CHAPTER 21

Collaboration between government agencies

Introduction

1. The mid-1980s and early 1990s were a time of significant change in New Zealand. The economy was deregulated and major reforms were introduced in the state sector. It is within this context that a new legislative framework was established for health and safety. The Crown Minerals Act 1991, the Resource Management Act 1991 and the Health and Safety in Employment Act 1992 all came into force. Industry-specific legislation applying to mining was repealed.
2. This chapter provides an overview of the Coal Mines Act 1979 and of the changes that led to separate regimes for permitting, resource management and health and safety in coal mining. It then covers some of the consequences of the separation of functions. Of most concern is the lack of consideration given to health and safety during the various approval processes. This is a significant gap in regulatory oversight.

Law reform

Coal Mines Act 1979

3. Before the changes the Coal Mines Act 1979 was the main statute governing mining activities. It provided a prescriptive set of rules and regulations specific to the coal mining industry and was administered by one government agency. It covered coal prospecting, mine licensing and the regulation of coal mines, including coal mine management, certificates of competence, safety, employment, and accident notification and investigation. This act and other legislation – the Coal Mines (Licensing) Regulations 1980, the Coal Mines (Mine Management and Safety) Regulations 1980 and the Coal Mines (Electrical) Regulations 1980 – treated coal mining as a specialist area requiring highly prescriptive standards. The act was administered by the Mines Division of the Ministry of Energy.
4. The minister of energy granted coal mining licences over defined areas. Applications for licences were made to the Mines Division and their assessment included review by mines inspectors. Notice that a licence application had been lodged was served on landowners and occupiers and publicly notified. Local authorities had to report on environmental effects. Copies of applications were forwarded to the commissioner of Crown lands and to the relevant catchment boards or the Soil Conservation and Rivers Control Council for review and comment.
5. After consultation, the minister approved a work programme and set the conditions of the licence. These covered many matters, including resource extraction, environmental effects and mine safety.[1] The chief inspector of mines had input into the application and licence conditions. The mines inspectors were involved from the outset.
6. It was a standard condition of all mining licences that mining operations be carried out in accordance with an approved work programme. This covered the proposed development of the mine, extraction of coal and general plans for future development. As well as these site specific conditions, licences contained general conditions such as rents and royalties and supplying information. Operators were also required to use the licence land 'only for coal mining purposes in accordance with the Act and any regulations issued under the Act'.[2] That included compliance with health and safety provisions.
7. Coal mine owners had a statutory duty to make financial provisions and ensure the coal mine was managed, worked, planned and laid out in accordance with the Coal Mines Act. This included requirements on safety matters such as shafts and outlets, removal of pillars and control of dust. The act allowed for workmen's inspectors. The regulations had detailed provisions relating to certificates of competence and qualifications, conduct of the people

employed and the duties of mine managers. They included standards for mine systems and equipment such as ventilation and use of explosives.

Changing times – the 1990s

8. Both the Coal Mines Act 1979 and the Mining Act 1971, which applied to gold and silver mining, emphasised the use of land for mineral development over other uses. During the 1980s this became 'increasingly unacceptable' as the legislation governing mining was 'seen to unreasonably override the rights of land owners'.[3]

9. In 1986 the Ministry of Energy released a discussion document on mining legislation. One of its purposes was to find a better balance between the interests of the mining industry and the concerns of other parties, including local authorities and landowners. Many other parts of the mining legislation were in need of change because of matters concerning mineral ownership, mining titles, environmental protection, public participation, complex licensing procedures, and the roles and responsibilities of the various authorities.[4]

10. A major review of natural resource management, including mining, started in the late 1980s, and led eventually to the separation of the allocation of mining permits from management of the environmental effects of mining. This was reflected in the Crown Minerals Act 1991 and the Resource Management Act 1991.

11. The environmental reforms, which also resulted in the Environment Act 1986 and the Conservation Act 1987, and the establishment of the Ministry for the Environment and the Department of Conservation (DOC), changed the balance between environmental protection and economic production and the shape of the government agencies managing natural resources.

12. In 1992 the Health and Safety in Employment Act (HSE Act) was passed. It imposed general duties on all employers, including mine operators, to take all practicable steps to ensure health and safety. The prescriptive Coal Mines Act was repealed. Mine operators were to determine how to manage health and safety using appropriate hazard management practices. The drive to deregulate the economy and improve business competitiveness was evident in the new act. Initially the legislation lacked some key elements, such as strong employee participation provisions, and the delays in developing new regulations can be traced in part to a belief that the HSE Act was operating effectively without them.[5]

13. Like some other hazardous industries, including construction, geothermal energy, petroleum and quarries and tunnels, mining was no longer subject to a separate legislative scheme. Regulation regarding permitting, health and safety and environmental issues was allocated to various national and local government organisations, which were expected to act independently and impartially. It was expected, too, that the potential for conflicts of interest would be minimised, for example between the Crown's commercial interest in mining and its role in preserving the environment or making decisions about health and safety. This did not mean agencies should not work cooperatively.

The regulatory framework

Mining permits and land access

14. The Crown Minerals Act 1991 deals with the way in which rights to extract minerals and petroleum resources are allocated by the government. It sets out the rights and responsibilities of resource users and the functions and powers of the minister of energy. Exploration and mining permits are issued in accordance with government policies set out in the minerals programmes, which were prepared by the Ministry of Economic Development on behalf of the minister and issued by the governor-general.

15. New Zealand Petroleum and Minerals (formerly Crown Minerals) is the operating division of the ministry responsible for granting permits, monitoring compliance with permit work programmes and collecting royalties. It also promotes new investment in the minerals estate.

16. New Zealand Petroleum and Minerals aims to allocate resources efficiently and to generate a fair financial return for the Crown. It does not consider health and safety matters.

17. The Crown Minerals Act 1991 and Conservation Act 1987 together regulate mining on the conservation estate.

18. If mining is to occur on conservation land, the minister of conservation authorises access, taking into account the need to preserve and protect the area. Mining activities can be approved, irrespective of whether they are contrary to conservation purposes, provided there are safeguards against the potential adverse environmental effects of mining.[6]

19. When assessing applications for land access, DOC looks principally at the above ground effects of the operation. Ongoing monitoring of operations has a similar purpose. DOC does not consider whether a mining proposal involves workplace health and safety risks.

Resource management

20. The purpose of the Resource Management Act 1991 is to promote the sustainable management of natural and physical resources.

21. Local councils are responsible for its implementation. They grant land use and resource consents required for mining operations to proceed. The focus is on managing the actual and potential effects of an activity on the environment. Health and safety can be considered, but in practice the emphasis is on public, not workplace, health and safety.[7]

Health and safety

22. The HSE Act promotes prevention of harm to all employees. DOL helps employers to meet their obligations, determines whether they are complying, or likely to comply, with the act and takes enforcement action if necessary.

23. No approvals are required from DOL before mining operations start. DOL's oversight begins as soon as there is a workplace and may therefore include the exploration phase. However, despite the preventative approach of modern health and safety law, DOL has no involvement in the consenting stages of a mining operation. It does not contribute to decisions on granting mining permits, access arrangements or resource and land use consents. It is not required to approve mining activities before operations start.

The need for collaboration

24. The commission has not found anything to suggest fundamental flaws in the separation of permitting, mining safety and environmental law. It is common practice in other jurisdictions, such as New South Wales and Queensland, and in the main Canadian coal mining state of Alberta. New Zealand is not out of step.

25. The problem is not so much with the law, though there are weaknesses that are addressed later in this report, but with the way the laws were administered after the reforms. The benefits of the unified approach of the Coal Mines Act and mining inspectorate were lost.

26. The local councils – Buller, Grey and West Coast – worked together on resource consents. They appointed a lead agency and relied on reports, such as the annual planning document required by DOC, for monitoring purposes.

27. But sharp demarcation lines developed between the central agencies. The Ministry of Economic Development and DOL in particular interpreted their responsibilities narrowly, and there appears to have been little dialogue or sharing of relevant information during Pike's development.[8] Similarly, while DOC worked diligently to fulfil its statutory obligations it did not engage with either the ministry or DOL. Information collected about mining operations during approval and monitoring processes was therefore not shared.

Conclusions

28. Collaboration is required to make the system work and ensure that high-risk operations are adequately monitored. There should be closer contact between agencies, or business units within agencies, during the approval, planning and design of new mines and the production and decommissioning stages.

29. The increased collaboration required between regulators before permits are issued is in part the subject of government proposals to strengthen the Crown Minerals regime. Those proposals are dealt with in Chapter 27, 'Strengthening the Crown Minerals regime'.

ENDNOTES

[1] Ministry of Economic Development, Tier Two Paper, 6 May 2011, MED0000010001/23, para 74.
[2] Ibid., MED0000010001/23, para. 73.
[3] Ibid., MED0000010001/85, para. 294.
[4] Ibid., MED0000010001/86, paras 295–96.
[5] Department of Labour, HSE Regulations: Process, 30 May 1994, DOL0010010008/1.
[6] Crown Minerals Act 1991, s 61(2) .
[7] Resource Management Act 1991, s 5; Ministry for the Environment, Phase Four Paper, 16 March 2012, MFE4000010001/8, para. 25.
[8] Although the Conservation Act 1987, Resource Management Act 1991, Crown Minerals Act 1991 and the Health and Safety in Employment Act 1992 have different purposes there are circumstances where the same matter or information is relevant under more than one act, e.g. mining methods or access to mine plans.