



Royal Commission on the Pike River Coal Mine Tragedy
Te Komihana a te Karauna mōte Parekura Ana Waro o te Awa o Pike

UNDER

THE COMMISSIONS OF INQUIRY ACT 1908

IN THE MATTER OF

**THE ROYAL COMMISSION ON THE PIKE RIVER COAL
MINE TRAGEDY**

Before: The Honourable Justice G K Panckhurst
Judge of the High Court of New Zealand
Commissioner D R Henry
Commissioner S L Bell
Commissioner for Mine Safety and Health, Queensland

Appearances: K Beaton, S Mount and J Wilding as Counsel Assisting
S Moore SC, K Anderson and K Lummis for the New Zealand Police
N Davidson QC, R Raymond and J Mills for the Families of the Deceased
S Shortall, D MacKenzie, R Schmidt-McCleave and P Radich for certain
managers, directors and officers of Pike River Coal Limited (in
receivership)
C Stevens and A Holloway for Solid Energy New Zealand
K McDonald QC, C Mander, A Williams and A Boadita-Cormican for the
Department of Labour, Department of Conservation, Ministry of Economic
Development and Ministry for the Environment
G Nicholson and S Stead for McConnell Dowell Constructors
G Gallaway, J Forsey and E Whiteside for NZ Mines Rescue Service
N Hampton QC and R Anderson for Amalgamated Engineering, Printing
and Manufacturing Union Inc
J Haigh QC and B Smith for Douglas White
J Rapley for Neville Rockhouse

**TRANSCRIPT OF PHASE THREE HEARING
HELD ON 14 NOVEMBER 2011 AT GREYMOUTH**

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COMMISSION RESUMES ON MONDAY 14 NOVEMBER 2011 AT 11.32 AM

MR MOUNT OPENS

THE COMMISSION:

Thank you Mr Mount. That means we are in a position to proceed with the evidence of Mr Michael Firmin, and I take it Ms MacDonald that you're in charge of that?

THE COMMISSION:

Can you just indicate, how is it proposed to deal with his evidence from your perspective?

MS MACDONALD:

Sir, very briefly I'm simply proposing if it suits the Commission, to introduce Mr Firmin, refer to his written material, his written statement. He doesn't propose to read that unless the Commission wants him to. I have discussed those matters with Mr Wilding and then as I understand it, Mr Wilding will ask his questions and the matter will flow from there. I won't be very long myself with Mr Firmin. He's – I'm certainly happy for him to read his brief if that would assist the Commission, but I had understood that wasn't necessary.

THE COMMISSION:

Well, the Commission does not require that it be read certainly. There are a number of applications already been filed in relation to cross-examination and there may be additional oral ones, I do not know, but I'm just wondering whether the appropriate course – Mr Wilding, you're to cross-examine Mr Firmin from the Commission's perspective, aren't you?

MR WILDING:

Yes, I am sir.

THE COMMISSION:

I think we may adopt the course of calling for any additional oral applications after Mr Wilding has cross-examined, unless any counsel have any difficulty with that, and there also, I have a note of four counsel who filed a written application already but would likewise come to those after cross-examination by counsel assisting?

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MS MACDONALD CALLS:**MICHAEL KERRY FIRMIN (SWORN)**

- Q. Mr Firmin, can you confirm that your full name is Michael Kerry Firmin?
- A. Yes.
- Q. And you are currently employed I think as a health and safety inspector with the southern region of the Labour Group, the Department of Labour?
- A. Yes.
- Q. And you're from Dunedin, aren't you?
- A. Yes.
- Q. You've previously provided, I think four statements of evidence to the Commission and those previous or prior statements fully set out your experience, your qualifications, don't they?
- A. Yes.
- Q. The statement that you've filed for this phase, we'll just get you to confirm. Have you got a copy of that in front of you?
- A. Yes I have.
- Q. And that's your statement dated the 19th of the 10th 2011?
- A. Yes.
- Q. Now, I don't propose to ask you any further questions. Can I just get you to confirm what material you are – you have there with you? You've got a copy of your statement?
- A. Just a copy of the statement.
- Q. Yes, anything else?
- A. And I put all my inspector's notes, the contemporaneous notes together in one file all together chronologically, so if someone asks me a question, I can go through by date and pick out and answer them, it might help me.
- Q. And I don't anticipate there's any difficulty with referring to those if you need to and as with your previous evidence Mr Firmin, if you need a document in the course of any of the questioning, can you just indicate that and we'll endeavour to find it and have it displayed for you?
- A. Yes.

CROSS-EXAMINATION: MR WILDING

- Q. Mr Firmin, thank you for returning. If I could just turn first to the restructuring that's occurred within the department since the Pike River tragedy, am I right in understanding that a new senior inspector, high hazards was appointed this year, Mr Kay?
- A. He has a temporary role as a senior advisor rather than an inspector. I think it was to facilitate part of that changeover between the time that the high hazard unit would be put in place. They've advertised and they're hoping to get the people that will be part of the high hazard unit.
- Q. And are you able to confirm that his appointment was on the 23rd of May this year?
- A. I'm not really, no.
- Q. Does he have experience in underground coalmining?
- A. He was the health and safety manager with Solid Energy for quite a few years. I'm not really familiar with his CV, but he would've spent some time underground as a health and safety manager with Solid Energy.
- Q. What's the relationship between the underground coalmine inspectors and him?
- A. He has been sort of the facilitator in the sense that setting up this high hazard unit, he was the person that advertised, well put the job description together for the advertisement for the health and safety inspector that we've just managed to employ and then since then, he's been doing work with audits that the Australian auditors did that came over and I think he's had some advisory roles and official information requests, that sort of work, mainly between head office and some work with the inspectors.
- Q. He's based in Wellington?
- A. He lives in Christchurch and he bases himself probably equally between Christchurch and Wellington.
- Q. To whom do you report?
- A. Since the high hazard unit has been set up, I now report to Brett Murray.
- Q. Does Mr Murray have any expertise in underground coalmining?
- A. No.

- Q. Is he an inspector?
- A. No, he's not, no he's not an inspector.
- Q. Do you have contact with Mr Kay?
- A. Yes. John Kay, and I have been, especially with the audits, we have been, I spent about a week in the West Coast, and John would phone me quite regularly. Different issues come up, I look to him for advice. He's been the hands-on if you like, senior advisor, as Brett is a manager of quite a few different units.
- Q. And is there now an additional underground coalmine inspector?
- A. Yes. We have somebody who is going to go through his warrant. He hasn't got a letter of appointment yet, but we do have, yes, an additional coalmines person employed, good experience, background, that's going to come and inspect us soon.
- Q. Who's that?
- A. Brian Harrington.
- Q. And has he started?
- A. Yes, he must've started about two months ago, something like that.
- Q. And am I right that the training to be an inspector takes about a year?
- A. Yes, it can take a year.
- Q. So he won't receive a certificate of appointment probably until sometime next year?
- A. Probably, yeah, they were talking about making it a little bit, speeding up the process. He has been doing some work associated with the mines on the West Coast, yeah, in the meantime.
- Q. It's only once he's got that certificate of appointment that he can use the powers available to inspectors under the Health and Safety in Employment Act?
- A. That's correct, yes.
- Q. And he's inspecting mines at the moment?
- A. No, he wouldn't be inspecting mines, but he has been doing some work in relation to advice – well, he's been to a couple of places where, I think risk assessments were conducted and he's had some input into that. We went

together one time, for a week's inspections together and he helped me and I helped - we worked together to do those inspections.

Q. Are there any regions for which he's responsible?

A. No.

Q. You'll recall that we talked about your workload in the Phase One hearings?

A. Yes.

Q. Has that changed since then?

A. It's made a little bit easier with Brian, but no, the workload has, well, has lightened in the sense that I'm not doing any quarries, I'm to concentrate on mines and then with the Phase Three, well, the Royal Commission work that's taking quite a bit of time, but no, my focus now is purely on mines and tunnels.

Q. Does that mean you're still the sole inspector inspecting underground coalmines in New Zealand?

A. Yes.

Q. Are you able to tell us the timeframes when you've been the sole inspector inspecting underground coalmines?

A. We did prepare something but I wasn't – I can give you that information. When we talk about sole inspector, sometimes there was a mines inspector, metalliferous mines inspector, so sometimes there was two inspectors, but there is a difference between coalmines and metalliferous.

Q. Mr Firmin, we also talked about the frequency of visits to underground coalmines during the Phase One hearing and at that stage, the plan was for you to be able to visit underground coalmines once every three months. Is that still the case?

A. Tell you the truth, I haven't been monitoring it. I've been doing it as often as I can. It would be something like three months.

Q. I take it you'll have records from which you'll be able to identify that –

A. Yes, yes, I could supply that, yeah.

Q. Since the Phase One hearing, has any document been developed to help you as an inspector identify the particular sites, so the particular underground coalmines that have the greatest number of risk assessment and hazards?

A. No, I haven't done that.

1210

- Q. I take it then that no documents been developed to help you prioritise which underground coal mines are most deserving of frequent inspection?
- A. No, I think we did have that you know, the original document, you might have seen in Phase One about risk, the high hazard sites but generally all coal mines fitted into one of those high hazard sites, so they're all given equal rating.
- Q. That's right, this is the one page document.
- A. The one page document, yes.
- Q. Am I right in understanding that since Pike River an electrical inspector was appointed?
- A. That's true, yes.
- Q. Does that person have expertise in underground coal mines?
- A. No.
- Q. Has that person visited any underground coal mines?
- A. Yes, he came with us on a visit to Huntly East Mine.
- Q. What did that visit involve?
- A. John Kay and I were going to do the follow up on the audit that the Australian auditors that came over after Pike River and so we, I mentioned to Jerry Ryan that if he wanted to accompany us he could go with an electrical person. I think I gave him the supervisor and he spent three or four or five hours underground with a supervisor, but he came on site with us and left with us.
- Q. Jerry Ryan being the new electrical inspector?
- A. Yes.
- Q. Has he attended inspections at any other coal mine that you know of?
- A. No, he hasn't attended any other inspections.
- Q. Do you know whether there's any training plan within the Department to train him in the hazards and risks associated with electrical systems in underground coal mines?
- A. No.
- Q. Is there a mechanical inspector in respect of underground coal mines?
- A. No. I believe Brian Harrington, one of the jobs, it was to try and look for some people that we might be able to use as contacts. That was one of the jobs he's

been doing electrically and mechanical people that might be able to get contracted in for advice, but he was just looking for people.

Q. But you're not aware of that having been successful yet?

A. No.

Q. During Phase One we heard evidence about potential development of guidance or codes for the underground coal mine industry. Do you know whether the Department has progressed the development of any guidance or codes for the underground coal mine industry since Phase One?

A. The small mines, I think it was a health and safety management plan that people could take and use as a guide for their own health and safety management. That final draft was sent out maybe two weeks ago. I think it was at the stage where they were looking to release it.

Q. Did you have involvement in that?

A. Limited involvement, I think they obtained permission from the New South Wales Government to use the document that they'd produced, they changed it slightly. I was given a chance to comment on that maybe three or four months ago and then this final draft.

Q. You may remember that we talked in Phase One about the input that the coal mines' inspectors had in relation to policy development and is my recollection right that the input that you had had was quite limited?

A. Policy in terms of?

Q. Developing the policy for example in relation to the small mine review.

A. Yes, it was quite limited, yes.

Q. Since Phase One, has there been any discussion with you about the coal mines' inspectors having a greater role in policy development?

A. No, no discussion.

1215

Q. Are there any other changes of significance since Phase One that we haven't covered?

A. This high hazard unit that, that's been formed, do you want me to speak a wee bit about that?

Q. If you could describe that?

- A. Okay. That started I think on the 1st of September so now I report to Brett Murray and we've advertised for a new inspector, who we've got and we've just advertised again for a chief inspector and I believe another inspector. So those interviews I think for the chief inspector are going to start fairly soon. The high hazard unit has got funding. It includes the patrolling of geothermal inspectors, I'm not sure they've advertised for them yet. John Kay has been a wee bit involved in that as well. So the set up, I'm getting funding in the sense that I now have to, although I can work out of Dunedin, I have to, my salary et cetera has been transferred and all the expenses with the administration and the office, that's been transferred to this high hazard unit. It, it, we're going to have our first meeting next week.
- Q. So ultimately there will be three inspectors at a grass roots level, in respect of underground coalmines?
- A. I believe so, the three inspectors and a chief inspector reporting to the general manager and I think a policy analyst and admin person, maybe one other person.
- Q. During Phase One we talked about difficulties that unit had accessing training. Has the department talked with you about any changes in relation to your ability to receive training since Phase One?
- A. When the Australian auditors came over they suggested a couple of courses and John Kay was looking into those courses and when we could do them, but of course at the moment there's was just not enough of us to go and do some training.
- Q. Can I just turn to a different topic please being the review of the Department of Labour's interactions with Pike River Coal Limited by Professor Gunningham and Dr Neal dated 4 July. Ms Basher, if we could please have DOL0100010001/89. Perhaps if we could have paragraph 306 increased in size. You were interviewed for the purposes of this report?
- A. Yes.
- Q. How many times were you interviewed?
- A. Just the once.
- Q. How long was that interview?
- A. Between two and three hours, two and a half hours, something like that I think.

Q. Did you see a draft copy of this document at any stage?

A. Yes, I was shown it at least once, a couple of drafts perhaps.

Q. And did you make any comment or submissions in relation to that draft?

A. Yeah, there was a few comments that I made.

1220

Q. I just want to read you part of paragraph 306, the fourth line down and it says of the approach taken by inspectors, "Their starting point was certainly not an audit or other assessment of the company's health and safety management systems. They did not for example, concern themselves specifically with whether the mine's occupational health and safety management system meant legal requirements complied with recognised practices or were subject to periodic review." Do you agree with that comment?

A. We didn't conduct formal audits which would pick up those sorts of issues, however, well, speaking for myself I did inspections underground and at times you may identify a problem with the health and safety management system but no, I certainly didn't do any formal auditing.

Q. Am I right in inferring from your Phase One evidence and also this review to an extent that for you to be assured that an underground coalmine and its systems, for example, ventilation, methane drainage, strata management, complied with the requirements of the health and safety legislation would've involved far more inspection time than you had available to you?

A. Yes, I would agree with that. Because of the limited amount of time we had on site, I felt that there was a need to go underground, that is in some ways the best check to see whether the systems are working properly, rather than perhaps do the audit outside, only to miss the fact that there could be some real problems underground, so I have concentrated on the inspection.

Q. And to ensure that those systems complied with the health and safety legislation would also have involved a broader range of expertise than that which you had available to you, for example, ventilation engineers, methane drainage engineers, geotechnical experts?

A. Yes, it would've been great to have some people like that or access to them.

Q. Have you had any personal experience in hydromining?

A. No, just the, just the experience I get when I do an inspection and have a look at the lines.

Q. Have you been responsible for inspecting Spring Creek?

A. Yes, at various times.

Q. And that's a hydromining operation?

A. Yes.

Q. Would it be correct to infer then that the Department doesn't require that an underground coalmine inspector has specialist expertise of the type of mining that's going on in a mine that he's inspecting? For example, didn't require you to have hydromining expertise, even though you were inspecting Spring Creek?

A. That's true, yes.

Q. Just turning to audit training, Dr Neal and Professor Gunningham also say at paragraphs 411 and 412, comments to the effect that the underground coalmine inspectors did not feel confident about systems analysis and that for them to take audit training, an audit tool would be required. I take it the Department hasn't provided you with training in auditing a mine system?

A. No, that was one of the things that the – Brett Garland had suggested, that an auditing course and John Kay was looking at that and I guess it would depend when we can be available to do that course.

Q. That hasn't been finalised yet?

A. No, I haven't had anything.

1225

Q. Prior to Pike River had there been any discussion within the Department of the coalmine inspectors learning auditing?

A. No, generally not something that anybody in the department, to my knowledge, does.

Q. No. And is it also correct from Professor Gunningham and Dr Neal's comments that you didn't have an audit tool.

A. Yes.

Q. Was there ever any discussion prior to Pike River about the department getting an audit tool, or audit system for the inspectors to use?

- A. No, I think we had brought that up at a mining steering group meeting that we would like to do some audits, but nothing ever came of it.
- Q. Can you recall roughly what year that would've been?
- A. I remember Johan and Kevin and I talking about it, so it would've been in the last two years. Johan was employed the last two years.
- Q. Did that conversation go as far as a request for some sort of an audit tool?
- A. I'm not sure. I think it was just at a mining steering group meeting and we talked about it amongst ourselves, how we'd like to do these, but we always sort of got waylaid by having to do inspections. That was the, you know, part of the action plan. It was never written into the – I guess if Johan had been our manager, then it could get written into the action plan. We did have some input into the action plan, but it was never something that seemed to get put in there.
- Q. Ms Basher, I wonder if we could just have that same summation reference, but this time summation page 137? This is part of the Professor Gunningham and Dr Neal document which sets out the people who were interviewed, if you could just look at those names in those three columns, at the top. Could you please confirm that of those 20 people only three of them, Mr Louw, Mr Rockhouse and Mr Slonker were from Pike River Coal Limited?
- A. Yes, I think Nigel Slonker would, at that stage, probably didn't work for – I'm not sure if he was still, he worked there for a year or so, yeah.
- Q. And all of the rest of the people there are from the Department of Labour?
- A. Yes.
- Q. The only two underground coal mine inspectors there are you and Mr Poynter?
- A. Yes.
- Q. During the time you inspected Pike River, is it right that contractors were undertaking a significant amount of the work?
- A. Yes. I think what you say, contractors, there was basically just the one contractor when I was there.
- Q. There was McConnell Dowell?
- A. McConnell Dowell, yeah.
- Q. Was Valley Longwall there at that stage?
- A. No.

Q. Ferguson Brothers?

A. I don't think so. They could've been outside doing some work, I'm not too familiar with the contractors, but the only ones underground I think were McConnell Dowell.

Q. It's implicit in what you've identified there that it doesn't appear that Professor Gunningham and Professor Neal spoke to representatives of any of the contract companies?

A. Certainly not McConnell Dowell, who were the major contractor there.

1230

Q. I just want to turn to a different topic which is lead and lag indicators. Do you know what I mean by lead and lag indicators?

A. Yes.

Q. Are you able just to describe for us what a lag indicator is?

A. That would be something like an accident rate, the various types, fatality rate, medical treatment, things that have already occurred.

Q. And what would be some examples of some lead indicators?

A. They would be the number of times that, well the number of, if you have a system, the number of times that system has been used within the last week to identify issues, hazards.

Q. Has the department given you training in relation to lead and lag indicators and their use?

A. Not specifically. I think they were mentioned in that G3 course that I did.

Q. Could you just remind us of the G3 course?

A. Yeah. I did the G3 course probably a year or 18 months ago.

Q. If we could have please Ms Basher, CAC0118/71. Now this is a page from the Queensland Mines and Quarry Safety Performance and Health Report 2009 to 2010 and I just want to read out a paragraph to see whether you agree with it. It's the first paragraph, "Lead indicators or positive performance indicators (PPI) are measures of pre-emptive actions or initiatives that a system preventing workplace injury and disease from occurring. This is considered a more proactive approach than the use of lag indicators such as lost time injuries which by their nature measure the event or its impact after it has already occurred." Do you agree with that comment?

A. Yes.

Q. Do you agree that the serious harm notifications which are required to be given by the department pursuant to section 25 of the Health and Safety in Employment Act are essentially a lag indicator 'cos something's already gone wrong?

A. Yes.

Q. To your knowledge has there been discussion within the department about the underground coalmine inspectors focusing on lead rather than lag indicators?

A. No, I guess you'd really need to do some sort of an audit to do that, would part of an audit process which we won't do.

Q. The focus at Pike River therefore for the purpose of inspection wouldn't have been on lead indicators?

A. Sorry, what was that question?

Q. When inspecting Pike River, the focus wouldn't have been on lead indicators?

A. No, that's right.

Q. I think in your witness statement of 25 July at paragraph 25 you refer to having attended in past a Queensland University Risk Management course. Is that correct?

A. That's that G3 course, yes.

Q. I don't think you say when that was. When was that?

A. I could get back to you but I think it was 2009, 2010 so it would've been June/July 2010.

Q. Are you able to summarise just in a paragraph what the focus of that course was?

A. The course was primarily about management, risk management so the process in terms of how you're going to lessen the risk to people underground, well lessen the risk to people in a mine environment through good safety practices. The focus was on the different ways you could do that, whether you know, right from the design all the way down through to the lag indicators and the different types of hazards et cetera that you could identify and from ergonomics to chemical, physical hazards. It was a general approach to what sort of hazards and risks are associated with the mining industry.

1235

- Q. I'd like just to take us through some of the lead indicators referred to in this Queensland Mine and Quarries document just to see whether or not they were matters that were looked at. If we can have that same summation page ending 71. See figure 7.1, "Sites in each sector with a register of key hazards on site." When you were inspecting Pike River did you check whether it had a register of key hazards?
- A. No I don't think I did. I saw plenty of – if you asked for the control in a particular hazard there would be some very good information on those hazards and controls, although I guess the risk assessments that we asked for, they all stem from hazards, but I guess the key register, no, I don't think I looked at that.
- Q. So right, you looked at discreet topics?
- A. Yes.
- Q. Rather than the overall register and range of hazards?
- A. Yes that would be right.
- Q. Did you ascertain whether any of the contractors working on site had registers of key hazards?
- A. No, I think the – I remember when I first went there were for Pike River, I asked for their hazard management plan. I'm not sure there was a key register in there and I'd never asked for it from McConnell Dowell.
- Q. Figure 7.2, "Sites in each sector where key hazards on site are identified using a formal system." Did you enquire of whether Pike River had a formal system for identifying hazards?
- A. No I didn't, didn't look for evidence of that.
- Q. Sorry?
- A. You mean in terms of an audit to go through the process of how they identified the hazards?
- Q. Well whether they had a system for systematically working through and identifying hazards?
- A. Their systems weren't audited but it was obvious that when you did the, when you asked for a specific risk assessment, there was obviously a process going on there.
- Q. You didn't delve deeper into that process though?

A. No, no.

Q. Did you check whether the contract is an accepting, that you've given evidence that there was really only one main contractor McConnell Dowell at your stage had a formal system for identifying hazards on site?

A. No I didn't check their systems.

1240

Q. If you can just turn the page to 72 please. See 7.3.1, "Coal sector sites that have undertaken formal risk assessments within the last 12 months and the number of risk assessments performed." Now am I right in understanding from the material that was filed with the Commission that you did see some formal risk assessments from Pike River Coal Limited?

A. Yes. Got to be a wee bit careful here because our Act doesn't actually ask for risk assessments. It looks for hazard management, which is slightly different. Yeah, that, in mining we, we tend to go with the Australians and talk about risk assessment.

Q. Did you ever check the number of risk assessments that had been performed for either Pike River or its contractors?

A. No, that wasn't one of the things I did.

Q. I've got a few more questions from here but just at this point, do I take it that these weren't things that the Department required you to ask for or check?

A. Yeah, that, that would be true. These are kind of like auditing tools I would imagine. That's where you'd pick up that sort of thing. There'd be nothing to stop you asking for that if you decided to do a theme inspection to say, "Well look, how many risk assessments have you done?" But I hadn't thought of doing those.

Q. We'll go to the same document ending 75 please. Figure 7.4.1, "Coal sector workers and contractors routinely involved in conducting formal risk assessments," did you ever make any enquiries about the number of workers at the Pike River site who were involved in conducting formal risk assessments?

A. No. Again, we've got to be a wee bit careful in terms of hazard management, rather than risk assessment. I guess if you'd said were we involved in conducting formal hazard management assessments, I'd still say no.

Q. There's just a few more. If we could have the same document ending 80 please? Figure 7.7.1, "Coal sector workers involved in internal audits as auditors in the last 12 months," did you ever check the extent to which the workers were involved in internal audits of the systems prior to Pike River Coal Limited or its contractors?

A. No.

Q. The same document ending 83 please? Figure 7.8, "Sites in each sector with a formal reporting system for capturing and reporting high potential incidents," did you check whether Pike River or its contractors had such a system?

A. Generally, the system you know, would rely on a hazard management tool. Sometimes you use a sheet or just reporting to your supervisor verbally. I wouldn't say I formally, formally checked this. I, you could sort of see that it's working when you talk to people and ask them questions about, "Have you identified these hazards? What have you done?" and they tell you about their systems but actually sitting down with somebody and saying, "Well, let's see how many formal systems you've got," no, I wouldn't have done that.

Q. Well, did you check whether there was a register of high potential incidents for either Pike River Coal Limited or its contractors?

A. That there is a potential?

Q. No, whether there was a schedule or register of high potential incidents for either Pike River Coal Limited or its contractors?

A. I'm not sure if I understand that question.

Q. I'll repeat it.

A. Okay.

1245

Q. Did you check whether either Pike River Coal Limited or its contractors had a schedule or register of high potential incidents?

A. The, this is the requirement to identify high risk hazards?

Q. Yes, did you check whether there was a schedule or register of?

A. I guess not, I, we were generally though, when you're going round you'd ask the questions and I said, "We've got this system in place" but I never quite saw the register.

- Q. The last two, figure 7.9 "Improvement actions resulting from investigation into high potential incidents," would it be fair to infer that you never checked whether there were improvement actions that did result from any high potential incidents?
- A. If they had a, an accident or an incident then they would be required to notify us at Department of Labour and then we would check that they had been investigated properly.
- Q. When you were an inspector was there anything that you would have regarded as a high potential incident at Pike River?
- A. In the, no, in that time I don't think we had one reportable incident under section 10 or a serious harm.
- Q. So figure 7.1.0, number of high potential incidents from your perspective there were no high potential incidents while you're inspecting Pike River?
- A. Actual incident, no, potential incidents, we looked at, as they were heading towards the fault in terms of methane but actual incidents, that caused serious harm or were reportable, no.
- Q. We might turn to the methane matter later. When you say actual incidents that cause serious harm or were reportable, is it correct to infer from that then that your focus isn't on incidents that are high potential but rather matters that are reportable under the Health and Safety Act and its regulations?
- A. Under the regulations there are incidents, reportable incidents which are no one's been hurt but they're high potential for people to be hurt. But, yeah, I wouldn't specifically go and look. Although, you know, the, some of the incidents, some of the issues that I was involved in and Kevin with, like heading towards the fault et cetera, there was potential incidences there, is that what you mean as well, when we did our walk through inspection?
- Q. Well I think it's sufficient for current purposes. Is the approach that you took to Pike River, in terms of what you looked at and didn't as we've just discussed the same approach that you take to inspecting other coalmines?
- A. Yes.
- Q. Since you have been an inspector has the department ever revised with you whether that approach that you take is appropriate?

- A. No we were given quite a lot of flexibility in a sense of the approach that we would take. We initially, when we had a senior advisor were encouraged to do some audits of the health and safety system, that's to see whether they had a hazardous indication system or emergency procedures, whether they were complying with the Act. But that finished quite early. An actual audit of the health and safety practices within a company specific to particular hazards, we didn't do those.
- Q. When you say that finished quite early, are you able to give us a rough idea of when?
- A. George had a plan, this is going back a wee bit.
- Q. This is going back over 10 years.
- A. Probably, yeah, it would've been about 10 years ago that plan would've finished, sorry, six years ago it would've finished. It would've been about 10 years after we come over.

1250

- Q. In the time that you've been an inspector, has the department ever reviewed the approach that you take to enforcement of the Health and Safety Act and its regulations?
- A. That's our performance assessment every year, they have the, what they're looking for in terms of our assessment and our approach, which is a generalised approach.
- Q. How would you describe your approach?
- A. Well in terms of how we deal with people, that's the, there's a Braithwaite triangle in terms of if we find some hazards, what we do, keeping work safe policy, that document.
- Q. Well, how would you describe the approach you took to enforcement of the legislation at Pike River?
- A. In terms of the policy that "*Keeping Work Safe*," within the department, you could use your various enforcement tools related to the attitude of the company that you were dealing with. If you had someone that was wanting to perform best practise, then you wouldn't use so much of the improvement and prohibition notices, but if you had a company that were not wanting to comply,

then you would be using more of the infringement and prohibition and prosecution tools.

Q. Right, so your approach depended on whether or not the company at the particular site was using best practise or not?

A. The approach to how you –

Q. The approach to enforcement?

A. Yeah, to enforcement, yes.

Q. So in the case of Pike River, what was the approach you used there?

A. I found in dealing with Pike River, they were at the top end of the triangle. They were willing to comply, wanting to perform, wanting to be involved with best practise.

Q. And was your approach to Pike River ever the subject of any review within the department?

A. No.

Q. Did anyone within the department ever discuss with you whether you had sufficient information upon which to determine that that type of approach should be taken with Pike River?

A. No. I suppose the fact that if you raised an issue and it was dealt with quickly, that focused my attention, but in terms of the department formally looking at whether they were a good performer, no there was no formal process.

Q. Perhaps getting back to my initial question, does the department ever review the approach which coal mine inspectors take to particular mines?

A. No.

Q. Were the notes, being your handwritten notes, and the Insite records and correspondence that you generated in relation to Pike River, ever subject to any review by anyone within the department?

A. The review, I guess you do your monthly report, so your service manager would then look at what you were doing, so there'd be some sort of control over that. If he was in any way not satisfied that your approach that you were taking to the issues that had been raised and the issues that you've recorded from your inspections, and then I guess that would go into the final review, the end of the year review, so if he looked at that performance, in relation to the peer reviews that he would've done, then he would be controlling that to see

whether you'd actually following up as the Department would require on any issues that you had notified, had – that seeing for yourself.

1255

- Q. When you talk about your monthly reports, is it fair to say that they really only contain from time to time about a paragraph or so as entry in relation to Pike River?
- A. Yes, yeah in Pike River.
- Q. They don't for example go into the detail of the approach that you took to Pike River?
- A. There's not a lot of detail there. It would basically, if you had an incident and it was a major incident then the peer review would spend quite a bit of time looking at that report but no, not the monthly report.
- Q. When you say, "Peer review," did you ever have a peer review of any of your interactions with Pike River?
- A. There was no incidences or serious notifications required, so I suppose no there wasn't. None of that would have been peer review.
- Q. And so there wouldn't have been a peer review for example of decisions not to investigate something in relation to Pike River?
- A. No, that's right yeah.
- Q. When we say, "Peer review," have you had peer reviews since say 2005?
- A. I'm not sure. Every accident has to be peer reviewed and every serious incident has to be. Every notifiable incident, complaint, every investigation has to have a peer review process.
- Q. Right so since 2005 you would've had peer reviews?
- A. Yes, since I've been with the Department of Labour.
- Q. And what would be the expertise of the person conducting those reviews?
- A. In my case the person that did the peer review would either be your team leader who would be usually a past inspector or my service manager who was a past construction – who had previously worked as a construction inspector.
- Q. So the peer reviews wouldn't be conducted by someone with expertise in underground coal mining?

A. No, but they'd have expertise in health and safety management.

COMMISSION ADJOURNS: 12.58 PM

COMMISSION RESUMES: 2.01 PM**cross-examination continues: MR WILDING**

Q. Mr Firmin, I'd just like to talk to you about the compliance and enforcement policies and procedures of the department, and as I understand it, the mechanisms that you have available to you as an inspector under the Act are, warnings?

A. Yes.

Q. Improvement notices?

A. Yes.

Q. Prohibition notices?

A. Yes.

Q. Infringement notices?

A. Yes.

Q. And then prosecutions?

A. Yes. Then we have negotiated agreements.

Q. Beg your pardon?

A. Did you say negotiated agreements?

Q. Well, just turning to those, the negotiated agreements are a mechanism that you use?

A. Yes.

Q. But they're not actually provided for under the legislation, is that right?

A. Yeah, that's true. Bit like written warnings.

Q. Although when you issue an infringement notice, there needs to have been prior notice, doesn't there?

A. That's right, within two years under our policy.

Q. And a written warning constitutes a form of prior notice, or prior warning?

A. Yes.

Q. But a negotiated agreement doesn't?

A. Yes, that's true.

Q. So, if you use a negotiated agreement, and that's breached, you couldn't then use that as a basis for issuing an infringement?

A. Yes.

- Q. To assist you with these mechanisms, you have a Health and Safety Investigations Best Practice manual?
- A. Yes.
- Q. And that's common to all inspectors?
- A. Yes.
- Q. Is any part of that manual specific to coal mine inspectors?
- A. No.
- Q. And as I understand it, the Department also publishes guidance notes for inspectors?
- A. Yes.
- Q. Are any of those guidance notes specific to underground coal mines?
- A. No.
- Q. And also, it publishes operational procedures?
- A. Yes.
- Q. And once again, are any of those designed to assist coal mine inspectors and underground coal mines?
- A. No.
- Q. Ms Basher, could we please have up DOL3000100039/1?

WITNESS REFERRED TO DOL3000100039/1

1404

- Q. I just want to run briefly through some of these different types of enforcement mechanisms so we can get a feel for them and you'll see this one here is for written warnings and down the bottom it says, "Final 5 May 2003." Do you see that?
- A. Yes.
- Q. I take it, was this, the written warning procedure that was in force throughout the time from May 2003 to the Pike River tragedy?
- A. I'd say so.
- Q. Has that been updated at all since the tragedy?
- A. I'm not sure.
- Q. When you're saying, "You're not sure," would you expect to be told if it was updated?
- A. Yes, yeah.

- Q. How would you be advised of that?
- A. Usually in email, it would come through as a change in the procedures and policies.
- Q. When there's a change in procedures and policies, would it be usual to have training sessions in relation to those changes?
- A. Usually, not always yeah.
- Q. And we can just see from the centre block where it says, "Description of written warnings," that a written warning is a letter that sets out amongst others that a breach has been identified? Yes?
- A. Yes.
- Q. That the breach was remedied immediately?
- A. Yes.
- Q. That the breach is regarded as important?
- A. Yes.
- Q. And the significance of the letter is a prior warning?
- A. Yes.
- Q. I presume that last part, the significance of the letter as a prior warning would reference the ability to then issue an infringement notice if there was a recurrence?
- A. Yes.
- Q. Is it fair to describe written warnings as essentially the first rung on the ladder of compliance action?
- A. If the breach can be, well it falls into this category, yeah you could say that in terms of levels.
- Q. And when you say, "This category," the circumstances in which it's used are set out immediately below that section it just referred to in the section entitled, "When to issue written warnings."
- A. Yeah, although the first bit there where it's been, the breach has been identified. Sorry, the second bit and the breach was remedied immediately, yet there was a little bit perhaps of leeway there but I guess if the breach couldn't be remedied immediately then you couldn't use the written warning.

1407

Q. Right, well would it be fair to say that if there's a breach which is remedied immediately, except where it's minor or trivial, it would at least be met by a written warning?

A. Yeah.

Q. That's the intention of the policy?

A. Yeah, that's the intent, yeah.

Q. And I should just note at this stage, you didn't issue any written warnings to Pike River?

A. No.

Q. And I don't think you used any of the enforcement mechanisms available under the Act in relation to Pike River. Is that correct?

A. That's correct.

Q. Could I have please Ms Basher, DOL3000100031/1 and you'll see that this is an operating procedure titled, 'Improvements and Improvement Notices,' and down the bottom it's stated to be issued on 17th October 2005. So once again, this would've been the operating procedure in force throughout your time inspecting Pike River up to the tragedy. Has that been updated since then?

A. Not to my knowledge.

Q. Now, it seems to deal with two matters, one of them is negotiated agreements. Are you able to tell us please the range of circumstances in which a negotiated agreement might be used in the context of an underground coalmine?

A. The range is left fairly, from what I can see, that was left fairly open to people. There were procedures as such where they would require you to perhaps look at stronger action but it was left fairly open I think.

1410

Q. By that do you mean it was left to your discretion as to the circumstances in which you could use a negotiated agreement?

A. Yeah, yes.

Q. Does that mean that although there are written policies for written warnings, improvement notices, prohibition notices, infringement notices, on a day to day basis you're able to deviate from those policies?

- A. I think that the "*Keeping Work Safe*," procedure looked at the policies, it looked at that from the point of view of the employer's attitude or their - what you appear to be, to have the employer's attitude.
- Q. Did the department ever review the degree to which the coalmine inspectors complied with the written enforcement policies?
- A. Not to my knowledge, no.
- Q. Well certainly you weren't subject to any review?
- A. No, that's right, yes.
- Q. And it's probably clear from a discussion before the break that there would've been no review of the way you'd applied these enforcement policies to Pike River or its contractors?
- A. No, that's true.
- Q. If you can just come back to negotiated agreements and you'll see down the bottom third of the page under, "DOL approach," it says, "Negotiated agreements, outcomes are achieved by discussion and negotiation processes." Is that a fair description of them?
- A. Yes.
- Q. And down the very bottom of that page there's a heading, "Negotiated Agreements," and it says, "Where improvements are required to ensure clients comply with the Health and Safety in Employment Act 1992 and appropriate regulations, inspectors are to seek agreement with the client to remedy the matter either immediately or at some future date."
- A. Yes.
- Q. Do I take it from that that an important component of a negotiated agreement is a date for remedying the matter?
- A. It should be on there.
- Q. In other words it wouldn't be sufficient to simply have an agreement which said, do this as soon as is practicable?
- A. It's recommended that you put a date on there. A lot of the time you may not in terms of - you'll have, you have some understanding that they'll get back to you within a reasonable time frame. You may not have negotiated that at the time or stipulated that at the time. It should be on there.
- Q. You might need to just talk into the microphone a bit more I think?

A. Sorry.

Q. If we can turn over to the next page, summation ending 2, and you'll see it says at the top, beside prohibition notices, inspectors must also consider whether a prohibition notice is also needed in a particular circumstances by applying the test for prohibition notices?

A. Yes.

Q. And so does that mean that you aren't simply faced with the choice of having a negotiated agreement or, for example, a prohibition notice but you could have a negotiated agreement and some other form of enforcement action?

A. I wouldn't think so. I think if you are dealing with an issue it would have to be one or the other, a double, double-jeopardy thing.

Q. And just under, "Record of agreements," we can see that the preferred method is that an agreed outcome be recorded in a departmental letter?

A. Yes.

Q. And that details of improvements made and agreements to improve must be entered into notebooks?

A. Yes.

1415

Q. And that means the written notebook that you take around with you does it?

A. Yes.

Q. And it says, "And also recorded on workbench," and that's now called, "Insite," is that correct?

A. Yes.

Q. And that's the departmental computer system?

A. Yes.

Q. And it says, "Agreement pad will be developed to enable simple agreements to be confirmed at the time in the field." Has that agreement pad ever been developed?

A. No, not to my knowledge.

Q. Am I right in saying that you didn't have any negotiated agreements with Pike River or its contractors?

A. I used a letter in terms of breaches to ascertain what we talked about during the inspection and that these issues would be addressed and I wrote – did that

verbally and then used a letter and a lot of the time I probably haven't got a due date on them. Some of them would have I think but that was a negotiated agreement.

Q. Even though they didn't include a date?

A. Yeah, often they didn't include a date. I should've but I found without a date on there it allowed them a little bit of flexibility 'cos if it wasn't done by that due date then you'd have to write another one, so it was negotiable.

Q. So does the Department undertake any checks to see whether inspectors are edging into negotiated agreements without any dates specified?

A. No probably not.

Q. Not in your experience?

A. Not in my experience, yeah.

Q. And certainly not in relation to Pike River?

A. Not in relation Pike River.

Q. If we could just turn to, "Improvement notices," which were also dealt with on that page. You'll see on the left-hand side, the third heading down. Is it fair to describe improvement notices being reserved for situations where an employer has refused to make an improvement?

A. Yes.

Q. Has not been committed to making an improvement?

A. Sorry where's that?

Q. Perhaps if you look at the third bullet point.

A. The third one.

Q. So where an employer's not been committed to make an improvement.

A. Yes.

Q. And also from that bullet point, if they haven't been willing to make an improvement within a reasonable timeframe?

A. Yes.

Q. So timeframes are quite important matters with improvement notices as well?

A. Yes.

Q. And if we look at the next heading down, "Other additional options." It says, "Other options must be considered such as infringement notices or prosecution where there is a history of similar breaches or an initial improvement notice

has not been complied with without good reason.” Do I take it from that, that it’s important to build up an accurate picture of the employer’s compliance history?

A. Yes.

Q. And how’s that recorded?

A. It would just be for each file or visit if there were written warnings or infringement notices or prohibition notices, you’d have to go to that file and look it up yourself.

Q. When you say, “That file,” if we take Pike River, is there an individual file with an Insite for Pike River or is there an individual file for each interaction with Pike River?

A. There’s individual file for each interaction, but then if you search for Pike River that would bring up all those interactions.

1420

Q. Right. Well, is there a readily accessible part of the website – or sorry, the programme which will summarise the compliance history?

A. Yes.

Q. So somewhere there will be a page which contains a summary of Pike River’s compliance history?

A. Yes, you could go to the computer, Pike River matters, I think, notices issued, or something like that, and it would bring them up.

Q. Would that summary include references to negotiated agreements?

A. No.

Q. So it wouldn’t include references to negotiated agreements that’d been breached?

A. No. Negotiated agreements that’d been breached?

Q. Yes.

A. Unsure, what do you mean by that one?

Q. Well if there’s a negotiated agreement, and it’s breached, so for example, there’s an agreement to do something and it’s not done, would that show on the compliance history of the company?

A. No, if you had a negotiated agreement that’d been breached, then you’d be expected to take some stronger action to make sure that it was complied with.

- Q. So, given that no enforcement action pursuant to the Act was taken in relation to Pike River, it wouldn't have any compliance history?
- A. It wouldn't have any compliance history under infringements notices or notices issued, but it would have compliance history under findings. You have to write down findings. If you found some issues that needed to be controlled. With a breach or an improvement you have to write down findings. Then you have to write down issues. These are all sections within the computer system and then you write down what you did once you had the finding and an issue, so you can search under findings. At the moment I don't think you can search under issues.
- Q. Right, so you can't search to readily find whether the same issue's arisen previously with the same employer?
- A. No, I don't think you can with issues.
- Q. And the findings section, would that include negotiated agreements and any breaches of those?
- A. Yes, you put your findings in there, so you could search under that, which is a general – you might've had three or four different findings, you put those in, so you could search under that. But then you'd have to find out what was actually done with the findings. Was it just a verbal, or was it raised by an improvement notice, or whatever.
- Q. Well, I don't want to take too much of your time on this, but if I did a search, "Pike River findings" would it come up with information about the negotiated agreements and any breaches from all of the various interactions by inspectors?
- A. I'm not sure. The way I think it works is that if you did it under "findings" you would just get findings.
- Q. Okay.
- A. And then if you wanted the next part of that, you'd have to search under the next search engine.
- Q. Does the department have a system or part of a system which contains a profile of a particular workplace, for example, an outline of its operations, key personnel, systems, hazards?

A. No, I think that's the intention of Insite, if you wanted to create a profile then you could do that by searching, but it doesn't automatically do that.

Q. So there isn't, for example, a profile with Pike River or its contractors?

A. No, you'd have to search that and look at the sort of findings, or improvement notices, matters, et cetera, and then you could find out that sort of information?

Q. Right, so an inspector has to sift through all of that –

A. Yeah, yeah. If he knows how to do it.

Q. Has there been consideration given by the department to your knowledge to building up discreet profiles of particular workplaces?

A. I, I'm not sure.

1425

Q. All right. If I could just take you please back to the document summation ending 2, that we're on Ms Basher, the full page, thank you. And you'll see at the bottom it says, "A failure to meet a negotiated agreement without reasonable cause will require the inspector to issue an improvement notice or take other action"?

A. Yeah, yes.

Q. And so does that mean that whenever you had a negotiated agreement with Pike River, if it didn't comply with that, you would have then had to consider whether it had reasonable cause for not complying?

A. Yes.

Q. And if it didn't, then you'd have to issue and improvement notice or take other action?

A. Yes.

Q. We might go through some of these later but just generally, were there negotiated agreements that you made with Pike River that it didn't comply with?

A. No. There would be some negotiated agreements where I've written down you need to do something, only to find that they were doing it and the information I'd been given was wrong, so if someone said to me they hadn't done any geotechnical monitoring, only to find in the letter that they would send back to me that they had been, then, then they weren't seen to be – there was no non-compliance in the first place.

- Q. Right, we might take some discrete examples later on. If I could ask for the same document, but summation ending 3 please, Ms Basher? You'll see the top of that by the section, "Advise employee reps of action," it says, "Where possible, inspectors must make contact with health and safety representatives with a view to seeking information and keeping representatives advised of action taken"?
- A. Yes.
- Q. Is your understanding then that when you come across a breach, the obligation is on you to make contact with the health and safety representative?
- A. No, I didn't take it that way. When we came across a breach we normally dealt with that with the, with the employer.
- Q. Well how did you interpret that?
- A. I, I wasn't obviously aware of that particular requirement.
- Q. Right, because it is, is it fair to say that when things were of concern to you, your general pattern wasn't to make contact with the health and safety representative?
- A. Sorry, what was that?
- Q. Is it fair to say that when you came across something of concern, you generally didn't then make contact with a health and safety representative?
- A. No, that's true.
- Q. And you didn't do so for either Pike River or the contractors?
- A. No.
- Q. And so, the consequence of that is that the health and safety representatives first wouldn't have been always aware that there was something of concern to you?
- A. Yes, that's true.
- Q. Second, they wouldn't have been able to provide you with information that they had that might have been relevant?
- A. Yes. I wasn't aware of this. I was quite surprised to see it there. So this is every – is this every action you're meant to talk to the health and safety representative?
- 1430
- Q. Well we're dealing with a –

- A. There's only one section there that, where possible.
- Q. We are dealing with a policy which is in relation to improvements, notices and also seems to include reference to negotiated agreements?
- A. Okay.
- Q. But my questions are broader than that?
- A. Yeah.
- Q. And I'm asking just generally?
- A. Just generally, I didn't.
- Q. No you didn't. Did the Department ever check the extent to which you were involving health and safety representatives?
- A. No.
- Q. Do you know if it's ever conducted an audit of the extent to which inspectors have made contact with health and safety representatives?
- A. No I don't know.
- Q. Certainly not an audit that's been drawn to your attention, if it –
- A. No, that's true.
- Q. Ms Basher, could we please have different document DOL.3000100034/1 and you'll see this is an operating procedures entitled, "Prohibition notices," and down the bottom left has a date of 5 May 2003. Do you see that?
- A. Yes.
- Q. And once again would this have been the procedure and place from then throughout the time of the –
- A. It's the last paragraph there is it, that you're referring to, is it?
- Q. Sorry, just down the bottom where it says, "Final 5 May 2003"?
- A. "Where possible inspectors should research the file." Is that what you're talking about?
- Q. No I'm just trying to establish the date of the document.
- A. The date, sorry. Yeah.
- Q. You see the date of the document is 5 May 2003?
- A. Yeah, yeah.
- Q. And this is the policy that would've been in force right up to the time of the tragedy?
- A. Yes. Yes.

- Q. Has this been revised at all since the tragedy?
- A. I don't believe so.
- Q. And you'll see it has a heading, "Common situations," and it says, "Non-compliance having likelihood of serious harm e.g. unguarded punch forming press that allows access to the trapping point between the tool and die." That's an example obviously of a circumstance in which a prohibition notice is used, yes?
- A. Yes.
- Q. Are you able to give examples of the circumstances in which a prohibition notice should be used in an underground coalmine?
- A. Where I have used it or where it should be used?
- Q. Well first some examples of where it should be used?
- A. Where there is the likelihood, under the definition really, where there's a likelihood that serious harm could result, then you should write a prohibition notice. In terms of, like they've got guard in there, it would depend if the guard was where people were working, it, that the place that wasn't guarded, where people were working and it was a good chance, the likelihood because of the access that they could get harmed well then you could write a prohibition notice there.
- Q. Where you referred to serious harm, I presume your referencing the definition of serious harm in the First Schedule of the Health and Safety in Employment Act?
- A. Yeah, yes.
- Q. Well can I just give you a list of things which might crop up in an underground coalmine to see if you agree that they would have potential to cause serious harm, justifying a prohibition notice. Poor maintenance of underground equipment?
- A. It's potentially - yeah, potentially it could.
- Q. Amongst other things it could cause sparking?
- A. Yes.
- Q. Poor ventilation?
- A. Potentially, yes.
- Q. Poor strata management?

A. Yes.

1435

Q. Inadequate gas drainage?

A. Yes.

Q. Problems with electrical equipment underground?

A. It would depend, you know, the, I mean those general headings yeah, but you'd have to look at the situation.

Q. Right, look at the situation to ascertain what?

A. So the last one you said, "Poor electrical."

Q. Yes.

A. What was it? "Poor electrical."

Q. Poor electrical equipment.

A. Poor electrical equipment, yeah if it was something like a mini-warn or a handheld device or a cap lamp, you know, then you wouldn't be writing prohibition notices but I, you know, something that, something was high risk, yeah.

Q. So what would be high risk justifying a prohibition notice?

A. Well electrical motor that was over-heating, was quite hot. I guess, if you looked at the connection where the cable came into a light fitting and it wasn't connected properly, something like that.

Q. Taking of contraband underground, for example lighters, aluminium?

A. Yes that will.

Q. The example which is given there, "An unguarded punch forming press that allows access to the trapping point," seems to be something that would be able to be picked up on quite easily by way of visual inspection, is that right?

A. Yes I'd say so.

Q. Did any of your training by the Department focus upon the compliance enforcement approach that should be taken when you have a concern with a complex system, for example, a methane drainage and ventilation system?

A. There was no specific training on that, no.

Q. And you'll see down the very bottom of that page it says, "Where possible inspectors should research the client file and information on Hasard prior to

making the visit.” So once again, that would emphasise the importance of having an accurate compliance history of the client?

A. Yes.

Q. And what’s, “Hasard?”

A. That was the computer system before Insite.

Q. If we can just go to another summation document please, DOL3000100018/1.

WITNESS REFERRED TO DOCUMENT DOL3000100018/1

Q. And you’ll see this is the infringement notice, “Operational policy guidance note for 6 November 2003?”

A. Yes.

Q. And this would’ve been the guidance in force right up to the time of the tragedy?

A. Yes.

Q. And once again, I presume to your knowledge, this hasn’t been revised?

A. Yeah, that’s right, yeah.

Q. You’ll see in the first paragraph it says, “in I-N,” where, “I-N,” is an abbreviation for infringement notice, can be seen as a practical first level penalty response and it is appropriate for a breach that does not result in serious harm.

A. Yeah.

Q. Well are you able to give us an indication of the range of circumstances that might be appropriate to use an infringement notice in an underground coal mine?

A. Remember, infringement notices you have to have prior warning within the last two years.

Q. And we’ll talk about that in a minute.

A. Yeah. Well they would tend to be of a minor nature. The prosecutions take so much time and cost, this is another way to achieve compliance. It may be something simple like you’re seeing somebody not wearing a hard hat and so you’ve said, “Look, I’ve seen you walk over there without a hardhat in a hardhat area.” You may give them a written warning about that and then if you saw them again, then you could give an infringement notice on an individual. For a company it might be a guard and it would be quite simple then if the

similar guard wasn't on a piece of machinery, you might then write an infringement notice.

1440

Q. You referred to the need for prior notice, and you're referring there, are you, to the requirement that under section 56B of the Health and Safety in Employment Act you need to have a prior notice before you can issue an infringement notice?

A. Yes.

Q. And a prior notice is some other enforcement action, a written warning, an infringement notice, improvement notice, prohibition notice or a prosecution?

A. Yes.

Q. And you never issued anything that amounted to a prior notice to Pike River or its contractors?

A. That's right.

Q. With the exception, I think, of the two contractors –

A. Of the two contractors, yeah -

Q. – to whom you issued improvement notices and we'll talk about those. And one of the consequences of that would be that when Mr Poynter took over, if he thought an infringement notice was appropriate, he couldn't have moved straight to that, because there wouldn't have been a prior notice, correct?

A. Correct.

Q. If we could just have another document, please Ms Basher, once again, DOL3000100010/1?

WITNESS REFERRED TO DOCUMENT DOL3000100010/1

Q. And you'll see that this is a workplace services practise note, and the issue date in the top right, 10 March 2010?

A. Yes.

Q. If we can have page 2, please Ms Basher? It's in relation to prosecution decisions and you'll see that it says half way down, "Investigations must be completed and the file forwarded to legal services within three months of the date on which the department became aware of the matter under investigation."

A. Yes.

- Q. First, before you prosecute, there has to be an investigation?
- A. Yes.
- Q. Second, that investigation should be completed within three months?
- A. Should be, yes.
- Q. Then third, that's presumably to enable time for legal services to consider the matter and prepare a prosecution to be filed?
- A. Yes, yes.
- Q. And although this document is dated March 2010, in the time that you've been an inspector, has there always been the requirement to have the investigation completed within three months?
- A. I couldn't be sure of that.
- Q. Well, for at least the last five or six years?
- A. Well, at least a couple of years that I can remember the three years being around for a wee while, yeah – the three months.
- Q. I think it's included in your performance agreement documentation, is it?
- A. Okay, yeah, yeah, well, probably.
- Q. Did the department ever review whether the coal mine inspectors to your knowledge were completing their investigations within three months?
- A. I couldn't be sure. Three months is policy. What I often find is, sometimes with the coalmining issues, they may take a wee while to investigate and write reports, so sometimes there's a little bit of flexibility there, sometimes...

1445

- Q. You've never been a subject to a review though of how long it's taken you to investigate a matter?
- A. No, no.
- Q. Is it correct to infer from the documents filed with the Commissioner in your witness statement that you didn't conduct an investigation in relation to Pike River or its contractors while you were an inspector?
- A. I think that's probably true. When we talk about investigations, complaints or serious harm incidents, no, I don't think there was an investigation. I'm not, I'm not 100% sure on that.
- Q. I've asked a few questions about the range of circumstances that might be appropriately met by, for example, an improvement notice or an infringement

notice. Has the Department ever given you training about the circumstances in which each of those different types of enforcement devices should be used in an underground coalmine?

A. No.

Q. If we could have another document please Ms Basher, DOL300010001/26?

WITNESS REFERRED TO DOCUMENT DOL300010001/26

Q. And you'll see down the bottom, this is part of the health and safety investigation manual. It says, "Chapter last updated January 2005?"

A. Yes.

Q. This would've been the chapter in force up to the time of the tragedy?

A. Yes.

Q. Once again I presume it hasn't been reviewed since the tragedy?

A. Yeah, I presume so.

Q. And as I understand it from that, when there's a potential breach, the matter gets classified as either falling into a limited response criteria?

A. Yes.

Q. Or alternatively an investigation categorisation criteria, is that correct?

A. Yes.

Q. And are you just able to give us a brief flavour of what type of circumstances in an underground coalmine might be appropriate for the limited response criteria?

A. I don't, I can't think of too many. A limited response may be someone bent over to pick up something light, their lunchbox, and hurt their back.

Q. So something very, very low level?

A. Very minor, yeah.

Q. And if it's limited response, that means it doesn't have to be investigated further?

A. That's right.

Q. And so that means that everything else has to be investigated?

A. Yes.

Q. And if we turn to the same document, the summation ending 27 please, Ms Basher? When something is going to be investigated, it needs to be categorised as category A or category B, is that right?

- A. No. That, that went out a wee while ago. Quite some time ago.
- Q. Right, so this manual's not up to date?
- A. No. There could be some officers that do category A and B but we don't.
- Q. When you say, it went out, what was it replaced with?
- A. I think once we went to Insite, there was a special form for category A and category B in terms of where you thought the accident might be heading, how much work you wanted to do on it but then by the time you put into Insite, all the different criteria, you almost had a report so it wasn't really worth separating between A and B. You don't actually get an A or a B reported at all, you just get all the bits that are put into the Insite, findings, the incident, your investigation, all those get printed out separately and can be used as a report.

1450

- Q. So were category A and category B designed to assist with identifying matters that should be responded to urgently?
- A. Well I guess, it depends how much an inspector would spend on investigations. Where it was B you weren't looking to spend a lot of time doing the investigation. In category A you'd be taking statements et cetera so you usually had some inclination that there could be a potential for prosecution or there was serious – so you would look at that category A and you would spend more time on that.
- Q. You referred to Insite records. Should each investigation result in a written investigation report?
- A. In Insite there is a box for investigation. So you'll have, you'd have your client details, you'll have the incident and you'll have the investigation with the outcome and then you'll have a peer review and that will be the end of the file, the file closed.
- Q. That's not a separate investigation report though, is it?
- A. No.
- Q. For example, the Insite record wouldn't be in the level of detail to set out the content of interviews, the causal factors, that sort of information?
- A. Would that be an Insite?
- Q. Yes.

- A. Yeah, that would be an Insite, you'd attach the interviews, whether they were the audios or statements. What was the other bit you asked for?
- Q. Causal factors?
- A. Causal factors, yeah, that'll be part of your investigation. I think there's actually a heading, actually a little box for causal factors which you can fill out if you want to.
- Q. I don't think the Commission's been provided with documents that you've generated or put into Insite in that level of detail in relation to Pike River?
- A. No I don't think I had any investigations.
- Q. Are you familiar with an investigation system called I-CAM?
- A. Yes.
- Q. Is that something you've been trained in?
- A. No I haven't, no.
- Q. Is it something the Department uses?
- A. No.
- Q. If I could just turn briefly to the search and rescue and I'm not going to delve into any detail because it was dealt with in Phase Two but could you just tell us if you've had any training in CIMS?
- A. This is a –
- Q. Do you know what CIMS is?
- A. Was it Critical –
- Q. Co-ordinated Information Management System?
- A. Co-ordinated, no I haven't, yeah, no.
- Q. No you haven't had training?
- A. No.
- Q. Had you ever had any training from the Department in relation to the role that coalmine inspector might have in an underground coalmine emergency?
- A. No.
- Q. Prior to the Pike River tragedy had you had any involvement in an underground coalmine emergency?
- A. No, one fatality but I just went there as an investigator, it wasn't an ongoing emergency management system.
- Q. Was that Black Reef?

A. No, that was Wairakei.

Q. When was that?

A. I'm not sure, 2003.

Q. If I could just move to a different topic please? I'd like to take you through the interactions listed in a schedule prepared by Professor Gunningham and Dr Neal. Ms Basher, if we could have DOL010010001/141.

WITNESS REFERRED TO DOCUMENT DOL010010001/141

1455

Q. This is page 141 of the review of Gunningham and Neal and it's entitled you'll see, "Visits."

A. Yes.

Q. And I just want to just look generally at this stage in relation to these visits to identify what they involved et cetera and you'll see that the first visit there, 18 November 2004 is described as a, "Workplace information visit," by Margaret Harrington.

A. Yes.

Q. Now she's an administrator based in Greymouth, is that right?

A. Yes, at the time.

Q. And Mr Cooper in his witness statement at paragraph 60 describes a workplace information visit as being used to capture a record of information delivery that has occurred usually offsite, electronically or by post.

A. Okay, yes.

Q. Is that correct?

A. Yes.

Q. And of course the construction of the Pike River Mine wouldn't have started by that stage in 2004 to your knowledge?

A. Yes that's right.

Q. So I presume that wouldn't have been a visit to the workplace, is that a fair assumption?

A. Yeah, you said that they could send it electronically or by mail, some sort of information.

Q. Right.

- A. She must have supplied them some information. There must have been a – presumably there was an office.
- Q. Well the next visit recorded as, on 9 May 2005, “Workplace information visit,” by you. Can I just take you to paragraph 11 of most recent witness statement of 19 October?
- A. Yes.
- Q. And you'll see from that paragraph that you spoke with Mr Whittall by phone on that day, is that correct?
- A. That's true.
- Q. So that matter recorded in that schedule on 9 May 2005, that wouldn't have been a visit to Pike River, is that right?
- A. That's true.
- Q. And the next one, 13 February 2007, that was a visit by you together with Mr Davenport of the Electrical Safety Service?
- A. 13th of the 2nd sorry was it you say?
- Q. Yes, on the 13th of February.
- A. Yes, yes.
- Q. Do you recall what length the drift was then?
- A. I'll just go to my notes, is that okay Your Honour?

LEAVE GRANTED TO REFER TO NOTES

- A. About 320 metres it's meant to be. I think there's a dollar sign there for some reason, but 320 metres.
- Q. Do you know whether Mr Davenport had expertise in electrical systems in underground coal mines?
- A. I'm not sure of his expertise in that area, but he certainly did that work for the Energy Safety Service and used to accompany me when we went to various coal mines.
- Q. Ms Basher could we please have up DOL300070190/2 and also 3 please. DOL300070190/ pages 2 and 3 please.

WITNESS REFERRED TO DOCUMENT DOL300070190/2 AND /3

1500

- Q. This is a document which appears to record the inspection by Richard Davenport on the 13th of February 2007. Have you seen that before?

- A. Yes.
- Q. And is that what it shows?
- A. Yes, that's an inspection report.
- Q. And he says, just above the two photographs on page 2, "Work on the 33kv supply is well underway, as is the substation." Would that be a reference to the power system being installed, I think above the bridge, but before the portal?
- A. I'm not too sure.
- Q. You'll see on the right hand page under the heading, "Further action", it says, "Please keep ESS informed of progress with the mine power reticulation and HV supply." You've said in paragraph 39 of your witness statement that you don't know whether Mr Davenport was kept informed, correct?
- A. Correct.
- Q. Did you ever check that?
- A. No.
- Q. No. Do you know whether anyone in the department ever checked whether Electrical Safety Service was being kept informed?
- A. No.
- Q. Was there any discussion between the Electrical Safety Service in the department as to how the electrical system at Pike River Mine should be overseen or checked?
- A. No.
- Q. If I could take you to a different matter, paragraph 33 of your witness statement, which is DOL7770040002/8?

WITNESS REFERRED TO STATEMENT DOL7770040002/8

- Q. You say there, "I recall being advised that the ground conditions underground were much worse than what had been expected and this was because geotechnical testing had been done on the rocks in the creek, which were harder than the rocks they found underground. The view was that the softer rocks in the creek had eroded away leaving only harder rocks, giving a false impression as to the likely hardness of ground to be encountered in the mine." Did you consider whether that misjudgement of the geological conditions

underground might be a matter which would have implications for the whole of the mine?

- A. I'm not sure of the question. I can attempt to answer, or do you want to... My first comment on that is that it was costing more to put the tunnel in than what they thought it would originally cost because of the extra supports required.
- Q. But it must've been a concern to you though that their understanding of the geological conditions underground weren't right?
- A. Well, the – what had happened was that they had adjusted very quickly because they had good geotechnical consultants – well, they appeared to have good geotechnical consultants. You got quite a lot of information out of those creeks, like joints, joint directions, spacing, foliation type of rock, however it was, it said it was too soft, but it said it was – it gave a wrong impression, the ground was harder than what they encountered but when they had some good geotechnical monitoring underground as well to adapt to that and they had a trigger action response plan for the geological conditions, the geologists, before they fired the shot, would examine the tunnel as is, as it was mined, and he would discuss with the supervisor the amount of pull that you would get with your next round.

1505

- A. He would look at the geological disconformities, or geological joints, the hardness of the rock, then when it was fired, the first, one of the first people in was the engineering geologist and he would assess that rock and the type of rock support that was required and they had adjusted that the trigger action response plan to the, to his report which gave a rock mass quality, so they adjusted to that problem.
- Q. Do I take it from that that because of those systems, you didn't feel the need to enquire further into the accuracy of the geological, or geotechnical information they had?
- A. I was, I was reasonably satisfied that the geological testing and monitoring and their TARPS and looking at that roof conditions that they were keeping good control on their ground support, plus they'd, they'd invested in the shotcrete machine, which allowed them to shotcrete a lot quicker.

- Q. In paragraph 34, you refer to requesting if rock bolt pull testing was being done and being told that there'd been a 10% failure rate?
- A. That's right, yes.
- Q. And that was outside the design criteria?
- A. Well this is what I needed to find out, what exactly that 10% rock failure meant. No-one on site seemed to be able to answer that.
- Q. So what did you do about that?
- A. Well I wrote the letter to say I want to have a look at the rock bolt testing pull tests, because the comment that 10% failure may not have been correct. It was, and then they asked for a response. Okay, why was 10% failing and what was the – was this a design problem? And I got back quite a comprehensive letter, how that had been, that that issue had been resolved. I haven't got it here. It's on, it's in the system and they, they had done, they had looked at the rock bolts and they looked at the drill bit because it might have, I think it was just slightly too large for the ground, so they looked at the amount of chemical that was actually being used around the rock bolt. They may have increased. I can remember, but there was quite a geotechnical investigation and they gave me a copy of that, so it addressed this issue and it had – and then they showed the further rock bolt testing and how the procedures that they'd put in place, they had a bar graph and it got the rock bolt testing down to quite a small percentage of failures.
- Q. Right, so you're able just to very succinctly summarise why there was a 10% failure rate?
- A. They had had problems with the rock bolts bonding to the rock in the hole, but they'd, they had, once they found out there was a problem, then they took steps to make sure that this problem was addressed.
- Q. Had you considered an improvement notice or any enforcement action in relation to that issue?
- A. First I needed to establish whether 10% was failing, because it was just a general comment.
- Q. Yes, but you established that it was failing.
- A. When I established it was failing then the letter was, came back with that that said that, that these, that when they'd found that they were having failures,

when they were doing the testing, they had immediately put into place control measures and I think they'd put up extra bolts for every one that they tested so they had, they had addressed this issue fully.

Q. You describe in paragraph 43 of your witness statement that since being advised that since the change in 2000 was achieved, the failure rate was now 3.7%?

A. I think that's 200.

Q. Sorry, 200.

A. Yeah.

1510

Q. Did you go back to check whether there was re-bolting of the area in which you'd first identified the problem?

A. No, I, I accepted their geotechnical report, the letter.

Q. If we can just go back to the Gunningham/Neal schedule and you'll see that under that visit of 13 February 2007, the next visit is recorded as being 3 March 2007. It's the fourth one down?

A. Right, yep.

Q. Would it be fair to infer from the materials filed with the Commission that you didn't visit Pike River on that day?

A. That I didn't?

Q. That you didn't?

A. Well I did.

Q. That you did not visit on that day?

A. What was the date, sorry, the 3rd of?

Q. The 3rd of March 2007?

A. In my, does my, in my notes says I visited that day – probably, no, I don't know that, then it must be wrong.

Q. Well if you look at the – just take an easy example, the index of your witness statement?

A. Yeah, they've got the date wrong.

Q. So no visit on that date?

A. No.

Q. Because your next visit after your 13 February visit was on the 2nd of May 2007. Is that right?

A. Yeah, that's right.

Q. And so that next date down which Professor Gunningham and Dr Neal have as 3 May 2007 should be 2 May 2007?

A. Yes.

Q. Just by way of a brief overview, in paragraph 50 of your witness statement of 19 October this year, you refer to noting at that visit that there was, 50.1 no geotechnical monitoring being done, 50.2 no communication to the outside on night shifts and 50.3 no refuge chambers?

A. Yes.

Q. And if we could please have Ms Basher, DOL3000720/1.

WITNESS REFERRED TO DOCUMENT DOL3000720/1

Q. Can you just confirm that that's a letter that you sent on 21 May 2007 to McConnell Dowell Constructors Limited and down the bottom that you copied it to Pike River Coal Limited?

A. Yes.

Q. And it was addressed to McConnell Dowell Constructors Limited because they were responsible for the drive. Is that right?

A. Yes.

Q. Can you just explain please the concern referred to in paragraph 1 of that letter, "Performance monitoring of the rock support system needs to be improved, by such means as extensometers, crack monitoring of the shotcrete?"

A. Well again, in this case, they weren't. They were doing this. I'd asked the tunnel manager, I said, "Are you managing?" I, I probably overemphasised extensometers which they weren't using and he said, "No we don't do any of that" and I said, "Well you should be and I'll write you a letter." But when they wrote me a letter back in actual fact they were, they had an engineering geologist who was monitoring cracks and shotcrete and he was monitoring the performance visually, of the roof support system. So just the information I was given was wrong.

Q. So who did you speak with on that visit?

A. In my notes I can remember it was Corrie, that's, that's the tunnel manager at the time, yeah, Corrie van Wyk.

1515

Q. That was the?

A. The guy who's addressed to in this letter, Corrie van Wyk, McConnell Dowell.

Q. Yes, was there anyone else you spoke with on that visit?

A. About this issue?

Q. At all.

A. Oh probably, I could refer to my notes, but yeah there would've been quite a few people I spoke to.

Q. So what you thought was an issue turned out not to be?

A. Yes, that's right.

Q. But if we just look at it from your perspective, you'd in February become aware that there's been a misjudging of the strata although it was responded to, correct?

A. This was the design with the correct, what I was told anyway, with the hardness of the rocks yes?

Q. Yes.

A. Yeah.

Q. And then just three months later, from your perspective, you've identified another problem with the rock support, namely not proper monitoring.

A. No, I think that's not quite right because the comment's been made to me about the hardness of the rock is less, it be requiring more roof support, but they were doing that with the geotechnical consultants, so that was well controlled. That was planned in the sense, they may have found that within five or 10 metres of the portal and they were in, when I was there, at 320 metres so they had addressed that issue. So in a sense that's a separate issue. So now we go to this one and you've got your increased roof support, your trigger action response plans have completely changed because the ground support is so much less competent than what you originally designed for, but the new design now has a trigger action response to that ground and they're monitoring that ground the whole time. So that's been looked after. Now the next phase of this, is once that ground support is in, you then have to

make sure that you're monitoring as I say, that that's going to stay up. Because it may look good at the moment but who knows what's going to happen and the comment I was given was, "No we're not doing any monitoring as such," and I probably over emphasised extensometers, now extensometers are something that we use quite a lot in coal mines and I – and Corrie says, "No we're not," so I said, "Well you should, you need to be doing something. You need to monitor your roof support performance." So they've got the increased roof support through the ground that's less competent and now they need to monitor that performance and they were, so...

Q. So just to summarise though, from your perspective first, this wasn't the recurrence of the same type of issue?

A. No.

Q. And second, turns out that they were doing what you thought they should be doing anyway?

A. Yeah, mmm.

Q. We'll just move on to the second matter in that letter, "Effective means of communication needs to be maintained between the surface and underground on nightshift." Was that an issue?

A. It was, I mean the issue was addressed straight away and their reply in that letter, they put in quite a few procedures but the issue perhaps needs to be explained and that was, I said, "What happens on nightshift?" They said, "Oh we've got the fitter outside that we can call." And I said, "Okay, well what if the fitter goes underground?" They said, "Well there's generally someone outside because we go in and out all night." And I said, "Well there could be a situation where there's no one," and they agreed. So they said, "Right, we'll make sure there's someone outside," and then they looked at other electronic methods which they put in that letter.

Q. When you say, "Call, for drive," at that stage according to your witness statement, paragraph 50 was about 670 metres long. Does that...

A. Sorry, where are we?

Q. Paragraph 50 of your witness statement I think.

A. Fifty, okay, yes, yeah.

Q. So when you say, "They'd call the person outside," how would they do that?

- A. Oh on the telephone.
- Q. Right, so they had a telephone system?
- A. They had a telephone system but it needed someone outside to what I recall.
- Q. Was the telephone system sufficient in your opinion?
- A. They were upgrading it but yes, if you had a telephone system you could ring outside and that person could ring for help, that's all.

1520

- Q. I think you said that they addressed it immediately, is that right?
- A. Yes, they said, "Right, we'll make sure there's someone there." But it relied on a procedure and I said, "Well, we need to look at this."
- Q. Because you were advised of the system for effective means of communication by way of a letter of 12 July 2007?
- A. Yes, that's right, I remember that.
- Q. Right, so that's a couple of months later. Had you checked before that date whether the issue of the communication system had been addressed?
- A. I recall he said he was going to do that straight away. When I mentioned it, they said, "Well, there's usually someone outside." "Well, usually is not good enough." They said, "Oh, okay, yep, yep, take your point." That's why I needed to write, I needed to put that in a letter, because ...
- Q. Right, but in terms of your actions, you had that discussion with him during that visit of 2 May and you didn't follow that up between that visit and the letter from McConnell Dowell of 12 July, is that correct?
- A. Well, the follow-up was on the, was it the 2nd of May, is it, because he said he'd do it.
- Q. Right, that was sufficient from your perspective for him to say he'd do it?
- A. Yeah, to say that he'd do it, yeah.
- Q. You didn't enter into a negotiated agreement?
- A. Well, this is in a sense a negotiated agreement that, okay, he said he'd do it straight away, but at the same time I wanted to put it in writing because this is an issue that I've addressed. I want to make people aware of it.
- Q. There's no reference to an agreement in this letter though, is there?
- A. No, I guess the way I've written the letter, what I've said is, "I'll put that – agree to do this?" "Yes." I could've written it different.

Q. Had you considered issuing an improvement notice?

A. For this one?

Q. Mmm.

A. Yes, but as I said that everything I've ever asked for was – well, not quite everything, but they would address things as required, so under that Braithwaite triangle, if you've got someone that's prepared to do things, then you can write letters, negotiated agreements.

Q. Well, since you've referred to it, can we just contrast that with the circumstances in which you did write improvement notices and perhaps if we can have please, Ms Basher, DOL7770040002/23?

WITNESS REFERRED TO DOCUMENT DOL7770040002/23

Q. And this is paragraphs 127 to 129 of your witness statement of 19 October, and you'll see paragraphs 127 and 128 refer to the improvement notices that you issued?

A. Right, yes.

Q. And you'll see the first one was to, "An employee of Portacom, working at height without proper fall protection."

A. Yes.

Q. Did he rectify that on the day?

A. Yes.

Q. And the second one, paragraph 128, "An employee of Jeff Evans Plumbing was using some electrical equipment that has not been checked by the due date on the tag." Did he stop using that on the day?

A. Yes.

Q. Can you just explain the distinction between why these circumstances warranted an improvement notice and the situation we've just discussed in relation to the Pike River site communication issue didn't?

A. I said that next paragraph, exactly what I said was that, for the Braithwaite triangle to be effective you need to know that the company are a best practise company, well at least endeavouring, should be a best practise company and will do what you've asked them to do. These two companies, I didn't know them.

Q. Well, Portacom, did you try and contact Portacom?

A. No.

Q. Did you try and ascertain what its compliance history was?

A. No.

1525

Q. Jeff Evans Plumbing, was that a local outfit?

A. I suppose so?

Q. Did you try and contact it?

A. No.

Q. You didn't know its compliance history?

A. No.

Q. I think you were accompanying Mr Rockhouse at the time that you issued those, is that right?

A. Yes.

Q. Did he raise with you concerns about the conduct of contractors in that area?

A. I'm not sure. Did he? What are you saying?

Q. Well I'm asking you, had he drawn to your attention that there were concerns from a health and safety perspective?

A. No, we just went down to the – this is the processing plant isn't it, that for an inspection, I said, "Okay, we'll go down here and have a look around."

Q. This year we're going to apply the policies we've referred to earlier. You would have wanted to have known the compliance history of those companies, wouldn't you?

A. I, I could've in a sense that okay, if you had enough time you could go back and say, "Am I going to write an improvement notice or a negotiated agreement?" but you know, you've got a limited amount of time on site. I come across a guy that, that I don't know. As for going to that extent to find out their compliance history, et cetera, and justifying which way I went, they may feel a little bit aggrieved, because they could be a really good company, but I didn't have time for that. I just wanted to address the issue, improvement notice, finish, go on. I guess you could have gone back and said, "Right, I'll go into Insite." This would take time. I was in a hurry.

COMMISSION ADJOURNS: 3.27 PM

COMMISSION RESUMES: 3.46 AM**cross-examination continues: MR WILDING**

Q. Mr Firmin, I think it was during that visit of 2 May 2007 that you raised the issue of plans needing to be in place for a refuge chamber as soon as practicable?

A. Yes.

Q. And as I understand it the view taken by McConnell Dowell is that there was no need for one at that stage. Is that correct?

A. That's true, yes.

Q. And you raised that issue in your letter of 21 May 2007 to McConnell Dowell copy to Pike River?

A. Yes.

Q. Your wording in that letter is paragraph 3, "Plans need to be in place for a refuge chamber as soon as practicable." Given your view, is there any reason why you didn't include a timeframe for that?

A. As you can see that just about all my letters don't have a timeframe and they should have really but as soon as you stick down a time often, you know, they might be a week later or two weeks later or something and it presents its own problems, whereas if you leave it open then they're getting back to you and you're working through the process. So perhaps I should've put more times in there to try and make them complete them by the time I set.

1548

Q. And I think we've already identified, the tunnel at that stage was 670 metres. Now McConnell Dowell wrote back to you by way of letter of 12 July 2007. Can you recall that?

A. What was the letter?

Q. Perhaps if we'll have it on screen, DAO.011.16251/1. Just while that's being found, I think we should clarify, we're talking about you saying there should've been plan for a refuge chamber in the drift during the construction of the drift?

A. Yes.

Q. It doesn't seem to come up, but can you recall that they wrote a letter to you in which they said that they'd done a risk assessment with regards to the need for

a refuge chamber and their findings were that they wouldn't require one in the tunnel?

A. Yes I remember that, yep.

Q. And you're aware that that was copied to Pike River also?

A. Yeah I believe it, yes.

Q. Am I right in understanding that they weren't at that stage proposing a changeover station either?

A. No, that's right.

Q. So this is some seven weeks after you'd first raised the issue. This must have been of some concern to you?

A. The timing there perhaps would be, but not in this case because refuge chambers normally won't go, or exchange chambers won't go in until usually at least 750 metres from the portal.

1551

Q. I think, am I right that it was when the tunnel was at 1400 metres that you received advice that there was an agreement of a changeover station?

A. I think I wrote that. I can't remember the exact distance. It was somewhere between 1000 and 1400 metres, the exchange chamber. That would be probably right, what I have written.

Q. Well taking you to paragraph 68 of your witness statement, you say, "On 19th September 2007, Kobus Louw phoned to advise me that the work on the changeover station had been completed. The changeover station consisted of a container that has filtered compressed air and long-acting self-rescuers. He said he would send a report. He advised that the tunnel was at 1400 metres and at a place close to the stream." Does that mean that from when you first raised the issue on 2 May 2007 to when you received that advice referred to in paragraph 68 of your witness statement, you weren't aware that a changeover station had been installed?

A. You mean it hadn't been installed until about then. Is it?

Q. Yes.

A. Yes, that's right.

Q. And did you ever find out how far along the drift it was that it had been installed?

- A. No, I can't remember exactly.
- Q. Wasn't that a matter sufficiently important to follow up?
- A. With a? What matter? The fact that it hadn't been put in or exactly where it was?
- Q. Well, the issue of the refuge chamber. Didn't you need to inspect Pike River at some earlier stage to see whether it had been put in?
- A. The issue of that refuge chamber exchange, it took quite a while to resolve. They were certainly close to getting an improvement notice and they would then have to comply with that. There was, there was some suggestion that because the tunnel was downhill and that it was very difficult to get lost, that the person that was walking out of that tunnel in smoke could actually probably walk from 2000 metres with a self-contained self-rescuer in half an hour, so yes, while I was concerned, I thought I got onto it reasonably early, and the fact that it was 670 metres by 1400 metres that's in place, so yeah, certainly getting near the stage where you'd be concerned.

1554

- Q. Well when you say that someone could walk that distance with a rescuer, your concern was that they needed either refuge or else to change over in a fresh air environment?
- A. Yes.
- Q. And in particular, your concern was that changing over in potentially an irrespirable atmosphere was a high risk activity?
- A. Yes.
- Q. You say in paragraph 57 of your witness statement of 19 October, "I considered I had grounds for an improvement notice but preferred to discuss the issue face-to-face with Mr Whittall. My view is that if we could not resolve the issue by agreement, I could enforce compliance by issuing an improvement notice."
- A. Yes.
- Q. Looking back now, and looking at the amount of time it took from when you first raised the refuge chamber issue on 2 May to when you got confirmation that it was done in September, do you think that your strategy of trying to negotiate might have been the wrong one?

A. With an improve – with a tunnel, this was the first tunnel in New Zealand, well, I can understand that it never had a refuge chamber, so I could understand that a exchange chamber. There was – they didn't want to do this. They didn't think it was necessary, so I was dealing with something that was a wee bit new. So I could see that it might take a bit of convincing, but if I did an improvement notice, the danger is that they would not put in an exchange chamber, not put a refuge chamber, but use some sort of tent system over a compressed air outlet, which I hear are available. I haven't seen them.

1557

Q. But as long as they address the hazard then that would be acceptable to the department?

A. Well that's the trouble and I didn't want them to do it that way. I mean, I wanted either an exchange chamber or a refuge chamber so the more I could talk to them the more chance I got, had of getting one of those.

Q. If we can just turn back to the Gunningham and Neal schedule please and there's a visit referred to as being on 10 July 2007, this is page 141. Just while that's still on the screen, if you could have a look at your witness statement 19 October paragraph 76 and you'll see that refers to you speaking on 10 July with Neville Rockhouse, him asking for a copy of an e-mail. Can you confirm to us that that was a phone call rather than a visit?

A. Yes.

Q. To the mine?

A. Yes.

Q. So that 10 July 2007 visit referred to in the Professor Gunningham/ Dr Neal schedule is also wrong?

A. I, I think, I think the difficulty is that I might've sent an email as well, I email, yes.

Q. But the point is that that visit referred to wasn't a visit?

A. Yes, it's not an actual visit, no. I think this will probably come up a few times because in Insite, if you want to record something, if you're provided information you can call that an information visit, even though you don't visit.

Q. And so after your visit of May the 2nd 2007 your next visit was actually on 6 November 2007. Is that correct?

A. 6 of November, is it?

Q. I can refer you to paragraph 81 of your witness statement if that helps?

A. Yeah, no, that'll be right, yes.

Q. Now during this inspection you noticed that the conveyor was not adequately guarded in two places, correct?

A. Yes.

1600

Q. And is that the conveyor which goes from outside, inside the mine?

A. Not actually sure the exact location, I – it was, the one with the crest was from the one that goes from the portal to the bin but I think there was a couple of guards or a guard missing right near the transfer where it comes out of the portal. I'm not sure which conveyor it was on.

Q. And that issue wasn't fixed on that day?

A. No.

Q. Why wasn't an improvement notice or some enforcement action appropriate then?

A. Again with that Braithwaite triangle, if you've got an employer that's prepared to accept that they've made failings, you can write a negotiated agreement.

Q. Ms Basher could we please have DOL7770010009_15/2.

WITNESS REFERRED TO DOCUMENT DOL7770010009_15/2

Q. The Commission sought from the Department details of the improvement and prohibition notices which had been issued from 2005 through to, in this case 9 August 2011. I just want to take you through a few of those. You'll see on that page 16 February 2005, that there's an improvement notice issue for exposed nip points represent an injury hazard which owner/employer has indentified and is addressing. See that?

A. Oh yes.

Q. Ms Basher, page 5 of the same document and the fourth row down, "17 March 2005, exposed nip points present a hazard to person in the vicinity of this equipment." See that?

A. Yes.

- Q. That led to an improvement notice. To page 7 please Ms Basher. 19 May 2005 and fourth down, "Nip points (exposed brackets may cause injury.) See that?
- A. Yes.
- Q. Page 8 and second down 18 December 2006, "Exposed nip points on crushing and screening plant. Improvement notice issued." See that?
- A. Yes.
- Q. I'm not going to continue to take you through that schedule, but it's fair to say isn't it that problems with guarding and nip points are routinely met by improvement notices?
- A. Yes.
- Q. Well wouldn't that to have been the case here?
- A. I've written quite a few improvement notices on guarding. The plant was 95% guarded, I don't know, it was well guarded but they've missed these two or three nip points and I go back to what I'd basically been doing was using negotiated agreements, so I didn't see any real need. I guess if it had been the second time, then you know, if I'd gone back and found another lot of guarding that needed - required, then I probably would've written an improvement notice.
- Q. Wasn't it important to begin to build up a history of Pike River's health and safety practices by way of enforcement mechanisms thought?
- A. Yes it was.
- 1605
- Q. Did you tell Mr Poynter when he took over that you'd identified issues with guarding?
- A. No.
- Q. Are you aware that he encountered issues with guarding on the conveyer when he was inspecting the mine?
- A. No.
- Q. Not a matter you both ever discussed?
- A. No.
- Q. I just see also at paragraph 83.3 of your witness statement you refer to an area on the left-hand side of the tunnel having fallen out about 30 metres from the

face, did that cause you to consider Pike River or its contractors' understanding of the strata?

A. I remember the concrete arrived when I was leaving so I – it could've been a joint. I vaguely remember a joint or some small fault on the rib that had fallen out that they had failed to identify. No, look I saw the roof support processes that they were using and particularly with their geotechnical monitoring and design each shift, so no I didn't, it didn't cause me to think that this was a regular thing that, that would alert me to think that there are some issues here that need to be resolved.

Q. I think if we can go back to the Neal and Gunningham schedule, page 141 again please Ms Basher, and you'll see the next visit after that is listed as 7 February 2008, and on paragraph 99 of your witness statement you refer to receiving a letter that day from Kobus Louw. I wonder if you would just confirm that you didn't visit the mine that day?

A. Right, no I didn't.

Q. Right, so that date there is also wrong?

A. Perhaps in fairness to Gunningham/Neal, the, remember the requirement for an information visit where information was given and by an email, so it can be recorded as an information visit because you want to record it and the system doesn't record it that well.

Q. Right. Thank you, no I'm not intending to imply anything adverse or otherwise. I'm just trying to get the facts right.

A. Yeah.

Q. And the next visit is listed as 11 March 2008 and you did attend then, because that's when you wrote out those improvement notices. Correct, that was a visit?

A. Okay, yeah, 11th of March was it? What? Yeah.

Q. Following that visit, you then visited on the 27th of May 2008, is that correct?

A. Yes, I think so. 27th of May. I'll just catch up I think. Yes.

Q. And your final visit then was on the 30th of May 2008?

A. Yes.

Q. And on 30 May 2008, you had discussions in relation to methane being reported and bubbles in the face, is that right?

- A. Yes.
- Q. Am I right in understanding you sought a risk assessment in relation to whether flame-proof equipment should be used at that stage?
- A. Yes, except Kevin and I both went on that visit and Kevin and I discussed it and we thought they were heading towards the fault. They were 20 metres away on the direction that they were travelling and we thought, "Well, you're better off to not worry about trying to use non-flameproof equipment. We recommend that you switch over to flameproof equipment, which would be the roadheader or the boomer."

1610

- Q. What were the risks you were concerned about that led to that view?
- A. Well, I guess explosion or a methane fire, or certainly explosion with methane.
- Q. Am I right that Pike River took the view that there wasn't the need for flameproof equipment at that stage?
- A. Yes, that's true.
- Q. Had you considered taking any enforcement action in relation to that?
- A. Yes, I think the difficulty is that there wasn't any methane as such, in terms of defining as a gassy mine and their full risk assessment was in place if methane was detected, they would certainly do what we'd asked, or they would certainly switch over to flameproof equipment. But since there wasn't any gas they wanted to use the jumbo, which was a much better machine for drill and blast in very hard rock with which they encountered, and for the height of the tunnel which was four and a half, five metres, so they wanted to continue using the jumbo.
- Q. Well at that stage they had had some methane detected, hadn't they?
- A. Some methane, yes, that's right.
- Q. And they were approaching a fault?
- A. Yes.
- Q. And the way the strata might react as it was being driven was unknown?
- A. Yes.
- Q. And if you're satisfied that all practicable steps hadn't been taken to ensure the health and safety of employees, you could've issued a prohibition notice or improvement notice?

- A. Yes.
- Q. And that wouldn't have depended on whether the mine met the requirement for gassiness in the regulations, would it?
- A. No.
- Q. No. So you could've issued one?
- A. Well –
- Q. I'm asking a question there rather than making a statement?
- A. Okay, okay. I see, we could've, yes, I see. But I have to qualify that because it would depend on the risk. I mean they were drilling ahead, what, 16 metres with a jumbo, to try and detect methane, and hadn't found any, you know, any improvement notice can be appealed and we have to be reasonable, and for us to say, "No, you have to. We think there's significant risk and you have to go to flameproof equipment and we're going to, because of the risk," there probably wasn't enough grounds for us to do that, enough evidence of the methane for us to do that.
- Q. Finally on this Gunningham and Neal schedule please, so page 141, you'll see fourth from the bottom is "Reference 11 June 2010, workplace information visit by Steve Moran." Who's he?
- A. Sorry, I'm – 11th of June 2000 and what?
- Q. 2010, it's the fourth from the bottom.
- A. Okay, Steve Moran. I don't know.
- Q. Not to your knowledge a inspector?
- A. No, I'm not sure who he is.
- Q. Given the definition of workplace information we've discussed and the problem you've just raised with the computer systems identification of it, would it be fair to say that's likely to not have involved a visit to the site?
- A. I don't know, yeah, well, mean a information visit, I don't know, to tell the truth, yeah.
- Q. If I could just turn to a few other issues, first the main fan underground. As I understand your statement, you weren't aware of a main underground fan in any other coal mine?
- A. No, I'd never seen one before.

Q. Had you given consideration to whether it would give rise to additional hazards compared to an above ground main fan which would need to be controlled?

A. Yes, it would give rise to additional hazards.

1615

Q. Did the department ever consider engaging an expert to report about the placement of the main underground fan?

A. No, no.

Q. Just turning to the drift, were you ever aware of a plan for Pike River Mine to be a two-drift mine?

A. No.

Q. Did you have concerns about there being only one main drift?

A. The main drift went down to 2100 metres and then I think there was going to be another 200 metres to the shaft and that 200 metres, about 100 metres was kilometres which may not contain that much methane. So when I looked at the proposal I thought well it can be done safely but yeah, if there'd been a proposal for two, a choice between two drifts and the fan outside, be far better proposal so...

Q. Had the department ever considered engaging expert advice in relation to any aspect of the Pike River Mine prior to the tragedy?

A. No, I guess they hadn't. They have asked to do the inspections.

Q. If I could take you please to DOL300070199/2. If we could highlight please the top half Ms Basher, and the date on the preceding page is 27 May 2008. Can you just confirm that these are your notes?

WITNESS REFERRED TO DOCUMENT DOL300070199/2

A. Yes, they're my notes.

Q. And they would've been notes of your visit of that date?

A. Yes.

Q. Are you able just to read for us from the seventh line down where it starts, "Shaft sinking has started...?"

A. And do you want me to read it – "Shaft sinking has started, drill holes are being used to grout area. 2000 bags of grout have already been used. Discussed ladderway in shaft. 110 metres will be second egress for about seven months.

May be a need for full restraint 10 metres between major landings.” Shall I go, “Expecting to hit the coal in July, production to start December.”

Q. Thank you. I take it that's a reference to the main ventilation shaft?

A. Yes.

Q. Am I right that your understanding at that stage was that the plan would be that it would have landings every 10 metres?

A. Yes, well maximum.

Q. Was that a matter that you ever discussed with Mr Poynter?

A. Well what was the date of this inspection, is this –

Q. This is the 25th of May 2008, so you had in fact gone along with Mr Poynter?

A. Was Mr Poynter at this, was he?

Q. Well I think it may well be –

A. May, the day before or something.

Q. – a missed date by one day.

A. Right, so I'm not sure if Kevin, I'm not sure if Kevin was there.

Q. You can't recall the nature of your discussions with him?

A. No.

Q. Did the Department at that stage give consideration to whether that ventilation shaft was in a return airway?

A. Or a second egress?

Q. Mmm.

A. No. The regulations just say two egresses not intake of both, both need, it doesn't state whether they need to be intake or returns.

Q. Had a ventilation been considered by the department?

A. Sorry, had a what?

Q. Had a ventilation plan been considered by the department?

A. Had they submitted a ventilation plan to us?

Q. Yes?

A. No I don't think so.

Q. So there was essentially no consideration at that stage of whether that proposed second egress might operate essentially as a chimney in the event of an underground fire or explosion?

A. There was no talk about that.

1620

- Q. Was consideration given at that stage to how practical it would be to climb that in the event of an emergency?
- A. Yes we looked at, oh I looked at the definition of a, a second egress had to be one you went out by mechanical means, the other on foot and that would comply with, "on foot," in my opinion, to go up a ladder.
- Q. Yes, but aside from compliance was consideration given about whether it was going to be practical for men to climb out of that in an emergency?
- A. It depends on the emergency. If you mean if there was a collapse in the drive and then people were to go out that, they didn't have to hurry, they weren't in smoke or do you mean – or you know, there's some other situations might be an explosion or fire.
- Q. But you and Mr Poynter visited together and I'm just wondering whether you or the Department considered at that stage whether it was going to be practical for that to be used as an egress in an emergency?
- A. It would depend on the emergency.
- Q. Wasn't this the state at which the Department had to consider the appropriateness of the emergency egress at that mine?
- A. There's two emergency egresses isn't there. Once the shaft is in, there's the shaft and the drive. Perhaps if there's a collapse in the shaft and you have to go up in the drive and you have to go out through the tunnel, through the shaft, that's sounds like a reasonable option. If there was fire in the intake and you had to go up the shaft well then, no it wouldn't be, so you'd be looking at the refuge chamber or something like that in the meantime 'til they got the fire out.
- Q. Yes, my point is, isn't this the state at which the Department ought to have given serious attention to whether or not this was an appropriate second means of egress for use in emergencies?
- A. When you do your risk assessment the requirement in the Act is for two means of egress and if you go through each of the scenarios of a fall or a fire or explosion, it will be – except or in certain circumstances it would meet the regulations in the sense there was two although a modern way of thinking which were just coming to Johan, had some ideas was two (inaudible)

16:23:36) intakes and it's not law at the moment but there's definitely good reason to do that.

Q. You will see that your note refers to, "Ladderway and shaft 110m," presumably metres will be second egress for about seven and then the abbreviation for months. Does the Department's view of whether it's acceptable to have an egress such as that depend on the length of time for which it might be used?

A. No, I think it would an acceptable means under the present legislation, it would be an acceptable means of egress for quite some time as long as we have refuge chambers, however, modern practice we would be encouraging people to have two egresses in the intake.

1625

Q. Well I suggest to you that it wasn't an acceptable means of egress and given that you've expressed the view that it was, can I ask you this. Did the Department ever seek advice or report about whether or not that was a second means of egress that complied with the regulations?

A. Did they have a second advice from some, from an external person?

Q. Externally or internally?

A. No. It was...

Q. If we could just turn to a different document please Ms Basher, DOL300030119/1?

WITNESS REFERRED TO DOCUMENT DOL300030119/1

Q. You'll see that this is an email of 20 April 2009 from Mr Poynter to Mr Booyse and a copy to you, containing some safety statistics presented to the board from Pike River. Do you recall receiving that?

A. No I don't.

Q. Ms Basher, if I could just ask for page 10 of that document. This is the information supplied by Pike River under cover of that email. You'll see it's a pie chart entitled, "Incidents by cause of accident/harm," based on 132 reported incidents from 01 September '08 to 22 March '09. Do you see that?

A. Yes.

Q. Up the top you'll see that the incidents include misuse/malfunction of equipment 6%?

A. Yes.

- Q. Faulty equipment, maintenance, damaged equipment 6%?
- A. Yes.
- Q. Substandard housekeeping 6%?
- A. Yes.
- Q. Substandard environmental conditions 5%? Yes?
- A. Yes.
- Q. Protective clothing not worn, 2%
- A. Yes.
- Q. I take it some of these matters would be of concern to an inspector. Is that a fair comment?
- A. Yes.
- Q. They're matters which would perhaps warrant some enquiry about?
- A. Yes, statistics are good to identify areas where you can target.
- Q. Did you, Mr Poynter and Mr Booyse ever discuss this document?
- A. Not that I'm aware of.
- Q. Just turn to a different issue, which is the information the Department had at its disposal when you were at Pike River. If I could just ask Ms Basher please if you could just show DOL.012.03499/1? It's not available but conveniently Mr Poynter, it's a document headed, "Pike River Coal Company Financial Mine Plan and Financial Model," as at 13 July 2005 and you'll remember having a look at that this morning. Do you recall that?
- A. Yes, yes.
- Q. And can you just confirm that to your knowledge the Department didn't ever receive that?
- A. I've never seen that document.
- Q. To your knowledge did the Department receive any document from Pike River giving an overview of matters such as the geology, coal seam, extraction methods, risks, hazards and controls that would be used?
- A. The only document I got was when I first started, I got part of the, I asked for part of the geotechnical appraisal and the plan I think.
- Q. Being the mine plan?
- A. Yeah, being the mine plan.

Q. And I take it the department didn't to your knowledge, receive any documentation from any other regulatory agency, for example, Ministry of Economic Development or the councils?

A. No.

A. And that was never sought?

Q. No.

1630

Q. And in paragraph 17 of your witness statement, you describe emailing to Mr Whittall that you had no objection for his proposal, and I presume you mean there the proposal for developing the mine?

A. Sorry, I'm a bit lost here, which ones that?

Q. If I could ask you to turn to paragraph 17 of your witness statement?

A. Okay.

WITNESS REFERRED TO STATEMENT PARAGRAPH 17

Q. See, it says, "On 12 May 2005, I emailed Peter Whittall and told him I had no objection to the proposal he had sent me."

A. No.

Q. I presume that was the proposal for developing the mine?

A. Using the contractors who were non-flam – is it calling it the tunnel, using non-flameproof equipment.

Q. I'm presuming the Department never sought detailed information about the mine, its proposals, its hazards, et cetera, because it doesn't have a consenting role in relation to mines, is that a fair comment?

A. There was the inspector who would've been involved at the initial stages of Pike, was Bill Taylor, he may have asked for that information, but generally the Department would not – it would have to be just from the inspector's own initiative. The Department doesn't normally, would not normally ask for that.

Q. Well, if we could just look at a letter of his of 3 April 2006 to Pike River – Ms Basher, DOL300070217/1?

WITNESS REFERRED TO LETTER DOL300070217/1

Q. You'll see this is letter, 3 April 2006, signed by Bill Taylor, senior advisor mining, to Pike River Coal?

A. Yes.

Q. And he at that time was an underground coal mine inspector with the department?

A. Yes. And senior advisor, that's right.

Q. And in relation to regulation 8 of the Health and Safety in Employment (Mining-Underground) Regulations 1999, he says, second paragraph, "Whilst this may be open to interpretation, the Department would regard that as a minimum a safety management plan for the initial tunnelling phase of the operation be produced."

A. Yes.

Q. Do you know whether that was ever produced to the Department?

A. No, I don't know.

Q. Not something you ever saw?

A. No.

Q. He then says, "At a later date, there would be an expectation that a similar document or collection of documents be produced in relation to the coalmining phase." Are you aware of whether a similar document, a safety management plan was ever provided to the Department in relation to the coalmining phase?

A. No.

Q. Do you know whether the Department ever sought one?

A. No, I don't know.

Q. If I could just ask Ms Basher for you to call up document CAC0117/3?

WITNESS REFERRED TO DOCUMENT CAC0117/3

Q. I'm just going to show you a series of four schedules prepared by the Commission, which lists some of the types of records which Pike River had, and I'm just going to ask you to identify which ones, if any, you looked at and in fairness, I want to note that a lot of these might not have been in existence at the time at which you inspected the mine, so the purpose of this is just to find out what you did look at. Did you ever look at any of the documents on schedule A?

A. Probably did see some multiple shotfiring records, whether they're firing in the drive, especially when the explosives were stolen. I probably would've seen that. Probably the only one.

Q. Next page please Ms Basher and this is schedule B, any that you can recall checking or seeing from there?

A. I probably would've seen some incident reports.

Q. Would you have made a record of those if you'd seen them?

A. No. I would've gone onsite with the, in the tunnel and maybe can't recall but often I'd look, sometimes I'd look at the incident report, if you've got the incident reports there and just have a quick look at some of them.

Q. What about schedule C?

A. No. Yeah, audits were sometimes good to get hold of, if someone had the – but no.

Q. Well sorry –

A. No, sorry.

Q. - when you say they were good to get hold of, did you see –

A. Yeah, I was thinking of Solid Energy where we asked for some audit reports but no, I'm, no.

Q. But you didn't ask for any audit reports with Pike River?

A. No, no, Pike River, no.

Q. Schedule D, just the next page?

A. No, no. Hazard register in a sense that not really but some of the risk assessments had some hazard registers in them.

Q. If we could have DAO.011.00219/1.

WITNESS REFERRED TO DOCUMENT DAO.011.00219/1

Q. Well it's a document headed specific contractor OH&S system evaluation and conformance audit. Do you recall if you ever looked at such a document?

A. Have we got it here, is it? No, I don't think so. What it is, sorry, what was it?

Q. You didn't request any audit documents. Is that right?

A. No, no.

Q. And you didn't view any audit documents?

A. No.

Q. Ms Basher could we have DAO.004.00798/1.

WITNESS REFERRED TO DOCUMENT DAO.004.00798/1

- Q. This is a document headed, "Incident accident near event register Pike River Coal Limited," with the date starting 001 on 16 January 2006. Did you ever inspect the incident accident near hit event register?
- A. No. There is a requirement to send that to us, isn't there? I'm not sure if they ever did, can't remember.
- Q. Well if we just look at some of the matters in it. Number 007 McConnell Dowell unsupported roof collapse in tunnel, 17 December 2006. Is that the sort of matter that had you known about it you might've wanted to enquire into?
- A. That's reportable under the regulations.
- Q. I take it you weren't aware of that?
- A. No, I wasn't.
- Q. Were you the inspector at that time?
- A. No, I think my first visit is 2007, isn't it? Yeah, February 2007. It may have been reported then to Bill.

1640

- Q. Let's go to another, this time DAO.004.00789/1, number 033 which is the third down. "McConnell Dowell, ventilation shutdown, crew not withdrawn from face after 30 minutes, fan restarted after 60 minutes, 11 May 2007." Were you aware of that?
- A. No, it's a breach, that's a, they've written, they've breached the regulations.
- Q. You would've been concerned about that?
- A. Yes, that's an omission of a breach.
- Q. Second from the bottom number 044, "Unsafe act, person removed a person's tag on tag in/tag out board 25 July 2007." Were you aware of that?
- A. No.
- Q. I take it you would've viewed that matter seriously?
- A. Yes, that's right.
- Q. It would've warranted an investigation of some sort, correct?
- A. That's right, yes whether they used their own investigation or we did one, yeah.
- Q. Ms Basher please could we have DAO.004.00791/1. Sixth down number 066, "Tunnel first aid medical injury - McConnell employee," I won't name the employee. "Bruising to lumbar area after rock fell from face while loading explosives 15 October 2007." Were you aware of that matter?

- A. No, no.
- Q. That the sort of matter that had you been aware of it, you might've investigated?
- A. Yes I would expect that to be notified. There's a – well it may not be serious harm, however does it fit into the definition of unplanned fall of ground, certainly a serious matter. It may not have to be notified, depends on the size of the rock. It sounds like he's injured so they should've notified. If in doubt, notify.
- Q. Ms Basher please DAO.011.24660/3. This doesn't seem to come up but I'll read it for you. It's number 117. "Unsafe at/SOPs – tunnel - McConnell during a routine inspection of boomer working area, PRCL representative observed that the Drager gas detector was incorrectly placed to detect methane at high levels, 26 March 2008." That the sort of matter in which you would've taken interest as an inspector?
- A. Yes I would expect them to probably handle that themselves, but it would be good to be notified of these things.
- Q. And perhaps finally, it's the same document so I'll have to just read it. Number 132, "Tunnel, McDowell PRC employee found detonator hanging on rib bolt in B4 intersection. Given to undermanager for further investigation, 28 May 2008." Is that the sort of matter that you might have taken an interest in as an inspector?
- A. You know, I guess there's no requirement for them to notify those but yes, it's certainly a serious incident.

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- Q. I take it, fair to say at this stage that the inspections that you conducted at Pike River and the enquiries you made weren't sufficient for you to be able to form a view as to whether or not Pike River and its contractors were complying with the Health and Safety in Employment Act and regulations?
- A. Well, true, we weren't. Once, when I look back once every three months was obviously not enough and we should have been auditing.
- Q. Just the final topic Mr Firmin, and I just want to look at the knowledge that the Department through you had of Pike River by the time you had finished

inspecting in May 2008, by then the Department would have known that the mine was geographically isolated?

A. Yes.

Q. That it was developing a substantial infrastructure?

A. Yes.

Q. Which involved developing and installing its own electrical system?

A. Yes.

Q. That there'd be a substantial amount of electrical equipment underground?

A. Yes.

Q. That it would be undertaking plant and vehicle servicing and maintenance on site?

A. Yes.

Q. That it would need to be able to cope with initial emergency responses on site?

A. Yes, although they did have the service I think of the local fire engine, fire service.

Q. If we look at the geology, it would have known that the area, the mine was in an area with complex geology?

A. Yes.

Q. Working in close proximity to the fault?

A. Yes.

Q. With the drift going through it?

A. Yes.

Q. It would've known that one of the consequences of that was weak strata in places?

A. Yes.

Q. With sandstone above the Brunner seam?

A. Yes, is that a hazard or ...

Q. Well I'm just going through information the Department would've known.

A. Yeah.

Q. As a result of the Mount Davy incident, it would've known that there may be outburst potential there?

- A. Yes, we were aware of that particular issue, especially Kevin. He was, followed up on that with a – they gave us a report. Gave Kevin a report on potential.
- Q. Did the Department ever seek from Pike River information about the extent of its borehole data?
- A. No.
- Q. It would've known that it was going to be a gassy mine?
- A. Yes.
- Q. Did it ever ask for the gas drainage plans?
- A. I'm not sure.
- Q. Did it ever receive any spontaneous combustion reports?
- A. I'm not sure on that.
- Q. In terms of the design, it would've known that it was going to be lengthy single drift of 2.4 kilometres roughly?
- A. Yes, I was aware of that.
- Q. And that for a period of time, the second egress was going to be up about a 110 metre vertical shaft?
- A. Yes.
- Q. That it was going to involve various different companies working together?
- A. Yes.
- Q. And would you agree that having many different companies working together can introduce challenges in terms of managing health and safety?
- A. Yes.
- Q. Of course, it was aware that Pike River was in the development stage. Would you agree that a development stage carries risks from a health and safety perspective?
- A. Yes.
- Q. As new systems are being developed and tested?
- A. Yes, new mine.
- Q. And you'd agree that new systems are prone to deficiencies?
- A. Well teething troubles. Yeah, you've got to get them to work properly.
- Q. I think the Department would've also know that there were difficulties in engaging experienced miners in New Zealand?

A. Yes.

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Q. And so it would've been clear to it that Pike River would likely have some inexperienced workers?

A. It's a problem for New Zealand really.

Q. And inexperience is something that increases the risk underground, is that right?

A. That's true.

Q. And it would've had some workers from overseas, that would've been known?

A. Yes.

Q. And the department would've known that mining in the West Coast environment is quite different from mining in many overseas places, for example, Australia?

A. Yes.

Q. And so it must've known that there would've at least be a risk that some of the miners from overseas wouldn't have the skills ideally suited to the West Coast environment?

A. Yes.

Q. Of course, it was aware that this was going to involve hydromining?

A. Yes.

Q. And that that introduces a fresh set of risks compared to more conventional mining. Is that a fair comment?

A. It's quite a safe form of mining, perhaps, similar perhaps of Longwall in terms of safety for extraction, but quite different.

Q. Right, a special set of risks compared to normal mining?

A. A special set of risks, yes.

Q. And of course, as a result of your visits, you knew at least there was an incident where there was insufficient guarding of the conveyor?

A. Yes.

Q. Insufficient floor protection in the case of a contractor?

A. Yes.

- Q. An issue with electrical equipment in relation to another contractor for which you issued a notice? There'd been an issue over the sufficiency of communications installed for those on nightshift during the drive?
- A. Yes.
- Q. And it had already had concerns about whether there were sufficient safety measures for those underground and by that I'm referring to the refuge station changeover issue, while the drift was being driven?
- A. Yes.
- Q. I think we know from Phase One that the department was aware of the lack of industry specific codes and guidance?
- A. Yes.
- Q. I'm not going to continue to list those matters, but it'd be fair to say, wouldn't it that it must've been known by the Department that this was going to be a complex and difficult operation?
- A. Yes, I think the West Coast tends to be that way – any mine really.
- Q. And that Pike River and its contractors were going to have to identify and manage the hazards and risks very carefully in order to meet the requirements of the Health and Safety in Employment Act?
- A. Yes.
- Q. Appreciating from the Phase One evidence and some of yours today that the coal mines inspectors were under pressure and were only able to visit once every three months, you would accept that those circumstances would justify far more frequent visiting regime?
- A. Definitely, I guess at the time, we should've been doing that.
- Q. And you're aware that from when Mr Poynter started from April 2008, to when he received a certificate of appointment in 18 June 2009, he was a trainee inspector?
- A. If you like, yeah. He had a role where he was, he didn't have his warrant.
- Q. Well he was still undergoing the training courses, wasn't he?
- A. He was undergoing training, very competent, good experience, good management experience, West Coast experience.

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- Q. Against that background, did the department give any consideration to whether the Pike River Mine was a mine that it ought to have given more close scrutiny to?
- A. No, I think it was put into the system where the mine, it wasn't thought of in those terms. Mines inspectors inspected mines every three months, general workplace only once every five years so that was adequate.
- Q. Those comments as are many of mine not directed at you but did the Department give any consideration to whether it was appropriate after you stopped inspecting this in May 2008 for the responsibility of inspection to lie within a trainee inspector?
- A. I don't think they considered that. What normally happens is I think for Bill Taylor and the rest of them, we just take over. Yes, I guess he was inexperienced in the terms of being an inspector.

**THE COMMISSION ADDRESSES COUNSEL – APPLICATIONS FOR
CROSS-EXAMINATION OF WITNESS – ALL GRANTED**

COMMISSION ADJOURNS: 5.00 pm

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