

WV Division of Environmental Protection  
Office of Mining and Reclamation  
Inspection and Enforcement

Series: 20  
Pg. No: 1 of 1  
Revised: 2-04

**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.

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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 Supervisor's forms to the Coal/Non Coal Enforcement Coordinator at the Headquarters Office.

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**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.

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**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.

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**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.

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Subject: Assessing violations with original  
assessments of less than \$1,000.00

1. Purpose: To clarify when violations under \$1,000 will 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 fact of a violation 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 Request 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.
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COMPANY NAME:
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- 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 Anhydrous 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.

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Minor Revisions... Field Level Personnel

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. **Purpose:** To ensure consistent and timely determinations of patterns of violation
2. **Definitions:** N/A
3. **Legal Authority:** Code: 22-3-17(b), Regulations: 38-2-20.4.b, 38-2-20.4c, and 38-2-20.4i
4. **Policy/Procedures:**

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 10<sup>th</sup> day of every month. Deputy Directors shall, during the next management staff meeting following the 10<sup>th</sup> 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**

<b>COMPANY NAME</b>		<b>PERMIT NO.</b>	
Fill Number		Corp Authorization No.	<u>Expiration Date</u>
Enter "A" if this Certification concerns a critical stage of construction; "B" a quarterly inspection; "F" a final inspection; or "C" combination.			
<b>1. Removal of Organic Materials and Topsoil</b>			
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.			
<b>2. Placement of Underdrain System (attach color photographs)</b>			
<b>Designed Underdrains:</b>			
A. Designed height by width <b>dimensions</b> (in feet) of the underdrain per the approved plans.			
B. Actual constructed height by width <b>dimensions</b> (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.			
<b>Natural Segregation:</b> Attach photographic documentation that natural segregation is occurring and proper underdrain material is forming in advance of fill placement.			
<b>3. Construction Aspects of Rock Toe Buttress/Keyway Cut</b>			
Attach documentation that buttress/keyway cut is constructed according to plan.			
<b>4. Fill Construction Status</b>			
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):	
<b>5. Installation of the Surface Drainage System</b>		
<b><u>Yes or No</u></b>	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.	

<b>6. Placement of Materials</b>	
<b>Yes or No</b>	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.

<b>7. Sketch of Fill(s) and Support Structure(s)</b>
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).

<b>8. Comments</b>
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.)

<b>Certification by Registered Professional Engineer</b>			
I certify that the aforementioned fill is constructed and installed in accordance with the Regulations and as per the approved design(s).			
<b>CERTIFIED BY:</b>		Certification/Registration No.	

<b>SIGNATURE:</b>		Inspection Date:	
<b>PLACE SEAL HERE</b>			

***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 15<sup>th</sup> 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 15<sup>th</sup> 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.