



Department of
**Natural Resources,
Mines and Energy**

Complaint Investigation Report – Peak Downs

Initial Complaint (brief description)

The concern was raised that the investigated into the PDM Operator and Dozer inundation with water incident of 10th August 2018 had not considered the event on 9th July 2018 and could have contributed to the fatality at Saraji due to lessons learnt not being communicated by Peak Downs.

Additional concerns that there was not a sufficient cross section of the workforce involved in the ICAM investigation, that the mine was being given instructions as to how to operate from persons not appointed under the Coal Mining Act and Regulations, that the Asset mandate to keep trucks running to meet production targets and this was ahead of safety, and finally that the controls from the ICAM investigation were preconceived and not as a result of the investigation.

The following feedback was provided verbally to the Complainant by phone on 21st April 2020. It was agreed that a written file note and summary of the discussion would be provided.

Key Concern 1 – That the ICAM conducted by the SSE for the incidents at Peak Downs Mine were deficient.

Actions-

- An Inspector attended the mine on 23.01.2020 to review the incident investigation and action close out from the investigation
- Chief Inspector Peter Newman reviewed the ICAM investigation provided by the complainant and BMA

Results/Comments-

- The investigation followed the ICAM investigation methodologies and practices.
- The ICAM lists persons having been involved in the investigation with a fair and adequate cross section of the workforce with the relevant skills
- The report did provide a detailed account of the incident facts
- The corrective actions aligns with the findings of the investigation

Conclusion

- While there were improvements that could have been made to the investigation they were not significant
- A recommendation that there is a review of the controls (as documented) be undertaken as part of the current site practices and this also been done through the site SSHR's.
- Target 'Field Leadership' activities in the area of working around water for a nominated timeframe.

Key Concern 2 – That Saraji Mine may not have been informed of the Peak Downs incident learnings hence contributing to the fatality in 2018.

Actions-

- An Inspector attended the mine on 23.01.2020 to review the following;
 - How critical information is shared across the BMA/BHP system
 - Find evidence that the findings of the Peak Downs Mine dozer incident was entered into the management system
- The Chief Inspector reviewed the BMA notification of the Peak Downs incident and findings from the Saraji Investigation

Results/Comments-

- A copy of the two page Significant Incident Report (BMA-HSE-9218624) was located and reviewed
- Evidence was demonstrated that the event was communicated electronically, by email address appreciate to the prescribed corporate practices
- Significant Incident Reports are shared across the company sites via a corporate email listing.
- The Report was communicated to all persons on the email distribution list at Saraji Mine including the SSE.

Conclusion

- The learnings from the Peak Downs incident were shared with other BHP operations including the Saraji Mine prior to the fatality that occurred in December 2018.

Key Concern 3 – Documents reviewed by the complainant had to be obtained through the RTI process and the Department resisted the release of documents. Further, it is claimed that now the department has released the information the investigation and actions have been closed off by the Department

Results/Comments-

- Documents held by the Department cannot be presented to third parties unless provided through the RTI process, to ensure Natural Justice has been afforded all the impacted parties.
- The timing of documents being released will depend on the status of the investigation, with documents not being released until the completion of the investigation process. Both factors will impact the timing of documents being released
- The investigation has been completed and no further action to be taken on this matter.

Key Concern 4 – It is claimed that BMA has certain mandates such as “There is mandate to keep trucks running to meet production targets”, and “There is an asset requirement to have this mandate”, which is believed to be a formal admission that “Production before Safety” mandate exists.

Results/Comments-

- This is the assertion of the complainant not a formal admission of Production before Safety as they assert. It may reflect the business requirements but is not exclusive of the Health and Safety of Coal Mine Workers.

Key Concern 5- BMA/BHP has created some sort of Entity outside the Coal Mining Act that by its own admission is issuing Directions to the Peak Downs Mine and therefore the SSE about how the Site Safety and Health Obligations are to be discharged. Such Directions unless issued by a least the Coal Mine Operator are in direct contravention of the Coal Mining Act. Further, there is no mention anywhere of the Asset being the Coal Mine Operator.

Results/Comments-

- BMA have an appointed Operator under the Coal Mining Act, an appointed SSE as required under the Act and a Management Structure with persons in that structure being appointed to those roles, all having responsibility and accountability to ensure the provisions of the Coal Mining Act and Regulations are implemented for their operations. Only these persons are able to give directions at the site under the requirements of the Coal Mining Act and Regulations.
- A business owner or representative, not having an appointed role under the legislation, is not precluded from making other operational and business decisions that may impact the mine, where those decisions do not impact the Health and Safety of CMW’s, and/or contravene the obligations of the Coal Mine Operator, SSE or other statutory officials from discharging their duties under the Coal Mining Act and Regulations.
- The Coal Mine Operator is an appointed role under the Coal Mining Act. This does not preclude an organisation referring to Assets within their organisation or as some businesses have appointing personnel to roles within their business organisation, having accountability for the business performance of certain Assets. Such terms include Asset President, VP Coal Assets etc.
- As discussed with you in November in 2019 and later in January 2020, many organisations refer to their Mine, CHPP, or other production entity as an Asset. It is not uncommon to use this reference in an organisational sense. It is not mentioned in this sense in the Coal Mining Act or Regulation, however, this does not preclude its reference by an organisation. It is those appointed under the Coal Mining Act and Regulations, as previously described, that carry the responsibility and accountability, to give Directions as they relate to Health and Safety matters.

Key Concern 6 - BMA ICAM process has clearly demonstrated that there were preconceived Preventative Measure Outcomes. These have not changed since those reported to and recorded by the Regional Inspector of Mines at 8:25am on the 9th of July 2018. This is less than 3 hours since the Incident occurred. Further, the QMI accept the existence and validity of the “Asset” by its apparent copying and pasting of the un-changed Preventative Measures

Results/Comments-

- A review of the initial notification, final investigation, and documentation supplied by the Complainant and BMA found no evidence to support this concern
- The QMI do not accept the assertion made that it accepts the validity of the “Asset”. It has an obligation to record the details of an incident as reported by the operator, as was done in this case.

Key Concern 7 - The complainant is unable to ascertain who the BMA Operator is under the Coal Mining Act and who was the authority to make decisions and give instructions under the Coal Mining Act in relation to this matter. He asserts that Mr James Palmer is listed in the Structure as the Asset President. He cannot ascertain who the Operator is. It could be Mr Palmer, or someone he has nominated under Sections including, but not limited to Sections 40 and 41 under the Coal Mining Act 1999.

Results/Comments-

- The Coal Inspectorate have been advised by BMA who The Operator is, and who the SSE is at the Peak Downs Mine, as required by legislation. In the investigation into this matter both persons have the necessary control to make decisions as they relate to the Coal Mining Act and Regulations.

Key Concern 8 – The SSE is not listed as responsible for the Preventative Actions in the findings of the Incident Investigation, nor is the Operator mentioned in the investigation. Further, there is no mention of the SSE and their obligations and requirements under the Act and Regulations in any of the BMA Documentation.

Results/Comments-

- The SSE, by the position they hold, has accountability for investigating all incident and implementing controls to ensure an acceptable level of risk is achieved in the activities undertaken at the mine. They may delegate that responsibility but it does not reduce their accountability. Hence, your comments are interesting observations but not in breach of the Coal Mining Act or Regulations in the review of the investigation into this matter.
- In regard to the complaint that the SSE and their obligations are not mentioned in the ICAM, it was found this not to be true and as an example the ICAM makes reference to the mine Safety and Health Management System as it applies to trenching. The SSE is responsible for developing and implementing under the Coal Mining Safety and Health Act 1999

Note: There were other matters discussed as part of the phone call but they did not relate to the matter of the complaint and therefore are not covered in this file note.

An email was forwarded to the complainant with a copy of this file note attached and confirming the previous email, following the feedback on the phone, that the matter of the complaint is now considered closed.

Peter Newman

30th April 2020