

January 2023

WHS undertaking

Notice of variation

WHS undertaking varied by Springvale Coal Pty Limited

Entity	Springvale Coal Pty Limited
Issue	Application to vary a WHS undertaking made by Springvale Coal Pty Limited
Legislation	Part 11 of the Work Health and Safety Act 2011
Decision maker	Peter Day Executive Director, NSW Resources Regulator - Regional NSW

Section 221 agreement

Pursuant to section 221 of the Work Health and Safety Act 2011 (WHS Act), I, Peter Day, having a delegated authority from the Secretary of Regional NSW (the regulator), give written agreement to the varying of the WHS undertaking made by Springvale Coal Pty Limited (Springvale) as follows:

- The timeframe for Term B-3 Project 1 is extended to within 36 months from acceptance of the WHS undertaking
- The timeframe for Term B-4 Project 2 is extended to within 36 months from acceptance of the WHS undertaking
- The timeframe for completion of the evaluation report on the use and effectiveness of the Underground Safety Communication System (USCS) is extended to 8 February 2023

All other terms and commitments within the WHS undertaking remain in force.

In accordance with section 221(3) of the WHS Act, the notice of variation of the WHS undertaking will be published on the regulator's website.

Reasons for agreement

Legislation

1. The Secretary of the Department of Regional NSW (Secretary) is the regulator for the purposes of the WHS Act. The Secretary has delegated the function under section 221 of the WHS Act to the Executive Director, Resources Regulator¹.
2. Section 221 of the WHS Act relevantly states:

221 Withdrawal or variation of WHS undertaking

¹ Work Health and Safety Act 2011, sch 2 cl 1(1)(b) and Work Health and Safety (Mines and Petroleum Sites) Act 2013, s 5(1).

- (1) *A person who has made a WHS undertaking may at any time, with the written agreement of the regulator:*
 - (a) *withdraw the undertaking, or*
 - (b) *vary the undertaking.*
 - (2) *However, the provisions of the undertaking cannot be varied to provide for a different alleged contravention of the Act.*
 - (3) *The regulator must publish, on the regulator’s website, notice of the withdrawal or variation of a WHS undertaking.*
3. The Secretary has issued, and published on the Resources Regulator’s website, guidelines relevant to the varying of WHS undertakings (Guidelines), as required by section 230(4) of the WHS Act.

Background

1. On 5 February 2019 a 56-year-old worker suffered serious lower leg injuries when he was hit by a bow shackle, after a RUD link failed during a towing operation at Springvale Colliery near Lithgow, NSW.
2. On 7 December 2020 the Secretary’s delegate accepted a WHS undertaking from Springvale.

Reasons for variation

1. The current timeframes for completion of enforceable terms B-3 and B-4 (Projects 1 and 2 of Attachment A to the WHS undertaking) are not achievable due to circumstances outside the control of Springvale.
2. Projects 1 and 2 require the delivery of presentations to at least 3 mining industry conferences or seminars including the regulator’s Mining Engineering Safety Seminar and the Mine Managers Association of Australia Annual CPD seminar within 30 months of acceptance of the WHS undertaking. The timeframes cannot be met due to the timing of the seminars in 2023.
3. The Mining Engineering Safety Seminar is being held in October 2023. The Mine Managers Association of Australia Annual CPD Seminar is being held in July 2023. Springvale plan to deliver the third presentation to the regulator’s Electrical Engineering Safety Seminar which is being held in November 2023.
4. Project 1 also requires completion of an evaluation report on the use and effectiveness of the Underground Safety Communication System (USCS) by 8 December 2022. This timeframe has not been met due to a delay in the provision of diagnostic reporting (final phone usage and application usage figures and trending since its inception) on the phone and system usage for the USCS, which is required to complete the report.
5. The variation to the timeframes of the WHS undertaking is agreed between Springvale and the Regulator.

Conclusion

1. I am satisfied that the varying of the undertaking meets the requirements of the WHS Act and the Enforceable Undertakings Guidelines.
2. Accordingly, I have determined to agree to vary the WHS undertaking made by Springvale as proposed.

Date of decision: 23 January 2023



Peter Day

Executive Director
Resources Regulator
Regional NSW

Note: In accordance with Section 221 of the Work Health and Safety Act 2011 this will be published on the Regulator's website

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