Department of Commerce, Labor and Environmental Resources

Division of Environmental Protection

INSPECTION AND ENFORCEMENT

POLICY AND PROCEDURE HANDBOOK

August 1,1993

Office of Mining and Reclamation

INSPECTION AND ENFORCEMENT HANDBOOK

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SECTION 1

INTRODUCTION AND APPLICABILITY

INTRODUCTION

This Handbook contains many references to forms required and/or used by the Division of Environmental Protection (DEP), Office of Mining and Reclamation. Forms are designated by a two or three initial prefix, followed by a one or two digit number. Because the prefix designates the agency that developed and uses the form, and the agency that administers and enforces the mine reclamation requirements has undergone several name changes in recent years, many forms still retain letter prefixes designate former agency names.

Letter prefixes include: DR; MR; OMR; DEP; and DMM. These may be read interchangeably, however, the form numbers remain unchanged.

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OK

Gaston Caperton
Governor

M E M O R A N D U M

David C. Callaghan
Director

TO: All Division of Environmental Protection Personnel

FROM: David C. Callaghan

DATE: March 30, 1992

SUBJECT: Policy and Procedure

There has occurred a number of instances where the need for issue resolution has resulted in ad hoc development of policy memoranda without the benefit of administrative review. It is recognized that the intent was to undertake a self-motivated initiative to resolve a problem or issue; however, this approach has often resulted in inconsistency in program management and controversy. In the interest of sound management practices, I believe it is appropriate that the following policy-making procedure be implemented effective immediately.

Where the development of policies, procedures, guidelines, directives, interpretation regulations or other guidance becomes necessary, you are directed to first discuss the matter with your immediate supervisor. The initial objective should be to seek resolution of the issue through a careful review of the statute, the regulations, or existing policy or procedures. If these documents do not provide the desired guidance, the supervisor may wish to engage in further discussions to seek an informal resolution without the need for written policy.

Where it is generally agreed that written guidance is necessary to insure consistency and to reduce conflict, a draft policy should be developed. This draft, along with supporting documentation which establishes the need, should be forwarded to the appropriate unit administrator. These are as designated in the attached table. No such document may be made effective without the approval of this office, and this office will be the sole issuing authority. Roger Hall will coordinate policy development for this office.

DCC;RTH:cc

ENFORCEMENT MANAGEMENT PLAN

1. Purpose: This handbook establishes official policy and procedure for the Enforcement Management Plan. Goals of the department are outlined, and standards are established in order to assure that appropriate compliance is maintained with program requirements, and mandates by the O.S.M. and West Virginia Division of Environmental Protection.

MANAGEMENT TOOLS IN PLACE AND PENDING

Data Processing is a primary tool that tracks and quantifies performance by field personnel with regard to Inspection Frequency, Issuance of N.O.V.'s and C.O.'s, timely abatement inspections and problem identification. A detailed example of how these functions will operate is incorporated into the EMP and is as follows.

1.0 The Inspection and Enforcement staff fills out a report for every activity, and these reports will be entered into the SMIS I & E system by regional I & E clerical staff. Inspections, Violations, Cessation Orders, Citizen Complaints and their Inspections, and Follow-Up Inspection will all be entered immediately after they are turned in by the field personnel.

By comparing the individual activity report for an inspector to the assignment list for an inspector, a supervisor can determine the performance level for that inspector. If the inspection rate is inadequate (too many permits not inspected on schedule) the supervisor should investigate the inspector's work load to determine if work-level overload or geographical separation is responsible.

If a pattern of avoidance of certain permits, types of permits, etc., emerges, appropriate management action must be taken.

2.0 Inspection Form Details

There are two main inspection reports: the MR-6 mine inspection report and the MR-6A refuse/impoundment inspection report to be used when a mine site includes any kind of refuse/impoundment facility.

By submitting requests for inspection summary reports by region or state-wide, a supervisor or manager can obtain various listings of inspection activity. Summaries of inspections by inspector, permit, permittee or operator will also be available for management decision-making guidance.

If variations in the rate of inspections conducted are found in activity reports, the appropriate supervisor must determine the cause of the variance. If managerial action is called for, (i.e. the assignment list includes a number of widely separated or unusually large and complex mine sites) then proceed as appropriate.

If the variance appears to be a result of poor or indifferent performance, a meeting with the field staff to help them conform to professional standards should be held. If there is no positive change in performance then more severe disciplinary measures may be called for.

An estimate of acreages disturbed and reclaimed is paired with information about permitted and bonded acreages from the permit files, to show how activity at the mine site compares to that expected under the conditions required by the permit.

Phased bond releases, facility types for the site, previous inspections, time required to perform the field activity, comments and delivery information are all included in order to allow for a complete picture of the activity represented by the report.

2.2 Refuse/Impoundment Inspection Tracking - MR-6A

The MR-6A form allows the field inspector to detail refuse/impoundment quality for specific standards, as well as enter comments if other problems not detailed in the performance standards occur. Both an evaluation of a specific standard and the violation number (if an evaluation other than full compliance is entered) can be entered on the form and then keyed into the SMIS data bases.

A copy of the newly designed Refuse/Impoundment Inspection Report (MR-6A) is attached. The attachment includes printed copies of the screens used to control the information gathered from the reports.

2.3 Management Reporting Facility

Management reports will be generated both automatically after the closing date for a month's activity and on command by management users using an on-line report submission facility. The report generator facility will allow user requirements to be entered such as date span, the region, or other selection criteria, so that a manager can generate a specific list of either detailed or summary inspection data.

Inspection summary reports will contain information about every inspection performed and logged for either a region, the state-wide agency as a whole, or an individual inspector. These reports can be produced for a month, a quarter, a year, or for a specifically entered date-span. These reports will contain totals of inspections conducted, totals of violations generated as a result of these inspections, and so forth.

Inspection detail reports will list more detailed information about a given group of inspections. All inspections of a given mine-site, all inspections conducted by a given inspector or group of inspectors, or all inspections over a given time frame are the sorts of selection criteria which are planned. Specific information gathered by field inspections will be available both on-line and in these reports.

3.0 Violation Forms Detail

There are three types of violations issued to operating mines by the I&E field inspectors: Notices of Violation, Imminent Harm Cessation Orders, and Failure to Abate Cessation Orders.

3.1 Notice of Violation - MR-15

An MR-15 form is used when a field inspector issues a Notice of Violation to a mining operation. The form allows the inspector to specify the permittee and operator being cited, additional owners and controllers as determined at the mine site, the specific location and type of mine being cited as well as the specific code or regulation violated and the specific nature of the violation.

In addition the remedial measures being required, the time and date of the completion of the required remediation, and information on the service of the citation are all included on both the form and within the SMIS database. All of this information will be keyed into the SMIS I&E database at the time the field office copy of the Notice is filed with the Regional I&E clerk.

3.2 Cessation Order - MR-15A

An MR-15A form is used when a field inspector issues a Cessation Order to a mining operation. The form allows the inspector to specify the permittee and operator being cited, additional owners and controllers as determined at the mine site, the specific location and type of mine being cited as well as the specific code or regulation violated and the specific activity which must be stopped.

In addition the remedial measures being required, the time and date of the completion of the required remediation, and information on the service of the citation are all contained on the form. This information will be keyed into the SMIS I&E database at the time the field office copy of the CO is filed with the Regional I&E clerk.

3.3 Management Tracking of Violation Activity

By submitting requests for violation summary reports by region or state-wide a supervisor or manager can obtain various listings of violation activity. Summaries of violations by inspector, permit, permittee or operator will also be available for management decision-making guidance.

On-line summary information about a given permit or inspector will be available; this will become more important as additional management staff are equipped with and trained to use the computer system.

If variations in the rate of violations or COs issued per inspection conducted are found in activity reports, the appropriate supervisor must determine the cause of the variance. If managerial action is called for, (i.e. the assignment list includes a preponderance of poor or excellently performing mine sites) then proceed as appropriate.

If the variance appears to be a result of differing standards between inspectors, a meeting with the field staff to help them conform to agency-wide standards should be held. If there is no positive change in performance then more severe disciplinary measures may be called for, up to and including dismissal if performance standards are consistently and flagrantly violated.

4.0 Citizen Complaint - MR-35

There are two parts of the citizen complaint form, one for receipt of a citizen complaint and one for reporting the result of the official investigation of the complaint.

4.1 Complaint Investigation Form - MR-35

This form allows any DEP staffer to record sufficient information about a citizen complaint to allow a field inspector to investigate the complaint and report on their findings about the complaint.

The name of the complainant is optional, as is other identifying information; citizens may request anonymity.

Other information about the mine site, type of problem being reported, location of the complaint, etc. is recorded and given to the inspector assigned to the complaint.

Investigation results are documented by the inspector, and keyed into the SMIS I&E database as soon as the form is turned in to the regional I&E clerk. Information includes the date of last inspection, results of the investigation, permit number of the mine site, whether a NOV or CO was issued and other general information.

4.2 Management Tracking of Citizen Complaints

By requesting a complaint summary report for a Region (or statewide if desired) management can compare a complaint investigation activity from area to area or from a given point in time to the present.

The same kinds of selection criteria will be used as for other types of management reporting; date-span, region, by permit or inspector, etc.

On-line summary lists of MR-35 activity will also be available for management use.

Additional management tools have been brought about by the restructuring and reorganization of the agency to maximize the "hands on" management of operations. Examples of these are as follows:

1. A basic training program has been developed for personnel with three years and less of service and all new hires to assure that the basic fundamentals are impressed on new hires and to reaffirm department policy and procedure. The class comprises sixty-eight hours of classroom and field exercises.

Our ongoing utilization of the Technical Training Programs offered by the O.S.M. is, and will remain a large section of training

policy for our staff. In addition to training the DEP formulates in house, other Technical Training Programs offered by vendors will be utilized on a case by case basis.

2. The environmental specialist positions are filled at this time. These individuals, will have specialized duties as will be described under job responsibility of this report, but will represent a new level in the management chain, which will assist greatly in enhancing performance.

3. A complete inspection checklist was distributed to all field personnel on February 3, 1992, and has established a standard basis on which to conduct complete inspections. The checklist is compiled for each complete inspection and reviewed by the supervisors. This will enhance the quality of inspections and add an extra check on field performance.

4. The quarterly aerial overflight program is mandatory for supervisors; they are to have flown with each of their inspectors a minimum of once a quarter. An additional consideration will involve aerial overflights as part of all complete inspections involving major facilities which will include but not be limited to refuse piles, refuse impoundments or structures under dam control criteria, and major surface mines. The availability of aircraft on an as-needed basis for field personnel will have been assured.

5. All activities will be monitored and reviewed by headquarters I&E and will include helicopter overflights, field reviews, and staff meetings, as required to orient performance levels and assure consistency in program application.

6. An inspection enforcement handbook has been assembled which deals with policy and procedures. Additional work is being done at this time to assure consistency and to reduce conflict. No such documents will be made effective without prior approval through headquarters, as outlined in March 30, 1992, memo from the Director (see Page 2).

In order to help meet the goals of the department, the following additional objectives must be met.

1. To meet the statutory and regulatory requirements of Chapter 22A-3 and Title 38 Regulations, Series 2, for 100 percent inspection frequency.

2. To conduct all inspections of non-compliances by/on the established abatement date written on the noncompliance.

3. To conduct all inspections of cessation orders by/on the abatement date written on the cessation order.

4. To conduct all inspections of agreed orders and suspensions by/on the date written the agreed orders or suspensions.

5. To cite all observed violations during the course of any partial, complete or aerial inspection.

6. To respond to all citizen complaints within twenty four hours of receipt.

By meeting these objectives listed above the inspector should be able to accomplish the overall goals of prompt compliance and proper reclamation at all mining sites, which, benefits the environment, department and industry.

INTERACTION OF OBJECTIVES

The department recognizes that prompt compliance and proper reclamation at mine sites benefits the environment, department and industry. To that end we have established them as overall objectives throughout the E.M.P. In order to monitor the department's performance in meeting those overall objectives, several interacting objectives were established.

INSPECTION FREQUENCY

In order to meet the overall goals of the department to assure prompt compliance and proper reclamation within the time frame as outlined in the permit package, Chapter 22A-3 and Title 38 Regulations, Series 2, the inspector must perform inspections frequently enough to keep the operator in check or to detect all violations in early stages. [The schedule for inspection priority is as follows until inspection frequency is reinstated per the WVDEP/OMR Implementation Plan]

(1) An average of at least one partial inspection per month of each active surface mining operation.

(2) One complete inspection per calendar quarter of each active and inactive surface mining operation. An inactive operation is one which has requested and received approval to temporarily cease operations as provided in subsection 14.11 of the regulations, or one that has been granted Phase I bond release, and the revegetation on the surface coal mining and reclamation operation has been successfully established at the end of the first growing season with a minimum ground cover of sixty (60%) percent and the operation is in compliance with the requirements set by subparagraph (B), paragraph 10, subsection (b) of Section 12 of the Act or until soil productivity for prime farmlands has returned to the equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined by the soil survey performed pursuant to paragraph (15) subsection (a) of Section 9 of the Act and subsection 10.3 and Section 10 of the regulations.

(3) Prospecting operations shall be inspected as necessary to assure compliance with the Act and these rules and regulations.

(4) At least one partial inspection monthly and one complete inspection quarterly for each prospecting operation for which approval has been granted for coal removal in excess of 250 tons.

(5) More frequent inspections shall be made on any prospecting, active surface mining operation, or inactive surface mining operation as necessary to insure compliance with the Act.

Failure to perform timely inspections will allow the permittee to fall out of compliance. This will ultimately cost the permittee additional time and money to regain compliance with an adverse impact on the environment, and cause the inspector to miss the goals of prompt compliance and proper reclamation.

PROGRAM GOALS

There are two types of goals associated with the EMP. The first is to assure compliance with Chapter 22A-3, and Title 38 Regulations, Series 2, to assure compliance and proper reclamation of all associated mining sites in West Virginia.

The second is to institute an effective management program to allow for better management of the inspection staff, and to correct weaknesses found in the remainder of this program such as permits, hearings, regulations, forms, policy and procedures. Instituting these goals and practices will translate into proper compliance and reclamation practices.

PROGRAM OBJECTIVES

The overall objective and reason for existence of DEP is to ensure prompt compliance and proper reclamation of mining sites. This is achieved through a thorough inspection and enforcement program, which monitors compliance of the operations through Chapter 22A-3 and Title 38 Regulations, Series 2.

A thorough understanding of the code, regulations, policies, procedures, permit packages, mining practices, and inspection techniques is required for an inspector to get prompt and proper compliance and reclamation from the

operators. An effective preventative program coupled with a consistent enforcement program will achieve that end.

CITE ALL VIOLATIONS

A second standard is to cite all violations observed, this is critical, if inspectors do not cite all violations when observed the inspector will not be able to keep the permit site close enough to compliance to complete reclamation within the time frames allowed by the code and regulations. Prompt and consistent enforcement is essential for our program to be effective.

VIOLATION FOLLOW-UP INSPECTIONS

It is imperative that when an inspector issues a notice of violation or cessation order, and gives the permittee an abatement date, a prompt follow-up must be conducted by/on the date written on the violation. At this time the violation should be abated, extended or turned into some other form of alternative enforcement. All of these requirements listed, work together to complete the overall objectives and goals set forth by the E.M.P.

Prompt follow-up inspections are extremely critical in assuring compliance and timely reclamation. Abatement dates issued on violations should be realistic and well thought out to assure environmental protection, but also allow the permittee time to correct the situation.

POLICY STATEMENT

It is the policy of the Department of Environmental Protection, Office of Mining and Reclamation, to ensure that all inspectors meet the standards set forth in the E.M.P. These standards were officially established by memorandum by the Director on which is enclosed. It is the responsibility of the Assistant Chiefs - North and South, to ensure that the E.M.P. is utilized by the field supervisors and to monitor the field supervisors compliance with the procedures set out in this handbook. It is the policy of this Department to incorporate the results of the E.M.P. into the Standard Employee Evaluation Form, which is completed annually on each inspector.

For those inspectors and field supervisors who continually fail to meet the requirements as set out in the E.M.P. and if that continued failure is directly attributable to the inspector or field supervisor, they as individuals will be held accountable. The use of disciplinary action, depending on the severity of the problem to be addressed, could range from verbal or written reprimands, suspension without pay, and for continued failure to enforce these policies, dismissal from their job responsibilities in accordance with civil service guidelines.

I & E Performance Standards

Attached are the required performance standards for I & E Field Personnel from Assistant Chiefs (North and South), to Inspectors in Training. Employees should familiarize themselves with aspects of these requirements for all positions listed for a more thorough understanding of the interaction between positions.

Assistant Chiefs of Operations

An employee in this class performs administrative and technical work of a professional nature, directing a major program of the D.E.P. as may be outlined in Chapter 22 of the Code of West Virginia.

Employee has authority to exercise independent judgment in all matters within assigned jurisdiction. Work is reviewed obtained and by the Director and Chief primarily for results
for compliance with policy.

Employee advises and makes recommendations to the Director and Chief regarding policies, rules, regulations and procedures for the operation of the Department.

Primarily responsible for independent decisions rendered on program and operation issues as it pertains to operational areas under their primary jurisdiction.

Knowledge of the principles and practices of personnel management and public administration.

Comprehends, interprets, and executes the laws, regulations, policies and objectives of the Department in an efficient manner.

Reviews, investigates and submits comments and recommendations relative to new legislation and amendments to existing legislation pertaining to the interest and jurisdiction of the Department.

Exercises broad independent judgment, delegates authority, and evaluates the results of work performed.

Initiates new programs, evaluates programs, and directs implementation.

Maintains good working relationships with federal, state, and county officials and with private citizens.

Effectively communicates, both orally and in writing.

Directs investigations, reviews reports, and recommends and takes appropriate action on the basis of these reports.

Environmental Inspector Supervisor

Plans, assigns, coordinates and monitors work and training of assigned inspectors, inspectors-in-training and specialists engaged in complex technical or inspection duties; follows-up to insure all complaints and reports are acted upon; acts as a liaison between administrative and field inspection personnel.

Consults and advises administrators concerning proposed changes in policy and work procedures. Reviews and insures all regulatory and procedural requirements are being met as required by law and/or policy.

Interprets laws, rules, and regulations and applies such interpretations to specific cases or situations.

Instructs, trains, advises and evaluates the work performance of assigned inspection personnel.

Recommends promotions, demotions, and other personnel actions; investigates employee grievances, reports findings and recommends resolutions.

Coordinates multi-agency reviews of permit applications.

Represents agency at various symposiums, hearings, meetings and discussions.

Evaluates the work performance of technical and field inspection personnel.

Completes reports on activities for review and approval by an administrator; assists legal counsel in the preparation of materials for hearings in courts of law; testifies as necessary.

Discusses with public officials, private business representatives and the general public their efforts to treat, control and minimize wastes, or their efforts to control environmental impacts of regulated facilities, and outlines pertinent statutory and regulatory obligations.

Investigates complaints of no response or unsatisfactory response to reported suspected environmental harm from point sources, nonpoint sources, or regulated facilities.

Environmental Specialist

Trains inspectors-in-training and inspectors.

Coordinates and monitors work of inspectors-in-training and inspectors engaged in complex technical or inspection duties.

Follows-up and evaluates performance to determine need for additional or more intensive training.

Interprets laws, rules, regulations, contracts, engineering drawings, plans and specifications and explains such to others, and enforces the provisions thereof.

Conducts training seminars for inspectors and other technical and professional personnel.

Completes reports on activities for review by supervisor; assists legal counsel in the preparation of materials for hearings in courts of law or administrative proceedings; testifies as necessary.

Consults and advises supervisor concerning proposed or needed changes in policy and work procedures.

Makes inspections at sites to verify the accuracy or completeness of inspection reports submitted by inspectors-in-training or inspectors.

Responds in accord with approved emergency response procedures to spills or releases of pollutants, some of which may be hazardous substances.

Discusses with public officials, private business representatives and the general public their efforts to protect the environment and to outline pertinent statutory and regulatory obligations.

Investigates complaints pertaining to previously reported suspected environmental harm from point sources, nonpoint sources, or regulated facilities to determine if prior inspections were conducted and appropriate action taken.

Performs specialized duties as assigned by supervisors or Assistant Chief's to include but not limited to blasting, excess spoil disposal and citizens complaints.

Environmental Inspector

Collects samples from state waters, soil and discharges for field and laboratory analyses to determine environmental quality and compliance; documents findings.

Makes regular inspections of sites to ascertain types of wastes produced, sources and volume of wastes, efficiency of treatment, disposal methods, compliance with laws, regulations, issued permit conditions, reclamation contracts, best management practices or to determine the condition of state waters, or to evaluate surface mining and reclamation practices per mandated frequency.

Discusses with public officials, private business representatives and the general public, their efforts. to protect the environment and to outline pertinent statutory and regulatory obligations.

Investigates complaints pertaining to suspected environmental harm from point sources, nonpoint sources, or regulated facilities.

Conducts field reviews of permit applications, contract proposals or sediment control plans.

Determines the intervals and appropriate sites for sampling, records pertinent data concerning relevant factors and interprets data collected.

Inspects sites under construction and/or during operation for compliance with contracts, permits or best management practices.

Responds, in accordance with approved emergency response procedures, to spills or releases of pollutants, some of which may be hazardous substances.

Consults with supervisor on observations, variances cited in complying with regulations, and problems noted during inspections in order to determine courses of action which will accomplish the regulatory objectives.

Initiates criminal, administrative or civil enforcement or prosecution actions against suspected violators of environmental protection laws; testifies in court or administrative proceedings as required.

Orders immediate cessation of any operation or portion thereof when provided for by law where the public welfare or safety calls for such or when necessary due to noncompliance with law, regulations, permit conditions, and/or agency orders.

Makes decisions on change orders on reclamation contracts, adequacy of construction materials and methods, and verifies appropriateness of payment requests.

Coordinates enforcement activities with technical staff.

Writes technical and activity reports.

Environmental Inspector-In-Training

Learns to perform assigned duties under the guidance of a r i. r

trained inspector or supervisor so

Collects samples from state waters, soil and discharges for field and laboratory analyses to determine environmental quality and compliance; documents findings.

Makes regular inspections of sites to ascertain types of wastes produced, sources and volume of wastes, efficiency treatment, disposal methods, compliance with laws, regulations, issued permit conditions, reclamation contracts, best management practices or to determine the condition of state waters, or to evaluate surface mining and reclamation practices, per department frequency requirements.

Discusses with public officials, private business representatives and the general public, their efforts to protect the environment and to outline pertinent statutory and regulatory obligations.

Investigates complaints pertaining to suspected environmental harm from point sources, nonpoint sources, or regulated facilities.

Conducts field reviews of permit applications, contract proposals or sediment control plans.

Determines the intervals and appropriate sites for sampling and records pertinent data concerning relevant factors.

Inspects sites under construction and/or during operation for compliance with contracts, permits or best management practices.

Responds, in accordance with approved emergency response procedures, to spills or releases of pollutants, some of which may be hazardous substances.

Consults with supervisor on observations, variances cited in complying with regulations, and problems noted during inspections in order to determine courses of action which will accomplish the regulatory objectives.

Initiates criminal, administrative or civil enforcement or prosecution actions against suspected violators of environmental protection laws; testifies in court or administrative proceedings as required.

Orders immediate cessation of any operation or portion therefor when provided for by law where the public welfare or safety calls for such or when necessary due to noncompliance with law, regulations, permit conditions, and/or agency orders.

Makes decisions on change orders on reclamation contracts, adequacy of construction materials and methods, and verifies appropriateness of payment requests.

Writes technical and activity reports.

SECTION 2

ADMINISTRATION

Gaston Caperton
Governor

Michael T. Smith
Director

STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
DIVISION OF PERSONNEL

STATE PERSONNEL BOARD
John A. Canfield, Chairman
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Sharon H. Lynch, Member
Thomas P. Maroney, Member
Roger Morgan, Member

M E M O R A N D U M

TO: Cabinet Secretaries
Agency Administrators

FROM: Michael T. Smith, Director
Division of Personnel

DATE: February 13, 1991

RE: POLITICAL ACTIVITIES

It is important to provide direction as to the political activities permitted and prohibited for employees of the State of West Virginia. The following summarizes various provisions of State and Federal law. It is suggested that this information be posted or circulated to employees within your department. Specific questions regarding this issue should be directed to the Division of Personnel, Employee Relations Section, at 348-3350.

Classified Employees Covered Under WV Code 29-6-20

The last substantive revision to this section of the State Code occurred effective May 31, 1983. Subsequent revision in 1989, changes reference to Civil Service Commission to Division of Personnel, State Personnel Board. Thus, the numerous Attorney General Opinion's issued on this subject since May 31, 1983, remain in effect.

Employees May

1. Voluntarily campaign for a candidate or party during non-work time, off of State property, and without use of State supplies or equipment within the provisions of Election Guidelines and Law, so long as they are not paid a fee other than actual expenses incurred.

Employees May Not

1. Serve as a Ballot Commissioner or election official working inside the polling place.

2. Sell tickets to political affairs to employees in the classified service.

3. Serve as a campaign financial agent or treasurer.

Employees May

2. Voluntarily sell tickets to political affairs to individuals other than employees of the classified service.

3. Voluntarily erect campaign signs on private property, as long as property is not used as State office or official office site by the State.

4. Voluntarily attend political dinners, rallies and dances.

5. Voluntarily serve on campaign committees for a candidate, so long as not receiving compensation for service.

6. Be a candidate for local partisan or non-partisan elective office by taking a leave of absence commencing with filing date.

7. Voluntarily make a monetary contribution to a political party or candidate not to exceed limitations established by law.

8. Voluntarily place a campaign sticker on personal vehicle, as long as vehicle is not used for State business.

Employees May Not

4. Be a candidate for any national, State paid public office or court of record.

5. Be a candidate or delegate to any State or national political party convention.

6. Be a member of any national, State or local committee of a political party.

7. Hold any paid elective public office.

8. Solicit or receive any assessment, subscription, or contribution from employees in the classified service.

9. Use any official authority or influence to interfere or influence an election or nomination for office.

10. Post or distribute campaign literature in a State office building.

11. Directly or indirectly coerce, attempt to coerce, command or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, organization, agency or person for political purposes.

Federally Funded Programs (Hatch Act)

The Federal Hatch Act governing State and local employees found in 5, U.S. Code, 1501-1508, applies to any "individual employed by a State or local agency whose principle employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a federal agency but does not include - (a) an individual who exercises no functions in connection with that activity...." In certain areas the federal statute is more restrictive than the current law found in Chapter 29, Article 6

of the West Virginia Code, as amended. Therefore, to the extent that employees are covered by the Hatch Act, the provisions of Chapter 29, Article 6, would not apply.

Chapter 29, Article 6, permits an employee to be a candidate for election to a local level partisan or non-partisan office, except for courts of record, by taking a leave of absence without pay for the period of candidacy commencing with the date of filing for such candidacy. The Hatch Act does not allow a State employee whose principle employment is in connection with an activity which is financed in whole or in part by federal funds to be a candidate for a partisan elective office.

Division of Highways Employees (WV Code 17-2A-5)

The Division of Highways law provides that, "...no person may be...employed...when he is a candidate for or holds any public office or is a member of any political party committee...." Thus, to the extent that this law prohibits activities permitted under Code 29-6-20, Code 17-2A-5 prevails.

Division of Rehabilitation Services Employees (WV Code 18-10A-11)

The Division of Rehabilitation Services law provides that, "...no... employee engaged in the administration of the Vocational Rehabilitation program...shall take an active part in the management of political campaigns or participate in any political activity, except that he shall retain the right to vote as he may please and to express his opinions as a citizen on all subjects. No such officer or employee shall solicit or receive, nor shall any such officer or employee be obliged to contribute or render, any service, assistance, subscription, assessment, or contribution for any political purpose...."

Thus, to the extent that this prohibits activities permitted under Code 29-6-20, Code 18-10A-11 prevails.

From the above, you can see that the issue of political activities for State employees is complex and requires determination of the application of the appropriate State and/or Federal law. It is hoped that this provides some clarification in this matter.

JES:JDW:jak

of the West Virginia Code, as amended. Therefore, to the extent that employees are covered by the Hatch Act, the provisions of Chapter 29, Article 6, would not apply.

Chapter 29, Article 6, permits an employee to be a candidate for election to a local level partisan or non-partisan office, except for courts of record, by taking a leave of absence without pay for the period of candidacy commencing with the date of filing for such candidacy. The Hatch Act does not allow a State employee whose principle employment is in connection with an activity which is financed in whole or in part by federal funds to be a candidate for a partisan elective office.

Division of Highways Employees (WV Code 17-2A-5)

The Division of Highways law provides that, "...no person may be...employed...when he is a candidate for or holds any public office or is a member of any political party committee...." Thus, to the extent that this law prohibits activities permitted under Code 29-6-20, Code 17-2A-5 prevails.

Division of Rehabilitation Services Employees (WV Code 18-10A-11)

The Division of Rehabilitation Services law provides that, "...no... employee engaged in the administration of the Vocational Rehabilitation program...shall take an active part in the management of political campaigns or participate in any political activity, except that he shall retain the right to vote as he may please and to express his opinions as a citizen on all subjects. No such officer or employee shall solicit or receive, nor shall any such officer or employee be obliged to contribute or render, any service, assistance, subscription, assessment, or contribution for any political purpose...."

Thus, to the extent that this prohibits activities permitted under Code 29-6-20, Code 18-10A-11 prevails.

From the above, you can see that the issue of political activities for State employees is complex and requires determination of the application of the appropriate State and/or Federal law. It is hoped that this provides some clarification in this matter.

JES:JDW:jak

DIVISION OF ENVIRONMENTAL PROTECTION

Effective: 4/15/93

SUBJECT: Wearing and Use of DEP Uniforms

==========

Section 1. General.

1.01. Certain coordinated articles of wearing apparel have been adopted as standard, and shall constitute the prescribed uniform attire for those eligible personnel engaging in public contact. Not all items on contract are available to each employee.

Therefore, each DEP office should have on file with Howard Skidmore, Administrator, in the Office of Administration, a form reflecting personnel by class and the uniform items and safety equipment authorized to be issued to them. Initial allotment of uniforms, including leather shoes, should not exceed $750.00.

1.02. Each July, the DEP offices should take orders from all eligible employees for uniform replacement items, including leather shoes, so that orders can be placed as early in the fiscal year as possible. Such orders should not exceed $350 per employee. In the event an office's budget precludes the expenditure of $350 per employee where needed, a lesser limit may be established if applied uniformly and prior approval is obtained from the Director.

1.03. Safety Equipment - Hard toe leather shoes shall be included as a part of the uniform allotment. Other safety equipment, hard hats, rubber boots, etc., shall be issued to the employee as needed and shall not be included in any uniform allotment.

Section 2. Wearing and Use of DEP Uniforms.

2.01. The uniform shall be worn only when on official duty or when it is reasonable to expect recall to duty.

2.02. The uniform shall be worn as prescribed by the chief. Items of the uniform having the DEP insignia or other identifying mark should not be worn in conjunction with civilian attire.

2.03. The name plate, when issued, shall be worn on the jacket or shirt, centered on the flap of the right shirt or jacket breast pocket.

2.04. The emblem is an integral part of the uniform and is to be worn on the shirt and jacket. The emblem shall be centered on the left sleeve, one inch below the shoulder seam.

2.05. When the long-sleeve shirt is worn, the sleeves will be worn full-length and buttoned. Wearing of a tie with long-sleeve or short-sleeve shirts is optional.

The uniform is the symbol of the Division of Environmental Protection -- it is the means by which the public immediately identifies the individual and the organization. To be effective, the uniform must be worn with pride.

Section 3. Termination.

3.01. Upon termination of employment, the following issued items shall be surrendered to the individual's immediate supervisor:

a. All emblems and patches
b. Unused clothing and unused footwear
c. Safety equipment

Section 4. Uniform Committee.

4.01. The uniform committee shall be composed of one representative from each office, to be named by the chief, and Howard Skidmore, Office of Administration, to serve as chairman.

4.02. The chairman will coordinate any change in the uniform contract with the appropriate representatives from any other State divisions which may be a part of the uniform contract.

4.03. The uniform committee shall be responsible for monitoring, maintaining, and renewing contracts to cover uniform needs.

4.04. The uniform committee shall recommend to the Director any changes in uniform items worn by DEP employees and specialized uniform needs for groups of DEP employees that are not provided within standard uniform contracts.

Section 5. Exceptions.

5.01. Special or unusual circumstances regarding uniform needs for employees should be presented by the chief to the Director for consideration.

5.02. Any exceptions to this policy must have prior written approval from the Director.

David C. Callaghan
Director

Section 1. General Guidelines.

1.01. State vehicles are to be used only for official business purposes, maintained in good repair, clean, and operated in a safe manner with observation of all traffic laws.

Section 2. Definition of Terms.

2.01. Office-based Employee. Employee whose primary duties and responsibilities are accomplished by being in the office--even though duties include direction, supervision and administration of programs carried forth in the field--whose presence in the office is generally required more than 50 percent of the normal work time.

2.02. Field-based Employee. Employee whose primary duties and responsibilities are accomplished by being in the field at locations other than the headquarters office, whose presence in the field is generally required more than 50 percent of the normal work time.

2.03. Pool Vehicle. Vehicle that is assigned to a particular program or office within the agency, to be checked out for use, as needed, by employees of such program or office. Pool vehicles are under the supervision and control of an appropriate designated employee, who is responsible for their use, maintenance and repair and necessary reporting procedures.

2.04. Emergency. Emergency is defined as any situation that arises which affects the duties and required hours of work or assignments of office-based employees. Such situations may include pollution spills, flooding or severe weather conditions, landslides, etc.

2.05. Commute. Travel to and from the office.

Section 3. Assignment and Use of Vehicles.

3.01. Permanent Assignment. Field-based employees may be assigned a state vehicle on a permanent basis for official use, including travel to and from their headquarters office when required.

3.02. Temporary Assignment. Any employee of the Division may be assigned a state vehicle on a temporary basis in an emergency situation, or in the event of a temporary change in the work assignment that requires full-time use of a vehicle for a short duration.

Such temporary assignment shall not be construed as permission to use the vehicle for home-to-work transportation for regular work assignments, or work-to-home on the chance that the employee "may be needed."

3.03. Assignment of Pool Vehicles. When it is necessary for an office-based employee to make an official business trip, a pool vehicle may be assigned. In the event the trip is scheduled to begin the following morning, the vehicle may be driven home that evening. If such a trip is concluded after normal work hours, the state vehicle may be taken to the employee's residence and returned to the office the next day.

When an office-based employee is required to work outside normal work hours, a pool vehicle may be made available for traveling to and from work and during the time on duty. The vehicle must be returned upon resumption of the normal work schedule. This authorization also covers required duties that cannot be accomplished during normal work days or work hours, such as attendance at meetings, public speaking engagements, investigation activities, etc.

However, personnel who are classified as an office-based employee are not authorized to commute.

3.04. Use of Vehicles by Field-based Administrators and Supervisors. District supervisors and area administrators who are classified as field-based employees may use their assigned vehicles for transportation to and from their headquarters office as necessary, so long as the employee lives within a reasonable distance of the office. Reasonable distance shall be determined by the chief of the appropriate office, subject to approval by the Director, on the basis of the employee's work assignment.

An employee, who is appointed as district supervisor or area administrator or who relocates from one headquarters to another after the effective date of this policy directive, must live within the geographic area of assignment of the headquarters office in order to be considered living within a reasonable distance and to be permitted to use a state vehicle for transportation to and from the headquarters on a regular basis.

On days that such employee is required to be at the office, notwithstanding the distance from home to office, the employee is expected to be on duty at the office during the standard work hours, and time spent traveling to and from work is not considered work time.

Section 4. Vehicle Maintenance.

4.01. Assigned Vehicles. A vehicle that has been assigned to an employee on a permanent or temporary basis shall be the responsibility of that employee. The employee shall operate and maintain the vehicle in accordance with established procedures. The vehicle shall be maintained in good repair, and for security reasons, shall be parked at a safe location when not in use (home, office--wherever the risk of vandalism is less).

4.02. Pool Vehicles. An employee in charge of pool vehicles shall be responsible for their maintenance, repair, security and the filing of all required reports to the appropriate offices.

Section 5. Vehicle Accidents.

5.01. Reporting. Any accident must be reported by forwarding three copies of Form RMI-1 to the Property and General Services office in Nitro within two working days of such accident. If the property damage exceeds $250 and/or any person is injured in the accident, a copy of Form DMV-121-F should also be forwarded to the Safety Responsibility Office, Division of Motor Vehicles, Charleston, WV 25305.

5.02. Injury. If an employee is injured in a motor vehicle accident, in addition to notifying the Division of Motor Vehicles, a Workers' Compensation Form WC-123 (Employer's Report of Injury) must be forwarded to the DEP Staffing office in Nitro within 24 hours.

Section 6. Complaints.

6.01. Complaints and inquiries about the use or misuse of state vehicles are seriously regarded. Reported violations will be investigated and appropriate action will be taken when warranted.

Section 7. Exceptions.

7.01. Exceptions to this policy must have prior written approval of the Director.

David C. Callaghan
Director

Subject: Requirements for Personal Safety Equipment

Purpose: To establish requirements for mandatory use of personal safety equipment

Definitions:

Legal Authority/Reference: 36-38.3 and 36-38.4

Policy/Procedure: All persons shall wear safety-toed shoes and a hard hat in and around the active area of any mine site. In addition, all persons shall wear safety-toed shoes equipped with metatarsal guards in and around underground mines, preparation plants, and loading facilities. All persons shall wear approved eye protection in and around underground mines, preparation plants, and loading facilities.

DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION
10 McJunkin Road
Nitro, WV 25143-2506

Gaston Caperton
Governor

John M. Ranson
Cabinet Secretary

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

POLICY MEMORANDUM

TO: All Headquarters' Staff and Attorney General's Office

FROM: David C. Callaghan

DATE: May 17, 1993

SUBJECT: Management of Central Files - OMR

With the growth of our Division of Environmental Protection and our ever-expanding range of duties and responsibilities, it is becoming increasingly difficult to maintain control of permit documents and other records in the central files. As you know, these files contain the documents of record for all legal proceedings and are the official public records for all other types of inquiries. In that regard, the integrity of these records and our ability to properly catalog them are of critical importance. In view of the above, I am requesting your cooperation in the use and management of the central files in accordance with the following directive.

Each inquiry into the files will be recorded by the central file staff. This record will include the name of the person making the inquiry, a permit number or other identification of the documents used, the date and time of the inquiry, the date and time of completion of the inquiry, and other pertinent information which may be requested.

No files or original documents are to be removed from the central file area. Arrangements have been made to have any documents which you may wish to keep in your personal files copied, including maps and drawings. Work space in the central file area is also being made available for your convenience in reviewing records.

Any original records which are currently in your possession are to be promptly returned to central files.

Any questions or comments you may have regarding the above may be directed to David Gay in the central file room. David will assist you in obtaining the information you need to perform your work.

DCC;RTH:cc

Effective Date:
11/1/93

Division of Environmental Protection

Communications Policy: Investigations & Emergency Situations

Section 1: Introduction.

1.01. The purpose of this policy is to ensure that information is readily available for release and/or dissemination to the appropriate Division officials and the news media.

Because of its regulatory, investigative and permitting authority, the Division of Environmental Protection will be required to comment on enforcement actions and emergency situations. At all times the DEP will provide honest and timely information on issues and situations.

Information on investigations and emergency situations that are apt to receive public and media attention should be communicated to the agency's Public Information Officer (PIO) as soon as possible. The PIO, working with the DEP Director, will determine agency response to the situation and whether to contact the Governor, Department Secretary and/ or other agencies.

However, during active investigations into possible violations of environmental laws, rules and regulations, the Division will restrict the release of all information relating to the particular investigation, pending final action by the Division.

Section 2: Emergency Situations.

2.01. Examples of emergency situations are:
- *Imminent threat to human life and/or health.*
- *Job-related injury or death of DEP employees.*
- *Catastrophic event within the regulated community:*
  - *releases of toxic gases.*
  - *discoveries of high levels of hazardous substances near populated communities.*
  - *explosions or fires at regulated facilities.*
- *Natural disasters affecting regulated industries.*
- *Dam failures.*
- *Fish kills.*
- *Spills (on land and in water)*

Section 3: Briefing the Public Information Office.

3.01. The severity of the situation will dictate when to contact the Public Information Office. For example, if the situation involves imminent threat to human life and/or health, the Public Information Officer should be contacted immediately, day or night.

3.02. When briefing the Public Information Office, the following information must be provided:

-- *Factual assessments of current situation.*

-- *What occurred.*

-- *Where and when it occurred (date, time and location).*

-- *What materials have been determined to be present (nature of products and potential hazards).*

-- *What activities the DEP is currently pursuing.*

-- *Personnel or agencies involved (DEP, DNR, OSM, EPA, etc.).*

Section 4: The Public Information Office's Role.

4.01. The Public Information Office will serve as the contact point for the news media, and will work with field and program staff to assemble information on enforcement and/or emergency situations.

Depending on the nature of the enforcement action or emergency situation, the PIO may send an information specialist to the scene to handle on-site media inquiries.

Because the media may arrive at the scene before the information specialist, the on-scene coordinator should designate one person to serve as spokesperson. The on-scene spokesperson will provide updates to the Public Information Office and respond to media inquiries until the information specialist arrives at the scene.

If necessary, the spokesperson, in consultation with the on-scene coordinator and local officials, shall determine a safe area close to the event where the media can obtain information without being in danger or hindering technical and emergency operations.

4.02. When on scene, the spokesperson shall NOT:

-- *Speculate about the cause of the incident.*

-- *Allocate any blame for the incident.*

-- *Exaggerate or be emotional.*

-- *Express personal opinions.*

-- *Make subjective statements.*

4.03. As a general rule, if the spokesperson has any doubts about answering a question, refer the question to the PIO.

Section 5: Handling News Media Inquiries During Investigations.

5.01. While it is the DEP's policy to cooperate with the news media, there will be times when the release of information may prejudice an active investigation. During active investigations, the following can be supplied to the media:

-- Information to dispel any rumors of imminent public health dangers stemming from an investigation site.
-- Explanation on why the agency is on-site (alerted to site through citizens complaints, etc.).
-- Information that is disclosed by public record, including information contained on a complaint for a warrant issued by magistrate court.
-- Status of investigation.

5.02. To avoid the risk of prejudicing an agency investigation, the following information will be withheld from public disclosure until final action is taken by the DEP.

-- The results of any site examinations or test results.
-- Any opinion, speculation, or general comment on the outcome or anticipated outcome of an agency investigation, or the handling of an investigation.

5.03. THE DEP DOES NOT IDENTIFY COMPLAINANTS.

5.04. Questions dealing with Division policy, procedures or internal Division affairs should be referred to a program manager, office chief, PIO, or the Director.

5.05. When the Division is involved in a cooperative investigation with another state or federal agency, the responsibility for the release of information shall rest with the agency having primary investigatory responsibility, and shall be coordinated to the greatest extent possible.

Section 6: Exceptions.

6.01. Any exceptions to this policy must have prior written approval from the Director.

David C. Callaghan
Director

Division of Environmental Protection

Effective Date: 11/1/93

Communications Policy: General News Media

Section 1: Introduction.

1.01. This policy emphasizes the importance the Division of Environmental Protection places on the release of complete and accurate information to the news media and the role the news media has in communicating the Division's mission.

Public perception of the DEP is formed by the agency's actions and how those actions are communicated to the public through stories in newspapers and on television and radio. Therefore, it is important for DEP to cooperate with the media at all times by releasing complete and accurate information.

News pertaining to the DEP and its environmental responsibilities is generated in two ways: agency initiated, or media initiated. In either instance, it is important to remember that every time DEP employees talk with the news media, it is an opportunity to tell the DEP's story and to educate the public on environmental matters facing West Virginia.

Questions about this policy should be directed to the DEP Public Information Office.

Section 2: Public Information Office.

2.01. The Public Information Office's role is to respond to news media and public inquiries about the DEP and its activities. The Office also is responsible for working with the DEP's various programs to develop and coordinate informational and educational materials, news releases, exhibits, events and other public-oriented activities.

To accomplish its mission, the Public Information Office is staffed by the Public Information Officer (PIO), who is located in the Director's Office, and information specialists, who serve the offices of Abandoned Mine Lands & Reclamation, Administration, Air Quality, Information Services, Mining & Reclamation, Oil & Gas, Waste Management and Water Resources. Information specialists are located in the various program offices to better serve the programs and fulfill the Public Information Office's mission.

2.02. To ensure the DEP "speaks with one voice" and to avoid mixed messages or unnecessary controversies, the following guidelines have been developed:

2.02a. ***News Releases:*** All agency news releases shall be submitted to the PIO for review and approval before release. All agency news releases will be distributed by the Public Information Office. The Public Information Office maintains media mailing lists.

Offices that need assistance in developing news releases should contact the PIO, or an

information specialist. When a release is issued from the Public Information Office, copies will be distributed within DEP.

2.02b. ***Media Contacts:*** The PIO shall serve as the agency's main news media contact. While DEP employees are free to talk to the media, they should remain in close contact with the PIO to ensure that he/she is abreast of potential news stories and that agency management is advised. The media is encouraged to first contact the PIO when seeking information about the DEP. The media is not required to do this, but the Public Information Office is the clearing house for agency information and the PIO can either respond to, or direct a reporter's questions to the appropriate agency official(s).

2.02c. ***Publications:*** Promotional and educational material produced by the DEP shall be submitted to the PIO for review and editing prior to paste-up and printing. This is to ensure consistency among agency publications. A brochure, pamphlet, promotional or educational material should be printed in sufficient quantity to allow distribution to the DEP's field offices and at public events.

The DEP's commitment to the principles, practices and spirit of equal employment opportunity and to affirmative action shall be kept in mind when brochures, pamphlets or other promotional or educational materials are prepared for printing. As appropriate, the Equal Employment Opportunity statement, in brief or in full, shall be included on each such publication. Further, when illustrations or photographs depicting DEP employees or the general public are to be used, such illustrations or photos shall be reflective of the diversity of the agency work force and/or of the state's population.

2.02d. ***Displays:*** Promotional and educational displays that depict Division programs and offices should be coordinated with the Public Information Office and information specialists.

2.02e. ***Freedom of Information Requests:*** The PIO should be notified when offices receive Freedom of Information Act (FOIA) requests. Because of legal requirements, DEP program offices shall process requests in a timely manner and notify the PIO when the request has been completed. If the PIO receives a FOIA request, he/she will send it to the appropriate office where the information can be compiled or made available to the requestor *(see Communications Policy: Freedom of Information Act).*

As a rule, a request for agency information should be treated as a FOIA request if the information sought requires a file review or goes to specific agency actions. Persons seeking file reviews or information about agency actions should be requested to write a letter to the PIO, stating, as specifically as possible, the information being sought.

Information that is generic in nature, such as promotional and educational brochures, booklets and pamphlets, general reports (water quality, etc.) or permit and facilities lists (landfill, NPDES, UST, LUST, CERCLIS, etc.) should NOT be treated as a FOIA request

and should be handled in a timely fashion by the individual program offices without contacting the PIO or requiring a letter from the requestor *(a log of such requests should be kept to help the DEP better serve the public in the future).*

2.02f. ***Internal Communication:*** The PIO and Public Information Office information specialists are responsible for preparing the DEP Employee News. Information that might be of general interest to DEP employees should be coordinated with the program chiefs and sent to the PIO or information specialists.

Section 3: Handling News Media Inquiries.

3.01. Given its regulatory responsibilities, the DEP will be the focus of news media attention from time to time. Because public perception is influenced by the news media, it is important for the DEP to be consistent in the messages it sends through the media.

DEP employees are encouraged to talk with the media, however, only employees with direct involvement with an issue should consent to an interview. DEP employees with questions about media-related matters should contact the Public Information Office or an information specialist for guidance.

If a DEP employee declines a news media request for an interview, refer the news media to the PIO so other arrangements can be made. All referrals should be immediately reported to the PIO so he/she can prepare for the media call.

When talking with the news media, remember that reporters have a job to do, just as you do. Reporters work on deadlines, and may feel pressured to "get the story." Again, talking with a reporter is an opportunity to tell the DEP's side of an issue.

3.02. When responding to news media inquiries, DEP employees shall adhere to the following guidelines *(Guidelines on dealing with investigations and emergency situations are handled in a separate policy):*
-- Determine who is the correct person to answer the questions. *(If the interview is on an issue the employee is directly involved with, and the employee feels comfortable talking to a reporter, then the employee may agree to the interview.)*
-- Respond promptly to a media call and identify yourself as a DEP employee. Do **NOT** go home at the end of the day without returning the call. *(The DEP may have only one chance to respond to a story so we should make the effort to ensure our message is heard!)*
-- Refer questions on agency policy, procedures and/or internal affairs to a program manager, office chief, PIO or the Director.
-- Answer questions factually and completely.
-- If you do not know the answer to a question, don't be afraid to say so. *(An answer should be obtained, or the reporter should be referred to someone who can respond to the question. An answer should be given before the end of the day.)*
-- Be careful in selecting your words. *(Mean what you say! Say what you mean!)*

-- Keep answers NON-technical and jargon free. *(Remember, you are the expert and you should explain the issue or situation clearly so the general public can understand.)*
-- Keep your answers short and concise. *(Work to get you message across in 10 second to 15 second "sound bites." This will help when being interviewed by radio or television reporters.)*
-- Control the interview. *(Stress and re-stress the points you think are the most important .)*
-- Counteract negative questions with positive answers. *(Do not repeat the negative question.)*
-- Try to further a reporter's education on the issue or issues. *(Most reporters are generalists, so take some time to explain the issue.)*
-- Do **NOT** use humor or sarcasm to make a point or explain an issue.
-- **NEVER** make up an answer, or give inaccurate information.
-- **NEVER** say "NO comment." *(It gives the impression you are hiding something.)*
-- **NEVER** inject personal opinion into the interview. *(When being interviewed, you are representing the DEP, not yourself.)*
-- **NEVER** become angry or lose your temper during the interview. *(If you become angry, take a deep breath and count to 10, or excuse yourself for a moment so you can regain your composure.)*
-- **NEVER** speculate on a cause or what the agency may do. *(Your speculation could end up being the lead story on the 6 o'clock news or the banner headline in the next day's newspaper.)*
-- **NEVER** use "off the record." *(Assume everything you say will be quoted. If you don't want to see it in print, then do not say it.)*
-- **NEVER** ask a reporter to kill a story. *(It may only serve to create a controversy.)*

Section 4: After the Interview Follow Up.

4.01. After the interview, contact your supervisor, Public Information Office information specialist or PIO to provide a brief summary of the interview.

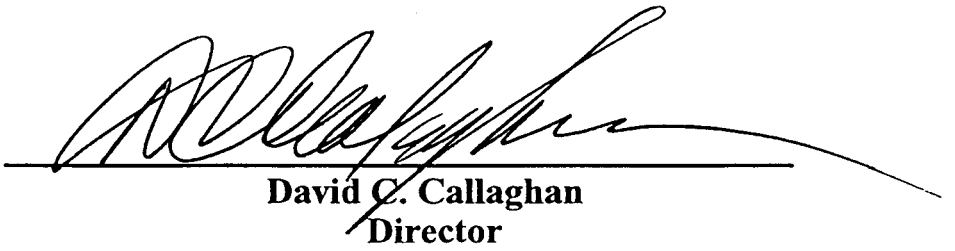
4.02. Look for the story to see if the reporter accurately reported the event and your comments. *(Use the experience as a learning tool. Send a copy of the story to the Public Information Office so it can become part of the agency's regular news summary.)*

4.03. If the reporter mis-quoted you or inaccurately reported the issue, call the reporter to see if you can clear up any misunderstandings. *(Be tactful in your approach. No one likes being told they may have done something wrong.)*

4.04. If you have problems with a member of the news media, contact the PIO for assistance.

Section 5: Exceptions.

5.01. Any exceptions to this policy must have prior written approval from the Director.



David C. Callaghan
Director

WV Division of Environmental Protection Office of Mining and Reclamation Inspection and Enforcement	Series: 2 Page: 1 of 1 Effective Date: 1/96

Subject: Policy Effectiveness

1. Purpose: Clarification of effectiveness of current policies

2. Definitions:

3. Legal Authority/Reference: 22-3-4

4. Policy/Procedure:

By virtue of the authority granted in Section 4, Article 3, Chapter 22 of the West Virginia Surface Coal Mining and Reclamation Act, the following disclaimer will take effect immediately:

Any policy/procedure written prior to 1/93 that is not contained in the Inspection and Enforcement Handbook (compiled circa 1/93 as updated) is considered void and rendered non-enforceable.

SECTION 3

PERMIT APPLICATION REQUIREMENTS

SUBJECT: Inspection Narratives

1. Purpose: To establish procedure for preparing inspection narratives.

2. Definitions:

3. Legal Authority/Reference: N/A (Internal Agency Procedure).

4. Policy/Procedures: Prior to any surface mining, quarry, or transfer applications being forwarded to the Director with a recommendation for issuance or denial, the I & E Inspector shall complete the appropriate narrative in accordance with the following guidelines:

1. Inspector's Narrative shall be completed and signed by the appropriate inspector for all surface mining, quarry, and transfer applications prior to submittal to Headquarters for Director's decision.

2. The Narrative shall be formatted by the I & E Secretary to reflect all questions as indicated and the inspector's response, but shall exclude the examples (i.e.....). See attached sample.

3. If recommending issuance, the inspector shall sign (name and badge #) and date the proposal/drainage map and shall also initial and date the first page of the applications form. If recommending denial, the inspector should note "Recommend Deny" above his signature, number and the date.

4. If the application contains more than one SMA/Permit #, the inspector shall only be required to complete one narrative, but the narrative shall reflect all SMA/Permit #'s and any other permit specific information as required.

5. The narrative shall be provided to the Permitting Section and shall be included in the Facts and Findings folder for the specific application.

6. **A narrative is required for all SMA's, quarry applications, significant revisions and IBR's, and renewals. Notices of Intent to Prospect, Operator Reassignments, insignificant modifications and IBR's will have a short memo (can be handwritten) recommending approval or denial prepared and provided to the permitting section. If recommendation is for denial, the memo should explain why. The inspector will also sign and date maps. If the application does not include maps, the inspector will initial and date in the upper right hand corner of the first page of the application form.**

SUBJECT: Ownership and Control Relative to Consent Orders

1. Purpose: Establish guidelines for signatories on consent orders.

2. Definition: N/A

3. Legal Authority: 22A-3-9; 38-2-3.1

4. Policy/Procedures: Recent events have shown a need to establish a policy regarding permittees whose ownership and control information has been substantially or completely changed without notice to DEP, where the permittee is now attempting to execute a consent order to resolve a show cause proceeding or some other document binding the company. In these instances, before DEP can resolve the issue the permittee must show that the person executing the document is, in fact, an owner/controller (and in some instances a principal officer) of the permittee. This way DEP ensures the permittee is actually aware of the action, and that the permittee is legally bound by the person signing. In addition, a DMM-19A must be submitted to correct the ownership and control of the permittee in most instances.

Examples of the situations where this procedure may be necessary are as follows:

1) The permittee company is sent a show cause notice or draft consent order. Then, someone whom the inspector and DEP, as a whole, have never associated with the permit or permittee responds. Upon inquiry, the inspector is told that the company has been brought out by completely different owners, and the officers and directors previously associated with the permittee resigned at the time of sale. All of the current officers, directors and owners are completely different than those on DEP records.

2) Through a similar situation, the inspector is told that the original application filed by the permittee company was not accurate in its listing of the officers, directors and owners. The owners and controllers have been different than those listed on DEP records all along. Through some error,

incorrect O/C information was originally filed. The person(s) whom DEP listed as responsible signatories for the permittee are actually not legally able to sign for the company. Other persons are responsible as principal officers, directors or owners.

3) Situations similar to the first two given in that the vast majority of O/C has been changed without notice to or approval by DEP, but where one or two officers, directors or owners have stayed the same. Where 50% or more of the permittee's ownership has changed (i.e., shareholders, partners, or owners), a DMM-19A will be required because "effective control" of the permittee will have changed. Any changes in officers, directors or other O/C's should also be included in the 19A. (However, where ownership has NOT changed and only some officers or directors have changed, a 19A will not usually be required. In this instance, a previously approved principal officer who remains in that position may sign the consent order without further submissions. The supervisors should bring the situation to Rick's and/or my attention, in making a decision on whether a transfer or only an O/C update will be required).

Where this kind of situation arises, the permittee will be instructed to send relevant documentation of the O/C change (sales agreement, stock certificates, articles of merger, etc.) to the O/C Unit in Nitro. The inspector or supervisor will coordinate with me, Randy or Chris Negley as to whether the documentation is sufficient to show that the consent agreement or other document will be executed by someone who can bind the permittee to its terms. Once the perittee's status is resolved, the permittee will be instructed to submit a DMM-19A identifying the new owners or controllers. Upon submission of the DMM-19A, but before approval of it, the consent order or other document may be signed by the person(s) cleared by the O/C Unit and then by DEP. (A good draft letter from Darcy White explaining the procedure to the permittee is attached as an example.) Please note that, where a show cause proceeding is involved, usually BOTH the prior and current O/C's will be blocked if the consent order is not complied with, because the prior O/C's were likely involved at the time the violations leading up to the Show Cause were created.

By following this procedure, the proceeding can be resolved in a timely fashion without further delays from unapproved persons being involved. In addition, we will obtain complete, accurate and up-to-date information on the permittee's ownership

and control. This will be to our advantage since we will then have correct lists of persons to notify of violations, and also to the permittee's advantage since the O/C information will be current should they file an application.

This same procedure may also be used in those situations where the permittee must file some sort of application (e.g., a renewal) in order to maintain SMCRA compliance, but the O/C has changed to the extent that none of the previously-approved principals are around to sign. Again, the situation should be brought to Rick's and my attention.

WV Division of Environmental Protection Office of Mining and Reclamation Inspection and Enforcement	Series: 3 Pg. No: 1 of 2 Effective:3/93

VOID

SUBJECT: Excess Spoil Disposal Fill Design

1. Purpose: Clarify when a fill has to be redesigned.

2. Definition: N/A

3. Legal Authority: 22A-3-9; 38-2-3.7; 38-2-14.14

4. Policy/Procedures: The West Virginia Surface Mining Reclamation Regulations require that, for excess spoil disposal fills, all runoff from areas above and adjacent to the fill shall not be allowed to flow onto the fill surface, and shall be diverted into stabilized diversion channels, designed and constructed to safely pass the peak runoff from a 100-year, 24-hour precipitation event. These diversion channels are also known as "groin ditches" or "perimeter ditches".

Prior to the inclusion of this language on June 1, 1991, the Regulations allowed for the runoff from areas above and adjacent to the fill to flow through a surface center channel designed to safely pass the runoff from the precipitation event. Many of these types of designed excess spoil disposal fills were permitted and successfully constructed prior to the 1991 regulatory change.

However, confusion has arisen of late regarding the need to redesign those uncompleted excess spoil disposal fills with an approved surface center channel design, to meet the current regulatory requirements for perimeter ditches. The following guidelines shall be used in making this determination.

* If an excess spoil disposal fill was designed with a surface center channel for the conveyance of drainage from areas above and adjacent to the fill and was approved prior to June 1, 1991, it will not be required to be redesigned to include perimeter ditches.

* If this same type of designed excess spoil disposal fill with a surface center channel was approved on or after June 1, 1991, it shall be considered as approved

in error and must be redesigned to meet the current regulatory requirements, to include perimeter ditches.

* If an excess spoil disposal fill with a constructed surface center channel for the conveyance of all upland drainage is determined to be exhibiting stability problems or creating environmental problems as a direct result of the design, a redesign and reconstruction to include perimeter ditches may be required.

Please ensure that compliance is met in accordance with these guidelines and if you should have any questions regarding this matter, please contact Rick Clark at 759-0510.

DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION
10 McJunkin Road
Nitro, WV 25143-2506

Gaston Caperton
Governor

John M. Ranson
Cabinet Secretary

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

M E M O R A N D U M

TO: All I & E and Permitting Supervisors

FROM: David C. Callaghan, Director

DATE: March 23, 1993

RE: Excess Spoil Disposal Fill Designs

The West Virginia Surface Mining Reclamation Regulations require that, for excess spoil disposal fills, all runoff from areas above and adjacent to the fill shall not be allowed to flow onto the fill surface, and shall be diverted into stabilized diversion channels, designed and constructed to safely pass the peak runoff from a 100-year, 24-hour precipitation event. These diversion channels are also known as "groin ditches" or "perimeter ditches".

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* If an excess spoil disposal fill with a constructed surface center channel for the conveyance of all upland drainage is determined to be exhibiting stability problems or creating environmental problems as a direct result of the design, a redesign and reconstruction to include perimeter ditches may be required.

Please ensure that compliance is met in accordance with these guidelines and if you should have any questions regarding this matter, please contact Rick Clark at 759-0510.

DCC:RC:det

cc: John Ailes
Rocky Parsons
Ed Griffith
Jeff McCormick
Louis Halstead
Charlie Sturey

Subject: Termination of Not Started Permits that are 3 Years Old

1. **Purpose:** To clarify the requirements and establish procedures for extension or termination of permits that are not started by end of the 3rd year after issuance.

2. **Definitions:** A Not Started Permit is a permit which has not had any mining related disturbance within the permit area. Mining related disturbance includes, but is not limited to, road construction, drainage construction, overburden removal, construction of permanent facilities, clearcutting, etc., by the permittee and/or operator. Prospecting disturbance within a permit area must have been addressed by an approved Notice of Intent to prospect and reclaimed in accordance with 38-2-13 in order for the permit to be deemed not started. Underground mine face-ups within a surface mine permit area shall be deemed to be started if they are also bonded by the surface mine and no underground coal extraction has occurred.
area

3. **Legal Authority/Reference:** 22A-3-8(e); 38-2-3.29(b)

4. **Policy/Procedure:** All not started permits should be reviewed for compliance with 22-A-3-8(3) two and one half years after the issue and/or renewal date. The following procedures are required for any not started permit that is two and one half years old.

A. For permits approaching the three (3) year anniversary deadline, the inspector or the I & E Unit Clerk shall notify the permittee that the permit will expire on the three year anniversary date using the sample letter attached. This notification should be sent at least 90 days before the three year anniversary (mid-term) date but no more than 180 days before the mid-term date.

B. If the inspector receives a request for extension, he should determine if the request provides appropriate justification for extension (see 22A-3-8(e) for guidance) and if the permit will need to be modified to comply with current regulatory standards. A modification should be required only if it is necessary to insure compliance, timely reclamation and/or environmental protection. Avoid needless paperwork information which does not support these goals should not be requested. Some permits will need no revision at all. Examples of revisions that may be required include addition of a mine and reclamation sequence, addition of backfill stability analysis for steep slope mining, revision of water monitoring requirements, addition to PHC data and revision of PHC conclusions, and addition of written requests of variance that are implied by existing permit but not specifically granted by the existing permit.

If the inspector believes an extension of the permit is justified he/she should prepare a draft extension letter using the appropriate sample letter (attached). The inspector shall specify the extended date, which shall not exceed the 5 year anniversary (expiration) date for the permit. Where appropriate, the inspector shall also specify revisions required and a time of submittal of said revision. Any revision required should be submitted prior to permit renewal.

The inspector should also initial and date the request for extension and forward it to the I & E Unit Clerk with the sample Extension Approval Letter for distribution with the Approval Letter.

C. If no request for extension is received prior to the 3 year anniversary date or if a request for extension does not adequately justify an extension in accordance with 22-3-8(e), then it becomes necessary to terminate the permit. The inspector shall prepare a Termination letter for the Assistant Chief's signature and a MR-7c, noting in the comment section that "the permit has not started operations within 3 years of the permit issue date and has been terminated." This letter and the MR-7c should be forwarded to the Assistant Chief for signature through the I & E supervisor and Release Specialist.

D. If a permittee requests release in response to the notification described in paragraph A (above), then a termination letter is not necessary. The inspector will only need to prepare the MR-7c with a note in the comment section that the permit is not started and the permittee has requested release. Attach a copy of the request for release to the MR-7c as usual.

E. There should not be any not started permits which have exceeded more than three years since issuance (or the most recent renewal date). However, if any of these are discovered, that have not been notified in accordance with the procedure given above, you should proceed in accordance with the guidelines listed above.

Sample Notification for Not Started Permits
Approaching three years since issuance

Date

CERTIFIED MAIL_____

Addressed to current permittee

Re: Notice of Potential Termination of Not Started Permit Number

Dear Permittee:

Our records indicate that the above referenced permit is approaching the three year anniversary date and that the proposed operation has not yet commenced. The West Virginia Code 22A-3-8(3) states in part:

> A permit shall terminate if the permittee has not commenced the surface mining operation covered by such permit within three years of the date the permit was issued.....

The Statute further provides that the Director may grant a reasonable extension of time upon a showing by the permittee that such is necessary for one of the following reasons:

1. Litigation precluding commencement of operations or threatening substantial economic loss to the permittee; or

2. Conditions exist which are beyond the control and without the fault or negligence of the permittee which preclude commencement of the operations.

Therefore, prior to the three year anniversary date, you must take one of the following actions:

A. Submit a request for extension of this permit at this time. Your submittal must state the reasons for requesting an extension pursuant to West Virginia Code 22A-3-8(e) and must specify the time period for which an extension is requested. A simple statement referencing depressed coal market conditions alone will not be sufficient justification for an extension, you must explain why the permit is believed to have future potential for coal production;

B. If operations are expected to commence before the three year anniversary date of the permit issuance, submit a statement which so indicates;

C. Submit a statement acknowledging receipt of this letter and advising that you wish to terminate the permit and obtain bond release.

Upon receipt of request for extension, as per Item A above, the Division will determine whether or not such request is justified and either grant or deny the request. The Division may establish an extension period different from that requested.

The Division is concerned that due to the age of the application/permit in question, and because significant changes have occurred in the West Virginia regulatory program in recent years, this Not Started permit may not be in compliance with current standards. Under the provisions of the Code of West Virginia at 22A-3-4(b)(2) and the approved regulations at CSR 38-2-3.28(c), the Director is empowered to require permit revisions as necessary to assure compliance with program requirements.

If an extension is granted, you may be required to submit a revision to the permit to update it to current regulatory standards, and you may be required to advertise the revision, depending on its scope. The revision, if required, must be submitted within the specified schedule, and approved before you begin operations.

If you propose to commence operations as per Item B above, you may also be required to revise and update your permit. If the existing permit contains serious deficiencies, the revisions may be required before you begin mining. Contact me or the regional permitting supervisor for assistance in determining the nature of the required revisions, and submit your revision application as soon as possible in order to avoid needless delay in start-up. Note that if you choose the alternative outlined in Item B, but then fail to activate the permit within the schedule you specify, it will be terminated.

Your prompt response and cooperation will be appreciated. If the Division of Environmental Protection does not receive your written response within thirty (30) days of your receipt of this letter, your permit will be terminated.

If you have any questions regarding this matter, please feel free to contact your inspector or regional supervisor for assistance.

Sincerely yours,

Surface Mine Reclamation Inspector

cc: Region Permit File
Headquarters Permit File

Sample Notification of Not Started
Permit Extension Approval
(Where revision is required)

DATE

CERTIFIED MAIL_____

ADDRESSED TO PERMITTEE

Re: Extension of Not Started Permit Number_____

Dear Permittee:

This is to notify you that in accordance with your request, the termination date for Permit Number_____has been extended to_____. Within _____days, you are required to submit an application for permit revision to update the permit to current regulatory standards. The revision should address at a minimum the following:

The inspector, with advice from the supervisor and/or permitting staff, will determine and specify the nature and extent of the needed revisions, and the time to be allowed for submittal. Be reasonable.

Failure to submit the required revision application within the specified time will result in termination of your permit.

You are cautioned to carefully note the termination date of this permit extension. Further extensions will be considered and granted only if a timely and adequate request is submitted, and the Division of Environmental Protection bears no responsibility for providing you with any additional notice.

If you have any questions, please contact your inspector.

Sincerely your,

(Inspector's signature and
typed name/title here)

cc: Region permit file
District Assistant Chief

Sample Notification of Not Started
Permit Extension Approval
(Where no revision is required)

DATE

CERTIFIED MAIL

ADDRESSED TO PERMITTEE

Re: Extension of Not Started Permit Number_____

Dear Permittee:

This is to notify you that in accordance with your request, the termination date for Permit Number_____ has been extended to _____.

You are cautioned to carefully note the termination date of this permit extension. Further extensions will be considered and granted only of a timely and adequate request is submitted, and the Office of Mining and Reclamation bears no responsibility for providing you with any additional notice.

If you have any questions, please contact your inspector.

Sincerely yours,

(Inspector's signature and
typed name/title here)

(Supervisor's signature and
typed name/title here)

cc: Region Permit File
District Assistant Chief

Sample Notification of Not Started
Permit Termination

DATE

CERTIFIED MAIL

ADDRESSED TO PERMITTEE

Re: Termination of Permit Number_____

Dear Permittee:

This is to notify you that Permit Number_____ has been terminated, effective this date, in accordance with the provisions of West Virginia Code 22A-3-8(e), because...

(Acceptable reasons include, but are not necessarily limited to: (1) you failed to submit a timely request for extension; (2) the operation as proposed/permitted cannot meet current regulatory standards; and (3) your request for extension failed to satisfy the provisions of 22A-3-8(e).

Your bond will be returned, or released, under separate cover. If you have any questions, please contact the undersigned.

_____
Assistant Chief

cc: Inspector (name)
Region File (specify region)
Headquarters permit file

WV Division of Environmental Protection Office of Mining and Reclamation Inspection and Enforcement	Series: 3 Page: 1 of 1 Effective Date: 1-93

Subject: Reclamation Plans

1. Purpose: To explain the level of detail required in Mining and Reclamation Plans for Permit Applications.

2. Definitions:

3. Legal Authority: 22A-3-12(b) & 22A-3-14(a)
38-2-14.15(b); 38-2-15.2(b); 38-2-3.6

4. Policy/Procedures: A large area or mountaintop removal mine that through its life will mine a main ridge and/or several finger ridges, and will also generate several excess spoil disposal fills should lay out on a relative basis, the sequence of removal of overburden, disposal of excess spoil, and backfilling of the mined area. It should specifically identify the source (i.e., mining area) of spoil that will be placed into each excess spoil disposal fill, and the timing of construction and reclamation of that fill in relation to the progress of mining.

The maximum amount of the mine area, either by acres or by proportion of the total operation, which will be disturbed at any given time should be clearly specified. For multiple-seam operations, it is critical that the plan identify the point in the operation when backfilling of specific areas will occur and the timing and distances whereby backfilling will lag behind the active coal pit(s). The plan should further make clear the maximum amount of acreage that will be disturbed at any time.

Each permit application must have a reclamation plan that can be completed within the scope of the proposed operation or in consideration with other already issued and operational permits. A plan which proposes to reclaim with overburden from future (not yet issued) permits is not acceptable and cannot be approved.

If the applicant does not propose (and obtain approval of) any alternative limits, those specified in the regulations at CSR 38-2-14.15(b) or CSR 38-2-15.2(b), as applicable, will be applied and strictly enforced.

Subject: Permitting of Coal Preparation Facilities

1. Purpose: To address the requirement of a permit for all coal preparation facilities and those facilities which may be exempted.

2. Definitions: Coal Preparation Plants - as defined under Section 38-2-2.20 of the Rules and Regulations

Coal Loadout Facility - any facility which is used to load coal for transportation and is not included under the definition of a coal preparation plant.

3. Legal Authority: 22-A-3(W)(2); 22A-3-8; 38-2-2.20

4. Policy/Procedures: All coal preparation plants require a permit under Chapter 22A, Article 3 regardless of their distance from the mine site.

The only sites which do not require a permit are coal loadout facilities as defined above. However, these sites shall be required to obtain an NPDES permit where there is a point source discharge.

Any facility which physically (including crushing, sizing or sieving) or chemically (even if with water only) processes coal is required to obtain an Article 3 reclamation permit.

WV Division of Environmental Protection Office of Mining and Reclamation Inspection and Enforcement	Series: 3 Page: 1 of 1 Effective date: 1-93

Subject: I & E inspector participation in SMA review

1. Purpose: To establish procedures for inspector participation in permit review.

2. Definitions:

3. Legal Authority/Reference: 22A-3-9 & 10; 38-2-3

4. Policy/Procedures: As soon as practical, but no more than two weeks, following the issuance of an SMA number, the Permit Review Team Leader for each SMA shall contact the appropriate field inspector to schedule a pre-inspection (field review) of the proposed permit area. Every effort should be made to schedule the pre-inspection within two weeks. The inspector shall review the appropriate portions of the application at his/her convenience prior to the pre-inspection so that he/she can intelligently discuss the proposal during the pre-inspection.

Once the applicant has submitted technical corrections, the Permit Review Team Leader should notify the inspector (a note in the inspector's mailbox is sufficient) and the inspector shall then review aspects of application within two weeks. If the inspector notes any deficiencies, he/she should inform the Review Team Leader either by meeting with the Review Team Leader or by a written note to the Review Team Leader.

When the Review Team Leader begins preparation of the Facts and Findings, he/she shall notify the inspector. The inspector shall prepare the Inspector Narrative within one week of receipt of this notice and forward the Narrative to the Review Team Leader who will incorporate the Narrative into the Facts and Findings folder.

WV Division of Environmental Protection	Series: 3
Office of Mining and Reclamation	Page: 1 of 1
Inspection and Enforcement	Effective Date: 1-93

Subject: Renewal of permits pending Phase I Release

1. Purpose: To clarify the requirements for submittal of renewal applications for permits and filing fees for permits pending Phase I release.

2. Definitions: Active Permit shall be any permit which has not yet obtained approval of a Phase I release

3. Legal Authority/Reference: 22-3-8(c), 22A-3-19(a), (1)(A)(3)(4) and 38-2-3.26(a)

4. Policy/Procedure: West Virginia Code 22A-3-19(a)(4) requires in part that "Any permit renewal application for an active permit shall be on forms prescribed by the director and shall be accompanied by a filing fee of two thousand dollars". WV Code 22A-3-19(a)(3) requires in part that "Application for permit renewal shall be made at least one hundred twenty days prior to the expiration of the valid permit".

In order to insure that active permits are renewed in a timely manner and that regulatory requirements are being met, any permanent program permit that does not have an approved Phase I Release at least one hundred twenty days prior to the expiration date of the permit (at which time the renewal must be submitted) must submit a Phase I release application or a renewal application.

If a renewal application is submitted, the two thousand dollar filing fee must be included. The required two thousand dollar fee is a filing fee and not an approval fee. Therefore, it shall be non-refundable.

If a permittee has completed mineral removal, and backfilling/regrading, and it appears that Phase I release can be achieved before permit expiration, issue an NOV with remedial measures to either submit and obtain approval of a Phase I release application or submit and obtain approval of a permit renewal.

WV Division of Environmental Protection Office of Mining and Reclamation Inspection and Enforcement	Series: 3 Page: 1 of 1 Effective Date: 1-93

Subject: Operator Reassignment (MR-19)

1. Purpose: To establish guidelines and procedures for enforcement of the requirement that the permittee obtain prior written approval from the Director before assigning the mining operation(s) on the permit to a contractor.

2. Definitions:

3. Legal Authority/Reference: 22A-3-19, 38-2-3.25(c)

4. Policy/Procedure: A permittee must have prior written approval from the Director prior to allowing a contractor, operator or other person to conduct mining, (coal extraction), operations on his permit. Should the inspector become aware that a contractor, operator, or other person, who has not obtained an approved MR-19, the inspector should immediately issue a Cessation Order which requires the contractor/operator to cease mining operations.

Inspectors are responsible to make careful observations and inquiries where it is not completely obvious that the permittee is conducting mining operations.

State of West Virginia
DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION
1615 Washington Street, East
Charleston, West Virginia 25311
Telephone: 348-3500

Gaston Caperton
Governor

David C. Callaghan
Director

M E M O R A N D U M

TO: All I & E and Permitting Personnel

FROM: Dave C. Callaghan, Director

SUBJECT: DMM-19 Processing

DATE: February 26, 1992

In order to effect a more efficient permit processing system and to eliminate unnecessary adverse situations, the following procedure relative to processing of DMM-19 applications shall be effective immediately.

Hereafter, it will be permissible to submit DMM-19 applications which involve multiples of permits on a given permittee as long as each individual permit upon which the applicant will operate is clearly identified on the application; and these operations are located within a proximity of each other so as to be identifiable on a single location map suitable for public notice purposes. Copies of the DMM-19 application must be submitted for each permit included in the application.

Should it become necessary to add an additional permit to an existing approved DMM-19, the following will apply: The applicant must notify the agency in writing through the inspector (four copies). If any ownership and control information has changed subsequent to the approval of the original DMM-19, this information must be identified and included in the notification. If a change has occurred or the original DMM-19 has been approved for more than 30 days, a simple AVS update should be made. This update can occur by a querry of the AVS system and a quick review of the forfeiture and delinquent civil penalty list. If the notification has not involved ownership and control changes and/or is not over 30 days from original approval, AVS updates will not be required. Additional permits must also be in the same geographical area or within the same mining complex.

Assuming approval at these levels, the permit involved will then be officially approved as part of the existing DMM-19. The inspector should insure the checks are properly made, signify approval and submit the notification to their respective supervisor for final approval and distribution to all permit files and appropriate system updates.

The above procedure should enhance the efficiency of this system while continuing to insure that appropriate scrutiny of DMM-19's and applicants remain at current levels.

WV Division of Environmental Protection Office of Mining and Reclamation Inspection and Enforcement	Series: 3 Page: 1 of 1 Effective Date: 1-93

Subject: Permit Revisions with Permit Renewals

1. Purpose: To establish guidelines for upgrading, correcting, revising or otherwise changing existing permit requirements, designs and/or specifications with permit renewals.

2. Definitions:

3. Legal Authority/Reference: 22A-3-19(a)(1)(A)

4. Policy/Procedure: Please encourage permittees to generally refrain from proposing permit revisions (IBR's or modifications) within an application for renewal. This situation necessitates additional review time that historically has resulted in major delays in the approval of renewal applications. It is realized, however, that for certain permits, it would be reasonable to allow for a combined application. The decision to allow for these combined applications should be made between the Permit Supervisor and the I & E Supervisor. Revisions which are required to insure that the terms and conditions of the permit are being met, and which are necessary to abate an outstanding notice of violation, might be appropriately included with a permit renewal.

Should any additional permit revision be required to modify operations pursuant to mining or reclamation requirements which have become applicable after the original date of permit issuance, the permittee shall submit, with the renewal application, a schedule delineating when the permittee will submit any information that may be required to upgrade the permit to current regulatory standards. This additional or supplemental information shall be submitted in revision format.

If a permittee fails to comply with the approved schedule, the inspector shall issue a notice of violation, citing 22A-3-19(a)(1) and 38-2-3.27(c).w

DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION
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Gaston Caperton
Governor

John M. Ranson
Cabinet Secretary

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

M E M O R A N D U M

TO: OMR Staff

FROM: David C. Callaghan

DATE: November 1, 1993

RE: Policy regarding an Owner/controller who encounters problems getting proper signatures on permitting documents

Recently, several occurrences have presented the situation where an owner/controller of a permittee is submitting some permitting document (such as a renewal application, an IBR, a modification) on behalf of the permittee. Generally, the permittee is either unable or unwilling to submit the application itself due to dissolution, bankruptcy or abandonment. In most instances, the owner/controller has signed the application and included a letter explaining that it is being submitted on behalf of the permittee, but that the owning/controlling relationship is not being admitted. Obviously, the lack of a proper signature has presented a quandary for DEP.

In these sort of situations, DEP will respond to the submission by the owner/controller initially by requiring that a proper signature be obtained. "Proper signature" may include the signature of the appropriate representative of the permittee, such as the President or Vice President of a corporate permittee, a bankruptcy trustee for permittees in Chapter 7 bankruptcy, the receiver appointed in cases of dissolution, any person designated as having such signatory authority in a corporate permittee's Articles of Dissolution, or anyone authorized by Court order to sign. The legal staff in the Ownership & Control Unit will assist by reviewing and approving the documentation submitted by the owner/controller to show that the signature can be accepted. Alternatively, the owner/controller may obtain from a court an order instructing DEP to process the application as signed by a representative of the owner/controller. In each of these instances in which the permittee's usual representative (President, Vice

President) is not the signatory, documents justifying DEP's acceptance of an alternate signature must be provided as a part of the application. In this way, questions regarding the DEP's acceptance of an application which was not submitted by the permittee's usual representative will be explained by documents already in the official DEP file.

An optional addition to the above initial response is to suggest to the owner/controller that if it is unable to obtain either a proper signature or a court order, it may enter into a Consent Order with the DEP. The Consent Order will enable the owner/controller to avoid any potential permit block due to the permittee incurring unabated violations. The Consent Order will be modelled on the agreement regarding Gary Enterprises, Inc. executed between DEP and U.S. Mining Co., Inc. The owner/controller would, in essence, agree to undertake any and all reclamation and water treatment necessary at the permitted site, perhaps to pay some portion of civil penalties incurred, and to be the responsible party for the remainder of the life of the permit. In most instances involving unabated violations, the original permit may proceed to Show Cause and then to revocation. In that event, the permittee's bond should be forfeited and put into the special reclamation fund. (Even where the owner/controller had somehow assisted the permittee by obtaining the bond for the permittee, DEP will still collect the bond.) Depending on the circumstances of the particular case, DEP may propose that the owner/controller either repermit the site after forfeiture and revocation, or that the owner/controller have the permit reinstated in its own name. Again, the legal staff of the Ownership & Control Unit will assist in negotiating these agreements.

By virtue of having such an agreement in place, the owner/controller may avoid the permit block. At the same time, the DEP is relieved of the potential liability associated with processing an application without a proper signature, and of being placed in the inappropriate position of getting involved in business dealings between private parties. It also allows the permittee to be permit blocked, which is generally appropriate in such situations. Most importantly, DEP is assured of having a responsible party at the site and obtaining reclamation at no cost to the taxpayers.

JJM:cap

DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION
10 McJunkin Road
Nitro, WV 25143-2506

Gaston Caperton
Governor

John M. Ranson
Cabinet Secretary

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

POLICY DIRECTIVE

TO: All Permitting Supervisors

FROM: David C. Callaghan Director

DATE: February 15, 1994

SUBJECT: Facilities or Structures Used in Common

Effective immediately, applicants for new mining permits or revisions to existing permits which propose to jointly use mining-related facilities or structures permitted on adjacent operations, will conform to the following policy.

The plans of a facility or structure (i.e., haulroad, drainage structure, etc.) that is to be shared by two or more separately permitted mining operations may be made a part of each application or may be included in one permit application and referenced in the other applications. Each permittee shall be required to bond the facility or structure unless the permittees proposing to share it agree to another arrangement for assuming their respective responsibilities. A copy of this written agreement must be made a part of each application and shall at a minimum specify the respective bonding responsibilities of each party (to include a bond release procedure) for the facility or structure to be commonly used.

The Director may approve such an agreement where it is demonstrated that all regulatory requirements for the facility or structure will be met.

DCC;RTH:cc

cc: Roger Hall
Steve Keen
John Ailes
Rocky Parsons
ED Griffith
Lewis Halstead
I&E Supervisors

OWNERSHIP AND CONTROL ANNUAL UPDATE VIOLATION PROCEDURE

1. PURPOSE: To Establish Procedures For Issuing And Assessing Violations To Companies That Have Failed To Submit Annual Ownership And Control Updates.

2. DEFINITIONS: N/A

3. LEGAL AUTHORITY: CSR 38-2-3.32(i)

4. POLICY/PROCEDURES:

1. O & C inspector completes MR-6 & MR-15 using a violation number beginning with 01U and sends the original of the violation to the company via certified mail and the inspectors copy to the appropriate inspector. The violation should be issued to one of the following, if possible:

A. A COAL PRODUCING PERMIT;
B. THE MOST RECENTLY ISSUED PERMIT;
C. THE PERMIT WHICH DOES NOT HAVE A RELEASE OR THE LOWEST PHASE OF RELEASE.

2. O & C staff enters inspection & violation information on smis and distributes the region and OSM copies.

3. At the end of the original abatement period or upon termination of the nov the O & C inspector completes the MR-24U & MR-16 and sends the MR-24U to the assessment section along with the Headquarters copy of the MR-15 & MR-16. The MR-24U is to be stapled on top of the 15 & 16.

4. If at the end of the original abatement period the violation is not abated, the O & C Inspector will also issue a cessation order (MR-15A). The original MR-15A shall be sent certified mail to the company and the inspector's copy sent to the appropriate inspector who shall insure that the operation has ceased coal production. The submission, tracking & assessment of the C.O. will be done by the O & C staff and assessment staff in accordance with established procedures and the I & E policy handbook. The C.O. will be numbered using the next number in the _ _ U numbering FOR THAT PERMIT.

5. If an assessment conference is requested by the permittee, the O & C inspector will be required to attend.

6. History of Violations: Violations written under this policy shall not include or be included in the history of violations for the respective permit.

7. When alternative enforcement action (i.e.: Show cause) is necessary, the request for show cause order will be prepared by the O & C inspector and sent to the I & E supervisor for that particular permit. The i & e supervisor will then review the request, sign off on it and send it to the appropriate Assistant Chief of operations. The Assistant Chief of operations will cause the request to be effected in the normal manner. (i.e. field distribution, data entry...)

PROCEDURE FOR PERMIT RENEWALS

1. PURPOSE: Procedure for Permit Renewals

2. DEFINITIONS: N/A

3. LEGAL AUTHORITY: 22-3-17

4. POLICY/PROCEDURES:

West Virginia Code 22-3-8(c) provides in part that "All permits issued pursuant to the requirements of this article shall be issued for a term not to exceed five years". WV Code 22-3-19(a)(1) provides in part that "Any valid permit issued pursuant to this article shall carry with it the right of successive renewal upon expiration with respect to areas within the boundaries of the existing permit". WV Code 22-3-19(a)(3) requires in part that "Application for permit renewal shall be made at least one hundred twenty days prior to the expiration of the valid permit".

In order to insure that permits are renewed in a timely manner, the following enforcement guidelines are to be implemented effective immediately:

A. For permits which have not yet expired:

1. Notice to renew sent to operator by Headquarter's Office 210 days prior to expiration date.

2. If application is not submitted 120 days prior to expiration date, issue Notice of Violation (NOV).

3. Remedial measure: submit renewal application. Abatement time: 30 days, with maximum 60 day extension.

4. If NOV is not abated within time allowed, issue Cessation Order (CO) - cease all coal production activity. Remedial measure: submit renewal application. Abatement time: maximum 30 days.

5. If CO is not abated within time allowed, submit for show cause (MR-10) under Alternative Enforcement Policy.

6. If a renewal application was received before the 120 day date and remains in the review process beyond the expiration date, extensions of violations may be granted in accordance with regulations until review and final decision on renewal is made.

7. If a renewal application was received prior to the expiration date but was delinquent, and remains under review at the expiration date, order cessation of operations until such time as the renewal is approved. Failure to renew within 60 days after the expiration date will result in initiation of permit revocation and bond forfeiture proceedings.

B. <u>For permits which have expired and have not been renewed:</u>

1. Issue I.H.C.O.-Ceasing all coal production activity. Remedial measure: submit renewal application. Abatement time: 30 days maximum.

2. If CO is not abated within 30 days, submit for show cause (MR-10) under Alternate Enforcement Policy.

PROCEDURE FOR PROCESSING PERMIT RENEWAL WAIVER REQUESTS

1. PURPOSE: Procedure for processing permit renewal waiver requests

2. DEFINITIONS: N/A

3. LEGAL AUTHORITY: 38-2-3.27

4. POLICY/PROCEDURES:

   1. The company submits a request for a waiver of permit renewal to the inspector prior to the 120 day date that a renewal is to be submitted. The request must certify that coal extraction is complete, backfilling and regrading will be completed and that reclamation activities are ongoing. The certification must be signed and notarized by an accountable official of the applicant.

   2. If the certification is complete and accurate, the inspector shall initial and date the request in the upper right corner and forward the request to his/her immediate supervisor for formal approval. By initialing the request, the inspector will be confirming that all coal extraction is complete and reclamation activities are complete or ongoing. Note: Coal extraction does not include coal that is stockpiled on the permit area; the company should be encouraged to haul this coal stockpile, if any, off of the permit prior to the permit expiration date.

   3. The I & E supervisor shall prepare the formal approval of the waiver request and distribute a copy to the Inspector, Permitting Supervisor, Regional and Nitro files (see attached approval letter).

DATE

COMPANY NAME
ADDRESS
ADDRESS

Re: Request for Waiver of Permit Renewal
Permit Number

Dear

In accordance with CSR 38-2-3.27, your request for a waiver of the renewal of Permit Number has been approved based on the following conditions:

1. No further coal extraction can occur on this permit.

2. Reclamation activities on this permit must remain ongoing until complete.

Should you fail to comply with the above conditions, enforcement actions may be initiated requiring the renewal of this permit.

If you have any questions, please contact me at your convenience.

Sincerely

Name
Environmental Inspector Supervisor

cc: Inspector
Regional Permit Supervisor
Nitro Files
Regional Files

SECTION 4

HAULAGEWAYS AND ACCESS ROADS

WV Division of Environmental Protection Office of Mining and Reclamation Inspection and Enforcement	Series: 4 Pg. No: 1 of 1 Revised:12-00

SUBJECT: Special Use Form for Haulroads

1. Purpose: To define the procedure for leaving roads and access roads for landowner uses after release.

2. Definitions: N/A

3. Legal Authority: 22A-3-23(c)(3) 38-2-4.10

4. Policy/Procedures: A form MR-12 will be completed for each haulroad to be left for the landowner's use. All MR-12's for haulroads must be reviewed and approved by the inspector prior to submittal to the I & E supervisor or release specialists. MR-12 forms shall be distributed to the appropriate permit files by the I & E supervisor or release specialist after approval.

A Phase I grade release cannot be approved unless all roads have an approved MR-12 or are reclaimed in accordance with the approved permit. (Water bars, seeding.)

If the surface ownership changes from time of original MR-12 approval and Phase III release, a new MR-12 signed by the current landowner must be executed.

WV Division of Environmental Protection Office of Mining and Reclamation Inspection and Enforcement	Series: 4 Page: 1 of 1 Effective: 5/3/93

SUBJECT: Annual impoundment inspection and certification for haulroad sumps

1. Purpose: To clarify the requirements of 38-2-5.4(2)&(3)

2. Definitions:

3. Legal Authority/Reference: 38-2-5.4(e) (2) & (3) and 38-2-2.65

4. Policy/Procedure: Haulroad sumps fall under the definition of impoundment (38-2-2.65) and must be inspected and certified by an RPE or LLS yearly until removal of the sump or release of the performance bond. However, the Department will accept a single report as required by 38-2-5.4(e)(2) to address all of the sumps associated with each haulroad. Quarterly inspections shall also be completed during construction.

SUBJECT: Internal Primary Roads

1. Purpose: Identification

2. Definitions: N/A

3. Legal Authority: Reference 38-2-4.1, 4.13, 2.58

4. Policy/Procedure: The West Virginia Surface Mining Reclamation Regulations at 38-2-2.58 provide a definition for a haulageway or access road. However, ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas are excluded from this definition. Furthermore, the Regulations at 38-2-4.1 classify each road, as defined in subsection 2.58, as either a primary road or an infrequently used access road.

Confusion has arisen of late regarding the definition of "immediate mining area" and when a road is classified as "primary". Immediate mining area, as envisioned by 38-2-2.58 of the Regulations and reinforced by federal register language, refers to the area where coal is being removed from the seam and to other areas that should not be subject to the performance standards for roads because they are subject to frequent surface changes. These other areas may include areas where topsoil and overburden are being moved and areas undergoing active reclamation. Utilizing this as a basis, any road which is not within the immediate mining area and will be in place and in use for six months or longer, will be classed as a primary road.

As a result, these internal primary roads must meet performance standards and be certified in accordance with 38-2-4.13 of the Regulations. A design must be contained in the permit which provides sufficient detail that assures performance standards will be met. This design should include and may be limited to a typical cross section and a narrative which addresses the surfacing material, a water management plan which assures that drainage from the mined area flows to the proper sediment control structure, and that the road will be properly constructed, maintained, and certified. However, site specific conditions may require that additional criteria be included in the design. It is realized that most of these roads are constructed in areas where drainage from the road is treated by sediment control structures designed and constructed for the mined area, so sediment control should not be a factor in these designs. The focus of these designs should be on proper surfacing, slope, grade, and drainage conveyance to ensure performance standards can be adhered to.

Certifications for these internal primary roads should include a profile, plan view, and appropriate cross sections. This information would then show that the road is built in accordance with the approved plan, except as otherwise noted in the certification statement.

Please ensure that all future permit applications include plans which comply with these requirements. Furthermore, for existing permits that do not contain plans which adequately comply with these requirements, an application for permit revision, to include a road design as review, permit renewal, or if violations of associated performance standards arise, whichever should occur first. If you should have any questions regarding this matter, please contact Rick Clark at 759-0510.

SUBJECT: Off-site damages caused by coal and support vehicle traffic.

1. Purpose: To insure protection to the public and the environment from the effects of mining on public roads.

2. Definitions: Surface Mining Operations

3. Legal Authority: 2-3-13(b)21; 22-3-16(a); 38-2-4.8(a)

4. Policy/Procedures: To insure protection to the general public and the environment, the following guidelines shall be used:

   1. When mud, debris, or other mining related materials are being tracked or deposited on a public roadway directly from a surface mining operation, several degrees of seriousness can occur depending on the conditions.

      A. If there exists an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resource due to conditions on the public roadway, then issue an IHCO citing Chapter 22-3-16, 22-3-13(b)21 and 38-2-4.8(a) of the Rules and Regulations with the following language:

         Cease the use of (permit area in question) at the junction of public roadway (state road system designation) due to imminent danger to the health and safety of the public caused by (cite road conditions causing the imminent danger).

         Corrective/remedial measures shall be:

         Correct all conditions causing the imminent danger to the health or safety of the public on the public roadway and/or all conditions on the permitted area causing

the conditions on the public roadway.

B. When a lesser degree of off-site deposition of materials is occurring an NOV shall be issued citing Chapter 22-3-13(b)21 and 38-2-4.8(a) of the Rules and Regulations using the following language:

> Failed to protect off-site areas by depositing spoil material or waste accumulations outside the permit area and onto (state road system designation).
>
> Corrective action to be taken is:
>
> Clean and remove all material or waste accumulations outside the permit area on (state road system designation) and provide method to limit deposition of material onto (state road system designation).

C. In cases where there is negligible disruption to or deposition on the public roadway, then wording on an MR-6 citing 38-2-4.7(A)2 may be effective: "Maintain haulroad so as to control or prevent erosion, siltation, and air pollution including road dust." This could be used where a violation does not exist at the time but on-going site problems indicate the company should be working to prevent future problems.

This policy is to provide guidelines for the Environmental Inspector in judgmental calls concerning tracking of mud, coal spillage, or other disruption to public roadways.

SECTION 5

DRAINAGE AND SEDIMENT CONTROL

SUBJECT: Temporary Sediment Control Structures

1. Purpose: Construction and certification of temporary sediment control structures

2. Definitions: See Below

3. Legal Authority: 38-2-5.4(a)

4. Policy/Procedures: The West Virginia Surface Mining Reclamation Regulations at 38-2-5.4(a) require that sediment control structures be constructed in appropriate locations for the purposes of controlling sedimentation. Furthermore, all runoff from the disturbed area shall pass through a sedimentation control system. The Regulations at 38-2-5.4 (d)(1) require that, prior to any surface mining activities in the component drainage area of a permit controlled by a sediment control structure, that specific structure shall be certified as to construction in accordance with the plans, designs, and specifications set forth in the preplan, or in accordance with as-built plans.

   Therefore, in order to comply with these requirements, each application for a new permit must include plans which show that sediment control structures can be constructed and certified prior to any surface mining activities within the area to be controlled by each structure. It is realized, however, that some structures cannot be constructed until a certain amount of mining has occurred, particularly in steep slope areas. This situation would require that a "temporary" sedimentation control system be designed, constructed, and certified in accordance with the preplan and Regulations. These "temporary" structures would then provide the required sediment control for the area being disturbed, until such time that the "permanent" sedimentation control system could be constructed and certified.

   It is important to remember that all new permit applications must include specifications for the

design, construction, maintenance, location, and certification of all sediment control structures. Please ensure that you continue to require this information in the preplan.

Furthermore, for existing permits that do not contain plans which adequately comply with these requirements, an application for permit revision should be required at the next mid-term review, permit renewal, or if violations of associated performance standards arise.

GROUNDWATER MONITORING REPORT

Company Name		
Monitoring Frequency		**Permit No.**
Reporting period:	**quarter, 199**	**NPDES No.**

PARAMETER	POINT DATE	POINT DATE	POINT DATE
pH			
Acidity			
Alkalinity			
Specific Conductance or TDS			
Total Iron			
Total Manganese			
Standing Water Level (well)			
Flow (spring)			
Flow (other)			
(List Additional Parameters Below)			

Division of Environmental Protection Office of Mining and Reclamation Inspection and Enforcement	Series: 5 Page 1 of 1 Effective: 4-92

SUBJECT: Elimination of Principal Spillway for Sediment Control Structures

1. Purpose: To clarify the requirements emergency spillway design and construction

2. Definitions:

3. Legal Authority/Reference: 38-2-5.4(c)(1)

4. Policy/Procedure: In accordance with the regulations Title 38, CSR 2, Section 5.4 (c)(1), the principal spillway requirements may be waived by the Director if the emergency spillway is designed at a minimum to safely pass the peak rate of discharge of a 25 year, 24-hour frequency storm in an open channel constructed of non-erodible material and capable of maintaining sustained flows.

State of West Virginia
DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION
1615 Washington Street, East
Charleston, West Virginia 25311
Telephone: 348-3500

Gaston Caperton
Governor

David C. Callaghan
Director

M E M O R A N D U M

TO: Office of Mining & Reclamation Staff

FROM: David C. Callaghan

DATE: April 13, 1992

SUBJECT: Policy on Sediment Dams, Embankment Type: Elimination of Principal Spillway
Replaces and Supersedes: Policy Series P, Page No. 1.10, Dated May 24, 1984

In accordance with the regulations Title 38, CSR2, Section 5.4 (c)(1), the principal spillway requirements may be waived by the Director if the emergency spillway is designed at a minimum to safely pass the peak rate of discharge of a 25-year, 24-hour frequency storm in an open channel constructed by non-erodible material and capable of maintaining sustained flows.

If the emergency spillway is excavated totally in solid rock, or if it is fully lined with properly placed concrete, it will be considered non-erodible. Further, for purposes of this regulation, non-erodible material may include a variety of engineered systems, such as but not necessarily limited to graded rock riprap, rock gabions, grout-filled filter point fabric systems, and synthetic meshes or grids (in which case the erosion protection may consist of a system incorporating soil, the mesh or grid, and the channel vegetation).

For any engineered channel lining, the approved plans must include adequate hydrologic and hydraulic analyses, information on material and system properties, and construction specifications to assure that the structure will perform and remain functional under design conditions. For instance, if a graded rock riprap lining is selected, the design must specify the rock gradation range (usually by size and percentage of the total), and general shape characteristics. In some cases, a graded bedding will be necessary.

The design certification of the sediment control structure must encompass the spillway and its erosion protection. The construction certification for the sediment control structure must likewise include the spillway and erosion protection.

:CC;SCK:cc

SUBJECT: Drainage System Certifications

1. Purpose: To define method of Drainage system certification submission, and/or requirements for as-built plans or modifications.

2. Definitions: Minor design change - a change from the pre-plan, such as, but not limited to a minor change in configuration, minor change in location and/or minor change in spillway configuration which is at least equal to or better than the original design.

Major design change - a change in location which results in a larger drainage area, a change in the type of structure and/or a change in spillway design such as construction of a rock spillway instead of a pipe.

3. Legal Authority/Reference: 22-3-13(b)(10(c) and 38-2-5.4(d)

4. Policy/Procedure:

A. All drainage systems shall be certified on an MR-13 in accordance with Section 5.4(d) of the Rules and Regulations. Disturbance within any component drainage area may not begin until certification in accordance with 5.4(d) is submitted.

B. If the structure meets the design requirements, the inspector shall accept the MR-13 and distribute the forms to the appropriate permit files.

C. For structures with minor design changes, the operator shall submit as-built plans with the MR-13 in accordance with 5.4(b) of the Rules and Regulations.

D. For structures with major design changes, a permit revision in accordance with Rules and Regulations 3.28(c) shall be submitted and approved prior to drainage system certification.

E. If an MR-13 without as-built plans is received and an on-site inspection reveals a minor or major design change exists, then the inspector shall not accept the MR-13. A simple statement by the inspector shall be attached to each MR-13 stating the reasons for the non-acceptance. The MR-13 shall be distributed to appropriate permit files with the statement attached.

F. If a certification is not accepted, no additional disturbance or mining activity may take place in the component drainage area until an appropriate certification is received.

G. Any certification or as-built drawings believed by the inspector to be factually or materially inaccurate shall not be accepted and shall be returned to the certifying professional along with a simple statement by the inspector identifying the questioned (item(s). The PE of PS shall provide appropriate documentation that the certification or as-built documents are accurate, or shall revise and resubmit the certification accordingly. The drainage system will not be considered to be certified until any issues of accuracy, raised in good faith by the inspector, are resolved.

SUBJECT: Inspection and certified report requirements for all water retention structures

1. Purpose: To clarify the frequency of examination and reporting requirements for certification of impoundments

2. Definitions:

A. INSPECTION REPORT - (Due Annually) must address at a minimum: (a) has been (is being) constructed and maintained as designed and in accordance with the approved preplan. (b) report shall include discussion of any appearances of instability, structural weakness or other hazardous conditions. (c) depth and elevation of any impounded waters. (d) existing storage capacity. (e) any existing or required monitoring procedures and instrumentation and any other aspects of the structure affecting stability.

B. EXAMINATION REPORT - (Due Quarterly) must address any appearance (0r lack of) structural weakness and othe hazardous conditions. (i.e., slumps, scarps, cracks, bulges, piping, seeps, etc...).

C. STRUCTURES - Sediment Control Structures and Water Retention Structures.

D. CERTIFICATION - must be submitted on an MR-13 and must affirm that construction was done in accordance with the approved criteria or as otherwise noted in the certification statement.

3. Legal Authority/Reference: 38-2-5.4(d) & (e)
38-2-2.66

4. Policy/Procedures: The chart on next page summarizes and clarifies the reporting requirements for each type of inspection or examination.

	ALL WATER RETENTION STRUCTURES	EMBANKMENT STRUCTURES	MSHA CLASS STRUCTURES
INSPECTION REQUIREMENTS BY OPERATOR	a) not less than quarterly during construction b) upon completion of construction c) at least yearly until removal		
EXAMINATION REQUIREMENTS BY OPERATOR		At least quarterly	Weekly
CERTIFICATION REQUIREMENTS	Upon completion	Upon completion	Upon completion of each phase
INSPECTION REPORT SUBMITTAL REQUIREMENTS	After each inspection (copy retained at or near the operation)		
EXAMINATION REPORT REQUIREMENTS		Reports retained at or near the operation	Reports retained at or near the operation

DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION
10 McJunkin Road
Nitro, WV 25143-2506

Gaston Caperton
Governor

John M. Ranson
Cabinet Secretary

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

M E M O R A N D U M

TO: All Permitting Supervisors

FROM: John C. Ailes, Chief

DATE: March 8, 1993

RE: Sediment Control Structures

The West Virginia Surface Mining Reclamation Regulations at 38-2-5.4 (a) require that sediment control structures be constructed in appropriate locations for the purposes of controlling sedimentation. Furthermore, all runoff from the disturbed area shall pass through a sedimentation control system. The Regulations at 38-2-5.4 (d) (1) require that, prior to any surface mining activities in the component drainage area of a permit controlled by a sediment control structure, that specific structure shall be certified as to construction in accordance with the plans, designs, and specifications set forth in the preplan, or in accordance with as-built plans.

Therefore, in order to comply with these requirements, each application for a new permit must include plans which show that sediment control structures can be constructed and certified prior to any surface mining activities within the area to be controlled by each structure. It is realized however, that some structures cannot be constructed until a certain amount of mining has occurred, particularly in steep slope areas. This situation would require that a "temporary" sedimentation control system be designed, constructed, and certified in accordance with the preplan and Regulations. These "temporary" structures would then provide the required sediment control for the area being disturbed, until such time that the "permanent" sedimentation control system could be constructed and certified.

It is important to remember that all new permit applications must include specifications for the design, construction, maintenance, location, and certification of all sediment control structures. Please ensure that you continue to require this information in the preplan.

Furthermore, for existing permits that do not contain plans which adequately comply with these requirements, an application for permit revision should be required at the next mid-term review, permit renewal, or if violations of associated performance standards arise.

JCA:RAC:det

cc: Rocky Parsons
Ed Griffith
Jeff McCormick
Louis Halstead
Charlie Sturey
I & E Supervisors

DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION
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Nitro, WV 25143-2506

Gaston Caperton
Governor

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Cabinet Secretary

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

MEMORANDUM

TO: Ed Griffith and Rocky Parsons

FROM: John C. Ailes, Jr.

DATE: August 10, 1993

SUBJECT: Flocculant Approval

Please advise all permitting and I & E Field Personnel that effective immediately the only type of flocculant that will be approved for use in free flowing drainage systems will be those that have been approved by E. P. A. for use in the open environment.

It is highly recommended that only flocculants that are E. P. A. approved for use in potable water supplies are used in areas where domestic water supplies have the potential to be impacted.

This is due to several incidents of upsets and spills of other types of flocculant that have caused environmental problems including fish kills.

Headquarters will notify the two (2) industry associations so that they may disseminate to their respective members.

Please note that this does not apply to closed circuit preparation plant systems.

JCA/cl

cc: West Virginia Coal Association
West Virginia Mining and Reclamation Association
Policy Book

Division of Environmental Protection Office of Mining and Reclamation Inspection and Enforcement	Series: 5 Page 1 of 1 Revised: 2-98

SUBJECT: Certification of "In Pit" Sediment Control

1. Purpose: Establish acceptance procedures for additional sediment control certifications

2. Definitions:

3. Legal Authority/Reference: CSR 38-2-5.4

4. Policy/Procedures: For operations utilizing "in pit" temporary sediment control, the following certification requirements will apply.

Each quarter when a certification (Form MR-13) will be submitted for "in pit" sediment control with the statement:

I hereby certify that during the _____quarter of _____(year) there has been and is currently 0.125 AC-FT of storage volume available for each acre disturbed in the watershed. A map or other description of the area being certified should be included.

This type of certification for "in pit" drainage control will comply with the requirements of 38-2-5.4(d)(i) for permits that allow temporary "in-pit" sediment control. Once "permanent" sediment control structures are constructed, they should also be certified as required by 38-2-5.4(d).

WV Division of Environmental Protection Office of Mining and Reclamation Inspection and Enforcement	Series: 5 Pg. No: 1 of 1 Effective: 10/97

SUBJECT: Removal and/or Reclamation of Sediment Ditches

1. Purpose: Establish Procedure for abandonment of sediment ditches

2. Definitions: N/A

3. Legal Authority: 38-2-3.6(b) & (h)
   38-2-5.4(h)

4. Policy/Procedures: Abandonment of sediment ditches shall be in accordance with the approved reclamation plan as contained in the permit. In the event that abandonment of sediment ditches has not been specifically addressed in the reclamation plan, refer to the final regrade cross sections to determine if the sediment ditch was proposed to be left in place. If the ditches are shown on the regrade cross sections, then the operator has the option of either regrading or breaching the sediment ditch so that it no longer impounds water. If the ditch is to be breached, the inspector shall work with the operator to choose appropriate places to breach the ditch. A permit revision will not be required to show the actual locations of the breaches of the sediment ditch.

   If there is no abandonment plan in the permit and the regrade cross sections do not show a ditch being left, then the operator must regrade and revegetate the sediment ditches in accordance with 38-2-5.14(h)(1).

WV Division of Environmental Protection Office of Mining and Reclamation Inspection and Enforcement	Series: 5 Pg. No: 1 Effective: 9-98

SUBJECT: Water Retention or other structure(s)

1. Purpose: Procedure for documentation of water or other structure failure

2. Definitions: N/A

3. Legal Authority: 22-3-13(b)(10)
38-2-5.4, 38-2-20

4. Policy/Procedures:

The attached form is to be used when investigating reported failures of water retention or other structures.

This format will standardize documentation of this type of events and will serve as a guide for items to look for and findings made.

Completed forms shall be distributed to permitting, regional file, and the appropriate I & E Supervisor.

Failureform

Company Name:_____ Permit Number:_____

INFORMATION ABOUT NOTIFICATION

When Notified:_____ By Whom:_____
People I notified_____
_____

INFORMATION TO BE GATHERED ON SITE AT TIME OF INSPECTION OF FAILURE

Date Arrived on Site:_____ Time Arrived on site:_____

Others On Site:_____

Weather Conditions:_____Rainfall (Amount & Duration):_____

Description Of Failure

Structure Number:_____ Other identifying Features of Structure:_____
_____
Exact Location of Structure:_____

Date and Condition of Structure Last Observed Prior To Failure:

_____

ACTIONS TAKEN WHILE ON SITE

By Inspector ____Enforcement Action ___Pictures ___Video ___Notes Other_____

By Company Remedial Measures:_____

_____

Date and Time of Departure From Site:_____

FOLLOW-UP ACTIONS

By Inspector Date of Follow-up Inspection:_____ Was Structure Certified:_____

If Certified, By Who:_____

By Company Was Structure Repaired:_____

Attach map showing location of problem
Attach pictures of structure, on-site damage and off-site damage

Describe What You Believe Caused Failure:

_____
_____
_____
_____
_____
_____
_____
_____
_____

Inspector:_____ Office:_____ Date:_____

SECTION 6

BLASTING

WV Division of Environmental Protection Office of Mining and Reclamation Inspection and Enforcement	Series: 6 Pg. No: 1 of 1 Revised: 2-98

SUBJECT: Blasting Logs

1. **Purpose:** Approval of company blasting log in lieu of MR-37

2. **Definition:** n/a

3. **Legal Authority/Reference:** 38-2-6.4(a)

4. **Policy/Procedure:** Companies may use their own blasting log if prior approval has been granted by the Director.

WV Division of Environmental Protection Office of Mining and Reclamation Inspection and Enforcement	Series: 6 Pg. No: 1 of 1 Revised: 2-98

SUBJECT: Blasting Certification Revocation

1. Purpose: Outline procedure for initiating revocation of a Blaster Certification

2. Definition: n/a

3. Legal Authority/Reference: 22-3-17, 38-2-6.1 & 6.7

4. Policy/Procedure:

If a situation develops where an individual certified blaster is in violation of the Act, Surface Mining Regulations pertaining to blasting, or the Blaster's Certification Regulations, the following procedure will apply:

1. Inspector documents violation on MR-15 and issues an NOV to Permittee (Permittee always responsible for violation) and sees that a copy of the NOV is given to the certified blaster.

2. Send Headquarter's copy of the NOV to the attention of the Blasting Coordinator (Tony Grbac) along with a request to revoke the certified blaster's certification (if situation calls for revocation).

3. Blasting Coordinator will ensure that the steps required to be taken to revoke a certification are followed and shall pursue final revocation by the director.

4. If the situation warrants, the Blasting Coordinator will also pursue Individual Civil/Criminal penalties against the certified blaster.

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SUBJECT: Preblast Surveys

1. **Purpose:** Define "persons approved by the Director" who conducts the pre-blast survey.

2. **Definitions:**

3. **Legal Authority:** 22-3-13(b)(15)(E); 38-2-6.8, 38-2-11.1(a)(2); 38-2-11.1(c)

4. **Policy/Procedures:**

   The insurance carrier who has indemnified the operations under the provisions of Chapter 22A-3-8 of The Code of West Virginia, shall conduct the pre-blasting survey in accordance with the provisions of Section 38-2-6.8 of the Rules and Regulations. If the carrier or the operator elects to engage the services of an outside agency or person to conduct the preblast survey, then the insurance carrier shall certify and submit in writing that this agency or person is acceptable to do such. This submittal shall be reviewed and approved by The Division of Environmental Protection prior to acceptance of the preblast survey.

SUBJECT: Preblast Survey Procedures

1. Purpose: Establishes preblast survey procedures

2. Definitions: "30 days prior to beginning of blasting operations" shall mean at least 30 days prior to the date specified in the blasting advertisement as the date blasting will be initiated.

3. Legal Authority: 22-3-13(b)(15); 38-2-6.8 & 38-2-2.116

4. Policy/Procedures:

The preblast survey process begins with the operator informing in writing all residents or owners of manmade dwellings or structures located within one-half mile of the permit area. This notification, Sample letter Number 1, must state how to request a preblast survey and must be mailed or delivered to the resident/owner via certified mail or signed and witnessed receipt. The certification number will be referenced on the letter.

The "30 days prior to beginning of blasting operations" means at least 30 days prior to date specified in the blasting advertisement as the date blasting will be initiated.

Surveys requested more than ten days before blasting must be submitted to and acknowledged by OMR prior to commencement of blasting operations.

Any survey requested after blasting operations have begun must be submitted to and acknowledged by OMR within 30 days of receipt of request or blasting must cease.

The list of one-half mile residents and owners should be reviewed and updated at a minimum annually for new structures and residents. Any new individuals must be notified of their right to a preblast survey.

Once the request is received at the appropriate Regional Office, a "Notice to Perform Preblast Survey" (Sample Letter Number 2) will be mailed to the permittee. This "Notice" will advise the permittee to conduct the requested survey(s) and that these surveys must be conducted for the insurance carrier who has indemnified the permittee for property damages and bodily injury. If carrier elects to engage the services of another agency to conduct the survey, the carrier must certify, in writing, that this person or agency is qualified to do such work.

Then a letter (Sample Letter Number 3) will be sent from the Regional Office notifying the owner/resident that their request has been received and the request has been forwarded to the permittee for processing. This will advise them that a copy of the preblast survey will be made available to them and they will have an opportunity to disagree if they feel that it does not represent the condition of their structure.

Permittees will submit completed surveys to the regional office where the survey will be date stamped as received, logged in, and forwarded to headquarters. Headquarters office will notify the regional office clerks once surveys are accepted, and return accepted surveys to the regional office clerk for filing.

Finally, the Regional Office will notify (Sample Letter Number 4) the permittee that the requested preblast survey has been reviewed and appears to be complete and adequate. The permittee shall promptly provide a copy to the owner/resident who made the request.

A "log book" will be kept at each Regional Office to track each "Request" and "Survey" during the process. Each request for a preblast survey shall be entered in the log book at the Regional Office and contain the following information:

1.) Resident/Owner
2.) SMA or Permit Owner
3.) Permittee name
4.) Date request received
5.) Date notification letter sent
6.) Date notification letter received by permittee
7.) Date survey received from the permittee
8.) Date survey was sent to Headquarters
9.) Date survey acknowledged (accepted)

10.) Date the accepted survey is received from Headquarters.
11.) Date acknowledgement letter is sent to permittee

Before blasting begins, the inspector should review the logbook to ascertain whether all surveys have been submitted. Additionally, the inspector should review the permittees proof of Letter Number 1 delivery (i.e., "green card" or signed statement by owner/resident.

These guidelines are provided to assist in evaluating whether the pre-blast survey adequately documents pre-blasting damage and other physical conditions which could be affected by blasting. Each survey of a building should be bound securely (not stapled) together and shall include all the following items:

* Name of owner/tenant, permittee, SMA # or permit #, and the structure number from the permit blasting map which must appear on the survey cover.

* Current insurer with address.

* A copy of the request for the preblast survey. If a survey is conducted without a written request, then provide an explanation.

* Address of structure or description of structure location

* Mailing address of owner and tenant

* Plan view of the relative location of structures surveyed (scale not required)

** General description of structure (number of stories, construction materials for frame, construction material for exterior finish and approximate age, if available).

* A general description of the survey methods and direction of progression of the survey, including a key to any abbreviations used.

* Sufficient exterior photographs to illustrate a wide angle full frame view of each exterior wall, close-up photographs to illustrate any pre-blast damages noted, and mid-range photographs to illustrate relationships of close-up photos to wide angle photos. Exterior photos should also illustrate the condition of visible foundation walls, sidewalks, steps, porches, chimneys, well houses, fences, utilities, garages, out buildings and other exterior structures.

* Information on the type of water supply (public utility, private multi-dwelling water systems, well(s), spring, cistern).

* If water supply is any other than a public utility, survey must include water analysis (tds or spec. cond. at 25 degrees centigrade, pH, acidity, alkalinity, total Fe, total manganese, and sulfates) and a description of the type of system and treatment being used unless an untreated water sample can be readily obtained (e.g. plumbing disconnection), a sample of the treated water will be allowable if noted in data. For wells, give type (drilled or dug) and, if available well log, depth, age, depth and type of casing or lining, static water level, flow data, pump capacity, drilling contractor and indicate source of data. If this cannot be accomplished, then the surveyor must justify in detail narrative.

** Documentation of the conditions of each interior room to include comments on type of finishing material for each interior wall, ceiling and floor, and notations on the location and approximate dimensions of any defect or unusual condition. Interior condition may be illustrated by drawings, sketches, narrative description and/or photographs. Should the person requesting the survey refuse access, the survey shall note this situation.

** A notation of any unusual construction technique or method, especially extra-ordinary or sub-standard ("not-to-code")

materials or spacings, absence of footer or foundations, pre-fabricated or modular construction, previous relocation of the structure, unusual lot construction or foundation preparation and similar unusual conditions.

* A notation describing any portion of the structure not documented and explanation of why. (e.g., non-accessible areas).

* Signature of the person conducting the survey, name and address of person or firm conducting the survey and a copy of insurance carrier documents certifying that the person or firm is qualified to conduct pre-blast surveys. (**A more detailed listing of these requirements can be found on the checklist pages 13 through 16.**)

Photographs submitted with a survey must be 3x5 prints or larger (35mm or equivalent. Contact prints are allowable only if the survey contains a statement that full size (3x5 inch or larger) prints will be made available. Prints must be provided, upon request, to the DEP-OMR and/or the owner/resident who requested the survey at no cost, when there is a question regarding blasting damage. Also, provide the address and phone number (within the survey) to contact whenever full size prints are needed. Prints must be provided within 30 days of request. Videos can be used as a supplement only.

Items marked with ** above may be entirely documented by photographs if sufficient photographs are included to adequately illustrate the required information.

Sample notification letter, notice to perform preblast survey, supervisor's response to preblast survey request, acknowledgement of completed survey and checklist, logforms, preblast survey process, follows and should be used as presented, except for appropriate name changes.

Page 18 is the standardized pre-blast survey log form to be used for tracking surveys.

LETTER #1
NOTIFICATION FROM PERMITTEE TO 1/2 MILE RESIDENTS AND OWNERS

Date_____ Certified Mail #_____

Name and address of resident or owner

Dear XXXX,

Your home, building, school, church or other man-made structure is located within 1/2 mile of surface mine permit number _____ of _____ Company. The mining operation is located in _____District. _____ County _____ miles N S E W of _____. (nearest post office) The longitude is _____ and latitude _____.

As the resident or owner of a structure within 1/2 mile of the permit boundary, you have the right to request a pre-blast survey. By regulation, blasting could begin 30 days from receipt of this letter. To insure that a survey is conducted prior to blasting, the Director must receive your request within 20 days. You may request a survey by writing to the following address:

Director
Division of Environmental Protection
(Regional Office Address)

A preblast survey is a recording of the structural and physical condition of your dwelling and will be conducted at no cost to you. This survey will be completed for our insurance company and includes photographs, drawings and other general information about the structure. If wells or springs are used for the water supply, a sample will be taken and included in the survey. The completed survey will also provide you with the name and address of our current insurance carrier. In addition, if any changes are made to the structure you have the right to request the preblast survey be updated.

Please include permit number _____ in your request.

The completed preblast survey report will be kept on file at the Division of Environmental Protection. A copy will be mailed to the person requesting the survey. Upon receipt you should review the contents. If you disagree with the results you should notify the DEP in writing.

XXXXXXXXXXXXXXXX

LETTER #2
NOTICE TO PERFORM PRE-BLAST SURVEY
(DATE)

(COMPANY NAME)
(ADDRESS)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

RE: Requests for Pre-Blast Survey(s)
Permit No.:

Gentlemen:

Please find enclosed copies of requests for pre-blast surveys for the above-captioned surface mining operation.

You are hereby ordered to conduct the requested surveys in accordance with the provisions of Section 6.8 of the rules and regulations which state:

On a request to the Director by a resident or owner of a man-made dwelling or structure that is located within one-half mile of the permit area, the operator shall conduct a pre-blasting survey of the dwelling or structure and submit a report of the survey to the Director.

These surveys must be conducted by the insurance carrier who has indemnified your company for property damages and bodily injury under the provisions of Chapter 22, Article 3, Section 13(b) (15) of the Code of West Virginia. If you or your carrier elects to engage the services of another agency to conduct the survey, the insurance carrier must certify, in writing, that this person or agency is qualified to do such work. The survey must be submitted and acknowledged by the Office of Mining and Reclamation and a copy provided to the person requesting the survey. Failure to do so may result in enforcement action by this Department.

If you have any questions regarding this matter, please contact this office.

Sincerely,

(SURFACE MINE RECLAMATION SUPERVISOR)

Enclosure(s)

NOTE: Pre-blast survey requests for applications pending approval may be delayed until your application is approved and a permit number is assigned, however, no blasting may occur prior to the survey.

LETTER #3
ACKNOWLEDGEMENT OF REQUEST FOR PREBLAST SURVEY

DIVISION OF ENVIRONMENTAL PROTECTION
(REGIONAL OFFICE ADDRESS)

Person requesting Survey
address

REF: Preblast Survey Request
Permittee Name
Permit No.

Dear ,

We have received your request for a preblast survey. Your request has been documented and forwarded to the above referenced company for processing. They will be contacting you to make arrangements for the preblast survey.

When the survey is completed you will receive a copy. You should take the opportunity to review the report. If you disagree with the results you should notify the WV Division of Environmental Protection at the address above.

Please note that DEP inspection staff cannot evaluate or assess whether the occurrence of cracks and/or structural defects are blast related. However, we will respond to complaints concerning blasting to evaluate if the permittee is in compliance with law, regulation, and permit conditions.

Should you have any questions, please contact our office in (Region/office) at (phone).

Sincerely,

Environmental Inspector Supervisor

LETTER #4
ACKNOWLEDGEMENT OF COMPLETED PREBLAST SURVEY

DIVISION OF ENVIRONMENTAL PROTECTION
Regional Office/Address

DATE

COMPANY NAME
ADDRESS

RE: Preblast Survey(s)
Permit No.

Gentlemen,

This is to notify you that the completed preblast survey(s) requested on the above named permit has (have) been reviewed and accepted by the Division of Environmental Protection for the following individual(s):

PERSON(S) REQUESTING SURVEY

In accordance with 38-2-6.8(a)(3), a copy of each survey shall be provided to the person requesting the survey and to the Director. It is expected that you retain proof (i.e., certified mail receipt) that the person requesting the survey received their copy. In addition, we recommend that you maintain a copy of each survey in your files.

Be advised that it is your responsibility to review the 1/2 mile radius, at a minimum annually, for new construction or ownership which may require notification of the right to a preblast survey.

Should you have any questions regarding this matter, please feel free to contact this office.

Sincerely,

Environmental Inspector Supervisor

cc: Inspector

WEST VIRGINIA DEP PREBLAST SURVEY CHECKLIST

_____ 1. Application bound together in booklet form (stapling not acceptable).

_____ 2. Name and address of owner/tenant, permittee, SMA# or Permit#, and the structure # from the permit blasting map must appear on the survey cover.

_____ 3. Current insurer with address and phone number.

_____ 4. Copy of notification and request. Without formal request (verbal) provide documentation.

_____ 5. If owner refuses survey, a statement declaring this situation should be noted and signed by the owner if possible. If not, then a statement describing the reason shall be stated and signed by the surveyor.

_____ 6. A general description of the survey methods and direction of survey progression, including a key to any abbreviations used.

_____ 7. Plan view of structure(s) surveyed; description of structure exterior and photographs (i.e., foundation walls, sidewalks, chimneys, age of structure, construction materials, porches, steps, and other exterior surfaces), sufficient exterior photographs (equal to the standard 35mm negative film format, 3 x 5 inch prints or

larger) to illustrate a wide angle full frame view of each exterior wall, close-up photos to show any preblast damages or defects noted, and mid-range photographs to illustrate relationships of close-up photos to wide angle photos.

_____ 8. Type of water supply (public utility, private multi-dwelling water systems, well(s), spring(s), cistern). Sampling and analyses required if not supplied by public utility. Required: t.d.s. or spec. cond. At 25 degrees centigrade, pH, acidity, alkalinity, total Fe, total manganese, and sulfates. Also, for wells, description of system (including treatment if applicable) and other pertinent information (i.e. depth, casing type, age, static water level, flow data, pump capacity, drilled or dug. If an untreated water sample cannot be readily obtained (e.g., plumbing disconnection) a sample of the treated water will be allowable if noted in data. If water sample cannot be secured, surveyor must justify in detail narrative.

_____ 9. Documentation of each interior room describing condition including any defect (water leaks, cracks, etc.), type of finishing material for each interior wall, ceiling, and floor may be illustrated by sketches, narrative form, and/or

photographs (35mm or equivalent photographs, 3 x 5 prints or larger. Should the person requesting the survey refuse access, the surveyor shall note this situation and sign the statement.

_____ 10. Notation of unusual construction technique or method (i.e., sub-standard materials, excessive frame spacings, absence of footer or foundations, pre-fab or modular construction, inefficient guttering/downspouts).

_____ 11. A notation describing any portion of the structure not documented and explanation of why (e.g., non-accessible areas).

_____ 12. Signature of person conducting survey, name and address of person or firm conducting survey and a copy of insurance carrier document certifying that the person or firm is acceptable and qualified by the permittee to conduct the survey.

_____ 13. Photographs submitted with a survey <u>must be 3x5 prints or larger. Contact prints are allowable only if the survey contains a statement that full size (3x5 inch or larger) prints will be made available. Prints must be provided, upon request, to the DEP-OMR and for the owner/ resident who requested the survey at no cost</u>

when there is a questions regarding blasting damage. Also, provide the address and phone number (within the survey) to contact whenever full size prints are needed. Prints must be provided within 30 days of request receipt. Videos can be used as a supplement only.

_____ 14. Submit surveys to regional DEP office only.

PRE-BLAST SURVEY PROCESS

- PERMITTEE INFORMS OWNERS/RESIDENTS OF HOW TO REQUEST PRE-BLAST SURVEY

- OWNER/RESIDENT SENDS LETTER REQUESTING SURVEY TO DEP REGION OFFICE.

- REGION OFFICE ORDERS PERMITTEE TO CONDUCT REQUESTED SURVEY(S), AND REGION OFFICE NOTIFIES OWNER/RESIDENT THAT THEIR REQUEST FOR SURVEY HAS BEEN RECEIVED AND FORWARDED TO PERMITTEE.

- PERMITTEE COMPLETES SURVEY(S).

- PERMITTEE SUBMITS SURVEY(S) TO REGION OFFICE.

- REGION OFFICE STAMPS & LOGS SURVEY, AND FORWARDS TO HEADQUARTERS.

- HEADQUARTERS REVIEWS SURVEY, (CONTACTING PERMITTEE DIRECTLY FOR CORRECTIONS, IF NEEDED.)

- HEADQUARTERS NOTIFIES REGION OFFICE THAT SURVEY(S) IS ACCEPTED (USUALLY BY PHONE OR FAX). SURVEYS ARE SENT TO REGION OFFICE WITH HARD COPY OF ACCEPTANCE.

- REGION OFFICE NOTIFIES PERMITTEE THAT SURVEY(S) IS ACCEPTED.

- PERMITTEE PROVIDES COPY OF SURVEY TO OWNER/RESIDENT.

PRE-BLAST SURVEY LOG

Resident/Owner	Permit #	Company	Date Request Received	Date Notification Letter Sent	Date Company Response	Date Survey Received	Date Survey Sent to Nitro	Date Survey Accepted	Date Letter Sent to Company	Date Package Received

WV Division of Environmental Protection Office of Mining and Reclamation Inspection and Enforcement	Series: 6 Pg. No: 1 of 1 Effective: 12/00

SUBJECT: Blasting Damage Claims

1. Purpose: Establish procedure for referring blasting damage claims to the Office of Explosives and Blasting

2. Definitions: Claim of Damage Caused by Blasting activities conducted pursuant to a permit granted under 22-3-1-et seq.

3. Legal Authority: 22-3A-5

4. Policy/Procedures:

Due to the enactment of Chapter 22, Article 3A of the West Virginia Code, the Office of Explosives and Blasting (OEB) has the duty and authority to address claims of alleged blasting damage caused by blasting from coal mining operations.

Therefore, upon receiving a blasting complaint, the assigned inspector will begin the investigation by reviewing the appropriate blasting logs and seismograph readings (if any) to determine if the permittee is in compliance with the Law, Regulations, and permit conditions. When this process is complete, the inspector will notify the complainant that a violation was issued or that the blast(s) and blast records are in compliance. The inspector will also notify the complainant that the damage claim is being referred to the OEB. The OEB will continue the investigation to determine if there is merit to the damage claim and assist the complainant in filing the claim per Article 3A.

The local inspector should continue to complete and distribute an MR-35 and indicate on it that the damage claim has been referred to the OEB and terminate the complaint investigation.

Note: Implementation of this procedure will preclude the need for copies of pre-blast surveys to be kept in the regional office. Please forward any new ones received in the region to the Office of Blasting & Explosives.

SECTION 7

POST MINING LAND USE

SECTION 8

FISH AND WILDLIFE CONSIDERATIONS

SECTION 9

REVEGETATION

Subject: Municipal Waste Sewage Sludge as Soil Amendment on Mined Lands

1. Purpose: To establish procedures for allowing sewage sludge to be placed on mine sites.

2. Definitions:

3. Legal Authority: 38-2-9.2(i)(1)

4. Policy/Procedures: No sewage sludge disposal is allowed on any mining operation unless the permittee submits and obtains approval of a permit revision from the Office of Mining and Reclamation and the producing facility is permitted by the Office of Water Resources. The revision application for sludge disposal must contain a copy of a permit and approved sludge disposal plan issued by the Division of Environmental Protection, Office of Water Resources. The revision required for sludge use as a soil amendment or additive will be in the form of a non-significant revision to the revegetation plan.

The following procedures shall apply to non-significant permit revisions for use of sewage sludge:

1. Each request for a permit revision will be submitted on forms prescribed by the Director, signed by an accountable official of the applicant and notarized.

2. The applicant shall submit five (5) copies of the revision proposal.

3. A map must be submitted which shows all of the original permit area and the area proposed for sludge disposal/use.

4. Maps must be signed by the inspector, if he/she recommends approval. The revision must also be reviewed by the permit review team.

5. The applicant must submit a cover letter describing the type and purpose of the proposed revision.

6. The revision package must include a copy of the approval issued by the Office of Water Resources for land application project, i.e. sewage sludge disposal.

7. The information submitted must include the sewage sludge application rate as approved by the Office of Water Resources, and copies of all analyses of the sewage sludge as required by the Office of Water Resources.

8. The final decision to approve or deny the permit revision will be made by the Division of Environmental Protection regional permit supervisor in consultation with the I & E supervisor.

WV Division of Environmental Protection Office of Mining and Reclamation Inspection and Enforcement	Series: 9 Page 1 of 1 Effective: 1-93

Subject: Final Planting Plan MR-8

1. Purpose: Procedures for filing a final planting plan report.

2. Definition:

3. Legal Authority/Reference: 38-2-9.3(b)

4. Policy/Procedure:

   A. Operator submits MR-8 to inspector
   B. Inspector reviews MR-8 and vegetation for compliance.
   C. Inspector submits MR-8 to the Bond Release Specialist for approval.

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Inspection and Enforcement	Revised: 12-00

Subject: Spring and Fall Seeding Deadlines

1. Purpose: To establish deadlines for completion of required seeding of regraded areas in the apppropriate seasons.

2. Definitions:

3. Legal Authority/Reference: 22-3-13(b); 38-2-9.3(c) & 38-2-14.15(e)

4. Policy/Procedure: The spring seeding deadline is May 15th of each year except that seedlings must be planted prior to April 1. The fall seeding deadline is October 15th of each year.

Inspectors should notify permittee of the spring and fall deadlines at least 60 days prior to these deadlines on an MR-6.

Extensions of seeding deadlines may be granted by the I & E Supervisor based upon weather conditions.

WV Division of Environmental Protection Office of Mining and Reclamation Inspection and Enforcement	Series: 9 Page 1 of 1 Effective: 2-95

Subject: Revegetation

1. Purpose: Define when trees must be planted

2. Definitions: N/A

3. Legal Authority: 22-3-13(b)(19); 38-2-9.1

4. Policy/Procedures:

Due to the unspecific nature of the revegetation section of the regulations as it relates to when trees are to be planted, the following policy will immediately be placed into effect.

Trees must be planted during the first appropriate planting season after completion of backfilling and regrading. (For most tree species this will be spring)

Trees must be alive and healthy when the permit area is evaluated for Phase II release.

If trees have to be restocked after Phase II release has been approved, the applicable time frames from 38-2-9.3 (g)(h) will apply.

SECTION 10

PRIME FARMLANDS

SECTION 11

INSURANCE AND BONDING

SUBJECT: Delinquent Insurance

1. Purpose: Establishes procedures where insurance has expired.

2. Definitions:

3. Legal Authority: 22-3-8(2)

4. Policy/Procedures: When an inspector becomes aware of expired insurance, an immediate Notice of Violation with cessation of mining activities must be issued for expired insurance.

   When an Inspector finds that a company has not submitted proof of insurance, a Notice of Violation must be issued. Time to submit proof should be very short (5 to 10 days). If the company fails to comply, a FTA Cessation Order should be issued.

   It is incumbent on the EI to monitor the abatement progress to include checking with the Nitro Office to ascertain if the insurance renewal has been received at that office.

SECTION 12

REPLACEMENT, RELEASE, AND FORFEITURE OF BONDS

SUBJECT: Final/Progress Maps - Color Codes

1. **Purpose:** This policy is to clarify the color codes required for final and progress maps.

2. **Definitions:** Progress maps - for the purpose of this policy, progress maps are to include inactive status maps, maps under Section 15(f) of the Code, modification maps, IBR maps, and renewal maps.

3. **Legal Authority:** 22-3-15(f); 38-2-3.4(c)

4. **Policy/Procedures:** The following color codes are to be used in the preparation of progress and final maps:

Yellow	-	shall indicate area to be disturbed
Red	-	shall indicate mineral to be removed
Blue	-	shall indicate water and drainage patterns
Green	-	shall indicate areas regraded
Purple	-	shall indicate adjacent mining permits
Red Outline	-	shall indicate areas disturbed outside of permit boundary (inside yellow if still disturbed, green if regraded)
Orange	-	shall indicate limits of augering
Brown	-	shall indicate DMM-12 (Special Use) areas

Note: Cross-hatching of color coded areas may be necessary on progress maps to indicate areas which have been disturbed and not yet reclaimed.

SUBJECT: Special Use Form for Leaving Water Retention Structures

1. **Purpose:** To establish procedures for leaving water retention structures in place at the landowners request.

2. **Definitions:**

3. **Legal Authority:** 22-3-23(c)(3); 38-2-5.5

4. **Policy/Procedures:** A form MR-12 shall be completed for water retention structures to be left in place for the landowner's use. A MR-12 for these structures shall meet all of the requirements outlined in 38-2-5.5.

SUBJECT: Public Hearings on Bond Releases

1. **Purpose:** To aid inspector specialists/supervisors in conducting public hearings for protested bond releases.

2. **Definitions:** Informal conference and public hearing mean the same thing.

3. **Legal Authority:** 22-3-23; 38-2-12.2(a)

4. **Policy/Procedures:** Attached are sample forms to be used for bond release hearings requested by the public.

   Section 23 of the Code and 12.2(e) of the regulations should be reviewed concerning further hearing procedures and requirements.

NOTICE OF PUBLIC HEARING

The West Virginia Division of Environmental Protection will hold a Public Hearing on _____ at _____(a.m.-p.m.) to be located at _____ _____ for the purpose of allowing comments from those persons having a valid legal interest which is, or may be adversely affected by the BOND RELEASE for a Phase _____ Bond Release of approximately _____acres of disturbance by _____ in _____ District of _____ County.

REFERENCE: Permit #_____.

This meeting is being held in accordance with Chapter 22, Article 3, Section 23(f) of the Code of West Virginia.

REQUEST FOR COPY OF INFORMAL CONFERENCE-TAPE

Please send me _____ copies of the tape recording of the following informal conference:

SMA NO._____DATE OF CONFERENCE:_____

COMPANY NAME:_____

LOCATION:_____WEST VIRGINIA

Number of Cassettes Per Conference:_____--$5.00 each

Number of Copies Requested:_____--$_____

Total Payment Enclosed:--$_____

PAYMENT MUST BE BY: Certified Check No.:_____

Cashier's Check No.:_____

Money Order No.:_____

NOTE: Make Payable to: Director, Division of Environmental Protection

Mail Request and Money to the appropriate DEP Regional Office

NAME: _____

ADDRESS: _____

_____

Informal Conference for Bond Release

Good Evening, I am _____, a _____(TITLE) for the West Virginia Division of Environmental Protection and have been appointed by the Director to preside over this informal conference.

This conference has been requested by _____ in reference to the Phase ____ Bond Release on Permit _____ assigned to _____.

Only those persons who have previously shown an interest which may be adversely affected by the release of the bond on this permit and representatives of the company will take part in the conference.

The following rules shall apply during this conference.

1. Please state your name, and who you represent. If you are a spokesman for a group or company, the Director needs to know who is making a statement when reviewing these tapes.

2. Please do not interrupt a speaker during his statement. You will be allowed to rebut anything you disagree with.

3. Please remember, none of the employees of The Division of Environmental Protection here tonight will take part in anyway in this conference except myself, and I will only see to it that the conference proceeds in an orderly fashion.

4. Any gross violations of these rules or any special procedural rules which we agreed to before the opening of this hearing will cause the conference to be concluded.

As previously agreed, _____ will now open the conference.

Closing Statement

I thank you all for taking part in this conference These tapes will be forwarded to the Director and he will make his decision on the application for bond release within 30 days. The company and those persons who requested the hearing will be notified of his decision by mail. Anyone wishing a copy of the hearing tape(s), may purchase these from the Division of Environmental Protection, #10 McJunkin Road, Nitro, WV 25143 in the amount of $5.00 pre-paid by certified check or money order payble to the Division.
Thank you and goodnight.

SUBJECT: Bond Release Notification of Surface Owners

1. **Purpose:** To provide for notification of surface owners of their right to participate in bond release inspections.

2. **Definitions:**

3. **Legal Authority:** 22-3-23; 38-2-12.2.b.1; 38-2-18.2

4. **Policy/Procedures:** When a request for a bond release is received, the specialist shall notify the surface owners by regular mail of their right to participate in an on-site inspection. The surface owner must submit a written request to the specialist if he desires to participate in the inspection.

   Note: Refer to sample on next page.

Date

Landowner's Name
Address

Re: Permittee
Permit No.

Dear

This letter is to advise you that the above referenced company has applied for (Type of Release) of the reclamation bond associated with the above referenced permit. As the surface owner, agent, or lessee, you have the right to participate in making the bond release inspection.

You may request your participation during this inspection by furnishing a signed written statement (or an oral request followed by a signed written statement) within fifteen (15) days of receipt of this notice.

Your request can be made by writing to the above address or call at (304)000-0000.

Sincerely,

Specialist's Name

SUBJECT: Release Procedure Change

1. Purpose: Release Procedure for Permits that are Chemically Treating Water

2. Definitions: n/a

3. Legal Authority: 38-2-12.2(e)

4. Policy/Procedure:

For facilities that are chemically treating water for neutralization and/or metals removal, continue to follow normal PhaseI release procedures.

If the operation meets all standards for Phase I release, the MR-7a will show zero (0) dollars released/reduced.

The inspector (once the paperwork has been completed and approved) will show the status of the permit as "RC" (Released-Chemically Treating Water).

It will be at the inspector supervisor's discretion whether to allow reduced inspections or not. The minimum frequency is one (1) complete per quarter.

SUBJECT: Surety Reclamation Agreements

1. Purpose: To outline the process on how a Surety Reclamation Agreement is entered into.

2. Definitions: A surety may explore its option of either remitting payment on a forfeited bond of a revoked permit or complete the reclamation requirements as set forth the WVSCMRA. The surety must demonstrate its ability to perform reclamation in accordance with the reclamation plan to the satisfaction of the Director, prior to the agreement becoming effective.

3. Legal Authority: 38-2-12.4.a.2.B

4. Policy/Procedures:

If a surety reclamation agreement is entered into, the following will apply:

1. The area encompassed by the agreement will be assigned for inspection purposes to the nearest available release specialist. The specialist will be responsible for quarterly inspections including completion of MR-6's unless more frequent inspections are necessary.

2. A permittee "ID" number will be assigned to the surety for inspection tracking purposes.

3. The issued permit number will continue to be used as an identifier. The status code in ERIN will indicate SA (Surety Agreement).

4. When completing a MR-6, put the surety's name in the space for permittee.

5. The bond activity screens in ERIN will indicate SA (Surety Agreement)

6. Issuance of Notices of Violation (NOV's), if necessary, shall be completed in the normal manner with the surety being listed as the responsible party (instead of former permittee).

SUBJECT: Roads/Water Retention Structures/Other Structures

1. Purpose: To leave roads and water retention structures and other structures for the benefit of the landowner.

2. Definitions: Surface Mining Operations

3. Legal Authority: 22-3-13, 38-2-5.5
22-3-23, 38-2-4.9

4. Policy/Procedures:

At the time of application for Phase II release, if a structure or road is to be left unreclaimed, an MR-12 form must be included with the release package.

The MR-12 will be revised to include this statement: "It is the permittee's responsibility to maintain this structure until final bond release".

If, during the time period between MR-12 approval and Phase III release the surface owner changes, the MR-12 is no longer valid and must be re-executed or the structure(s) must be reclaimed. If the landowner changes his mind between time of MR-12 approval and Phase III release, the WVDEP will consider that a property rights dispute and proceed as such.

This policy/procedure does not in any way prohibit a permittee from executing an MR-12 at Phase III (final) release. The proper time for MR-12 application is at Phase II release, but circumstances will arise that precludes this.

The approval path for MR-12's follows the same path as any other bond release application with the exception of permitting section involvement. After the appropriate inspector signs off, he delivers application to the permitting supervisor. Once the permit supervisor has signed off on the MR-12, the release package goes to the release specialist/supervisor for final disposition.

The MR-12's will no longer be recorded at the courthouse.

SUBJECT: Chemical Water Treatment

1. Purpose: To clarify the differences between "Passive", "Prevention", and "Remediation" as those terms relate to chemical water treatment

2. Definitions:

a) "Passive Treatment" includes, anoxic drains, limestone trenches, artificial wetlands and other systems designed to alleviate the need to actively add neutralizing agents to water in order to meet effluent limits.

b) "Prevention" in this context refers to approved selective materials handling,addition of alkaline material to pit floors, backfill, backstack and other areas to prevent the formation of acidic drainage.

c) "Remediation" means the active, on-going treatment of acid mine drainage in order to meet effluent limits.

3. Legal Authority: 22-3-2(c)(5), 22-3-3(a), 38-2-2.21 Policy/Procedures: 38-2-12.2.e,

Since the Office of Surface Mining did not approve the definition of chemical treatment (as it relates to passive treatment), the following guidelines shall be followed.

(A) Bond releases will not be approved on sites using passive treatment systems. (See definition of passive system)Exception: Phase 1 is approvable under provisions of 38-2-12.2.e.

(B) Bond releases will be granted on areas that utilized preventive measures to control acid formation and are meeting effluent limits without active chemical treatment of water.

(C) Bond releases will not be granted on areas that have remedial chemical water treatment in order to meet effluent limits. Exception: Phase 1 is approvable under provisions of 38-2-12.2.e.

This clarification in no way limits placement of limestone rip-rap in sediment ditches, diversion ditches, pond entrance/exit channels, etc...

The inspector along with the bond release specialist will have to utilize judgment and on-site experience to determine if an operation is routing poor or marginal quality water through a ditch rip-rapped with limestone to remedy the water quality problem or if the rip-rap is solely for erosion control.

This clarification also does not limit the utilization of limestone as a durable surfacing material for haulroads.

SUBJECT: MR-12's

1. Purpose: Clarification of submittal and routing of MR-12's.

2. Definitions: Special Use

3. Legal Authority: 38-2-4.9, 38-2-5.5

4. Policy/Procedures:

There are several scenarios that involve leaving roads and drainage structures in place after final bond release. This procedure describes the process and the approval routing for these situations.

Roads

1. If a road is proposed to be left [in the original permit application] an MR-12 Special Use Form is not required.

2. If the road(s) is(are) proposed to be left and the proposal is not in the permit application, an MR-12 Special Use Form needs to be executed. Submittal of the MR-12 is at the time of application for Phase I bond release and shall be made part of the Phase I application package.

3. If circumstances arise where the permittee wants to leave a road after a phase of release has been granted, the MR-12 will be submitted upon and included with the application for the next phase of bond release.

4. The road proposed to be left shall be shown on the final map as disturbed/unreclaimed acreage. The bond calculation will reflect this and 100% bond for this acreage will be maintained until final release.

Water Retention Structures

1. If a water retention structure is proposed to be left, an MR-12 form must be executed.

2. The size and configuration of the structure must be certified by an approved person which demonstrates that the structure meets current regulation requirements.

3. The MR-12 will be submitted as part of an application for Phase II bond release. The Phase II release application will be submitted to the local inspector and after the inspector signs off on the certification (MR-13) he/she forwards the total release application to the bond release unit.

GENERAL NOTE: It is the permittees' responsibility to maintain roads and water retention structures until final (Phase III) bond release is approved.

SUBJECT: Oil and Gas Wells on Permitted Areas

1. Purpose: Establish procedure allowing oil and gas operations on permitted areas

2. Definitions: Oil and Gas operations include, but are not limited to: oil well, gas well, pipelines, access roads, storage tanks, ancillary oil & gas facilities.

3. Legal Authority: 22-3-10, 38-2-7

4. Policy/Procedures:

Oil and gas activities may take place on reclaimed mining operations without additional liability to the permittee if the following procedure is followed:

1. For the areas to be utilized by the oil and gas operation, a post-mining land use change to "light" industry is submitted and approved.

2. A Phase I or Phase II bond release application is submitted and approved. When the release is processed, the areas shown on the map as oil and gas sites will have 100% of the bond released, thereby deleting them from the permit.

3. If the access road is part of the proposed oil and gas operation, a dual use letter signed by both parties allowing ingress & egress by the mining permittee.

SUBJECT: Bond Release Procedures

1. **Purpose:** Procedure for processing release applications.

2. **Definitions: N/A**

3. **Legal Authority:** 38-2-12.2

4. **Policy/Procedures:**

A. **PERMITTEE WILL:**

1. Submit 1 original and 4 copies of application for release (in binders) to Inspector or Bond Release Specialist.

2. Ensure that application is complete and accurate.

3. Ensure that all signatures on forms MR7, 8, 12, etc. are those of a principal officer of the corporation.

4. Provide a current list of the surface owners of the permitted area.

5. Ensure that proper water quality data is included as follows:

a. No bond release will be granted if, at the time of application, the water discharged from or affected by the operation requires chemical treatment in order to meet effluent limits. Upon reapplication for release, a 6-12 month history of untreated raw water data must be included.

b. A one year history of untreated raw water data must be included with Phase II application. (See guidelines for

cessation of water monitoring). Untreated raw water is to be monitored at such locations as, but not limited to, the following:

1.) Prior to entering drainage structure.

2.) At discharge from wet seal.

3.) Seeps along coal seam elevation.

4.) In stream locations above and below operation if no water is available from permit area.

c. Provide copies of previously approved MR- 12, 8 or 13 (for mine seals) if appropriate.

B. PERMIT RELEASE SPECIALIST WILL:

1. Log and track application.

2. Notify:

a.) OSM

b.) Landowners

c.) Permittee to begin advertisement (if not included with application).

d.) Permittee to begin collecting raw water data (form letter).

e.) Inspector

3. Complete and sign:

   a.) 7a, b, or c

   b.) Checklist for 7a, b or c

   c.) MR-8

4. Conduct technical review of application and on site evaluation of the reclamation work. Every effort will be made by the Release Specialist to coordinate the on site inspection with OSM, landowners, permittee, inspector, protesters and anyone else who has a valid interest in the release of the performance bond.

5. Take photos during site inspection if not included in application by inspector or applicant.

6. Conduct field analysis of raw water quality and collect lab samples if necessary.

7. Investigate and respond to all citizen or landowner protests concerning the bond release.

8. Forward application to Assistant Chief for signature with recommendation for approval or denial. Notify Supervisor.

   a.) If approval is recommended, simply forward 7a, b or c.

   b.) If denial is recommended, Specialist will prepare denial letter (in addition to 7a, b or c) and forward to Assistant Chief for signature.

   NOTE: All denial letters must give reason(s) for denial and recommended corrective actions and permittee right to appeal.

9. Be available for courtesy evaluations upon request (as scheduling will allow).

10. Distribute applications (after approval or denial) to appropriate personnel.

C. INSPECTOR WILL:

1. Conduct brief review of application for completeness (i.e. 5 copies in binders, advertisement, forms, water data, etc.).

2. Closely review final map and indicate approval by signing and dating all copies.

3. Complete and sign abbreviated checklist.

4. Forward any protest directly to Release Specialist with his comments if appropriate.

5. Forward application to Release Specialist when the review is complete.

SUBJECT: Removal of Sediment Control Structures

PURPOSE

The purpose of this guidance is to identify the procedure for removal of sediment control structures upon a drainage area meeting the definition of "reclamation area" per 40CFR434 for post mining areas (backfilling and grading complete, revegetation commenced) while ensuring preservation of the hydrologic balance and meeting applicable regulations pertaining to abandonment procedures of sediment control structures.

DISCUSSION

According to 38CSR2-14-7(d), "Where any discharge from the permit requires treatment during the mining operation in order to meet applicable effluent limitations, water monitoring of such discharges shall continue following grading approval. If it is established on the basis of such monitoring that the hydrologic balance is being preserved without treatment, the treatment facilities can be removed. A one (1) year history of meeting applicable effluent limitations shall be adequate to establish that the hydrologic balance is being preserved. "

Additionally, 38CSR2-5.4(h) *Abandonment Procedures*, states "abandonment and/or removal of sediment control or other water retention structures shall not occur within 2 years after the last augmented seeding nor less than 2 years before final bond release."

"Adequate treatment" is defined in Chapter 22, Article 3, Section 3 as "treatment of water by physical, chemical or other approved methods in a manner so that the treated water does not violate the effluent limitations or cause a violation of the water quality standards…"

38CSR2-2 further defines chemical treatment and sediment control structures as follows:

> *Chemical Treatment means the treatment of water from a surface coal mining operation using chemical reagents such as but not limited to sodium hydroxide, calcium carbonate, or anhydrous ammonia for the purpose of meeting applicable state and federal effluent limitations. Chemical treatment does not include passive treatment systems such as but not limited to limestone drains, wetlands, alkaline addition, application of fly ash, agricultural lime, or injection of fly ash, limestone, or other minerals into underground coal operations.*
>
> *Sediment Control or Other Water Retention Structure, Sediment Control or Other Water Retention System, or Sediment Pond means an impoundment designed, constructed, and maintained in accordance with this rule for the purpose of removing solids from water in order to meet applicable water quality standards or effluent limitations before the water is discharged into the receiving stream. Examples include wildlife ponds, settling basins, and all ponds and facilities or structures used for water treatment.*

Sediment control structures will be considered treatment facilities, requiring one year of monitoring to ensure the hydrologic balance, for the purpose of this policy. Chemical treatment can be removed at any point when no longer necessary. Diversion ditches/ conveyances used strictly for conveyance of surface runoff only are not considered sediment control structures for the purpose of this policy and therefore, not considered treatment. Diversions/conveyances, even if not designed for sediment control, should not be removed until appropriate raw water is sampled at the entrance to the sediment control structure(s).
Therefore, the procedures set forth in the following paragraphs shall be followed to determine data requirements to ensure preservation of the hydrologic balance prior to removal of a sediment control structure:

PROCEDURE

1. Permittee shall collect and submit the following data required to ensure preservation of the hydrologic balance to the inspector for review. ***Raw water shall be analyzed for all parameters on the approved NPDES permit.***

A. Outlets with sediment control structures – Provide one (1) year of raw water data, sampled prior to the sediment control structure, and submitted no sooner than two (2) years after the last augmented seeding. This raw water data is necessary to request removal of the sediment control structure or grant an MR-12 to allow a structure to remain in place after Phase III bond release. Provide corresponding discharge data for the raw water sampling.

B. On-bench outlets (precipitation-induced) are associated with sediment control structures designed to minimize solids. Therefore, the one (1) year raw water requirements apply to on-bench outlets as well. Provide one (1) year of raw water data, sampled when flow exists and document other sample dates as "no flow"; submit effluent data as confirmation of "no flow" conditions and inspector confirmation is required. If outlet does not flow, provide one (1) year of documentation demonstrating that no influent (raw water) flow occurred with confirmation from the inspector. **Samples of pooled raw water are not necessary.**

2. Assuming all raw water and effluent data meets effluent limitations (monthly average and daily maximum) and applicable water quality criterion for report only parameters, the required time frame of a minimum of two (2) years after the last augmented seeding has been completed, and the structure can be removed per the post-mining SWROA plan, permittee shall submit a "Request for Structure Removal" form to inspector for approval. The approved form will be submitted by the inspector with the subsequent MR-6 inspection form.

3. Permittee shall commence structure removal as soon as possible after approval from Environmental Inspector Supervisor is received.

4. Permittee shall notify inspector when removal is complete so inspector can document on MR-6 inspection form.

5. Once the sediment structure is removed, the permittee shall request deletion of the outlet on the associated NPDES permit through a modification or reissuance application.

MUST NOTE:

i. For wet seals, if sediment control structure is removed, then outlet must be relocated to the wet seal. This outlet and its associated monitoring requirements will remain until Phase III bond release.

ii. If multiple sources of flow exist into the structure(s), then individual inflow sources must be collected at the entrance of the sediment control structure. All observed sources of flow, i.e. valley fill toes, deep mine discharge seals, must be sampled individually at the point of flow origin, even if they have a common outlet. The sampling frequency is the same as set forth in the current NPDES permit and is parameter-specific. Therefore, if semi-monthly sampling is required at the associated outlet for a particular parameter, then the raw water sampling frequency is semi-monthly. If the outlet has a reduced monitoring frequency of quarterly, then the sampling frequency for raw water is quarterly.

<u>** A form for this policy has been created (MR-13R) you can find this form on our web page under DMR forms.</u>

SUBJECT: Guidance for Proceeding Through Post Mining Limits, Structure Removal, and Outlet Deletion

PURPOSE

The purpose ofthis guidance to provide a procedure for moving through the process of requesting post mining limitations, structure removal, and final deletion of an outlet.

PROCEDURE

Under 40 CR 434.ll(k), the fo!Jowing surface operations are classified as a Post Mining Area:

(J) A reclamation area, which is the surface area of a coal mine which has been returned to required contour and on which revegetation (specifically, seeding or planting) work has commenced.

STEP 1:

As stated in the "Post Mining Limits under 47 CSR 30" policy, when an outlet qualifies as a Post Mining Area, manganese effluent limitations can be reevaluated immediately. If the permit contains effluent limits for Manganese to protect a public water supply, then manganese effluent limitations must remain; otherwise, the manganese effluent limitations may be removed for any outlet that discharges for an area classified as a "reclamation area." Therefore, a modification to remove Mn limitations can be submitted for all applicable outlets immediately. Inspector should confirm that the defmition of "reclamation area" is met by evaluating whether backfilling and grading have been accomplished and revegetation has commenced according to the approved reclamation plan and corresponds with the approved grading profiles. Permittee must provide date(s) the drainage area(s) met the definition of "reclamation area" in the NPDES application.

NOTE: One raw water data sample may be requested by the NPDES Permit Writer to ensure protection of any downstream public water intakes, even if no WQBELs are currently applied to the permit (e.g. a permit just outside of the 5 mile zone of a public water supply).

STEP 2 (if applicable): Permittee should assess with WVDEP regional NPDES unit whether sufficient information and conditions exist to remove report only parameters from the monitoring requirements.

STEP 3: Accumulate required effluent data and coiJect appropriate raw water samples as required per "Post Mining Limits under 47 CSR 30" policy for all parameters on the permitted outlet, including report only (with the exception ofTDS, Specific Conductance and Sulfates). Sampling shall begin when area meets the definition of"reclamation area" per 40CFR434 for Post Mining Areas. Parameters sampled must match parameters on the NPDES permit at the time of sampling.

STEP 4: Submit modification to request post mining limitations and include required effluent and raw water data that you collected in STEP 3. Requests for post mining limitations can be parameter specific.

STEP 5: After approval of post mining limitations for all parameters on all outlets of a particular Article 3 permit is received, apply for Phase I release. Although not required, it is recommended that Phase I release be applied for after post-mining limitations have been received, where applicable.

STEP 6: Collect raw water data according to "Removal of Sediment Control Structures" in Series 12 of the Inspection and Enforcement handbook for remaining parameters on the NPDES permit after STEPS 1-4 have been completed. Although not required to go post-mining first, this will minimize raw water collection parameters to only those required by 40CFR434 for Post Mining Areas.

STEP 7: Provide data collected in STEP 6 to inspector and request permission to remove structure (at minimum two years after last augmented seeding and only if post-mining SWROA plan allows for removal of structure). Obtain approval form for structure removal. Inspector will document on MR-6.

STEP 8: As soon as possible after approval is received, remove sediment control structure in field. Inspector will document on MR-6.

STEP 9: Submit NPDES modification to delete outlets for which all treatment systems and the sediment control structure have been removed. (Refer to notes below for additional information.)

STEP 10: Proceed with request for Phase II release once the above steps have been completed and all vegetative requirements for Phase II release are met for the entire permit.

MUST NOTE:

1. If STEPS 6-8 have not been completed prior to request for Phase II release, then provide required information for STEP 5 in release applica6on.

11. For wet seals, if sediment control structure is removed, then outlet must be relocated to the wet seaL This outlet and its associated monitoring requirements will remain until Phase III release.

111. Post-mining limitations are not applicable to quarry operations. Preservation of the hydrologic balance requires raw water for all parameters on the applicable NPDES permit with effluent limitations or those parameters with monitoring only requirements for which there is an applicable water quality criterion.

Harold Ward, Acting Director,
October 16, 2014
Prepared by: P. Drooger 10/16/2014

SECTION 13

PROSPECTING

SUBJECT: General Procedures for Prospecting

1. Purpose: Clarification of procedures governing prospecting.

2. Definition:

3. Legal Authority/Reference: 22-3-7; 38-2-13

4. Policy Procedures:

A. A Notice of Intent to Prospect is intended for operations determining the location, quality, and quantity of a natural coal deposit or conducting feasability studies. They are not small surface mining permits.

B. A Notice of Intent to Prospect is required whenever excavation equipment is used to determine the location or nature of a natural coal deposit, abandoned refuse for possible reprocessing, to include new roads which are constructed or upgraded for drilling operations.

C. A Notice of Intent to Prospect (NIP) for less than 250 tons must be inspected quarterly and NIP greater than 250 tons must be inspected monthly. However, upon reclamation of the site, the approval may be inspected quarterly.

D. All prospecting disturbance is to be regraded to A.O.C. within 3 months of initial disturbance, unless an SMA number has been issued. However, reclamation of a prospect site cannot be delayed more than one (1) year after the receipt of an SMA number. All stream crossings should be removed and stream beds returned to original configuration.

E. All boreholes should be filled immediately as per

F. All distrurbance must be seeded and mulched in accordance with the pre-plan as soon as possible.

G. Drilling for the purposes of overburden analysis or stability analysis will require a Notice of Intent to Prospect when substantial disturbance is anticipated.

WV Division of Environmental Protection Office of Mining and Reclamation Inspection and Enforcement	Series: 13 Pg. No: 1 of 1 Revised: 2-98

SUBJECT: Blasting on Prospecting Approvals

1. Purpose: Clarification of blasting requirements on prospecting approvals.

2. Definitions:

3. Legal Authority: 22-3-7; 38-2-13.4(c), & 38-2-13.5(b)

4. Policy/Procedures: Blasting is prohibited on prospecting operations unless they are addressed in the proposed prospecting application. If approved, all blasting must comply with section 38-2-6 of the rules and regulations.

   If blasting is required after a prospecting approval has been issued without a blasting plan, then a new prospecting application must be submitted which includes all the requirements of Section 38-2-6.

WV Division of Environmental Protection Office of Mining and Reclamation Inspection and Enforcement	Series: 13 Pg. No: 1 of 1 Revised:2-98

SUBJECT: Map Requirements for Notices of Intent to Prospect

1. Purpose: Requirements of map locations for drill holes and excavations.

2. Definitions: N/A

3. Legal Authority: 22-3-7, 38-2-13.1(a), 13.2(c), 13.3

4. Policy/Procedures: The location of drill holes and excavations on maps are required to be an appropriate location. Meaning that a reasonable variance in actual location of a drill hole or outcrop excavation from the proposed location will not constitute a violation.

SECTION 14

PERFORMANCE STANDARDS

ALL OPERATIONS

SUBJECT: Removal of Organic Material from Fill Foundations

1. **Purpose:** Clarify Removal of Organic Material

2. **Definitions:**

3. **Legal Authority:**
38-2-14.14(d)(2)
38-2-14.14(e)(8)
38-2-14.14(f)(5)
38-2-14.14(g)(6)
22-3-13(b)(22)(B)
22-3-10(a)(14)

4. **Policy/Procedures:**

As you are aware, there has been controversy regarding the clearing and grubbing of organic material from fill areas prior to construction. The two issues involved are (1) the removal of tree stumps and their accompanying root balls, and (2) the removal of secondary growth where the fill area has been previously cleared and grubbed.

The West Virginia Code at 22-3-13(b)(22)(B) requires the removal of organic material immediately prior to excess spoil placement. The state regulations at CSR 38-2-14.14 specify the requirements for removal of organic materials for various types of fills as follows:

14.14(d)(2) - Fills on existing benches.
14.14(e)(8) - Conventional valley fills.
14.13(f)(5) - Side hill fills.
14.14(g)(6) - Durable rock fills.

The subject regulations for each specific type of fill require that fill areas be progressively cleared of trees, shrubs, and other organic material. The removal of tree stumps and accompanying root balls, and removal of secondary growth, is not specifically addressed. After lengthy negotiations with the federal Office of Surface Mining, it was agreed that:

1. Except in the case of conventional valley fills (see limit in 14.14(e)(8), the fill area may be cleared and grubbed of all tress, brush, and other organic material at ground level in a one step operation if the operator so desires; however, secondary growth must be progressively removed during fill construction.

   Tree stumps and accompanying root balls must be removed from critical foundation areas prior to excess spoil placement. Critical foundation areas are those areas of the fill foundation, which, according to prudent engineering practice, are critical to fill stability and integrity. These areas include at a minimum the area underlying the toe of the fill, and any area where a constructed underdrain is to be placed. See the discussion for further detail.

2. The fill area may be progressively cleared and grubbed of trees, brush, and other organic material during fill construction with tree stumps and accompanying root balls removed from critical foundation areas as defined above.

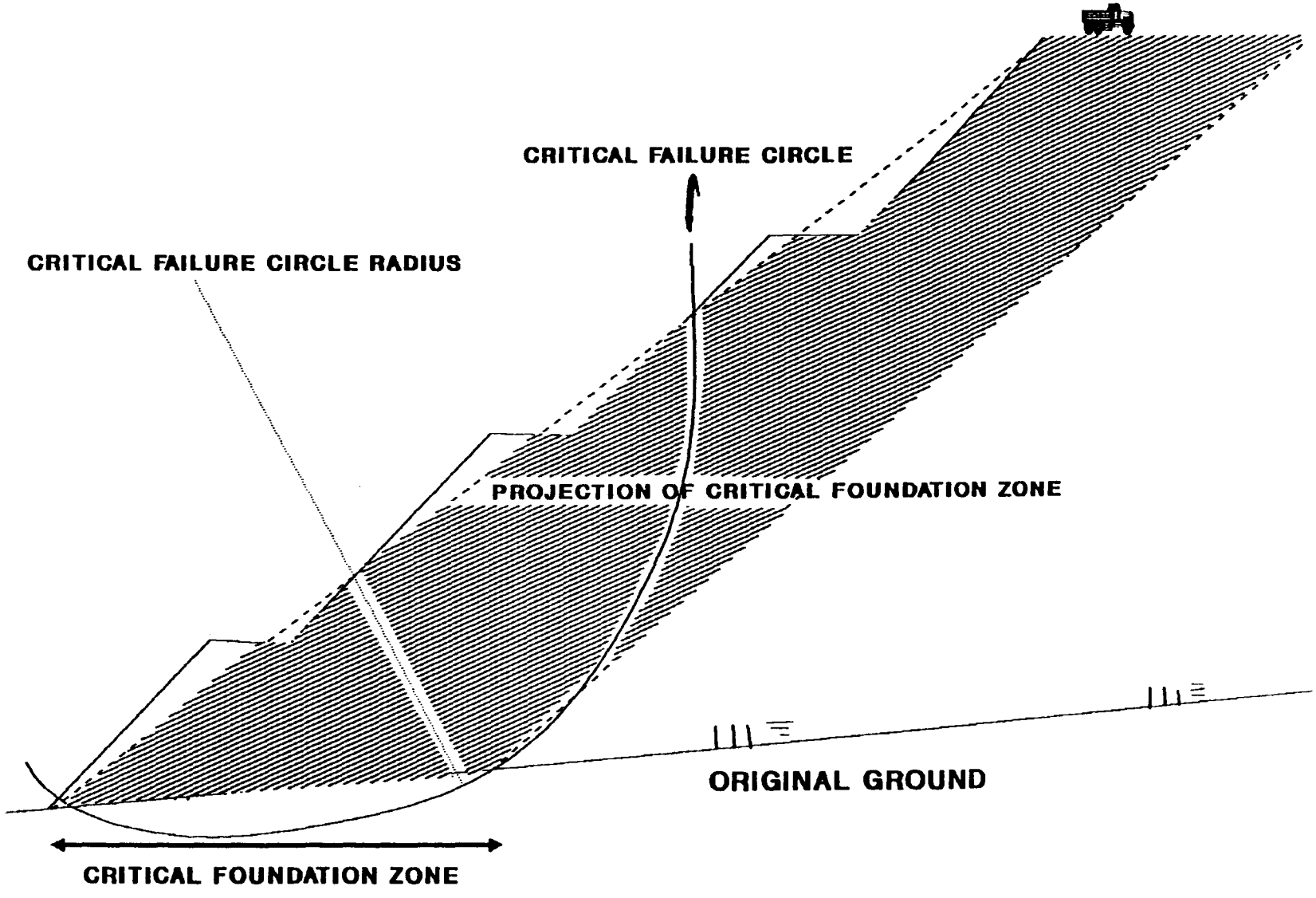
For fills currently under construction, the inspector must during regular inspections assure that original growth, secondary growth, or organic materials are being progressively removed and that tree stumps and root balls are removed from critical foundation areas prior to spoil placement. If (as is likely to be the case) the limits of the critical zones are not defined, the permittee should be directed, via a comment on the inspection report, to file an engineer's report, within 30 days, defining the critical zone(s) limits. The same requirement should be applied to permitted but not started fills. For any new permit application, the engineer's plan and specifications must define the critical zone limits for each excess spoil disposal fill.

If an applicant or permittee objects to the need to have a qualified registered professional engineer define the critical zone limits, they should be informed of the alternative, which is to grub stumps and root balls from the entire fill area. This was the OSM position prior to our negotiation of the critical zone concept.

As a rule of thumb, the critical zone limit at the toe of the fill should be considered to include the total area of the foundation that is encompassed within the slip circle or wedge defined by the minimum factor of safety analysis for deep-seated failure. Along the fll abutments, the critical zone limits will be defined by a plane parallel to the overall face angle of the proposed fill, and passing through the upstream limit of the critical slip circle (or wedge). (See attached sketch for example).

If you have any questions regarding this matter, contact the Managers of Inspection and Enforcement and Permitting for further guidance.

REPRESENTATION OF THE CRITICAL ZONE LIMITS



WV Division of Environmental Protection Office of Mining and Reclamation Inspection and Enforcement	Series: 14 Pg. No: 1 of 1 Revised: 8-95

SUBJECT: Water Rights and Replacement

1. Purpose: Define time periods as they relate to water rights and replacement.

2. Definitions:

3. Legal Authority: 22-3-24

4. Policy/Procedures: Upon receipt of notification that a water supply was adversely affected by mining, the permittee shall provide drinking water to the user within twenty-four (24) hours.

Within seventy two (72) hours, the permittee shall have the user hooked up to a temporary water supply. The temporary supply shall be hooked up to existing plumbing, if any, to allow the user to conduct all normal activities associated with domestic water use. This includes drinking, cooking, bathing, washing, non commercial farming, and gardening.

Within thirty (30) days of notification, the permittee shall begin activities to establish a permanent water supply or submit a proposal to the WVDEP outlining the measures and timetables to be utilized in establishing a permanent supply. The total elapsed time from notification to permanent supply hook-up cannot exceed two (2) years.

The permittee is responsible for payment of operation and maintenance costs on a replacement water supply in excess of reasonable and customary delivery costs that the user incurred.

Upon agreement by the permittee and the user (owner), the obligation to pay such operation and maintenance costs may be satisfied by a one-time lump sum amount agreed to by the permittee and the water supply user (owner).

	U. S. DEPARTMENT OF THE INTERIOR OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT DIRECTIVES SYSTEM	Subject Number: REG-27 Transmittal Number: 474 Date: 10/19/88

Subject: Water Replacement

Approval: [signature] Title: Deputy Director

1. PURPOSE. The purpose of this directive is to provide guidance for (1) implementing the water supply replacement requirement of section 717(b) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) where OSMRE is the regulatory authority and (2) evaluating water supply replacement provisions of approved State regulatory programs.

2. DEFINITIONS. None.

3. POLICY/PROCEDURES.

a. Background. Section 717(b) of SMCRA requires that a person who conducts surface mining activities "shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution, or interruption proximately resulting from such surface coal mine operation." The permanent program regulations at 30 CFR 816.41(h) incorporate these requirements and also contain the statement that baseline hydrologic information required in 30 CFR 780.21 and 780.22 shall be used to determine the extent of the impact of mining upon surface water and groundwater.

In promulgating the permanent program regulations, OSMRE established a policy framework within which water supply replacement is to occur. This directive clarifies OSMRE's published policy on water supply replacement.

In the preamble to the final 1979 permanent program regulations on water replacement (44 FR 15175, March 13, 1979), OSMRE articulated three concepts in response to comments on the proposed rules. The first is that SMCRA requires replacement, not compensation, for water loss. The second is that under the normal rules of administrative law, the initial burden of production and proof rests with the party asserting that a water supply has been adversely affected. Third, OSMRE stated that SMCRA requires replacement of the water supply in all instances and that the landowner cannot waive replacement, since such a waiver would not provide adequate protection for present lessees or for future owners of the property involved.

In 1983 OSMRE added the requirement at 30 CFR 816.41(h) that baseline hydrologic information required in 30 CFR 780.21 and 780.22 (permit application contents) shall be used to determine the extent of the impact of mining upon surface water and groundwater (48 FR 43980, September 26, 1983). The preamble language clarified that the alternative water supply must be capable of restoring the water user's supply that was lost due to

surface mining impacts. OSMRE also stated that the water supply replacement requirement is tied to pre-existing uses and not to the postmining land use. OSMRE affirmed that water replacement rights operate in accordance with State water law and that the requirements of SMCRA do not change these rights except for requiring operators of surface coal mines to replace affected water supplies. Furthermore, since SMCRA requires a use be a "legitimate" use before it can qualify for replacement, OSMRE stated that any use that would be in violation of State water rights would not be a "legitimate" use.

In the preamble to the final 1979 rules on determination of bond amount (currently found at 30 CFR 800.14), OSMRE established a policy that has important implications for water replacement. Concerning situations where the unplanned consequences of mining, such as the need to abate groundwater pollution, may result in an increase in the cost of reclamation, OSMRE pointed out that the regulatory authority is authorized to impose additional bond liability in order to ensure adequate funding to complete the required abatement work (44 FR 15111, March 13, 1979). Although this preamble statement does not explicitly refer to water supply replacement, mining-related groundwater pollution is one of the primary causes of water supply problems. The implications for water supply replacement are that the unanticipated costs of replacing a water supply authorizes an increase in the bond amount.

b. Policy/Procedures. OSMRE's policy in cases where there has been contamination, diminution, or interruption of a water supply proximately resulting from surface coal mining operations is to assure water replacement equivalent in terms of quality, quantity, and duration to the supply developed for the premining use. Release of bond liability sufficient to cover the cost of water supply replacement shall not occur until OSMRE is satisfied that there is a contract between the permittee and the landowner enforceable under State laws that provides for ongoing water replacement sufficient to allow the premining use to continue without restrictions or limitations for a duration comparable to the duration expected where no mining had occurred.

(1) Quality of Replacement Water Supplies.

(a) A replacement source is acceptable in terms of water quality if the water quality of the replacement supply does not restrict or limit the premining use.

(b) In accordance with 30 CFR 816.41(h), baseline data contained in the permit shall be used to determine impacts of mining upon surface water and groundwater. In addition to the hydrologic and geologic information contained in the permit application pursuant to 30 CFR 780.21-22, the regulatory authority may also use information concerning the location and depth of water wells in the permit area and adjacent area (30 CFR 779.25(a)(10)) and information contained in preblasting surveys (30 CFR 816.62) to identify and characterize premining water supplies.

If no baseline data for the particular affected water supply exists or if inadequate data exists, then the acceptability of the replacement water supply shall be judged in comparison to water supplies put to the same premining use in the immediate surrounding area. If no such supplies exist, then the premining use shall be classified and the replacement supply compared to the state water quality standards for the appropriate use classification. If no applicable state water quality standards exist, then the replacement may be compared to applicable Federal standards, such as those established pursuant to the Safe Drinking Water Act of 1974.

(c) To the extent the permit information is insufficient, the burden of proof is with the party making the assertion that the water supply has been adversely affected. An affected party has the right to request a Federal inspection pursuant to 30 CFR 842.12.

(d) Replacement water may be treated to achieve the required quality.

(2) Quantity and Duration of Replacement Water Supplies. A replacement source is acceptable in terms of water quantity if the quantity supplied shall not restrict or limit the premining use for a duration comparable to the duration expected where no mining had occurred.

(3) Cost of Replacement Water Supplies.

(a) The permittee shall pay the capital costs of installing a replacement water supply. If the use of well water can continue, a permittee shall pay the cost of designing, drilling, and completing a new or deeper well; purchasing and installing a pump; or purchasing and/or installing a treatment system, as necessary. If the replacement water supply involves a hook up to a water supply system, the permittee shall pay the hook-up costs, including fees, purchase of equipment and supplies, and construction.

(b) If a permittee provided or was ordered to provide a temporary water supply before the replacement water supply is provided, the permittee shall pay the cost of providing the temporary water supply.

(c) Operation and maintenance costs associated with the replacement water supply shall be borne by the landowner, unless such costs are higher than those associated with the premining supply. In such cases, the permittee shall make provision to offset the increased costs.

(4) Bond Release. Bond cannot be released until an agreement is in place delineating the responsibilities of the permittee in the period following bond release. The regulatory authority has jurisdiction over replacement requirements only until final bond release. Subsequently, an agreement between the permittee and the landowner is controlling and is subject to applicable State or common law.

SUBJECT: Termination for surface water monitoring

1. Purpose: Define procedure for termination of surface water monitoring.

2. Definitions: The West Virginia Surface Mining Reclamation Regulations at 38-2-14.7(a) provide for the termination of surface water monitoring as it relates to the Surface Mining Permit. 38-2-14.7(a) states: Monitoring shall continue until bond release unless the operator demonstrates that continued monitoring is unnecessary to achieve the purpose of the monitoring plan.

3. Legal Authority: C.S.R. 38-2-14.7(a)

4. Policy/Procedures:

Procedure to review requests to terminate surface water monitoring is as follows:

1. The request should be processed as an insignificant permit revision;

2. For surface extraction mining operations, the permit and/or area of the permit associated with the request should meet the vegetation requirements of Phase II release. The request shall contain the following information:

   * One year of raw water data for the area after backfilling has occurred;

   * Surface water monitoring data for the requested area;

   * Comparison of the pre and post mining data to document the impacts of the operation; and

* Documentation that the operation does not require chemical treatment to meet effluent limits.

3. For underground mining operation, the permit and/or area of the permit associated with the request should have been active for at least five (5) years. The request shall contain the following information:

   * One year of raw water data for the area;

   * Surface water monitoring data for the requested area;

   * Comparison of the pre and during mining data to document the impacts of the operations; and

   * Documentation that the operation does not require chemical treatment to meet effluent limits.

The State can order resumption of the water monitoring program upon notice if the operation begins to chemically treat water and/or is adversely impacting the area.

SUBJECT: Perimeter Markers

1. Purpose: Standards for placement of perimeter markers

2. Definitions: N/A

3. Legal Authority: C.S.R. 38-2-14.1(b)

4. Policy/Procedures: Perimeter markers shall be established and located on the proposal maps (and located accordingly on the ground) in such a manner so as to define the beginning and end points of the permit. Such markers must be durable and have the permit number affixed. Perimeter markers must remain in place until Phase III bond release is approved.

   The boundaries of the permit must be clearly marked at a maximum of 500' intervals with other suitable markers which can consist of but not be limited to engineering tape, flagging or other easily identifiable markings. These additional markers do not need to be identified or located on the proposal map. These markers are not required for haulage or access roads or off-site drainage systems. Boundary markers must remain in place until active mining is complete and regrading is accomplished to acceptable Phase I standards for any particular permit segment. Phase I release approval is not necessary to discontinue maintainance of boundary markers.

   It should also be emphasized that 14.1(b) requires all markers to be in place prior to initial disturbance. All markers must remain in place until Phase I bond release is approved. Perimeter markers must remain in place until Phase III bond release is aproved.

   As per the September 1993 agreement with OSM, boundary markers are not required on certified haulroads, off site drainage structures, and permits which are eligible for grade release.

WV Division of Environmental Protection Office of Mining and Reclamation Inspection and Enforcement	Series: 14 Pg. No: 1 of 2 Effective: 11-92

SUBJECT: Durable Rock Fills

1. Purpose: Clarification of Wing Dumping

2. Definitions: n/a

3. Legal Authority/Reference: 38-2-14.14(g)(7)

4. Policy/Procedure: The West Virginia Surface Mining Reclamation Regulations at 38-2-14.14(g)(7) for durable rock fils, state in part that "the undergrain system may be constructed simultaneously with excess spoil placement by the natural segregation of dumped materials". This construction method results in the larger dumped rocks settling on the bottom of the valley floor to form an adequate underdrain.

It has been observed, during recent field visits, that a few durable rock fills were being constructed using multiple side dumping points which were located well ahead of the developing toe. However, this construction method, also known as "wing dumping", can create several types of problems.

Excessive side dumping of spoil creates increased disturbed area within the limits of the fill that results in an increased sediment load upon the sediment control structure. Additionally, when conditions arise which dictate that a durable rock fill cannot be costructed to meet its original design capacity, any spoil which had been previously side dumped ahead of the developing toe would then have to be rehandled and placed within the confines of the fill. Thus, this practice can result in environmental problems and unnecessary additional disturbance.

Therefore, for durable rock fills, it shall be the policy of this agency to limit side dumping or "wing dumping" of spoil to a distance not to exceed 300 feet downstream from the developing toe, as measured horizontally. The developing toe shall be defined as that

area which is clearly being formed by the dumping of materials from points located near the center of the hollow. Please ensure that all current operations are brought into compliance with this policy and that all future permitted durable rock fill designes incorporate construction plans which do not exceed this limit.

DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION
10 McJunkin Road
Nitro, WV 25143-2506

Gaston Caperton
Governor

John M. Ranson
Cabinet Secretary

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

M E M O R A N D U M

TO: All I & E and Permitting Supervisors

FROM: David C. Callaghan, Director

DATE: March 23, 1993

RE: Excess Spoil Disposal Fill Designs

The West Virginia Surface Mining Reclamation Regulations require that, for excess spoil disposal fills, all runoff from areas above and adjacent to the fill shall not be allowed to flow onto the fill surface, and shall be diverted into stabilized diversion channels, designed and constructed to safely pass the peak runoff from a 100-year, 24-hour precipitation event. These diversion channels are also known as "groin ditches" or "perimeter ditches".

Prior to the inclusion of this language on June 1, 1991, the Regulations allowed for the runoff from areas above and adjacent to the fill to flow through a surface center channel designed to safely pass the runoff from the precipitation event. Many of these types of designed excess spoil disposal fills were permitted and successfully constructed prior to the 1991 regulatory change.

However, confusion has arisen of late regarding the need to redesign those uncompleted excess spoil disposal fills with an approved surface center channel design, to meet the current regulatory requirements for perimeter ditches. The following guidelines shall be used in making this determination.

* If an excess spoil disposal fill was designed with a surface center channel for the conveyance of drainage from areas above and adjacent to the fill and was approved prior to June 1, 1991, it will not be required to be redesigned to include perimeter ditches.

* If this same type of designed excess spoil disposal fill with a surface center channel was approved on or after June 1, 1991, it shall be considered as approved in error and must be redesigned to meet the current regulatory requirements, to include perimeter ditches.

* If an excess spoil disposal fill with a constructed surface center channel for the conveyance of all upland drainage is determined to be exhibiting stability problems or creating environmental problems as a direct result of the design, a redesign and reconstruction to include perimeter ditches may be required.

Please ensure that compliance is met in accordance with these guidelines and if you should have any questions regarding this matter, please contact Rick Clark at 759-0510.

DCC:RC:det

cc: John Ailes
Rocky Parsons
Ed Griffith
Jeff McCormick
Louis Halstead
Charlie Sturey

DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION
10 McJunkin Road
Nitro, WV 25143-2506

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Director

Ann A. Spaner
Deputy Director

M E M O R A N D U M

TO: Ed Griffith, Rocky Parsons, and I & E Supervisors

FROM: Jeff McCormick JM

DATE: March 31, 1993

SUBJECT: Highwall Settlement

Please see the attached memorandum from Jim Blankenship, Director of the O.S.M. Charleston Field Office to his area office managers.

This memorandum details the circumstances when highwall can remain on a permanent program site. We are adopting this as our policy and this should be implemented by the field staff and bond release specialists immediately.

Please distribute accordingly.

United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
603 Morris Street
Charleston, WV 25301

TAKE PRIDE IN AMERICA

MAR 30 1993

Memorandum

To: Regulatory Branch Chief
Area Office Managers

From: James C. Blankenship, Jr., Director
Charleston Field Office

Subject: Settlement of Material Backfilled Against a Highwall

On December 11, 1992, we sought guidance from Headquarters regarding OSM's current policy concerning the settlement of material backfilled against a highwall. Recently, Al Klein advised us that it is acceptable to have some settlement of backfilled material between Phase I and Phase III bond release if the obligations discussed in the attached Carl Close memorandum of June 29, 1990, are met. Therefore, we may accept some settlement of backfilled material on permanent program sites if the following criteria are met:

(1) The operator must demonstrate that the site was initially backfilled, compacted, and graded to the approved permit requirements (This demonstration could be accomplished through close-up and panoramic photographs or videos of the site);

(2) Any highwall exposed due to settlement can not exceed 3 feet in height;

(3) A current stability analysis, certified by a registered professional engineer, must demonstrate that the exposed highwall is the result of settlement or consolidation of the backfilled material and that the long-term stability of the backfill is not adversely affected; and,

(4) All other performance standards are in compliance, including the requirements that the coal seam be covered with a minimum of 4 feet of nonacid and nontoxic forming material and the approved postmining land use can be implemented.

Attachment

cc: John Ailes, WVDEP
Deputy Field Office Director

RECEIVED JUL 5 1990

United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
Eastern Field Operations
Ten Parkway Center
Pittsburgh, PA 15220

JUN 28 1990

Memorandum

To: Director, Charleston Field Office

From: Assistant Director, Eastern Field Operations

Subject: Highwall Settlement

In response to your memorandum dated June 20, 1990, regarding the agency's policy on allowing highwall settlement, I have attached a copy of Directive REG-30. This directive established the policy on permanent program sites when backfilled material settled between Phase I and Phase III bond release. However, REG-30 was rescinded on October 17, 1989. A directive to supersede REG-30 has not been finalized and, until this occurs, the policy being implemented in Kentucky and Tennessee is simply an expansion of the rescinded REG-30 and includes the following criteria:

(1) The site was initially backfilled, compacted, and graded to the approved permit requirement;

(2) The exposed highwall does not exceed three vertical feet;

(3) A current stability analysis, certified by an engineer, must demonstrate that the exposed highwall is the result of settlement of the backfill material and that long-term stability of the backfill is not adversely affected; and

(4) All other performance standards are in compliance upon inspection, including the requirement that the coal seam be covered with a minimum of four feet of non-acid forming or non-toxic material.

If you have any questions or need further assistance, please do not hesitate to contact Jim Taitt at FTS 726-2106.

Attachment

SUBJECT: Procedure for obtaining Inactive Status

1. Purpose: Outline procedure for processing Inactive Status Applications.

2. Definitions:

3. Legal Authority/Reference: 38-2-14.11

4. Policy/Procedure: The procedures for obtaining inactive are as follows:

   1. Permittee submits three (3) complete copies of application form MR-14 to the appropriate Division of Environmental Protection Regional Office, to the attention of the appropriate I & E Clerk.

   2. Upon receipt of the application, the I & E Clerk logs the application into C.A.T.S. and submits one copy to the I & E Inspector for review. Within fifteen (15) days of receipt, the Inspector reviews the application (along with the respective I & E Specialist or supervisor, if necessary).

      a. If the application is so incomplete (major deficiencies) that it cannot be properly reviewed, the application must be denied and the appropriate procedures for denial followed (see Step 5 a).

      b. If the application has only minor deficiencies, the I & E Supervisor/Specialist, and/or Inspector lists the corrections and gives the application to the I & E Clerk for tracking. The I & E Clerk returns the original and one copy of the application with the correction sheet to the company/consultant, noting that the Courthouse copy must also be corrected. The Supervisor sees that the third copy of the application is mailed to or delivered to the appropriate Courthouse. The company/consultant has seven (7) days from receipt to correct the application and return the original and one copy to the appropriate I & E Clerk. Upon return of the corrected application, the I & E Clerk

checks for delinquent civil penalties (see step 5 b).

3. The I & E Clerk, after tracking the corrected application, submits it to the Inspector for review of the requested corrections and the completion of the MR-14A. Upon completion of the 14A, the inspector will give the application to the specialist or supervisor for a final cursory review before returning to the I & E Clerk.

4. The I & E Clerk does appropriate tracking and places application in the pending file awaiting End of Comment. A site inspection is to be performed if the operation has not had a recent complete inspection, or if the current inspector is unfamiliar with the permit.

5. The application is kept on file at the appropriate Regional Office until the comment period closes and any informal conference (if requested) is held. An original and two (2) copies of the affidavit of publication must be received by this time and tracked by the I & E Clerk.

   a. If any reason for denial exists (i.e. delinquent civil penalties, denial recommendations by the inspector, the I & E Supervisor will, within five (5) days of the close of the comment period, issue the letter of denial and distribute copies of the <u>letter only</u>. (letter informs of the right to appeal to the Assistant Chief). All copies of the application will be held at the Regional Office pending a request and outcome of any appeal, before distribution.

   b. If delinquent civil penalties are owed on the subject permit, the I & E Supervisor will, within five (5) days of such discovery, direct a letter to the permittee advising of the delinquent civil penalties. The letter will allow for the payment in full or approval of a payment plan for the civil penalties and the letter will further indicate that the application will continue to be processed but will be <u>denied</u> at the close of the comment period if the delinquent civil penalties are not resolved.

c. If all recommendations are for approval, the I & E Supervisor has the approval letter prepared and forwards it, with the application, to the Assistant Chief of Operations, or a Deputy Assistant Chief within five (5) days after the comment period.

6. The Assistant Chief of Operations or Deputy Assistant Chief reviews the application, makes the final decision, and executes the approval letter.

Distribution upon Approval:

1 - Nitro Office (original application and letter)
1 - Regional (application and letter)
1 - Inspector (application and letter)
1 - Company (letter only)
1 - Health and Safety (letter only)

Followed by these procedures are: Inspector's Checklist for Inactive Status and the Advertisement Request for Inactive Status

INSPECTOR'S CHECKLIST FOR INACTIVE STATUS

MR-14-A Revised 9/1/95

Company Name _____ Permit No. _____

Type of Operation _____ Inactive Date _____

		YES	*NO*	*N/A*
1.	Is reclamation current in accordance with regulations and/or permit conditions?	____	____	____
2.	Are there any outstanding violations?	____	____	____
3.	Are sediment control structures in place and certified for all disturbed area?	____	____	____
4.	Is adequate photographic documentation attached?	____	____	____
5.	Are significant coal reserves remaining on permit area?	____	____	____
6.	Is all disturbed acreage bonded?	____	____	____
7.	Is water treatment and necessary environmental monitoring adequate?	____	____	____
8.	Have you performed field tests or water sampling/analysis to verify compliance with effluent limits?	____	____	____
9.	Has permittee made a showing that the cessation of the permit is necessary due to temporary market conditions?	____	____	____
10.	Does the Inactive Map and Underground Mine Map:			
	a. accurately depict the extent and location of all disturbed area(s) and existing mine workings?	____	____	____
	b. show the remaining undisturbed areas	____	____	____
	c. show the remaining coal reserves within the current approved mine boundary?	____	____	____
	d. have a legend which lists a, b, and c above with their respective acreages and/or tonnages?	____	____	____
11.	Is the request submitted on the approved DEP form?	____	____	____
12.	Does the form contain the required sworn statement, signed by an authorized officer, and notarized?	____	____	____
13.	If this request is for an extension of inactive status, does it exceed three years?	____	____	____
	If Yes, has permittee met the condition of 14.11(d)?	____	____	____
14.	Is sample advertisement attached?	____	____	____
15.	Does the permittee owe delinquent civil penalties?			
16.	Have temporary seals/barricades been constructed?	____	____	____
17.	Is approval recommended? If No, explain in comments	____	____	____

Comments: _____

_____

Inspector _____ Date _____

Supervisor _____ Date _____

☐ *Inactive Status is **APPROVED*** ☐ *Inactive Status is **DENIED***

Inactive Status will expire on _____

_____ _____

Assistant Chief Date

ADVERTISEMENT
REQUEST FOR INACTIVE STATUS

INSTRUCTIONS	
This is an advertisement of a request for inactive status. Date of Publication:_____	Ad will be published one time.

ADVERTISEMENT

Notice is hereby given that _____
(Applicant Name and Business Address)

has an application on file with the Division of Environmental Protection (DEP)

_____
(DEP Regional Office Address)

for _____ on Permit No. _____
(inactive status/extension of inactive status)

located near _____ in _____ District of
(Nearest Post Office)

of _____ County.

Written comments on this application will be received by the I & E Supervisor at the DEP address above until _____, or thirty (30) days from date of publication.

A copy of the request will be available until _____, or thirty (30) days from date of publication in the DEP Regional Office located at the address above AND in the _____County Clerk's Office during normal business hours.

DEP Telephone No._____

SUBJECT: Contemporaneous Reclamation

1. Purpose:

2. Definitions:

3. Legal Authority: 38-2-14.15(b)(6)
38-2-14.15(b)(6)(A)
38-2-14.15(c)
38-2-14.15(d)

4. Policy/Procedure:

Operations which are defined under 38-2-14.15(b)(6) may apply for and be granted a variance to the percentage and/or acreage limits contained in 38-2-14.15(b)(6)(A), PROVIDED: The operation consists of at least three spreads of excavating equipment.*

The variance shall be limited to not more than 50% of the total permit acreage or 400 acres, whichever is less.

In addition to the semi-permanent ancillary facilities already exempted in 14.15(c), these additional areas may now be considered reclaimed or not disturbed:

1. Areas within the confines of excess spoil disposal fills which are under construction provided the fill is being constructed in the "conventional" method, i.e., completed from the toe up, or those fills which are being constructed progressively in lifts from the toe up or are being progressively completed from the toe up by constructing benches and appropriate drainage control structures (ditches, flumes, channels, etc.) from the toe up as soon as the area is available to do so.

2. Areas containing 30 aggregate acres or less which have

* The contemporaneous reclamation variance will be reviewed no less than quarterly. Any deficiencies will be communicated to the operator/permittee immediately and appropriate enforcement action taken.

been cleared and grubbed and have the appropriate drainage control (temporary or permanent) installed and certified, and which will become a part of the operational area within six months or less. (Failure to incorporate these areas into the operational area within six months may result in the loss of this exemption.)

3. Areas that have been cleared and grubbed which exceed the thirty aggregate acres and/or those which will not be included in the operational area within six months may be excluded if the appropriate temporary or permanent drainage control structures are installed and certified and have temporary vegetative cover established.

4. Areas which have been backfilled and graded to <u>final</u> grade, mechanically stabilized, and had <u>appropriate</u> drainage control structures installed in accordance with the approved mining and reclamation plans. The sediment control structures need not be certified to meet this requirement if the mining plan is such that it would make this unfeasible. Topsoiling and revegetation of these areas are highly encouraged.

   The request for variance consideration shall be submitted as part of the mining and reclamation plans required by 38-2-14.15(d) and shall contain sufficient information so as to allow the director to properly evaluate the plan and issue an approval.

5. Consideration may be given to contemporaneous reclamation plans on multiple permitted areas with adjoining boundaries where contemporaneous reclamation is practiced on a total operation basis. Operations such as this will not be eligible for incremental bonding.

SUBJECT: Excess Spoil Disposal

1. Purpose: To Minimize Erosion During Construction of End-dump Fills

2. Definitions: N/A

3. Legal Authority: § 22-3-13(B)(10)

4. Policy/Procedures:

In order to minimize erosion during the construction of end-dump valley fills, water shall not be allowed to flow over the face of the fill. The top of the fill shall be sloped toward the back and sides into drainage channels through approved outlets. Drainage from above the fill should also be channeled away from the fill and discharge through approved outlets.

In the event that water from the deck and/or above the fill cannot be directed away from the fill area, a flow path shall be constructed and maintained by dumping sufficient rock to minimize erosion along the interface where the edge of the fill meets original ground and shall be capable of handling the maximum anticipated flows.

Quarterly certifications shall address the maintenance of these areas as temporary drainage control for that reporting period. Once the fill is completed or as conditions allow, water will be diverted into properly designed and constructed channels capable of passing a 100 year, 24 hour event.

WV Division of Environmental Protection Division of Mining and Reclamation Inspection and Enforcement	Series: 14 Pg. No: 1 Effective: 2/25/03 Revised: 10/14/04

SUBJECT: Inactive Status Requests for Operations with Valley Fills

1. Purpose: Minimize potential problems for inactive status

2. Definitions: N/A

3. Legal Authority: 38-2-14.11

This replaces the document issued on February 25, 2003.

4. Policy/Procedures:

When operations containing valley fill(s) request inactive status, the fill(s) may be in a condition that could allow for erosion into natural drainage paths. Therefore, to minimize surface erosion and to prevent spoil movement, each of the following conditions shall apply to fill(s) that have not reached designed capacity and a demonstration is made that reactivation of the fill(s) is feasible:

1. The top of the fill shall be configured to prevent uncontrolled water from discharging over the face of the fill;
2. Runoff and sediment from the top of the fill must be managed and discharged in a controlled manner;
3. The top and all erosion prone areas of the fill shall be seeded;
4. Surface water runoff from areas above and adjacent to the fill surface shall be diverted into stabilized channels;
5. Submission of a certified report that notes any instances of apparent instability, structural weakness, and other hazards. The certified report shall include a drawing of the fill showing the following:

    a. Current outline of the fill;
    b. Location of sediment control and drainage structure(s);
    c. Limits of clearing and grubbing;
    d. Location of any surface or ground water discharges;
    e. Current extent and location of underdrain system
    f. Design and current volume;
    g. Color photographs of the fill; sediment control and drainage structures and underdrain system.

6. Drainage control structures shall be cleaned to 100% designed capacity.

If the operation has any fill(s) that has reached designed capacity or not demonstrated that reactivation is feasible, the request will not be considered for approval until the fill(s) is reclaimed.

Division of Mining and Reclamation
Program Development
#10 McJunkin Road
Nitto, WV 25143
Phone: (304) 759-0510 Fax: (304) 759-0528

West Virginia Department of Environmental Protection

Bob Wise
Governor

Stephanie R. Timmermeyer
Cabinet Secretary

INTEROFFICE MEMORANDUM

To: All DMR Employees

From: Joe Parker, Acting Director

Date: 5/17/2004

Re: EXCESS SPOIL AND VALLEY FILL CERTIFICATION REQUIREMENTS

AUTHORITY: § 22-3-13(b)(22), 38-2-14.14

This document replaces the 'EXCESS SPOIL DISPOSAL FACILITY INSPECTION AND REPORTING REQUIREMENTS' memorandum issued on February 25, 2003.

INSPECTION FREQUENCY

A registered professional engineer experienced in the construction of earth or rock fills or other qualified professional specialist working under the direction of a professional engineer experienced in the construction of earth or rock fills, shall inspect an excess disposal facility according to the following schedule:

1. Quarterly for stability;

2. Regularly during the placement and compaction of fill materials and during critical construction periods such as, but not limited to:

   a. Foundation preparation;
   b. Underdrain placement;
   c. Installation of surface drainage systems;
   d. Construction of rock toe buttresses.

3. Upon completion of construction.

REPORTING FREQUENCY

A certified report of this inspection shall be submitted to the Secretary a certified report within two weeks following completion of the inspections. The certified report shall contain a statement that the fill is being constructed and maintained as designed in accordance with the approved plan and this rule. The report shall contain the company name, permit number, company address, fill identification, date of inspection, and name of the person performing the inspection. The report will also note any instances of apparent instability, structural weaknesses, and other hazards. The report on the drainage system and protective filters shall include color photographs taken during and after construction, but before the underdrains are covered with excess spoil. Color photographs shall be of sufficient size and number to provide a relative scale and to clearly identify the site. A copy of the certified report shall be maintained at the mine site.

REPORTING REQUIREMENTS

The report shall include as applicable the following:

1. Type of inspection.

    a. Quarterly for stability;

    b. Regular/critical stage;

        i. Foundation preparation;
        ii. Critical foundation area;
        iii. Underdrain\lateral drains;
        iv. Material Compaction;
        v. Surface drains;
        vi. Rock toe buttress;
        vii. Other

    a. Final;

    b. Commmets

2. Foundation preparation.

    a. Acknowledgment of proper construction;
    b. Comments

3. Placement of underdrain system.

    a. Acknowledgement of proper construction;
    b. Acknowledgement of construction simultaneously with excess spoil placement by the natural segregation of dumped materials;

c. Comments - include color photographs

4. Installation of surface drainage system.

   a. Acknowledgement of proper construction of sediment control structures;
   b. Acknowledgement of proper construction of temporary drainage control;
   c. Acknowledgement of proper construction of permanent diversion ditches and terraces

5. Placement of materials.

   a. Acknowledgement of proper construction of fill;
   b. Acknowledgement of proper handling of toxic or acid forming materials;
   c. Acknowledgement of contents not exceeding 20% non-durable material;
   d. Acknowledgement of prohibited materials not being placed, deposited, or disposed of into the fill area
   e. Comments

6. Stability.

   a. Acknowledgement of no apparent instances of instability, structural weakness, and/or other hazards being observed;
   b. Note any instances of apparent instability, structural weaknesses, or other hazards observed;
   c. List any corrective actions taken or recommended

7. Additional information

   a. Estimated current volume of fill;
   b. Status of fill;
      i. Active
      ii. Being reclaimed
      iii. Inactive
   c. If inactive, date of last activity
   d. Test results;
   e. Sketches;
   f. Drawings;
   g. Photographs;
   h. As-built plans, drawings, and stability analyses as appropriate for final certifications

The information listed above must be specifically addressed and submitted in summarized form.

TO:	Permitting and I&E Personnel
SUBJECT:	SWROA Requirements for Existing Permits
DATE:	May 25, 2004
APPROVAL:	F. Joe Parker, Acting Director

The requirement to implement a surface water runoff analysis (SWROA) on active mining operations is provided by rule at 38-CSR2-5.6.d. of the West Virginia Surface Mining Regulations. After January 1, 2004, all existing permits must comply with the SWROA requirements according the following timetable based upon permitted acreage.

- Permitted acreage > 400 acres: SWROA due date is June 29, 2004
- Permitted acreage • 200 and • 400 acres: SWROA due date is December 26, 2004
- Permitted acreage • 100 and < 200 acres: SWROA due date is June 24, 2005
- Permitted acreage • 50 and < 100 acres: SWROA due date is December 21, 2005
- Permitted acreage < 50 acres: SWROA due date is June 19, 2006

If a SWROA has been previously approved for an exiting permit and the entire permit remains in compliance with those SWROA designs, the permittee needs only to submit a written statement, signed by a corporate official having signatory authority, to the permit supervisor. This statement needs to address that the permit is SWROA compliant and specify what approved permitting transaction contains the SWROA design, e.g., Amendment #1, Revision #5, etc. After verification, the associated ERIS entry description should be revised, if needed, to show that a SWROA compliance demonstration is included.

If a permit, or portion thereof, is not SWROA compliant, a permit revision will be required to incorporate the required designs into the permit, regardless of whether on-ground remedial construction is anticipated or not. Allowable exclusions to the SWROA requirement include permits, or portions thereof, that are vegetated and qualify for Phase I release standards. Such exclusions will require a written request to be submitted as a permit revision. Permit review should coordinate with the inspector to verify any requested SWROA exclusions on a case-by-case basis. The associated ERIS entry description should indicate that the revision contains a SWROA compliance demonstration.

If a permit will become Phase I eligible within the above-mentioned timeframes, a written schedule may be provided to the inspector by the permittee specifying when the permit will achieve these standards. The submitted schedule must also include a contingency plan for SWROA compliance in the event the permit fails to meet this stipulated timeframe. This statement needs to be signed by a corporate official having signatory authority.

SWROA submittals for "not started" permits may be postponed if the permittee provides a written statement to the inspector stating that the permit's SWROA will be performed and submitted as a permit revision prior to permit activation. This statement needs to be signed by a corporate official having signatory authority.

TO:	**Permitting and I&E Personnel**
SUBJECT:	**SWROA Modeling, Runoff Monitoring, and Data Recording**
DATE:	**November 24, 2015**
APPROVAL:	**Harold D. Ward, Acting Director**

Surface Water Runoff Analysis (SWROA) requirements were codified in the West Virginia Surface Mining Reclamation Regulations (38-CSR2-5.6, et seq.) and became effective June 1, 2003. At its inception, SWROA was effectively applied to existing permits and became a routine design requirement for future permits. Nevertheless, some confusion still exists relating to hydrologic modeling, runoff monitoring, data collection, field reporting, and termination aspects of this rule. The purpose of this policy is to provide clarification for permits containing SWROA designs.

Evaluation Point Siting Requirements

Any evaluation point (EP) chosen for hydrologic modeling shall be located so that pre-mining, during-mining, and post-mining peak flow volumes can be compared at a common location. To comply with the "no-net increase" SWROA requirement, calculated during-mining and post-mining peak flow volumes cannot exceed those of the pre-mining condition. Also, EP locations must be as close as practical to the permitted acreage while being located upstream of any critical structures such as, houses, buildings, stream constrictions/encroachments, etc.

SWROA pre-mining modeling should consider existing ground cover conditions at the time of permit issuance. Hydrologic analyses for the pre-mining condition must rely on realistic curve number and hydrologic soil group (HSG) assumptions applicable to actual on-ground conditions. HSG assumptions shall be substantiated by using the United States Department of Agriculture – Natural Resources Conservation Service – Web Soil Survey, as follows: http://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm.

Failure to account for available sheet flow can exaggerate peak flows from pre-mining areas and result in reduced SWROA protection. Therefore, all pre-mining flow calculations should assume sheet flow conditions of three hundred feet (300 ft.) at the onset of the hydraulic flow path through any component watershed, unless otherwise documented.

SWROA Design Storm

The minimum SWROA design storm is a 25 year/24 hour precipitation event. The SWROA design storm is based upon the design standard applied to the most immediate hydraulic structure upstream of each EP within the associated watershed area. Typically, this will result in a 25 year/24 hour event to base SWROA designs upon, but occasionally a 100 year/24 hour design standard may apply. Other instances triggering the 100 year/24 hour SWROA design requirement would be the presence of occupied dwellings or significant stream constrictions/encroachments located upstream of an EP.

Runoff Monitoring Plan and Data Collection (U-3)

The intent of a site-specific runoff monitoring plan for a permit is to accumulate rainfall/runoff data for precipitation events of 1 year/24 hour or greater until the permit meets phase II release requirements. The runoff monitoring location(s) chosen by the permittee should be easily accessible and be representative of component watersheds within the permit boundaries where mining disturbance is expected to result. Rainfall and flow measurement methodologies should be adequately detailed in Item U-3.

Any permit having an approved SWROA with an incomplete or missing U-3 monitoring plan that fails to fulfill the above mentioned goals will require a permit revision to incorporate an acceptable monitoring plan.

The permittee is required to record daily precipitation and report monthly. Additionally, peak runoff resulting from any precipitation event of 1 year/24 hour or greater, must be measured at the designated location(s) identified in Item U-3 and be recorded. All recorded data, including rainfall data, shall be reported to the Secretary on a monthly basis in the format specified by Item U-3 of the approved permit.

Inspection of Drainage/Sediment Structures and Reporting on Integrity/Function

Any precipitation event of 1 year/24 hour or greater, based upon the permittee's designated rain gauge in Item U-3, will require the permittee to conduct a permit-wide inspection to evaluate all constructed drainage/sediment structures. Such inspection should verify that the structures remain structurally intact and can still function as intended. A report is to be submitted to the Secretary addressing such findings. Present rule language allows 48 hours before a report has to be submitted to the Secretary.

Reporting is to be in written format so that a tangible record can be included in the permit file. Reporting to the inspector via email will be deemed acceptable; a telephone call to the inspector is also acceptable provided that timely follow-up (within one week) is submitted in written form.

Implemention/Termination of SWROA Requirements

All permits are required to have approved SWROA designs prior to any on-ground disturbance, unless otherwise exempted. For permits less than 50 acres, SWROA may be exempted on a case-by-case basis, if adequately justified and approved in a permit revision. Further, haulroads, loadouts, and ventilation facilities are excluded from any SWROA requirements. If a SWROA exemption is granted for any permit, all aspects of the SWROA rule are waived, including U-3 rainfall/runoff monitoring.

When a permit becomes Phase II eligible and complete drainage structure removal occurs, the SWROA runoff monitoring plan (U-3) can be terminated. At this time, recording of rainfall and resulting runoff responses will no longer be required. The permittee should submit a letter to the inspector addressing proposed SWROA termination for a permit.

SECTION 15

PERFORMANCE STANDARDS

UNDERGROUND OPERATIONS

SUBJECT: MR-13 for Mine Seals

1. Purpose: To require that mine seals be installed as designed.

2. Definition:

3. Legal Authority: 22-3-14(b)(2); 38-2-3.13(b)

4. Policy/Procedures: All underground mining operations shall submit a certification (DMM-13) for the construction of the mine seal(s). The DMM-13 shall be submitted prior to regrading and backfilling for review and approval of mine seal installation by the inspector, unless the DMM-13 provides accompanying photographs clearly demonstrating the mine seal is appropriately constructed and clearly distinguishing the site.

SUBJECT: Interim Enforcement Procedures on Underground Mine Barriers

1. **Purpose:** **Establish enforcement procedures for operations that fail to comply with approved barrier width**

2. **Definition:** **N/A**

3. **Legal Authority:** **22-3-17, 38-2-3.13**

4. **Policy/Procedures:** **When it is determined that the permittee has failed to leave the approved barriers in an underground mine, the following Interim Enforcement Procedures will be followed:** *(Note: Although some of the procedures outlined below may apply to blowouts, these procedures are intended as preventive measures to avert blowout situations when barrier widths are encroached upon.)*

   1. **Issue a Notice of Violation (NOV) for failing to follow the approved pre-plan.**

   2. **IN NO CASE will calculations on remaining barrier(s) be accepted as an approved abatement measure to abate an NOV issued at item #1, unless curcumstances discussed in 3.C. are applicable.**

   3. **The remedial measures will be dependent on site specific situations at the mine and may include:**

      A. **Area is still accessible from underground- Remedial measures should include replacing the missing portion of the barrier with constructed bulk-head(s) and/or backstowing of voids with suitable materials to bring the strength and seepage resistance of the constructed barrier to original design.**

      B. **Area is not accessible from underground- Remedial measures should include installation of approved seal(s) and backstowing of voids with suitable materials to bring the strength and seepage resistance of the constructed barrier equal to the original design. This may entail drilling and pumping of concrete, or other suitable materials, from the surface.**

C. Other remedial measures on areas not accessible underground may be approved on a site specific case by case basis. Such cases must be supported by a comprehensive engineering analysis that provides specific monitoring and remediation plans which must contain at a minimum:

1) Structural analysis of remaining barriers;
2) Structural analysis of the overburden and underlying rock strata to ensure the integrity of any remaining barriers;
3) Analysis of any impounded water;
4) A plan for dewatering the mine or reducing the head to correspond with the remaining barrier width that will permanently control water buildup in the mine or affected area. This plan may not include "gravity discharge".
5) A water treatment plan.

D. In all cases, the permittee will be required to conduct adequate surveying, measurements, testing, and engineering design and analysis to assure the reconstructed barrier provides protection at least equal to that of the intended and approved coal barrier. Analysis and design documents mut be certified by a qualified R.P.E., and submitted to DEP. Construction certification, by a qualified R.P.E., must also be submitted upon completion of work.

4. In order to effect changes in underground mine barriers that may have been originally overdesigned, such changes must be submitted and approved prior to any physical disturbance of the originally designed barrier.

SUBJECT: **Underground Mine Outcrop Barriers and Post Mining Hydrology Evaluation**

Purpose: This procedure is intended to prevent the occurrence of a "mine blowout," and to prescribe the requirements for the evaluation of post underground mining hydrologic impacts prior to bond reduction for operations that proposes underdrainage mining and/or where the Secretary has determined the application has an elevated risk of blowout or offsite impacts. "Blowouts" are a rapid release of large volume of water impounded in underground mine workings to the land surface due to the failure of outcrop barrier pillar.

1. The permit applicant must leave an unmined section of coal where the coal seam approaches the land surface so as to create an outcrop barrier pillar except:

    a. Where the applicant has demonstrated in the permit application that based upon the geologic and hydrologic conditions in the permit area no accumulation of water in the underground workings will occur;
    b. In those locations where the applicant has proposed mine entries for ventilation and transportation of men and materials.
    c. Areas where a determination has been made that hydrologic head relief is required.

2. The permit applicant must demonstrate the outcrop barrier is of sufficient width to support the overburden and prevent its failure and sudden release of water due to water pressure against the unmined coal. The applicant must provide an outcrop barrier pillar design based on sound engineering principles. An overburden blow out and stability analysis must be performed and included in the permit package.

3. When the overburden blow out and stability analysis indicates that the coal seam is the weakest point, the permit applicant may use the Empirical Formula (commonly known as the Rule of Thumb) which states that the width of the outcrop barrier $W = 50 + H$ where W is the width of the coal barrier in feet and H is the maximum hydrostatic head that can be built on the outcrop barrier.

4. The outcrop barrier design must also consider seepage analysis in estimating the flow that will be expected from the barrier. The outcrop barrier may be lengthened if estimated flow rates are such that surface water hydrology is likely to be adversely impacted. Alternatively, methods to decrease seepage by use of impermeable materials behind the barrier including curtain grouting may be prescribed.

5. Where underground mining is proposed to be conducted to an adjacent abandoned waterlogged mine, the effect of additional head of water must be considered by the permit applicant in the design of internal and outcrop barriers. For this purpose, the accuracy of maps of the abandoned mine must be verified by additional borings or by the use of geophysical survey techniques when determined necessary.

6. The width of all outcrop barriers as determined from the design computations must be plotted on the topographic map and included in the permit application. The seam elevations along the outcrop line, location and elevations of springs and seeps must also be plotted on the topographic map. Methods to conduct the water flows safely from seeps downstream of the barrier must be incorporated in the permit.

7. Where multi-seam mining is proposed, the permittee must demonstrate that outcrop barriers in the upper seam are underlain by solid coal barriers in the lower seam, except as provided under item 1.b or where the stability analysis shows that partial mining can occur and that remaining pillars in the lower seam will support the outcrop barriers in the upper seam. The permittee must demonstrate that developmental maps for multi-seam mining include information relating to proposed underground barriers, where mining has already occurred and where it is planned.

8. The permit applicant must demonstrate that procedures for the prevention of buildup of hydrostatic head beyond the designed water level is assured by drilling relief wells or using angled boreholes into the hillside at a point in the overburden for direct passage of mine water to the surface are included in the permit. However, the uses of these methods which result in gravity discharge from acid producing coal seam are prohibited. Alternatively, pumping of water from deep mine workings to the surface may be included in the permit package. Where such procedures for prevention of the buildup of water beyond the designed water level are used, the permittee must demonstrate that appropriate water treatment methods are included in the permit.

9. Applications that proposes underdrainage mining and/or where the Secretary has determined the application has an elevated risk of blowout or other adverse offsite impacts applicant must provide monitoring plans to include measurements on hydraulic head, quality and quantity of water discharged from workings and verification of outcrop barriers on a regular basis, as determined by the reviewer and/or the inspector. This information shall be used by the permittee to perform an analysis of surface and groundwater quantity and quality that will be prior to granting bond reduction. This analysis must be submitted at least 180 days prior to submittal of initial release request. The analysis will include an assessment of the data to show that material damage has been prevented. The analysis can include an evaluation of any trends which may exist in the available data that which demonstrate the elevated risk of blowout or other adverse offsite impacts have been minimized and material damage have been prevented.

SUBJECT: Post Underground Mining Assessment (PUMA)

This information is to clarify the November 15, 2012, policy titled, "*Underground Mine Outcrop Barriers and Post Mining Hydrology Evaluation*," which is included in the Permitting Handbook, Section 24 and the Inspection and Enforcement Handbook, Series 15, pages 4-5.

The November 15, 2012 policy requires the submittal of hydrologic analyses for underdrainage mines and mines having blowout potential, or other possible adverse offsite impacts. Its intent is twofold. First, in cases where there is no discharge from a mine at the time of a request for Phase I bond release, it provides a quantitative method to demonstrate that the post-mining discharge will be in compliance with applicable water quality standards; thereby, providing rationale in support of the approval or denial of the release application. Secondly, the policy is intended to be forward-looking to assure that during the permit review of new mining applications or expansions of existing underground mines, the permit review team will require adequate pre-mining and during-mining groundwater and/or surface water monitoring, as necessary, to enable the permittee to demonstrate that the predictions in the Probable Hydrologic Consequences (PHC) remain valid, prior to the initial bond release. This required supplemental information for the PHC has become known as the Post Underground Mining Assessment (PUMA).

Therefore, based upon its defined scope, a PUMA is not necessary for all deep mines or when resulting mine discharges are compliant with applicable water quality standards. Only underdrainage mines or other mines having an elevated blowout risk or those lacking sufficient data to demonstrate the validity of the predictions of the PHC will require such analyses. Typically, PUMAs are not required for above-drainage mines unless elevated risks of blowout or other adverse offsite impacts exist, e.g., artesian effects, subsidence material damage, stream dewatering, etc.

All underground mine permits must be evaluated to determine the need for a PUMA, with such determination documented in the permit record. Therefore, within thirty (30) days of the completion of underground mining operations, the permittee shall submit a **Deep Mine Abandonment Plan** in the form of an Article 3 permit revision**.** This revision will provide the documentation necessary to uphold the approved PHC and Hydrologic Reclamation Plan (HRP), thus affirming that a PUMA is not required for the permit. Otherwise, a PUMA will be required for the permit. The associated permit revision will require all relevant PUMA information and resulting updates to the PHC, HRP, and existing mine seal designs necessary for approval. The regional Geologist IV will be responsible for conducting the review of the submitted information, with engineering assistance as required.

Should a pending Phase I release application exist for an underground permit, the inspector, after conferring with the region's Geologist IV and the I & E Supervisor, will order the permittee on an MR-6 inspection form to perform a PUMA evaluation. Likewise, the revision should either include a PUMA, or present adequate documentation supporting why a PUMA is not applicable. The assigned inspector is to immediately contact the assigned Release Specialist or the Release Supervisor and make them aware of this outstanding requirement. **Under no circumstance is**

the release application to remain pending while the required PUMA revision is being prepared or under agency review. The applicant may either withdraw the application or it will be denied until the requirement is met.

Additionally, there may be permits approaching Phase II and Phase III release that achieved Phase I status prior to the November 15, 2012 Policy. If such permits require PUMAs, as determined by the region's Geologist IV and I&E Supervisor, the inspector will order the permittee on an MR-6 inspection form to submit a permit revision incorporating all applicable PUMA requirements prior to processing the release request. It will be the responsibility of the regional Geologist IV to review any resulting permit revisions.

The PUMA shall at a minimum include the following information to support all PHC predictions, as follows:

- Final mine map depicting coal seam contours, areas of known water inundation, limits of mining, adjacent mining operations, topographical features, the location of all boreholes (both vertical and horizontal), mine barriers, and dewatering sites.
- Detail map showing coal seam elevation contours, outcrop barrier widths, and if applicable, internal barrier widths adjacent to other mine workings.
- For above-drainage mines, identify any seeps or punch-outs on the down dip end of the mine and provide any available water data from seeps and/or punch-outs.
- Identification of any overlying or underlying mines.
- Resulting hydraulic head calculations reflecting the effects from superjacent, subjacent, and adjacent mining extents; potential barrier interaction between mines; and fracture-induced permeability increases from multiple seam and longwall mining.
- Comprehensive outcrop barrier evaluation comparing existing dimensions and potential hydraulic heads to originally approved values in permit. For significant departures, a factor of safety reevaluation will be necessary.
- Depiction of existing or anticipated mine pool elevations for the mine and inclusion of requirements for monitoring and mine pool level maintenance to control artesian or other adverse effects, if applicable.
- Supporting analyses and descriptions of all underground water discharge(s) from the permit and associated underground mining limits.
- Provide the most recent water data from the approved Article 3 surface and groundwater monitoring sites. At a minimum, provide six (6) consecutive months or, if monitoring quarterly, two (2) years of samples.
- Identification of any pump stations, their pump rates, and sampled water qualities
- Assessment of any injection sites and associated injected volumes affecting mine pool elevations.
- Discussion of past stream dewatering events or well impacts and associated remediation for the specific mine.
- Evaluation of all water sources intentionally introduced to the mine void.

More data may be required, at the discretion of the reviewing geologist.

SECTION 16

SUBSIDENCE CONROL

SUBJECT: Repair of Subsidence Damage to Surface Lands

1. Purpose: To establish procedures for repair of material damage to surface lands caused by mine subsidence.

2. Definitions: Material damage is damage to the surface of the land that reduces it's value or damages or diminishes it's reasonable forseeable use.

3. Legal Authority: 22-3-14(a), 38-2-16.2(c)(1)

4. Policy/Procedures: Each person who conducting mining operations which result in subsidence that causes material damage shall restore the land to a condition where it is capable of supporting any uses it was capable of supporting prior to subsidence. (In accordance with 38-2-3.12(a)(6). A permittee cannot have a right to subside in the instance). Usually this will involve the filling or closing of subsidence cracks and/or regrading the area to blend with the surrounding contour and should include establishment of vegetative cover in species appropriate for the land use and sufficient to prevent erosion and siltation.

Once material damage resulting from subsidence is discovered, the inspector should provide written notice to permittee that the damage has occurred and order the permittee to repair the damage. This notice and order can be provided on an inspection report (MR-6) served on and signed by an agent of the permittee or by certified mail. The order should cite 38-2-16.2(c) and should describe the location of the damage and appropriate actions required to repair the damage and reclaim any disturbance created by the repairs. Alternatively, the order may require the permittee to submit a plan and proposed time schedule for making repairs. The order shall also establish a deadline to begin and/or complete the repairs and reclamation or to submit the appropriate plans.

If the order requires plans be submitted, the inspector should review the plans and proposed deadline (with advice from the permit review team members as appropriate) and notify the permittee in writing if additional information is necessary. Once the plan is acceptable, the inspector should order the permittee to complete repairs in accordance with the plan. Again, an inspection report signed by an agent of the permittee or a certified letter should be used to serve the order. No violation exists unless the permittee fails to repair material damages in a timely manner, or the damage was caused by a violation of the permit conditions, or unless the material damage is causing imminent harm to the environment or imminent danger to the public health and safety in accordance with 22A-3-16(a). In these cases, the appropriate NOV or IHCO shall be issued by the inspector.

Where it will be necessary to enter surface lands not owned or leased by the permittee, the permittee should obtain a right of entry agreement with the landowner.

The inspector should use some judgement in determining the appropriate remedial measures required by the order. Factors to consider include the likelihood of public endagerment, the extent and difficulty of work necessary to accomplish the repairs, the accessability of the area and the attitude of the surface owner.

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SUBJECT: Subsidence Control - Public Notice of Underground Mining

1. Purpose: Clarify timing requirement for notice of underground mining sent to surface owners.

2. Definitions:

3. Legal Authority: 22-3-14(a); 38-2-16.1(a)

4. Policy/Procedures: Where mining will begin immediately upon permit issuance, initial notification of underground mining to residents/property owners must occur within thirty (30) days of permit issuance. This notice should be sent to all resident/property owners that will be impacted during the first six (6) months of projected underground mining.

All additional notices must be sent to residents/property owners at least six (6) months prior to underground mining beneath their property.

All notifications must be sent certified mail and the return receipt maintained at the respective mine office and made readily available to the inspector at his request.

The operator is responsible for continually monitoring changes in land ownership and the construction of new structures within the subsidence control area.

SUBJECT: Subsidence Damage or Water Loss Related to Mining

1. **Purpose:** Procedure to replace water loss related to mining.

2. **Definitions:** N/A

3. **Legal Authority:** 22-3-14(b)(9)

4. **Policy/Procedures:**

   1. Inspector investigates and determines if water loss is related to mining.

   2. If the inspector determines water loss is mining related, the inspector should notify the permittee via DMM-6 to replace the water supply.

   3. If the water loss is not replaced, the inspector should issue a NOV or CO as the case may dictate.

   4. If the property owner refuses to let the permittee enter upon their property, contact the I & E supervisor for appropriate action or guidance.

SUBJECT: Subsidence Control - Mine Development Map Review

1. Purpose: To clarify the requirement for review of mine development maps.

2. Definitions:

3. Legal Authority: 22-3-14(a); 38-2-16.2(e)

4. Policy/Procedures: During each complete inspection of an active underground mining operation, the inspector is to review the most current mine development maps to determine if mining is proceeding in accordance with the approved subsidence control plan. All mining operations are required by the Division of Miners Health Safety and Training to maintain an up-to-date map indicating all current and previous mining. A copy of these maps are to be kept at or near the mine site. In addition 38-2-16.2(e) and 22-3-15(b) provides the agency with the authority to require this information be submitted to the Director or his authorized agent.

SUBJECT: Pre-subsidence Structure Survey Procedures

1. Purpose: Establish pre-subsidence structure survey procedures.

2. Definitions:

3. Legal Authority: 38-2-3.12 and 38-2-16.2

4. Policy/Procedures: The survey process begins with the operator informing in writing all residents or owners of non commercial dwellings or manmade structures located within a thirty (30) degree angle of draw projected from the mining limits. This notification must state the reason for the survey and that denial of access will mean that no presumption of causation will exist. The notification must be mailed or delivered to the resident/owner via certified mail or signed and witnessed receipt. The certification number will be referenced on the letter.

Surveys must be submitted and acknowledged by this agency prior or simultaneously to owners and residents receiving the Notice (six month notice) described in 38-2-16.1 of the West Virginia Surface Mining Reclamation Regulations. No mining may take place in any area for which a survey is required until such survey is completed, and acknowledged by this office.

The list of residents and owners shall be reviewed and updated by the permittee at a minimum annually for new structures and residents. Within fifteen (15) days of becoming aware of any changes to the original survey (new residents/structures/etc.) the permittee must complete and submit to this agency a revised survey. Any new individuals and/or structures must have a survey if mining (mineral extraction) in the area is not completed.

A copy of the notice of the right to a survey along with the return receipt must be submitted to the appropriate Regional Office. A "Notice" will be mailed to the permittee advising the permittee that these surveys must be conducted by the insurance carrier who has indemnified the permittee for subsidence related damages. If the carrier elects to engage the services of another entity to conduct the survey, the carrier must certify, in writing, that this person or entity is qualified to do such work.

Once the Regional Office receives the surveys, they shall be logged in and date stamped. Then, one copy of each survey will be submitted to Headquarters for review.

Upon review by headquarters staff, if the survey is found to be complete and adequate, it will be sent back to the regional office. The regional office will then notify the permittee that the survey has been reviewed and appears to be of sufficient detail to identify the condition of the structure. The permittee shall provide a copy to the owner/resident at this time.

A "log" will be kept at each Regional Office to track each survey during the process. Each survey shall be entered in the log book at the Regional Office and contain the following information:

1.) Resident/Owner
2.) SMA or Permit Number
3.) Permittee Name
4.) Date Notification received by owner/resident
5.) Date "Notice" sent to permittee
6.) Date "Notice" received by permittee
7.) Date survey received
8.) Date survey acknowledge (accepted)
9.) Date acknowledgment letter sent

The following guidelines must be adhered to when reviewing a pre-subsidence survey. The guidelines are provided to assist in evaluating whether the survey adequately documents pre-subsidence damage and other physical conditions which could be affected by subsidence. Each survey of a building and structure related thereto should be bound or stapled together and shall conform to the following format:

- Name of owner

- Name of tenant (if applicable)

- Permittee and SMA# or Permit #

- A copy of the Notification for the Pre-subsidence Survey. If access is denied, include documentation.

- Address of structure, description of structure and location identifier keyed to the subsidence survey map

- Mailing address of owner and tenant

- Plan view of the relative location of structures surveyed (scale not required)

** General description of structure (number of stories, construction materials for frame, construction material for exterior finish and approximate age, if available.

- A general description of the survey methods and and direction of progression of the survey, including a key to any abbreviations used.

- Sufficient exterior photographs (equal to the standard 35mm negative film format) to illustrate a wide angle full frame view of each exterior wall, close-up photographs to illustrate any pre-subsidence damages noted, and mid-range photographs to illustrate relationships of close-up photos to wide angle photos. Exterior photos should also illustrate the condition of visible foundation walls, sidewalks, steps, porches, chimneys, well houses, fences, utilities, garages, out buildings, and other exterior structures.

- Information on the type of water supply (public utility, private multi-dwelling water systems, well(s) spring, cistern).

- If water supply is any other than a public utility, survey must include water analysis (tds or spec. cond. at 25 degrees centigrade, pH, acidity, alkalinity, total Fe, total manganese, and sulfates) and a description of the type of system and treatment being used. For wells, give type (drilled or dug) and, if available, well log, depth, age, depth and type of casing or lining, static water lever, flow data, pump capacity, drilling contractor and indicate source of data.

** Documentation of the conditions of each interior room to include comments on type of finishing material for each interior wall, ceiling and floor, and notations on

the location and approximate dimensions of any defect or unusual condition. Interior condition may be illustrated by drawings, sketches, narrative description and 35 mm (or equivalent) photographs.

** A notation of any unusual construction technique or method, especially extra-ordinary or sub-standard ("not-to-code") materials or spacings, absence of footer or foundations, pre-fabricated or modular construction, previous relocation of the structure, unusual lot construction or foundation preparation and similar unusual conditions.

- A notation describing any portion of the structure not documented and an explanation of why.

- Signature of the person conducting the survey, name and address of person or firm conducting the survey and a copy of insurance carrier documents certifying that the person or firm is qualified to conduct pre-subsidence surveys.

Photographs submitted with a survey may be contact prints of 35 mm negatives if information on how to obtain full size prints is provided. Videos can be used if they are accompanied by diagrams illustrating where the videos were taken. Items marked with "**" above may be entirely documented by photographs if sufficient photographs are included to adequately illustrate the required information.

SUBJECT: Pre-subsidence Structure Survey Procedures

1. Purpose: Establish pre-subsidence structure survey procedures.

2. Definitions:

3. Legal Authority: 38-3.12

4. Policy/Procedures:

This procedure supersedes the March 23, 1993 memorandum and is in response to The Energy Policy Act of 1992 and the March 31, 1995 Federal Register.

1. a. *Subsidence Survey Map:* The map described in 3.12 of the Surface Mining Reclamation Regulations must identify structures, location and type of domestic water sources, perennial and intermittent streams or renewable resource lands both on the permit area and adjacent areas within an angle draw of at least 30-degree. However, an angle other than 30-degree can be used based upon results of site specific analyses and demonstration that a different angle of draw is justified. Computer program packages predicting surface movement and deformation caused by underground coal extraction can be utilized.

   b. *Pre-subsidence Structural Survey:* The survey described in Series 16 of the I & E Handbook shall be submitted to and acknowledged by DEP prior to any underground extraction within the area defined by the angle shown in 1.a. above for any structure for which a survey is required. Structural surveys are required for all non-

commercial or residential dwellings and structures related thereto. No mining shall take place in any area for which a structural survey is required until such survey is submitted to and acknowledged by DEP.

For areas of extraction that is less than or equal to 60 percent, a pre-subsidence structural survey exemption may be requested by the permittee; provided, it is demonstrated that damage to the structure(s) will not occur (adequate support).

In areas of developmental mining *(less than or equal to 60 percent extraction)*, a postponement of the pre-subsidence structural survey may be requested by the permittee; provided, it is demonstrated that damage to the structure(s) will not occur. No mining *(extraction greater than 60 percent)* within the angle of draw shall occur until the pre-subsidence structural survey is completed.

In areas for which a pre-subsidence structure survey exemption and/or postponement is granted and the percent extraction exceeds 60 percent, the exemption and/or postponement for the structural survey is voided for the entire underground mining operation. In addition, the presumption of causation will apply to any damage to structure(s) as a result of earth movement within a 30-degree angle of draw from any underground extraction.

If water supply is any other than a public utility, the permittee must submit information described in Series 16 of the I & E Handbook with the request for exemption or postponement.

NOTE: 30-degree angle of draw is only for survey purpose. 15-degree angle of critical deformation is for protection zone and must be clearly denoted on the subsidence map.

c. *Schedule of Compliance:*

- Not-started Permits: Both a. and b. above must be submitted to and acknowledged by DEP prior to initiation of any mining activities.

- No mining shall take place in any area for which a structural survey is required until such survey is submitted to and acknowledged by DEP.

- Existing Permits with Reserves: Both a. and b. above must be submitted to and acknowledged by DEP no later than August 1, 1996. The structural survey (b.) must at least include the area(s) projected to be mined by January 1, 1997. No mining shall take place in any area for which a structural survey is required until such survey is submitted to and acknowledged by DEP.

- A permittee may submit for review existing surveys if the permittee believes they have surveyed an area previous to this policy to the extent that it complies with this policy. This information may be deemed acceptable provided it satisfies the intent of this policy, provides sufficient information to adequately investigate complaints, and the affected party has been notified and concurs.

- Previously mined areas: Both a. and b. above are not required for areas where mining was completed prior to August 1, 1996. However, both a. and b. above are required for previously mined areas only if second mining is contemplated.

2. *Presumption of Causation:* If alleged subsidence damage to any non-commercial or residential dwellings and structures related thereto occurs as the result of earth movement within the area which a pre-subsidence structure survey is required, a rebuttable presumption exists that the underground mining operation caused the damage.

a. If the permittee was denied access to the land or property for the purpose of conducting the pre-subsidence survey, no presumption of causation will exist.

b. The presumption will be rebutted if, for example, the evidence establishes that:
   - the damage predated the mining in question;
   - the damage was proximately caused by some other factor or factors and was not proximately caused by subsidence; or
   - the damage occurred outside the surface area within which subsidence was actually caused by the mining in question.

c. In any determination whether damage to protected structures was caused by subsidence from underground mining, all relevant and reasonably available information will be considered by the DEP.

3. *Liability:* Regardless of the date of issuance, permittee is liable for subsidence damage caused by underground mining that occurred after October 24, 1992.

4. *Maintenance Cost of Replacement Water Supply:* Replacement of water supply includes an equivalent water delivery system. Therefore, the permittee is responsible for payment of operation and maintenance cost of the equivalent water delivery system which is in excess of customary and reasonable delivery cost for the premining water supply. Upon agreement by the permittee and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment in the amount which covers the present worth of the increased annual operation and maintenance cost agreed to by the permittee and the water supply owner.

5. *Bonding for Subsidence Damage:* When subsidence related material damage occurs to lands, structures, or water supply, and if DEP issues violation(s), the DEP may extend the 90-day abatement period to complete repairs, but shall not exceed one year from date of violation notice. Provided, however, the permittee demonstrates, in writing, that it would be unreasonable to complete repairs within the 90-day abatement period. If extended beyond 90-days, as part of the remedial

measures, the permittee shall post an escrow bond to cover the estimated costs of repairs.

NOTE: Memorandums dated March 7, 1995 and April 24, 1995 regarding groundwater wells and protection of streams remain in effect.

SECTION 17

SMALL OPERATOR ASSISTANCE PROGRAM

(SOAP)

SECTION 18

CITIZEN ACTIONS

SUBJECT: MR-35 Complaint Investigation Forms

1. **Purpose:** To establish procedures for preparation of a MR-35 Complaint Investigation form.

2. **Definitions:**

3. **Legal Authority:** 22-3-15(g); 38-2-18.2 & 18.3

4. **Policy/Procedures:** Each citizen's complaint, whether received verbally or in writing, shall cause a MR-35 Complaint Investigation form to be filled out.

An attempt to contact the complainant must be made within 48 hours of notification of a complaint and the investigation of complaints as expedient as possible.

All citizens must be advised of their rights regarding the following:

(1) The need to follow up an oral complaint with a signed written statement to receive the full range of rights provided by law and regulation. The Director must be given reason to believe that a violation exists.

(2) Their right to accompany the inspector on the investigative inspection, and the right to ask for an informal review of the action taken relative to the issues referenced in the complaint.

(3) The right of the citizen, who is not accompanying an inspector on an inspection, that their name may remain confidential if requested.

The citizen should be informed of the results of the inspection and any actions taken to rectify the situation within ten (10) days of the inspection. If no inspection was made, then this response is to be completed within fifteen (15) days of receipt of the written statement of the complainant. Also, if no action was taken or the complaint was declared invalid, those facts should be presented to the citizen.

Any citizen's complaint which is transmitted via a Ten-Day Letter or Notice from the Office of Surface Mining will require the completion of a MR-35 Complaint Investigation form to be completed and submitted with the TDL/TDN response.

Each field office shall maintain a log of citizen complaints and the disposition thereof. It is the inspector's responsibility to advise the secretary of the information needed to complete this log.

NOTE: Water pollution complaints or a spill that has been relayed from Charleston, it is important that a MR-35 is completed and sent back to Charleston Office. Send these MR-35's to the attention of the NPDES Section.

MR-35
REV 1/93

West Virginia Division of Environmental Protection

SMS/R&E

MR-35 COMPLAINT INVESTIGATION

PERMIT NUMBER [redacted]

COMPLAINT DATE [redacted] TIME [redacted]

METHOD OF COMPLAINT: (PER) IN PERSON (LET) LETTER (HOT) HOTLINE (PHN) PHONE (FAX) FACSIMILIE (OTR) OTHER

CITIZEN NAME "WITHHELD" IF ANONYMOUS CITIZEN TO ACCOMPANY? Y N

ADDRESS PHONE

(NOC) NATURE OF COMPLAINT

PERMITTEE ID# NAME

OPERATOR ID# NAME

NPDES NUMBER MSHA NUMBER

COUNTY [redacted] POST OFFICE

RECEIVING STREAM LOCATION

INVESTIGATION RESULTS

COMPLAINT STATUS (INI) INITIAL (OPN) OPEN (TER) TERMINATED (UNS) UNSUBSTANTIATED (WDR) WITHDRAWN

INSPECTOR ID [redacted]

DATE INVESTIGATION	DATE RIGHT TO REVIEW ADVISED	DATE MR35 PROVIDED	DATE COMPANY CONTACTED
[redacted]	M M D D Y Y	M M D D Y Y	M M D D Y Y

COMPANY CONTACT NAME PHONE

INSPECT DATE	TIME	FORM#	FACILITY	ENF STD	VIOL#
M M D D Y Y	H H M M				

(FND) FINDINGS

DISTRIBUTED TO NAME: PLEASE PRINT TITLE:

ACTING AS:

DISTRIBUTION DATE AND TIME: M M D D Y Y H H M M

CERTIFIED MAIL #

[DL] DELIVERED [CM] CERT. MAIL [RM] REG. MAIL

ADDRESS: IF MAILED

WV DEP REP:

DISTRIBUTED TO SIGNATURE: DATE:

White - HQ, Green - Inspector, Canary - Complainant, Pink - Field Office, Goldenrod - OSM

WV Division of Environmental Protection Office of Mining and Reclamation Inspection and Enforcement	Series: 18 Pg. No: 1 of 1 Effective:1-93

SUBJECT: Citizen Participation in Informal Assessment Conference

1. Purpose: Clarifies citizen notification and participation in informal assessment conferences.

2. Definitions:

3. Legal Authority: 38-2-20.6(d)

4. Policy/Procedures: Should a citizen request to attend or be notified of an informal assessment conference, he should be instructed to notify the Assessment Officer in writing of this fact. The Assessment Officer will provide notice of conference schedule to the requesting citizen.

If a citizen's complaint investigation generates a Notice of Violation, a note must be made on the 24-A for that violation and a photo copy of the DR-35 attached so that the Assessment Officer can notify the complainant of the conference.

You may be asked to notify the citizen verbally if requested by the Assessment Officer as the most expeditious notification.

SECTION 19

DESIGNATION OF AREAS UNSUITABLE

SECTION 20

INSPECTION AND ENFORCEMENT

SUBJECT: Complete Inspection Checklist

1. **Purpose: Requirements for using a Complete Inspection Checklist.**

2. **Definitions: N/A**

3. **Legal Authority: 38-2-20.1(a)(2) & 38-2-20.1(c)**

4. **Policy/Procedures: Annually, during the second quarter complete inspection, the updated completed inspection checklist and the valley fill checklist found in this section shall be completed along with digital photographs.**

WV Division of Environmental Protection Office of Mining and Reclamation Inspection and Enforcement	Series: 20 Pg. No: 1 Effective:6-92 Revised: 05-2016

SUBJECT: Aerial Overflight Program

1. **Purpose:** Supplement of on ground inspections

2. **Definitions:** N/A

3. **Legal Authority:** 38-2-20.1(d)

4. **Policy/Procedures:** Effective July 1, 1993, it will become mandatory for supervisors to fly all active surface mine permits with each of their inspectors a minimum of once a quarter.

Additional consideration will involve aerial overflights of problem areas on an as-needed basis as in the past.

Completion of Supervisor Helicopter Evaluation Forms (MR-31) will be necessary for all sites viewed. Please utilize the revised form attached. When all aerial inspections for each respective Region are completed, the forms will be submitted to the Regional Administrator for that Region. The Regional Administrator will send via email an electronic copy of each Supervisors forms to the Coal/Non Coal Enforcement Coordinator at the Headquarters Office.

SUBJECT: Midterm Review

1. **Purpose:** **Midterm review evaluation procedures**

2. **Definitions:** N/A

3. **Legal Authority:** **22-3-19(c)**

4. **Policy/Procedures:**

A midterm review shall be completed at the appropriate time via a MR-6 and noted in the reason for inspection as (MR).

SUBJECT: Inspector Guidelines for Assessment Conferences

1. **Purpose:** Addresses inspector participation during assessment conference.

2. **Definitions:**

3. **Legal Authority:** 38-2-20.6

4. **Policy/Procedures:** All assessment conferences will be held in the Regional Office nearest the operation in question.

Inspector participation is mandatory, unless specifically approved by the Surface Mine Reclamation Supervisor.

The following guidelines are provided to assist the inspectors participation in the assessment conference process:

A. Informal conferences are as the name implies - informal and are not recorded. They are, however, similar to any actual court case in which you may have participated in that the operator's side and the Department's side are aired before an impartial assessment officer. The Assessment Officer, based on the facts presented, may vacate the violation or assessment, reduce the assessment, raise the assessment, or uphold the violation or assessment. The inspector then is representing the Department's side and as such must be prepared to discuss the facts surrounding the violation(s) and any other factors pertinent thereto.

B. Conduct at informal conferences is important and one should remember that the Assessment Officer's decision is final. His decision is based on the facts, as prescribed, and his ability to be impartial and reasonable.

Argumentative or adversarial attitudes on the inspector's part will be avoided, as they will only serve to detract from the facts at hand. Legal Aid section of the handbook should be reviewed as it provides excellent guidance for participation in trials or hearings. A professional demeanor always enhances your participation in situations such as this.

C. Conferences are scheduled on a certain date by the Assessment Officer. You will be notified of date and time by a copy of the assessment conference schedule. If you cannot attend a conference, immediately notify your supervisor so that other arrangements can be made.

SUBJECT: Failure to abate Cessation orders unabated over thirty (30) days

1. **Purpose:** To establish procedures for failure to abate cessation order over 30 days.

2. **Definitions:**

3. **Legal Authority:** 38-2-20.4(i)

4. **Policy/Procedures:** Immediately place any permit which has a failure to abate cessation order unabated for over 30 days in show cause. (Complete a MR-16)

SUBJECT: Ownership/Control Update as a result of Cessation Order Issuance

1. **Purpose:** To update a permittee's ownership and control information and to notify those entities that a cessation order was issued.

2. **Definitions:** 38-2-2.83; 38-2-2.84

3. **Legal Authority:**

4. **Policy/Procedures:** Paragraph (h), Subsection 3.33, of the regulations requires that a permittee update ownership/ control information within thirty (30) days after issuance of a cessation order. The attached notice will serve as the official notification, and must be issued to the permittee by the inspector or supervisor upon issuance of any cessation order.

The update notice letter is to be attached to the cessation order, and a note referencing the letter entered in the remedial measures section of the MR-15. Failure by the permittee to provide the required updated information within thirty (30) days will prompt immediate enforcement action.

SUBJECT: MR-16 (Civil Penalty Assessment)

1. **Purpose:** **Guidelines for utilizing civil penalty assessment work sheet.**

2. **Definitions:** N/A

3. **Legal Authority:** N/A

4. **Policy/Procedures:** **MR-16's are to be completed according to 38-2-20.7 and submitted to the Northern or Southern Assessment Officer.**

For withdrawn violations, send the MR-16 (with the reason for withdrawal outlined in the comment section) to the Northern or Southern Assessment Officer.

WV Division of Environmental Protection Office of Mining and Reclamation Inspection and Enforcement	Series: 20 Page: 1 of 1 Effective Date: 1-93

Subject: Assessing violations with original assessments of less than $1,000.00

1. **Purpose**: **To clarify when violations under $1,000 wil be assessed.**

2. **Definitions:** **n/a**

3. **Legal Authority:** **38-2-20.5**

4. **Policy/Procedure:**

All violations shall be assessed a Civil Penalty and no violation will be made non-assessable, even if such assessment is less than $1,000.00.

Subject: Citing and Assessing violations against MR-19 Operators

1. **Purpose:** To clarify citing and assessing violations against MR-19 Operators

2. **Definitions:** n/a

3. **Legal Authority:** 38-2-20.4

4. **Policy/Procedure:**

On operations where MR-19 operators are being utilized, it is always necessary to issue violations to the permittee who is always the responsible party. A review of CSR 38-2-20.4(d) will provide clarification on this issue.

When a violation occurs for which the MR-19 operator is responsible, a violation (MR-15) should then be issued in the permittees name and include the operators name on the MR-15 (i.e., AB Coal Co. - ZX Coal Co. operator) and issue the MR-15 to the permittee then make and serve a copy on the MR-19 operator. MR 16's should be handled the same way. In doing this, you have served notice to and cited the operator for the same violation. This is done to insure, should this violation not be abated or delinquent penalties result or is included as part of a future show cause/revocation, that the MR-19 operator may be appropriately held responsible should the operator be found to be in control of the operation.

SUBJECT: Show Cause Procedures

1. **Purpose:** To outline process of continuances relative to show cause hearings

2. **Definitions:** N/A

3. **Legal Authority:** 22-3-17(b)
   38-2-20.4

4. **Policy/Procedures:**

   1. If a company wants a hearing continuance, the request must be made, in writing, five (5) working days prior to the scheduled date of hearing, signed by an officer or designated counsel, and reasonable justification given. This request will be reviewed by the hearing examiner and a decision rendered within five (5) days of receipt.

   2. If the I & E staff wants a continuance, it will be granted for emergencies only. If the Office of Legal Services requests a continuance, it must be in writing and will be reviewed by the hearing examiner. A decision will be made within five (5) days.

   3. In situations where a consent order is being negotiated, the I & E supervisor should contact Headquarters I & E staff and inform them of such. This should take place at fifteen (15) days prior to the scheduled hearing.

   4. If any of the violations contained in the pattern are a result of a citizen complaint, a note shall be attached to the MR-10 indicating this and containing the citizen's name, address, and phone number, (if available).

      If any of the violations contained in the pattern are

a result of a citizen complaint or if there are intervenors in the case, the citizen/intervenor must be given a copy of the consent order and be allowed fifteen (15) days to submit comments on the consent order before it is signed by the company and director.

5. In cases where there are violations included in the pattern that have not been informally conferenced, a note needs to be attached to the MR-10 indicating as such. The I & E supervisor or inspector shall contact the respective Assessment Officer for an expedited assessment conference. Headquarters will send the show cause order to the company but will not put it on the hearing docket until notified that the violations have been conferenced and the appeals process completed.

6. If an informal assessment conference causes the <u>fact of a violation</u> to be vacated and this action warrants withdrawal of the show cause proceedings, the I & E supervisor will submit to Headquarters recommendation to withdraw the proceedings and a copy of the Assessment Officer's findings.

7. When submitting the MR-10 packet to Headquarters, it must contain the following:

   MR-10 - Request for Show Cause Order
   MR-10A - Violation History
   MR-10B - Violation History for Show Cause
   MR-15's and MR-16's which resulted in the Requst for Show Cause

SUBJECT: Pre-Blast Surveys and Pre-Subsidence Surveys

1. Purpose: Establish procedures for routing pre-blast surveys and pre-subsidence surveys

2. Definitions: N/A

3. Legal Authority: N/A

4. Policy/Procedures:

   1. Region sends or delivers surveys to Headquarters to the attention of Renee Chapman. Renee will date stamp, record in log book and give surveys to Jim Miller.

   2. The HQ review will be done on a five day turnaround. Each survey will be initiated by the reviewer.

   3. HQ will send notification by fax followed with a hard copy to the regional office indicating review is complete and surveys are adequate. This notification will list all surveys reviewed for a particular permit. (This notice will be sent to the appropriate I & E Clerk.)

   4. Regional office notifies permittee that surveys are adequate.

   5. When review is complete, the surveys will be sent to the appropriate regional office for filing.

   6. If a company submits a large number of surveys, one or more of the review team may be detailed to the regional office to conduct the review(s).

   7. Review team supervisor will prepare and submit a weekly report to I & E and permitting assistant chiefs (due Monday for the preceding week) detailing the number of surveys reviewed, which companies they were for and the number pending review. (This can be done via cc:Mail)

SUBJECT: Site Evaluations for Hazardous Materials Prior to Revocation

1. Purpose: To identify potential hazardous materials on revoked sites. This procedure is an addendum to the May 30, 1995 policy.

2. Definitions: See Above

3. Legal Authority:

4. Policy/Procedures:

When a permit is submitted for show cause and the inspector/supervisor is reasonably confident the permit will be revoked, a site evaluation shall be conducted by the supervisor and/or specialist and the enclosed evaluation form submitted.

There are two (2) scenarios that dictate which method of submittal to be used.

1. If a Show Cause Order is issued and the company does not request a hearing, Headquarters sends a memorandum to the appropriate inspector/supervisor indicating no contact from company and does the inspector/supervisor confirm the revocation. In this type of situation, the supervisor/specialist must evaluate the site within 10 days of receipt of the memo and return the evaluation form Headquarters along with the confirmation memo.

2. If a hearing is held and the outcome of the hearing is the decision to revoke, the site must be evaluated within ten (10) days of becoming aware of the decision. The evaluation must be sent to Headquarters before the revocation letter is sent to the Director. Attached is a sample form which provides an example of items which should be list in No. 2 of the Evaluation/Inventory form.

HAZ-MAT Evaluation and Inventory

PERMIT NO.

COMPANY NAME:

1. Does the permit area have materials stored on it that you believe could be considered hazardous to humans, animals, or aquatic life? ☐ Yes ☐ No

2. If yes, list the different types of materials and estimated quantities (No. of barrels, tank sizes in gallons, etc...) i.e...

   1 - 1000 Gal. diesel fuel tank, estimate 500 gal. (1/2 full)
   10 - 55 Gal. drums hydraulic fluid - full
   20 - Lead Acid Batteries
   2 - 500 Gal. tanks NaOH - Appear Empty
   1 - Tank for Anyhydrous Ammonia - size and contents unk.
   2 - Powder magazines - contents and quantity unknown
   1 - Anfo Bin - contents and quantity unknown
   5 - 55 Gal. drums - full - contents unknown

3. Is site access controlled? (locked gate, fenced)
   ☐ Yes ☐ No

ADDITIONAL
COMMENTS:_____
_____
_____
_____
_____
_____
_____

Signature_____Supervisor/Specialist

Date:_____

SUBJECT: Minor Revisions Approvable by Field Level Personnel

1. Purpose: Establish guidelines for approval of minor adjustments to original proposals

2. Definitions: See Above

3. Legal Authority: 38-2-4.12, 38-2-5.4(d), 38-2-9.2(h), 38-2-14.14(g)(5)

4. Policy/Procedures:

The following are examples of minor revisions that are approvable at the field inspector level.

1. Minor drainage structure configuration changes (i.e... round vs. square, spillway on one side instead of the other, etc...) as long as the required sediment storage capacity is maintained. (Approved by virtue of the inspector signing off on the as-built certification)

2. Minor road width/slope configuration (as long as the width/slope do not compromise safety considerations). (Approved as an as-built certification)

3. Additional sediment control capacity (i.e...additional sumps on roads, pre sumps in front of sediment ponds.) (approved on an as-built certification)

4. Species substitution on planting plans (i.e. substituting legume for legume, hardwoods for hardwoods, etc...) Approved by letter submittal and inspector signs off on it.

5. Minor bench size changes on fills (i.e...wider than twenty (20) feet. (Approved on the final certification)

6. Outlets/spillways constructed of different material than originally proposed. (Approved on the as-built certification)

7. Additional rock flumes on backfilled areas (letter approval when constructed)

8. Minor encroachment of the permit boundary (i.e...slips, shootovers, etc...) - These need to be covered with an N.O.V. then shown on a progress map or on the final map. The acreage involved has to be included in the disturbed acreage number on the Phase I release application, and the bond reduction calculated accordingly.

Keep in mind that some of these changes need to be delineated on the ''map of record''. This can be done by requesting a progress map to accompany the certification or letter, or at mid term review, or at the time of final map submittal (Phase I release).

SUBJECT: Pattern of Violations

1. <u>Purpose</u>: **To ensure consistent and timely determinations of patterns of violation**

2. <u>Definitions:</u> **N/A**

3. <u>Legal Authority:</u> **Code: 22-3-17(b), Regulations: 38-2-20.4.b, 38-2-20.4c, and 38-2-20.4i**

4. <u>Policy/Procedures:</u>

A. Upon issuance of a *second* violation of a same or similar nature within any twelve month period, the inspector shall evaluate with his/her supervisor whether a pattern of violations exists for a given permit. This evaluation shall be performed as soon as possible but no later than three weeks following the first inspection of the second violation at issue.

The preliminary determination made by the inspector and his/her supervisor shall be reviewed by the regional deputy director. If a positive pattern determination is made by the deputy director, he/she shall, within five days of his/her review, sign and forward a show cause package to headquarters to the attention of the Alternative Enforcement Specialist (currently, Michele Sturey). The show cause package shall consist of a Request for Show Cause Order (MR-10), Violation History (MR-10A), Violation History for Show Cause (MR-10B)(which shall include a listing of violations that have not been conferenced), copies of the violations (MR-15s), follow-up inspections of violations (MR-16s), supporting inspection reports (MR-6s), water analyses, photographs and conference worksheets (if an assessment conference has been held).

A pattern of violations is present for *two* violations of the same or similar nature where: 1) both violations resulted in off-site impacts to the public or the environment; 2) the operator has a significant history of repeated violations; or 3) the violations were of a willful or negligent nature. Particular attention shall be given to those violations that received a negligence rating of 3 or higher. Moreover, a pattern of violations is present when there is one violation followed by a failure-to-abate cessation order for that violation which has run unabated for thirty (30) days or more.

The determination of whether there is a pattern of violations is to be made on a case by case basis and is not mandatory for two violations of a same or similar nature where: 1) the negligence rating of one or more of the subject violations is 2 or less; or 2) a review of the permit history shows that one or more of the violations was an isolated departure from lawful conduct.

If the deputy director determines that there is no pattern of violations, he/she shall, within five days of his/her review, complete a Negative Pattern Determination and forward it to headquarters, to the attention of the Alternative Enforcement Specialist.

B. For *three* violations of the same or similar nature within any twelve month period, the inspector shall evaluate with his/her supervisor whether a pattern of violations exists for a given permit. This evaluation shall be performed as soon as possible but no later than three weeks following the first inspection of the third violation at issue. Further review and submission to headquarters shall proceed as set forth above.

A finding of a pattern of violations for three violations of a same or similar nature is not mandatory where: 1) the negligence rating of two or more violations is 2 or less; or 2) a review of the permit history shows that two or more of the violations were isolated departures from lawful conduct.

C. Inspector Supervisors shall, on a monthly basis, review violation histories for permits within their territories. A report confirming this review and confirming that the foregoing provisions of this policy have been met for every such permit shall be submitted to the deputy director on the 10th day of every month. Deputy Directors shall, during the next management staff meeting following the 10th of every month, relay the results of the supervisors' monthly review to the Director and/or the Assistant Director for Enforcement.

SUBJECT: Valley Fill Checklist

1. **Purpose:** Requirements for completing valley fill checklist

2. **Definitions:** N/A

3. **Legal Authority:** §22-3-13(b)(22), 38-2-14.14.6

4. **Policy/Procedures:**

A valley fill checklist shall be completed by the appropriate inspector during the second quarter of each year for all excess disposal fills that do not meet the requirements for Phase I Release. This is to be completed during your complete inspections and should accompany the complete inspection checklist appearing in this section.

For the remaining quarters, the valley fill certification submitted by the permittee shall be approved by the inspector and submitted to Nitro Headquarters in accordance with the Director's directive dated February 25, 2003 regarding Excess Soil Disposal Facility Inspection & Reporting Requirements.

EXCESS SPOIL FILLS AND REFUSE EMBANKMENTS
CONSTRUCTION CERTIFICATION

COMPANY NAME		**PERMIT NO.**	

Fill Number		Corp Authorization No.	Expiration Date

Enter ``**A**'' if this Certification concerns a critical stage of construction; ``**B**'' a quarterly inspection; ``**F**'' a final inspection; or ``**C**'' combination.	

1. Removal of Organic Materials and Topsoil	
A. Describe area cleared and grubbed.	
B. Is Topsoil removed to competent subsoil or rock?	
C. Describe disposal of cleared and grubbed material.	
D. Attach documentation that foundation is prepared according to the plans.	

2. Placement of Underdrain System (attach color photographs)	
Designed Underdrains:	
A. Designed height by width **dimensions** (in feet) of the underdrain per the approved plans.	
B. Actual constructed height by width **dimensions** (in feet) of the underdrain.	
C. Attached photographs for each phase of underdrain construction if applicable.	
D. Lateral drains were installed to all springs and potential seeps.	
E. Protective filter systems were installed.	
Natural Segregation: Attach photographic documentation that natural segregation is occurring and proper underdrain material is forming in advance of fill placement.	

3. Construction Aspects of Rock Toe Buttress/Keyway Cut	
Attach documentation that buttress/keyway cut is constructed according to plan.	

4. Fill Construction Status	
A. Type of fill (durable, conventional).	
B. Method of construction (end dump, bottom up, modified bottom up).	
C. Designed volume of fill.	
D. Volume of material disposed of in fill during reporting period.	
E. Current total volume of fill.	
F. Current status of fill (active, being reclaimed, inactive):	

(1) If Inactive, date of last activity:	
(2) Percent slope of ground at toe at current location (only for end dump fills):	
(3) If Being Reclaimed, projected date of completion:	
(4) Method of reclamation, i.e. top down in lifts, long sloping (only for end dump fills:	

5. Installation of the Surface Drainage System		
Yes or No	Where applicable, enter the appropriate response to the following. If not applicable, enter ''NA''.	
	A. Sediment ponds were installed and certified prior to any fill construction and being maintained in accordance with the approved design.	
	B. Temporary drainage control, if needed, was installed in accordance with the approved design.	
	C. Describe methods used to control surface water runoff from areas above and adjacent to durable rock fills during construction.	
	D. Indicate the type of erosion protection techniques used in the fill area (i.e., ''**R**'' for rock rip rap; ''**B**'' for bed rock; ''**V**'' for vegetation; and ''**O**'' for other (specify).	
	E. Permanent diversion ditches and terraces are installed in accordance with the approved designs.	

6. Placement of Materials	
Yes or No	Where applicable, enter the appropriate response to the following. If not applicable, enter ''NA''.
	A. Material is placed in lifts as specified in the approved design.
	B. Potentially toxic or acid forming material is being handled according to the approved plans.
	C. The fill contains no more than 20% non-durable material.
	D. Prohibited materials are not being placed, deposited, or disposed of into the fill area.

7. Sketch of Fill(s) and Support Structure(s)

Submit a drawing of each fill and supporting structures, which are subject to this certification. Include the following information:

A. Current delineation of fill.
B. location of sediment control and drainage structure(s).
C. number and location of completed lifts.
D. limits of clearing and grubbing.
E. location of any surface or ground water discharges.
F. current extent and location of underdrains.
G. current location of toe (latitude, longitude, and elevation).

8. Comments

Discuss any appearance of any instability, structural weakness, or other hazardous condition including, but not limited to underdrain function or erosion vulnerability. (Documentation of implemented or proposed solutions for specific construction or quality control problems must be included.)

Certification by Registered Professional Engineer

I certify that the aforementioned fill is constructed and installed in accordance with the Regulations and as per the approved design(s).

CERTIFIED BY:		Certification/Registration No.	

SIGNATURE:		Inspection Date:	
PLACE SEAL HERE			

SUBJECT:	**Clarification of the Applicability and Certification for Operations Designed Using Final AOC Guidance Document (Steep Slope Operations Only)**
DATE:	**August 1, 2011**

This procedure shall be utilized for the clarification of the applicability and certification for operations designed using the Final AOC Guidance Document.

Policy/Procedures:

The West Virginia Surface Mining Reclamation Regulations provide for objective and well-defined methods for determining Approximate Original Contour (AOC) and to assure compliance. The Final AOC Guidance Document applies to steep-slope surface mining applications submitted after March 24, 2000. This Guidance Document is commonly referred to as (AOC-Plus) and is located within Section 29 of the Permit Handbook. The Final AOC Guidance Document does not apply to underground, refuse, contour or non-steep slope surface mining facilities.

Section 10.1 and 10.2 of the Final AOC Guidance Document provides criteria and guidance for Semi-Annual Certifications of AOC by a Registered Professional Engineer (RPE). The purpose of the Semi-Annual AOC Certification is to determine if the operation is in compliance with its spoil handling plan which was developed as part of the AOC Final Guidance Document and if the operation can maintain the excess spoil optimization plan as included in the approved permit. To ensure compliance, at a minimum, the following information shall be included in the semi–annual submission:

- Certification of Compliance with Final AOC Guidance Document
- Volumetric Table
  - Comparison to Spoil Balance in approved Permit,
- Progress Map
- Cross-section information for any areas backfilled to final regrade
  - Current cross-sections of the backfill area shall be compared with regrade plan and cross-sections in the approved Permit

The Certification criteria are as follows:

1. The operation is in compliance with its spoil handling plan which was developed as part of the AOC Final Guidance Document;

2. The operation can maintain the excess spoil optimization plan as included in the approved permit; and

3. There have been no material changes in, or are any material changes anticipated (defined as greater than 5%), in the following:
    a. The volume of overburden generated
    b. The areal extent of coal to be mined
    c. The spoil balance
    d. The final regrade configuration, so it does not comply with section 9.1 of the Final AOC Guidance Document
    e. Increases in the Excess Spoil Disposal Volume (ESDV)
    f. Moving the toe of any valley fill downstream, or
    g. Other changes that impact the approved excess spoil optimization plan, such as changes in mining method or equipment.

4. If any changes have occurred or are anticipated in the above, the operator must justify in the semi-annual report why the changes have occurred.

5. Should the answer be "yes" to any part of Paragraph 3 above (Question 3 on the Certification Form), the permittee shall submit a permit revision implementing any material changes in the mine operation and mine plan.

6. The required certifications should be submitted by the 15th day of January and July for the preceding (July 1 and December 31) and (January 1 and June 30) periods, respectively.

7. The Certification requirement described herein applies to both AOC and AOC Variance permits, which are designed in accordance with the Final AOC Guidance Document.

SUBJECT: Clarification of the Applicability and Certification for (AOC- Plus) Operations

1. Policy/Procedures:

The West Virginia Surface Mining Reclamation Regulations provide for objective and well-defined methods for determining Approximate Original Contour (AOC) and to assure compliance. The Final AOC Guidance Document applies to steep-slope surface mining applications submitted after March 24, 2000. This Guidance Document is commonly referred to as (AOC-Plus) and is located within Section 29 of the Permit Handbook.

The Guidance Document does not apply to underground, refuse, contour or non-steep slope surface mining facilities. Inspection and Enforcement along with Permit Review staff must first determine from the individual permit document if the Policy applies. If questions arise, Regional or Headquarters Engineering staff should be consulted.

For permits that the procedure applies, the field (on-ground) regrade should periodically be compared to the nearest representative regrade cross-sections of the permit document. In addition, Sections 10.1 and 10.2 provide criteria and guidance for Semi-Annual Certifications by a Registered Professional Engineer (RPE). The criteria are as follows:

1. **the operation is in compliance with its spoil handling plan which was developed as part of the AOC Final Guidance Document, and;**
2. **the operation can maintain the excess spoil optimization plan as included in the approved permit**
3. **there have been no material changes in, or if any material changes are anticipated in, the following items:**
    a. **the volume of overburden generated**
    b. **the areal extent of coal to be mined**
    c. **the overall spoil balance**
    d. **the final regrade configuration**
    e. **increases in the Excess Spoil Disposal Volume (ESDV)**
    f. **moving the toe of any valley fill downstream, or,**
    g. **other changes that impact the approved excess spoil optimization plan, such as changes in mining method or equipment**
4. **and finally, if any changes have occurred or are anticipated in the above, justification should be included in the certification.**

These certifications should be submitted by the 15th day of January and July for the preceding (July 1 to December 31) and (January 1 to June 30) periods, respectively. The Certification requirement applies to both AOC and AOC Variance permits designed in accordance with the Guidance Document.

SUBJECT: **COAL REMINING OPERATIONS**

DATE:	**MAY 25, 2011**
APPROVAL:	**Lewis A. Halstead**

Coal Remining Operations

Legal authority for coal remining: 22-3-13(b) 3
38-2-2.26
38-2-23

The West Virginia Surface Mining and Reclamation Rules §38-2-2.26 states ''Coal Remining Operations means a coal mining operation on lands which would be eligible for expenditures under section 4, article 2 of Chapter 22.'' That means created prior to August 3, 1977 or AML eligible.

The criteria in the rules §38-2-23 outlines the performance standards for this type of remining operation. §38-2-23.1.b. states that a demonstration must be made in writing that the volume of all reasonably available spoil located in the vicinity must be used to reclaim the reaffected or enlarged highwall. It is obvious that the language ''reaffected or enlarged'' means that an additional fresh cut of the pre-existing highwall can be taken and if there is not enough reasonably available spoil, an approximate original contour (highwall) variance can be granted using the surface mine application Section O-5-A.

All spoil generated during the second cut operation, in addition to all reasonably available spoil from the prelaw area, must be utilized to eliminate as much highwall as that volume of spoil will provide for. Keep in mind that 14.8.a.4 (pertains to steep slope mining) says ''The operator shall at a minimum retain all overburden and spoil on the solid portion of the existing or new benches and backfill and grade the area to the most moderate slope possible.

Where the highwall contains more than one coal seam and both are not remined in all places and a demonstration has been made that there is not enough spoil available to totally eliminate all highwall, the highwall AOC variance can be applied to either, or both, of the seams as long as all available spoil is used for reducing the highwall (overstacking on the bottom seam would not constitute eliminating as much of the wall as possible.) and all of the other criteria in §38-2-23 are met. Those criteria are:

a) Demonstrate in writing that the volume of all reasonably available spoil located in the vicinity of the remining operation is insufficient to completely backfill the reaffected or enlarged highwall.

b) Demonstration that the highwall has been reduced to the maximum extent technically practical.
c) All spoil was used to reclaim high wall and there is no overstacking.
d) Demonstrate the post mining slope will not exceed either the angle of repose or such lesser slope as is necessary to achieve a minimum long-term static safety factor of 1.3 and to prevent slides and will not cause a hazard to public safety or significant damage to the environment.
e) Sufficient number x-sections characterize pre and postmining conditions. The steeper the area the more x-sections are needed.
f) The remaining requirements of §38-2-23.1.

SECTION 21

RECLAMATION BOARD OF REVIEW

SECTION 22

COAL REFUSE

SECTION 23

NPDES/WATER MONITORING

SUBJECT: Monitoring and Review of Discharge Monitoring Reports (DMR's for NPDES Permits)

1. Purpose: Procedure for monitoring and review of discharge monitoring reports (DMRs) for NPDES Permits.

2. Definitions:

3. Legal Authority: 22-1-16

4. Policy/Procedures: The following procedures are in addition to any other monitoring required by the Article 3 permit.

1. In preparation for your compliance review of DMR's you should have a copy of the NPDES permit with all attachments and subsequent modifications. This may require some search time on your part to assure that your files are complete. (An inspector's copy is generated for every NPDES action - permitting and enforcement.) When you perform your complete inspection, you will review the permittee's file copies of their DMR's. The NPDES regulations at 47-30-5.11.3 require that records relating to NPDES permits be maintained for a period of not less than three years.

2. The first step in the review procedure is to check to see if DMR reports are provided for each outfall indicated in the permit file. In instances where this is not the case, it will be necessary to ascertain the reason for the omission and where appropriate, take action.

   A DMR is still required to be submitted when an outlet has no discharge for the reporting period. In lieu of a DMR the permittee may submit a letter which specifies the outlets and the months that no discharge occurred.

   Not started permits and oulets not yet constructed, still must submit DMRs in accordance with the reporting requirements in the NPDES Permit. In lieu of a DMR, a letter informing the agency which NPDES Permits are not started and which outlets are not yet constructed will suffice. The letter needs to include the NPDES

Permit No. and is to be signed by an employee of the company who is authorized to sign DMRs. This information needs to be submitted at least quarterly and more frequently if the permit requires it.

3. Compare the values reported for each water quality parameter on the DMR with the water quality standard or effluent limit established in the permit for the specific outfall in question. (The outfall numbers should be clearly noted on both the permit and the DMR.) Where the values of the reported parameters violate the standards or limits of the permit, the extent and frequency of such occurrences should be noted. This is where you should concentrate your inspection efforts.

4. Compare the sampling frequency reported on the DMR with that required under the NPDES permit. Inconsistencies must be noted and a determination made as to the reasons for their occurrence.

5. Verify that the DMR's are being signed by the appropriate person. NPDES regulations at 47-30-4.7.2 require that a responsible corporate officer or his duly authorized agent sign the DMR's. Signature of agents of the analytical laboratory are not acceptable.

6. Verify that the permittee is forwarding the DMR reports to the NPDES Office in Nitro.

7. Be watchful for evidence of false reporting, but exercise common sense and good judgement in handling such cases. Consistent reporting of "no discharge," and identical analytical values for the same outfall over a period of several months, are key indicators that the reports may not be accurate. In these cases, your inspection must include field verification.

   Where false reporting is suspected but not provable, the permittee should be warned. If such problems continue, or if the false reporting is in fact confirmed, enforcement must be initiated. Confirmation of false reporting is best achieved through analysis of grab samples taken by the inspector at approximately the same time and date as the permittee's DMR sampling date. *In any case of suspected or confirmed false reporting, the inspector shall advise his/her supervisor, the Manager of Inspection and Enforcement, and the Manager of NPDES.*

WV Division of Environmental Protection Office of Mining and Reclamation Inspection and Enforcement	Series: 23 Pg. No: 1 of 1 Effective:12-94

SUBJECT: NPDES Enforcement

1. **Purpose:** Policy concerning NPDES/5A Administrative Orders.

2. **Definitions:** N/A

3. **Legal Authority:** N/A

4. **Policy/Procedures:** Upon receiving notification of an Administrative Order concerning a significant noncompliance (SNC) the inspector shall begin within two weeks securing grab samples from the referenced outlets. A copy of the analysis shall be sent to Ken Politan at the Nitro Headquarters.

If a violation of effluent limits is shown, a Notice of Violation (NOV) shall be written and assessed under Article 3.

For ''Notices to Comply'' and ''NPDES Compliance Schedules'', check the measures taken by the company to correct the identified problem(s) and document in the comment section of the MR-6.

WV Division of Environmental Protection	**Series: 23**
Office of Mining and Reclamation	**Pg. No: 1 of 1**
Inspection and Enforcement	**Effective: 10-95**

SUBJECT: Inspection Strategy for mining related facilities with NPDES permits but no Article 3 Permit

1. **Purpose:** **To provide direction to the field staff concerning the subject situations.**

2. **Definitions:** N/A

3. **Legal Authority:** 22-11-4(a)12, 47-30-1

4. **Policy/Procedures:** Inspect the site(s) at least one time per quarter using the existing MR-6. Include at a minimum, the Permittee Name, NPDES Permit Number, field analyses of all discharges, inspection date, and inspection time. In the space for inspection type, indicate a **''C''** for **Compliance Evaluation Inspections**.

Send or give a copy of the Inspection Report to the Permittee, put a copy in the regional NPDES file and send a copy to HPU in Nitro, **ATTN: Angela Dorsey**, for data entry and filing.

If violations exist during the inspection, document on the MR-6. If the violation is one of effluent limits, water samples must be taken and sent to the lab for analysis. When the analyses are received, send a copy to H.P.U. with all of the identifiers (Permittee Name, NPDES Number, Outfall, etc...) to the attention of **Ken Politan**.

SUBJECT:	**Permitting Guidance for Bioreactors**
DATE:	**December 30, 2013**
APPROVAL:	**Harold Ward – Acting Director**

Permitting Guidance for Bioreactors

Authority

The West Virginia Department of Environmental Protection has authority for the Guidance document as per 38 C.S.R.2.

Introduction

With recent advances in research, the construction and use of bioreactors for treatment of selenium and other parameters has increased. The West Virginia Department of Environmental Protection (DEP) finds that these structures can be successful in reducing the concentrations of the pollutants for which they are designed. The DEP also finds that a procedure is required in the permitting of these bioreactors to ensure compliance with the requirements of 38 C.S.R.2.

Background

A bioreactor is a structure that is designed to mimic the conditions found in a naturally occurring wetland area. Research has shown that naturally occurring microbes that digest selenium, and other parameters, currently exists within a majority of the mining operations; however, the naturally occurring conditions are not conducive to stimulate increased activity. Within a bioreactor, organic medium is installed along with a water distribution method that creates an anaerobic environment along with a readily available carbon source used by the microbes as a source of energy.

Permitting

Prior to construction of a bioreactor, the permittee shall submit an application to the DEP for review and approval. The Regional Permit Supervisor will determine if the proposed activity requires submittal as a revision, modification or Incidental Boundary Revision. The application will include design drawings that accurately reflect the design flow, volume and type of organic material, and flow distribution system.

If the structure is proposed as a “Permanent Impoundment”, the permittee must address the requirements of 38 C.S.R.2.5.5. Temporary structures shall include an abandonment plan in accordance with 38 C.S.R.2.5.4.h.

Certification

Upon completion of construction, the structure shall be certified in accordance with 38 C.S.R.2.5.4.d.

This Guidance is also found in
Series 23 of the I&E Handbook and Series 5 of the Permitting Handbook

SUBJECT:	**Policy for NPDES Permitting of Bioreactors for Coal/Quarry NPDES Permits**
DATE:	**Revised-April 8, 2016**
APPROVAL:	**Harold Ward – Acting Director**

Policy for NPDES Permitting of Bioreactors for Coal/Quarry NPDES Permits

Authority

The West Virginia Department of Environmental Protection has authority for this guidance pursuant to 47CSR30 Section 8.2.c.2.A.

Background

A bioreactor is a structure that is designed to mimic the conditions found in naturally occurring wetlands. Research has shown that naturally occurring microbes that digest selenium, and other parameters, currently exist within most mining operations; however, conditions in active water treatment systems are not conducive to stimulate increased activity. Within a bioreactor, organic media are installed along with a water distribution method to create an anaerobic environment and to provide readily available carbon for the microbes to use as a source of energy.

NPDES Permitting

Prior to construction of a bioreactor, the permittee shall submit an application for modification of the NPDES permit for each outlet where a bioreactor is to be installed. The application shall include, at a minimum, design drawings that accurately reflect the design flow, volume of organic material, and flow distribution system. The permit application shall include specific information which identifying measures to be used to ensure adequate function of the bioreactor for DEP for review and approval. In addition, the permit application shall include a description of the organic materials to be used in the bioreactor, the construction procedures and schedule, the construction and design features of the "polishing pond" prior to discharge from the bioreactor, and the proposed method to remove any suspended solids or particulate matter that may be discharged from the bioreactor into the "polishing pond." The permit application shall set forth in detail the methods employed to ensure that the bioreactor does not cause or contribute to a violation of water quality standards in the receiving stream.

Monitoring

A bioreactor is a treatment system that will reduce the concentration of certain parameters in mine discharges. However, monitoring is necessary and prudent to ensure that a newly constructed

bioreactor is operating properly. Upon issuance of a permit modification for installation of a bioreactor, the following language shall be added to Section D of the WV/NPDES permit:

The following bioreactor monitoring requirements apply to monitoring station(s) ___ associated with outlet(s) ____:

a. Samples shall be collected from the receiving stream monitoring station(s) located immediately below the Outlet(s) discharge at the regular sampling interval for the Outlet(s).

b. Each outlet shall be monitored separately.

c.

Pollutant	Benchmark Value:
Dissolved Oxygen	•6 mg/l
Chemical Oxygen Demand	120 mg/l
Biochemical Oxygen Demand	30 mg/l
Total Suspended Solids	100 mg/l
Ammonia Nitrogen	4 mg/l
Nitrate (as Nitrate –N)	10 mg/l
Nitrite (as Nitrite-N)	1.0 mg/l (warm water / non-trout)
Nitrite (as Nitrite-N)	0.06 mg/l (cold water / trout)
pH	6.0 to 9.0 S.U.

When the concentration results from a minimum of twelve consecutive samples of a pollutant are all less than the corresponding benchmark value for the pollutant, a revision requesting reduced monitoring may be submitted (all pH values of the samples must be within the range 6.0 to 9.0 S.U.). Each treatment facility shall submit annual certification that there has not been a significant change in the bioreactor operation or design or the corresponding pollution prevention measures.

When a benchmark value is exceeded; upon discovery the permittee shall within 24 hours notify the local inspector and implement appropriate corrective action to achieve the established benchmark values. Within thirty (30) days of exceeding a benchmark value, the permittee shall submit a letter identifying the revised and implemented procedures for the bioreactor to address the exceedance of the benchmark concentration to the local inspector.

If there is evidence indicating potential or realized impacts on water quality due to any bioreactor covered by this permit, the permit may be promptly modified and/or reissued to include effluent limitations and/or other requirements to control such discharges.

This Guidance is also found in
Series 23 of the I&E Handbook and Series 5 of the Permitting Handbook

SUBJECT:	**Selenium Implementation Guidance**
DATE:	**November 13, 2007**
REVISED:	**December 30, 2013**
APPROVAL:	**Harold Ward – Acting Director**

INTRODUCTION

The West Virginia Department of Environmental Protection (DEP) has statewide effluent data and in-stream water-quality data indicating selenium concentrations in certain locations exceed the current water quality criteria (WQC) for aquatic life. This memorandum documents permitting procedures that will be implemented to reduce the potential for new mining activities to cause or contribute to selenium WQC violations.

This document reflects the current state of knowledge in selenium regulation and prevention. As more facilities permitted under this guidance are constructed, the DEP will review the effectiveness of the controls set forth herein. Limited situations may arise that are not addressed by this guidance. In those situations, discretion may be exercised by the permit review staff after consultation with DEP headquarters.

As such, if selenium is initially identified as a "Parameter of Concern" (POC), the Probable Hydrologic Consequences (PHC) Statement in application for new Surface Coal Mining and Reclamation Act (SMRCA) permits or permit amendments, submitted after January 1, 2008, shall address whether or not selenium is a POC by providing information as described herein.

Mining activities where selenium has initially been identified as a "POC" as outlined in Section 1 of this document will be required to perform overburden sampling for selenium as set forth in Section 2.

Applicants not wishing to implement the described procedures must provide additional testing of materials, alternative handling procedures, historical water quality or other data that demonstrates selenium is not a "POC" or does not have a reasonable potential to violate the selenium WQC.

A proposed activity will initially be deemed to have selenium as a "POC" if:

- The proposed mining is in the Winifrede to Upper No.5 Block coal seam interval. (Seam nomenclature as defined by the West Virginia Geologic and Economic Survey) or;
- Site-specific or adjacent water quality data (associated with mining in the same geologic strata) shows concentrations equal to or more than 5 µg/l. This water data may include, but is not limited to, application water quality data (e.g. PHC, anti-degradation BWQ sampling), effluent data from adjacent mining operations (e.g. NPDES Table 2 IV C analysis) and in-stream monitoring data from DEP Trend Stations, DMRs, and DEP Stream Assessments or;
- If the immediate receiving stream for a proposed discharge is listed on the operable Section 303(d) List for use impairment related to selenium, or;
- There is an approved selenium Total Maximum Daily Load for the receiving stream or downstream waters that mandates regulation of selenium in the discharges from the activity.

SECTION 2

Surface and deep mining operations initially deemed to have selenium as a POC shall be required to perform overburden sampling, as follows:

Overburden Sampling Plan

The recommended spacing of sample sites will be on approximately 2000 foot spacing[2], or other spacing approved by the geologist reviewing the surface mining application. The holes will be located on the uppermost part of the strata to be mined and drilled down to 10 feet below the lowest seam to be mined for surface mines and strata a minimum of 50 feet above and 10 feet below the seam to be mined for deep mines. This will help ensure that all the overburden to be disturbed is sampled. The reviewing geologist may require supplemental sampling locations, if deemed necessary. Detailed geologic logs of the drill holes, to include chroma as per Munsell's chart, are required[3].

[2] Geologic Handbook, pages 29 to 33, published by the DEP in September 2005 for further guidance.

[3] Geologic Handbook, pages 23 to 25, published by the DEP in September 2005 for further guidance).

All strata**,** including the coal seam(s) will be sampled for selenium according to U.S. EPA- 600/2-78-054 *Field and Laboratory Methods Applicable to Overburdens and Minesoils*, Chapter 2. This method generally requires sampling every 5 feet for sandstones, 3 feet for shale or other soft rock including coal seams, or each times the strata or chroma changes. The core should be split longitudinally along its length**,** and a composite analysis shall be done for each stratum. (Stratum sub-sampling is not acceptable.)

Each sample will be analyzed for total selenium by the 3050B (for Acid Digestion of Solids) method. The laboratory performing the test must have a valid DEP Laboratory Certification Program approval to perform metals analysis.

If the total selenium concentration of any strata is equal to or greater than 1 mg/kg, the applicant shall implement a selenium isolation plan or alternatives, as described in Section 3. If all of the tested materials exhibit selenium concentrations less than 1 mg/kg, then the activity will be deemed not to have reasonable potential to cause or contribute to selenium water quality criteria violations.

SECTION 3

Surface Mine and Deep Mine Face-up Operations

Selenium Isolation Plan

Surface mine and deep mine face-up operations with the total selenium concentration of any strata is equal to or greater than 1 mg/kg, shall isolate the following materials:

1. All black/dark grey coal pit materials (Munsell Soil Color Chart of 2.5 or less) that are visibly differentiated in the field. Mining companies typically term this material “pit cleanings.”
2. Any overburden stratum greater than 12 inches in thickness with selenium concentrations greater than 1 mg/kg or Munsell Soil Color Chart of 2.5 or less. The reviewing geologist shall also require isolation of strata that are individually less than 12 inches in thickness, if they meet the selenium or Munsell conditions and are proximate to strata of similar characteristics. Provided that where the permit specifically demonstrates that this material has a selenium concentration less than 1mg/kg, isolation of the material will not be required.
3. The pavement floor shall be removed and isolated if the selenium concentration is equal to or greater than 1 mg/kg to avoid contact with the water/rock interface. Pavement is defined as the pit floor associated with the lowest seam to be mined within any a specific area of the operation and as identified in Item 6 below.

Isolation shall be accomplished as follows:

1. The material shall be isolated promptly to minimize weathering and leaching of selenium.

2. The material shall be isolated in an area of the operation that is high and dry, away from watercourse, and under no circumstance shall any of this material be put in a valley fill.
3. The material shall be put on a free draining pad of at least 10 feet of coarse non-toxic material and the selenium laden material shall be covered with at least 4 feet of the most impervious material available on the surface mining operation.
4. Provided that DEP shall require revision to this plan, where it is demonstrated as necessary to meet performance standards.
5. The isolation cells are to be certified by a registered professional engineer or licensed land surveyor that they were constructed as per permit specifications and located geographically (GPS) on the progress maps.
6. For applications proposing excavated in-stream sediment control structures; any coal seam or dark carbonaceous shale encountered during the excavation of the structure shall be removed, handled, and disposed of in accordance with the procedures specified herein or other appropriate method approved by the Director.

Deep Mining / Augering

Deep mining and augering operations with total selenium concentration of the coal seam being mined, immediate roof, or pavement equal to or greater than 1 mg/kg, will be required to provide the following requirements or meet the following conditions.

The location of openings in coal seams, with total selenium concentration of the coal seam being mined, immediate roof, or pavement equal to or greater than 1 mg/kg, will be situated in such a manner to prevent a gravity discharge, unless the applicant can demonstrate by other methods that the anticipated discharge will not cause or contribute to a violation of the WQS for selenium. During active mining operations with pumped discharges, the applicant shall demonstrate, in their Hydrologic Reclamation Plan (Section J-11) and NPDES application (Modules 7 and 8), the methodologies that will be utilized to ensure compliance with applicable water quality based effluent limitations.

SECTION 4

WV/NPDES Permit Considerations

The WV/NPDES Permit for all operations located in the Kanawha formation, Winifrede to Upper No.5 Block coal seam, shall contain selenium report only requirements. The WV/NPDES Permit for any activity determined to have reasonable potential to cause or contribute to selenium exceeding the current WQC will include selenium effluent limitations and self-monitoring requirements.

For Tier 1 anti-degradation implementation, effluent limitations will require the achievement of selenium water quality criteria end-of-pipe for outlets associated with in-stream treatment

structures and all other outlets where no dilution is available in the immediate receiving stream. For outlets with available receiving stream dilution, effluent limitation development will incorporate dilution, but only to the extent that assures compliance with applicable water quality standards. For Tier 2 and higher waters, anti-degradation implementation may result in selenium effluent limitations more stringent than those described herein.

WV/NPDES permits for activities that are determined to not have reasonable potential to cause or contribute to selenium water quality criteria violations shall not contain selenium effluent limitations. Operations that demonstrate the ability to achieve compliance with the WQC for selenium through implementation of procedures described in Section 3 may be determined to not have the potential to cause or contribute to a violation of the WQC for selenium. However, those permits shall contain selenium report only requirements to confirm that the activity is not adversely impacting water quality.

This Guidance is also found in
Series 23 of the I&E Handbook and Series 32 of the Permitting Handbook

SUBJECT:	**Post Mining Limits under 47 CSR 30**
DATE:	**January 3, 2014**
APPROVAL:	**Harold Ward – Acting Director**

INTRODUCTION

This memorandum supersedes the previous guidance concerning post-mining limits issued by the agency on February 28, 1995. In the eighteen years since the last guidance was issued, significant changes have occurred to the procedures for preparing effluent limitation for mining permits. The purpose of this guidance is to ensure that evaluations of effluent limits for Post-Mining Areas are processed in a consistent manner with full consideration of the type of outlet, the applicable effluent limitations, and the protection of the receiving stream. This guidance provides a uniform method for the review and assignment of both technology-based effluent limitations (TBELs) and water quality-based effluent limits (WQBELs) for post-mining areas.

DISCUSSION

Effluent limits are separated into two categories – technology-based effluent limits (TBELs) and water quality-based effluent limits (WQBELs)… TBELs are established to require "a minimum level of effluent quality that is attainable using demonstrated technologies for reducing discharges of pollutants. TBELs are developed independently of the potential impact of a discharge on the receiving water, which is addressed through WQBELs." *NPDES Permit Writers' Manual*, p. 5-1.

TBELs for coal mining facilities are set forth in the effluent limitation guidelines ("ELGs") in 40 CFR 434. This regulation sets forth categories applicable to different types and stages of mining activities. WQBELs are based on the water quality standards set forth in 47 CSR 2. Whereas TBELs are specified by regulation, WQBELs are calculated, when appropriate to protect receiving water quality, based upon the procedures set forth in EPA's *Technical Support Document for Water-Quality-Based Toxics Control* (the "TSD").

This document sets for the procedure for assigning effluent limitations for facilities that are classified as a "Post Mining Area" under 40 CFR § 434.11(k). This document also explains the requirements for water quality data for applications to revise effluent limitations for Post Mining Areas.

PROCEDURE

TBELs

Under 40 CFR § 434.11(k), the following operations are classified as a Post Mining Areas:

> (1) A reclamation area, which is the surface area of a coal mine which has been returned to required contour and on which revegetation (specifically, seeding or planting) work has commenced, or
>
> (2) The underground workings of an underground coal mine after the extraction, removal, or recovery of coal from its natural deposit has ceased and prior to bond release.

Neither of these are based upon a requirement for raw water quality, unlike the requirement for classification as "alkaline mine drainage." This is logical, because TBELs are not related to receiving water quality. Instead, this role is served by WQBELs set to protect West Virginia's water quality standards.

The determination for classification as a Post Mining Area is based on three factors: (1) mining in the area is completed; (2) the surface area has been returned to contour; and (3) revegetation has commenced. This determination is made on an outlet-by-outlet basis. The drainage area associated with each outlet will be assessed individually to determine whether each of the three factors is satisfied. It is possible for one or more outlet to be classified as a Post-Mining Area, while other outlets do not qualify for reclassification.

Once an outlet qualifies as a Post Mining Area, manganese effluent limitations may be re-evaluated immediately. If the permit contains WQBELs for manganese that is necessary to protect a public water supply intake, then the manganese effluent limitations must remain. If the permit does not contain WQBELs for manganese for an outlet, then the manganese effluent limitations may be removed for any outlet that discharges from an area classified as a "reclamation area" under 40 CFR § 434.11(k).

Past versions of DEP guidance precluded deep mine discharges, pump discharge, and instream ponds located in intermittent or perennial streams from classification as Post-Mining Areas. This contradicts Federal regulations set forth in 40 CFR 434. **However, as a practical matter, classification as a Post Mining Area does not change the effluent limitations for a discharge from the underground workings of an underground mine, since the applicable TBELs for underground workings of underground mines are the same for active mining areas and post-mining areas.** *See* 40 CFR § 434.55(b) and 40 CFR § 434.35. As with active mining areas, manganese can be removed if the discharge from an underground working of an underground mine at a Post-Mining Area can meet the criteria for classification as "alkaline mine drainage."

WQBELs

While TBELs apply to all outlets, the majority of outlets have also been assigned WQBELs. Therefore, both types of effluent limitations must be evaluated when reviewing an application for post mining limits. Likewise, the review process for on-bench outlets is different than the process for instream outlets or deep mine discharges. Importantly, the classification of an outlet as a Post Mining Area **does not affect any WQBELs** assigned to the outlet. Because WQBELs are assigned based on reasonable potential to cause or contribute to a violation of water quality criteria in the receiving stream, WQBELs can only be removed from an outlet by following the procedure set forth in the following paragraphs. [1]

On-bench outlets. Prior to applying for post-mining limits, the permittee must provide one of the following data sets for each outlet:

- Twelve (12) months DMR data plus 1 raw sample, if the outlet is not chemically treated;
- Six (6) months of raw sample data collected prior to any chemical treatment;
- If the outlet does not flow consistently, 12 months DMR data plus 1 raw sample with confirmation from the DEP inspector; OR
- If the outlet does not discharge, 12 months of DMR demonstrating no flow with confirmation from the DEP inspector.

The data will be compared to the corresponding outlet's effluent limitations. If the data meets all WQBELs in the permit, then the outlet will be assigned the appropriate TBELs for a Post-Mining Area specified in 40 CFR 434. WQBELs will remain in the permit for any parameter that does not meet the effluent limitations set forth in the NPDES permit.

Instream or deep mine outlets. Prior to applying for post-mining limits, the permittee must provide 12 months raw water data for each outlet, prior to chemical treatment. This sample needs to be taken prior to the water entering the associated control structure. The agency will compare the data to the applicable water quality criteria. If the data does not exceed the corresponding water quality criteria, then the outlet will be assigned the appropriate TBELs for a Post-Mining Area specified in 40 CFR 434. WQBELs will remain in the permit for any parameter that exceeds the applicable water quality criteria in the receiving stream.

The agency has developed the following flow diagram to represent the procedure for revising both WQBELs and TBELs for Post-Mining Areas:

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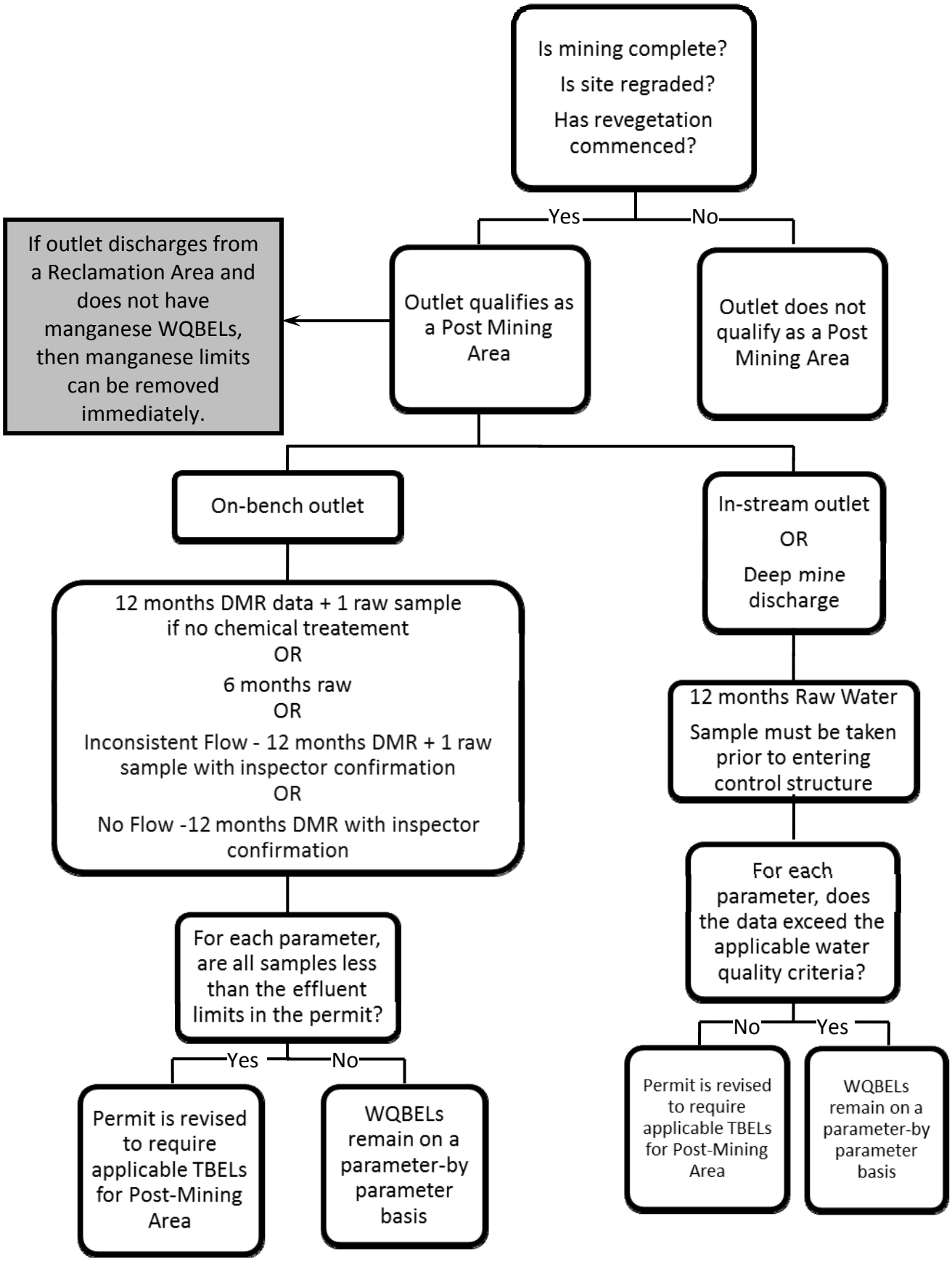
[11] Limited situations may arise that are not addressed by this guidance. In those situations, discretion may be exercised by the permit writer, after consultant with DEP headquarters. In addition, this policy does not affect the requirements for pond removal under SMCRA.


Is mining complete?
Is site regraded?
Has revegetation commenced?
Yes
No
If outlet discharges from a Reclamation Area and does not have manganese WQBELs, then manganese limits can be removed immediately.
Outlet qualifies as a Post Mining Area
Outlet does not qualify as a Post Mining Area
On-bench outlet
In-stream outlet
OR
Deep mine discharge
12 months DMR data + 1 raw sample if no chemical treatement
OR
6 months raw
OR
Inconsistent Flow - 12 months DMR + 1 raw sample with inspector confirmation
OR
No Flow -12 months DMR with inspector confirmation
12 months Raw Water
Sample must be taken prior to entering control structure
For each parameter, are all samples less than the effluent limits in the permit?
For each parameter, does the data exceed the applicable water quality criteria?
Yes
No
Permit is revised to require applicable TBELs for Post-Mining Area
WQBELs remain on a parameter-by parameter basis
No
Yes
Permit is revised to require applicable TBELs for Post-Mining Area
WQBELs remain on a parameter-by parameter basis

CONCLUSION

Most outlets have both TBELs and WQBELs assigned to them. TBELs are based solely on regulation and are independent of water quality of the outlet and receiving stream. WQBELs, on the other hand, are designed specifically to protect water quality in the receiving stream. The evaluation for post mining limits must evaluate both the relevant TBELs for that category as well as the need for WQBELs to assure protection of instream water quality.

This Guidance is also found in
Series 23 of the I&E Handbook and Series 5 of the Permitting Handbook

SECTION 24

QUARRIES

SUBJECT: Quarry Permits

1. Purpose: Transfer, Assignment or Sale of Non-Coal (Quarry) Permits.

2. Definitions: N/A

3. Legal Authority: N/A

4. Policy/Procedures:

   1. The applicant shall submit one original and four (4) copies of Form MR-19-Q to the appropriate DEP regional office bound in folders no larger than 10-1/2" x 12".

   2. The applicant shall submit every application to the regional PTU in the appropriate regional DEP office who will date stamp all copies of the application and immediately assign a MR application number. The PTU shall notify the inspector and regional permit supervisor that the application has been received in the regional office. The PTU shall immediately complete an "application tracking encoding form" which shall be used to enter the application information into the computer application tracking system. This entering of information shall be done immediately, but in no case no later than 24 hours after receipt of the application. Upon notification of receipt of the application, the regional permit supervisor shall immediately assign the review of the application to a permit review team.

   3. The regional office will notify the applicant to begin advertisement (one-time advertisement) with a 30-day comment period in a newspaper of general circulation in the county or counties in which the proposed area is located. The Certification of Publication shall be submitted within 30 days of the close of the period and included as part of the application.

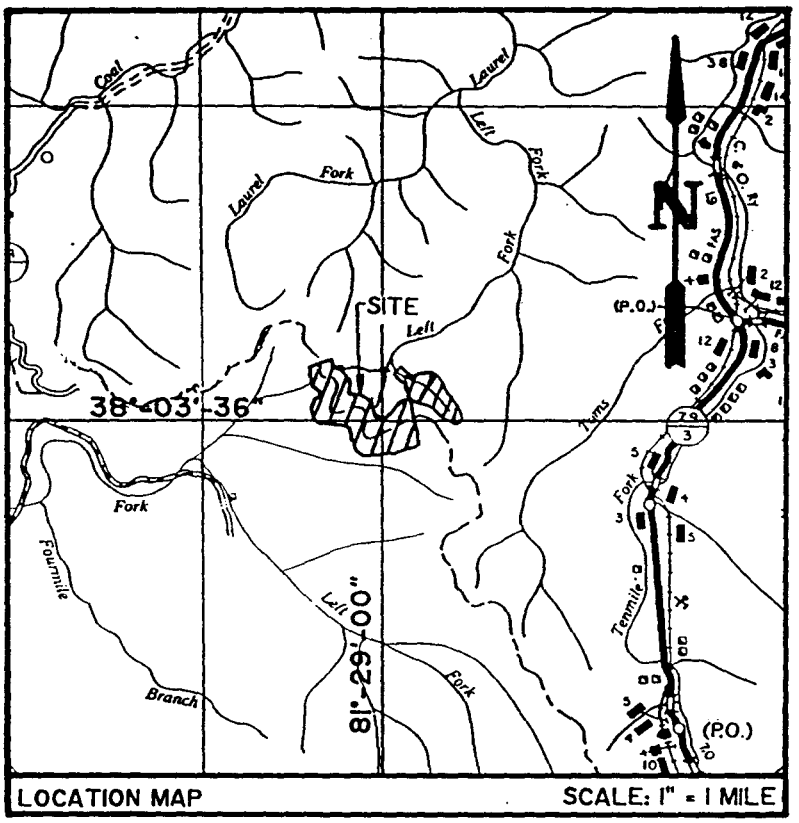
4. If applicable, the applicant shall affirmatively demonstrate that a bond in the full amount of that required for the permit will be kept in full force and effect before, during, and after the transfer, assignment, or sale. Such bond must be received and approved prior to application being forwarded to Headquarters for decision. Bond is not required if application is for sand, sandstone or limestone.

5. The applicant shall submit a certified true copy of original policy of insurance covering all surface mining operations of the applicant in this state and affording personal injury protection in an amount not less than $100,000 and property damage, including blasting damage, protection in an amount of not less than $310,000. The original policy shall be included in the original application with copies of policy in remaining copies of application.

6. The PTU shall compile as a package the original application, MR-2-A, Permit Review Team's Facts and Findings, and the completed MR-2 into a blue 9" x 12" clasp type binder. The original application, along with appropriate attachments, is forwarded to Headquarters for decision.

7. Form MR-2 shall be prepared by the regional PTU with the following typed in the upper right-hand corner: "EFFECTIVE DATE OF TRANSFER _____". The new company name shall be typed in capital letters followed by previous permittee in normal type in parentheses. The transfer shall reflect the current total acres.

NOTE: A 30-day letter may be written to applicant when minimal corrections have been requested by DEP and a response was not received within 30 days. This allows a final 30 days for the applicant to either request an extension or submit the requested correction. If neither is accomplished, the application shall be terminated by DEP.



This location map is provided as a guideline only. All location maps shall be clear and accurate and of a scale and detail found in the West Virginia General Highway Map. The map size will be at a minimum four inches (4") x four inches (4").

The longitude and latitude coordinates for the advertisement and the map must be the same and should cross at or near an end of strip marker for the proposed operation.

WV Division of Environmental Protection Office of Mining and Reclamation Inspection and Enforcement	Series: 24 Pg. No: 1 of 1 Effective:1-93

SUBJECT: Quarry Blasting Notification Requirements

1. Purpose: Clarification of notification of adjacent property owners.

2. Definitions: N/A

3. Legal Authority: 22A-4-11 38-4B-4.3 & 4.6

4. Policy/Procedures: West Virginia Code 22A-4-11 states in part that "The Director shall promulgate rules and regulations which shall provide for a warning of impending blasting to the owners, residents or other persons who may be present on property adjacent to the blasting area."

West Virginia Regulations at 38-2B-4.3 requires in part that "Prior to mining operations, written notification of blasting shall be given by certified mail to all residents, owners or other persons who are adjacent to any part of the proposed operation." In addition, 38-2B-4.6 requires in part that "When blasting is to be done within five hundred feet (500') of any occupied dwelling, the operator or his authorized representative shall notify all persons involved that a blast is to be detonated, stating the approximate time of same.

For blasting purposes, the term "adjacent" is not defined by Chapter 22A, Article 4 of the West Virginia Code or by 38 CSR 2B of the West Virginia Regulations. Therefore, for purposes of 38-2B-4.3, "adjacent" shall be defined as five hundred feet (500') or less from any part of the proposed operation.

SUBJECT: Assessments for Blasting Violations on Non-Coal Operations

1. Purpose: Establish procedure to assess penalties for blasting violations on non-coal surface operations.

2. Definitions: Non-coal surface operations include, but are not limited to: clay, flagstone, gravel, limestone, manganese, sand, sandstone, shale, iron ore, and any other metal or metallurgical ore.

3. Legal Authority: 22-4-11(5), 38-2B-4.1

4. Policy/Procedures:

When a violation ("Notice of Non-Compliance") is issued for blasting violations, the line described as Blasting Scaled Distance Assessment (4009) (Y/N) on the MR-15Q shall be marked Y. A copy of the MR-15Q shall be sent to the assessments section for initial penalty assessment and operator/permittee notification of assessment.

SECTION 25

COAL ASH

DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION
10 McJunkin Road
Nitro, WV 25143-2506

Gaston Caperton
Governor

John M. Ranson
Cabinet Secretary

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

POLICY MEMORANDUM

TO: Office of Mining & Reclamation Staff

FROM: David C. Callaghan
Director

SUBJECT: Disposal and Utilization of Coal Ash on Surface Mining Operations

DATE: January 3, 1994

PREAMBLE

Significant interest has developed over the past several months in the disposal and/or utilization of coal ash on surface mining operations. This concept offers practical and beneficial reclamation possibilities, but raises questions regarding environmental impacts.

The properties of coal ash and the environmental impacts of its disposal have been the subject of scientific research and analysis for several years. For the most part, the body of scientific evidence shows that coal ash is a rather inert material which can be adequately stabilized in fill configurations with negligible impact on water quality or the environment.

Scientific evidence and experience also demonstrates that coal ash frequently contains chemical and physical properties which are environmentally desirable. Some examples are: alkalinity which neutralizes acid mine drainage and acidic soils, inert aggregate for filling of underground mine voids, treatment of coal refuse for acidity and stability, and enhancement of soil properties which provide for a better substrate for vegetation. These considerations are best described collectively as beneficial uses.

However, some scientific evidence shows that the origins of the coal ash will determine its chemical behavior. It seems that some coals or combination of coals produce an ash which is capable of leaching out undesirable elements. Also, when placed in association with

acid-producing materials, otherwise inert coal ash can be acted upon by the acid leachate and produce leachates containing not only acid but also other undesirable elements. Another area which concerns some observers is the potential of the coal ash to be contaminated with other chemical wastes which are toxic or hazardous.

It seems clear that there will be continued interest and activity in disposal of coal ash on surface mining operations throughout the state. Consequently, it is incumbent upon the Division of Environmental Protection (DEP) to develop a policy position which accentuates the positive benefits of coal ash utilization while providing adequate protection to the environment. Also, coal operators and managers of utilities need to know the limitations and requirements which will be placed on coal ash disposal in order to plan future operations. The public and the DEP field staff need to be aware of the safeguards and responsibilities for ensuring that such activities occur in an environmentally-sound manner.

The disposal of coal ash on surface mining operations is authorized in West Virginia Code 22A-3-12,(b),(11) [West Virginia Surface Coal Mining and Reclamation Act]. The West Virginia Code at 20-5F-2(1)[Solid Waste Management Act] excludes coal ash by definition from the solid waste disposal provisions, provided that the coal ash is disposed of in conformance with a permit issued pursuant to the Surface Mining Act. Coal ash, however, does fall into the definition of "industrial waste" and "other waste" at West Virginia Code 20-5A-2 (h) and (j) [Water Pollution Control Act], and therefore the disposal of coal ash is subject to the permitting requirements of the DEP's National Pollutant Discharge Elimination Systems (NPDES) program. Coal ash disposal or utilization operations are also clearly subject to West Virginia Code 20-5M [The Groundwater Protection Act]. The statutes give no further guidance on the disposal of coal ash on surface mining operations.

DIVISION OF ENVIRONMENTAL PROTECTION

CECIL H. UNDERWOOD
GOVERNOR

10 McJunkin Road
Nitro, WV 25143-2506

JOHN E. CAFFREY
DIRECTOR

To: OMR Supervisors

From: John E. Caffrey, Director

Subject: Coal Combustion By-Product Utilization Policy

Date: January 13, 1998

I. Applicable Provisions of State Law

The West Virginia Division of Environmental Protection's (DEP) Office of Mining and Reclamation (OMR) recognizes the need for guidance to the mining, utility, and manufacturing industries on the beneficial use of coal combustion by-products and the disposal of coal combustion wastes. The OMR further recognizes that coal combustion by-products and coal combustion wastes have both beneficial uses and the potential to provide positive impacts when properly managed. The following policy provides the necessary guidance and required criteria for the beneficial use of coal combustion by-products regulated under Articles 2, 3, or 4 of Chapter 22 of the West Virginia Code, so long as such placement is in conformance with an approved plan or permit issued pursuant to such provisions of the code.

Coal combustion by-products means the residuals, including fly ash, bottom ash, bed ash, boiler slag, and flue gas emission control waste produced by coal-fired or coal/gas-fired electrical or steam generating units which are beneficially used. Coal combustion wastes means these same materials which are disposed of and not beneficially used.

Coal combustion waste disposal and coal combustion by-product utilization are not defined as solid waste according to the Solid Waste Management Act Section 22-15-2.27 of the West Virginia Code, when placed on a facility regulated under Articles 2, 3, or 4. Coal combustion waste disposal and coal combustion by-product utilization are subject to the applicable Surface Coal Mining and Reclamation Act, the Surface Mining and Reclamation of Minerals Other than Coal Act, Abandoned Mine Lands and Reclamation Act, the Water Pollution Control Act, and the Groundwater Protection Act. This document addresses beneficial uses of coal combustion by-products. A document addressing the disposal of coal combustion wastes on mined areas may be developed at the discretion of the Director.

II. Permits, Revisions, and Modifications

The OMR may approve the utilization of coal combustion by-products for a beneficial use as described in an application for an Article 3 or 4 permit or revisions to existing permits. Coal combustion by-products may also be used when approved by the DEP Office of Abandon Mine Lands (AML) under Article 2.

For pre-approved uses, as described in this policy, a written notification shall be deemed sufficient to meet the permit revision application requirements. Pre-approved utilization notifications shall automatically, without further agency action, constitute an insignificant revision to the Article 3 or 4 permit and/or minor modification to the National Pollution Discharge Elimination System (NPDES) permit. Permit revisions for acceptable beneficial uses listed below will be subject to the provisions of the Code of State Regulations (CSR) 38-2-3.28 and will generally be handled as insignificant revision to the Article 3 and/or minor modification to the NPDES permit. Permit revisions of Article 4 and related NPDES permits will be subject to the provisions of CSR 47-10-9.2.

The beneficial use of coal combustion by-products on surface mining and quarry operations will be evaluated by the OMR in accordance with plans, design specifications, testing procedures, and monitoring requirements as set forth and submitted on the MR-36 form. The MR-36 form will serve as an element to both Article 3 or 4 permit application and the NPDES permit application. Coal combustion by-products may be utilized on a mining operation only within the permit area, or within such permit area as modified to accommodate the beneficial use of coal combustion by-products.

III. Beneficial Uses

Pre-approved uses and examples of acceptable beneficial uses are listed below. Beneficial uses other than those listed below will be evaluated by OMR on a case-by-case basis through the evaluation of plans, design specifications, results of testing and analysis of the coal ash, water quality sampling and analysis, overburden analysis, and conformity with the applicable laws and regulations of the State.

A. Pre-approved uses include:

1. Subsidence control as part of a confined cementitious mixture.

2. Abatement of underground mine fires as part of a cementitious mixture.

Pre-approved uses will require written notification at least 30 days prior to initiation of such use. The notification will include a description of the use, start and completion dates, a map showing the area where the use will occur, details on the proposed mix including components and proportions, and the estimated amount of coal combustion by-product to be used. The 30-day notification period may be waived at the discretion of the Director.

B. Acceptable beneficial uses include:

1. Coal combustion by-products may be used as a soil amendment, subject to the provisions of applicable regulations.

2. Coal combustion by-products may be used as a source of alkaline addition to neutralize potentially acid-producing materials in the following: (a) coarse coal refuse, fine coal refuse, and combined coal refuse disposal sited (b) backfills, conventional excess spoil disposal fills, and (c) to line pit floors subject to the applicable regulations and the following criteria.

   a. Coal combustion by-products used for neutralizing potentially acid-producing materials in coarse coal refuse, fine coal refuse, and combined coal refuse disposal sites shall comply with the following requirements:

      i. The net neutralization potential of the coal combustion by-product(s) shall be greater than or equal to 5 tons per 1000 tons $CaCO_3$ equivalent, and

      ii. The minimum application of coal combustion by-product will be determined by the formula:
      Where:

A	=	Required amendment (in tons)
W	=	Amount of waste rock: refuse to be neutralized (in tons)
%S	=	Percent sulfur in waste rock, e.g. 2% = 2 tons per 100 tons of rock
%NNP	=	Percent net neutralization potential of amendment, e.g. %NP – %MPA (NP = Neutralization Potential, MPA = Maximum Potential Acidity)

$$A = \left(\frac{W \times \%S \times 3.125}{\%NNP} \right) \times 1.1$$

Notes:

- Pyritic sulfur may be substituted for total sulfur.

- The S and NNP are percentages which make them tons per 100 rather than tons per 1000. The formula was provided by Paul Ziemkiewicz of the National Mine Land Reclamation Center at West Virginia University.

iii. The ratio of coal combustion by-product(s) to refuse shall not exceed 8:1 calculated on a weight basis.

b. Coal combustion by-products used for neutralizing potentially acid-producing materials in backfills and conventional excess spoil disposal fills shall comply with the following requirements:

i. The net neutralization potential of the coal combustion by-product(s) shall be greater than or equal to 5 tons per 1000 tons $CaCO_3$ equivalent, and

ii. The minimum application of coal combustion by-product will be determined by the formula:
Where:

A	=	Required amendment (in tons)
W	=	Amount of waste rock: spoil to be neutralized (in tons)
%S	=	Percent sulfur in waste rock, e.g. 2% = 2 tons per 100 tons of rock
%NNP	=	Percent net neutralization potential of amendment, e.g. %NP - %MPA (NP = Neutralization Potential, MPA = Maximum Potential Acidity)

$$A = \left(\frac{W \times \%S \times 3.125}{\%NNP} \right) \times 1.1$$

Notes:

- Pyritic sulfur may be substituted for total sulfur.

- The S and NNP are percentages which make them tons per 100 rather than tons per 1000. The formula was provided by Paul Ziemkiewicz of the National Mine Reclamation Center at West Virginia University.

- The addition of coal combustion by-products for alkaline addition will not be allowed if it will significantly increase the volume of excess spoil.

- Neutralization potential of the spoil or backfill material may be considered in certain cases at the discretion of the OMR.

c. Coal combustion by-products used for lining pit floors shall comply with the following requirements:

i. The net neutralization potential of the coal combustion by-product(s) shall be greater than or equal to 20 tons per 1000 tons $CaCO_3$ equivalent, or

ii. The coal combustion by-product(s) must exhibit pozzolanic properties.

Coal combustion by-products proposed as a source of alkaline addition not meeting the above criteria may be evaluated by the OMR on a case-by-case basis. The application of coal combustion by-products as an alkaline additive should be uniformly mixed/blended throughout the material to be neutralized.

3. Coal combustion by-products may be utilized to encapsulate potentially toxic material. Coal combustion by-products exhibiting a low hydraulic conductivity (less than or equal to 1×10^{-5} cm/sec) may be used to provide a low permeability zone around toxic materials.

4. Coal combustion by-products may be utilized to replace coal refuse removed from a coal refuse pile, where the removal of the coal refuse is for the purpose of fueling a coal-fired or coal refuse-fired electric power generating facility. Only the coal combustion by-products generated from the facility may be utilized. The utilization of coal combustion by-products shall be subject to the provisions of CSR 38-2-22 provided that the moisture content of the coal combustion by-products as specified in the application is within the range required to achieve suitable compaction, and is placed in one foot lifts and compacted to ninety percent standard proctor.

5. Coal combustion by-products may be utilized to fill underground voids or to reduce acid mine drainage discharges or otherwise improve water quality in permitted or abandoned sites in accordance with the applicable regulations.

6. Coal combustion by-products may be used to improve the stability and/or enhance the material handling characteristics of coal refuse disposal facilities subject to the provisions of the applicable regulations and section III(B)(2)(a) of this policy.

7. Coal combustion by-products may be used to prevent and control spontaneous combustion or to otherwise control burning of coal refuse disposal facilities subject to the provisions of the applicable regulations.

8. Coal combustion by-products may be used to return disturbed areas to approximate original contour (AOC), where additional fill is required to

properly reclaim the site, only after using all available spoil material subject to the provisions of the applicable regulations.

9. Coal combustion by-products (bottom ash or boiler slag) may be used as anti-skid material, if such use is consistent with West Virginia Division of Highways specifications.

10. Coal combustion by-products may be used as a partial replacement for soil in covering coal refuse disposal facilities (coarse coal refuse piles, combined coal refuse disposal facilities, and coal refuse slurry impoundments) subject to the provisions of the applicable regulations.

11. Coal combustion by-products may be used to construct base material for roads, parking areas, storage areas, etc., to stabilize foundation soils.

12. Coal combustion by-products may be used in accordance with the plan, as approved, on abandoned mine land (AML) reclamation and no-cost reclamation projects subject to the requirements of Article 2. Coal combustion by-products may be used for Special Reclamation Projects subject to the requirements of Article 3 & 4.

13. Coal combustion by-products may be used in demonstration projects. The DEP encourages demonstration projects which will allow monitoring of beneficial use applications of coal combustion by-products and the collection of data to allow the evaluation of beneficial use performance.

14. Coal combustion by-products may be used for the construction of liner systems. The evaluation of the liner system shall be included in the application and shall include engineering analysis and laboratory testing. The acceptability of liner systems shall be determined on a case-by-case basis.

15. Coal combustion by-products may be used for sealing of underground mine openings.

More than one coal combustion by-product may be utilized on a permit so long as the overall coal combustion by-product mixture is determined to meet the criteria in Items 1 through 15 above.

C. Coal combustion by-products may be used in other applications as approved by the Director.

IV. Water Quality

Surface and ground water monitoring stations for the purpose of monitoring coal combustion by-product leachates at coal combustion by-product facilities may be established at appropriate locations so as to satisfy the requirements of both the Surface Mining Act (SMCRA)

and the NPDES program. In the event that discharge points are established at different locations than the designated monitoring stations, analysis of water at the discharge point will include the same chemical parameters as for the monitoring station.

V. Coal Combustion By-Product Assay

The coal combustion by-products or wastes to be utilized on a surface mining or quarry operation will be analyzed and tested by the applicant for the parameters and properties set forth in the MR-36 form. Periodic retesting of the coal combustion by-products may be required from time to time by the OMR, provided that the Toxicity Characteristic Leaching Procedure (TCLP) test (for metals only) shall be performed, at least annually.

In the event that the source of the coal combustion by-products or wastes being utilized or disposed of on a permit area changes, prior approval for the change must be requested on an updated , MR-36 form and all required testing and analysis shall be performed on the coal combustion by-products from the new source.

Coal Combustion by-products, which exhibit potentially toxic or potentially acid producing characteristics will not be approved for beneficial use.

Coal combustion by-products may be modified by the generator prior to shipment. If this is the case, the modified coal combustion by-products or wastes shall be analyzed and reported on the application form as such.

VI. Permitting Decision

The decision on issuance or denial of an application for a permit and revision or modification of an existing permit will be in accordance with Chapter 22, Articles 3 and 4 of the Code of West Virginia. This decision will be based on an interpretation of: the mining and reclamation plan; sampling, testing, and analytical data; and other information known or made available to the Director. The Director's decision will be in favor of minimizing risk to the environmental integrity of the State's air, land, and water.

STATE OF WEST VIRGINIA
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF MINING AND RECLAMATION

APPLICATION FOR COAL ASH UTILIZATION

MR-36 1/94

Part I: Applicant Information

NOTE: This application must be completed for each application or permit in which coal ash is to be utilized. Surface Mining Permit Revisions will be subject to the provisions of CSR 38-2-3.27 (Code of State Regulations).

Applicant/ Permittee _____ **SMA/ Permit #** _____ **NPDES #** _____

1. Mailing Address: _____
   Street Address:
   (if mailing address is a Post Office Box) _____
   City _____ State _____ Zip _____ Telephone No. _____

2. Type of Operation: *(Check all applicable types)*

   ☐ Surface

   ☐ Underground

   ☐ Other *(Specify)*: _____

   ☐ Coal ash utilization on existing permitted site

   ☐ Coal ash utilization on new site

   ☐ Change in coal ash source

3. a. Generator of Coal Ash: _____
   (Company Name)

   Mailing Address: _____
   Street Address:
   (if mailing address is a Post Office Box) _____
   City _____ State _____ Zip _____ Telephone No. _____

   Name and location of generating facility if different from mailing address:
   Name _____
   Location _____
   Company Contact Person _____
   Title _____ Telephone No. _____

b. Type of plant (Boiler) or Process Generating the Ash:

- ☐ Pulverized Coal-Fired Furnace;
- ☐ Cyclone Furnace;
- ☐ Stoker-Fired Furnace *(Specify type):* _____
- ☐ Bubbling Fluidized Bed;
- ☐ Circulating Fluidized Bed;
- ☐ Wet Scrubber;
- ☐ Dry Scrubber;
- ☐ Other *(Specify)* _____

c. If available, list SIC Codes: _____

_____

_____

NOTE: *Where any of the information received in Part I, Item 3 changes, or where the applicant receives and utilizes coal ash from additional generators, the applicant will promptly update the application and provide testing and analysis data as required in Part II, Items 4 and 5 of this form.*

4. Maximum Rates of Coal Ash to be Utilized on the Permit Area:

Tons/Day: _____ Tons/Month: _____ *OR* Tons/Year _____

Part II: Coal Ash Utilization Plan

1. Provide a detailed narrative describing the following on a separate attachment:
   a. Site preparation;
   b. Unloading and stockpiling areas;
   c. Sequence of mining/utilization techniques;
   d. Phases of utilization:
      (1) Compaction of coal ash;
      (2) Equipment to be used to achieve compaction;
      (3) Thickness of lifts; and
      (4) Methods of utilization.
   e. Application of cover material;
   f. Revegetation procedure;
   g. Dust control methods;
   h. Final slopes and closure (abandonment) procedures; and
   i. Life of facility.

2. a. Provide a map of the coal utilization area at a minimum scale of 1"=500' and locate the following:
      (1) Extent of the area proposed for coal ash utilization;
      (2) Location of initial placement;
      (3) Location of collection and treatment facilities;
      (4) Location of discharge points;
      (5) Location of proposed groundwater monitoring points;
      (6) Location of surface water monitoring points;
      (7) Location of all test holes and borings used to obtain information on overburden, geology, and groundwater;
      (8) Location of all surface and ground water users within 1/2 mile of the coal ash utilization or disposal site(s), or ground or surface water discharges therefrom; and
      (9) Location of all discharge points and all streams receiving surface or ground water flow from the coal ash utilization or disposal area.

   b. Provide a cross-section map showing the following:
      (1) Relation of utilization area to mining activity;
      (2) Groundwater table;
      (3) Highwalls, mine pools, mine workings, etc.; and
      (4) Aquifer(s) to be monitored by the well.

   c. A description of how the coal ash utilization is consistent with or alters the hydrologic regime, as proposed in the permit application, or as modified in the case of a significant revision to an existing permit.

   d. A description of how the coal ash utilization will alter the mining and reclamation plan and the post-mining land use as proposed in the permit application or significant revision to an existing permit.

   e. Unless otherwise available, provide an acid-base accounting and the soil types or rock lithotypes of the material which will be associated with the coal ash once in place.

3. Provide water quality sampling and analysis of all surface and ground water which will be associated with the coal ash. Analysis will be for the following parameters:
   a. pH (S.U.)
   b. Alkalinity (mg/l)
   c. Hardness (mg/l
   d. Total Dissolved Solids (mg/l)
   e. Total Suspended Solids (mg/l)
   f. Total Iron (mg/l)
   g. Total Manganese (mg/l)
   h. Total Aluminum (mg/l)
   i. Chloride (mg/l)
   j. Sulfate (mg/l)
   k. Phenolics (mg/l)
   l. Arsenic (mg/l)
   m. Selenium (mg/l)
   n. Lead (mg/l)
   o. Silver (mg/l)
   p. Cadmium (mg/l)
   q. Copper (mg/l)
   r. Antimony (mg/l)
   s. Boron (mg/l)

4. Provide the results of analysis of leachate studies or analyses, performed on the coal ash, the material blended with or associated with the coal ash, and a representative mixture of both materials in amounts which approximate the proportional ratios once in place. Analysis of the leachate will include the following parameters:
   a. pH (S.U.)
   b. Alkalinity (mg/l)
   c. Hardness (mg/l
   d. Antimony (mg/l
   e. Arsenic (mg/l)
   f. Cadmium (mg/l)
   g. Copper (mg/l)
   h. Lead (mg/l)
   i. Nickel (mg/l)
   j. Selenium (mg/l)
   k. Thallium (mg/l)
   l. Zinc (mg/l)
   m. Manganese (mg/l)
   n. Iron (mg/l)
   o. Aluminum (mg/l)
   p. Silver (mg/l)
   q. Boron (mg/l)
   r. Sulfate (mg/l
   s. Chromium (mg/l)

5. Provide Toxicity Characteristic Leaching Procedure (TCLP) results for metals only.

6. For Items 3, 4, and 5 above, list the names, addresses, and phone numbers of the individuals, firm or laboratories performing the analysis. Give a description of the analytical methods and Detectic Limits used and a description of the leachate testing procedures used.

7. Provide an affidavit from the ash generating facility certifying that only coal ash will be loaded ar supplied to the trucks and/or railroad cars bound for the permitted facility.

CERTIFICATION OF APPLICATION:

I, _____, having been duly sworn, depose and attest that all the representations contained in this application are true and correct to the best of my knowledge, that I am a principal executiv officer (President/Vice President) of the applicant and that this application for coal ash utilization is being executed with my consent and has been executed by the person required by law.

State	
County	Signature of Principal Officer (President/Vice-President)
Sworn and Subscribed to Before Me This _____ Day of ,	
	Typed Name
Notary Public	Official Title
Commission Expiration Date	Date

SUPPLEMENTAL INFORMATION

SUBJECT: Inspector Guidelines for Assessment Conferences

1. Purpose: Addresses inspector participation during assessment conference.

2. Definitions:

3. Legal Authority: 38-2-20.6

4. Policy/Procedures: All assessment conferences will be held in the Regional Office nearest the operation in question.

Inspector participation is mandatory, unless specifically approved by the Surface Mine Reclamation Supervisor.

The following guidelines are provided to assist the inspectors participation in the assessment conference process:

A. Informal conferences are as the name implies - informal and are not recorded. They are, however, similar to any actual court case in which you may have participated in that the operator's side and the Department's side are aired before an impartial assessment officer. The Assessment Officer, based on the facts presented, may vacate the violation or assessment, reduce the assessment, raise the assessment, or uphold the violation or assessment. The inspector then is representing the Department's side and as such must be prepared to discuss the facts surrounding the violation(s) and any other factors pertinent thereto.

B. Conduct at informal conferences is important and one should remember that the Assessment Officer's decision is final. His decision is based on the facts, as prescribed, and his ability to be impartial and reasonable.

Argumentative or adversarial attitudes on the inspector's part will be avoided, as they will only serve to detract from the facts at hand. Legal Aid section of the handbook should be reviewed as it provides excellent guidance for participation in trials or hearings. A professional demeanor always enhances your participation in situations such as this.

C. Conferences are scheduled on a certain date by the Assessment Officer. You will be notified of date and time by a copy of the assessment conference schedule. If you cannot attend a conference, immediately notify your supervisor so that other arrangements can be made.

DR-10A

Page No. _____

VIOLATION HISTORY

NAME: _____ PERMIT NO: _____

IOLATION DATE	VIOLATION NUMBER	DISP *	DATE TERMINATED	TYPE VIOLATION, ADDITIONAL REMARKS

* If a violation is withdrawn or vacated by the assessment officer, do not include in history or pattern of violations. Should three or more like or similiar violations occur within a twelve month period, the area supervisor must be notified in accordance with your handbook.

DR-10B

Page _____ of _____

REPORT OF VIOLATION HISTORY

COMPANY NAME: PERMIT NO:

VIOLATION #: DATE:

Description _____

If willful or unwarranted describe: _____

VIOLATION #: DATE:

Description _____

If willful or unwarranted describe: _____

VIOLATION #: DATE:

Description _____

If willful or unwarranted describe: _____

If any violation(s) was an isolated departure from the law (unusual conditions) describe _____

SUPERVISOR SUMMARY: _____

If issuance of show cause order will further enforcement of the act explain: _____

Supervisor Recommendation: _____

Superivsor Signature Date

WEST VIRGINIA
DIVISION OF ENVIRONMENTAL PROTECTION

TYPE OF MEETING: _____

LOCATION OF MEETING: _____

SUBJECT OF MEETING: _____

SPEAKERS

(Please Print)

DATE: _____

NAME	ADDRESS	REPRESENTING

SPEAKERS

(Please Print)

DATE:_____

NAME	ADDRESS	REPRESENTING

WEST VIRGINIA
DIVISION OF ENVIRONMENTAL PROTECTION

TYPE OF MEETING: _____

LOCATION OF MEETING: _____

SUBJECT OF MEETING: _____

ATTENDANCE ONLY

(Please Print)

DATE:_____

NAME	ADDRESS

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ALTERNATIVE ENFORCEMENT PROCEDURES

FOR UNABATED CESSATION ORDERS

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Alternative Enforcement Procedures for Unabated Cessation Orders

I. Purpose. This document establishes procedures for Regional Offices to refer enforcement cases of unabated cessation orders to the Office of the Attorney General (AG) for injunctive relief, to the local Magistrate for criminal penalties, to the Commissioner for a determination that a pattern of violations exists or has existed and/or to the Assessment Officer for assessment of an individual civil penalty (ICP) where warranted.

II. Authority. This document consolidates the Division of Energy's policy and procedures for Regional Offices to implement alternative enforcement referrals for patterns of violations, criminal penalties, ICPs and injunctive relief pursuant to Sections 22A-3-17(b), (e), (f), and (h) of the West Virginia Surface Coal Mining and Reclamation Act. This document also includes procedures concerning alternative enforcement referrals to reflect provisions of the Settlement Agreement between Save Our Mountains, Inc., et al, and the West Virginia Division of Energy.

III. Definitions.

A. Administrative or Procedural Violation means a violation that has neither direct environmental consequences nor environmental remedies (i.e., the remedial measures do not directly require compliance with one or more performance standards).

B. Agent means a person who exercises authority and control over a surface mining operation on behalf of a corporate permittee. See 53 Federal Register 3664, February 8, 1988. Under United States v. Dix Fork Coal Co., 692 F.2d 336 (6th Cir. 1982), an "agent includes that person charged with the responsibility for protecting society and the environment from adverse effects of the surface coal mining operation and particularly charged with effectuating compliance with environmental performance standards during the course of a permittee's mining operation."

C. Alternative Enforcement means the documented consideration and/or implementation of any or all of the following actions whenever a violator fails to abate a violation: suspension or revocation of a permit due to a pattern of violations, section 22A-3-17(b); criminal penalties, section 22A-3-17(e); individual civil penalties, section 22A-3-17(f); or injunctive relief, section 22A-3-17(h).

D. Corporate Official(s) means the president and the director of a corporation and any other officer or agent who has line responsibility with respect to a mine site.

E. Knowingly means that an individual knew, or had reason to know, in authorizing, ordering, or carrying out an act or omission on the part of a corporate permittee that such act or omission constituted a violation, failure, or refusal.

F. Line responsibility with respect to a mine site means authority or demonstrated control over the conduct of surface mining operations, including the

ability to directly cause the abatement of violations, and any level of supervisory responsibility over a person having such ability. (For example, the mine superintendent and each official in the superintendent's "chain of command," up to and including the chief executive officer, would have line responsibility with respect to the mine site.)

G. Violation, failure, or refusal means (1) a violation of a condition of a permit or a failure or refusal to comply with any order issued under section 22A-3-17 of the West Virginia Regulatory Program. A failure or refusal to comply with any order issued under section 22A-3-17 would include a failure or refusal to comply with an Imminent Harm Cessation Order (38 CSR 2, Section 20.3(a)) or a Failure to Abate Cessation Order (38 CSR 2, section 20.3(b)).

H. Willfully means that an individual acted (1) either intentionally, voluntarily, or consciously, and (2) with intentional disregard or plain indifference to legal requirements in authorizing, ordering, or carrying out a corporate permittee's action or omission that constituted a violation, failure, or refusal.

IV. Policy/Procedures.

A. Background. The West Virginia Coal Mining and Reclamation Act provides for the following alternative enforcement measures on unabated enforcement actions issued by the West Virginia Division of Energy: (1) criminal penalties, (2) individual civil penalties, (3) injunctive relief, and (4) permit suspension/revocation. The Settlement Agreement between Save Our Mountains, Inc., et al,

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and the West Virginia Division of Energy requires that the Division take appropriate action pursuant to permit suspension/revocation, individual civil penalties, and injunctive relief within 60 days of issuance of the cessation in order to ensure that abatement will occur or that there will not be a reoccurrence of the failure to abate in accordance with Title 38, CSR 2.

1. Pattern of Violations. Section 22A-3-17(b) provides for the suspension or revocation of a permit if the Commissioner determines that a pattern of violations exists or has existed and the violations resulted from the operator's lack of reasonable care and diligence.

2. Criminal Penalties. Section 22A-3-17(e) provides for criminal penalties upon conviction when any person knowingly and willfully violates a condition of a permit, or fails or refuses to comply with any order issued under sections 22A-3-17.

3. Individual Civil Penalty (ICP). Section 22A-3-17(f) provides that an individual who is the director, officer, or agent of a corporate permittee and who willfully and knowingly authorizes, orders, or carries out a violation, failure, or refusal (as defined above) may be assessed a civil penalty for violations committed by the corporation and shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under sections 22A-3-17(c) and (e).

4. Injunctive Relief. Section 22A-3-17(h)

Authorizes the Commissioner, the attorney general, or the prosecuting attorney of the county in which the major portion of the permit area is located to request a civil action for injunctive relief when a permittee or agent violates or fails or refuses to comply with any order or decision issued by the Commissioner; interferes with, hinders or delays the Commissioner in carrying out the provisions of the West Virginia statute; refuses to permit inspection of a mine site; or refuses to furnish any reasonable information or report in furtherance of the provisions of the West Virginia statute.

B. Policy. The following policy applies to any failure to abate cessation or imminent harm cessation order.

1. Follow-Up Inspections. The Division will conduct follow-up inspections of the mine site within 30 days after the issuance of a cessation order and as appropriate thereafter to determine whether mining has ceased and abatement of the cessation order has begun;

2. Criminal Penalties. If sufficient evidence exists of knowing and willful conduct on the part of the operator (for example, the operator continues to mine after the issuance of the cessation order or the operator hinders or impedes the inspector in the performance of his duties), the inspector will discuss with his/her supervisor the appropriateness of criminal penalties as an alternative enforcement mechanism. If the inspector and supervisor

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agree on the appropriateness of criminal penalties, the supervisor or the inspector will contact the Chief, Inspection and Enforcement, for concurrence. Following the Chief's concurrence, the inspector or his supervisor will contact the Magistrate in the county which has jurisdiction over the subject mining operation for initiation of criminal charges. The inspector will supply the Magistrate with all available information concerning the violation, including but not limited to inspection reports, copies of the citation, photographs and any other information available to the inspector concerning the violation and the operator's knowing or willful conduct. Using the form provided in Appendix A ("Knowing and Willful Determination Required for Recommended Criminal Penalty"), the inspector will

(a) List each person allegedly responsible for any knowing and willful violation, failure, or refusal (indicate the person's position in the company and current address); and

(b) Document those actions by the person which establish a knowing and willful violation, failure, or refusal, including any statement(s) by the person which indicate(s) an intention to violate a permit condition or a refusal or failure to comply with a cessation order or a decision of the Commissioner (include dates, times, names, and current addresses of witnesses). The inspector may also

pursue injunctive relief at the same time (as described in the following paragraphs) as he is recommending criminal charges in order to assure reclamation of the site.

3. Injunctive Relief. If the violation cited in a Cessation Order is not abated fully within 30 days of issuance and the operator (a) is conducting mining operations in violation of the CO, (b) is not making satisfactory progress toward abatement of the violation, (c) has abandoned the site, and/or (4) is removing from the site equipment needed to perform the abatement work, the inspector will immediately prepare an injunctive relief recommendation for the Attorney General's Office using Appendix B entitled the "Regional Office Referral to the Attorney General for Injunctive Relief". The Attorney General may seek a temporary restraining order or preliminary injunction, or both, if any of these situations occur. If the operator or permittee is granted temporary relief from the FTACO or IHCO under section 22A-3-17, further inspection and enforcement will be curtailed to the extent provided under the grant of temporary relief.

Necessary documentation to be included in the injunctive relief referral for the Attorney General's Office shall include

(a) A copy of the Cessation Order (CO) and the underlying Notice of Violation (NOV)

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(b) Copies of all relevant modifications for the NOV and CO;

(c) Copies of relevant service of process receipts;

(d) Inspection reports, including reports of any reinspections documenting whether the operator has ceased mining at the site, is making satisfactory progress toward abatement, has abandoned the site, or has removed from the site equipment needed to perform abatement work;

(e) Informal hearing or assessment conference requests and reports;

(f) Other pertinent documents (additional reports, letters, maps, photographs, etc.);

(g) Identification of ownership and control information, including the names and addresses of the company agent or representative(s) who were served;

(h) A chronology of events;

(i) Recommendations of remedial measures needed for abatement;

(j) A reclamation cost estimate (RCE), giving specific cost items as shown in

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Appendix C entitled Violation Abatement Cost Estimate Worksheet;

(k) Permit information (including information regarding whether the violator has other permits and their status);

(l) Bond information;

(m) A map showing the location of the mine site;

(n) Directions for service of process; and

(o) A copy of the Notice(s) of Potential Liability for an ICP (if the violator is incorporated) and evidence of service.

If one or more of the items listed in the above section is not available at the time the case is otherwise ready for referral for the alternative enforcement action, and inclusion of the missing item(s) would delay the referral by more than a few days, the referral package containing all other necessary documentation should be forwarded promptly and the missing item(s) should be sent as soon as possible thereafter.

4. Permit Suspension/Revocation. If the violation cited in a Cessation Order is not abated fully within 30 days of issuance of the CO, the inspector will determine in writing, following review of the permittee's history of violations, whether a pattern of violations exist. If the inspector determines that a

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pattern of
violations exist as a result of the operator's lack of reasonable care and diligence, or that the violations are willfully caused by the operator, the inspector will prepare form DR-10 entitled Request for Show Cause Order (Appendix D) and DR-10B, Report of Violation History, (Appendix E) along with the following documentation.

(a) Copies of all violations pertinent to the pattern of violations;
(b) Copies of all relevant modifications, vacations and termination notices;

(c) Copies of relevant service of process receipts;

(d) Inspection and reinspection reports;

(e) Other pertinent documents (additional reports, letters, maps, photographs, etc.);

(f) A chronology of events;

(g) Recommendations of remedial measures needed for abatement; and

(h) A reclamation cost estimate.

When the permittee demonstrates that sufficient resources are available to him to abate the violation(s), the inspector may enter into a consent agreement, on behalf of the Commissioner. The inspector will use the

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language in Appendix G (sample Consent Agreement) for the introductory paragraphs and the penalty provisions. All underlines and blank lines in Appendix G should be completed appropriately. The applicable conditions prescribing actions and deadlines shall be included between the introduction and closing language. Depending on the nature of the problems or violations which are addressed by the Consent Order, it may and often will be appropriate to include a provision stipulating an irreducible minimum civil penalty for future violations which occur during the term of the Order. A sample paragraph for such civil penalties is included at the end of the sample consent agreement. The intent of this provision is to require the operator to pay at least the minimum stated penalty for the cited violation. Although the single violation would not in itself constitute a breach of the order, refusal or failure of the operator to pay the specified penalty would.

All abatement work mandated in the Consent Agreement will have time periods to be performed in the most expeditious manner possible with no time periods to exceed one year. Nor can extensions to abatement times in Consent Orders total more than one year. If the operator/permittee violates any term in a Consent Order, the Division will immediately initiate bond forfeiture in accordance with CSR 38-2-12.4.

No consent agreement shall be agreed to if the permittee or operator is in violation of a

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previous consent agreement.

5. Individual Civil Penalties. Whenever an inspector issues an FTACO or an IHCO to a corporate permittee, the inspector shall make reasonable efforts to serve a copy of the FTACO or IHCO, together with a completed "Notice of Potential Liability for an Individual Civil Penalty" (Appendix F), on the president or chief executive officer of the corporation and on any other officer, director, or agent who has demonstrated control over the daily conduct of the mining operation. Service shall be by hand delivery or certified mail (restricted delivery).

If the violation committed by a corporate permittee is not abated within 60 days after the issuance of an FTACO or 30 days after the abatement date set for an IHCO, whichever is applicable, the inspector shall refer the case to the Manager of Inspection and Enforcement for concurrence and for referral to the Assessment Officer for assessment of an individual civil penalty along with the following documentation.

(a) Copies of the pertinent notice of violation and subsequent failure-to-abate cessation order (or imminent harm cessation order):

(b) copies of all relevant modifications;

(c) copies of relevant service of process receipts; citation must be served on the responsible corporate official

either by personal service or certified mail (restricted service);

(d) copy of Notice of Potential Liability for an Individual Civil Penalty served on the responsible corporate official; notice must be served on the responsible corporate official either by personal service or certified mail, restricted service (Appendix F);

(e) inspection and reinspection reports;

(f) a reclamation cost estimate to abate the violation(s) in the cessation order(s) (Appendix C); and

(g) any statements made by the responsible corporate official relative to his knowing and willful conduct in failing to comply with the violation(s) (Appendix A).

The Assessment Officer shall have 30 days thereafter to decide whether to propose an ICP and, if so, the amount of the proposed ICP, using the criteria set forth in CSR-2-20. See document entitled Assessment Procedures for additional information concerning assessment of ICPs.

6. In all instances in which the Division decides not to utilize one or more of the alternative enforcement mechanisms with respect to an unabated cessation order, the inspector will

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prepare a written statement setting forth the reasons for not utilizing each sanction and place the statement in the permit file which is available to the public. Reasons for not pursuing alternative enforcement are as follows.

(a) An appropriate written abatement plan or consent agreement has been entered into between the permittee and the Commissioner, and the permittee is proceeding in accordance with the provisions of the plan;

(b) The violation is administrative or procedural in nature (if, however, a permittee/operator has been issued one or more other on-the-ground unabated violations, that have been previously referred for alternative enforcement, the administrative or procedural violation should also be referred. The inspector should note this information in his/her referral memorandum.

(d) A CO or an underlying NOV (other than a CO or NOV for an administrative or procedural violation) has not been properly served on the permittee. In those instances, the Regional Office shall ensure proper service prior to making a referral to the Attorney General's Office.

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C. Reporting Requirements. Regional Office Managers shall ensure that records are maintained documenting all alternative enforcement decisions and that SMIS is updated to track the dates and results of these decisions. All outstanding consent orders will include the following information on the tracking system: the permit number, the permittee/operator, the violation number, the violation description (i.e., performance standard violated) a brief description of the required remedial actions and the date(s) established for abatement, including interim steps and extensions.

D. References.

1. West Virginia Surface Coal Mining and Reclamation Act, Sections 22A-3-17(b), (e), (f) and (h).

2. 38 CSR 20.3, 20.4, 20.8, 20.9, 20.10, 20.11

3. Settlement Agreement between Save Our Mountains, Inc., et al, and George E. Dials, Commissioner, Department of Energy, dated July 17, 1989.

4. Department of Energy Memorandum dated May 2, 1990, entitled Failure to Abate Cessation Orders Unabated Over Thirty (30) Days.

5. Department of Energy Memorandum dated July 5, 1990, entitled Consent Orders.

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F. Effect on Other Documents. None.

G. Effective Date. Upon Issuance.

H. Contact. Jennifer Meeks, Director, Office of Environmental Enforcement, and John Ailes, Manager, Inspection and Enforcement.

I. Appendices.

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Appendix A

Knowing and Willful Determination Required for Recommended Criminal Penalty, Individual Civil Penalty or Permit Suspension/Revocation Based on a Pattern of Violations

1. Document those actions by the permittee/operator which are considered to be a knowing and willful violation of a permit condition or a knowing and willful refusal or failure to comply with a cessation order or decision of the Commissioner.

2. List those persons allegedly responsible for the above-described knowing and willful actions, or failure or refusal to comply (indicate position in company and current address).

3. List any statements by persons which indicate an intention to violate a permit condition, or failure or refusal to comply with a cessation order or decision of the Commissioner (include dates, time, name, and current address of witnesses).

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Appendix B

Regional Office Referral to the Attorney General for Permit Suspension/Revocation or Injunctive Relief (or to the Magistrate for Criminal Penalties and Information for Possible Assessment of an Individual Civil Penalty by the Assessment Officer)

Priority Designations:

Priority 1: _____ Imminent Harm Cessation Order is unabated; or
_____ The permittee is actively conducting mining operations after a cessation order has been issued; or
_____ The permittee has interfered with or hindered an inspector in his duties or has refused entry for the purposes of inspecting a mine or obtaining relevant inspection records.

Priority 2: _____ Cessation Order has been issued and the permittee has ceased mining or abandoned the site without abating violation(s) which are or may become serious. (NOTE: An unabated violation would be considered serious if the extent and duration of the impact would progress to an imminent harm/danger condition; would fail to stabilize naturally before causing substantial environmental damage to offsite air, water, or land resources; or would substantially interfere with the planned postmining land use.)

Priority 3: _____ The site is abandoned or inactive with environmental harm not as great as priority 2 above.

1. Permittee(s) Name _____

Permittees' Officer(s):

(1) _____	(2) _____
Name	Name
_____	_____
Position	Position
_____	_____
*** Source	*** Source

*** Source = Indicate source of information, e.g., permit, AVS, furnished by violator, etc.
Permittees' Officer(s):

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(3) _____ (4) _____
Name Name

_____ _____
Position Position

_____ _____
*** Source *** Source

Permittee's Director(s):

(1) _____ (2) _____
Name Name

_____ _____
Position Position

_____ _____
*** Source *** Source

(3) _____ (4) _____
Name Name

_____ _____
Position Position

_____ _____
*** Source *** Source

Permittee's Shareholder(s) (10% or more):

(1) _____ (2) _____
Name Name

_____ _____
Position Position

_____ _____
*** Source *** Source

(3) _____ (4) _____
Name Name

_____ _____
Position Position

_____ _____
*** Source *** Source

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2. Operator(s) Name _____

Operator's Officer(s):

(1) _____ (2) _____
Name Name

_____ _____
Position Position

_____ _____
*** Source *** Source

*** Source = Indicate source of information, e.g., permit, AVS, furnished by violator, etc.

Operator's Officer(s):

(3) _____ (4) _____
Name Name

_____ _____
Position Position

_____ _____
*** Source *** Source

Operator's Director(s):

(1) _____ (2) _____
Name Name

_____ _____
Position Position

_____ _____
*** Source *** Source

(3) _____ (4) _____
Name Name

_____ _____
Position Position

_____ _____
*** Source *** Source

Operator(s) Shareholder(s) (10% or more):

(1) _____ (2) _____
Name Name

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_____	_____
Position	Position
_____	_____
*** Source	*** Source
(3) _____	(4) _____
Name	Name
_____	_____
Position	Position
_____	_____
*** Source	*** Source

*** Source = Indicate source of information, e.g., permit, AVS, furnished by violator, etc.

Permit Information

Permit Number _____
MSHA Number _____
Expiration Date _____

Type: Interim _____ Permanent _____
Status: Active _____ Inactive _____

Additional Information: _____

CO#	V/T	NOV#	ST	COUNTY	PERMIT#	INJ	CRIM	ICP

_____ A copy of the underlying NOV, CO and associated Recommendation for Civil Penalty Assessment
_____ Copies of all relevant modifications, vacations, and termination notices of the associated CO(s).
_____ Copies of relevant service of process receipts.
_____ Inspection reports.

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_____ Hearing or conference requests/reports.
_____ Reclamation Board of Review requests/decisions.
_____ Other pertinent documents (additional reports, letters, maps, photographs, etc.).
_____ Identification of ownership and control information including names and addresses of the company agent(s) or representative(s) who were served.
_____ Chronology of events.
_____ Recommendations for remedial measures needed for abatement.
_____ Reclamation cost estimates.
_____ Permit information (including information regarding whether the violation has other permits and their status).
_____ Bond information.
_____ Map to mine site.
_____ Directions for service of process.
_____ Copy of the notice of potential liability for an individual civil penalty (if violator is incorporated) and evidence of service.

_____ _____
Regional Office Contact Person

_____ _____
Telephone Number Date

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Appendix C

VIOLATION ABATEMENT COST ESTIMATE WORKSHEET

Item	Cost
1. Structure Removal	$ _____
2. Earthmoving	_____
3. Revegetation	_____
4. Other Reclamation Cost	_____
Specify _____	_____
_____	_____
_____	_____

Total of items 1-4 $ _____

DR-10
REVISED 11/85

White - Charleston Off.
Pink - District Off.
Green - Inspector
Goldenrod - Permittee

STATE OF WEST VIRGINIA
DEPARTMENT OF ENERGY
DIVISION OF MINES AND MINERALS
1615 Washington Street, East
Charleston, West Virginia 25311
Telephone: 348-3500

DRAFT

CORRECT COMPANY ADDRESS:

_____

_____

_____

|_| Check if different than permit

Request for SHOW CAUSE Order

1. Name of Permittee _____

2. Permit Number _____ Date Issued _____ Permit Acres _____

3. County _____ Magisterial District _____ Nearest P.O. _____

4. Surface owner _____

5. Date of last inspection _____

6. Estimated disturbed acreage at time of last inspection _____

7. Has mining been completed? ( ) Yes ( ) No

8. Describe circumstances which resulted in request for Show Cause Order:

_____

_____

_____

_____

_____

_____

_____

_____

9. Attach DR-10B, copy of DR-10A, photos and supporting documention to back of report.

Signed _____ Inspector

Signed _____ Supervisor

Date _____

DR-10B DRAFT Page ____ of ____

REPORT OF VIOLATION HISTORY

COMPANY NAME: PERMIT NO:

VIOLATION #: DATE:

Description _____

If willful or unwarranted describe: _____

VIOLATION #: DATE:

Description _____

If willful or unwarranted describe: _____

VIOLATION #: DATE:

Description _____

If willful or unwarranted describe: _____

List and describe any violation(s) that were an isolated departure from the law.

SUPERVISOR SUMMARY: _____

Supervisor Recommendation: _____

Date

DRAFT

Appendix F

NOTICE OF POTENTIAL LIABILITY FOR AN INDIVIDUAL CIVIL PENALTY ASSESSMENT UNDER SECTION 22A-3-17 OF THE WEST VIRGINIA SURFACE COAL MINING AND RECLAMATION ACT LAW

Name of Corporate Official	Title of Corporate Official
Name of Corporate Permittee	Citation Number
Permit Number	

The State of West Virginia, Division of Energy, pursuant to Section 22A-3-17 of the West Virginia Surface Coal Mining and Reclamation Act, may assess an individual civil penalty against a director, officer, or agent of a corporate permittee which has violated a condition of its permit or fails to refuses to comply with a cessation order. Section 22A-3-17(f), in pertinent part, provides that:

> [A]ny director, officer, or agent of such corporation who willfully and knowingly authorized, ordered, or carried out the failure or refusal shall be subject to the same civil penalties that may be imposed upon a person under [Section 22A-3-17(c) and (e)]. . .

As (insert individual's title) of the above-referenced corporate permittee, you are hereby notified that the corporation has been issued a cessation order (insert number), a copy of which is attached. You will be subject to assessment of an Individual Civil Penalty if you willfully and knowingly fail or refuse to take all reasonable steps within your legal authority to bring about abatement of the violation(s) by the corporate permittee (insert one of the following:) [for FTACO's] within 30 days after the issuance of the cessation order (or) [for IHCO's] within 30 days after the abatement date set forth in the cessation order.

In the event that any violation cited in the cessation order is not abated, you may provide, for the Commissioner's consideration, written documentation that demonstrates that you took all reasonable steps within your authority to bring about abatement. Such documentation shall be provided (insert one of the following:) [for FTACO's] within 45 days after issuance of the cessation order (or) [for IHCO's] within 45

DRAFT

days of the abatement date set forth in the cessation order. Assessment of an Individual Civil Penalty does not affect the Commissioner's authority to assess civil penalties or take other enforcement actions against the corporate permittee or other directors, officers, or agents as well.

This notice does not constitute an as , but rather advises you that you are potentially liable for an Individual Civil Penalty. Because a Notice of Potential Liability for an Individual Civil Penalty Assessment is neither a notice of violation nor a cessation order under section 22A-3-17, nor a modification, vacation, or termination of such notice or order, no assessment conference is provided for under the provisions of CSR 2-20.6. However, in the event that a Notice of Proposed Assessment for an Individual Civil Penalty is issued, you may then appeal under the provisions of CSR 2-20.10.

If you have any questions concerning this matter, you may contact:

ID Number	Authorized Inspector	Telephone Number

(Detach along perforated line and retain for State records.)

Signature of Individual Served _____ Date Served _____

I certify that a copy of this notice was served upon (<u>insert individual's name</u>) or his/her authorized agent.

Print name of server _____ Signature of server _____

Attachment(s)

DRAFT

BEFORE THE WEST VIRGINIA DEPARTMENT OF ENERGY

IN RE: COMPANY NAME
PERMIT NUMBER:

CONSENT ORDER

On Date, an order was issued to complete company name (hereinafter referred to as "_____"), finding that a pattern of violations existed at the _____'s mining operations, Permit Number _____. _____ was given thirty (30) days to request a hearing to show cause why Permit Number _____ should not be revoked.

_____ and the West Virginia Department of Energy ("DOE") agreed that the following Consent Order would be entered into as a resolution of the show cause proceeding.

_____, desiring to comply with the West Virginia Surface Coal Mining and Reclamation Act, West Virginia Code 22A-3-1, et seq. (the "Act"), agrees to the following:

CONDITIONS

(Number each item and the subsequent paragraphs. Be specific. Refer to permit conditions or sections of the regulations where possible.)

_____. Reasonable extensions to the aforementioned deadlines may be granted by DOE upon a prior showing to DOE that conditions exist which are beyond the control of _____; provided, that _____ shall notify the DOE of any anticipated failure to meet the aforementioned deadline.

DRAFT

If any event occurs which causes delay in the achievement of the requirements of this Order, _____ shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). Within two working days after _____ becomes aware of such a delay, it shall notify the Director orally and shall, within seven working days of oral notification to the Director, notify same in writing of the anticipated length and cause of delay, the measures taken and/or to be taken to prevent or minimize the delay, and the timetable by which _____ _____ intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of _____ (i.e., force majeure), the time for performance hereunder shall be extended for a period equal to the delay resulting from such circumstances.

[ALTERNATIVE EXPIRATION DATE LANGUAGE:]

This Order shall remain in effect as follows:

~~Any obligation imposed under~~ Paragraphs _____ through _____ will terminate on the date that _____ complies with all stated requirements.

DRAFT

Any obligation imposed under Paragraphs _____ and _____ is an obligation which will continue during the period this Order remains in effect.

This Order shall remain in effect until terminated in writing by the Director. _____ may petition the Director to terminate this Order after one year from the effective date of the Order.

NOTE: The following paragraph should be in all orders as a separate paragraph:

Termination of or compliance with this Order, or any obligation imposed in this Order, shall not operate to relieve from its obligation to comply with any statute, regulation, permit condition, other order, certification, standard, or requirement otherwise applicable.

__. Violation of any of the above terms and conditions will result in immediate initiation of forfeiture procedures in accordance with CSR 38-2-12.4. unless the Commissioner, in his absolute discretion, finds in writing that:

A. The operator has shown good faith in taking remedial actions required by this Consent Order;

B. No environmental harm has resulted, or will result, from the subject violation; and

C. The violation is abated within five (5) days after service of the notice required in CSR 38-2-12.3(a)(1).

DRAFT

__. The DOE will immediately initiate bond forfeiture proceedings, in accordance with CSR 38-2-12.4. on Permit Number _____ if during the term of this order, _____ experiences an additional pattern of related violations of a willful or unwarranted nature; provided that such proceedings, once initiated, may be stayed if the underlying violations are the subject of a good faith appeal, which is being diligently pursued, by _____.

__. This order becomes effective upon signature by the Commissioner of DOE and will expire upon satisfactory compliance with the terms and conditions of this order, as determined by the Commissioner.

__. Coal removal (specify processing, if a preparation plant, or loading, if a loading facility) on Permit Number _____ is hereby suspended for three (3) days immediately following notification of execution of this order.

It is agreed by all parties that this Consent Order shall be binding on all representatives, heirs, assignees, etc. and any corporation or person working in conjunction or in privity with the parties.

DRAFT

_____
COMPANY NAME

_____ By_____
Date Its Title

WEST VIRGINIA DIVISION OF ENERGY

_____ _____
Date Its Commissioner

By_____
Its Director, Mines and Minerals

****

OPTION 1: (Example of mandatory minimum civil penalty clause)

__. _____ agrees that any violations issued during the term of this Consent Order for _____ (specify nature of violations to be considered) _____ will be assessed a minimum civil penalty of $__(enter amount)___. _____ agrees to waive the opportunity to contest the penalty amount or to attempt to have it reduced, and further agrees to pay the penalty in full within thirty (30) days of receipt of the assessment notice.

****

NOTE: The amount of the penalty should be set at a level which would be at least as high as, and preferably higher than, the estimated penalty which would result from the assessment worksheet for the nature of the violation(s) in question.

OPTION 2: (Where plans must be submitted for DOE approval, the following is advisable)

DRAFT

Within 15 days of receipt of the plan, the Director shall have the option of approving the proposed plan as submitted, modifying the plan, requiring _____ to modify the plan or rejecting the plan.

_____ shall implement the plan within seven days of approval of the plan by the Director.

If the Director rejects the plan or requires _____ _____ to modify the plan, _____ shall, within 15 days of notification of rejection or required modification, submit a new or revised plan which shall be subject to the procedure outlined above in paragraphs _____.

In the event of two consecutive rejections by the Director, _____ shall be considered to have violated the terms of this Order and the Director may assess a civil penalty as stipulated in paragraph _____.

SUBJECT: Inter-Agency Cooperation

1. Purpose: To establish procedures for reporting timbering/ logging problems to appropriate personnel.

2. Definitions: n/a

3. Legal Authority: n/a

4. Policy/Procedures: When pollution problems are observed by DEP personnel, the following should be relayed to the appropriate district forester:

   1. Name of Company, if known.
   2. Location - geographic coordinates, watershed, nearest post office, highway, or other identifier.
   3. Type of activity that needs attention. (equipment in creek, etc...)
   4. Any additional pertinent information.

DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF MINING AND RECLAMATION

Inspection and Enforcement

INTER-OFFICE MEMORANDUM

TO: Ed Griffith, Rocky Parsons, and all I & E Supervisors

FROM: Jeff McCormick JMcC

DATE: October 26, 1994

SUBJECT: Violation Numbering

Please advise your respective staff of the need to start the violation numbering process with number one (1) and continuing with consecutive numbers until the permit is released or revoked. The numbers do not start over with a name change or a transfer.

The violation history, when considered for assessments, will not include violations issued to a previous permittee (if the permit was transferred).

If you have any questions, give me a call. Please insert this procedure in the Supplemental Section of your I & E Handbook for future reference and be sure that the inspectors receive a copy.

WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION

IN RE: Sample Coal Co.

PERMIT NUMBER: S-0101-99

CONSENT ORDER

On August 18, 1993, an Order was issued to Sample Coal Co. (hereinafter referred to as "Sample") finding that a pattern of violations existed at their mining operation covered by Permit Number S-0101-99. Sample was given thirty (30) days to request a hearing to show cause why Permit Number S-0101-99 should not be revoked.

Sample and the West Virginia Division of Environmental Protection ("DEP) agreed that the following Consent Order would be entered into.

Sample, desiring to comply with the West Virginia Surface Coal Mining and Reclamation Act, West Virginia Code 22-3-1, et seq. (the "Act"), agrees to the following:

1. Place operable reclamation equipment on the permitted area within 14 days of the effective date of this Order. Sample agrees that a minimum of two (2) operable bulldozers shall remain on site until items 1 through 6 are completed to Phase I release standards. Sample further agrees that less than 2 (two) bulldozers on site constitues a breach of this agreement.

2. All haulroads shall be properly graded, surfaced, and drainage installed within 14 days of the effective date of this Order.

3. The drainage system shall be re-established and certified in accordance with the approved pre-plan within thirty (30) days of the effective date of this Order.

4. The entire permit area shall be backfilled, regraded, and seeded to include downslope areas to Phase I release standards within ninety (90) days of the effective date of this Order.

5. Reconstruction of the valley fill shall be completed and final certification submitted within thirty (30) days of the effective date of this Order.

6. The slide area approximately fifteen hundred feet (1500') from the last open pit shall be repaired, stabilized, and seeded within forty-five (45) days of the effective date of this Order.

7. Reasonable extenstions to the above referenced may be granted upon a prior showing to DEP that conditions exist which are beyond the control of Sample; provided that Sample shall notify DEP of any anticipated failure to meet any agreed deadline. If any event occurs which causes delay in the achievement of the requirements of this Order, Sample shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). "Force majeure" shall mean conditions or

circumstances beyond the reasonable control of Sample which could not have been overcome by due diligence and shall include, without limitation, acts of God, action or inaction of other governmental agencies, administrative or judicial tribunals or other third parties, strikes or labor disputes, which prevent or delay Sample from complying with said compliance schedule. Within two (2) working days of when Sample becomes aware of such force majeure, the DEP shall be notified orally, and within seven (7) working days of oral notification to the DEP, the DEP shall be provided reasonable authentication of the force majeure and notified in writing of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and the timetable by which Sample intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by force majeure, the time for performance hereunder shall be extended for a period equal to the delay resulting from such circumstances.

8. Any obligation imposed under Paragraphs 1 through 7 is an obligation which will continue during the period this Order remains in effect.

9. Termination of or compliance with this Order, or any obligation imposed in this Order, shall not operate to relieve Sample from its obligation to comply with any statute, regulation, permit condition, other order,

certification, standard, or requirement otherwise applicable.

10. Violation of any of the above terms and conditions will result in immediate initiation of forfeiture procedures in accordance with CSR 38-2-12.4, unless the Director finds in writing that:

A. The Operator has shown good faith in taking remedial actions required by this Consent Order; and

B. No environmental harm has resulted, or will result, from the subject violation; or

C. The violation was abated within five (5) days after service of the notice required in CSR 38-2-12.4(a)(1).

11. The DEP will immediately initiate bond forfeiture proceedings, in accordance with CSR 38-2-12.4 on Permit Number S-0101-99, if during the term of this Order, Sample experiences an additional pattern of related violations, provided that such proceedings, once initiated, may be stayed if the underlying violations are the subject of a good faith appeal, which is being diligently pursued by Sample.

12. This Order becomes effective upon signature by the Director of DEP and will remain in effect until terminated in writing by the Director. [Sample may petition the Director to terminate this Consent Order upon satisfactory completion of all requirements contained herein, or one year after the effective date, whichever is more suitable].

13. Coal removal/production/processing is hereby suspended for three (3) days immediately following notification of execution of this Order.

14. Sample agrees that any violations issued during the term of this Consent Order for failure to (i.e...backfill, treat water, revegetate, etc.) will be assessed a minimum civil penalty of (applicable dollar amount). Sample agrees to waive the opportunity to contest the penalty amount in the minimum or attempt to have it reduced, and further agrees to pay the penalty in full within thirty (30) days of receipt of the assessment notice.

It is agreed by all parties that this Consent Order shall be binding on all representatives, heirs, assignees, etc. and any corporation or person working in conjunction or in privity with the parties.

WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION

_____ _____

DATE Its Director

SAMPLE COAL CO.

_____ By:_____

DATE Its_____

INTENT TO PROSPECT

VIOLATION	SUGGESTED CHARGE
Failure to File 22-3-7(a) 38-2-13.2(less than 250) 38-2-13.3(more than 250)	Failed to file a Notice of Intention to Prospect for coal with the Director at least fifteen days prior to commencement of any disturbance associated with prospecting.
Reclamation 22-3-7(h) 38-2-13.5.j.	Failed to reclaim any part of a prospecting operation within a period of three months from disturbance.
Tonnage 22-3-7(f) 38-2-13.3	Removed more than 250 tons of coal without the specific written approval of the Director.
Prospect Roads 22-3-7(c) 38-2-13.6.	Inspector must choose appropriate charge from Section 13.6.
Blasting 22-3-7(c) 38-2-13.5.b.	Conducted blasting on prospecting operations without the approval of the Director.
Steep Slopes 22-3-7(c) 38-2-13.5.d.	Placed material on the natural downslope below the coal seam on slopes of twenty degrees or greater.
Prospect Holes 22-3-7(c) 38-2-13.5.f.	Failed to case, seal or otherwise manage all prospect holes, boreholes or other exposed underground openings.
Revegetation 22-3-7(c) 38-2-13.5.k.	Failed to revegetate all areas disturbed by prospecting.
Notice on Site 22-3-7 38-2-13.9	Failed to have a copy of the written approval of Notice of Intent on the site while conducting prospecting operations.
Sediment Control 22-3-7(c) 38-2-13.5.c.	Failed to conduct prospecting operations in such a manner as to prevent or control erosion, siltation, pollution of water, and to minimize disturbance to the prevailing hydrologic balance.

ALL TYPES EXCEPT PROSPECTS
ADMINISTRATIVE

VIOLATION	SUGGESTED CHARGE
19A Submittal 22-3-19(d) 38-2-3.25.a.4.	Transferred or sold the rights granted under an Article 3 permit without prior written approval of the Director.
19 Submittal 22-3-19(d) 38-2-3.25.c.	Assigned the mining rights granted under an Article 3 permit without approval of the Director.
Renewal 22-3-19(a)(3) 38-2-3.27	Failed to submit an application for permit renewal at least 120 days prior to the expiration of the valid permit.
Renewal 22-3-19(a)(4) 38-2-3.27.	Failed to submit all information required in the application for renewal.
Insurance 22-3-9(d)	Failed to maintain personal injury and property damage insurance in full force and effect during the term of the permit.
Proof of Insurance 22-3-8(2)	Failed to provide proof of insurance on an annual basis.
Workers` Compensation 22-3-8(6)(B)	Failed to maintain continued Workers` Compensation compliance and provide proof of compliance to the Director on an annual basis.
Remedial	Establish and maintain Workers` Compensation compliance and provide proof of compliance to the Director.
Ownership & Control 22-3-9 38-2-3.26.	Failed to notify the Director of any changes to the ownership and control data relating to a permittee or assignee.
MAPS	
Progress Maps 22-3-15(f)	Failed to submit progress maps within thirty days after service of a copy of an order for said maps.

SURFACE MINING
METHOD OF OPERATION

VIOLATION	SUGGESTED CHARGE
Permit Conditions 22-3-13(a) 38-2-3.33.	Failed to follow permit conditions in that...(describe the instance where operator is not complying with the approved permit).
Backfill Compaction Slide of Backstack 22-3-13(b)(3) 38-2-14.8.a.4.	Failed to sufficiently compact material used to back-fill so as to insure stability with a static safety factor of 1.3.
Mine Idle 22-3-13(a) 38-2-14.11.a.	Ceased mining and reclamation operations for a period of more than 30 days without obtaining Inactive Status.
Material Outside Bonded Area 22-3-13(b)(21)	Failed to follow approved pre-plan in that the operator placed spoil material outside the bonded area.
Downslope Placement on Slopes Steeper Than 20 Degrees 22-3-13(d) 38-2-14.8.a.1.	Placed spoil or debris on the downslope where the natural slope exceeds 20 degrees.
Signs & Markers 22-3-13(a) 38-2-14.1.	Failed to establish permanent monument and/or perimeter markers, etc. (Inspector to choose violation from Section 14.1.)
Operation Current 22-3-13(b)(16) 38-2-14.15.b.	Failed to keep operations current. (Inspector to be specific by selecting appropriate violation from Section 14.15.b.1. & .6.)
Topsoiling 22-3-13(b)(5) 38-2-14.3.a. & .b.	Failed to remove, stockpile and return topsoil or upper horizon material to the surface of the regraded area.
Toxic Materials 22-3-13(b)(14) 38-2-14.6.a.	Failed to localize or separate from the remaining overburden or spoil all acid producing and/or toxic materials.

SURFACE MINING
METHOD OF OPERATION

VIOLATION	SUGGESTED CHARGE
Erosion Control 22-3-13(b)(4) 38-2-14.15.k.	Failed to regrade, protect and stabilize all disturbed areas in a manner which effectively controls erosion.
Approximate Original Contour 22-3-13(b)(3)	Failed to backfill, compact and grade in order to restore approximate original contour.
Grading Outer Spoil 22-3-13(a) or 13(b)(23) 38-2-14.15.j.	Failed to grade all outer spoil to blend into the adjoining undisturbed land.
Air Pollution/Dust 22-3-13(b)(4)	Failed to minimize attendant air pollution to the best extent technologically practical.
Excess Spoil Disposal 22-3-13(b)(22) 38-2-14.14	Inspector must select appropriate violation from Section 14.14 of the Regulations.
Prime Farmlands 22-3-13(b)(7) 38-2-10	Failed to mine and reclaim prime farmlands in accordance with the approved pre-plan.
Auger Seals 22-3-13(b)(9) 38-2-14.9.b.	Failed to properly seal all auger holes with an impervious and non-combustible material in order to prevent drainage.
Mining Within 500 Feet of Deep Mine 22-3-13(b)(13)	Mining within 500 feet of an active or abandoned deep mine without prior approval of the Director.
Outcrop Barrier/ Temporary Drainage Barrier 22-3-13(b)(25) or 13(c)(4)	Failed to retain a natural outcrop barrier or failed to properly construct an approved outcrop barrier.
Protection of Off-site Areas 22-3-13(b)(21)	Failed to protect off-site areas from surface mining operations.

SURFACE MINING
METHOD OF OPERATION

VIOLATION	SUGGESTED CHARGE
Removal of Equipment 22-3-13(a) 38-2-14.15.h.	Removed operable regrading equipment from the permit area prior to satisfactory completion of grading.
Regraded Drainage Control 22-3-13(b)(10) 38-2-14.15.l.	Failed to provide drainage control on regraded areas to prevent excessive erosion or additional contributions of suspended solids to the receiving stream.
Slides 22-3-13(b)(21)	Failed to protect off-site areas from slides or damage occurring during surface mining operations.
Surface Mining Without Permit 22-3-8 22-3-13(a) 38-2-3.33.a.	Engaged in surface mining without first obtaining a permit from the Director or conducted surface mining operations outside of the permitted area.

BLASTING

Approaches 22-3-13(b)(15) 38-2-6.5.b.2.	Failed to adequately guard against unauthorized entry to the blast area.
Formula 22-3-13(b)(15)(C) 38-2-6.5.i.	Failed to adhere to the scaled distance formula and approved pre-plan.
Records 22-3-13(b)(15)(B) 38-2-6.4.c.	Failed to accurately record required information in blast record. 6.4.a. Blast log required 6.4.b. Log retained for 3 years
Sign 22-3-13(b)(15) 38-2-14.1.e.	Failed to erect or maintain a blasting warning sign.
Time 22-3-13(b)(15) 38-2-6.5.a.	Detonated an explosive charge in violation of time restrictions, on Sunday, or between sunset and sunrise.

SURFACE MINING
BLASTING

VIOLATION	SUGGESTED CHARGE
Warning 22-3-13(b)(15) 38-2-6.5.b.1.	Failed to provide the audible blasting warning.
Written Notification 22-3-13(b)(15)(A) 38-2-6.3.a.	Failed to properly provide initial public notice of blasting operations.
Written Notification 22-3-13(b)(15)(A) 38-2-6.3.a.	Failed to properly republish the public notice of blasting operations.
Certified Blaster 22-3-13(b)(15)(D) 38-2-6.7.	Failed to conduct blasting operations by a certified person.
Pre-Blast Survey 22-3-13(b)(15)(E) 38-2-6.8.a.	Failed to provide pre-blast survey when required or failed to notify 1/2 mile owners/residents on how to request a pre-blast survey.
Particle Velocity 22-3-13(b)(15) 38-2-6.5.j.	Exceeded peak particle velocity limits.
Air Blast Levels 22-3-13(b)(15) 38-2-6.5.c.1.	Exceeded air blast level of 129 decible linear peak at a protected structure. (Note - level changes depending to type of monitoring instrument used)
Flyrock 22-3-13(b)(15) 38-2-6.5.d.	Cast flyrock more than half the distance to the nearest dwelling or occupied structured or cast flyrock beyond the bounds of the permit area.
Seismographic Monitoring 22-3-13(b)(15) 38-2-6.5.k.	Failed to properly monitor all blasts as required by an order of the Director or the Director`s authorized agent.
Air Blast Monitoring 22-3-13(b)(15) 38-2-6.5.c.3.	Failed to conduct periodic monitoring of air blast levels.

SURFACE MINING
DRAINAGE

VIOLATION	SUGGESTED CHARGE
Construction 22-3-13(b)(10)(C) 38-2-5.4.b.1.	Failed to properly construct the sediment control system in accordance with the approved pre-plan.
Discharge Across Backfill 22-3-13(b)(10)(B) 38-2-14.8.a.5.	Failed to construct drainage channel across or through the backfill in order to insure stability and to prevent erosion.
Installation 22-3-13(b)(10)(C) 38-2-5.4.a. & .c.	Failed to construct a drainage system prior to commencement of surface mining operations.
Maintenance 22-3-13(a) or 13(b)(10)(B) 38-2-5.4.a. & 5.4.b.7.	Failed to properly maintain the approved drainage system.
Sediment Control Clean Out 22-3-13(a) or 13(b)(10)(B) 38-2-5.4.b.7.	Failed to clean out a sediment control structure when the sediment accumulation reaches 60% of the design capacity.
Certification 22-3-13(b)(10)(C) 38-2-5.4.d.1.	Failed to certify that the drainage system was constructed and installed in accordance with the approved pre-plan.
Drainage Vegetation 22-3-13(a) or 13(b)(16) 38-2-9.2.f.	Failed to seed and mulch all areas disturbed in the installation of the drainage system.
Drainage Control 22-3-13(a) or 13(b)(10) 38-2-5.4.a.	Failed to pass all runoff from the disturbed area through a sedimentation control structure.
Sediment Storeage Volume 22-3-13(a) or 13(b)(10)(G) 38-2-5.4.b.4.	Failed to provide 0.125 acre/ft. of sediment storage volume per acre.

SURFACE MINING

PROTECTION OF THE HYDROLOGIC SYSTEM

VIOLATION	SUGGESTED CHARGE
Water Treatment 22-3-13(b)(10) 38-2-14.5.c.	Failed to install, operate or maintain water treatment facilities to address water quality problems.
Breakthrough 22-3-13(a) 38-2-14.5.d.	Failed to sample and analyze water from a break-through and submit reports to the Director.
Treatment of Breakthrough 22-3-13(a) 38-2-14.5.d.	Failed to take appropriate action as a result of breakthrough water being outside effluent limitations.
Accumulation 22-3-13(b)(10)(A)(i) 38-2-14.5.a.	Failed to remove all water accumulation in the pit at least once in a 24 hour period whenever water quality or spoil stability may be affected.
Breakthrough 22-3-13(a) 38-2-14.5.d.	Failed to immediately seal or report any break-through of acid water to the Director.
Surface Water Discharge Reports 22-3-15(b)(1)(B) 38-2-14.7.a.	Failed to submit a report of surface water discharges to the Director.
Effluent Limitations 22-3-13(b)(10) 38-2-14.5.b.	Failed to maintain effluent limitations as set forth in the NPDES Program or other applicable water quality standards.
Ground Water Monitoring 22-3-15(b)(2) 38-2-14.7.b.	Failed to follow the groundwater monitoring pre-plan as approved.
Water Rights Replacement 22-3-24	Failed to replace the water supply of an owner of interest in real property where such supply has been adversely affected by the surface mining operation.

SURFACE MINING

PROTECTION OF THE HYDROLOGIC SYSTEM

VIOLATION	SUGGESTED CHARGE
Ground Water Monitoring Reports 22-3-15(b)(2) 38-2-14.7.b.	Failed to submit ground water monitoring results to the Director.
Stream Pollution 22-3-13(b)(10) 38-2-14.5.b.	Failed to minimize the disturbance to the prevailing hydrologic balance at the mine site and in associated off-site areas.

HAULAGEWAYS OR ACCESS ROADS

Construction 22-3-13(b)(17) 38-2-4.5.a.	Failed to properly construct a haulageway or access road.
Maintenance 22-3-13(b)(17) 38-2-4.8.a.	Failed to properly maintain the approved haulageway.
Seeding 22-3-13(b)(16) 38-2-4.7 & 9.2.f.	Failed to seed and mulch all disturbed areas, including cut and fill slopes of a haulageway or access road immediately after construction.
Surfacing 22-3-13(b)(17) 38-2-4.7	Surfaced a haulageway or access road with acid producing or toxic materials or with materials which create a concentration of suspended solids in surface drainage.
Surfacing 22-3-13(b)(17) 38-2-4.7.a.2.	Failed to maintain a haulroad surface in a manner that controls erosion and siltation.
Dust Control 22-3-13(b)(17) 38-2-4.7.a.2	Failed to control dust from the surface of a haulroad or access roal.
Sediment Control 22-3-13(b)(17) 38-2-4.7.b.	Failed to provide sediment control for a haulroad.

SURFACE MINING

HAULAGEWAYS OR ACCESS ROADS

VIOLATION	SUGGESTED CHARGE
Abandonment 22-3-13(b)(17) 38-2-4.9.	Failed to properly reclain a haulageway.
Certification 22-3-13(a) 38-2-4.12.	Failed to certify that the haulroad construction was in accordance with the approved pre-plan.

REVEGETATION

Mulch 22-3-13(a) 38-2-9.2.i.3.	Failed to use mulch on all disturbed areas.
Planting Plan Report 22-3-13(a) 38-2-9.3.b.	Failed to prepare and submit a final planting plan report to the Director within 60 days after Phase I Bond Reduction.
Planting Plan Proper Species & Amounts 22-3-13(a) 38-2-9.1.a.	Failed to carry out the approved planting plan in such a manner so as to establish a satisfactory vegetation cover.
Fertilizer 22-3-13(a) 38-2-9.2.i.1.	Failed to use the minimum fertilizer rates.
Lime 22-3-13(a) 38-2-9.2.i.2.	Failed to apply lime where soil pH is less than 6.0.
Temporary Revegetation 22-3-13(a) 38-2-14.15.e. & 9.1.e.	Failed to establish a temporary vegetation cover at the end of the first growing season.
Permanent Revegetation 22-3-13(a) 38-2-14.15.e. & 9.1.e.	Failed to establish a permanent vegetation cover at the end of the second growing season.

SURFACE MINING

REVEGETATION

VIOLATION	SUGGESTED CHARGE
Concurrent Revegetation 22-3-13(a) 38-2-14.15.e. & 9.1.d.	Failed to keep revegetation concurrent with the operation as mining and reclamation progress.

UNDERGROUND MINING

PERMITS

Note: 22-3-14(b)(10) requires compliance with Section 13 - making most surface mine violations applicable to underground mining.

Mining Without Permit 22-3-8 38-2-3.33.a.	Engaged in surface mining activity without first obtaining a permit from the Director or engaged in surface mining outside the permit boundaries.

METHOD OF OPERATION

Subsidence Control 22-3-14(a) 38-2-16.2.b.	Failed to comply with all provisions of the approved subsidence control plan.
Progress Maps (Underground) 22-3-14(a) 38-2-16.2.e.	Failed to submit updated maps of underground workings as requested by the Director.
Mine Boundary 22-3-14(a) 38-2-16.2.b. & 3.33.a.	Conducted underground mining operations outside the approved mine boundary as set forth in the Subsidence Control Plan.
Site Development 22-3-14(a) 38-3-15.1.a.	Failed to maintain a schedule for site excavation that provides for minimum disturbance at any one time consistent with sound environmental procedures.
Junk 22-3-14(a) 38-2-15.1.e	Permitted indiscriminate dumping or discarding of materials, litter, junked equipment, containers or other non-coal wastes.

UNDERGROUND MINING

METHOD OF OPERATION

VIOLATION	SUGGESTED CHARGE
Backfilling and Grading 22-3-14(a) 38-2-15.2.b.	Failed to initate final backfilling and regrading of the mine site within 180 days of completion of underground operations.
Subsidence Control 22-3-14(a) 38-2-16.1.a.	Failed to notify all owners of property and residents at least six months prior to mining beneath his or her property or residence.
Sealing of Portals 22-3-14(b)(2)	Failed to seal all portals, entryways, drifts, shafts or other openings when no longer needed for the conducting of the mining operation.
Progress Maps (Surface Disturbance) 22-3-15(f)	Failed to submit progress maps within 30 days after service of a copy of an order for said maps.
Permit Conditions 22-3-14(a) 38-2-3.33	Failed to follow permit conditions in that you...
Material Outside Bonded Area 22-3-14(a) 38-2-15.1.b.	Failed to place spoil not required to achieve the approximate original contour in a controlled manner in designated disposal area within the permit area.
Downslope Placement on Slopes Steeper Than 20 Degrees 22-3-14(a) 38-2-14.8.a.1.	Placed spoil or debris on the downslope where the natural ground slope exceeds 20 degrees.
Signs and Markers 22-3-14(a) 38-2-14.1.	Failed to establish permanent monument, etc. Inspector to select which marker from 14.1.
Topsoiling 22-3-14(a) 38-2-14.3.a.	Failed to remove and stockpile topsoil when a borrow area is not provided.

UNDERGROUND MINING

METHOD OF OPERATION

VIOLATION	SUGGESTED CHARGE
Redistributing Topsoil or Topsoil Substitute 22-3-14(a) 38-2-14.3.a.	Failed to redistribute topsoil and other materials in a manner that achieves an approximate uniform stable thickness.
Toxic Materials During Mining 22-3-14(b)(9)(A)(i) 38-2-14.6.a.	Failed to prevent or remove water from coming in contact with toxic producing deposits.
Toxic Materials After Mining 22-3-14(a) or 14(b)(4) 38-2-14.6.c.	Failed to cover any acid-forming, toxic-forming, combustible materials, or other waste materials with a minimum of four feet of nontoxic and noncombustible material.
Dust(Stockpile) 22-3-14(b)(10) & 13(b)(4)	Failed to minimize attendant air pollution.
Approximate Original Contour 22-3-14(a) 38-2-15.2.a.	Failed to backfill and regrade the mined out area to approximate original contour with all highwalls eliminated.
Erosion Control 22-3-14(a) 38-2-14.15.k.	Failed to regrade and stabilize all disturbed areas in a manner which effectively controls erosion.
Excess Spoil Disposal 22-3-14(a) 38-2-14.14.	Inspector to select appropriate violation from Section 14.14 of the Regulations.
Prime Farmlands 22-3-14(a) 38-2-10	Inspector to select violation from Regulations.
Casing and Sealing 22-3-14(b)(9)(A)(iii)	Failed to case, seal or otherwise manage boreholes, holes,shafts, and wells to keep acid or other toxic drainage from entering ground and surfacewater.

UNDERGROUND MINING

METHOD OF OPERATION

VIOLATION	SUGGESTED CHARGE
Sealing Openings 22-3-14(b)(2)	Failed to seal all openings when no longer needed to conduct mining.
Off-site Disturbance 22-3-14(b)(7)	Failed to protect off-site areas from damage resulting from mining operations.
Gravity Discharge 22-3-14(b)(12)	Located openings for new drift mines in acid and iron producing seams in such a manner that the mine will have a gravity discharge without approval of the Director.

SURFACE BLASTING

Pre-blast Survey 22-3-14(a) 38-2-6.8.a.1.	Failed to provide pre-blast survey when required.
Particle Velocity 22-3-14(a) 38-2-6.5.j.	Exceeded peak particle velocity limit.
Air Blast Level 22-3-14(a) 38-2-6.5.c.1.	Exceeded air blast level of 129 decibel linear peak at a protected structure. (Note: level changes with type of monitoring instrument used.)
Flyrock 22-3-14(a) 38-2-6.5.d.	Inspector to choose appropriate violation from Section 6.5.d. (See more specific wording in the Surface Mining section of this Code.)
Seismographic Monitoring 22-3-14(a) 38-2-6.5.k.	Failed to properly monitor all blasts as required.
Notification 22-3-14(a) 38-2-6.3.b.	Failed to notify all residents or owners of dwellings or structures located within one-half mile of the blast site approximately 24 hours prior to any surface blast.

UNDERGROUND MINING

SURFACE BLASTING

VIOLATION	SUGGESTED CHARGE
Approaches 22-3-14(a) 38-2-6.5.b.2.	Failed to adequately guard against unauthorized entry to the blast area.
Formula 22-3-14(a) 38-2-6.5.i.	Failed to adhere to the scaled distance formula and approved pre-plan.
Records 22-3-14(a) 38-2-6.4.c.	Failed to accurately record required information in blast record.
Sign 22-3-14(a) 38-2-14.1.e.	Failed to erect or maintain a blasting warning sign.
Time 22-3-14(a) 38-2-6.5.a.	Detonated an explosive charge in violation of time restrictions, on Sunday, or between sunset and sunrise.
Warning 22-3-14(a) 38-2-6.5.b.1.	Failed to provide the audible blasting warning.
Certified Blaster 22-3-14(a) 38-2-6.7.	Failed to conduct blasting operations by a certified person.

DRAINAGE

Installation 22-3-14(a) 38-2-5.4.a. & .c.	Failed to install the drainage system in accordance with the approved pre-plan prior to any disturbance for site development.
Drainage Control 22-3-14(a) or 14(b)(9) 38-2-5.4.a.	Failed to pass all runoff from disturbed area through a sedimentation control system.

UNDERGROUND MINING

DRAINAGE

VIOLATION	SUGGESTED CHARGE
Sediment Control Clean Out 22-3-14(a) 38-2-5.4.b.7.	Failed to clean out a sediment control structure when the accumulation reaches 60% of the design capacity.
Certification 22-3-14(a) 38-2-5.4.d.1	Failed to certify that the drainage system was constructed and installed in accordance with the approved pre-plan.
Drainage Vegetation 22-3-14(b)(6) 38-2-9.2.f.	Failed to seed and mulch all areas disturbed in the installation of the approved drainage system.
Surface Drainage 22-3-14(a) 38-2-14.5.f.	Allowed water from underground works to co-mingle with surface drainage without approval of the Director.
Discharge Into Underground Mine Workings 22-3-14(a) 38-2-14.5.e.	Discharged surface water into underground mine workings without approval of the Director.
Regraded Drainage 22-3-14(a) or 14(b)(9) 38-2-14.15.l.	Failed to provide drainage control on regraded areas.
Maintenance 22-3-14(a) 38-2-5.4.a.	Failed to properly maintain the approved drainage system.

PROTECTION OF THE HYDROLOGIC SYSTEM

Breakthrough 22-3-14(b)(9) 38-2-14.5.d.	Failed to seal or report any breakthrough of acid water to the Director.

UNDERGROUND MINING

PROTECTION OF THE HYDROLOGIC SYSTEM

VIOLATION	SUGGESTED CHARGE
Surface Water Discharge Reports 22-3-15(b)(1)(B) 38-2-14.7.a.	Failed to submit a report of surface water discharges to the Director.
Effluent Limitations 22-3-14(b)(9) 38-2-14.5.b.	Failed to maintain effluent limitations as set forth in the NPDES Program or other water quality standards.
Ground Water Monitoring 22-3-15(b)(2) 38-2-14.7.b.	Failed to follow ground water monitoring pre-plan as approved.
Water Rights 22-3-24	Failed to replace the water supply of an owner of interest in real property where such supply has been adversely affected by the surface mining operation.
Ground Water Monitoring Reports 22-3-15(b)(2) 38-2-14.7.b.	Failed to submit ground water monitoring results to the Director.
Stream Pollution Hydrologic Balance 22-3-14(b)(9) 38-2-14.5.b.	Failed to minimize the disturbance of the prevailing hydrologic balance at the mine site and in associated off-site areas.

HAULAGEWAYS OR ACCESS ROADS

Construction or Maintenance 22-3-14(b)(10) 38-2-4.7.a.	Failed to properly construct or maintain the haulageway or access road.
Seeding 22-3-14(b)(10) 38-2-4.7.a. & 9.2.f.	Failed to seed and mulch all disturbed areas including cut and fill slopes of a haulageway or access road immediately after construction.

UNDERGROUND MINING

HAULAGEWAYS OR ACCESS ROADS

VIOLATION	SUGGESTED CHARGE
Surfacing 22-3-14(b)(10) 38-2-4.7.a.	Surfaced a haulageway or access road with acid producing or toxic materials or with materials which create a concentration of suspended solids in surface drainage or failed to maintain a haulroad surface in a manner that controls erosion and siltation.
Dust Control 22-3-14(b)(10) 38-2-4.7.a.	Failed to prevent the loss of haulageway surface material in the form of dust.
Sediment Control 22-3-14(b)(10) 38-2-4.7.b.	Failed to provide sediment control for a haulroad.
Abandonment 22-3-14(b)(10) 38-2-4.9.	Failed to properly abandon a haulroad.
Certification 22-3-14(b)(10) 38-2-4.12.	Failed to certify that the haulroad construction was in accordance with the approved pre-plan.

REVEGETATION

Mulch 22-3-14(a) 38-2-9.2.i.3.	Failed to use mulch on all disturbed areas.
Planting Plan Report 22-3-14(a) 38-2-9.3.b.	Failed to prepare and submit a final planting report to the Director within 60 days after Phase I Bond Reduction.
Planting Plan Species and Amounts 22-3-14(a) 38-2-9.1.a.	Failed to carry out the approved planting plan in such a manner so as to establish a satisfactory vegetation cover.

UNDERGROUND MINING

REVEGETATION

VIOLATION	SUGGESTED CHARGE
Fertilizer 22-3-14(a) 38-2-9.2.i.1.	Failed to use the minimum fertilizer rates.
Lime 22-3-14(a) 38-2-9.2.i.2.	Failed to apply lime where soil pH is less than 6.0.
Temporary Revegetation 22-3-14(a) 38-2-15.1.c.	Failed to seed a topsoil or spoil storage area.
Permanent Revegetation 22-3-14(a) 38-2-15.1.d	Failed to seed a spoil storage area which will be in place longer than one year so as to establish a satisfactory permanent vegetative cover.
Temporary Revegetation on Regraded Areas 22-3-14(a) 38-2-14.15.e. & 15.2.c.	Failed to establish a temporary vegetation cover at the end of the first growing season on regraded areas.
Permanent Revegetation on Regraded Areas 22-3-14(b)(6) 38-2-14.15.e. & 15.2.c.	Failed to establish a permanent vegetation cover at the end of the second growing season on regraded areas.
Erosion Control 22-3-14(a) 38-2-9.1.b.	Failed to establish vegetation capable of stabilizing the soil from erosion.

COAL REFUSE

PERMITS

VIOLATION	SUGGESTED CHARGE
Placing Refuse in Areas Not Covered by Permit 22-3-8	Engaged in surface mining operation without having first obtained a permit from the Director.
Plan 22-3-13(a) 38-2-3.33	Failed to follow the approved permit.
Underground 22-3-13(f) 38-2-22.3.s.	Disposed of coal processing wastes in underground mine workings without an approved plan.

MONUMENTS AND MARKERS

Permanent Monument 22-3-13(f) 38-2-14.1.a.	Failed to install a permanent monument with the company name, permit number/s, business address and telephone numbers.
Perimeter Marker 22-3-13(f) 38-2-14.1.b.	Failed to install perimeter marker with permit numbers.
Buffer Zone Markers 22-3-13(f) 38-2-14.1.c.	Failed to mark or establish a buffer zone.
Topsoil Marker 22-3-13(f) 38-2-14.1.d.	Failed to mark the topsoil stockpile area with suitable markers.
Blasting Markers 22-3-13(f) 38-2-14.1.e.	Failed to install "Blasting Area" signs at all approaches to the blasting site and along haulroads and access roads to the mining operation.

COAL REFUSE

BLASTING

VIOLATION	SUGGESTED CHARGE
Certified Blaster 22-3-13(b)(15)(D) 38-2-6.7	Failed to conduct blasting operations by a certified person.
Pre-Blast Survey 22-3-13(b)(15)(E) 38-2-6.8.a.	Failed to provide pre-blast survey when required.
Particle Velocity 22-3-13(b)(15) 38-2-6.5.j.	Exceeded peak particle velocity limits.
Air Blast Levels 22-3-13(b)(15) 38-2-6.5.c.1.	Exceeded air blast level of 129 decibel linear peak at a protected structure.
Flyrock 22-3-13(b)(15) 38-2-6.5.d.	Inspector must choose appropriate violation from Section 6.5.d.
Seismographic Monitoring 22-3-13(b)(15) 38-2-6.5.k.	Failed to properly monitor all blasts as required. (Monitoring must be required by the Director before this is a violation.)
Air Blast Monitoring 22-3-13(b)(15) 38-2-6.5.c.3.	Failed to conduct periodic monitoring of air blast levels.
Approaches 22-3-13(b)(15) 38-2-6.5.b.2.	Failed to adequately guard against unauthorized entry to the blast area.
Formula 22-3-13(b)(15)(C) 38-2-6.5.i.	Failed to adhere to the scaled distance formula and approved pre-plan.

COAL REFUSE

BLASTING

VIOLATION	SUGGESTED CHARGE
Records 22-3-13(b)(15)(B) 38-2-6.4.c.	Failed to accurately record the required information in the blast record.
Sign 22-3-13(b)(15) 38-2-14.1.e.	Failed to erect or maintain a blasting warning sign.
Time 22-3-13(b)(15) 38-2-6.5.a.	Detonated an explosive charge in violation of time restrictions, on Sunday, or between sunset and sunrise.
Warning 22-3-13(b)(15) 38-2-6.5.b.1.	Failed to provide the audible blasting warning.
Written Notification 22-3-13(b)(15)(A) 38-2-6.3.a.	Failed to properly provide initial public notice of blasting operations.
Written Notification 22-3-13(b)(15)(A) 38-2-6.3.a.	Failed to properly publish public notice of blasting operations.

TOPSOIL REMOVAL

Topsoil Removal 22-3-13(f) 38-2-14.3.a. & 22.5.d.	Failed to remove topsoil in designated areas prior to other disturbance.
Protection of Stockpiles 22-3-13(f) 38-2-14.3.a. & 22.5.d.	Failed to install protective measures for stockpiles not being immediately utilized, to prevent erosion or contamination by acid or toxic materials.
Redistribution of Topsoil 22-3-13(f) 38-2-14.3.b. & 22.3.t.5.	Failed to redistribute topsoil in uniform, stable thickness to support vegetation over at least four feet of non-toxic, non-combustible material.

COAL REFUSE

METHOD OF OPERATION

VIOLATION	SUGGESTED CHARGE
Inspections 22-3-13(f) 38-2-22.6. (Non-impounding) 38-2-22.7 (Impounding)	Failed to conduct a visual inspection of all impoundments every seven days or of all non-impounding embankments quarterly.
Construction 22-3-13(f) 38-2-22.6.c. 38-2-22.7.b.	Failed to submit a written report (quarterly) on construction progress.
Sediment Control 22-3-13(f) 38-2-5.4. & 22.5.k.	Failed to install sediment control and/or diversion ditches before construction began.
Clear and Grub 22-3-13(f) 38-2-22.5.d.	Failed to progressively clear and grub prior to placement of refuse materials.
Burning 22-3-13(f) 38-2-22.3.r. & 22.5.m.	Failed to submit a plan for extinguishing a refuse fire or failed to follow the approved plan to extinguish a refuse fire.
Notification 22-3-13(f) 38-2-22.5.h.	Failed to immediately inform the Director of a condition which is dangerous to human life or property.
Impounding Capability 22-3-13(f) 38-2-22.5.f.	Failed to remove the impounding capability of the coal refuse embankment prior to abandonment.
Abandonment 22-3-13(f) 38-2-22.3.t.	Failed to submit a schedule for implementation of abandonment.
Pipes 22-3-13(f) 38-2-22.3.t.3.	Failed to seal all pipes in a non-impounding coal refuse embankment prior to abandonment.

COAL REFUSE

METHOD OF OPERATION

VIOLATION	SUGGESTED CHARGE
Fine Coal 22-3-13(f) 38-2-22.3.t.4.	Failed to cover fine coal refuse with a minimum of three feet of coarse coal refuse prior to final covering.
Hazard 22-3-13(f) 38-2-22.5.m.2.	Failed to minimize the hazard in extinguishing a coal refuse fire.
Fires 22-3-13(f) 38-2-22.5.m.1.	Failed to extinguish a coal refuse fire.
Certification 22-3-13(f) 38-2-22.6. & 22.7.	Failed to inspect and submit a certified report of the construction sequence quarterly and/or during critical construction periods.
Annual 22-3-13(f) 38-2-22.7.c.	Failed to submit an annual certification for all dams under Chapter 20-5D.
Cover 22-3-13(f) 38-2-22.3.t.5. & 22.5.g.	Failed to cover coal refuse with four feet of non-toxic and non-combustible material.
Slope Stability 22-3-13(f) 38-2-22.5.e.	Failed to stabilize coal refuse surfaces, slopes, or benches.
Compaction 22-3-13(f) 38-2-22.3.p.	Failed to spread and compact refuse material in layers not exceeding two feet or in layers of greater thickness as approved by the Director.
Removal 22-3-13(f) 38-2-22.5.l.1	Failed to remove coal refuse in successive layers from the top of the pile or on a slope 2H : 1V or less... OR: Removed refuse from the toe of an embankment prior to the final removal process.

COAL REFUSE

METHOD OF OPERATION

VIOLATION	SUGGESTED CHARGE
Highwall 22-3-13(f) 38-2-22.5.l.1.	Failed to maintain all vertical faces in refuse 12 feet or less.
Burning 22-3-13(f) 38-2-22.5.l.4.	Failed to extinguish all burning areas in coal refuse.
Regrade and Revegetate 22-3-13(f) 38-2-22.5.l.5.	Failed to regrade and revegetate all disturbed areas resulting from removal operaations.

PROTECTION OF THE HYDROLOGIC SYSTEM

Drainage 22-3-13(f) 38-2-14.6.a.	Failed to prevent the drainage from acid producing or toxic producing material from entering ground or surface water.
Effluent Limitations 22-3-13(f) 38-2-14.5.b.	Failed to maintain effluent limitations as set forth in the NPDES Program or other applicable water quality standard.
Water Treatment 22-3-13(f) 38-2-14.5.c.	Failed to install, operate or maintain water treatment facilities to address water quality problems.
Breakthrough 22-3-13(f) 38-2-14.5.d.	Failed to sample and analyze water from a break-through and submit two copies to the Director.
Treatment of Breakthrough 22-3-13(f) 38-2-14.5.d.	Failed to take appropriate action as a result of breakthrough water being below effluent limitations.
Monitoring Reports 22-3-13(f) & 15(b)(1)(B) 38-2-14.7.a.	Failed to submit a report of surface water discharges to the Director.

COAL REFUSE

PROTECTION OF THE HYDROLOGIC SYSTEM

VIOLATION	SUGGESTED CHARGE
Ground Water Monitoring 22-3-13(f) & 15(b)(2) 38-2-14.7.b.	Failed to follow the ground water monitoring pre-plan as approved.
Water Rights Replacement 22-3-24	Failed to replace the water supply of an owner of interest in real property where such supply has been adversely affected by the surface mining operation.
Ground Water Monitoring Reports 22-3-13(f) & 15(b)(2) 38-2-14.7.b.	Failed to submit ground water monitoring results to the Director.
Hydrologic Balance/ Stream Pollution 22-3-13(b)(10) 38-2-14.5	Failed to minimize the disturbance to the prevailing hydrologic balance at the mine site and in associated off-site areas. (See 13(b)(10) for condition/s being violated.)

DIVERSIONS AND SPILLWAYS

Construction 22-3-13(f) 38-2-3.33	Failed to follow permit conditions in that you failed to construct diversion ditches or spillways in accordance with the approved plan, specifications or regulations.
Topsoil Removal 22-3-13(f) 38-2-22.3.e.6. & 22.4.h.4.	Failed to remove topsoil prior to construction of diversion ditches or spillways.

SEDIMENT CONTROL

Construction 22-3-13(f) & 13(b)(10)(C) 38-2-5.4.b.	Failed to properly construct the drainage system in accordance with the approved pre-plan.

COAL REFUSE

SEDIMENT CONTROL

VIOLATION	SUGGESTED CHARGE
Installation 22-3-13(f) & 13(b)(10)(C) 38-2-5.4.a. & .c.	Failed to construct a drainage system prior to the commencement of surface mining operations.
Maintenance 22-3-13(f) & 13(b)(10)(B) 38-2-5.4.a. & 5.4.b.7.	Failed to properly maintain the approved sediment control system.
Sediment Control Clean Out 22-3-13(a) 38-2-5.4.b.7.	Failed to clean out a sediment control structure when the accumulation reaches 60% of the design capacity.
Certification 22-3-13(f) & 13(b)(10)(C) 38-2-5.4.d.	Failed to certify that the sediment control structure was constructed and installed in accordance with the approved pre-plan.
Drainage Vegetation 22-3-13(f) & 13(b)(16) 38-2-9.2.f.	Failed to seed and mulch all areas disturbed in the installation of the approved drainage system.

HAULAGEWAYS OR ACCESS ROADS

Construction or Maintenance 22-3-13(f) & 13(b)(17) 38-2-4.7.a.	Failed to properly construct or maintain the approved haulageway or access road.
Seeding 22-3-13(f) & 13(b)(16) 38-2-9.2.f.	Failed to seed and mulch all disturbed areas including cut and fill slopes of a haulageway or access road immediately after construction.
Surfacing 22-3-13(f) & 13(b)(17) 38-2-4.7.a.	Surfaced a haulageway or access road with acid producing or toxic materials or with materials that create a concentration of suspended solids in surface drainage.

COAL REFUSE

HAULAGEWAYS OR ACCESS ROADS

VIOLATION	SUGGESTED CHARGE
Dust Control 22-3-13(f) & 13(b)(17) 38-2-4.7.a.	Failed to control dust from the surface of a haulroad.
Sediment Control 22-3-13(f) & 13(b)(17) 38-2-4.7.b.	Failed to provide sediment control for a haulroad.
Abandonment 22-3-13(f) & 13(b)(17) 38-2-4.9.	Failed to properly abandon a haulroad.
Certification 22-3-13(f) & 13(a) 38-2-4.12.	Failed to certify that haulroad construction was in accordance with the approved pre-plan.

REVEGETATION

Mulch 22-3-13(f) & 13(b)(16) 38-2-9.2.i.3.	Failed to use mulch on all disturbed areas.
Planting Plan Report 22-3-13(f) & 13(a) 38-2-9.3.b.	Failed to prepare and submit a final planting plan report to the Director within 60 days after Phase I Bond Reduction.
Planting Plan Species & Amount 22-3-13(f) & 13(a) 38-2-9.1.a.	Failed to carry out the approved planting plan in such a manner so as to establish a satisfactory vegetation cover.
Fertilizer 22-3-13(f) & 13(a) 38-2-9.2.i.1.	Failed to use the minimum fertilizer rates.
Lime 22-3-13(f) & 13(a) 38-2-9.2.i.2.	Failed to apply lime where soil pH is less than 6.0.

COAL REFUSE

REVEGETATION

VIOLATION	SUGGESTED CHARGE
Temporary Revegetation 22-3-13(f) & 13(b)(16) 38-2-14.15.e. & 9.1.e.	Failed to establish a temporary vegetation cover at the end of the first growing season.
Permanent Revegetation 22-3-13(f) & 13(b)(16)&(19) 38-2-14.15.e. & 9.1.e.	Failed to establish a permanent vegetation cover at the end of the second growing season.
Concurrent Revegetation 22-3-13(f) & 13(a) 38-2-14.15.e. & 9.1.d.	Failed to keep revegetation concurrent with the operation as mining and reclamation progress.

MAPS

Progress Maps 22-3-15(f)	Failed to submit progress maps within thirty days after service of a copy of an order for said maps.
Plans and Cross-Sections 22-3-13(f) 38-2-3.5.	Failed to submit plans and cross-sections when requested by the Director.

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