

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.

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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 permittee'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

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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.

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

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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

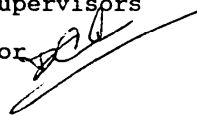
Gaston Caperton
Governor

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".

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 Alles
Rocky Parsons
Ed Griffith
Jeff McCormick
Louis Halstead
Charlie Sturey

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

Series: 3
Page: 1 of 3
Effective Date: 1-93

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.

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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.

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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;

Page Two
Permittee
Date

- 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.

Page Three
Permittee
Date

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

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

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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.

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

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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 query 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.

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MEMORANDUM
DMM-19 PROCESSING

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.

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


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: 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.

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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.

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Procedure for Permit Renewal

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. For permits which have expired and have not been renewed:

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