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SACEA comments on the Draft Mine Health and Safety Amendment Bill, 2022: Publication of the Draft Mine Health and Safety Amendment (46546)

Introduction

The Department of Mineral Resources and Energy (DMRE) released the above Mine Health and Safety Act (MHSA) amendment proposal on the 15th of June 2022. The public was given until the 29th of July 2022 to comment on the amendments. In response, the South African Colliery Engineers Association (SACEA) drafted this document to summarise the view of the engineering fraternity within the South African Coal Mining industry.

This document is laid out in such a manner that the regulations with specific comments are listed in italic font, with the subsequent comment in normal font. Additionally, as in the gazette, bold words in square brackets indicate omissions from the current regulations, while underlined words indicate proposed insertions. The comments are numbered according to the numbering system in the gazette, with amendments listed numerically and the number of the relevant MHSA section listed thereafter. Regulations or sections that are not listed in this document, implies that SACEA has no specific comment on that piece of legislation.

Comments

Amendment 5. Section (6) (4): All personal protective equipment supplied in terms of this section must be suitable in terms of –

- (a) size and fit;
- (b) type of workplace hazards;
- (c) purpose,
- (d) nature of work to be undertaken and
- (e) gender

SACEA commends the DMRE on the proposed amendment of the MHSA that will require the distribution of gender-specific PPE. It is SACEA's view that the mining industry should embrace diversity and this should reflect in legislation and the industry's approach to safety.

Amendment 10. Section 11A (2): On completion of each investigation, the employer must prepare a report that:

- (a) identifies the causes and underlying causes of the accident, serious illness or health threatening occurrence;
- (b) identifies any unsafe conditions, acts or procedures that contributed in any manner to the accident, serious illness or health threatening occurrence;
- (c) makes recommendations to prevent a similar accident. serious illness or health threatening occurrence.

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SACEA welcomes the changes requiring a more systemic approach to accident investigations. SACEA believes that this will lead to more thorough investigations being conducted with recommendations that can improve health and safety.

Amendment 10. Section 11A (9): *In the event of an incident in which a person died, or was injured to such an extent that he or she is likely to die, or suffered a loss of a limb or part of the limb, no person may without the consent of the Principal Inspector of Mines disturb the scene where the incident occurred or remove any article or substance involved in the incident. Provided that an article or substance may only be removed for the purposes of-*

- (a) preventing any further incident;*
- (b) removing the injured or the dead; or*
- (c) rescuing any person from danger."*

SACEA agrees with the substance of this proposed regulation. However, SACEA proposes that the 'loss of limb or part of the limb' referred to in the amendment should exclude the loss of a finger. SACEA believes that while finger injuries are serious enough to warrant a full investigation, they are not life threatening and will not normally affect an employee's ability to continue working. SACEA believes that if the loss of limb, contemplated in the above amendment, includes multiple fingers or parts of the hand, then the above amendment should apply as intended.

Amendment 17. Section 43 (b) after paragraph (eA):

- (eB) establish and control an administrative fine fund for the fines imposed in terms of section 55B.*
- (eC) subject to the approval of the Minister, use the monies collected in terms of section 55B for the promotion of health and safety in the mining industry;*
- (eD) in its annual report, reflect the financial affairs of the fund; and"*

SACEA does not support this proposed amendment. This would place undue financial strain on the mining industry, particularly for mines with limited financial resources. SACEA also believes that mines should invest money on improving regulatory compliance with the aim of preventing the issuing administrative fines, rather than saving money in a fund for the potential paying of such a penalty. The administration of such a fund would also open the door for individual interpretation and potential mismanagement.

Amendment 22. Section 54 (a) (1): *If an inspector [has reason to believe] observes that any occurrence, practice or condition at a mine endangers or may endanger the health or safety of any person at the mine, the inspector may give any instruction necessary to protect the health or safety of persons at the mine, including but not limited to:*

SACEA agrees that the phrase 'has reason to believe' was vague and open to individual interpretation. SACEA therefore supports the amendment to replace this phrase with the word 'observes'. This will assist the industry immensely in the understanding of section 54 instructions. It will also make the issuing of section 54 instructions more objective.

Amendment 22. Section 54 (b) (5) & (6):

- (5) Any instruction issued under subsection (1) (a) must either be confirmed, varied or set aside by the [Chief Inspector of Mines] Principal Inspector of Mines as soon as practicable.*
- (6) Any instruction issued under subsection (1) (a) is effective from the time fixed by the Inspector and remains in force until set aside by the [Chief Inspector of Mines] Principal Inspector of Mines or until the Inspector's instructions*



have been complied with.

SACEA supports the above amendment. The Principal Inspectors are more accessible to mines, allowing section 54 instructions to be handled in a more timely manner. However, SACEA requests that a means to elevate the handling of a section 54 instruction be regulated. It often happens that Principal Inspectors are not available, leaving mines with no option to handle the instruction. In such cases, an elevation route should be provided to the mines.

Amendment 24. Section 57 (b) (4): No person may apply to the Labour Court for the review of an administrative decision, except a decision contemplated in section 55B, until that person has exhausted the appeal process contemplated in this section.

While SACEA supports that proper channels should be followed for an appeal process, SACEA feels that it is unconstitutional to prevent a person from approaching the Labour Court whenever they deem it necessary to do so. The country's judicial system should always be protected and therefore, a person's right to access that system should also be protected.

Amendment 31. 86A (2): If a chief executive officer, manager, agent or employee of the employer commits an offence by performing or omitting to perform an act and such performance or omission would have constituted an offence had it been done by the employer, that employer is equally committing an offence if the act or omission fell within the scope of the authority or employment of the chief executive officer, manager, agent or employee concerned and the employer

(a) connived with or permitted the act or omission by the chief executive officer, manager, agent or employee concerned; or

(b) did not take all reasonable steps to prevent the act or omission.

SACEA does not support this amendment, particularly part (b). Part (a) makes sense, in that the wording makes the employer complicit in the offence. However, part (b) makes the employer guilty of an offence that could have been committed outside her/his control by another person. The wording 'did not take all reasonable steps to prevent the act or omission' is too open to interpretation. SACEA believes that if a person knowingly commits an offence in terms of the MHSA, then that person should be held to account. The employer has the responsibility to ensure that each person within her/his area of control understands, and complies with, the MHSA. However, the employer does not have the means to monitor people's actions all the time. SACEA believe that this regulation should be clearer on the definition of 'reasonable steps' contemplated in section (b).

SACEA is committed to improving the health and safety of all persons employed in the South African Coal Mining Industry. SACEA is committed to the implementation of all applicable legislation that will improve health and safety, and will enable the South African coal mining industry to prosper. We trust that these comments are accepted in the same spirit that they were drafted.

Mr L Botha
SACEA President 2022

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