

WHS undertaking given by Springvale Coal Pty Limited accepted

Entity	Springvale Coal Pty Limited (ACN 052 096 769)
Issue	Whether to accept or reject a WHS undertaking
Legislation	Part 11 of the Work Health and Safety Act 2011
Decision maker	Anthony Keon Executive Director, NSW Resources Regulator Regional NSW

Section 216 and 218 decisions

Pursuant to section 216 of the *Work Health and Safety Act 2011* (**WHS Act**), I, Anthony Keon, having a delegated authority from the Secretary of Regional NSW, have determined to **accept** the WHS undertaking given by Springvale Coal Pty Limited (**Springvale Coal**) that is attached to this decision.

For the purposes of section 218 of the WHS Act, I determine that the WHS undertaking is enforceable from when Springvale Coal is first notified of my decision to accept that WHS undertaking.

Reasons for decision

Legislation

- Section 216 of the WHS Act provides that:
 - The regulator may accept a written undertaking (a **WHS undertaking**) given by a person in connection with a matter relating to a contravention or alleged contravention by the person of the WHS Act.
 - A WHS undertaking cannot be accepted for a contravention or alleged contravention that is a Category 1 offence.
 - The giving of a WHS undertaking does not constitute an admission of guilt by the person giving it in relation to the contravention or alleged contravention to which the undertaking relates.
- Section 217 requires the regulator to give the person seeking to make an enforceable undertaking written notice of the regulator's decision to accept or reject the enforceable undertaking and the reasons for the decision. The regulator is also required to publish on its website any decision to accept an enforceable undertaking.

3. Section 222 provides that no proceedings for a contravention or alleged contravention of the WHS Act may be brought against a person if a WHS undertaking is in effect, or has been completely discharged, in relation to that contravention. If proceedings have already been commenced when the regulator accepts a WHS undertaking, then the regulator must take all reasonable steps to have the proceedings discontinued as soon as possible.
4. In exercising functions under the WHS Act, the regulator must have regard to the objects set out in section 3 of the WHS Act.
5. The maximum penalty for failing to comply with a WHS undertaking is \$317,350 in the case of a corporation, and \$63,250 in the case of an individual. Failure to comply with an undertaking may also result in prosecution action being taken in relation to the original alleged offence.
6. The regulator may delegate any functions conferred under the WHS Act to another person. The Secretary of Regional NSW (Secretary) is the 'regulator' for the purposes of the WHS Act and has delegated the function to accept a WHS undertaking under section 216 of the WHS Act to the Executive Director, Resources Regulator.
7. The regulator has issued, and published on the Resources Regulator's website, [guidelines](#) relevant to the acceptance of WHS undertakings as required by section 230 of the WHS Act.

Background

8. Springvale Colliery is operated by Springvale Coal Pty Ltd (**Springvale Coal**) and is located near Lithgow, NSW. The mine is a workplace within the meaning of section 8 of the WHS Act.
9. On 5 February 2019, a worker suffered serious injuries when he was hit by a bow shackle, after a RUD link failed during a towing operation at Springvale Colliery.
10. Before the incident, the worker and co-workers were unjamming an armoured face conveyor (AFC) chain at the longwall. The AFC chain had a flight bar jammed in the bottom race. The jammed flight bar was released and the AFC chain required inspection to assess damage. To help the inspection, workers decided to run the AFC in reverse and move the chain onto the top race. The tailgate slow runner drive on the AFC was not operational at the time. The maingate slow runner drive was not capable of moving the AFC chain. Workers decided to use the shearer (the longwall cutting machine) to support the maingate slow runner drive to move the AFC chain in reverse by towing the AFC chain with the shearer towards the tailgate end.
11. Workers began to assemble a towing system to move the AFC chain using the shearer. The towing system consisted of a 35-tonne bow shackle, a 42-millimetre nylon rope and two 'Recover Fast' Kevlar 50-tonne tow strops fitted with 16-tonne coupling links and 16-tonne sling hooks at either end. The towing system was attached to the AFC chain, with the sling hooks of the tow strops hooked into the links of the AFC chain. The towing system was attached to the shearer using the 35-tonne bow shackle connected to an 8-tonne RUD link, which was fitted to the shearer.
12. Shortly after starting the task, the RUD link on the shearer failed, resulting in the sudden release of energy in the towing equipment. As a result of the incident, an operator was struck in the right ankle by a bow shackle.

13. An [investigation information release](#) was released in May 2019, and a [final investigation report](#) was published in July 2020. A [lateral load shifting video](#) was released in March 2020.

WHS undertaking given by Springvale Coal

14. On 30 November 2020, Springvale Coal submitted a signed WHS undertaking to the regulator. Consistent with the Guidelines the undertaking was developed using the pre-proposal advisory service offered by the regulator which provided 'without prejudice' feedback on the proposed terms of the undertaking.
15. In summary, the WHS undertaking will impose an obligation on Springvale Coal to:
- commit that the behaviour that led to the alleged contravention has ceased and provide an assurance that steps have been taken to prevent a recurrence of the incident
 - publish a public notice in the Lithgow Mercury and the Sydney Morning Herald
 - disseminate information about the undertaking to Springvale Coal workers
 - reimburse the regulator's costs associated with the investigation, legal advice and administration of \$50,742 and with monitoring of the undertaking, a total cost of \$60,742.
 - provide underground workers with an Underground Safety Communication System (USCS), at a minimum cost of \$150,000
 - engage a registered training organization (RTO) to develop and deliver a bespoke resource and infrastructure training program for underground coal mine slinging, lifting and towing (SLT) tasks, at a minimum cost \$100,000
 - provide a donation to NSW Ambulance (Lithgow Station) to purchase a second first response recovery 4WD vehicle, a total cost of \$150,000
 - share its experiences and learnings associated with the projects to at least three mining industry conferences or seminars including the regulator's mining engineering seminar
 - commit to a total minimum spend of \$540,742
 - complete the undertaking on or before 24 months from acceptance by the regulator.

Considerations and findings

16. I am satisfied that the proposed undertaking meets the requirements of the WHS Act and the Enforceable Undertakings Guidelines. I have also had regard to the objects set out in section 3 of the WHS Act in considering this matter.
17. While under the WHS Act the giving of an undertaking does not constitute an admission of guilt, Springvale Coal has acknowledged that the regulator alleges a contravention of its health and safety duty and regrets the incident occurred and that workers suffered injury as a result of the incident.
18. I also note that Springvale Coal has implemented measures to minimise the recurrence of the circumstances and behaviour that gave rise to the alleged offences

19. However, there is a strong community expectation that companies such as Springvale Coal are aware of its obligations under the WHS Act and have systems in place to ensure compliance.
20. The subject WHS undertaking, if accepted, will require Springvale Coal to incur costs of at least \$540,742 including the funding and delivery of safety and community projects at a minimum cost of \$480,000.
21. In this regard, I note that the cost of the undertaking is significantly more than the three most recent penalties imposed in the District Court as a result of prosecution action by the regulator for similar offences:
 - a) LakeCoal Pty Ltd which was fined \$180,000, and LDO Operations which was fined \$136,000 in relation to an incident resulting in a serious injury to a worker who was stuck in the face and head by a damaged W-strap while travelling underground.
 - b) Richard Wayne Simmons who was fined \$90,000 in relation to a worker who was fatally injured when he was struck in the head by the tailgate of a coal haulage trailer.
22. In this respect, I am satisfied that the undertaking proffered by Springvale Coal adequately reflects the seriousness of the incident and the alleged offending and is appropriate in terms of monetary value.
23. However, the monetary value alone is not a determinative factor. The strategies of the undertaking need to go beyond mere compliance and provide clear and tangible benefits to workers, the broader industry, or the community - beyond what the regulator would ordinarily expect of an operator.
24. Springvale Coal have provided an undertaking which contains projects which I am satisfied meet those objectives.
25. The Underground Safety Communication System (USCS) appears to provide direct and tangible safety benefits for the workforce by enabling workers working underground to communicate electronically and access and share safety information in “real time” via tablet and handheld devices.
26. The USCS will provide a “real time” interactive tool for developing lifting plans and undertaking risk management of a work process that can be reviewed and approved remotely.
27. While I have some reservations about the USCS, as it is acknowledged that there will be clear commercial benefits also arising from this project, I am satisfied that the potential safety benefits are worth exploring and may provide broader industry benefits. In this respect, the requirement to evaluate the project after 12 months and share these findings at a minimum of three industry seminars appropriately addresses my concerns.
28. In relation to the, the bespoke slinging, lifting and towing (SLT) training program, I am satisfied that this has direct workforce benefits by providing a training program to specifically address the SLT tasks required to be undertaken in an underground mine. The training program will be also be made available to other mines, providing broader industry benefits.
29. Finally, the donation of \$150,000 to NSW Ambulance (Lithgow Station) will provide tangible benefits to the broader community by funding the purchase of a second first response recovery 4WD vehicle.

30. Accordingly, having considered the collective benefits of the undertaking in its entirety, I am satisfied that it will provide greater benefits to the workforce, industry and community, and will provide a better outcome than other available enforcement options.
31. Springvale Coal has no prior convictions under the WHS Act and I am of the view that the total value of the undertaking exceeds the likely penalty that would be imposed by a court following successful prosecution action.
32. I am also satisfied that the requirement under the WHS Act to publish the undertaking and this decision, will provide similar specific and general deterrence to successful legal proceedings.
33. The acceptance of an undertaking will ensure that the regulator, and ultimately the taxpayer, does not incur further costs in relation to the matter, particularly in relation to investigation and legal costs, which may never fully be recouped through prosecution action.
34. The initiatives given by Springvale Coal in the undertaking resolve the behaviour of concern that led to the alleged contravention, and rectifies the consequences of the conduct and provides clear and tangible benefits to the Springvale Coal workforce, across the mining industry and the broader community.
35. Accordingly, I have determined to accept the WHS undertaking given by Springvale Coal Pty Limited.

Date of decision: **07 December 2020**



Anthony Keon

**Executive Director, Resources Regulator
Regional NSW**

NOTE: In accordance with section 217 of the *Work Health and Safety Act 2011* this decision will be published on the regulator's website.