



**NSW
Resources
Regulator**

GUIDE

Appointment and notification of petroleum site operator

Work Health and Safety (Mines and Petroleum Sites) Legislation



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April 2018	2	Added petroleum site operator's new obligation under clause 8BA 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 the change. Set out penalties applying to petroleum site holders and petroleum site operators for failing to notify the regulator of various matters.

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Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (June 2021). 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.

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1. Introduction

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

- the petroleum site holder appointing an operator for the petroleum site
- the petroleum site holder notifying the regulator about who will operate the petroleum site (whether it is the petroleum site holder or a different petroleum site operator).

Information in this guide is primarily based on Part 1A, Division 2 of the Work Health and Safety (Mines and Petroleum Sites) Regulation 2014 (the Regulation) and the definitions of petroleum site holder and petroleum site operator in the *Work Health and Safety (Mines and Petroleum Sites) Act 2013* (the Act).

The petroleum site 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 petroleum site
- that the health and safety of other people is not put at risk from the petroleum site or work carried out as part of petroleum operations.

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

- are the petroleum site holder for the petroleum site
- are appointed by the petroleum site holder to be the petroleum site operator.

2. About the petroleum site holder

Under the Act, a PCBU will be a petroleum site holder if they:

- have control over a petroleum title that permits petroleum operations to be carried out at the petroleum site
- are carrying out petroleum operations at the petroleum site (without control over a petroleum title that permits petroleum operations to be carried out at the petroleum site).

3. About the petroleum site operator

A petroleum site holder may only appoint a person to be the petroleum site operator if they are a PCBU and have the skills, knowledge, experience and resources to exercise the functions of the petroleum site operator.

A business or undertaking can be conducted by a natural person (i.e. an individual), a partnership, an unincorporated association or by a company. Many petroleum site operators may be companies.

Whatever the legal entity, the proposed petroleum site operator must have the necessary skills, knowledge, experience and resources to exercise the functions of the petroleum site operator. Exactly what skills, knowledge, experience and resources are required will depend on the nature and complexity of the petroleum operations.

The proposed petroleum site operator must be able to:

- carry out petroleum operations at the petroleum site on behalf of the petroleum site holder
- have management or control of the petroleum site
- discharge the duties of the petroleum site operator under WHS laws.

4. How is a petroleum site operator appointed?

If the petroleum site holder decides to appoint a person to operate the petroleum site, the appointment 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 petroleum site operator agrees to the appointment. The petroleum site holder must give the requisite authority to the petroleum site operator to allow the petroleum site operator to discharge their duties and have actual management or control of the petroleum site.

The form also includes other details such as:

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

If the petroleum site holder has appointed a petroleum site operator, then the petroleum site 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 for providing a copy of the appointment document for the purposes of clause 8B (5) of the Regulation.

The petroleum site 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 petroleum site holder to appoint the same person to operate more than one petroleum site.

5. Additional obligations if a petroleum site operator is appointed

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

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

6. What if a petroleum site operator's contact details change after the operator is appointed?

The petroleum site 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. Penalties apply if the operator does not notify the Regulator as soon as practicable (and no later than 28 days) after any change.

7. What if a petroleum site operator is not appointed?

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

The petroleum site holder (in its capacity as the petroleum site operator) must notify the Regulator of any change to the petroleum site holder's contact details using the [Change of contact details of operator](#) form. Penalties apply if the operator does not notify the Regulator as soon as practicable (and no later than 28 days) after any change.

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.

8. What if there is a change in petroleum site holders?

If the petroleum site is sold or for some other reason there is a change in petroleum site holders, the PCBU who proposes to become the petroleum site holder of a petroleum site may appoint a person to be the petroleum site operator of the petroleum site in advance. In such cases the appointment takes effect when the prospective petroleum site holder becomes the petroleum site holder for the petroleum site, but only if, at that time, the person is still eligible to be appointed as the petroleum site operator.

This means, for example, that if the petroleum site is to be sold and the prospective petroleum site holder wants to continue with the same petroleum site 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 petroleum site operator remains eligible to operate the petroleum site (for example, it has not gone into liquidation or for some other reason ceased to have the skills, knowledge resources or experience to operate the petroleum site), the petroleum site operator can continue without interruption and the new appointment will take effect, for WHS purposes, when the prospective petroleum site holder becomes the petroleum site holder.

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

9. 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 petroleum site holder of a petroleum site if the petroleum site holder fails to notify the regulator that the petroleum site holder:

- is the operator of the petroleum site
- has appointed an operator of the petroleum site
- has changed an appointment of an operator of the petroleum site
- has terminated an appointment of an operator of the petroleum site.

Notification that a petroleum site holder is the operator must be given *before* petroleum operations commence at the petroleum site. If a person other than the petroleum site holder is appointed operator, the petroleum site 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 petroleum site operator who fails to notify the regulator of any change to the operator's contact details as soon as practicable (and no later than 28 days) after the change.

10. What are the obligations on the petroleum site operator who ceases to operate the petroleum site?

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

- the holder of the petroleum site
- the PCBU who is to become the new petroleum site operator.

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

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

The petroleum site record includes:

- a record of any improvement, prohibition or notice issued in relation to the petroleum site under Part 10 of the *Work Health and Safety Act 2011*
- a copy of any provisional improvement notice issued in relation to the petroleum site by a health and safety 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 petroleum site as communication between outgoing and incoming shifts
- a record of all first aid treatment provided at the petroleum site
- any other record that the petroleum site operator is required to keep in respect of the petroleum site under the WHS laws (for example, 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 petroleum site holder or new petroleum site operator of the petroleum site.

The new petroleum site 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 Regulation 2017*
- *Work Health and Safety (Mines and Petroleum Sites) Act 2013*

→ Work Health and Safety (Mines and Petroleum Sites) Regulation 2014.

11. Related forms

→ [Appointment and notification of operator of a mine or petroleum site](#) form

→ [Change of contact details of operator](#) form