

**SUBMISSION OF
THE NEW ZEALAND MINING INDUSTRY
SAFETY COUNCIL (MinEx)
TO WORKSAFE
ON**

**Consultation on phase one regulations to support the new
Health and Safety at Work Act**

- **General risk and workplace management**
- **Asbestos**
- **Major hazard facilities**
- **The redrafted 2013 mining regulation**

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INTRODUCTION

MinEx¹ welcomes the opportunity to submit on the Phase one regulations to support the new Health and Safety at Work Act.

We note the submission deadline of 15 May 2015 and the agreement to an extension to 22 May 2015 which has given the mining industry time to review the proposal properly.

In all of the engagement with the Government on the health and safety reforms, MinEx has taken a principled approach. We are guided by the desire for the mining and quarrying industries, both surface and underground, to be safer industries, and that better regulation is needed an important step to achieving this objective. In 2013 the *Health and Safety in Employment Mining Operations and Quarrying Operations Regulations 2013* (referred to from here as the “2013 Mining Regulations”) were introduced covering all sectors of the industry except the quarry and alluvial sectors and these regulations have contributed to improvements in the relevant sectors and operations.

We have also advocated for regulation to be fit for purpose, and that meeting this objective will, at times:

- Require differentiation between different sectors, e.g., between coal mines and metalliferous mines, surface mines and underground mines, and large operations and small operations (in terms of numbers of employees); and at other times
- Take into consideration that some sectors that appear to be different present in fact some of the same hazards to workers, and that such hazards should be regulated in the same way, e.g., in opencast mines, quarries and alluvial mines. An off-road truck haulage hazard in an alluvial mine, where there is a risk of a fatality in a collision with a light vehicle, is the same hazard and should be regulated in the same way as the analogous situation occurring in any other quarry or mining setting.

The issue for MinEx is now working with:

- Operators to improve their understanding and implementation of the new regulations; and,
- Those sectors that are not covered by the 2013 Mining Regulations.

Given the above, we make a high-level observation: that the proposals for General Regulation under the new health and safety legislation present both pros and cons to the mining and quarry sectors. While there is a case for including quarries and alluvial mining within the 2013 Mining Regulations, it is also the case that the present proposed regulations cover much of the same ground in any case.

For MinEx, a body representing both mining and quarries, we will have to be conversant with two sets of similar regulations covering roughly the same ground and having the same objective – safer workplaces. There is an element of that which is inefficient without providing additional benefits to industry or society.

MinEx has been debating the issue around the quarries being covered by the 2013 Mining Regulations since January of this year and the AQA supports this outcome, subject to some relatively minor amendments to the regulations.

¹ MinEx is the New Zealand Health & Safety Council for the quarry, coal and minerals industry. Its main purpose is to help industry to improve its health and safety performance, and to provide centralised industry representation on matters relating to health and safety.

This submission is made on behalf of all members and these are listed in Attachment I. A number of individuals and members were consulted directly in the development and review of the MinEx submission.

EXECUTIVE SUMMARY

MBIE has released exposure drafts of the following regulations associated with the Health and Safety Reform Bill:

- General risk and workplace management;
- Asbestos;
- Major hazard facilities; and,
- The redrafted 2013 mining regulations.

MinEx has sought input from all of the sectors of the mining industry including listed in Attachment I and in particular those listed immediately above.

Our submission addresses each of the regulations above in turn and the recommendations or observations we make on each are highlighted under these headings.

In summary:

- We understand that only those sectors of the mining industry not covered by the 2013 Mining Regulations will fall under the proposed General Regulations although we note that this is not stated explicitly in the exposure draft was stated in the May 2014 HSW Regulations Discussion Document;
- We have submitted that both the quarry and alluvial gold sectors should also be covered by the 2013 Mining Regulations and that the quarry sector ,through the AQA who are members of MinEx agree, but that the alluvial gold sector who are not members of MinEx do not agree;
- The quarry sector's agreement as to coverage is conditional on some minor amendments to the 2013 Mining Regulations which we discuss in detail in our submission;
- Not with standing the position of the alluvial gold sector on coverage of the 2013 Mining Regulations, that sector has indicated the two areas where it has difficulties with these regulations and MinEx has submitted on amending these sections to assist both the quarry and alluvial sectors;
- MinEx finds the General Regulations an appropriate response to the Government's objective of improving health and safety performance in all industries but note that it will take industry specific codes and guidance to support the new act if the objectives set are to be achieved;
- MinEx also finds the Asbestos Regulations appropriate and with no fatal flaws;
- MinEx notes that the Major Hazard Facilities Regulations do not apply to those sectors of the mining industry covered by the 2013 Mining Regulations and so will apply only to the quarry and alluvial sectors if those sectors remain outside the 2013 Mining Regulations;
- MinEx found it difficult to reconcile the quarry and alluvial sector relevant threshold limits with current terminology and, subject to clarification from MBIE, concludes that no quarry or alluvial sector operations would fall inside the threshold limits;
- MinEx makes a number of submissions relating to amending the 2013 Mining Regulations to make it possible to allow these regulations to be extended to include the quarry and alluvial

sectors and these amendments are generally minor in nature and reflect differences in risks between the sectors;

- MinEx argues very strongly that the changes required to incorporate these other sectors under the 2013 Mining Regulations should occur with this round of changes and not be left for phase two of the process as to do so will deny these sectors and the industry with the ability to improve health and safety performance using the same resources across the entire industry;
- MinEx make a number of submissions on correcting errors in the 2013 Mining Regulations now rather than via phase 2 given that the matters requiring amendment have been thoroughly canvassed with industry by MinEx and discussed in detail by the Extractive Industry Advisory Group (EIAG) to the WorkSafe board;
- MinEx that the current exemption available to WorkSafe be extended in the revised regulations;
- MinEx submits that the definition of a quarry requires modification to ensure that various civil earthworks activities are not captured by the regulations as this was never the intention of the regulations;
- MinEx submits that, with further consultation between WorkSafe and the industry via MinEx on the exact wording of the amendments to sections 171 and 172 dealing with trafficable escape-ways, the WorkSafe Chief Inspector's proposed amendment is made with this round of changes to the 2013 Mining Regulations.

OTHER SUBMISSIONS

We have been supplied a copy of the Bathurst Resources submission and agree with all of the recommendations contained there.

Attachment IV is a submission from Ravensdown Fertiliser that deals with the definition of a quarry and we support that submission.

RECOMMENDATIONS

Recommendations are to be found under each of the major headings.

GENERAL RISK AND WORKPLACE MANAGEMENT

Introduction

The summary below is extracted from the Explanatory Note in the regulations and is a useful summary for those reviewing this submission.

Part 2 of the Act imposes general duties on persons conducting a business or undertaking (**PCBUs**) to ensure, so far as is reasonably practicable, that the workplace is without risks to the health and safety of any person. The effect of these regulations is to impose additional duties on PCBUs with the management or control of a workplace to ensure, as far as is reasonably practicable, health and safety in the workplace.

Part 1 sets out general requirements relating to the management of risks to health and safety in the workplace, including—

- imposing a duty on PCBUs to identify hazards in the workplace that could give rise to risks to health and safety;
- setting out a hierarchy of control measures that a PCBU must implement where it is not reasonably practicable to eliminate risks to health and safety;
- imposing a duty on PCBUs to maintain and review the control measures to ensure that they are, and remain, fit for purpose, suitable for the nature and duration of the work, and installed, set up, and used correctly;
- imposing a duty on PCBUs to provide information, supervision, training, and instructions to workers; and,
- imposing duties on PCBUs regarding the general working environment and facilities for workers at the workplace, a duty in respect of unwell workers, a duty to provide first aid, a duty to prepare, maintain, and implement an emergency plan, and duties to provide personal protective equipment (PPE) and ensure PPE is used or worn in the workplace.

Part 2 imposes specific duties on PCBUs in relation to the management of particular risks associated with certain work, including—

- imposing duties in relation to workers performing remote or isolated work;
- imposing duties in relation to hazardous atmospheres and the risks associated with ignition sources;
- imposing a duty to manage or minimise the risks associated with falling objects; and,
- imposing duties in relation to hazardous containers in the workplace.

Part 3 imposes additional duties on PCBUs in relation to young persons in the workplace.

Part 4 imposes specific duties on PCBUs relating to monitoring in the workplace, including:

- monitoring in relation to airborne contaminant levels; and
- health monitoring of workers.

The General Regulations contain no reference to mining and it was MinEx's understanding that these regulations would not apply to those parts of the mining industry covered by the 2013 Mining Regulations.

The May 2014 HSW Regulations Discussion Document stated:

The new regulations would not apply to:

- *an installation to which the current HSE (Petroleum Exploration and Extraction) Regulations 2013 apply*
- *a mine to which the current HSE (Mining Operations) Regulations 2013 apply; or*
- *a pipeline to which the current HSE (Pipelines) Regulations 1999 apply.*

MinEx submits that, for clarity, the General Regulations need to include the May 2014 exclusion and accordingly these General Regulations will only apply to the Quarry and Alluvial sectors while they remain outside the 2013 Mining Regulations.

Mining industry sector coverage issues

These General Regulations will impose similar duties on the quarry and alluvial sectors as those set out in the 2013 Mining Regulations. While the General Regulations do not contain the concept of Principal Hazards, quarries and alluvial miners will need to follow the same processes as other mining sectors in assessing risks, developing control measures, implementing, reviewing, auditing and amending these measures, training workers and so on.

Critically, the quarry and alluvial sectors will fall under the *Good Practice Guidelines - Health and Safety at Surface Mines, Alluvial Mines and Quarries 2014* once this is issued in June of this year. This will have the effect of pushing these two sectors to adopt the same practices as those sectors covered by the 2013 Mining Regulations.

MinEx's reason for being is to improve the health and safety performance of the entire mining and quarry industry. Having all parts of the industry under the same health and safety regulations will make it possible to take lessons learnt and resources developed in one sector and apply it to others.

MinEx will have to be conversant with two sets of similar but slightly different sets of regulations covering different parts of the sector when the hazards are pretty much the same across all sectors of the industry. Matters will potentially become more complex as codes and guidelines are developed to support the new General Regulations. The mining industry is already working with WorkSafe to develop codes and guidance to support the 2013 Mining Regulations. These resources will always be more targeted and therefore more efficient in improving health and safety in the mining and quarrying industry than any general resources applying to all other industries.

Submission

MinEx submits that the proposed General Regulations contain no fatal flaws but will not on their own result in the changes required in the workplace to yield the improvements in health and safety that are required. Significant resources and time will need to be invested in processes downstream from the General Regulations. In the case of the mining industry significant progress has already been made and MinEx submits that drawing all sectors of the mining industry under the same regulations will allow both WorkSafe and MinEx to accelerate this process.

ASBESTOS

Introduction

The summary below is extracted from the Explanatory Note in the regulations and is a useful summary for those reviewing this submission.

Part 1 of these regulations prohibits a PCBU from carrying out, or directing or allowing a worker to carry out, work involving asbestos, other than in circumstances expressly permitted.

It imposes a general duty on PCBUs at a workplace to eliminate exposure to airborne asbestos at the workplace. It provides for a range of mechanisms to manage asbestos risks, including the imposition of the following duties on PCBUs with management or control of a workplace:

- to identify asbestos and asbestos containing material at the workplace;
- to prepare and keep an asbestos register and an asbestos management plan;
- to provide appropriate health monitoring to a worker carrying out asbestos removal work who is at risk of exposure to asbestos; and,
- prior to demolition or refurbishment, to identify and remove asbestos and ensure emergency procedures are developed.

Part 2 deals with asbestos removal. *Part 3* deals with air monitoring and related requirements for Class A asbestos removal work. *Part 4* is concerned with asbestos-related work. *Part 5* governs the licensing of asbestos removalists and asbestos assessors.

Submission

For the mining and quarry industry this will mean completing a review of all materials used to determine if asbestos is in use and a review of all structures to determine if asbestos is contained in these. The possibility of asbestos being mined in association with other minerals is covered and is permitted subject to controls.

The most likely source of asbestos in the mining and quarry industry will be in buildings. If asbestos is handled in building either via renovations or removal a management plan will be required and trained people are required for this. In most cases specialist contractors will be used for the work.

MinEx has reviewed the Asbestos Regulations and can find no fatal flaws in what is proposed. There are other industries and organisations more knowledgeable about asbestos and MinEx relies on their submissions. To a layperson the regulations around managing asbestos in structures seem to include sensible provisions for what will be specialist work.

MAJOR HAZARD FACILITIES

Introduction

The regulations at section 3 (4) (b) state:

These regulations do not apply to—

- (b) *a mining operation or quarrying operation to which the Health and Safety in Employment (Mining Operations and Quarrying Operations) Regulations 2013 apply*

Accordingly, currently only the quarry and alluvial sectors are subject to these regulations. The regulations at Tables 2 and 3 set out the threshold quantities that need to be considered for the quarry and alluvial mining sectors to come under these regulations in accordance with section 3 (1):

- (1) *These regulations apply to a facility or proposed facility where specified hazardous substances are present or likely to be present in a quantity that is equal to or exceeds the lower threshold quantity.*

The relevant sections of Tables 1 and 2 from the exposure draft are as follows.

| Column 1 | | Column 2 | Column 3 | |
|--|-----------------|---|-------------------------|--------|
| Hazard classes and categories in accordance with the <i>United Nations Globally Harmonized System of Classification and Labelling of Chemicals (GHS) Fifth revised edition</i> | | Threshold quantity (tonnes) of hazardous substances as referred to in regulation 23 for the application of | | |
| Hazard class | Hazard category | Lower-tier requirements | Upper-tier requirements | |
| Physical hazards (section P) | | | | |
| Explosives (see note 8) | P1a | Unstable explosives; or Explosives, Division 1.1, 1.2, 1.3, 1.5, or 1.6; or Substances or mixtures having explosive properties according to Chapter 2.4.2.4.2 of the <i>United Nations Recommendations on the Transport of Dangerous Goods Model Regulations</i> Seventeenth revised edition, and that do not belong to the hazard classes Organic peroxides or Self-reactive substances and mixtures | 10 | 50 |
| | P1b | Explosives, Division 1.4 (see note 8.3) | 50 | 200 |
| Flammable liquids | P5a | Flammable liquids, Category 1; or Flammable liquids, Category 2 or 3 maintained at a temperature above their boiling point; or Other liquids with a flash point ≤ 60 °C, maintained at a temperature above their boiling point (see note 10) | 10 | 50 |
| | P5b | Flammable liquids, Category 2 or 3 where particular processing conditions, such as high pressure or high temperature, may create major-accident hazards; or Other liquids with a flash point ≤ 60 °C where particular processing conditions, such as high pressure or high temperature, may create major-accident hazards (see note 10) | 50 | 200 |
| | P5c | Flammable liquids, Category 2 or 3 not covered by P5a and P5b | 5,000 | 50,000 |

Submission:



THE NATIONAL HEALTH & SAFETY COUNCIL FOR THE
NEW ZEALAND MINING AND QUARRY SECTOR

Phase one regulations to support the new Health and Safety at Work Act

Submission

It would have been helpful for MBIE to have included a table matching the current hazard classification system with that proposed under the new regulations. Diesel seems to fall under P5c with a threshold quantity of 5,000 tonnes or about 6M litres (0.832 kg/L). If this is the case then no quarries or alluvial mines will fall under these regulations as a result of diesel storage quantities.

In the case of explosives the situation is not clear which is not helped by the extremely technical nature of the tables in the proposed regulations. It would have been helpful if MBIE had included in the documentation details of where all of the various explosives in use in New Zealand fell under the categories in the tables.

It is our understanding that no quarry operations currently store in excess of 10 tonnes of explosives and so they will fall outside these regulations. MinEx submits that MBIE needs to supply more clarity to the mining industry before finalising these threshold values. Did MBIE do any research on explosive use in New Zealand and how did MBIE determine the explosive threshold limits?

THE REDRAFTED 2013 MINING REGULATIONS

Introduction

On 16 December 2013 the Health and Safety in Employment Mining Operations and Quarrying Operations Regulations 2013 (the 2013 Mining Regulations) were introduced. These regulations applied to all sectors of the extractives industry apart from the Quarry and Alluvial Mining (gold and sand mining) sectors.

With the proposed introduction of the new Health and Safety in the Workplace act via the Health and Safety Reform Bill, a number of changes to these regulations are proposed to bring them into line with the proposed act.

We understand that these changes are mainly, but not exclusively, required to *fit with the terminology of the Bill*². The email referred to also advised: *that there will be a phase two stage of the reform process (to occur within 2 years of the new law being passed), which will cover development of quarrying regulations and also will include reviewing how the mining regulations are working in practice.*

We also note the comment to the effect that the amendments take *the chance to fix some obvious drafting errors in the regulations – these do not affect the policy decisions made in 2013, eg, reg.173 (old reg.171) now refers to shafts as well as escape-ways in underground metalliferous mines.*

MinEx is aware of a number of errors in the 2013 Mining Regulations that have not been proposed for amendment in the current exposure draft. These errors are, in some cases, substantive, and could interfere materially with mining operations without providing fit for purpose solutions and have been well canvassed with the High Hazard Unit of WorkSafe via the Extractives Industry Advisory Group to the WorkSafe board. Some minor errors have been corrected and some have not.

MinEx is disappointed with the approach being taken to correct any substantive errors which place the Mining Inspectorate and the mining operators directly affected in a precarious position in that they are currently non-compliant with regulations 171 and 172 dealing with escape-ways in metalliferous mines and tunnels. There are other examples of lesser importance including for example the definition of a quarry which is so broad it includes any earthworks in any situation which was never the intent behind the 2013 Mining Regulations.

MinEx clearly recalls the early discussions with the Pike River Implementation team lead by M Papesch. With the sector exceptions noted elsewhere, the industry was prepared to enter into meaningful discussions with the implementation team with the objective of introducing new regulations by December 2013. This was despite the fact that the process essentially commenced with the release of the consultation document Safe Mines : Safe Workers in May 2013.

It was made clear that the short time frame would result in errors and that industry agreement to participate in the rushed process was conditional on correcting any errors that appeared in the final regulations. Both parties knew that to complete the process in such a short period of time was certain to result in errors and omissions in the final result but that we would get most of it right. From the release of the regulations and over the course of implementing the regulations, errors and omissions have become apparent.

MinEx can see no reason why MBIE is correcting minor errors in the regulations now with the current process and leaving substantive errors for possible correction in two years' time.

² Quote from email in Attachment II

Coverage of the 2013 Mining Regulations

Introduction

As mention above, the quarry and alluvial mining sectors were excluded from coverage of most of the 2013 Mining Regulations. Our experience is that this has created difficulties:

- 1 **For regulators** in that quarries and alluvial mines, from a health and safety perspective, given that they use very similar equipment and employ very similar processes, are essentially the same as other forms of surface mining generally referred to as opencast mining; and,
- 2 **For operators** given the same issues that face the regulator and with all surface mining sectors being subject to the same New Zealand and international codes, standards and guidance material.

During 2014 and 2015, the alluvial and quarry sectors have looked at the 2013 Mining Regulations to assess their suitability for adoption by those sectors resulting in:

- The quarry sector has concluded that, with some minor changes, that they could accept inclusion of the sector in the 2013 Mining Regulations and these are explained further on in this submission;
- The alluvial sector consists of two sub-sectors; sand mining and alluvial gold mining. The sand mining sub-sector is prepared to accept coverage under the 2013 Mining Regulations subject to the same changes required by the quarry sector; and,
- The alluvial gold sector's response is slightly different in that they have rejected acceptance of the 2013 Mining Regulations on the basis of the unsuitability of several sections which appear to be the same as those the quarry sector wishes to change.

Consequently, MinEx submits that the quarry and alluvial sectors should be included under the 2013 Mining Regulations subject to certain amendments being made.

While we note that MBIE does not wish to see submissions on the coverage of these regulations, the industry sees benefits, subject to some minor amendments in the regulations, in moving all mining industry sectors under the 2013 Mining Regulations now.

Changes recommended to include quarry and alluvial sector in the 2013 Mining Regulations **Senior Site Executive (SSE)**

The quarry and alluvial sectors do not have an issue with the concept behind this role in terms of accountability. It is a requirement of ASNZS4801-2001 that a senior manager be appointed to such a role and so clearly it is good practice to do this. The Person Conducting a Business or Undertaking (PCBU) concept under the General Regulations is the default position under the proposed act for those not covered by the 2013 Mining Regulations so the accountability issue is covered. At issue is the practicality of implementing what is proposed.

The concerns that are shared across the sectors not currently covered by the 2013 Mining Regulations relate to the competency requirements set by the Board of Examiners (BoE). These are considered onerous for anything but the larger operations and in some cases it is doubtful if staff in smaller operations could ever achieve the competencies set.

Most quarries and alluvial operations in New Zealand fall under the control of B Grade CoC holders. The qualification that essentially aligns with an A grade surface CoC is a level 5 qualification while the B grade

CoC aligns with the level 4 qualification so the issue with the SSE competency as currently set is clear: it contains level 7 and level 6 unit standards unlikely to be achieved by holders of A and B grade surface CoCs. Given that most quarry and alluvial sites are small and come under a B grade CoC this obviously will make it very difficult for these smaller operations to comply with the BoE set competencies.

Clearly this is also true of the smaller mining (mostly, if not exclusively, coal) operations currently covered by the 2013 Mining Regulations and the BoE set competencies. The issue has yet to surface but it will in January 2016, by which time all appointed SSEs need to have gained the extra competencies.

MinEx understands that this submission relates solely to the proposed regulations but you can not separate out what the BoE does from the regulations. To accept the 2013 Mining Regulations the quarry sector requires that the BoE amend the competency requirements which the BoE sets under the 2013 Mining Regulations.

The SSE competency requirements are set out in the table below along with selected competencies that could be used for a lower level SSE role covering small mines and quarries.

| Unit | Description | SSE Currently Required | A & B Grade Required | Level | Credits |
|-------|---|------------------------|----------------------|-------|---------|
| 7142 | Demonstrate knowledge of the application of regulatory requirements to manage an extractive site | Yes | Yes for both | 6 | 25 |
| 17279 | Demonstrate knowledge of the coordinated incident management system (CIMS) | Yes | A only | 2 | 2 |
| 22445 | Describe the roles and functions of a CIMS Incident Management Team (IMT) at an incident | Yes | A only | 4 | 4 |
| 23547 | Establish the risk management system at an extractive site | Yes | No | 7 | 20 |
| 23548 | Establish and maintain the Occupational Health and Safety management system at an extractive site | Yes | No | 7 | 20 |
| 16810 | Develop a Workplace Emergency Management Plan | Yes | No | 6 | 10 |
| 26856 | Carry out the risk management processes at an extractive site | No | Yes for both | 1 | 10 |
| ?? | Safety management unit selected from another domain | No | No | 4 | |

The one competency missing is a lower level equivalent to unit 23548 to ensure that all SSEs have a basic understanding of what is required in such a system. There does not appear to be a suitable Extractives Domain unit which is surprising as this means none of the CoC holders are taught the basics of a safety management system.

MinEx submits that rather than relying on the PCBU concept, which is the default position if the quarry and alluvial sectors are not brought under the 2013 Mining Regulations, MBIE should amend regulation 9 to allow for the creation of an SSE (Surface Mines & Quarries) and then allow the BoE to set suitable competencies which would require industry consultation.

A suitable suite of competencies could be 7142, 26856, plus a suitable safety management system unit meaning that all current A and B grade quarry and alluvial CoC holders would only need to complete the one additional safety management system unit to hold an SSE (Surface Mines and Quarries) CoC.

Mechanical and Electrical Superintendents

The convention seems to be if you require an electrical or mechanical Principal Control Plan then you need to appoint a relevant superintendent. The consensus in the industry is that in surface mines electricity does not constitute a principal hazard. The working environment and use of electricity is similar to many industrial sites around New Zealand and we have adequate legislation to manage electrical risks in those work places.

There is however a potential issue with the mechanical control plan. All surface mining and quarrying sites should have a maintenance management system embedded within their safety management system. This system looks after both the efficient and cost effective operation of fixed and mobile plant along with the health and safety requirements for the equipment.

MinEx submits that surface mines should be exempt from the need to appoint a Mechanical and/or Electrical Superintendent (proposed regulations 28 and 29) and that these roles be amended to be required solely for underground operations. Currently the BoE requires a minimum of 3 years relevant experience but CoCs are not tagged underground or surface and so a surface experienced person could operate in the underground environment. The MinEx submission would resolve this issue.

Supervisor

This is a new role introduced in 2013 (proposed regulation 33) for all shifts in a multiple shift operation and in which the CoC holder is not present. In this case the minimum competency requirement is set by the regulations and not the BoE which would appear to be an anomaly given all other CoC competencies are set by the BoE.

MinEx submits that regulation 33 should be amended to allow the BoE to set the competency. MinEx further submits that this competency should be lower than the B grade minimum set by the regulations. The role inherently must be supervised by an A grade CoC holder given that few multiple shift operations would employ in total fewer than 5 employees.

It could be argued that the general duty to provide adequate supervision on shifts where the CoC holder is not present is sufficient, given the industry experience and qualification required of the A grade manager. Should the need for specific competencies be required then this process would be via industry consultation and a suitable qualification could be developed at a level lower than the current B grade CoC.

Part 9 Notification and reporting

There are some sections of Part 9 that require information that are not necessary for small alluvial aggregate operations (quarries) and we deal with these issues here.

Alluvial aggregate operations fall into two groups:

- Large scale, relatively static operations typified by the Christchurch quarries of Isaacs, Fulton Hogan and Road Metals; and,
- Small scale river bed based operations that are intermittent, with low faces typically less than 5m and usually operated with mobile processing plants.

Section 213 Plans of mining operations

For small, intermittent, river bed based operations the requirement to complete a plan drawn up by a surveyor is onerous and would seem to serve little useful purpose. In these cases resource consents are held that identify the location of the area allowed to be accessed and an aerial photograph with the location

marked ought to be sufficient to locate the alluvial operation for the regulator and record the general extent of operations. The plan need only be submitted say annually if the operator intends to use the site in the coming year.

MinEx submits that section 213 be amended to require only a basic plan showing the location of river bed alluvial aggregate operations and that the plan need only be submitted say annually if the operator intends to use the site in the coming year.

Section 216 Plans of ceased mining operation

MinEx submits that a similar amendment to that proposed for 213 is required here for intermittent alluvial aggregate operations in riverbeds. It is anticipated that this plan would only be submitted when the resource consent expired.

Section 50 Untrained workers

While this section was written to apply to surface and underground mining operations, in surface operations it is difficult to achieve in some circumstances and un-necessary in a low risk environment.

MinEx submits that the section be modified by adding a sub-section for surface mining operations that requires the mine or quarry operator to closely supervise untrained workers and to ensure that they are only exposed to work environments appropriate to their skills and abilities until they are properly trained.

Transition provisions

MinEx submits that these will need to be considered for the quarry and alluvial sectors where time is required for full compliance.

Errors in the 2013 Mining Regulations

Introduction

The Extractive Industry Advisory Group to the WorkSafe Board (EIAG) has been monitoring the implementation of the 2013 Mining Regulations for 18 months. Attachment III contains a table of the errors and omissions in the current regulations that have not been amended in the exposure draft of the 2013 Mining Regulations.

Changes made to the 2013 Mining Regulations in the exposure draft

Changes made to the exposure draft of the 2013 Mining Regulations fall into two categories:

- 1 Language amendments linked to the language in the proposed act that have now practical effect; and,
- 2 Minor amendments to correct errors made in the drafting of the 2013 Mining Regulations, most of which have no practical effect.

In order to assess the changes made to the 2013 in the exposure draft each PDF file was converted to a Microsoft WORD file and compared using the comparison function within Microsoft WORD. The base document was the 2013 regulation file and so the exposure draft changes appeared as tracked changes in this base document.

The substantive changes to the 2013 Mining Regulations based on this analysis appear in the table below.

| Regulation | Change made | Comment |
|------------|---|--|
| 23 | Amended (2) A manager appointed to a quarrying operation in which no explosives are used and not more than 4 quarry workers ordinarily work at any one time may hold a certificate of competence as a B-grade quarry manager. | This gets us back to where we were before in the 1995 regulations with a B grade CoC able to supervise a quarry that used explosives but where fewer than 5 people were employed. MinEx agrees with this change |
| 36 | d) competency requirements to be met by site health and (including required qualifications and experience) to be met by health and safety representatives or industry health and safety representatives 35 in the mining sector | This allows the BoE to set the competency requirements which is a useful change |
| 54 | Mine operator must ensure health and safety management system developed, <u>documented</u>, implemented, and maintained | Sensible addition and makes it clear the system must be a written system although the need to audit implies this anyway |
| 109,110 | Default worker participation regulation deleted | Proposed to be covered in the act |
| 128 | <u>(5) A person who fails to comply with this regulation commits an offence and is liable on conviction to a fine not exceeding [\$.]</u> <u>(6) To avoid doubt, a person who complies with regulation does not have to comply with Part 4 of the Health and Safety at Work (General Risk and Workplace Management) Regulations 2015.</u> <u>Compare: SR 2013/483 r 128</u> <u>129 Mine workers to be given the results of monitoring</u> <u>(1) This regulation applies to the results of any monitoring of any mine worker or any mining operation undertaken in compliance with the Act or regulations made under this Act if the monitoring was—</u> <u>(a) undertaken by or on behalf of a mine operator; or</u> <u>(b) undertaken by or on behalf of a department (within the meaning of the State Sector Act 1988) or WorkSafe and</u> <u>the results have been given to a mine operator.</u> <u>(2) Subject to subclause (3), a mine operator must ensure that—</u> <u>(a) every mine worker is given all results to which this regulation applies of monitoring of the mine worker (whether as an individual or as one of a number of mine workers) in relation to health or safety; and</u> <u>(b) all mine workers are given all results to which this regulation applies of general monitoring of—</u> | Presumably added due to privacy requirements |

| Regulation | Change made | Comment |
|------------|--|--|
| | <p>(i) conditions in the mining operation; or (ii) the health or safety of mine workers there. (3) A mine operator must ensure that— (a) there are omitted from all results to which this section applies given to any individual mine worker all information that identifies, or discloses anything about, any other individual mine worker; and (b) there are omitted from all results to which this regulation applies given to any group of mine workers all information that identifies, or discloses anything about, any individual mine worker.</p> | |
| 159 | (3) The mine operator must ensure that no locked flame safety lamps are taken into or used in the underground parts of the mining operation. | MinEx agrees with this change |
| 173 | <p>173 Additional requirements for escape-ways in underground metalliferous mining operations (1) The mine operator of an underground metalliferous mining operation must ensure that, before topingstopping operations start at the mining operation, the operation has at least 2 egressesexits trafficable on foot (escape-ways) that—or shafts that comply with regulation 139 that— (a) are accessible from all stoppingstopping operations and lead to the surface; and</p> | <p>MinEx does not agree with the change in the spelling of “stopping”. It’s not a spelling mistake so this needs to be corrected. Stopping means coming to a stop, or plastering a wall. Stopping means extracting ore from a stope which is simply an underground opening from which ore is extracted.</p> <p>The addition relating to shafts is accepted but this does nothing to address the current issue with ladder-ways used in metal mines not complying with current regulations.</p> |
| 223 | (k) the details of any inspections completed by a site health and safety representative or an industry health and safety representative and any actions taken by a site health and safety representative or industry health and safety representative, including any notices issued under sections clause 6 | MinEx is not sure of implications here. The Site representative was specific to mining so seems to me the dropping of the use of “site” might cause confusion even though it is the wording used in the proposed General Regulations |

MinEx submits that the spelling change to section 173 is not correct. The correct word is as the section was originally written – “stoping”.

A further major change has been made to the 2013 Mining Regulations under section 226. Currently the mine operator was required to report the serious harm incidents listed in schedule 7 of the current 2013 regulations. Serious harm is defined on the Worksafe website as:

Until such an Order in Council is made, the following types of harm are defined in Schedule 1 as 'serious harm' for the purposes of the Act:

- 1. Any of the following conditions that amounts to or results in permanent loss of bodily function, or temporary severe loss of bodily function: respiratory disease, noise-induced hearing loss, neurological disease, cancer, dermatological disease, communicable disease, musculoskeletal disease, illness caused by exposure to infected material, decompression sickness, poisoning, vision impairment, chemical or hot-metal burn of eye, penetrating wound of eye, bone fracture, laceration, crushing.*
- 2. Amputation of body part.*
- 3. Burns requiring referral to a specialist registered medical practitioner or specialist outpatient clinic.*
- 4. Loss of consciousness from lack of oxygen.*
- 5. Loss of consciousness, or acute illness requiring treatment by a registered medical practitioner, from absorption, inhalation or ingestion of any substance.*
- 6. Any harm that causes the person harmed to be hospitalised for a period of 48 hours or more commencing within seven days of the harm's occurrence.*

The proposed amendments to section 226 have dropped the link to *serious harm* and consequently the mining industry is being asked to notify those items in a new Schedule 6 that were previously only notified if they constituted *serious harm*. Surely WorkSafe will not require notification of every incident resulting in bruising as that is what they appear to be asking for.

MinEx submits that the notifiable injuries should be limited to those in the current 2013 Mining Regulations

Further changes that need to be made

These are as follows:

- Quarry definition to exclude general earthworks;
- Trafficable access in underground metal mines; and,
- WorkSafe's exemption extension.

Quarry definition

The current definition in the act is:

19N Meaning of quarrying operation

- (1) In this Act, **quarrying operation**—
- (a) means an activity carried out above ground for the purpose of—
 - (i) extracting **any material**, other than any coal or any mineral, from the earth; or
 - (ii) processing **any material**, other than any coal or any mineral, at the place where the material is extracted; and
 - (b) includes the place where an activity described in paragraph (a) is carried out; and
 - (c) includes any place in which any material extracted or processed in a quarry is crushed or screened.
- (2) Subsection (1) applies whether or not the material is to be extracted or processed for commercial gain and whether or not the material is extracted or processed by the use of explosives.

One problem is with the use of the high-lighted word *material*. The implication of the use of the word is that all earthworks activities for whatever purpose and regardless of size are captured by this definition. It was not the intent of the 2013 Mining Regulations that it extends to civil earthworks activities such as bulk excavation.

Another problem is with section (c) which captures fertiliser processing of rock imported from outside New Zealand as well as downstream operations from quarry processing plants that are located distant from the quarry and often owned and operated by a company that is not the quarry owner. Examples are concrete and hot-mix plants.

A number of better examples of a definition are available. Queensland defined a quarry in their 1999 act which is still current as:

11 Meaning of quarry

- (1) A quarry is a place on land where operations are carried on, continuously or from time to time, to produce construction or road building material.
- (2) However, a place on land where operations are carried on, continuously or from time to time, to produce construction or road building material is not a quarry if the operations are carried on—
- (a) to produce construction or road building material substantially for use at a construction site at the place, or that adjoins, is adjacent to, or contiguous with, the place; or
 - (b) to excavate building foundations as part of construction work; or
 - (c) to extract, but not crush, river sand or gravel; or
 - (d) to redevelop the place as a place for any of the following—
 - (i) housing;
 - (ii) a shopping complex;
 - (iii) an industrial estate;
 - (iv) a recreation area;
 - (v) a landfill site.

Clearly the issues MinEx is raising have been faced by other jurisdictions and dealt with in a better way than the 2013 Mining Regulations.

MinEx submits that the definition needs to be amended to ensure that it is clear and unambiguous in line

with the Queensland definition or other similar definitions.

Trafficable access in underground metal mines

The issues here relate to the definition of trafficable in section 171 and 172 and, in the absence of any change in the definition, the lack of any transition period to enable metal mines to comply. In this regard coal mines were given the following transition period:

Transitional provision for escape-ways in underground coal mining operation

Until 16 December 2024, nothing in regulation 170(1) applies to an existing mining operation that is an underground coal mining operation.

The response to an emergency involving fire and explosion in a metal mine is to go to a refuge chamber and remain there for rescue. The response to a similar emergency in a coal mine is to evacuate. As a consequence different criteria ought to be associated with escape-ways in coal mines compared to escape-ways in metal mines.

This issue has been well canvassed by the industry and WorkSafe via the EIAG and a suitable amendment has been proposed to the EIAG by WorkSafe (by the Chief Inspector) and we understand MBIE have been provided with a copy of this proposed amendment.

MinEx submits that, with further consultation between WorkSafe and the industry via MinEx on the exact wording of the amendments to sections 171 and 172 dealing with trafficable escape-ways, the WorkSafe Chief Inspector's proposed amendment is made with this round of changes to the 2013 Mining Regulations.

Without the proposed amendments both of New Zealand's underground metal mines are non-compliant with sections 171 and 172 and it would take significant expenditure for them to be compliant with these specific sections of the regulation for no sound reason.

WorkSafe exemptions

WorkSafe may provide an exemption to any of the requirements of the 2013 Mining Regulations under Schedule 1, section 7 but this expires 31 December 2017. If the quarry and alluvial sectors fall under the 2013 Mining Regulations then this exemption will need to be extended for them for the same reason the exemption was granted to those who came under the regulations in December 2013.

In addition, unless there the amendments MinEx submits need to be made to the 2013 Mining Regulations occur in this round of amendments, the delay will require an extension of the current exemption.

Bathurst Resources have submitted on this issue and we support their submission.

MinEx submits that section 7 of Schedule 1 needs to be amended to grant an indefinite exemption to WorkSafe and, at the very least, time to allow exemptions to be granted until errors are corrected in the 2013 Mining Regulations and MinEx recommended amendments to allow the quarry and alluvial sectors to be covered by the regulations are bedded in.

ATTACHMENT I – MINEX MEMBERSHIP

This submission is made on behalf of the following list of MinEx members.

| | |
|---------------------------------------|--|
| AQA | McCallum Bros Ltd |
| A B Equipment Ltd | McGregor Concrete Ltd |
| A B Lime | Mike Edridge Contracting Ltd |
| Atlas Quarries Ltd | MITO |
| AusIMM NZ Branch | Monovale Sand Quarry Ltd |
| Bellingham Quarries Ltd | New Creek Mining |
| Birchfield Coal Mines Limited | Newmont |
| Blackhead Quarries Ltd | NZ Steel |
| Bradken Resources Pty Ltd | Oamaru Shingle Supplies Ltd |
| Brightwater Engineering | OceanaGold |
| Buller Coal Limited | ORICA Mining Services |
| Burkes Creek Coal | Origin Quarries Ltd |
| Byfords Construction Co Ltd | Perry Resources (2008) Ltd |
| Christchurch Ready Mix Concrete Ltd | Porritt Sand |
| Civil Contractor New Zealand | Porter Group |
| CRL Energy Ltd | Prenters Aggregates Ltd |
| Digger School | Pukepoto Quarries Ltd |
| Downer Edi Works Ltd | Quality Roding & Services (Wairoa) Ltd |
| Envirofert Ltd | Rangitikei Aggregates Ltd |
| EPMU | Ravensdown Fertiliser Co-op |
| First Break Mining & Construction Ltd | RealSteel |
| Francis Mining Co Ltd | RedBull |
| Fulton Hogan Ltd | River Run Products Ltd |
| Glencoal Energy Ltd | Roa Mining Co Ltd |
| Goughs | Road Metals Co Ltd |
| Green Vision Recycling Ltd | Roding New Zealand |
| Groeneveld New Zealand Ltd | Rock Products Ltd |
| H G Leach & Co Ltd | Rocktec Ltd |
| Harliwich Holdings Ltd | Sandvik Mining & Construction Ltd |
| Hauraki District Council | Selwyn Quarries Ltd |
| Higgins Aggregates Ltd | Sibelco NZ Ltd |
| Higgins Contractors Wairarapa | Solid Energy NZ Ltd |
| Holcim (New Zealand) Ltd | Southern Aggregates Ltd |
| Holcim (NZ) Ltd Kiwi Point Quarry | Stevenson Resources Ltd |
| Horokiwi Quarries Ltd | Stevensons Mining |
| Huntly Quarries Ltd | Taupo Scoria Ltd |
| Infracon Aggregates | Taylor Coal Ltd |
| IOQ NZ Branch | Taylor's Contracting Co Ltd |
| J Swap Contractors Ltd | The Isaac Construction Co Ltd |
| K B Contracting & Quarries Ltd | Total Lubricants/Oil Imports |
| Kai Point Coal Co Ltd | Transdiesel Ltd |

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THE NATIONAL HEALTH & SAFETY COUNCIL FOR THE
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Kaipara Excavators
Kenroll Industrial Coal (2011) Ltd
Lake Road Quarries
Liebherr Australia Pty Ltd
Longburn Shingle Company Ltd
Materials Processing Ltd
Maungaraki Lime Ltd

Tyreline Distributors Ltd
Victory Lime 2000 Ltd
Waiotahi Contractors Ltd
WaterCare Laboratory Services
Wharehine Ltd
Winstone Aggregates

ATTACHMENT II – NOTIFICATION FROM WORKSAFE ON EXPOSURE DRAFT OF THE REVISED 2013 MINING REGULATIONS

From: Kathy Drysdale <Kathy.Drysdale@mbie.govt.nz>

Date: 7 April 2015 16:03:53 NZST

To: "chris.baker@straterra.co.nz" <chris.baker@straterra.co.nz>

Cc: Kelly Hanson-White <Kelly.Hanson-White@mbie.govt.nz>, Tony Forster <Tony.Forster@worksafe.govt.nz>

Subject: Health and Safety Reform - exposure draft of the mining regulations as they would look under the new Act for consultation with industry [UNCLASSIFIED]

Hi Chris, this email is about transferring the Health and Safety in Employment (Mining Operations and Quarrying Operations) Regulations 2013 (the mining regulations) into the health and safety reform regime, and we would be grateful if you could please circulate it to your members so they are aware of the change.

The health and safety reform process involves a Bill that is currently before Select Committee and the development of regulations. As part of the process, regulations that have been made recently under the Health and Safety in Employment Act 1992 are being transferred into the new regime with only the redrafting necessary to make them 'fit' with the terminology of the Bill. There is not intended to be any change to the policy of these regulations.

An exposure draft of the mining regulations as they would look under the new regime has been prepared to check with industry. This is not a policy consultation process as the policy for the mining regulations was developed in 2013 in the Pike River Implementation process when the mining regulations were made. The process here is to let industry see a draft of what the regulations would look like under the new regime on a "no surprises" basis, and check that the redrafting process has not created any unintended consequences. (Note that there will be a phase two stage of the reform process (to occur within 2 years of the new law being passed), which will cover development of quarrying regulations and will also include reviewing how the mining regulations are working in practice.)

We have summarised the main changes (apart from simple typographical errors) in the attached table, which also sets out how the numbering has been changed. The main changes in the exposure draft are:

- renumbering to incorporate the changes
- including the new terminology, such as "person conducting a business or undertaking" (PCBU) and notifiable incidents to reflect the Bill
- inserting new regs declaring what are notifiable illnesses and injuries, and incidents which then refer to the schedule. This is a style change requested by the drafters, plus reflects the Bill's framework for notifications
- deleting the tunnels exemption order, and instead including the exemption in the regulations themselves - and we've re-written it in positive language to try to make it clearer who is exempted, because it was confusing having double negatives
- updating transitional provisions as some milestones have already passed
- making technical changes to worker participation, removing aspects that are being replaced by the worker participation framework in Part 3 of the Bill, while retaining mining-specific variations

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NEW ZEALAND MINING AND QUARRY SECTOR

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- incorporating aspects of monitoring requirements for mining that are currently at Act level (which are intended to be in regulations in the new regime), and
- taking the chance to fix some obvious drafting errors in the regulations – these do not affect the policy decisions made in 2013, eg, reg.173 (old reg.171) now refers to shafts as well as escapeways in underground metalliferous mines.

Any interested person or body can provide comment about the draft regulations by emailing feedback to HSWregs@mbie.govt.nz by **Friday 15 May 2015**.

The exposure draft is available on line at the following website - <http://www.mbie.govt.nz/what-we-do/workplace-health-and-safety-reform/development-of-regulations-to-support-the-new-health-and-safety-at-work-act/exposure-drafts-of-phase-one-regulations>

The Cabinet papers with the policy decisions on the regulations are also available on line at the following link. The relevant paper for the transfer of the recent regulations is Paper A, especially paras 30-32: <http://www.mbie.govt.nz/what-we-do/workplace-health-and-safety-reform/development-of-regulations-to-support-the-new-health-and-safety-at-work-act>

Kind regards, Kathy Drysdale

Kathy Drysdale

Senior Policy Advisor, Health, Safety & Compensation Frameworks Policy

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ATTACHMENT III – WORKSAFE & EIAG IDENTIFIED ERRORS IN THE 2013 MINING REGULATIONS

| Reg # (if applicable) | Internal notes on issue | Problem | WorkSafe comment | Industry comment |
|--------------------------|--|--|--|---|
| HSE Act/Regulations | Definition of a “mine operator” | There is no positive duty for the permit holder to advise WorkSafe NZ who is the “mine operator”. As the mine operator is the key position in the regulations and holds many of the responsibilities it is essential the inspectorate know who is the mine operator. | Add in this requirement to the Act or regulations as appropriate. | Industry agrees with the suggested change and the regulations at Schedule 10 require the Mine Operator to be named in the quarterly return so there can be no reason not to make the change requested which would be by notification by the permit holder. <i>Schedule 10 r 230</i> Information to be given to WorkSafe in quarterly report 1 Description of mining operation <i>The following descriptive details for the mining operation:</i> <i>(a) the name of the mine operator, the site senior executive, and the mine manager; and...</i> |
| 3 | Interpretation - page 18 - typo: "notifiable accident mean an accident specified..." | Should be plural, i.e "...means..." | | Industry sees no reason not to change this as its simply a spelling mistake |
| 12(1) | Unclear what “temporarily” means | Compare to reg 23(1) which uses a different definition of “unable to act as manager for any period”. | Should provide clarification of temporarily as “more than x weeks”. Need to decide on the time required. | This would seem to be a useful definition to include although it could be managed via a Management & Administration guideline which would require industry consultation |
| 22 | 22(1) cancelled out by (2) and (3) - should delete 22 (1). | | | This is a simple mistake and should be corrected. The correction would bring the 2013 regulation in line with the 1996 regulations. All that is required is insertion of the word “not” in (2) as per below. MBIE have made a similar change to regulation 21 so why not this change. 22 Certificate of competence of manager of alluvial mining |

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| Reg # (if applicable) | Internal notes on issue | Problem | WorkSafe comment | Industry comment |
|-------------------------------|--|---|---|---|
| | | | | <p>operation</p> <p>(1) Subject to subclauses (2) and (3), a manager appointed to an alluvial mining operation must hold a certificate of competence as a first-class mine manager.</p> <p>(2) A manager appointed to an alluvial mining operation in which <i>not</i> more than 4 alluvial mine workers ordinarily work at any one time may hold a certificate of competence as an A-grade quarry manager.</p> <p>(3) A manager appointed to an alluvial mining operation in which <i>not</i> more than 4 alluvial mine workers ordinarily work at any one time may hold—</p> <p>(a) a certificate of competence as an A-grade quarry manager; or</p> <p>(b) a certificate of competence as a B-grade quarry manager.</p> |
| 35 & Multiple | Regulation 235 mentions only electrical and mechanical superintendent and does not cater for the different requirements in surface and underground | Board of Examiners considers that the electrical and mechanical superintendents' CoCs need to be split into surface and below ground because of the different requirements needed in these different environments | Change CoC titles in Reg. 35: Electrical superintendent (underground), electrical superintendent (surface), mechanical superintendent (underground), and mechanical superintendent (surface).NOTE: Other regulations that will need to be amended because of this change are: 26, and 27. | Industry agrees with the need to clearly separate out surface from underground. |
| 36 & Multiple (Schedule 2) | Fees under the regulations do not get changed to reflect increases in administration costs. | | We would like to explore whether there is a way in which the fees can be updated more regularly without requiring amendment to the regulations. | Industry agrees with this concept subject to proper consultation at the time fees are amended |

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| Reg # (if applicable) | Internal notes on issue | Problem | WorkSafe comment | Industry comment |
|--------------------------|--|---|---|---|
| 35 & Multiple | Gas tester CoC is not included in the list of CoCs in the Regulations. This is considered to be a safety critical role . Currency of CoC need to be renewed regularly. | The Gas Tester CoC was in the HSE (Mining Administration) Regulations 1996, but is not in the current Regulations. There has been almost unanimous feedback from industry (e.g. via roadshows) that the Coc should be reinstated into regulations. This view includes the Board of Examiners and WorkSafe's Mining Inspectors who consider that the the requirement is needed because the GasTester is a safety-critical role in all underground coal mines | Add Gas Tester top CoC list in reg. 35, and include new regulation covering Gas Tester CoC in 'Subpart 3 - Other Safety-critical Roles'. NOTE: While the CoC will be subject regulation 42 (expiry in five years time), CPD requirements will ensure that the holder's knowledge is kept up-to-date. | Industry agrees with the need to reinstate the gas tester CoC |
| 57 | Does it need to be made clear that there is only one HSMS and everyone at a mine must comply with that system? Queensland has experienced significant and enduring problems with contractors trying to use their systems rather than the SSE's system, which has led to a number of serious incidents and near misses. | | Make clear that must be one health and safety system under control of the operator | Industry agrees with the need to make this change |

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| Reg # (if applicable) | Internal notes on issue | Problem | WorkSafe comment | Industry comment |
|------------------------------------|--|---------|--|---|
| 170-172, Schedule 1 clause 4 | Requirements around escapeways need to be reconsidered. | | Bob Hill will be in touch with a proposal in the New Year. | Industry agrees with the need to amend these regulations. Currently both underground metal mines are non-compliant. This has come about though a fundamental misunderstanding of the reaction to an emergency such as fire in an underground metal mine. The emergency response is to go to a refuge chamber and not to try and escape. The response to such a situation in an underground coal mine is to escape. The Chief Inspector has placed proposed draft replacement regulations to overcome the problem in front of the EIAG which consists of experienced mining operations managers who unanimously agree with the proposed changes. |
| 145 (f) | While it states auxiliary fans are to prevent an accumulation of an electrostatic charge, I can see nowhere in the Regs that VCDs -particularly vent tubing and brattice screens- are to be FRAS (fire-resistant, anti-static) | | Amend regulation to ensure that VCD equipment is fire-resistant and anti-static. | |
| 66(2)(c) | should read: A mining operation must have a principal hazard management plan for tips, ponds and voids if a tip at the mining operation is- I. Located on a slope; or II. Is greater than 15 metres in height; or III. Is greater than 100 000 cubic metres in volume. | | | Industry does not agree with the change suggested. During consultation industry recommended that the criteria driving the need for a PHMP for tips, ponds and voids ought to be based on a risk assessment incorporating a geotechnical assessment. Industry submits, that without a risk assessment, the current wording is in fact appropriate. |

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| Reg # (if applicable) | Internal notes on issue | Problem | WorkSafe comment | Industry comment |
|--------------------------|--|---------|---|--|
| 98 (f) (i) | I have a concern that the mention of "roll over protection" may lock you into a structure. Legal may provide a better analysis and I hope they are satisfied that there is no confusion on roll over being interpreted as ROPS being the only method to satisfy the regulation. I mention this as newer ANCAP 5 Star rated vehicles do not require a roll over protection structure, indeed they are actively discouraged as the structure interferes with the electronic sensors. | | Preface 98 (f) (i) with words, such as "If suitable protection to achieve the same effect is not included in the manufacturers specifications, then" | Industry agrees and the regulations should be future proofed as suggested |
| Schedule 9 | Some notification periods do not give WorkSafe sufficient time to consider and respond to notification. | | Amend notification periods so that the minimum notification period in all cases is 7 days (i.e. all periods shorter than 7 days currently should be amended to 7 days). | |
| Schedule 9 | Schedule 9 - High Risk Activities - Barrier mining: Refers to requirement to notify when width of barrier is proposed to be less than 40 m however Reg 132 refers to 50 m. | | 40 m amended to 50 m in Schedule 9. | Industry agrees with the proposed changed. Obviously each clause is in conflict and regulation 132 should be reflected in the schedule |

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| Reg # (if applicable) | Internal notes on issue | Problem | WorkSafe comment | Industry comment |
|--------------------------|---|--|--|---|
| 217 | In terms of abandonment plans, we only need a subset of the full list of information described in regulation 217. | Our NZ reg 213 requires a “plan of the mining operation” and reg 216 requires a “plan of ceased mining operation”. Reg 217 sets out the identical content required for both. | The intended effect is to allow for the inclusion of only those details that are relevant in a mine in which operations have ceased. Plans of ceased mining operation should not include the matters in regulation 217 (a), (b), (l), (o), (p), (s) and (t). | Industry agrees with any amendment that removes unnecessary compliance costs. |
| 23 | Acting manager is not required to hold a certificate of competence. | In the view of the Inspectorate, it is not acceptable for a mine or large quarry to operate for up to 10 weeks with an only an unqualified “fit and proper person” in charge of the operation (e.g. the underground coal mine at Huntly East). | It is proposed that regulation 23 is amended to that the person who is acting must have either the same qualification as the manager or a qualification one step below the required qualification for the manager of that operation. However, where the manager is required to have a B-grade (open cast coal mine/quarry/tunnel) certificate, the acting manager must be a fit and proper person. | Industry would need to consider this proposal. |

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| Reg # (if applicable) | Internal notes on issue | Problem | WorkSafe comment | Industry comment |
|--------------------------|--|---------|--|--|
| New issue | No reference made to exclusion zones around mine entrances or considerations of safety of persons on the surface in an emergency event (except for generic risk appraisal references). | | There should be a new requirement for the mine operator to undertake a risk appraisal to ensure that no harm will result to any persons or damage to buildings and safety critical equipment outside the entrance to the mine in the case of an explosion within the mine. | This is a sensible suggestion but could be covered through an approved code. |

ATTACHMENT V – RAVENSDOWN SUBMISSION



RAVENSDOWN FERTILISER CO-OPERATIVE LIMITED'S SUBMISSION

Health and Safety at Work (Mining Operations and Quarrying Operations) Regulations
2015

Consultation Draft

To: Ministry of Business, Innovation & Employment

By email: HSWregs@mbie.govt.nz

Name of submitter: Ravensdown Fertiliser Co-operative Limited ("Ravensdown")

This is a Submission on: the Health and Safety at Work (Mining Operations and Quarrying Operations) Regulations 2015 ("the Regulations")

Introduction

1. Ravensdown provides nutrient management services, technical advice, quality fertiliser and other essential farm inputs to farmers and other land users throughout New Zealand. Ravensdown is a co-operative primarily owned by farmers and it exists to optimise soil fertility and farm profitability in a sustainable way.
2. Ravensdown was established in 1978 by farmers and its mission is to provide competitively priced essential inputs and application knowledge based on sound science and sustainable practices.
3. Ravensdown has a number of operations that the Regulations currently and will continue to impact on. These are:
 - a. Lime quarries;
 - b. Stores that contain both finished Aglime and fertiliser for sale throughout the country ("stores"); and
 - c. Fertiliser operations that can undertake crushing of imported processed phosphate rock for fertiliser manufacturing and screening of imported processed reactive phosphate ("fertiliser operations").
4. The Lime quarries are and should be governed by the Regulations and we make no further comment on these.
5. The superphosphate manufacturing process undertaken at fertiliser operations involves the reaction of ground phosphate rock with sulphuric acid that converts phosphate rock into a soluble phosphate that is available to plants. The phosphate rock is imported into New Zealand from a number of countries including Morocco, Vietnam, China and South Africa.
6. The superphosphate manufacture consists of several stages including:
 - a. Rock grinding;
 - b. Reacting phosphate rock with sulphuric acid;
 - c. Granulation reacted material; and

RJB-492505-83-4-V2

- d. Storage, screening and despatch.
- 7. The product for sale at the manufacturing works, and the Ravensdown stores, can be a manufactured superphosphate product, an imported fertiliser, lime from the Ravensdown quarries, or a blend of components.
- 8. Product ready for sale to customers / farmers undergoes a final process where it is screened to remove any "oversize" material that could make fertiliser application less effective. The oversize material is crushed down to a size that passes through the screening process.
- 9. The definition of "quarrying operation" in both the Health and Safety in Employment Act 1992 ("current Act") section 19N and the Health and Safety Reform Bill Schedule 2, clause 3 is drafted to include Ravensdown's stores and fertiliser operations. The current and draft regulations incorporate this definition.
- 10. Section 19N of the current Act is:

19N Meaning of quarrying operation

(1) In this Act, **quarrying operation**—

(a) means an activity carried out above ground for the purpose of—

(i) extracting any material, other than any coal or any mineral, from the earth;
or

(ii) processing any material, other than any coal or any mineral, at the place where the material is extracted; and

(b) includes the place where an activity described in paragraph (a) is carried out; and

(c) includes any place in which any material extracted or processed in a quarry is crushed or screened.

(2) Subsection (1) applies whether or not the material is to be extracted or processed for commercial gain and whether or not the material is extracted or processed by the use of explosives.

Where an activity meets the definition of a quarry operation various provisions in the current and proposed regulations that require a manager to hold a certificate of competence as an A-grade manager (clause 23 proposed regulations).

The specific provisions of the Regulations that this submission relates to are:

- 11. Ravensdown is interested in the breadth of subsection (1)(c) "*includes any place in which any material extracted or processed in a quarry is crushed or screened*". Subsection (1)(c) does not include any exception for crushing and screening of material that is not related to a quarry. This means that crushing and screening of rocks that were extracted from a quarry in, say, Morocco in Ravensdown's fertiliser operations is defined as a quarrying operation.
- 12. Ravensdown's fertiliser operations and stores are distinct from quarries and should not be governed by regulations that have been crafted for quarrying and mining activities. The fertiliser operations should be regulated as an industrial site as should and customer service distribution centres.
- 13. Ravensdown submits that there should be a change so that the fertiliser operations and stores are not regulated as a quarry operation. The Bill (noting that changes to the Bill are outside the scope of this consultation process) could amend subsection (1)(c) so that either:

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- a. An exception is made for material that has already been processed (noting that "processed" is not defined) so that further crushing and screening off site is not included in the definition; or
 - b. A physical relationship is specified in the definition so that processing that is not associated with a quarry is not included in the definition.
14. Alternatively a change could be made to the draft regulations so that clause 18 requiring a manager to hold a certificate is amended to include an exception for offsite crushing and screening.
 15. Ravensdown acknowledges that there is no proposed change to the regulations or Act (the current Act and Bill currently before select committee) around quarry operations but submits that the Ministry should take this opportunity to reconsider the implications of the current drafting. As noted above a change could be made to either the primary legislation (via supplementary order paper on the Bill) or the new regulations.

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