under hazardous conditions, have the right to refuse to work under those circumstances.

Bearing in mind it is a brave or stupid official who would declare a place safe to work after the safety aspect had been disputed. Competent officials would take immediate steps to ensure work was performed to remove or rectify the hazardous conditions.

I believe it is common practice for some officials to take the complainant off the job and replace him with someone who will do the work. This must be avoided as it sends the wrong message to the workers and personal loss of trust and respect for this official.

The duties of a check inspector are many and varied, but his main concern are for the safe working environment of the work force. He should sit on safety committees and liaise with management in the identification of hazardous conditions that may come to exist in the work place.
Safety Deputys

(A) A worker or workers identify what they consider to be a workplace hazard, or have been ordered to perform a task which they consider to be a dangerous practice, or observe dangerous practices being performed. They must immediately report dangerous condition or practices to Management.

Management will immediately take steps to eliminate the dangerous conditions, and make the workplace safe or make sure the dangerous practice is discontinued.

(B) If Management does not agree that a dangerous condition exists or does not take steps to eliminate the hazardous condition, the workplace conditions would then be in dispute.

At this stage the “Check Inspector” is called to examine the scene of the dispute. If he agrees that conditions dangerous to life or injurious to health exist, he would liaise with Management to eliminate those hazards.

(C) If an agreement is not reached he must write a report, as would Management and the “Health and Safety” Inspector is called in.

He will need both Reports and accompanied by “Management” and the “Check Inspector” would examine the scene of the dispute.

Any discussions or recommendations would be binding to both parties.
Small/Medium Employer

Roa Mining
6 June 2008

Review of Underground Mining
Workplace Health and Safety
Department of Labour
PO Box 3705
WELLINGTON 6140

SUBMISSION:

IMPROVING HAZARD MANAGEMENT WITHIN THE
UNDERGROUND MINING INDUSTRY

1. This submission is on behalf of Roa Mining Company Ltd and Francis Mining Company Ltd.
2. Roa Mining Company currently operates the Roa Mine situated in the Paparoa ranges. It employs 35 underground Miners and has been operating underground since 1999 under current management. The original mine was opened in 1907 and closed in 1971.
3. Francis Mining is currently operating the Echo opencast mine in the Garvey Ck area. It has operated various smaller underground mines but ceased operation of these in the late 1990's mainly due to economic reasons. It is envisaged that the mining of a large majority of the permitted resource held will be by underground methods.

The following is a Statement regarding our views on the Document.
4. SAFETY CASE
We are concerned that an adequate history of such a regime exists to determine its suitability. With the size of our Industry we believe it would be prohibitively expensive and would be unnecessarily onerous.

5. MINES INSPECTORS
Historically the Mines Inspection group, under the control of Crown Minerals, and prior, was staffed by the most experienced mining people in the Industry. All were qualified Mine Managers who had served their time in practical operations. At that time there were numerous small underground operations and the Mines Inspectors played a role, rightly or wrongly, of "Mine Manager/Mine Engineer". This took the responsibility for health and safety and mine planning more or less directly with the Mines Inspector.

www.rocccoal.com
We are a small industry and therefore face some competency issues in areas such as smaller mine management. However we believe that the overall health and safety framework that we currently work under provides the most effective regime practical to our Industry.

9. **Main Improvements that could provide a Safer Workplace.**

There needs to be a statutory requirement that provides for a high level of competency/qualification for the management and planning of underground operations regardless of the size. Recognition of hazards in the terrain/geology we face requires a high degree of competence regardless of the size of operation. It is our belief that any Inspection group for Underground operations should be a semi autonomous unit housed within an organization more closely linked with the industry such as Crown Minerals. This way issues such as historical plans with mining applications and annual plans would be given more scrutiny and consideration. A role of coordinating between all parties be it EXITO, MINEX, DOL and operators would be enhanced.

Thank you for the opportunity of submitting the above submission and hope that it assists in your consideration of possible outcomes from your discussion paper.

Brent Francis  
DIRECTOR