

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.

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.

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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 and obtained 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.