



Public consultation draft WHS (Mines) Regulation 2014

Comments from Coal Services

Part 1 Preliminary

3. Definitions - respirable dust (p. 14)

Typographical error: remove the word 'mas' and replace with the word 'has'.

Part 2 Managing Risks

40. Ensuring exposure standards for dust not exceeded (page 43)

Modify 40(1)(b) - change 10.0 to 10

Purpose of change: Convention is that values greater than 10 mg/m³ are expressed in whole digits rounded to the nearest integer.

Purpose of change: this will locate standards for respirable dust, inhalable dust and respirable crystalline silica in the same Clause.

Include extra sub clause 40(1)(c) for respirable crystalline silica - 0.1 mg per cubic metre of air.

41. Monitoring exposure to airborne dust (page 43)

This clause to now refer to **40(1)(a), (b) or (c)**.

Purpose of change: Necessary to accommodate additional sub clause above.

56. Air quality – minimum standards for ventilated air (page 52)

Air quality for diesel particulate should reference a prescribed standard rather than as low as reasonably practicable.

Purpose of change: Experience with dust control and elimination of pneumoconiosis is that prescribed exposure standard and monitoring regime have been effective controls. ALARP (as low as is reasonably practicable) is not sufficient for a known carcinogen with known controls.

58. Requirements if air quality and air safety standards not met (page 53)

Reference should be made to diesel particulate matter as this is not necessarily picked up by

Corporate Office

T: +61 (2) 8270 3200
F: +61 (2) 9262 6090
Level 21, 44 Market Street
Sydney NSW 2000
GPO Box 3842
Sydney NSW 2001

Lithgow

T: +61 (2) 6350 1050
F: +61 (2) 6351 2407
3 Proto Avenue
Lithgow NSW 2790
PO Box 72
Lithgow NSW 2790

Mudgee

T: +61 (2) 6370 6100
F: +61 (2) 6372 2470
18 Sydney Road
Mudgee NSW 2850
PO Box 1156
Mudgee NSW 2850

Newcastle

T: +61 (2) 4948 3100
F: +61 (2) 4953 0541
143 Main Road
Speers Point NSW 2284
PO Box 219
Boolaroo NSW 2284

Singleton

T: +61 (2) 6571 9900
F: +61 (2) 6572 2667
1 Civic Avenue
Singleton NSW 2330
PO Box 317
Singleton NSW 2330

Woonona

T: +61 (2) 4286 5400
F: +61 (2) 4285 4144
558-580 Princes Highway
Woonona NSW 2517
PO Box 42
Corral NSW 2518

reference to exposure standard in CI 49 WHS Regulation.

Purpose of change: CI 49 WHS Regulation refers to Schedule 14 list of chemicals which does not contain diesel particulate matter.

77. Post incident monitoring (page 75)

CI 77(2)(c) should also allow for alternate options to be considered in event that primary system is not available after an incident.

Purpose of change: This will allow alternative options to be considered in the event that the primary monitoring system does not survive an incident.

88. Consultation in preparation of emergency plan (page 86)

Reference should be to “Mines Rescue Pty Limited (New South Wales)” instead of “New South Wales Mines Rescue Brigade”.

Purpose of change: Incorrect reference to Mines Rescue company.

93. Review (page 88)

Review of emergency plan should include reference to mines rescue and other emergency services. Should also require copy of modified emergency plans to be supplied.

Purpose of change: To make it clear that consultation should occur at review of emergency plans not just at initial development.

94. Training of workers (page 89)

Training should include a provision for regular refresher or ongoing training.

Purpose of change: To ensure that training is kept current and lessons are not forgotten or delayed.

95. Emergency exits (page 89)

CI 95(6)(b) should be more specific regarding firefighting equipment and types of equipment.

Purpose of change: Need to clarify type and quantity of firefighting equipment and type of equipment to which it applies.

96. Safe escape and refuge (page 90)

CI 96(3) should deal with survivability of communication system for foreseeable incidents. Should also contain provision for alternate communications in the event that primary system does not survive.

Purpose of change: This will allow alternative options to be considered in the event that the primary communication system does not survive an incident.

97. Signage for emergency refuge (page 93)

There should be requirement for lifelines and emergency illumination in appropriate locations.

Purpose of change: Signs are not adequate in the event of smoke. Additional guidance in the form of lifelines and emergency illumination will improve ability to find exit and escape apparatus.

99. Self-rescuers (page 93)

CI 99(4) requires a live trainer to deliver oxygen and simulate a normal SCSR. Note change to current requirements and equipment in use.

Purpose of change: For note only. Will involve additional capital and operating expense.

100. Personal protective equipment in emergencies (page 94)

Note requirement for mine operator to ensure provision of rescue equipment. Additional requirement for operator. Potential issue if dispute over “suitable” personal protective equipment

Purpose of change: For note only. Explanatory note may be required to make clear.

103. Duty to provide information, training and instruction (page 96)

Should include provision for ongoing and refresher training and changed equipment & procedures.

Purpose of change: Should provide for training to maintain currency and avoid loss of skill or knowledge over time.

Part 3 Health monitoring

108. Health monitoring of worker (page 99)

The Department stated it was not the intent of the Regulation to replace Order 41. Their view was that as the Regulation and Order were both State Laws they could sit alongside each other, and that mine operators and employers would need to comply with both.

In matters where the Regulation and Order were in conflict then some guidance would be needed but they felt if the Order demanded a higher standard than the Regulation then the Order should prevail.

Areas on conflict between the Regulation and Order included:

The Regulation states that health monitoring should be conducted at intervals determined by the medical practitioner. Order 41 states medicals must be completed each 3 years.

110. Duty to ensure health monitoring is carried out or supervised by registered medical practitioner with experience (page 100)

110(1) We expressed the view that the term ‘experience in health monitoring’ was too broad. Many Doctors would have no experience in mining or the diseases associated with mining. We expressed the view that the level of experience required needed to be more specific.

110(2) We expressed the view that more guidance needed to be provided as to what constituted ‘consultation’.

113. Health monitoring report (page 101)

The Regulation states that an individual health monitoring report should be provided to the employer. Order 41 requires de-identified health data only be given to the employer.

118. Health monitoring reports kept as records (page 103)

118(2) We expressed the view that given the long latency period of many occupational diseases that 30 years was too short a time for the retention of health records.

Discussion also took place around the fact that the Regulation is silent on the work completed by the Health Management Advisory Committee (HMAC) under the direction of the Mine Safety Advisory Council (MSAC) on the previously identified 'contemporary health issues' which were to be included in a mines health management plan. Where do these fit in? The Department should look into and consider this.

The matter of how health monitoring versus health surveillance was also discussed. The Department took the view that health monitoring occurred after a specific incident where a worker was exposed to a hazard that may cause disease. Whereas health surveillance took place whether a worker had been exposed or not. The Regulation focuses on health monitoring whereas Order 41 requires health surveillance and that is why the Order includes a far broader scope of medical. This approach will assist when conflicts between the Regulation and order are raised.

Recommendations

A statement is included in the Regulation that informs mine operators and employers of mine workers that they must comply with Order 41 as well as the provisions of the Regulation.

Part 9 Licenced activities (page 128)

Should include provision for external accreditation by NATA or other recognised agency.
Should have provision for independence from operation.

Purpose of change: Note refers only to sampling and analysis of diesel engine exhaust and airborne dust. Licence eligibility and conditions lack sufficient rigour to maintain standards in high risk health area. Training in safe working methods is not the same as having those working methods assessed and approved by an external agency. There is also a strong argument that these high risk health standards should be monitored by persons independent of the operation to maintain integrity of results. Experience overseas has not been good where this has been performed by company employed or aligned persons.

Schedule 1 Principal mining hazard management plans—additional matters to be considered

5. Air quality, dust and other airborne contaminants (p148)

Should refer specifically to dpm (diesel particulate matter).

Should include **5(e)** and MDG, code or standard which may apply.

Purpose of change: To make it obvious that air quality control measures must cater for diesel particulate matter, a known human carcinogen.

Schedule 2 Principal control plans – matters to be addressed

1. Health control plan (p151)

Should include a specific reference in (a) to dpm (diesel particulate matter).

Purpose of change: To make it obvious that a health control plan must cater for diesel particulate matter, a known human carcinogen.

Schedule 6 Sampling and analysis of airborne dust

Part 1 Preliminary

1. Definitions (page 172)

Remove respirable dust containing quartz from definitions. Include definition for respirable quartz as exists in current Gazette Notice (means the quartz in respirable dust).

Purpose of change: The current 2007 Gazette Notice contains some historic artefacts which need to be revised to match current practices.

The new section relating to non-operational activities in longwall and continuous miner areas is because results have shown that higher than normal dust levels are observed when ventilation is disrupted and equipment is relocated.

Part 2 Underground coal mines - sampling

3. Longwall mining area (page 173)

3(2) change to: Samples of respirable dust are to be taken at least once every six (6) months.

Add 3(2)(a) Samples are to be analysed for gravimetric content and at least 20% will be analysed for respirable quartz.

Note similar change required in CI 4 Continuous Miner operating area.

Add new clause requiring respirable and inhalable sample from non-operational activities in longwall and continuous miner areas at least once each 12 months.

5. Area where cement products being applied (page 174)

Add 5(3): Samples of respirable dust are to be taken at least once in every 6 months for cement products that contain more than 1% crystalline silica.

Notes 1 and 5 from Gazette are not included. Should be provision for resample of failed results and also notification to CICM/ICI of second failure. Should be provision “where difficult, dusty or unusual circumstances occur then the nominated operator is obliged to implement more rigorous sampling arrangements suitable to the circumstances”.

Schedule 8 Information to be included in notification of mining incident

1. Person injured (page 178)

1(4) This would be great particularly as some assistance for those claims where we are attempting to establish primary nature of business for employer in industry tests at present.

3. Consequences of incident (page 179)

3(1)(c) I thought within the draft mining Regulation it's more specific around "even if the one day absence is a part day" i.e. even if they leave for part of a day to have treatment etc...

3(1)(d) This point and the medical treatment point below I think are important statements around notification, so even in the event the worker's "self-managing" injuries, if there is any change in the workers normal duties or any treatment following an incident a notification should be given.

Schedule 9 Information to be included in mine quarterly report

9. Number of lost time injuries (page 180)

Again, as above (Schedule 8, clause 3(1)(c)) lost time incident includes part days after date of incident.

Discussion Paper

Some observations concerning the proposed fitness for work section of the regulation

What are stakeholders' views on the inclusion of NCDIs 26.20 to 26.22 in the draft WHS (Mines) Regulation?

It seems reasonable that a fall-back position is established in the event that agreement cannot be reached between the employer and employees. Notwithstanding recent decisions regarding oral fluid testing, CS Health continue to have concerns around the limitations of oral fluid testing which have been confirmed by recent decisions including those of NATA to completely review the Australian Standard for Oral Fluid testing, which is referred to in the Discussion Paper. The changes from that review may alter the way onsite drug screening is conducted and CS Health believe that until that time, urine drug screening is the most reliable method and should be the one adopted.

In regard to point C, which states the following: "Oral fluid laboratory confirmation as per AS 4760-2006 - If the onsite initial test is positive and the result is disputed and/or a confirmation test is requested by the individual or is otherwise required." It is our view that any onsite non-negative drug test should be forwarded for confirmation testing, regardless of whether the individual requests this or if it is disputed.