



## VICTORIAN GOVERNMENT SOLICITOR'S OFFICE

Your reference:

Our reference: 1403971

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22 April 2014

Elizabeth Lanyon  
Head of Secretariat  
Hazelwood Mine Fire Inquiry  
1 Spring Street  
MELBOURNE VIC 3000

*By email: [elizabeth.lanyon@hazelwoodinquiry.vic.gov.au](mailto:elizabeth.lanyon@hazelwoodinquiry.vic.gov.au)*

Dear Elizabeth

### **Independent Inquiry into Hazelwood Coal Mine Fire**

We refer to the Board's letter dated 15 April 2014, requesting information to be provided by the State. Some of the questions posed are better answered by the operator of the mine but on the basis of information available to us, we answer as follows:

#### ***General regulatory framework***

#### **1. Please advise who owns and operates the Hazelwood Coal Mine:**

1.1 We have conducted title searches of the land at the Hazelwood mine which is described in the following three principal Certificates of Title:

- (a) Vol 11377 Fol 558;
- (b) Vol 10816 Fol 278; and
- (c) Vol 11337 Fol 045.

We attach (**attachment 1**) a plan showing the 39 titles relating to the mine area.

1.2 Title searches disclose that the above three titles are owned by the following parties as Tenants in Common:

- (a) National Power Australia Investments Ltd (an English company which owns 51.94% of the Hazelwood power partnership);

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- (b) Hazelwood Pacific Pty Ltd (an Australian entity which owns 19.9% of the Hazelwood power partnership);
- (c) Australian Power Partners B V (a Dutch company which owns 20% of the Hazelwood power partnership);
- (d) Hazelwood Investment Company Pty Ltd (an Australian entity which owns 2.04% of the Hazelwood power partnership); and
- (e) CISL (Hazelwood) Pty Ltd (an Australian entity which owns 6.12% of the Hazelwood power partnership).

From information available from company searches, it appears that the entities which own the land are ultimately held by GDF Suez S.A and Mitsui & Co Ltd (see attached diagram which shows ownership as far as can be gleaned from company searches (**attachment 2**) which can be confirmed, or advice otherwise provided, by GDF Suez SA and Mitsui & Co Ltd).

- 1.3 A caveat is registered on each of the three titles 'absolutely' in favour of CISL (Hazelwood) Pty Ltd, Hazelwood Investment Company Pty Ltd and Hazelwood Churchill Pty Ltd.
- 2. If the Hazelwood Coal Mine is owned by the Crown and operated by GDF Suez, please advise the basis on which GDF Suez occupies the land and provide a copy of the lease or licence as at 9 February 2014.**
- 2.1 Not applicable.
- 3. If the Hazelwood Coal Mine is owned by GDF Suez, please advise the basis on which it became the owner of the land, and provide a copy of any relevant sale agreement or instrument of transfer.**
- 3.1 The Hazelwood power plant was privatised in the 1990's and the asset sale agreement relating to the sale of the mine to the Hazelwood Power partnership (dated 4 August 1996) is publicly available:
- [http://www.contracts.vic.gov.au/major/7/Hazelwood Power Corporation Asset Sale Agreement \(1\).pdf](http://www.contracts.vic.gov.au/major/7/Hazelwood Power Corporation Asset Sale Agreement (1).pdf)
- Save for the above information, we believe that this question is better answered by the operator.
- 4. Please provide an overview of the regulatory framework within which the Mine is operated, including an explanation of which agencies or bodies are responsible for administering that framework. Please ensure that occupational health and safety is covered in this overview:**
- 4.1 Please refer to the attached regulatory overview paper and folder of supporting material (**attachment 3 and folder 2**).
- 5. Please provide copies of the following documents:**

The documents which have been requested by the Board are included on the register maintained by the Secretary to the Department of State Development, Business and Innovation (**Secretary DSDBI**) under s 69(1) of the *Mineral Resources (Sustainable*

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*Development) Act 1990 (MR(SD) Act).* Sections 74(1) and 74(1A) govern the Secretary DSDBI's disclosure of documents kept on the register. In summary, s 74(1A) of the MR(SD) Act prohibits the Secretary DSDBI from disclosing any information in a registered work plan or work plan variation 'that is, in the opinion of the Department Head, of a confidential or commercially sensitive nature'.

It follows that the documents which the Secretary DSDBI is presently permitted to disclose in an un-redacted form are the licence and work plan approved in 1996, all subsequent licence variations, and the approved rehabilitation bonds. The Secretary DSDBI is also able to disclose a redacted copy of the 2009 work plan variation, as this was prepared in consultation with GDF Suez in response to requests from media outlets and the Environment Defenders Office. The Secretary DSDBI has not yet prepared redacted copies of the remaining work plan variations, including the 2009 variation to the rehabilitation plan.

In the meantime, the Secretary DSDBI proposes to seek GDF Suez's consent to provide the Board with un-redacted copies of all of the work plan variations. We will notify you if it appears that GDF Suez would not accept such a proposal.

**5.1 Mining Licence Number 5004 (MIN 5004) as in force from time to time**

Please refer to (attachment 4) (4(1)a; 4(1)b and 4(1)c).

**5.2 The approved work plan for MIN 5004 under section 40 of the *Mineral Resources (Sustainable Development) Act 1990 (Mineral Resources Act).***

Please refer to the document at Tab 2 of the attached regulatory overview.

**5.3 Any variations to the work plan approved under section 41 of the Mineral Resources Act**

Work Plan Variations were approved on:

- 5 May 1997;
- 20 May 1997;
- 1 October 1997;
- 9 October 1997;
- 6 December 2000;
- 22 February 2001; and
- 11 May 2009 (refer to the documents at Tabs 3-7 of the attached regulatory overview (redacted)).

**5.4 The rehabilitation plan in respect of the Hazelwood Coal Mine approved under section 78 of the Mineral Resources Act**

The Rehabilitation Plan is part of the Work Plan (under Schedule 15 of Mineral Resources (Sustainable Development) (Mineral Industries) Regulations 2013.

Rehabilitation Plans or Variations are as follows:

- Rehabilitation Plan is included in the Work Plan.
- Rehabilitation Plan is included in the Work Plan (Section 8 of Work Plan variation of 5 May 1997).
- Variation to Approved Work Plan (Rehabilitation) Hazelwood Mine of 20 May 1997.
- Rehabilitation Plan is included in the Work Plan (Section 5.8 of Work Plan 6 December 2000).
- Rehabilitation Plan is included in the Work Plan.

**5.5 Any rehabilitation liability assessment conducted in relation to the Hazelwood Coal Mine under section 79A of the Mineral Resources Act**

No rehabilitation liability assessment has been carried out under this section of the Act.

**5.6 The rehabilitation bond in relation to the Hazelwood Coal Mine under section 80 of the Mineral Resources Act**

Please refer to the document at Tab 8 of the attached regulatory overview.

**6. Please provide copies of any other documents referred to in responding to questions 1 to 4 above.**

Documents are supplied above.

***Mitigation of fire risk***

**7. Part 2 of the Emergency Management Manual Victoria outlines the general approach to emergency risk management and mitigation in Victoria. Please provide an overview of the framework for mitigating the fire risk at Hazelwood Coal Mine. Please include reference to relevant laws, guidelines and other key documents, and identify which agencies or bodies are responsible for developing, implementing and overseeing mitigation strategies.**

The following information has been provided to us by the below mentioned agencies:

**A. *Energy Safe Victoria***

**7.1** Energy Safe Victoria (ESV) as the independent technical regulator for electricity, gas and pipeline safety in Victoria is responsible for ensuring the safety of electricity generation, transmission, distribution and use in Victoria and for promoting the prevention and mitigation of bushfire danger.

**7.2** Hazelwood has an internal electricity distribution system to supply power to the large plant and equipment needed for mining and operational purposes, e.g. coal dredges and conveyors, water pumps and cooling towers.

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- 7.3 Under section 83A of the ES Act, an electric line (other than a private electric line) that is above the ground in a hazardous bushfire risk area is defined as an “at-risk electric line”, and a “specified operator” is defined as the operator of an at-risk electric line. GDF Suez is a “specified operator” under the ES Act.
- 7.4 Specified operators have general safety duties under section 83B of the ES Act and are also required, under section 83BA, to prepare and submit a bushfire mitigation plan (**BMP**) (**attachment 5**) to ESV before 1 July each year setting out the operator’s proposals for mitigation of bushfire in relation to the operator’s at-risk electric lines.
- 7.5 As a “specified operator” GDF Suez is required to submit a BMP to ESV. The BMP submitted to ESV for the year commencing 1 July 2013 is an overview of the practices and procedures for the prevention of fire that may be caused by electrical assets in the coal mine and the mitigation of fire outbreak. The BMP sets out design and operational arrangements for the prevention of fire ignition from the high-voltage overhead electricity distribution system operating within the mine.
- 7.6 Further information about ESV regulation is available in the regulatory overview.

*B. Emergency Management*

- 7.7 In addition to the current arrangements described above, the Victorian Government has committed to wide ranging reform of Victoria’s emergency management arrangements. As part of this exercise, emergency management planning arrangements will be examined with a view to making them more holistic and coordinated, and allocate specific accountabilities for risk management and mitigation in relation to particular hazards.
- 7.8 The Fire Services Commissioner has initiated a working group with representatives of all of the Latrobe Valley coal mines in order to better understand the future requirements for open cut coal mine fire management; determine the extent and efficacy of existing planning documents by considering regulations, practice and guides currently used by the industry and emergency services for preventing fires responding to fires and protection of assets, infrastructure and people; the relevant factors that support or limit fire management; and an appropriate framework for fire management for open cut coal mines.
- 7.9 This working group has taken a collaborative approach to reviewing current mitigation planning and identifying areas of improvement including the need to develop a good practice guideline for coal fire management that builds on previous practice to incorporate areas of improvement for both internal and external consequence management.
- 7.10 Increased engagement by the coal mining industry with other key stakeholders including the community, in clarifying roles and responsibilities for activities before, during and after fire events including secondary impacts such as smoke emissions is a critical path forward to improving outcomes for all involved. This approach needs to be

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transparent and provide a landscape perspective for all stakeholders to understand risks and mitigate impacts from environments both internal and external to the mine incorporating an all hazard approach. Training, induction training and exercising realistic scenarios provide the opportunity to test and refine mitigation, response and recovery activities and improve preparedness for actual events.

- 7.11 Further legislative reforms are under development to enable improved all hazard planning across government, business, industry and the community for Victoria.

C. *Victorian Workcover Authority*

- 7.12 Responsibility for the development and implementation of the fire mitigation strategies at the Hazelwood mine (and other mine sites in Victoria) lies with the mine operator, together with the local municipal council and relevant emergency service agencies (see *Emergency Management Act* and EMMV). In so far as mine operators are concerned, the responsibility arises in part from the general duties imposed on mine operators by the *Occupational Health and Safety Act 2004* (the **OHS Act**), and by the more specific duties imposed by Part 5.3 of the *Occupational Health and Safety Regulations 2007* (the **OHS Regulations**). These include duties to:

- Establish and implement a Safety Management System (regulation 5.3.21);
- Conduct a comprehensive and systematic Safety Assessment (in order to assess the risks associated with "major mining hazards", being mining hazards that have the potential to cause more than one death)(regulation 5.3.23];
- Prepare an Emergency Plan (regulation 5.3.34).

- 7.13 In meeting each of these duties a mine operator would necessarily be required to consider the risks of fire and to identify and implement control measures to mitigate those risks.

- 7.14 As the agency responsible for administering the OHS Act and the OHS Regulations, the Victorian WorkCover Authority (the **VWA**) is responsible for monitoring the compliance of mine operators with these duties.

- 7.15 We attach for your information guidelines entitled "Emergency Management in the Minerals Resources Sector", developed by Victoria Police, the VWA, the Mineral Council of Australia and the CFA (**attachment 6**) ; and "Safety Management Systems: A Self-assessment Tool for Prescribed Mines", published by the VWA (**attachment 7**) .

**8. Please describe the role and responsibilities of GDF Suez in developing and implementing a fire risk mitigation strategy for Hazelwood Coal Mine Fire.**

- 8.1 This is contained in the documents referenced in item 6 of the Hazelwood BMP.

**9. Please provide copies of any fire risk mitigation strategies prepared in relation to Hazelwood Coal Mine from time to time.**

- 9.1 A copy of GDF Suez's 'Electricity Safety - Bushfire Mitigation Plan issued on 19/6/2013 for the period commencing 1 July 2013 is attached (**attachment 8**).
- 9.2 A Regional Strategic Fire Management Strategy has been developed and implemented for the Gippsland area. At a municipal level, the Latrobe City Fire Management Planning Committee has developed a municipal fire management plan. Both these plans consider planning for fire across their geographic footprints, have included multiple stakeholders and detail with a range of fire mitigation activities and bodies accountable for delivering those activities. These plans also draw linkages to other specific plans including agency and mine mitigation, response and recovery plans ranging from government agencies, catchment management authorities and major essential service providers/sites including the coal mines.
- 9.3 The Hazelwood Coal mine has a range of plans, guidelines, policies and standard operating procedures for mitigation of fire within its geographical footprint including:
- Emergency Response Plan - Mine
  - Mine Fire Service Policy & Code of Practice
  - Fire Instructions - Mine
  - Fire Fighting Equipment Annual Inspection
  - Check List for Hazelwood Slot Bunker Fire Services Wash Down & Routine Inspection
  - Guidelines for Season & Period Specific Fire Preparedness and Mitigation planning
  - Guidelines for Season Specific Fire Preparedness and Mitigation Planning
  - Check List for Season Specific Fire Preparedness and Mitigation planning
- 9.4 The Hazelwood mine also has a range of plans, guidelines, policies and procedures for the mitigation of risk generally, including but not limited to the risk of fire. These include the documents referred to in paragraph 7.11, namely:
- Safety Management System;
  - Safety Assessment; and
  - Emergency Response Plan.

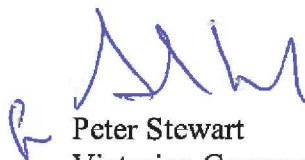
***Fire response***

**10. We understand from your overview of emergency management arrangements that the CFA is the control agency for responding to a fire at the Hazelwood Coal Mine. Is there any agreement or understanding between the CFA and GDF Suez in relation to responding to a fire at the mine? If so, please provide an overview of that agreement or understanding, and copies of the documents by which it is recorded.**

- 10.1 The CFA is the control agency for responding to a fire at the Hazelwood Coal Mine, except in circumstances where the fire may become or is a "major fire" as defined under the Emergency Management Act 1986 (EM Act). In such cases, the Fire Services Commissioner may assume the role of State Controller under s. 16 of the EM Act.
- 10.2 On account of the major fires already burning in Victoria and the forecast dangerous fire conditions on 9 February 2014, the Fire Services Commissioner had assumed the role of State Controller under that provision. In that capacity, the Commissioner, among other things, may:
- (a) exercise the powers and authorities conferred by the **Country Fire Authority Act 1958** on the Chief Officer of the Country Fire Authority in relation to the control of response activities in relation to the major fires: s. 16(7); and
  - (b) appoint one or more assistant controllers: s. 16(5)(a). On 9 February, the Commissioner had already exercised this power by appointing a Regional Controller for Gippsland and an Incident Controller for the fires already burning around Morwell. More information on these arrangements and the way they evolved over the period the mine fire burned can be supplied if required by the Board .
- 10.3 The Emergency Response Plan for the Hazelwood Mine dated 14 October 2009, sets out the arrangements between CFA and the mine owner in responding to fire. The majority of the arrangements have been developed through the creation of organisational culture developed over many years. Joint training exercises between CFA & the mine are carried out, the most recent exercise being held on 11 December 2013.
- 10.4 We attach the following documents:
- (a) a copy of the Emergency Response Plan for the Hazelwood Mine dated 14 October 2009 (**attachment 9**);
  - (b) copies of relevant emails in respect of joint exercises in folder titled "Joint Exercises" (**attachment 10**); and
  - (c) a copy of a training video titled "Brown Coal Fire Fighting Awareness" produced by CFA in conjunction with the coal power generating industries within the Latrobe Valley (**attachment 11**).



Yours sincerely

A handwritten signature in blue ink, appearing to read 'P. Stewart', with a large initial 'P' on the left.

Peter Stewart  
Victorian Government Solicitor