



Hazelwood Inquiry info/DPC@DTF

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To Hazelwood Inquiry
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Subject Morwell Mine Fire Submission

1 attachment



Submission-to-inquiry.docx

First Name: Felicity

Surname: Millner

Organisation represented (if applicable): Environmental Justice
Australia

Email address: [REDACTED]

Home or office phone: [REDACTED]

Content of submission (you can choose multiple): Application and
administration of regulatory regimes

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12 May 2014

Hazelwood Mine Fire Inquiry

By online submission

Dear Board Members

Submission to the Hazelwood Mine Fire Inquiry

Environmental Justice Australia (formerly the Environment Defenders Office, Victoria) is a not-for-profit public interest legal practice. We act as advisers and legal representatives to the environment movement and have worked with several environment groups in relation to the Hazelwood mine fire. We also have been and will be working with the members of the community in Morwell in relation to this issue.

Regulation of mining in the Latrobe Valley

Mining in Victoria is currently regulated by the Department of State Development, Business and Innovation (**DSDBI**). Up until mid-2013, mining was regulated by the Mineral Resources section of the Department of Primary Industries (**DPI**).

Fires in brown coal mines are a known risk. There have been fires in the Hazelwood mine pit before. It therefore appears to us that the mine fire was both foreseeable and avoidable. If this is the case, serious questions are raised as to:

- why the legal and regulatory requirements of the mine did not ensure that there were measures in place to prevent the mine fire;
- if there were appropriate regulatory requirements in place, whether these were being complied with by GDF Suez; and
- if there were any non-compliances by GDF Suez, why these non-compliances were not addressed by officers of the DSDBI.

The Hazelwood mine fire is not the first serious incident caused by coal mining in the Latrobe Valley to impact upon the environment and community of the Latrobe Valley. For example, in 2007, the mine batters at the Yallourn Mine collapsed. In 2011, a section of the Princes Freeway at Morwell collapsed, as a result of instability of the Hazelwood mine. In 2012 and 2013, the wall between the Morwell River and the Yallourn Mine collapsed and the river flowed into the mine. The fact that there have been a series of incidents may be indicative of a more systemic failure of regulation of coal mining in the Latrobe Valley.

We submit that this series of incidents, culminating with the Hazelwood mine fire, warrants investigation into the effectiveness of the regulations that apply to coal mining and into the DPI and DSDBI as regulators.

We discuss several regulatory issues, below, that we believe warrant further investigation by the inquiry.

Quality of Regulatory Instruments

Coal mines are primarily regulated under the Work Plan and Work Authority issued by the DSDBI under the *Mineral Resources (Sustainable Development) Act 1997*. In particular, the works plan provides details about how, where and when mine operations are to occur. Importantly, works plans ought to contain requirements for rehabilitation and fire management.

The areas of the Hazelwood mine that originally caught on fire were not currently being mined. Media reports on the Hazelwood mine fire have raised questions as to whether, had the northern and eastern batters been rehabilitated, the mine itself would have ignited. Questions have been raised as to whether there was appropriate access to water and other fire prevention infrastructure in the area of the mine that first caught alight.¹ Had appropriate infrastructure been in place, would have enabled the fire to be quickly extinguished?

We note that the mining licence for the Hazelwood mine (mining licence 5004) requires that the mine be "progressively rehabilitated" in accordance with an approved works plan. We have reviewed a works plan for the Hazelwood mine, approved in 1996 and a works plan variation, approved in 2009. The requirements of the works plan variation in relation to rehabilitation are vague and do not have clear milestones and targets, nor do they have firm timelines about when rehabilitation should commence.

In relation to fire management, the 1996 works plan appears to have a detailed fire plan with a series of pipes around the batters of the mine to ensure that water could be accessed, however, this is not entirely legible on the copy we have been provided. The other fire management requirements reference a generic document that applies to all Latrobe Valley coal mines and is not publicly available.

In our view, the Hazelwood works plan, as updated in 2009, does not appear to contain sufficiently clear obligations on the mine that, if not complied with, would give the DSDBI a firm basis for taking action. Given that the works plan is, under the legislation, the key regulatory document for mines, we think this is cause for concern.

Compliance and enforcement by the DSDBI

We do not have information about any compliance and enforcement activities undertaken by the DSDBI in relation to the Hazelwood mine, as this information is not readily publicly available. We do note, however, that reviews of disasters, such as that involving the Cranbourne landfill, by the Victorian Auditor General's Office and the Ombudsman note the importance of an 'enforcement culture' in ensuring that an agency is an effective regulator.

In 2012, the Victorian Auditor-General's Office completed an audit of the DPI and the then Department of Sustainability and Environment, entitled "Effectiveness of Compliance Activities: Departments of Primary

¹ <http://www.latrobevalleyexpress.com.au/story/2101580/heat-to-rise-on-hazelwood/>

Industries and Sustainability and Environment"². The audit identified several issues in need of addressing to ensure that the compliance activities of the DPI were effective. We do not know if steps have been taken to address these issues.

Role of DSDBI

The DSDBI has a dual role in relation to mining in Victoria. Firstly, its role is to "support and promote investment opportunities in the sector" and to "facilitate projects under development in the State as they navigate through approvals processes." On the other hand, the DSDBI is supposed to "maintain an efficient licensing and permitting system ...and regulate the industry."³

These dual roles have the potential to be contradictory, and too much emphasis on the first role could perhaps discourage rigorous regulation of the industry.

Conclusion

The large and complex mining activities in the Latrobe Valley can significantly impact on the health and well-being of communities and the environment. This was clearly demonstrated by the Hazelwood mine fire.

It is the role of the regulators, most significantly the DSDBI, to ensure that the regulations put in place for these mines are sufficient to manage the significant risk and that the regulations are complied with by those operating the mines, so that the risk to the community and the environment is minimised.

In light of the Hazelwood mine fire and preceding incidents caused by coal mining, we think that investigation into the broader regulation of mining in the Latrobe Valley and of the Hazelwood mine itself is warranted.

Please contact Felicity Millner on [REDACTED] if you have any queries in relation to this submission.

Yours sincerely



Felicity Millner
Director of Litigation

² <http://www.audit.vic.gov.au/publications/2012-13/20121024-Compliance-DPI-DSE/20121024-Compliance-DPI-DSE.html>

³ <http://www.energyandresources.vic.gov.au/earth-resources>