



New South Wales

Work Health and Safety (Mines and Petroleum Sites) Amendment Regulation 2019

under the

Work Health and Safety (Mines and Petroleum Sites) Act 2013

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Work Health and Safety (Mines and Petroleum Sites) Act 2013*.

JOHN BARILARO, MP

Deputy Premier, Minister for Regional New South Wales, Industry and Trade

Explanatory note

The object of this Regulation is to amend the *Work Health and Safety (Mines and Petroleum Sites) Regulation 2014* as follows—

- (a) to define certain events at mines as high potential incidents, which are required to be notified to the Secretary of the Department of Planning, Industry and Environment (the *regulator*) by the mine operator,
- (b) to require operators of mines and petroleum sites to ensure that persons at those mines and sites are not exposed to diesel particulate matter beyond a prescribed maximum atmospheric concentration and, in the case of underground mines, to ensure that the ventilation system in those mines provides air of sufficient quality to meet that requirement,
- (c) to make it an offence for the holders of practising certificates and licences to fail to comply with conditions imposed on those practising certificates and licences,
- (d) to clarify and provide for various matters relating to licences, including eligibility to hold licences, the voluntary surrender of licences and the making of minor amendments to licences by the regulator,
- (e) to prescribe spontaneous combustion at a coal mine as a dangerous incident for the purposes of section 14(c) of the *Work Health and Safety (Mines and Petroleum Sites) Act 2013* if immediate or imminent exposure to the combustion exposes a worker or any other person to a serious risk to a person's health or safety,
- (f) to update requirements relating to emplacement areas,
- (g) to identify the establishment, operation, alteration or decommissioning of a tailings storage facility at certain mines as a high risk activity and specify the information and documents to be provided in relation to that activity,
- (h) to prescribe certain offences as offences for which a penalty notice may be issued and the amounts of the penalties payable,
- (i) to make other minor and miscellaneous amendments, including transitional arrangements.

This Regulation is made under the *Work Health and Safety (Mines and Petroleum Sites) Act 2013*, including sections 4, 14(c), 76 (the general regulation-making power) and Schedule 2. See also the *Work Health and Safety Act 2011*, including sections 243 and 276 (the general regulation-making power) and Schedule 3.

Work Health and Safety (Mines and Petroleum Sites) Amendment Regulation 2019

under the

Work Health and Safety (Mines and Petroleum Sites) Act 2013

1 Name of Regulation

This Regulation is the *Work Health and Safety (Mines and Petroleum Sites) Amendment Regulation 2019*.

2 Commencement

This Regulation commences on 1 February 2020 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Work Health and Safety (Mines and Petroleum Sites) Regulation 2014

[1] Clause 3 Definitions

Insert “, including a tailings storage facility referred to in Part 7 of Schedule 3,” after “any place” in the definition of *emplacement area* in clause 3(1).

[2] Clause 3(1), definition of “inhalable dust”

Insert “as in force or remade from time to time” after “April 2012”.

[3] Clause 3(1), definition of “statutory function”

Omit “clause”.

[4] Clause 3(1), definition of “Wiring Rules”

Omit “2007”. Insert instead “2018”.

[5] Clause 39 Ensuring exposure standards for dust and diesel particulate matter not exceeded

Insert “and diesel particulate matter” after “to dust” in clause 39(1).

[6] Clause 39(1)

Insert “and diesel particulate matter” after “of airborne dust”.

[7] Clause 39(1)(c)

Insert at the end of clause 39(1)(b)—

, or

- (c) for diesel particulate matter—0.1 milligram per cubic metre (measured as sub-micron elemental carbon).

[8] Clause 40

Omit the clause. Insert instead—

40 Monitoring exposure to airborne dust and diesel particulate matter

Clause 50 of the WHS Regulations applies to the operator of a mine or petroleum site in relation to airborne dust and diesel particulate matter as if the concentrations referred to in clause 39(1) of this Regulation were exposure standards to which clause 50 of the WHS Regulations applies.

[9] Clause 55 Air quality—minimum standards for ventilated air

Omit “clause 39” from clause 55(1)(b)(ii). Insert instead “clause 39(1)(a) and (b)”.

[10] Clause 55(1)(c)

Omit the paragraph. Insert instead—

- (c) if diesel engines are used underground—has a concentration of diesel emissions that—
 - (i) for diesel particulate matter—is as low as reasonably practicable and does not exceed the relevant level specified in clause 39(1)(c), and

- (ii) for other diesel emissions, including any known harmful emissions from diesel engine systems—is as low as is reasonably practicable.

[11] Clause 127 Survey plan to be provided to regulator

Omit “*Mine Subsidence Compensation Act 1961*” from clause 127(3)(a).

Insert instead “*Coal Mine Subsidence Compensation Act 2017*”.

[12] Clause 128 Duty to notify regulator of certain incidents

Omit “(i)–(xviii)” from paragraph (a) of the definition of *high potential incident* in clause 128(5).

[13] Clause 128(5), definition of “high potential incident”

Insert after paragraph (s)—

- (t) an uncontrolled fire on mobile plant that is in operation (whether operated directly, remotely or autonomously),
- (u) a loss of control of heavy earthmoving machinery that is operated remotely or autonomously, including any failure of braking or steering,
- (v) spontaneous combustion occurring at the surface of a coal mine (including an underground coal mine).

[14] Clause 129 Duty to notify regulator of other matters

Omit “no later than one month” from clause 129(3)(a).

[15] Clause 129(3)(b)

Omit “mine as”. Insert instead “mine—as”.

[16] Clause 129(4)(c)

Omit “(and if the mining operations include exploration involving drilling, the coordinates of the location of the drill holes)”.

[17] Clause 130 Work health and safety reports

Omit “quarterly” from clause 130(1).

[18] Clause 139 Eligibility for practising certificate

Insert “only” after “function” where firstly occurring in clause 139(2).

[19] Clause 143 Conditions

Insert after clause 143(3)—

- (3A) The holder of a practising certificate must comply with the conditions imposed on the practising certificate.

Maximum penalty—

- (a) in the case of an individual—\$1,250, or
- (b) in the case of a body corporate—\$6,000.

[20] Clause 154 Eligibility for licence

Omit clause 154(b). Insert instead—

- (b) be carried out by workers who have had training in safe working methods in relation to the activity, and

- (b1) be carried out by workers who have—
 - (i) completed a course of training specified by the regulator in relation to the activity, or
 - (ii) appropriate experience or training in the carrying out of the activity, and

[21] Clause 157 Conditions

Insert after clause 157(5)—

- (5A) The holder of a licence must comply with the conditions imposed on the licence.

Maximum penalty—

- (a) in the case of an individual—\$1,250, or
- (b) in the case of a body corporate—\$6,000.

[22] Clauses 158A and 158B

Insert after clause 158—

158A Voluntary surrender of licence

- (1) The holder of a licence may voluntarily surrender the licence to the regulator.
- (2) The licence expires on the surrender of the licence.

158B Minor amendments to licence

- (1) The regulator may make minor amendments to a licence, including an amendment—
 - (a) to correct an obvious error, or
 - (b) to change an address, or
 - (c) that does not impose a significant burden on the holder of the licence.
- (2) An amendment that affects the period of a licence may not be made under this clause.

[23] Clauses 160(1)(b)(ii) and 164(2)(b)

Omit “Greater” wherever occurring.

[24] Clause 177 Registration of plant designs and items of plant

Omit “one year” from clause 177(4). Insert instead “5 years”.

[25] Clause 179 Dangerous incidents

Insert at the end of clause 179(a)(xviii)—

or

- (xix) spontaneous combustion at a coal mine,

[26] Clause 179(h)

Omit the paragraph.

[27] Schedule 3 High risk activities

Insert “, alteration” after “operation” in clause 27(1).

[28] Schedule 3, clause 27(3)(a1)

Insert after clause 27(3)(a)—

- (a1) dam break studies,

[29] Schedule 3, clause 27(3)(c)

Omit “drawings”. Insert instead “reports”.

[30] Schedule 3, clause 27(4)

Insert in alphabetical order—

alteration means any variation to, or expansion of, an existing emplacement area, including any new dam lifts, raises or buttressing or reject reprocessing.

operation includes the extraction or removal of reject from an emplacement area for disposal, co-disposal or further processing.

[31] Schedule 3, Part 7

Insert after Part 6—

Part 7 Certain mines at which tailings storage facilities are located

34 Application of Part

This Part applies to all mines other than—

- (a) coal mines, and
- (b) opal mines, and
- (c) small gemstone mines, and
- (d) mines at which the inundation or inrush of any substance would not reasonably be likely to result in an emergency situation or present a risk to the health and safety of workers and other persons.

35 Tailings storage facilities

- (1) The establishment, operation, alteration or decommissioning of a tailings storage facility is identified as a high risk activity.
- (2) The waiting period for the activity is 3 months.
- (3) The information and documents that must be provided in relation to the activity are as follows—
 - (a) an overview of the life cycle of the tailings storage facility, including time frames for each stage of that life cycle, the design and construction of the tailings storage facility, any tailings at the tailings storage facility, the transport of tailings to or from the tailings storage facility, the treatment of tailings at the tailings storage facility, inspections of the tailings storage facility and details of any decommissioning of the tailings storage facility,
 - (b) dam break studies,
 - (c) details of the ongoing monitoring of the tailings storage facility,
 - (d) engineering reports of the tailings storage facility showing all existing and proposed tailings storage facility areas and the geotechnical design of those areas, endorsed by the individual nominated to exercise the statutory function of—

- (i) in the case of an underground mine—mining engineering manager at the mine, or
 - (ii) in any other case—quarry manager at the mine,
- (e) either—
 - (i) survey plans of the tailings storage facility showing all existing and proposed tailings storage facility areas at the mine, endorsed by an individual nominated to exercise the statutory function of mining surveyor at the mine, or
 - (ii) if a mine survey plan is not required under Part 5 of this Regulation—a mine plan.
- (4) In this clause—
 - alteration* means any variation to, or expansion of, an existing tailings storage facility, including any new dam lifts, raises or buttressing or tailings reprocessing.
 - operation* includes the extraction or removal of tailings from a tailings storage facility for disposal, co-disposal or further processing.
 - tailings* means the material left after the processing of extracted minerals.
 - tailings storage facility* means any place at which there are tailings, including any wall or other structure that retains the tailings, but does not include—
 - (a) any tailings situated underground, or
 - (b) any tailings that have been disposed of with overburden in such a way that it does not alter the stability of any overburden dump.

[32] Schedule 9, heading

Omit “mine quarterly report”. Insert instead “work health and safety report”.

[33] Schedule 10 Statutory functions at mines

Omit “conducted by the Department of Planning and Environment” from clause 13(2).
Insert instead “approved by the regulator for the purposes of this clause”.

[34] Schedule 12 Savings and transitional provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering—

Part Provisions consequent on commencement of Work Health and Safety (Mines and Petroleum Sites) Amendment Regulation 2019

Definitions

In this Part—

transitional high risk activity means the establishment, alteration or decommissioning of a tailings storage facility that—

- (a) was commenced before 1 February 2020 but was not completed on that date, or
- (b) is commenced during the period commencing on 1 February 2020 and ending on 1 May 2020.

Atmospheric concentration of diesel particulate matter

The operator of a mine or petroleum site does not commit an offence under clause 39(1) or 55(1) of this Regulation for any contravention of clause 39(1)(c) or 55(1)(c)(i) (as inserted by the *Work Health and Safety (Mines and Petroleum Sites) Amendment Regulation 2019*) that occurs during the period commencing on 1 February 2020 and ending on 31 January 2021.

Expiry of registration

The amendment to clause 177(4) of this Regulation made by the *Work Health and Safety (Mines and Petroleum Sites) Amendment Regulation 2019* does not affect the expiry dates of registrations that were in existence immediately before 1 February 2020.

Transitional arrangements for tailings storage facilities

- (1) The following provisions have effect in relation to a transitional high risk activity—
 - (a) the operator of the mine to which the activity applies may give notice of the activity under clause 33(1)(a) of this Regulation at any time within 3 months of 1 February 2020 (regardless of when the activity commenced),
 - (b) on the giving of that notice, the waiting period specified in Schedule 3 in relation to the activity is taken to have elapsed for the purposes of clause 33(1)(b) of this Regulation.
- (2) Clause 33 of this Regulation does not apply to the continuing operation of a tailings storage facility that was in operation immediately before 1 February 2020.

[35] Schedule 13 Penalty notice offences

Omit the matter relating to “**Offences under this Regulation**”. Insert instead—

Offences under this Regulation

Column 1	Column 2	Column 3
Provision	Penalty— Individuals	Penalty— Corporations
Clauses 6(4) and (5), 8(2), 8A(4) and (5), 8C(2), 10(3), 11(2) and (3), 12(2) and (3), 13(1)–(3), 16, 17(1) and (2), 20, 21, 22(1), 23(1) and (2), 24(1) and (5), 25(1) and (2), 26(1), 27, 33(3), 34, 35(1), (2) and (4), 37(1), 39(1), 41, 45(1) and (6), 46(1) and (2), 47(1)–(3), 48, 49(2)–(6), 51, 52, 53(1)–(3), 54(1), 55(1) and (2), 57(2)–(4), 59(1)–(3), 60(1) and (2), 61(1), 62(1), 63, 64(1) and (3), 65(5), 71(3), (4) and (6), 72(1)–(8), 73(1) and (2), 74(1), 75, 77(1), 78(1), (4) and (7), 80(1), 81, 82(1), 83, 84, 85(1), (8), (9) and (11), 86, 87(3), 88(1), 90, 92, 93, 94(1) and (3), 95, 96(1) and (5), 97(1)–(7), 100(1), (2) and (6), 101(2)–(4), 102, 103(1)–(4), 104(2) and (3), 105, 107, 109(6), 110, 120, 121, 122(2), (4), (4A) and (8)–(10), 123(2), 124(1), 125(2), 126, 137(1)–(4), 138B(1) and (2), 153(1) and (2), 153A, 177(9) and 177A and clause 1 of Schedule 5	\$600	\$3,000
Clauses 7(1), 7B(5) and (6), 8B(1), 9(2), 18(1), 36(1) and (1A), 58(5), 91(1) and (2), 106, 125(1), 133(1) and 170(1) and (2)	\$432	\$2,160
Clauses 7A, 8BA and 60(5)	\$300	\$1,000
Clauses 42, 98 and 99	\$180	\$900
Clauses 58(1) and (4), 60(3), 108, 134(1)–(3), 143(3A), 144(13), 157(5A) and 158(4)	\$125	\$600
Clause 60(4)	\$150	\$600
Clauses 127(1), 127A, 128(1), 129(12), 130(1), 131(2) and 132	\$720	\$3,660
Clauses 138 and 138C	\$600	—