

NSW
Resources
Regulator

GUIDE

Appointment and notification of mine operator

Work Health and Safety (Mines and Petroleum Sites) Legislation



Document control

Published by NSW Department of Planning and Environment, NSW Resources Regulator

Title: Appointment and notification of mine operator

First published: February 2016

Authorised by: Director Mine Safety Performance

CM9 reference: PUB16/29

Amendment schedule		
Date	Version	Amendment
February 2016	1	First published
April 2018	2	Added mine operator's new obligation under clause 7A of the Work Health and Safety (Mines and Petroleum Sites) Regulation 2014 to notify the regulator of any change to the operator's contact details as soon as practicable (and no later than 28 days) after any change. Set out penalties applying to mine holders and mine operators for failing to notify the regulator of various matters.

State of New South Wales through the NSW Department of Planning and Environment 2018.

This publication is copyright. You may download, display, print and reproduce this material in an unaltered form only (retaining this notice) for your personal use or for non-commercial use within your organisation. To copy, adapt, publish, distribute or commercialise any of this publication you will need to seek permission from the NSW Department of Planning and Environment.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (April 2018). However, because of advances in knowledge, users are reminded of the need to ensure that information upon which they rely is up to date and to check currency of the information with the appropriate officer of the NSW Department of Planning and Environment or the user's independent advisor.

Contents

1. Introduction.....	3
2. How is a mine operator appointed?	3
3. Additional obligations if a mine operator is appointed	4
4. What if a mine operator's contact details change after the operator is appointed?.....	4
5. What if a mine operator is not appointed?	4
6. What if there is a change in mine holders?	4
7. Penalties for failing to notify the regulator	5
8. What are the obligations on the mine operator who ceases to operate that mine?	5
9. Related forms	6

1. Introduction

This guide will help mine holders and mine operators understand the requirements in relation to:

- the mine holder appointing a mine operator for the mine
- the mine holder notifying the Regulator about who will operate the mine (whether it is the mine holder or a different mine operator).

Information in this guide is primarily based on Part 1A, Division 1 of the Work Health and Safety (Mines and Petroleum Sites) Regulation 2014 (the Regulation) and the definitions of mine holder and mine operator in the *Work Health and Safety (Mines and Petroleum Sites) Act 2013* (the Act).

The mine operator is a key duty holder under the Act and Regulation. Their responsibilities include developing and implementing a safety management system that is used as the primary means of ensuring, so far as is reasonably practicable:

- the health and safety of workers at the mine
- that the health and safety of other people is not put at risk from the mine or work carried out as part of mining operations.

A person conducting a business or undertaking (PCBU) will be a mine operator only if they:

- are the mine holder for the mine, or
- are appointed by the mine holder to be the mine operator.

2. How is a mine operator appointed?

If the mine holder decides to appoint a person to operate the mine, the appointment and the notification of the appointment of a mine operator must be made in writing using the [Appointment and notification of operator of a mine or petroleum site](#) form. This includes a signed statement that the person to be appointed as mine operator agrees to the appointment. The mine holder must give the requisite authority to the mine operator to allow the mine operator to discharge their duties and have actual management or control of the mine.

The form also includes other details such as:

- the name and contact details of the mine operator
- when the appointment takes effect
- details of the location of the mine, including the boundaries of all mineral exploration sites and mineral extraction sites, and land title identification.

If the mine holder has appointed a mine operator, then the mine holder must also complete sections 5, 6, 8, and 9 of the [Appointment and notification of operator of a mine or petroleum site](#) form. This will be considered as compliance with the requirement of providing a copy of the appointment document for the purposes of clause 7(5) of the Regulation.

The mine holder must take all reasonable steps to ensure that the Regulator is notified before the appointment takes effect.

The form may be emailed or posted to the address shown in the form. The form must not be submitted to any other departmental addresses. Email notification is preferred.

The [Appointment and notification of operator of a mine or petroleum site](#) form may be used by the mine holder to appoint the same person to operate more than one mine.

3. Additional obligations if a mine operator is appointed

The mine holder must give the mine operator all relevant information that they hold or control that may reasonably be required by the mine operator to discharge the duties imposed on the mine operator under the WHS laws. This includes survey information, any hazards identified and the method of mining.

The mine holder must also notify the Regulator if the mine operator's appointment is terminated or altered. Again, the mine holder must take all reasonable steps to ensure that the Regulator is notified before the termination or alteration to the appointment takes effect.

4. What if a mine operator's contact details change after the operator is appointed?

The mine operator must notify the Regulator of any change to the operator's contact details by using the [Change of contact details of operator](#) form. The form may be emailed or posted to the address shown in the form. The form must not be submitted to any other departmental addresses. Email notification is preferred.

5. What if a mine operator is not appointed?

The mine holder does not have to appoint another PCBU to operate the mine on their behalf, unless directed to do so by the Regulator (see clause 8 of the Regulation). However, if no mine operator is appointed the mine holder is the mine operator. The mine holder must notify the Regulator that they will be the mine operator before mining operations begin using the [Appointment and notification of operator of a mine or petroleum site](#) form.

The mine holder (in its capacity as the mine operator) must notify the Regulator of any change to the mine holder's contact details using the [Change of contact details of operator](#) form.

Both forms may be emailed or posted to the address shown in the forms. The forms must not be submitted to any other departmental addresses. Email notification is preferred.

6. What if there is a change in mine holders?

If the mine is sold or for some other reason there is a change in mine holders, the PCBU who proposes to become the mine holder of a mine may appoint a person to be the mine operator of the mine in advance. In such cases the appointment takes effect when the prospective mine holder becomes the

mine holder for the mine, but only if, at that time, the person is still eligible to be appointed as the mine operator.

This means, for example, that if the mine is to be sold and the prospective mine holder wants to continue with the same mine operator they can make that appointment in advance using the [Appointment and notification of operator of a mine or petroleum site](#) form.

Provided that the mine operator remains eligible to operate the mine (for example, it hasn't gone into liquidation or for some other reason ceased to have the skills, knowledge resources or experience to operate the mine), it can continue as the mine operator without interruption and the new appointment will take effect for WHS purposes when the prospective mine holder becomes the mine holder.

The same requirements to notify the Regulator of the appointment apply.

7. Penalties for failing to notify the regulator

A penalty of up to \$3,600 for an individual and up to \$18,000 for a body corporate applies to a mine holder of a mine if the mine holder fails to notify the regulator that the mine holder:

- is the operator of the mine
- has appointed a mine operator of the mine
- has changed an appointment of a mine operator of the mine
- has terminated an appointment of a mine operator of the mine

Notification that a mine holder is the operator must be given *before* mining operations commence at the mine. If a person other than the mine holder is appointed operator, the mine holder must take all reasonable steps to ensure notifications are given to the regulator *before* any appointment, change to appointment, or termination of appointment takes effect.

The same penalties apply to a mine operator who fails to notify the regulator of any change to the mine operator's contact details as soon as practicable (and no later than 28 days) after the change.

8. What are the obligations on the mine operator who ceases to operate that mine?

If a mine operator ceases, or intends to cease, being the mine operator of the mine they must ensure, so far as is reasonably practicable, that all records they have kept under the WHS laws are given to:

- the mine holder for the mine
- or the PCBU who is to become the new mine operator.

This must be done before the new mine operator begins in that role.

The records kept under WHS laws include all records required to be kept such as the mine record which, in turn, includes the safety management system for the mine. The requirements for the mine record are set out in clauses 133 and 134 of the Regulation. The mine record includes:

- a record of any improvement, prohibition or notice issued in relation to the mine under Part 10 of the *Work Health and Safety Act 2011*
- a copy of any provisional improvement notice issued in relation to the mine by a health and safety representative and, for a coal mine, any provisional improvement notice issued in relation to the mine by a safety and health representative
- a record of every incident and high potential incident notified to the Regulator together with a summary of records kept in relation to a review of control measures following any notifiable incident or high potential incident
- each report under clause 27 of the Regulation by a shift supervisor at the mine as communication between outgoing and incoming shifts
- a record of all first aid treatment provided at the mine
- any other record that the mine operator is required to keep in respect of the mine under the WHS laws (e.g. the safety management system and records of risk assessments)
- if there is other information that has been kept for work health and safety purposes, even if not specifically required to be kept, it must also be provided to the mine holder or new mine operator of the mine.

The new mine operator will be required to keep the records for at least the remainder of the period that the WHS laws require the record to be kept. For example, some records of exposure to substances such as asbestos must be kept for 30 years.

WHS laws mean all the following legislation:

- *Work Health and Safety Act 2011*
- *Work Health and Safety (Mines and Petroleum Sites) Act 2013*
- Work Health and Safety Regulation 2017
- Work Health and Safety (Mines and Petroleum Sites) Regulation 2014.

9. Related forms

- [Appointment and notification of operator of a mine or petroleum site](#) form
- [Change of contact details of operator](#) form.