

POLICY

Public comment policy

June 2020

Introduction

The NSW Resources Regulator has a strong policy of transparency and we are committed to communicating publicly about our regulatory activities.

This principles-based policy explains when we comment publicly on our activities, our general approach to public comment and limitations on informing the public of our regulatory activities.

In addition, under the NSW Government's Quality Regulatory Services Initiative (QRSI), all regulators are required to regularly report on compliance activities and outcomes.

Who we are

The NSW Resources Regulator is a stand-alone regulator within the Department of Regional NSW, responsible for compliance and enforcement across NSW's mining sector.

In administering our functions, we may be involved in various regulatory activities such as:

- receiving and considering complaints, safety incident notifications and requests from interested parties
- conducting inspections, audits and investigations
- assessing licensing and registration applications
- issuing prohibition and other statutory notices
- taking criminal enforcement action, for example, issuing penalty infringement notices or commencing prosecution proceedings
- taking other administrative actions, including suspension or cancellation of authorities.

POLICY

Public comment policy

Public comment statement

1. Our general approach to public comment

We will always assert the right to publicise a regulatory outcome and not keep outcomes secret unless constrained by legal requirements. This is important for regulatory transparency and acts as an effective deterrent against wrongdoing.

Informing the public of our regulatory activities is important because it:

- promotes public confidence in the regulation of the industry – that is, there is transparency around what we are doing about those who contravene the law
- encourages compliance with the law by informing industry and the community about the standards we expect and the consequences of failing to meet these standards
- provides information and guidance about safety issues and irresponsible practices to protect the health and safety of workers.

Generally, we will issue a public statement, such as a media release or media statement, on significant regulatory activities and outcomes in order to:

- be transparent and accountable for what we do
- help inform our regulated sectors and the community of the standards we expect and of our priorities and areas of focus
- encourage the community to report concerns about suspected illegal or unsafe activity
- respond to publicly aired concerns about industry non-compliance and the associated impacts on communities.

We may issue a media release or make a public comment about:

- significant prohibition or penalty infringement notices issued
- results – both positive and negative – of compliance audits

- commencement and outcome of prosecutions
- administrative decisions, such as licence suspensions
- investigation reports
- safety issues affecting NSW mines and petroleum sites
- information releases on our compliance activities
- proactive compliance operations
- industry performance statistics
- guidance, information sessions, workshops and education programs.

Most importantly, we will consider whether making a statement would promote confidence and transparency in the regulatory regime and promote compliance with the legislation.

For example, in some circumstances making a statement could provide a clear deterrent that would prevent serious or widespread misconduct or reduce public concern about a matter that would have a significant negative impact on the integrity of the industry sectors we regulate.

When considering whether to make a statement, we will balance any likely public benefits against the risk that a statement may prejudice any person who is, or is likely to be, the subject of investigation or regulatory action.

2. Limitations on informing the public of our regulatory activities

Despite the importance of informing the public of our regulatory activities, we may not release information to the public where, on balance, it may be against the public interest to do so.

Specific factors that limit our ability to comment about investigations and regulatory actions include:

- legislative restrictions
- the need to safeguard confidential or sensitive information (such as commercial-in-confidence information or the identity of a complainant)
- the potential to jeopardise ongoing investigations and regulatory actions through the premature release of information
- ensuring a person's right to a fair hearing is not prejudiced
- the potential risk of defamation or other legal proceedings against the department or its officers

- the potential risk of affecting a person's ability to lawfully operate and trade
- court orders not to disclose information in certain circumstances or at specified times.

3. Comment on investigations

General investigations

When asked, we will generally confirm the existence of a current investigation or the receipt of a complaint but will not provide further comment until the investigation has concluded. We will not generally provide updates on the progress of the investigation unless it is in the public interest to do so. In determining whether updates are in the public interest, we will consider the principles set out in this document.

Importantly, where we comment on an investigation, this does not necessarily mean that a person or company will be the subject of any regulatory action, including legal or other proceedings – no adverse inference should be drawn with respect to that person or company.

If an investigation is finalised without taking regulatory action, we will, if possible, notify all parties that were previously identified as persons of interest and any person who reported the alleged misconduct. If this occurs, it should not be presumed that we will not take regulatory action in the future or if circumstances change.

Investigations into major accidents and incidents in the NSW mining industry

We will generally issue [Incident information releases](#) for serious incidents during the preliminary stages of an investigation (usually within 14 days). These are designed to draw attention to the occurrence of a serious incident and aim to contribute to a better understanding and management of the safety hazards and risks in mining operations. More than one information release can be issued for an incident, for example, if new information becomes available.

[Investigation reports](#) are generally issued for serious incidents in the NSW mining industry, once a major investigation is finalised. The identity of a victim will not be disclosed in these reports, except in relation to fatalities.

4. Comment on prosecutions and other court proceedings

We will normally issue a public statement in relation to prosecutions and other court proceedings:

- when proceedings are commenced
- when the court has determined the matter
- when there is an outcome of any appeal. This may occur by an editorial note to the original release.

We are mindful that once proceedings have been commenced, a publication may amount to contempt of court if the publication has a tendency to interfere with the course of justice in a particular case. As such, we will not generally comment on a matter that is before the court unless it is in the public interest to do so. This may include circumstances where the court has issued interim orders or where there has been material developments in relation to the matter.

Details of completed prosecutions will also be published on our website, which may include information in relation to the offence such as an incident summary, charges laid, penalty imposed by the court, link to decisions of the court and other related information.

Where proceedings relate to a matter under work health and safety legislation, we will not disclose the identity of a victim except in relation to fatalities.

5. Comment on administrative decisions

We will normally issue a public statement in relation to significant administrative decisions, such as a decision to [suspend or cancel](#) an authority, to issue a stop work order or to issue a significant prohibition notice. This may also include publishing a 'Reasons for Decision' document where available, and generally includes:

- acceptance or rejection of an enforceable undertaking*
- suspension or cancel of an authority
- imposition or revocation of a significant condition on an authorisation
- a review of a rehabilitation security deposit by the Minister.

We will also publish a summary table of recent rehabilitation security bond assessments.

Where asked, we will confirm the details of other administrative actions we have taken, such as the issuing of prohibition or improvement notices. These actions will also be identified through regular external reports on our [compliance activities](#).

As with investigations, when asked, we will generally confirm if a 'show cause' notice has been issued but will not provide any further comment until the action has been finalised.

*When accepting enforceable undertakings under both the *Mining Act 1992* and the *Work Health and Safety Act 2011*, we are required under the legislation to publicly communicate those decisions, including publishing the Reasons for Decision.

6. Comment on safety issues

We will normally issue a public statement in relation to safety issues, particularly those identified through safety incidents, which have the potential to affect multiple mines or petroleum sites. This would include identification of a significant hazard or risk, or issues associated with plant, equipment or materials.

[Safety alerts](#) and [safety bulletins](#) are often issued for significant or unique incidents in the NSW mining industry.

7. Comment on education programs and industry engagement initiatives

We will generally make public comment on significant education or training programs that we conduct, or industry engagement initiatives we undertake. These comments may take the form of media releases, reports, newsletters, briefings or public speaking engagements.

8. Publication of compliance activities

In addition to the above matters, we will regularly report on our compliance activities, including information on:

- audits and targeted assessments undertaken
- high-risk activity notifications received
- exemptions granted
- prohibition notices issued
- penalty notices issued
- enforceable undertakings accepted
- other administrative enforcement actions such as imposing conditions on an authority.

This information will generally take the form of a published report and may be accompanied by a media release.

9. Privacy and Personal Information Protection Act 1998

We will comply with the *Privacy and Personal Information Protection Act 1998* and the Information Privacy Principles set out in that act when making any public comment.

10. Media enquiries

All media enquiries must be made through the Department of Regional NSW Public Affairs team. Staff of the NSW Resources Regulator are not permitted to respond directly to any request for information.

The Public Affairs team can be contacted on regionalNSWmedia@dpc.nsw.gov.au.

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