

**PRESENTATION TO THE ASSOCIATION OF MINE MANAGERS OF
SOUTH AFRICA
KLOOF 28 NOVEMBER 2008**

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1. INTRODUCTION

There are only three certainties in our life : Death, Income Tax and Change.

Change is the most dynamic and when the rules of the game alter, we must accommodate these changes in our game plan. Many rules and regulations contained in our mining legislation have been altered but it appears that we have not fully adjusted our mining plans to comply. By failing to comply, we leave ourselves, our company and our employers vulnerable to judicial action.

You may argue that as our Minister of Transport is not made personally liable for the carnage on our roads, why should the employers and the managers be made personally responsible for an incident when an employee is injured while off on a “frolic of his own”.

It is possible that, Yes indeed, you are your brother’s keeper. Yes indeed, you may have to hold his hand to prevent him being injured. Yes, indeed you may have to have such effective systems, training and controls in place that due diligence is demonstrated beyond reasonable doubt even when you are not holding his hand.

It is necessary to change now – our methods, our commitments and our endeavours towards providing a happy, profitable, healthy, safe and sustainable future of which legal compliance is but the first step.

2. THE MINE HEALTH AND SAFETY ACT, 1996 AS AMENDED

Many of our members are under the impression that our main Act is the Mine Health and Safety Act, No.27 of 1996. That Act was largely repealed and altered by the Mine Health and Safety Amendment Act of 1997 in addition to others. So, *mutatis mutandis*, I will refer to our Act as the Mine Health and Safety Act, 1996 as amended.

You will all hear later that there are even more alterations to come.

Please be aware, understand and apply them as far as is reasonably practicable.

3. CURRENT ANOMALIES

The Regulations and amendments to the Regulations should be drawn up by competent persons appointed to the Mining Regulation Advisory Committee (MRAC). No law or part of a law should contain absurdities.

In Section 102 of the Act, the noun “mine” is defined as (i) any borehole, etc..., (ii) any other place, etc... and (iii) a works. But in the definition of “works” in the same Section, a works means any place, excluding a mine !

In Chapter 4 of the Regulations, Primary Blasting includes the blasting of obstructions in ore-passes. Yet Secondary Blasting includes blasting to remove obstructions at any time during a shift !

It is not an offence for an employee to fail to comply with a requirement contained in a Code of Practice.

Regulation 9.1.4 requires the employer to take reasonably practicable measures to ensure that no employee is exposed to any health hazard at, or emanating, either temporarily or from, any working place where work has ceased permanently. Surely this is a typo – it should be ...”at or emanating from any working place where work has either temporarily or permanently ceased.”

As it is possible that some terms may have to be redefined for the purposes of Standard Procedures, Lesson Plans and Unit Standards, it is strongly advised that expert legal advice be sought until such time as further corrective amendments are made.

4. REQUIREMENTS NOT YET ADDRESSED

4.1 Appointment of a Shift Supervisor

M. _____

In terms of (M.A.) Regulation 2.15.1 in force in terms of Schedule 4 of the Mine Health and Safety Act 1996, as amended, you are hereby appointed as Shift Supervisor of Section _____ as is depicted on the plans kept in the office of the Mine Overseer. The area of responsibility over which you will take charge consists of the following working places:

As part of your appointment, you will familiarise yourself with your duties, responsibilities and functions as are listed on the back of this letter of appointment and faithfully comply with them.

Manager

Date

Appointment Accepted

Shift Supervisor

Date

4.2 Duties, Responsibilities and Functions of a Shift Supervisor

1. The following (M.A) Regulations in force in terms of Schedule 4 of the Mine Health and Safety Act, 1996 as amended are relevant :
2.15.1 ; 2.15.2 ; 2.15.3 ; 2.15.4 ; 2.15.5 ; 2.15.6 ; 2.15.7; 2.15.8; 2.15.9 and 2.15.10.
2. In addition, in terms of (M.A) Regulation 24.20.2.3 you are hereby appointed to examine all Refuge Bays within your area of responsibility.
3. In terms of Section 7(4) of the Mine Health and Safety Act, 1996 as amended, you are in addition, hereby appointed to perform the following functions of the Manager:
 - a. That persons in possession of valid blasting certificates or equivalent are **appointed** in terms of MSHA Regulation 4.4(1) for the implementation of this Regulation relating to both primary and secondary blasting.
 - b. That persons found competent against a skills programme are **likewise appointed** in terms of MSHA Regulation 4.4(1) for the implementation of this Regulation relating to secondary blasting only.
 - c. That persons found competent against a skills programme are **approved** to assist the persons appointed in terms of MSHA Regulation 4.4(1) with regard to the activities specified in MSHA Regulation 4.4(2)
 - d. That persons found competent to examine and make safe are **appointed** in terms of Regulation 14.1 of the MSHA in the Safe Declaration Book for the implementation of Regulations 14.1(1) ; 14.1(2) ; 14.1(3) ; 14.1(4) ; 14.1(5) and 14.2
 - e. That persons found competent to install, maintain and remove support are **authorised** to assist the persons appointed in terms of Regulation 14.1 in the implementation of MSHA Regulation 14.1(7)
 - f. That persons found competent to operate scraper winches and mono - rope winches are **authorised** to do so in terms of MSHA Regulation 8.4(2)(a)
 - g. That persons found competent to declare scraper - winches and mono -rope winches safe to operate are **authorised** to do so in terms of MSHA Regulation 8.4(2)(b)
 - h. That persons found competent to operate lifting equipment and lifting tackle are **authorised** to do so in terms of MSHA Regulation 8.5(5)
 - i. That you will take reasonable practicable measures to ensure that no person is exposed to any health hazard at or emanating from any working place where work has either temporarily or permanently ceased (MSHA Regulation 9.1(4))
4. It is your responsibility to ensure compliance with the provisions of the MSHA and all relevant Regulations and Mine Standards within your area of responsibility through the application of your skills, knowledge and training.

Read, understood and accepted,

Shift Supervisor

Date

Consultations

Regulation 4.2(1)(b) requires the employer to ensure that a written procedure is prepared and implemented, after consultation with the explosives manufacturer or supplier, to prevent persons from being exposed to significant risks associated with the receipt, storage, issuing and transportation of explosives.

Regulation 4.2(1)(c) requires the employer to ensure that explosives are only transported in vehicles or containers approved for the purpose by the employer, after consultation with the explosives manufacturer or supplier.

Regulation 4.3(1)(b) requires the employer to take reasonable measures to ensure that the explosives are used in accordance with a written procedure prepared and implemented for that purpose, after consultation with the explosives manufacturer or supplier.

It may therefore be necessary for the employer to appoint a person in terms of Section 7.2 specifically for the purposes of conducting these consultations.

It may also be necessary for an engineer to be appointed in terms of Section 7(2) or Section 7(4) for the purpose of approving the design, construction and operation of all explosives vehicles, receptacles and conveyances in terms of the abovementioned written procedures.

Subject to the Risk Assessment process, it is hoped that in the near future, all mono-rope winches will be approved by the engineer for the purpose of conveying explosives (made-up primers excepted) in unopened boxes or locked approved receptacles.

4.4 Other

As (M.A) Regulation 24.20.2.3 was repealed on 1 August 2008, a Code of Practice or Standard Procedure dealing with the provision, siting, inspection and maintenance of Refuge Bays is now required.

In terms of Chapter 16, Mine Rescue Teams must be provided, and

Access scaffolding is to comply with SANS 10085.

5. DELEGATION

Delegatus non potest delagare. “Those to whom power is delegated cannot themselves further delegate that power.” This rather pompous maxim, originating in Canada, has had some success as an operating principle in the restriction of delegation of powers but the demands of modern governmental regulatory practices have inhibited its application somewhat.

In particular, the inclusion of both Section 7(2) together with Section 7(4) of our amended Act permits – as an option – such further delegation provided that certain criteria are met. Indeed, this is necessary when a single Designated Employer appointed in terms of Section 2A.(2) of the same Act appears to be made personally responsible on even very large mines for a multitude of duties and tasks many of which must be considered to be mundane, daily chores.

There appears to be no doubt that the intention of the legislation is to provide, and even encourage, further delegation and thereby empower and make responsible and accountable, those delegates upon whose shoulders the day-to-day operation of all our mines is placed.

Further to this thought, I remind you of the wise words of Jethro, the father-in-law of Moses as contained in the book of Exodus. He told his son-in-law “Hey. Look, Cookie. You are wearing yourself out. Provide competent and qualified men and appoint them as Managers over the thousands, appoint Mine Overseers over the hundreds, Shift Bosses over the fifties and Miners over the tens. Let them bring only the serious matters to your attention for action while they themselves judge the routine problems through such delegation.” So Moses hearkened to the voice of his father-in-law and did all that he had said to the benefit of the operation.

6. BE PREPARED

In order to mitigate against the Mine, a Shaft or a Section being shut down by Section 54 Instruction, it is recommended that the following points be addressed in preparation of the event :-

1. Reaction to recent fatalities and serious incidents. Do not wait for an official signed instruction. Draw up your own orders and ensure, by signatures, that the message has got through to all concerned. Risk assessments and on-the-job audits will strengthen your "Due Diligence" presentation.
2. Reaction to all Section 54 and 55 Orders. Ensure that all orders and instructions have, as far as is reasonably practicable, been complied with.
3. Review your own appointment. Ensure that you have been appointed to fulfil the latest functions of the employer.
4. Review the appointments of your Section Managers. Ensure that they are certificated and legally appointed. (The Section may only be run by an uncertificated manager for 60 days within a 6 month period).
5. Review the appointments of the Mine Overseers and Shift Supervisors. Ensure that all aspects of recent legislation have been complied with by appointing your subordinates in terms of Section 7(4) to perform the functions of the Manager. Regulation 9.1.(4) could be considered to refer to barricades at the entrances of stopped workings.
6. Review the appointments of your Miners. As competent persons who are the holders of valid blasting certificates, they are to be appointed in terms of Regulation 4.4(1) and Regulation 14(1).
7. Review the Blasting Certificates of your Shift Supervisors and your Miners. Ensure that the ORIGINALS of their certificates have been legally issued by a Principal Inspector of Mines. (M.A) Regulation 2.15.2 and Regulation 4.4(1) read with Regulation 22.4.1(1) all refer.
8. Review the appointments of your Panel Supervisors. Appointments in terms of Regulation 14(1) and Regulation 8.4.(2)(b) are necessary.
9. Review the renewal dates of Medical Examinations and First Aid Certificates.
10. Ensure all relevant documentation including Standards Books have been distributed.
11. Develop the concepts of Safe Declaration and Permit to Work at all levels and for almost every task.
12. The Permit to Work should incorporate a check-list and a mini-risk assessment,

7. INCIDENT INVESTIGATION

We are all familiar with the RCAT-type of incident analysis:

Immediate Causes:

**Non-standard Acts, and
Non-standard conditions**

Basic Causes :

**Personal Factors, and
Job Factors**

Failures of Safety Systems.

However, there is an alternative method of analysing incidents termed Elemental Analysis. In this method, every element of the incident is identified. The definition of an Element being that act, condition, reaction, circumstance, process, time or thing which, if removed, would have broken the chain so that the incident could not have occurred at all or the effects would have been severely reduced or minimised.

Once all the elements have been identified, the following five questions are asked of each element in turn :-

Was the hazard identified? (HAZ.ID)

Was a Standard drawn up to manage the hazard? (STDS)

Were all concerned trained in the Standard? (TRAINING)

Was all the necessary equipment and material available? (EQUIP & MAT)

Were all the controls in place? (CONTROLS)

The concept of CONTROLS is broad, covering every legal appointment, logbook, risk assessment, checklist, P.T.O, statutory inspection, examination, Safe Declaration and Permit to Work.

A thorough application of the above concept will go a long way towards finding out where system failures may lie and should also provide a measurement of the application of Due Diligence.

8. FAILURES OF MANAGEMENT SYSTEMS

- 1. PLANNING AND LEADERSHIP**
- 2. COMPETENCE TRAINING AND COMMUNICATION**
- 3. MANAGEMENT OF OPERATION RISK AND CHANGE**
- 4. OPERATIONAL MANAGEMENT AND DESIGN**
- 5. PURCHASING SYSTEMS**
- 6. WORK PROCESSES AND OPERATING PERMITS**
- 7. OCCUPATIONAL HEALTH SYSTEMS**
- 8. PERSONAL PROTECTIVE EQUIPMENT**
- 9. INCIDENT REPORTING INVESTIGATION AND ANALYSIS**
- 10. EMERGENCY PREPAREDNESS**
- 11. MEASURING, MONITORING AND AUDITING**
- 12. PREVENTATIVE AND CORRECTIVE ACTION SYSTEMS**

HOW DID WE SCREW UP ?

WHAT WENT WRONG ?

WHAT REALLY WENT WRONG ?

HOW CAN WE FIX IT PERMANENTLY ?

9. DUE DILIGENCE – OCCUPATIONAL HEALTH AND SAFETY

Due diligence is a defence against most occupational health and safety offences. Due diligence is demonstrated if an employer, manager or engineer takes all reasonable steps to avoid an incident. Accordingly, when company policy clearly describes an unequivocal and clear commitment to providing a healthy and safe working place and when the responsibilities of line managers and supervisors for health and safety are clearly spelled out in their letters of appointment and when programme implementation has been assigned and the necessary resources provided, due diligence has likely been demonstrated and guilt before the law would only be tied to those who have failed to take the reasonable steps necessary to fulfil their obligations and responsibilities.

Perhaps the greatest misconception about due diligence is the belief that being generally diligent in the working place is enough to establish a defence against specific charges. In court that is not the case. The court is not interested in what was generally done to be safety conscious.

Due diligence is a defence which requires evidence that specific steps were taken to prevent the alleged contravention which resulted in an incident.

It is not uncommon to see a due diligence defence presented on the basis that a worker was specially trained, well-experienced in the operation and acquainted with the risks associated with the task.

Such a defence, without strong evidence in the form of Planned Task Observations, Planned Inspections, Training records and similar managerial controls, is open to rebuttal on the grounds that the employer failed to guard against risk and prosecution could succeed.

10. VISION – QUO VADIS?

Many years ago there was a General Manager by the name of Hercules. Being a strong-willed and difficult professional, he managed to upset many senators at the Head Office Council. For his transgressions he was sent into the wilderness and tasked with bringing ten new ventures to fruition. He had to negotiate with the ferocious tribes that protected the lands, he had to sink shafts ahead of schedule, under budget and accident free. He had to create infrastructures including colleges, hospitals, homes and gymnasiums. He had to develop and build extraction plants which could produce the rewards planned for and he had to ensure, by strict compliance with the rules of the supreme judges, that the land, the air and the waters of the region remained as pristine and pure as on the day of their creation.

Hercules had to accept these challenging labours. Knowing that he would not see his family for many years and, being concerned about the education and development of his only son Telemachus, he called his best three-stripe, five-star professional Shaft Mine Overseer and tasked him with the job of seeing to the future welfare of the youngster to the benefit of the entire organisation. After expressing disappointment at not being permitted to accompany his master to the new ventures, he promised to do his best even as a true parent would do.

Many years later when Hercules returned, battered, bent, very tired but successful, he found that his son had been taught to be kind to animals, courteous to ladies and deferent to his superiors. He went through the learner official school with flying colours, passed both a Mine Overseer's and a Manager's certificate, had been found competent to direct and operate all the latest machines of war, he prostrated himself humbly before his God and had earned the respect and admiration of his regimental work force.

Hercules was very pleased and grateful for the dedication and loyalty demonstrated by his Mine Overseer whose name was Mentor.

It is possible that the true potential of our qualified but inexperienced young officers may only be realised by the proper application of a formalised mentorship programme. This may even mean appointing the youngster into the post while being supported by an experienced "Mentor" appointed in terms of (M.A) Regulation 2.9.1 to provide hands-on guidance.

Can we afford not to do it?

To summarise :-

- **Bring your law books up to date.**
- **Become aware of the recent changes.**
- **Schedule revisions of all legal documentation.**
- **Develop and implement the concept of Safe Declaration in all working places.**
- **Develop and implement the concept of Permit to Work for all tasks.**
- **Prepare submissions regarding Due Diligence ahead of time.**
- **Prevent unplanned stoppages without draining rock-passes.**
- **Prevent unplanned stoppages without installing stopped-face support.**
- **Conduct effective and protected Investigations in terms of Section 11.5.**
- **Close the loop with real implementation actions.**
- **Call on your Legal Advisor regularly.**
- **Remember that only people are capable of sustainable development.**

IN HEALTH, SAFETY AND PEACE,

TED DOW

082 447 2771

TEN COMMANDMENTS FOR BUSINESS FAILURE

Donald Keough, a former president of the Coca-Cola Company, was asked to speak at a convention on the secrets of success. He declined on the grounds that he had never been able to develop a set of rules that would guarantee success in a field as challenging and dynamic as business.

What he was prepared to speak about was a formula that, if followed, would guarantee that you would fail.

Here are his ten commandments for failure :-

1. **Quit taking risks.** Trying anything new is always risky.
2. **Be inflexible.** This is the tragedy of man – circumstances change but he does not.
3. **Isolate yourself.** Have a big office and then shut the door.
4. **Assume infallibility.** You will remain serenely confident that what you know is right without any input from others.
5. **Play the game close to the foul line.** Unethical people can flourish for very long periods but ultimately their lack of morality and lack of humanity destroys them.
6. **Do not take time to think.** Despite the avalanche of information and the speed of business, you have to make time to think.
7. **Put all your faith in experts and outside consultants.** This way you can avoid all responsibility and have others think for you.
8. **Love your bureaucracy.** Rules and routines become more important than the ends they were designed to serve. If you wish to impede all progress, make sure that administrative concerns take precedence over all others.
9. **Send mixed messages.** Such communications contain escape routes and blame-fixing possibilities.
10. **Be afraid of the future.** To aspire to be any kind of leader in business, you simply have to be a rational optimist.