

**Ohio Department of Natural Resources
Division of Mineral Resources Management**

****PROCEDURE DIRECTIVE****

Inspection and Enforcement # 2016-01

SUBJECT: Procedures for handling and tracking of citizen complaints

EFFECTIVE: TBD

PURPOSE: To set procedures and time frames for handling citizen complaints

(This procedure directive replaces Inspection and Enforcement 93-1)

Regulatory requirements for citizen complaints:

Ohio Revised Code (RC) 1513.09(G) and Ohio Administrative Code (OAC) 1501:13-14-01(H) pertain to the rights of citizens to request an inspection. The law and rule grant a citizen the right to request an inspection by providing the Chief a signed written statement or an oral report followed by a written statement that provides a reason to believe that a violation exists. The Division of Mineral Resources Management (Division) must notify the citizen as far in advance as practicable of any inspection that the Division will conduct as a result of the request and inform the citizen of his or her right to accompany the inspector on that inspection.

The Division must provide the citizen with a written statement in response to the complaint within ten days of the inspection, or if no inspection is conducted, within fifteen days after receipt of the citizen's written statement. The Division must also provide the information it supplied to the complainant to the person alleged to be in violation. However, the Division shall remove the name of the citizen from the information if the citizen requested to remain confidential.

The identity of the citizen requesting an inspection shall remain confidential, if requested, unless the citizen requests to accompany the inspector on an inspection.

Receiving complaints and inquiries from the public:

All Division employees shall treat all complaints that are received from the public, either verbally or in writing, in a professional, courteous and unbiased manner. The right to file a citizen complaint shall be explained in detail to any person who alleges that a violation exists or may exist. This explanation must include: the Division's strong preference that the citizen file a written statement before or at the initiation of the investigation of the complaint; the citizen's right to remain confidential, and the citizen's right to accompany the inspector during any inspection resulting from the complaint.

The DMRM staff person responding to the complaint shall record a summary of the nature of the complaint on the Division's electronic complaint log and request the citizen to provide a signed written statement of the complaint. The statement must provide the citizen's reason for believing that a violation exists and the address and phone number of the complainant. Written complaints need to be obtained if at all possible for clarity and an understanding of exactly what the citizen's complaint is. An investigation should be undertaken when information is found to warrant an investigation even when a written statement is not filed.

Complaints referred to the Division by the U.S. Department of Interior, Office of Surface Mining Reclamation and Enforcement (OSM) with a ten-day notice (TDN) are to be treated as if the complaint was filed directly with the Division. All complaints (written, verbal and by TDN) will be recorded on the district office complaint log. Complaints received in Columbus will be referred to the appropriate district office. The district office will then proceed with the complaint as if it had been received initially in the district office.

After recording a complaint in the Division's electronic complaint log, blasting and water supply complaints should be referred immediately via email to the lead blasting or lead hydrology investigator, and other complaints should be referred immediately via email to the appropriate field office for assignment. All blasting and water supply complaints will be tracked on the electronic complaint log by the lead blasting investigator or lead hydrology investigator; all other complaints will be tracked by the appropriate field office manager.

When a written complaint is received without prior contact with the citizen, the DMRM staff person assigned to the complaint shall call the citizen to: notify him or her of receipt of the complaint, obtain any additional information or clarification of the allegations contained in the statement, and explain the information listed above concerning the citizen's rights. This conversation should be documented in the complaint file. Documentation must include whether the citizen requested or waived the right to remain confidential.

Conducting inspections in response to complaints:

An inspection shall be conducted immediately if the allegations from the citizen are found to be accurate and indicate that an imminent danger or significant harm situation exists or may exist. An inspection shall be conducted as soon as possible if the allegations of the citizen are found to be accurate and would constitute a violation. In all cases, the DMRM staff person assigned to investigate the complaint must notify the citizen as far in advance as possible of the date and time of any inspection conducted in response to the complaint unless the citizen has indicated that they do not wish to participate in the inspection. This notification applies to review of company records concerning the complaint. This notification also applies to complaints referred to the Division by OSM.

The citizen who requests an inspection has the right to accompany an inspector on the mine site, with the exception of entering buildings unless consent or permission is granted by the permittee or operator. RC 1513.09 (F) allows a citizen to obtain copies of blasting records and other information required to be submitted to the Division by an operator. Any

person who refuses to allow a citizen to accompany the inspector or hinders an inspector from performing an inspection is subject to civil prosecution for injunctive relief.

Although inspections conducted with a citizen are intended to address only the allegations of the citizen, should new allegations arise during an inspection, these too must be addressed during the inspection. The inspector shall conduct any necessary collection of evidence during the inspection. Any evidence collected as a result of the inspection (water and soil sample results, photographs, etc.) will be made available to the citizen upon request. The citizen will not be permitted to collect evidence but may request the inspector to do so.

The inspector shall maintain control over the citizen at all times during the inspection. Discussions between the inspector and mine personnel shall be in the presence of the citizen. The inspector shall terminate the inspection and escort the citizen from the mine site if the citizen does not remain under the control and supervision of the inspector. The inspector would then complete the inspection without the citizen.

Responses to citizen complaints:

Following completion of the inspection, the inspector shall inform the citizen that the Division will provide a written response within ten days. If the inspector needs to conduct further investigation, the citizen must be informed of the date and time of future inspections, including review of company records or technical investigations necessary to address the complaint.

Citizens shall be provided with interim reports from the person conducting the investigation in cases, such as blasting and water supply complaints, where the investigation is expected to take longer than the ten or fifteen days allowed by rule. The status of the investigation should be reported to the citizen at least monthly or more often if the type of investigation warrants. Common courtesy and Division policy dictate that citizens are kept informed of the status of their complaint.

Analytical results of samples collected by DMRM staff from drinking water sources shall be provided to the citizen within five business days of receipt of the results from the lab unless reasonable and justified circumstances intervene. In such cases, results shall be provided within 20 business days of receipt by the Division of the results from the lab. The Division cover letter sent to the citizen shall include reference to the link <http://ohiowatersheds.osu.edu/know-your-well-water>, the water sampling interpretation tool available through Ohio State University Extension's Ohio Watershed Network.

A final written response is to be prepared once the DMRM staff person conducting the investigation has determined what action, if any, will be taken. The response must contain a description of the action taken during the inspection or if no inspection was conducted, an explanation of the reason why no inspection was conducted. The response must contain an explanation of the citizen's right to request an informal review by the Chief of the actions taken in response to the complaint.

The response must be reviewed by the appropriate supervisor for adherence to Division procedure before being sent to the citizen. The response shall be mailed to the citizen and a copy provided to the permittee. The name of the citizen and any reference that would identify the citizen shall be removed from the permittee's copy of the response in any case where the citizen requested confidentiality.

Availability of Records:

OAC 1501:13-1-10 requires that records concerning permits and inspection and enforcement activities, among other records, shall be made available to the public for inspection and copying in each district office. All information resulting from an investigation of a citizen complaint shall be made available to the citizen and the public except where the citizen has requested confidentiality. In that case any reference to the complainant shall be removed.

Lanny E. Erdos, Chief
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