

INQUIRY INTO THE HAZELWOOD COAL MINE FIRE

Overview

Community Over Mining is a Gippsland community action group advocating for mining reform to protect the basic rights of landowners and communities for their well-being and future prosperity.

Our major issues of concern are:

- Poor regulatory frameworks and ability to ensure mining industry compliance and enforcement of breaches
- Health implications from breaches of licence conditions
- Ambiguous and ineffective legislation

The emphasis of this submission will be on the person's right to clean air and clean water and the ongoing lack of integrity from government and industry to manage risks associated with mining infrastructure to prevent economic cost burdens for the taxpayer

Implemented the recommendations arising from reviews of previous events

Fire to the mine site was assessed as a foreseeable high-risk by the CFA with a bushfire mitigation plan created in 2012.

If this CFA mitigation plan was given to the mine operators they clearly did not implement measures

- for fire prevention; and
- to promptly react to fire threat to ensure containment

If the mine operators had considered this report and adequately evaluated the entire mine site and its surroundings to their fire preparedness the lack of firefighting equipment and rehabilitation in the unused section should have been noted to address fire risk in the community.

Irrespective of the licence conditions, the notification of a foreseeable risk of fire in a bush prone fire area, the licensee still has an obligation to ensure adequate measures are in place to protect mine workers and that of 'other person' particularly given the northern batter is so close to residential areas.

GDF SUEZ, clearly, did not manage the mine adequately or effectively and had a duty of care to the health and safety of their workers and the surrounding community, in particular, Morwell.

As a supplier of power to the state of Victoria, the licensee has a contractual agreement with the Government to supply the state with electricity upon agreed terms.

As such and aside from the licensee conditions, the owners of Hazelwood Coal Mine (MIN 5004) have an assumed commitment to uphold the principles of proper management for all mine infrastructures whilst safeguarding the health and safety for all mine workers to guarantee agreed delivery of electricity to the state.

Any forms of regulation are a curse for it interferes with market forces. Industry set the standards based on economic contribution with Government being the lap dog by its inaction.

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The adequacy and effectiveness of the application and administration of relevant regulatory regimes in relation to the risk of, and response to, fire at the Hazelwood Coal Mine.

Consistently poor government regulatory monitoring of industry by DSDBI (Department of State Development and Business Innovation which was previously Department of Primary Industry) is placing communities in Latrobe Valley in danger.

To further identify why regulatory monitoring is poor is perceived by the community to be:

- a) a conflict of interest with DSDBI as the regulator, monitor and promoter of the resource industry to ensure compliance and breaches are enforced.
- b) a complete lack of understanding and comprehension as to the enormity of what DSDBI's lack of oversight can cause.
- c) a lack of integrity by monitoring agencies Environment Protection Agency (EPA) & WorkSafe Victoria to protect the community rather than protect industry.
- d) poorly resourced departments impacting on their ability to monitor for compliance to ensure the risks can be mitigated.
- e) Mismanagement and failure to address identified concerns noted in Tim Sullivan's 2008 Mining Warden Report; and finally
- f) the Government's inability to accept that there is, in fact, a problem with their management of the resource industry.

As government is the regulator and sets the licence conditions to ensure the licensee is compliant for all work and operational plans, ultimately, the responsibility lies with government that the mine operators were not prepared for a fire nor had the equipment to contain a fire.

As the mine site was assessed as a foreseeable high-risk by the CFA with a bushfire mitigation plan created in 2012, the questions need to be asked:

- Was this CFA mitigation plan given to DSDBI as regulator to ensure an interdepartmental approach to address fire risk in the community
- Of the regulator in setting conditions, why was not the work plan revisited and updated to ensure the full evaluation of the entire site as to the mine owners preparation and capacity-
 - for fire prevention; and
 - to promptly react to fire threat to ensure containment

This should be a warning that if regulation is not tight, industry will take advantage of it.

If the licence conditions are too limited and not clearly defined in terms and timeframes for work plans then a grey area is created on what a licensee 'must do and when' as opposed to what the licensee 'should do at their convenience'.

If the inquiry deems that the work plans were open to different interpretations, the licensee still has an obligation and duty of care to ensure adequate measures are in place to protect mine workers and that of 'other person' particularly given the northern batter is so close to residential areas.

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The adequacy and effectiveness of the response to the Hazelwood Coal Mine Fire by:

Other relevant government agencies

Our communities in Gippsland have a right to clean air and clean water.

Currently, EPA State Protocols for monitoring of air toxics and pollutants are way too weak in regards to where the monitors are placed. They are positioned for average exposure for an average reading. So, by definition, those that are closest to the source and most impacted are the least protected which is in contradiction to the whole basis of determining that PM_{2.5} is bad for you. Therefore, actual risk is in context to what - controlled low level management over ethical and moral obligation to those most vulnerable?

EPA undertakes monitoring at long term monitoring stations and in regional centres as part of fulfilling our obligations under the NEPM(AAQ) and to determine the trends of air quality of time. The NEPM AAQ reporting is designed to report on representative general air quality and not for localised impacted areas. (EPA Victoria submission to Senate inquiry into the impacts on health of air quality in Australia)

Consequently, is it right that those communities who are most impacted by industry air toxics should receive no real monitoring to safeguard and prioritise public health and wellbeing.

Here, in Morwell the monitors have never been positioned where the most vulnerable are impacted so no true readings can accurately determine the extent of real exposure and to the health impacts. It took well over a week to get more PM₁₀ monitors in place including PM_{2.5} monitors in the area most impacted. The usual PM_{2.5} monitor is positioned in Traralgon, the next regional town on from Morwell. PM_{2.5} has no safe level but nothing is enforceable because no actual clear guidelines exist.

Under the Environment Protection Act 1987, GDF SUEZ could be liable for pollution to the environment due to breaches with discharge, emissions and deposits from the coal mine. However, because the EPA had inadequate monitoring, did not respond quickly enough with testing of sticky ash and substance deposits, the actual evidential proof to prove mine owner to be liable as to the severity of the air toxics is greatly diminished.

This means that EPA, the supposed pre-eminent authority to assess pollution and to their impacts, has greatly undermined their own ability to:

- make correct and appropriate public warnings to protect human health, and;
- determine breaches by mine owner and to their severity.

Informing the affected communities of the Hazelwood Coal Mine Fire and about its known effects and risks

This incident has come as something unexpected to the Government, which only proves they are not thinking through their risk management assessments.

An interdepartmental risk management plan in the likely event that a major contamination occurs was clearly absent. To attend the public meeting at Kernot Hall on Tuesday the 18th of February was a disgrace to see our State Government representatives and agencies clearly making decisions on the run with no one agency wanting or capable of taking the lead role and issue clear and concise directives that matched the severity of the situation.

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At least one week had passed before affected residents started to receive some advice albeit not clear for -

- appropriate dust masks
- cleaning ash build-up
- safety of drinking tank water
- safety of eating garden vegetables
- pet care
- using air conditioners

Medical advice about health risks was extremely poor with Department of Human Services (DHS) consistently stating no long term health affects yet had no relevant data to compare to or back up their statements.

It was very evident that DHS was reluctant to admit risk to vulnerable persons in the first two weeks but eventually had to due to the length of exposure to air toxics. DHS should have used the precautionary principle in the first week to protect those most vulnerable from contaminate exposure. However, they neglectfully ignored the potential health risks to pregnant women, children, elderly and other at risk persons and chose not to prioritise protection of the community rather continue to state the mantra “we continue to monitor”. It was clearly a deliberate move by the State Government to distance them from any form of responsibility because to evacuate or even recommend the precautionary principle would admit that the community was exposed to air pollution. The government chose politics and potential for liability over human health. So, whose role was it to protect and prioritise the health and wellbeing of the community because no one took the lead role?

On Saturday 15th February, in an unprecedented move, EPA interrupted ABC Gippsland radio to issue health warnings to people living in Morwell North.

It was called a Watch and Act, and they recommended staying inside with doors, windows and vents closed, and air con switched off. They later issued a new alert that Carbon monoxide levels had dropped and that people should reopen windows etc.

Apparently, social media went ballistic on that comment with people very concerned, and not happy to be told to open their windows while still in conditions of appalling thick black smoke which persisted in some areas and was confirmed by the EPA website which said visibility was still bad.

Responding to those effects on, and risks to, the affected communities.

Why did community have to request increased medical resources to provide advice and treatment to a range of symptoms caused by exposure to air toxics?

Of great concern, the issue of liability for contaminate pollution to the community has never been seriously addressed in any licencing conditions and for that community to seek reparation. Mostly, pollution abatement notices and fines are the norm.

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All Governments have an obligatory duty to ensure that no landowner, ratepayer or taxpayer incurs any form of cost burden on the end-of-mine-life in the event that a licence holder fails to fulfil their obligation to rehabilitate the regulated land.

With the Hazelwood Mine fire-

- The community has incurred a cost burden.
- The Local Council has incurred a cost burden which will consequently impact on ratepayer services.
- State Government has incurred the most significant cost burden which will be passed onto taxpayers.

Subsequently, the community bears the ongoing economic, health and social impacts of government inaction and mine owner negligence.

Any other matter reasonably incidental to the matters specified in paragraphs 1 to 4.

As part of the Princess Hwy freeway landslip there was a huge focus on the northern batter of the coal mine and the unused areas needing rehabilitation. Noted on DSDBI website

<http://www.energyandresources.vic.gov.au/earth-resources/policy-and-legislation/regulatory-reviews/morwell-land-movement/morwell-land-movement-public-information-session-aug-2011>

Future On-Going Works – Mine (the next months/years ?!)

Continue with Monitoring Activities and Analysis

Review of Mine Operational Activities

- Aquifer depressurisation
- Rehabilitation of northern batters
- Surface Drainage of northern batters
- HARA operations
- Buttressing – is it feasible?
- Horizontal drains maintenance?

Implement Long Term Ground Stability Works

Both mine operator and government were attending to constant remedial works so it is hard to see the lack of action by both operators and government as anything less than negligent

Given the recent history of groundwater build-up, landslips, sinkholes in the Wallis St area, cracks appearing on the northern batter and hot spots ongoing, it is appropriate that this inquiry revisits the structural integrity of the northern batter and to the impacts on Morwell South residents and landowners.

In 2012, the State Government refused to publicly release the ***Morwell Land Movement Survey Report***.

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I now request that this inquiry make sure that report is released to the public as currently some Wallis St residents are concerned about sinkholes forming over the winter season, particularly, with any flooding events. They have a right to know what the details of this report are and the government have a duty to be transparent.

In regards to the ineffective monitoring, it is essential that improved and proper monitoring by EPA for air toxics and substance deposits be always in place which would go some ways to give the community reassurance and trust that their health is prioritised over that of industry.

Aside from this inquiry, I bring to your attention the recent 2013 Senate Inquiry and to the [Impacts on Health of Air Quality in Australia](#) . With the [terms of reference](#) and recommendations being extremely broad and slow to even commence change on a Federal level it is hoped that this inquiry can recommend mining reform and that **a National Environmental Protection Authority to regulate and improve air quality** specific to the resource industry be initiated.

In light of this health disaster in Morwell and surrounding communities and to its Australia wide interest, those recommendations need to be revisited as to their relevant effectiveness to achieve the desired outcome which should be the communities right to clean air and clean water. This would protect those communities residing near significant resource infrastructure as our current State EPA protocols and monitoring are weak, not enforceable and unsatisfactory for the resource industry.

The following information is off the Victorian EPA submission to the Senate Inquiry into the impacts on Health of Air Quality in Australia

*Emissions of particles from industry are expected to grow slightly through long term economic growth. Most particles from industry are emitted from tall stacks or away from residential areas, however some emissions occur close to where people live. Some of these emissions are from small to medium sized industries **that are too numerous to manage through EPA licenses.***

NEPM (Air Toxics) - Air pollutants that are less common but very toxic to human health are commonly referred to as air toxics, and include, benzene, formaldehyde, polycyclic aromatic hydrocarbons (PAHs) and heavy metals.

The National Environment Protection (Air Toxics) Measure (Air Toxics NEPM) was developed (in 2004) to provide a nationally consistent framework for the monitoring and reporting of air toxics and to provide information that will enable the establishment of national air quality standards in the future following a review of the NEPM. The NEPM also enables jurisdictions to assess air quality in a consistent manner.

*The Air Toxics NEPM has monitoring investigation levels for each of the air toxics: benzene, formaldehyde, benzo(a)pyrene as a marker for polycyclic aromatic hydrocarbons (PAHs), toluene and xylenes. EPA has measured air toxics at various sites since the commencement of the Air Toxics NEPM. Since 2003, **air toxics monitoring has not measured levels exceeding the monitoring investigation levels (air quality objectives) in the NEPM.***

Delivery of the National Plan for Clean Air (NPCA) is a key component of the review of Victoria's air quality standards and will provide an economic analysis of relevant interventions and a methodology for continuous improvement (through the exposure reduction framework).

The NPCA, will:

- *recommend revised air quality standards for common pollutants that will aim to ensure individuals will be protected to a uniform minimum standard,*
- *include regulatory and non-regulatory proposals supported by economic analysis and*
- *include an exposure reduction approach which will take into account health effects at low levels. This will shift the emphasis of policy responses from reducing pollution to reducing the risk of harm from pollution. It will also shift the emphasis from providing an absolute level of protection to also finding the economically optimum point for intervention.*

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The exposure reduction framework will provide efficiency outcomes by maximising health benefits across a population.

Delivery of the NPCA is a key component of the review of Victoria's air quality standards and will provide an economic analysis of relevant interventions and a methodology for continuous improvement (through the exposure reduction framework).

Points relevant from the above EPA submission

- EPA have stated that with industry growth emissions will be **too numerous to manage through EPA licenses.**
- EPA air toxics monitoring has not measured levels exceeding the monitoring investigation levels (air quality objectives) in the NEPM **because the monitors are in the average position to determine the average exposure**
- Economic contribution by industry sets inconsistent standards and responses under regulatory monitoring by EPA rather than a standard framework of national protocols

Establishing a national framework for both monitoring of air quality and responding to critical incidents is now appropriate and morally ethical given the intrusion of resource mining into rural and regional communities Australia wide. With the potential for more serious events to impact our communities' in Gippsland, consistent and binding measures would ensure management within the EPA agency and public health regulator is proactive and more effective.

Conclusion

The biggest flaw for the Hazelwood Mine fire is that licence conditions on the mine processes, maintenance and rehabilitation were too few, too vague and not revisited enough to ensure precautions were appropriate for the age, type, and changed condition of its mining operation.

Compliance is premised only on a very narrow range of issues with environment listed but not enacted upon. There are too many variables that are unknown and this current process will not provide comfort for the community or, indeed, trust in the capability of both Government and Industry to manage our Latrobe Valley coal mines because Government are too pro-industry to be effective, EPA lack integrity and are too ineffective to protect community health and DHS are just a puppet of Government perpetuating the dissemination of public information at Governments bidding.

There have been significant mining incidents in Gippsland with reports and reviews following each yet we find ourselves back each time asking the same questions about the same issues and implementing what?

I ask this inquiry the most pertinent of questions, 'what are you going to recommend that will make any difference to ensure these industries and our governments do right by the people and for the people?'