

OHIO DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINES & RECLAMATION

****POLICY/PROCEDURE DIRECTIVE****

INSPECTION AND ENFORCEMENT 99-1
(Replaces PPD Inspection and Enforcement 95-2)

Subject: Initiation of Bond Forfeiture Process

Effective: January 1, 1999

Purpose: To provide guidance to Field Teams on determining when and how to initiate bond forfeitures on coal permits.

Ohio Administrative Code (OAC) 1501: 13-7-06(A) lists the four situations where the performance bond is to be forfeited. Those situations are:

1. The permittee has failed to comply with a notice of violation issued for failure to complete any phase of reclamation within the time required by the mining and reclamation plan and any time extensions given for good cause; or
2. The coal mining and reclamation-operations on the area under bond are abandoned; or
3. The permittee lacks the ability to continue to operate in compliance with the law, rules, or the permit; or
4. The permittee defaults on the conditions under which the bond was accepted.

If one or more of these situations exist on a permit then that permit is subject to bond forfeiture. The following procedures should be followed in identifying when these situations exist and in pursuing bond forfeiture once the situations are determined to exist:

Situation 1. If a notice of violation (NOV) issued pursuant to 1501: 13-7-06(A)(1) is not abated then a cessation order (CO) is to be issued and the bond forfeiture process initiated by the Field Team (See PPD Inspection and Enforcement 99-2) within 30 days based upon the likelihood to comply. 'Initiation' means the ordering of aerial photographs, drafting Bond Forfeiture Orders and preparing the final map. If at the end of thirty days the CO is not terminated, then the Field Team is to review the cessation order for alternative enforcement as required by P.P.D. 93-1, Legal. If the CO has been terminated, then the forfeiture process should be stopped. If the

permit includes affected area that is not subject to the NOV and CO the bond forfeiture process may be stayed until the Division can determine whether the permittee has the ability to continue to operate in compliance with the program requirements (See Situation 3). The Field Team should proceed under Situation 3 as soon as there is reason to believe that the permittee may lack the ability to comply. The purpose of the stay is to allow for forfeiture of the entire affected area instead of just the incremental area on which the NOV or CO is issued.

Situation 2. If the Field Team has reason to believe that a permit has been abandoned (OAC 1501:13-7-06(A)(2)), the Field Team will provide a draft Chief's Order to the Field Operations Manager (FOM). The FOM will contact the hearing officer to schedule a hearing date for an abandonment hearing. The hearing will provide the permittee an opportunity to show cause why the permit should not be deemed abandoned. If the hearing results in a determination that the permit is abandoned, the Field Team will initiate the forfeiture process as described in PPD Inspection and Enforcement 99-2.

The Chief's Order to show cause why the permit should not be deemed abandoned should be drafted if the mining and reclamation activities have been ceased for more than six months, a TINA notification has not been received by the Field Team Leader, and the permittee cannot be located or contacted by the Division during this six month period due to the permittee's office having been closed and contact by mail and telephone has been unsuccessful. The inability to contact the permittee is to be documented in writing by the Field Team Leader. Other conditions that exist that would support the issuance of the show cause order should also be documented and included in the Findings of Fact of the show cause order.

Situation 3: Chief's Orders for Inability to Comply will be issued whenever the Field Team has reason to believe that the permittee may no longer have the ability to continue to operate in accordance with Ohio Revised Code Chapter 1513 and the applicable regulations (OAC 1501:13-706(A)(3)). Issuance of a Chief's Order for Inability to Comply can be based on several factors or a combination of factors such as unabated cessation order(s), failure to respond to correspondence i.e. certified mail or phone calls, confiscation of equipment, employee layoff, non-payment of debts, and other conditions that may indicate that a permittee refuses or lacks the ability to comply. The Order provides the permittee with an opportunity for a hearing to prove to the Division that the permittee does have the ability to comply.

Inability to Comply Orders will be directed to the permittee and may address all permits held by the permittee. Once the Division has reason to believe that a permittee lacks the ability to comply, the Field Team responsible for that permittee's operations will draft a Chief's Order for Inability to Comply. In cases where a permittee's operations are located in more than one district the Field Team Leaders will coordinate the draft order to address all of the permits held by the permittee. This order will be directed to the permittee and will list all of that permittee's permits (where liability remains) regardless of the condition of the permit. The order should describe the basis for the order; i.e. unabated cessation order(s) on specified permits, bankruptcy, confiscation of equipment, failure to respond, and/or other reasons. The order will also include all items required by OAC 1501:13-7-06(B)(2). A sample order is attached to this PPD.

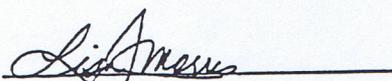
This approach will provide the permittee with the opportunity to demonstrate its ability to comply. If the permittee fails to demonstrate that it can comply, the hearing officer will make such determination and recommend that the Division initiate bond forfeiture proceedings in accordance with OAC 1501:13-7-06(A)(3). If the Chief adopts the hearing officer's recommendations to forfeit bond, the Field Team will follow the guidelines contained in PPD Inspection and Enforcement 99-2 for each permit where an on-the-ground condition exists that has been addressed with an unabated Cessation Order. On permits where violations do not exist, the Field Team Leader, in consultation with the Field Operations Manager, will determine, based upon site specific information, whether to pursue forfeiture on those permits at this time or to defer forfeiture until violations of environmental performance standards exist at the site. Once violations and cessation orders are issued on other permits held by the permittee, the Field Team will draft forfeiture orders for these permits, once a cessation order is issued. The basis for the forfeiture orders will be identified through a reference to the hearing officer's findings as a result of the show-cause hearing and the presence of violations that have not been abated.

Sites with cessation orders for administrative violations will be considered for forfeiture but generally the Division will not proceed to forfeiture until a violation of an environmental performance standard exists.

Situation 4. If the Division determines that the permittee has defaulted on the conditions under which the bond was accepted, the Field Team, based on guidance from the FOM, shall issue a notice of violation requiring immediate cessation of mining and submittal of acceptable bond to the Division within thirty days. The Field Team will initiate the forfeiture process upon issuance of a noncompliance with the Notice of Violation. The conditions of the bond are listed under OAC 1501: 13-7-03(B).

Review of Draft Orders and Monitoring

The FOM will review and finalize the draft show-cause orders and draft bond forfeiture orders prepared by the Field Team. The purpose of this review is for consistency and quality control, to see that the order is issued timely, to see that show-cause hearings are scheduled with hearing officers, and to keep the Chief informed. The FOM as well as the Field Team Leaders will continue to monitor cessation orders being issued as an indicator of non-compliance and potential inability to comply situations. Field Team leaders will continue to refer all FTACO's that remain unabated for 30 days to the FOM for alternative enforcement as specified in PPD Legal 93-1.



Lisa J. Morris, Chief
Division of Mines & Reclamation