

FILE NOTE

Subject: Request by Te Kāhui Whakamana Rua Tekau mā Iwa – Pike River Recovery Agency for exemption from the requirements of regulation 170(4)(a) of the Health and Safety at Work (Mining Operations and Quarrying Operations) Regulations 2016

Date: 3 December 2019

Purpose

1. This file note records my decision on the request made by Te Kāhui Whakamana Rua Tekau mā Iwa – Pike River Recovery Agency (PRRA), dated 13 September 2019, for an exemption under section 220(1) of the Health and Safety at Work Act 2015 (the Act) from the requirements of regulation 170(4)(a) of the Health and Safety at Work (Mining Operations And Quarrying Operations) Regulations 2016 (the Regulations) in respect of the proposed re-entry and recovery of the Pike River Mine drift (the Request).

Decision-making process

2. On Friday, 8 November 2019 I received a memorandum of advice from Paul Hunt, Chief Inspector Extractives, on the Request. This advice set out his analysis of the Request, and recommended that the exemption be granted subject to the terms and conditions set out in his memorandum.
3. Having considered this memorandum, on 13 November 2019 I asked Mr Hunt to provide further information and clarification about certain aspects of his advice. To respond to the issues and questions raised, Mr Hunt provided updated advice and recommendations on 20 November 2019.
4. On 21 November 2019, I wrote to Rob Regan, an independent consultant mining engineer, seeking his advice on the following matters:
 - a. whether he agreed that the forced ventilation could provide an equivalent level of safety to compliance with regulation 170(4)(a) of the regulations, having regard to the entirety of the controls identified by the PRRA; and
 - b. to validate whether the proposed description of what is required to ensure an “effective” phenolic plug is correct.
5. I received this advice on 24 November 2019. I decided to accept Mr Regan’s advice on the approach to the description of an “effective” phenolic plug as a proposed approach to the Request, subject to any necessary re-drafting of the description for clarity.
6. On 29 November, I wrote to the PRRA setting out my proposed approach to the Request, seeking any feedback before I made a final decision. On the same day, I received a response from the PRRA, advising that the terms and conditions of the proposed exemption were acceptable and that the PRRA would be able to comply with them.
7. I made the decision recorded in paragraph 9 below, having considered:
 - a. The advice from Paul Hunt dated 8 November 2019, and the revised advice dated 21 November 2019;
 - b. The advice from Rob Regan dated 24 November 2019; and
 - c. The response from the PRRA dated 29 November 2019.

8. I made the decision based on all the advice received. The primary reasons for my decision were that:
- a. the exceptional circumstances of the Pike River mine (the mine set up and the limited scope of recovering only one mine drift) were never fully anticipated by the Regulations;
 - b. in the Pike River mine, both an exhaust or forced ventilation would still be vulnerable in an emergency situation;
 - c. By implementing the 27 additional controls identified in the exemption request for escaping in return air and the other controls included in the principal hazard management plans, principal control plans, trigger action response plans, and standard operating procedures, PRRA will provide an equal level of safety to workers as would be achieved by using exhausting ventilation and complying with regulation 170(4)(a) of the Regulations;
 - d. Using forcing ventilation is appropriate and will provide an overall safer working environment for workers and other people by reducing or eliminating some risks (e.g. explosive or noxious gas mixture, ignition sources);
 - e. The advantages of using forced ventilation include that:
 - i. It provides a greater ability to scour any remnant gases in the drift as the recovery proceeds; and
 - ii. It eliminates the requirement to reticulate high voltage electricity underground to support an auxiliary ventilation system, therefore reducing hazards in the workplace; and
 - f. Therefore I am satisfied that the criteria for the granting of an exemption under section 220(2) of the Act are met.

Decision

9. On 3 December 2019, I decided to grant the PRRA an exemption from compliance with the requirements of regulation 170(4)(a) of the Regulations, subject to the following terms and conditions:
- (1) The exemption applies only in respect of re-entry and recovery of the drift up to the phenolic plug.
 - (2) During the re-entry and recovery up to the phenolic plug, the phenolic plug must —
 - (a) Remain in place; and
 - (b) Maintain a sufficiently high atmospheric flow resistance and low leakage flow to allow the area between the roof fall and the phenolic plug to —
 - (i) be positively pressurised relative to the ventilation in the open drift and the old mine workings; and
 - (ii) remain nitrogen-filled.
 - (3) If there is a change that could have a significant impact on how the PRRA can safeguard the health and safety of workers and others, PRRA must —

- (a) Respond in accordance with the critical controls included in its principal control plans, principal hazard management plans, and associated standard operating procedures and trigger action response plans; and
- (b) Inform WorkSafe immediately of any significant change.



Nicole Rosie
Chief Executive
WorkSafe New Zealand

