

WHS undertaking varied by Sibelco Australia Limited

Entity	Sibelco Australia Limited (ACN 000 971 844)
Issue	Application to vary a WHS undertaking made by Sibelco Australia Limited
Legislation	Part 11 of the <i>Work Health and Safety Act 2011</i>
Decision maker	Anthony Keon 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, Anthony Keon, having a delegated authority from the Secretary of Regional NSW (**the regulator**), **give written agreement** to the varying of the WHS undertaking made by Sibelco Australia Limited (**Sibelco**) as follows:

- The fifth and final compliance activity for action 2.1(d)(iii) is substituted with promotion of the video with an accompanying 2-3 page document through social media and email rather than face to face presentation.

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

- The Secretary of the 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 Regulator.¹
- Section 221 of the WHS Act relevantly states:
221 Withdrawal or variation of WHS undertaking
 - A person who has made a WHS undertaking may at any time, with the written agreement of the regulator:
 - withdraw the undertaking, or
 - vary the undertaking.
 - However, the provisions of the undertaking cannot be varied to provide for a different alleged contravention of the Act.
 - The regulator must publish, on the regulator's website, notice of the withdrawal or variation of a 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).

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. Sibelco processes and supplies raw materials for manufacturing and primary industries in Australia, New Zealand, and Asia.
2. Sibelco is the mine operator of the Salt Ash Sand Plant, which is located at Salt Ash, about 20 kilometres north of Newcastle, NSW. The Salt Ash Sand Plant processes raw sand and produces silica sands for glass making and other purposes that are mined from nearby sand pits.
3. On 1 February 2016 an employee of Sibelco fell 2.7 metres from the off-driver's side platform of an articulated dump truck (ADT). The ADT was located on a low loader road transport truck and was being prepared to be reversed from the low loader the Salt Ash Sand Plant. The worker suffered serious injuries.
4. The undertaking given by Sibelco was accepted by the delegate of the Secretary on 14 November 2018.
5. Initiative 2.1(d) in Attachment 1 of the undertaking, which forms part of the 'Part B' enforceable terms, requires Sibelco to:
 - i. develop and share an educational video on legislative requirements, safety issues and improving access systems for new and legacy articulated dump trucks with workers and the broader industry.
 - ii. deliver presentations about the incident, lessons learned and fall from height at five industry forums and/or seminars to further raise awareness about fall from height risks and fall protection.
6. Sibelco has developed and distributed the educational video with workers and the broader industry in accordance with action 2.1(d)(i) & (ii).
7. Action 2.1(d)(iii) requires Sibelco to present at a minimum of five industry forums, seminars or similar events, to be agreed in consultation with the regulator. To date, Sibelco has presented at four industry forums.
8. The fifth and final presentation proposed was scheduled for May however due to Covid-19 restrictions that seminar has been postponed until an online alternative can be organised. The WHS undertaking requires Sibelco to have presented at all five industry forums or similar by May 2020.
9. Sibelco has proposed an alternative method of presentation. Sibelco proposes to promote the video with an accompanying 2-3 page document through social media (i.e. a LinkedIn post), and also provide copies to the organisers of the seminars that have already received the presentation, so that they can distribute further to their members.

Reasons for variation

10. The Covid-19 social distancing restrictions have resulted in face to face industry forums being postponed.

11. On 22 April Sibelco advised the regulator that due to the Covid-19 restrictions it is unable to complete the fifth and final component of action 2.1(d)(iii) in accordance with the compliance timeframes stipulated in the WHS undertaking.

Conclusion

12. I am satisfied that Sibelco has made reasonable efforts to comply with the WHS undertaking and the compliance timeframes set out in the WHS undertaking accepted on 14 November 2018.
13. In view of the social distancing restrictions put in place by the Government in response to the Covid-19 pandemic, I am satisfied that Sibelco cannot meet the compliance date in relation to the fifth and final presentation to industry at this time, for reasons beyond Sibelco's control.
14. I am also of the view that the variation proposed by Sibelco provides an appropriate alternative and is commensurate with the requirements of the original undertaking. Further, the varied terms will likely result in the information being distributed to a much larger audience than through industry presentation alone.
15. I am satisfied that the varying of the undertaking meets the requirements of the WHS Act and the Enforceable Undertakings Guidelines.
16. Accordingly, I have determined to agree to vary the WHS undertaking made by Sibelco as proposed.

Date of decision: **07 May 2020**



Anthony Keon
Executive Director
Resources Regulator
Regional NSW

NOTE In accordance with section 221 of the Work Health and Safety Act 2011 this notice will be published on the regulator's website.

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