

Authorisation to use, handle or store prohibited or restricted carcinogens in relation to a mine or petroleum site

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Introduction

The *Work Health and Safety Regulation 2011* (WHS Regulation) provides that a person conducting a business or undertaking (PCBU) must not use, handle or store, or direct or allow a worker to use, handle or store a prohibited or restricted carcinogen unless the regulator has authorised that use, handling or storage under clause 384 of the WHS Regulation (and in the case of a prohibited carcinogen, is used, handled or stored for genuine research or analysis).

NSW Department of Industry, Skills and Regional Development is the regulator in respect of mines and petroleum sites. For all other workplaces application should be made to SafeWork NSW.

Under section 43 of the *Work Health and Safety Act 2011* (WHS Act), it is an offence to carry out work if the regulations require the person carrying out the work to be authorised and the person is not so authorised.

The purpose of authorisations in work health and safety is to control work activities and the use of substances that are high risk and to provide risk based information to NSW Department of Industry, Skills and Regional Development (Department of Industry) so it can apply resources and target compliance and enforcement actions to areas of greatest risk to health and safety.

This guide provides information on how to apply for authorisation that is required to:

- use, handle or store a prohibited carcinogen referred to in Schedule 10, Table 10.1, column 2 of the WHS Regulation; and
- use, handle or store a restricted carcinogen referred to in Schedule 10, Table 10.2, column 2 of the WHS Regulation.

The restricted and prohibited carcinogens referred to in Schedule 10, Table 10.1, column 2 of the WHS Regulation are set out in the attachment to this guide.

Who may apply for authorisation

A PCBU at a workplace who intends to use handle or store a prohibited or restricted carcinogen may apply for authorisation

Note: 'Person conducting a business or undertaking' is defined in section 5 of the WHS Act. A PCBU may be an individual, a body corporate, a government agency, a partnership or an unincorporated association.

Duration of authorisation

The authorisation is of unlimited duration unless cancelled by the regulator.

A decision to cancel an authorisation to use, handle or store a prohibited or restricted carcinogen is a reviewable decision.

How to apply for an authorisation

PCBUs that intend to use, handle or store a prohibited or restricted carcinogen at work places that are mines or petroleum sites must apply for authorisation to the regulator.

To apply for authorisation, complete the *Application for authorisation to use, handle or store prohibited or restricted carcinogens in relation to a mine or petroleum site* form available on the Department of Industry website. Lodgement instructions are on the form.

Where there is a change to the information provided in an application for authorisation, the authorisation holder must advise the regulator using the *Application for authorisation to use, handle or store prohibited or restricted carcinogens in relation to a mine or petroleum site* form.

Fees

There is no fee for the authorisation to use, handle or store a prohibited or restricted carcinogen.

Granting or refusing an authorisation

What does the regulator take into account when deciding whether to grant an authorisation?

The regulator will consider the following in making a decision to grant authorisation:

- whether a prohibited carcinogen will be used, handled or stored for genuine research or analysis as required by clause 384 (2) of the WHS Regulation or
- whether a restricted carcinogen will be used, handled or stored for a purpose referred to in Schedule 10, Table 10.2 column 3 of the WHS Regulation as required by clause 384 (3) of the WHS Regulation.

The regulator may also consider the information provided in the application for authorisation, including:

- the quantity of carcinogen to be used, handled or stored at the workplace each year
- the number of workers that may be exposed to the carcinogen
- the risk management procedure that contains hazard identification, risk control measures and, if elimination or substitution of the carcinogen is not reasonably practicable, the reason why and
- any other information requested by the regulator.

Granting of a conditional authorisation

The regulator may impose any condition it considers necessary on an authorisation to achieve the objectives of the WHS Act or WHS Regulation.

Refusal to grant an authorisation

The regulator must refuse to authorise the use, handling or storage of a prohibited or restricted carcinogen for a use not referred to in clause 384 of the WHS Regulation.

Under clause 384 (2) of the WHS Regulation, the regulator may authorise a PCBU to use, handle or store a prohibited carcinogen referred to in Schedule 10, Table 10.1 at the workplace only if it will be used, handled or stored only for genuine research or analysis.

Under clause 384 (3) of the WHS Regulation, the regulator may only authorise a PCBU to use, handle or store a restricted carcinogen referred to in Schedule 10, Table 10.2 at the workplace if it will be used, handled or stored for a purpose described in Schedule 10, Table 10.2 column 3 of the WHS Regulations.

The purposes described in Schedule 10, Table 10.2, column 3 are specific to the restricted carcinogen. Schedule 10, Table 10.2 is contained in the Attachment to the Guide. A decision to refuse to grant an authorisation to use, handle or store a prohibited or restricted carcinogen is a reviewable decision.

PCBU obligations following grant of authorisation

Changes to information

Under clause 385 of the WHS Regulation, a PCBU who applies for authorisation to use, handle or store a prohibited or restricted carcinogen must advise the regulator in writing of any change in the information given in the application for authorisation before the change or as soon as reasonably practicable after the person becomes aware of the change.

This may include change in the details of the applicant, workplace, supplier (of the carcinogen), carcinogen or the risk management procedures supplied in the application for authorisation.

Records to be kept

Under clause 388 (2) of the WHS Regulation, the PCBU authorised to use, handle or store prohibited or restricted carcinogens must keep the following records for 30 years after the authorisation ends:

- a copy of each authorisation given to the PCBU including any conditions imposed; and
- the full name, date of birth and address of each worker likely to be exposed to the prohibited carcinogen or restricted carcinogen during the period of the authorisation.

Statement of exposure

It is a requirement of clause 387 of the WHS Regulation for a PCBU authorised to use, handle or store prohibited or restricted carcinogens to give to a worker, at the end of the worker's engagement by that person, a written statement of the following:

- the name of the prohibited or restricted carcinogen to which the worker may have been exposed during their engagement;
- the time the worker may have been exposed;
- how and where the worker may obtain records of the possible exposure; and
- whether the worker should undertake regular health assessments, and the relevant tests to undertake.

Cancellation

The regulator may cancel an authorisation to use, handle or store a prohibited or restricted carcinogen if satisfied that:

- the person granted the authorisation has not complied with a condition on the authorisation; or
- the risk to health and safety of a worker that may be affected by using, handling or storing a prohibited or restricted carcinogen has changed since the authorisation was given.

The decision to cancel an authorisation to use, handle or store a prohibited or restricted carcinogen is a reviewable decision.

Application for review of decision

The table in clause 676 of the WHS Regulation sets out decisions that are reviewable (reviewable decisions) and who is eligible (eligible person) to apply for the review of a reviewable decision.

The applicant is the eligible person to request a review of a decision to refuse to grant an authorisation to use, handle or store a prohibited or restricted carcinogen.

The authorisation holder is the eligible person to request a review of the decision to cancel an authorisation to use, handle or store a prohibited or restricted carcinogen.

Internal review

An application for internal review allows the regulator's decision to be reviewed and possibly changed by a person who was not involved in the original decision. A written application for the internal review of a reviewable decision is made using the *Request for internal review application form* available on the Department of Industry's website. The application must be lodged within 28 days of the day on which the decision first came to the eligible person's notice or such longer period as the regulator allows, as provided by clause 678 (1) of the WHS Regulation.

Under clause 680 (2) of the WHS Regulation, the internal reviewer may:

- confirm or vary the reviewable decision or
- set aside the reviewable decision and substitute another decision that the internal reviewer considers appropriate.

If the reviewable decision is not varied or set aside within the 21 day period, the original decision is taken to have been confirmed by the internal reviewer under clause 680 (6) of the WHS Regulation.

The regulator will give the applicant written notice of the decision on the internal review and reasons for the decision within 21 days after the application for internal review or request for additional information is received.

An application for an internal review does not affect the operation of the reviewable decision or prevent the taking of any lawful action to implement or enforce the decision..

External review

If the applicant or authorisation holder is not satisfied with the decision on internal review, they can apply to the NSW Civil and Administrative Tribunal.

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