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	RAILROAD COMMISSION OF TEXAS **SURFACE MINING AND RECLAMATION DIVISION** # DIRECTIVE NOTICE	DIRECTIVE ID: **AD-AB-CO** REVISION NO.: **1** EFFECTIVE DATE: **January 8, 2008**

SUBJECT: **Processing AML Construction Contract Invoices**

APPROVAL: Melvin B. Hodgkiss TITLE: Director

I. PURPOSE

To describe the procedure and documentation required for approval of Abandoned Mine Land (AML) Reclamation construction invoices.

II. SUMMARY

Upon receipt of an invoice requesting payment for work completed under an AML construction contract, the following procedures shall be followed:

A. The original invoice is date stamped received and forwarded to the AML Manager.

B. After reviewing the invoice, the AML Manager will take the invoice to the project manager or project inspector.

C. Invoice quantities are verified by the project manager/inspector, using inspection reports.

D. If payment is recommended, the project manager/inspector prepares an AML payment package that includes the following and submits it to the Division Grants Coordinator within 5 working days.

1. Memorandum from the project manager/inspector to the AML Manager requesting payment;

2. Work completion report(s) which documents and summarizes completed work including: identification of contract bid item number, quantities completed, duration of work, completion date, a brief description of the work and how it was verified. Daily inspection reports and material documentation for earthwork and mine closure projects are retained in the project inspection notebooks kept by the AML – Engineer Supervisor. Inspection reports and materials documentation for revegetation projects are kept the AML Manager;

3. Original invoice;

4. Contract bid item summary report;

5. AML Approval of Payment Routing Form;

6. Requisition Recap Report.

E. If payment is not recommended, a letter will be prepared for the Director's signature, stating the reasons for non-payment. Minor adjustments for invoice amount to correct multiplication or rounding errors will not constitute reason for non-payment of invoice. In such instances, invoice reviewer will annotate corrections on original invoice.

F. The Division Grants Coordinator verifies availability of funds for payment and forwards entire payment package for Director's review and action.

G. Director reviews payment package, and if in agreement with recommendation, signs AML Approval of Payment Routing Form. Payment package is returned to Division Grants Coordinator for transmittal to Administration Division.

H. Administration Division then transfers money electronically from U.S. Treasury for direct deposit to Texas Comptroller of Public Accounts using the U.S. Department of Interior DDX system (request for reimbursement). A copy of the payment package is sent to the Division Grants Coordinator for permanent file and verification of grant accounting.

	RAILROAD COMMISSION OF TEXAS **SURFACE MINING AND RECLAMATION DIVISION** # DIRECTIVE NOTICE	DIRECTIVE ID: **AD-AD-6** (Former AD-AD-672) REVISION NO.: 3 EFFECTIVE DATE: **May 15, 2013**

SUBJECT: **Processing Open Records Requests**

APPROVAL: John E. Caudle TITLE: Director

I. PURPOSE

This directive describes the procedures that records personnel will follow in response to an open records request.

II. REGULATION AND ACT REFERENCE

Texas Coal Mining Regulations §§12.6, 12.115, 12.210 and 12.672; Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §20.101 et seq. incorporating Title 1, Part 5, Chapter 111, Subchapter C, TEX. ADMIN. CODE.

III. SUMMARY

An open records request received by the Surface Mining and Reclamation Division (SMRD) is normally handled by the records personnel. (See Attachment 1) The request can be submitted in person, by phone, by email or in writing for information in printed or electronic media. The procedures for handling open records requests is primarily determined according to the amount of time it takes to complete the request. A "small" request is one that can be filled in a day or two. A "large" request takes more than two days to fill and requires a large amount of time researching and/or copying. A "large" request should be in writing and legal staff will be consulted to insure that all deadlines and procedures set out by the Public Information Act are met. Documents classified as confidential according to laws or regulations shall not be made readily available to the public or governmental agencies without Special Counsel consent and all confidential records shall be kept separate from public records (see SMRD Directive AD-AD-210(c) for further instruction on handling confidential documents). Records personnel are required to fill out an Open Records Request Form once the request has been completed. (See Attachment 2)

IV. SMALL VOLUME REQUESTS

A. The requestor is contacted by records personnel, informing them of the amount of time the request will take, the approximate number of pages to be copied, and the associated cost. If the requestor agrees with the cost estimate and authorizes the order, the request will be filled.

B. The copies are made and charges are calculated for copies, labor, overhead, handling fee, and postage if applicable. Labor is charged on an hourly basis, not in increments and rounded off, i.e. a 2-½ hour job is charged 2 hours. Labor and overhead (20% of labor charge) is charged after the first 50 pages, if the total job takes an hour or more to complete. Handling fee is not charged if labor and overhead is charged. (See Attachments 3 & 4)

C. The requestor is contacted after all copies are made and quoted the exact price for the copies, and informed that payment can be made by check, credit card or cash.

D. If the requestor pays in person, a SMRD itemized invoice is presented and the requestor is escorted to Central Records to pay for the order. If paying by mail, the copies are sent along with the itemized invoice to the requestor under cover letter after payment is received.

E. Faxes – Documents can be faxed if requested with a maximum of 20 pages allowed. Records personnel are authorized to use discretion when determining whether to send a document via fax or not. There is no charge for sending documents via fax.

F. Electronic documents – There is no charge for emailing an electronic document, no matter the size.

V. LARGE VOLUME REQUESTS

A. Large requests require legal assistance and a copy of the written request is sent by memorandum to the Office of General Counsel-Special Counsel Section, requesting assistance. This should be done within two days of receipt of request. The memo should contain an estimate of the time required to fill the request and an estimate of the costs to complete the request. All communication with the requestor will be handled by the Office of General Counsel-Special Counsel Section.

B. The Special Counsel Section contacts the requestor and advises regarding activities required to process the request, the anticipated date of completion, and an estimate of charges that may be assessed. A deposit to cover the initial costs is requested if the total cost will exceed $100.

C. The deposit is received from the requestor and the copying can begin. Partial payments are requested and received as the copying progresses to cover the costs to that date. The partial payments are requested by phone by the records personnel and a telephone memo is written documenting payment request and a copy sent to Special Counsel. Special Counsel should be copied on all payments or correspondence between the requestor and records personnel.

D. When the job is completed and all payments received, the copies are sent to the requestor under transmittal letter with an itemized invoice and schedule of payments received attached.

VI. PERSONS NOT CHARGED FOR OPEN RECORDS REQUESTS

A. At the option of the Commission, residents of an area where mining is occurring or proposed - only records pertaining to that mine;

B. Permittees - only the permittee's records, for requests that require only copying and less than 1 hour of work;

C. Other government agencies;

D. News media;

E. Students - for small requests only;

F. The Commission may furnish copies at no charge or at a reduced charge if the Commission decides it is in the public interest.

VII. PAYMENT

A. By Credit Card--The Commission will accept Visa or MasterCard for payment. When a customer wishes to charge for copies, the type of credit card, credit card number, expiration date, and name on credit card must be obtained. This information along with an itemized invoice is given to the Administration Division and SMRD open records personnel for processing. Records personnel are required to redact (black out) the credit card number (except for the last four digits) and expiration date on the receipts (both the merchant copy and the customer copy).

B. By Cash or Check--Payment is received and given along with the itemized invoice to the Administration Division and SMRD open records personnel for processing.

VIII. ATTACHMENTS

1. "Public Information (Open Records) Act Requests Processed by General Law" provides general guidance for determining when to seek Special Counsel assistance for open records requests.
2. Open Records Request Form with instructions
3. Fee schedule as published in 1 TEX. ADMIN. CODE, §111.70
4. Invoice for Copy Charges

PUBLIC INFORMATION (OPEN RECORDS) ACT REQUESTS PROCESSED BY SPECIAL COUNSEL SECTION

Special Counsel Section's attorneys and legal assistants process nonstandard Public Information (Open Records Act) requests, including the following:

- requests deemed sensitive by supervisory personnel, requiring clarification and/or negotiations with requestors to minimize expenditure of time and resources by Commission staff;
- requests for voluminous information, requiring special payment arrangements or supervision over outside copying/litigation support service;
- all requests for information from Office of General Counsel Division, Personnel Division, and/or Commissioners' Offices;
- requests requiring drafting of legal documents, including affidavits of no record and/or business records affidavits;
- requests from private law firms for expedited responses, for good cause, based on discovery deadlines or trial/hearing settings;
- requests requiring consideration of exemptions to public disclosure available under the Public Information Act (Open Records Act) or any other state or federal confidentiality statute or court decision; and
- requests requiring coordination among several sections/divisions of the Commission.

Special Counsel Section's legal secretary assembles responsive information, prepares comprehensive invoices, receives payments and helps coordinate timely receipt of responses from multiple sections/divisions.

Surface Mining and Reclamation Division

Open Records Requests
Information Sheet
(Fill out one sheet per **filled** request)

Date: _____

Name of Requestor: _____

Category	Time Spent (Hrs.)	No. of Copies	Fees Charged (FOR RECORDS AREA ONLY)
Publications			
Budget information			
Contract information			
Financial information			
Information regarding agency policies and procedures			
Litigation information (pending)			
Litigation information (closed)			
Meeting agendas			
***Meeting (tape recordings)**			
Meeting (minutes and backup materials).			
***Names and voting records of agency officials**			
Permit/license applications			
***Personnel information**			
***Purchase Orders**			
Regulatory/reporting information			
Rules and regulations			
Other			

* Category not normally reported by SMRD

_____
(name)

INSTRUCTIONS

1. Complete one form for each request completed.
2. Enter date of request
3. Enter name of requestor
4. Choose one of the categories from the list below that the request pertains to and fill in the information on that line, if none of the categories fit, use other.
5. Enter the time it took to fill request. **Report in quarter hour increments.**
6. Enter number of copies or publications that were sent.
7. Enter amount of charges if fees were charged.
8. E-mail form to Records Coordinator upon completion.

CATEGORIES OF OPEN RECORDS REQUESTS

1. **Publications** - All SMRD Publications.
2. **Budget Information** - All information on the Division's operating budget.
3. **Contract Information** - All information on contracts for (AML) work or other contracts for work done for the Division.
4. **Financial information** - All federal grant application information for the Division.
5. **Information regarding agency policies and procedures** - All guidance documents, advisories, or directives.
6. **Litigation information (pending)** - Permit application files that have been docketed in the Hearings Division. Litigation starts with the docketing of the matter in the Hearings Division. **A party or counsel's request for copies or access to records is not an open records request.**
7. **Litigation information (closed)** - Permit application files that have been docketed for the permitting process after the Commission has issued a final Order and all appeals have been exhausted.
8. **Meeting agendas** - Agendas from meetings held by the SMRD or attended by the SMRD.
9. **Meeting (tape recordings)** - SMRD will not report on this category.
10. **Meeting (minutes and backup materials)** - Minutes for meetings involving the Surface Mining staff, such as TMRA meetings, OSM quarterly meetings or permit consultation meetings for which minutes have been prepared.
11. **Names and voting records of agency officials** - SMRD will not report on this category.
12. **Permit/license applications** - All open records requests for copies of documents from coal and uranium (includes exploration) application records that has not been in litigation (docketed). This also includes open records requests for large amounts of records as a result of discovery in a court case.
13. **Personnel information** - SMRD will not report on this category.
14. **Purchase orders** - SMRD will not report on this category.
15. **Regulatory/reporting information** - Reports sent to U.S. Department of Interior, Office of Surface Mining (OSM).
16. **Rules and regulations** - Information on proposed rules, rule changes, or federal program amendments.
17. **Other** - Any other request received that does not fit in the above categories.

FEE SCHEDULE FOR COPY CHARGES

1. Standard paper copy ..... $0.10 per page

2. Nonstandard-size copy:
   a. Diskette ..... $1.00 each
   b. Magnetic tape ..... actual cost
   c. Data cartridge ..... actual cost
   d. Tape cartridge ..... actual cost
   e. Rewritable CD (CD-RW) $1.00
   f. Non-rewritable CD (CD-R) $1.00
   g. Digital video disc (DVD) $3.00
   h. JAZ drive ..... actual cost
   i. Other electronic media ..... actual cost
   j. VHS video cassette $2.50
   k. Audio cassette $1.00
   l. Oversize paper copy $0.50
      (e.g.: 11 inches by 17 inches, greenbar, bluebar,
      not including maps and photographs using specialty paper)
   m. Specialty paper ..... actual cost
      (e.g.: Mylar, blueprint, blueline, map, photographic)

3. Labor charge:
   a. For programming ..... $28.50 per hour
   b. For locating, compiling, and reproducing ..... $15.00 per hour

4. Overhead charge ..... 20% of labor charge

5. Microfiche or microfilm charge:
   a. Paper copy ..... $0.10 per page
   b. Fiche or film copy ..... actual cost

6. Remote document retrieval charge ..... actual cost

7. Computer resource charge:
   a. Mainframe ..... $10.00 per CPU minute
   b. Midsize ..... $1.50 per CPU minute
   c. Client/Server System ..... $2.20 per hour
   d. PC or LAN ..... $1.00 per hour

8. Miscellaneous supplies ..... actual cost

9. Postage and shipping charge ..... actual cost

10. Photographs ..... actual cost

11. Maps ..... actual cost

12. Other costs ..... actual cost

13. Outsourced/Contracted Services--Actual cost for the copy. May not include development costs.

14. Sales Tax--**No** Sales Tax shall be applied to copies of public information.

SURFACE MINING AND RECLAMATION DIVISION

P.O. Box 12967, Capitol Station, Austin, TX 78711-2967 (512) 463-6900

INVOICE FOR COPY CHARGES

DATE:
NAME:
COMPANY:
PHONE:
DESCRIPTION:

DESCRIPTION		QUANTITY	PRICE	TOTAL
STANDARD SIZE PAPER COPIES		0	$ 0.10	$ -
EACH SEALED CERTIFICATION		0	$ 1.00	$ -
MAP COPIES PER SQUARE FOOT		0	$ 0.40	$ -
COMPACT DISK (CDR)		0	$ 1.00	$ -
COLOR COPIES (per page)		0	$ 1.00	$ -
MICROFICHE PAPER COPIES		0	$ 0.10	$ -
MICROFICHE DUPLICATE		0	$ 0.30	$ -
HANDLING CHARGE		0	$ 4.45	$ -
POSTAGE		0	$ 4.97	$ -
LABOR CHARGES (per hour)		0	$ 15.00	$ -
OVERHEAD CHARGES	(20% of Labor Charge)	20%	$ -	$ -
		TOTAL COST		$ -

CREDIT CARD INFORMATION FOR ADMINISTRATION DIVISION

☐ Mastercard

☐ Visa

Credit Card Number

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date (MM/YY)

☐☐☐☐

Security Code (3 Digits)

☐☐☐

Zip Code

☐☐☐☐☐

Name on Credit Card

PAYMENT

☐ Check

☐ Cash

☐ Visitor
☐ Phone-In
☐ E-Mail

☐ **1 Copy-SMRD Records**
☐ **1 Copy-Customer**

☐ **1 Copy-Admin**
☐ **2 Copies-Central Records**

CENTRAL RECORDS INITIALS

REGISTER NO.

SMRD FEE CODE

SM-04

	RAILROAD COMMISSION OF TEXAS **SURFACE MINING AND RECLAMATION DIVISION** # DIRECTIVE NOTICE	DIRECTIVE ID: **AD-AD-210(c)** REVISION NO.: **2** EFFECTIVE DATE: **May 15, 2013**
SUBJECT: **Handling of Confidential Documents**		
APPROVAL: John E. Caudle		TITLE: Director

I. PURPOSE

This directive describes what a confidential document is and provides guidance in proper handling of confidential documents.

II. REGULATION AND ACT REFERENCE

Texas Government Code, Title 5, Chapter 552, §552.147; Texas Government Code, Title 4, Chapter 442, §442.005(b); Texas Natural Resources Code, Title 9l, Chapter 191, §191.004; TEXAS ADMIN. CODE, Title 13, Part 2, Chapter 24, §§24.1 & 24.13; Texas Coal Mining Regulations §§12.6, 12.115, 12.210 and 12.672.

III. SUMMARY

Records classified as confidential according to laws or regulations shall not be made readily available to the public or governmental agencies. Requests for information or portions of information that might be confidential by law or otherwise exempted from public disclosure by state or federal law or reported court decision, must be reported to the Surface Mining and Reclamation Division (SMRD) Director or Special Counsel. Determination of requests for confidential information will be resolved on a case-by-case basis. See Directive AD-AD-6 for further instructions regarding Open Records Requests.

Note: All information contained in a confidential document is considered confidential until further determination; therefore, information cannot be released, no matter how seemingly insignificant the information requested may be.

IV. DESCRIPTIONS/EXAMPLES

The following is a list of confidential documents and/or information maintained in SMRD:

- Archeological sites contained in permit files;
- Coal and uranium exploration permit information when applicant requests that such information be kept confidential;
- Complaints against permittees if the complainant requests anonymity;
- Social security numbers [blaster applications, permit administrative information (i.e. Sec. 12.116), financial information, land leases];
- Email addresses of members of the public, this includes the mining industry;
- Bank account numbers (permit application financial information);
- Driver's license numbers;
- Any other documents/information deemed confidential by SMRD Division Director or Special Counsel.

V. GENERAL HANDLING

A. Confidential documents are retained in files segregated from the public files and locked with access given on a need to know basis only.

B. Requested documents containing confidential information will be copied in the following manner:
   1. Original document is copied;
   2. Confidential information in copied document is redacted (blocked out) with "white out" tape and then copied again to ensure the information does not show through the redacted area;
   3. Second copied document is given to the requestor; the first copy (not original document) is shredded.

   Note: Handwritten confidential complaints cannot be copied for open record requests as the handwriting reveals the source, seek Special Counsel assistance for this type of document.

C. Email addresses contained within email printouts or correspondence (except Commission staff email addresses, other state agency or federal agency email addresses, and email addresses that are made public, i.e. included on company letterhead or business card) will be redacted with "white out" tape for the original file.

	RAILROAD COMMISSION OF TEXAS SURFACE MINING AND RECLAMATION DIVISION # DIRECTIVE NOTICE	DIRECTIVE ID: **AD-AD-RE** REVISION NO.: **2** EFFECTIVE DATE: **July 8, 2014**

SUBJECT: **Procedures for Handling Original Document Correspondence Dealing With Permitting Actions and to Identify Record Keeping Responsibilities for Official Bonding, Insurance, and Commission Order Files.**

APPROVAL John E. Caudle	TITLE: Director

I. PURPOSE

The purpose of this directive is to insure the timely filing of original correspondence in the regulatory division's permit application files and to specify Record keeping responsibilities for original documents pursuant to this Directive.

II. SUMMARY

A. The Hearings Division will:

1. Send all Hearings Division **original** incoming correspondence directly to the Surface Mining and Reclamation Division's (SMRD) Records Section for filing in appropriate permit application files. This assumes that a **copy** of the same **original** correspondence was also sent to the SMRD Director. If a **copy** of the correspondence was not also sent to the SMRD Director, the **original** received by the Hearings Division will be taken to the Director's Secretary for in-processing. All **original** incoming faxes will be treated the same as all Hearings Division original incoming correspondence.

2. Send all **original** correspondence created by Hearings Division, and addressed to the SMRD Director, to the Director's Secretary for in-processing.

3. Send a **copy** of all correspondence created by Hearings Division, but not addressed to the SMRD Director, to the Director's Secretary for in-processing.

4. Keep and maintain appropriate files for all **original** bond instruments. A **copy** of these documents will be sent to the SMRD Director's Secretary for in-processing.

5. Keep and maintain appropriate files for all **original** Commission signed orders and send a **copy** of the orders to the SMRD Director's Secretary for in-processing.

6. Keep **original** publisher's affidavits and newspaper clippings on all public notices other than bond releases and file with the permit orders. If a **copy** of the publisher's affidavits and newspaper clippings were not also sent to the SMRD Director, a copy will be sent to the SMRD Director's Secretary for in-processing.

B. The Surface Mining and Reclamation Division will:

1. Keep and maintain appropriate files for all original Certificates of Insurance. Reviews of Certificates of Insurance will be coordinated with the Office of General Counsel. A copy of certificate review results will be sent to the Hearings Division.

2. Send a **copy** only of the applicant's completed SMRD-1C form with the administratively complete application being transferred to the Hearings Division. The application transfer correspondence will certify that the **original** SMRD-1C form is filed in SMRD's permit application records file.

3. Send a **copy** of the Staff's permit application review Technical Analysis (TA) to Hearings Division. The transmittal correspondence will certify that the **original** TA is filed in SMRD's permit application records file.

4. All communications with Hearings Division will be made via **original** letter or memorandum transmitted to them, date stamped by Hearings Division, a **copy** left in Hearings Division, and the **original** returned directly to SMRD's Records Section for filing in appropriate permit application files.

5. All **original** publisher's affidavits and newspaper clippings for bond release will remain in SMRD's bond release files and a copy transmitted to Hearings Division.

6. Keep and maintain appropriate files for all original corporate and financial documents submitted in support of a reclamation Self-Bond.

7. Review of corporate and financial documents submitted in support of a reclamation Self-Bond will be performed in accordance with SMRD Directive Notice PR-AP-309(j), *Procedures for Reviewing Legal and Financial Information Required for a Coal Mining Permit Self-Bond or Self -Bond with Third Party Guarantee.*

8. All open records requests will be handled by SMRD's Records Section in accordance with SMRD Directive Notice AD-AD-672, *Processing Open Records Requests.*

	RAILROAD COMMISSION OF TEXAS **SURFACE MINING AND RECLAMATION DIVISION** # DIRECTIVE NOTICE	DIRECTIVE ID: **AD-AD-RE1** REVISION NO.:**1** EFFECTIVE DATE: **September 1, 2000**

SUBJECT: **Digital photograph naming and storage**

APPROVAL: Melvin B. Hodgkins TITLE: Director

PURPOSE

This Directive Notice describes the standard conventions for naming and storing digital photographs within the Surface Mining and Reclamation Division.

SUMMARY

All digital photographs[1] included in official Division documents will be named in accordance with the standard convention as described in attachment 1. The "What" portion of the file name will include a brief narrative summary of the photo subject. File names may include up to 255 characters, including spaces and some special characters. Spaces shall be used as a separator between words in the narrative portion of the file name.

Digital photo files shall be archived on the Division's computer network servers within the area designated for photos[2]. Folders shall be created within the "Photo" folder to further organize files by minesite or project.

Photo files shall be saved without alteration or manipulation of content to preserve the integrity and accuracy of their subject matter.

Photographs extracted from digital cameras shall be saved at their original resolution, in a JPEG file interchange format (.jpg).

Digital photographs created through the scanning process shall be captured at the highest reasonable resolution[3]. Scanned photographs shall be saved at their original resolution, in a JPEG file interchange format (.jpg).

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[1] The term digital photograph refers to all photographs in an electronic file format.

[2] Photo folders as designated on servers:

Austin	DATA: \ SM_ALL \ GRAPHICS.SM \ DIGITAL PHOTOS
Tyler	\PHOTOS
Floresville	\PHOTOS

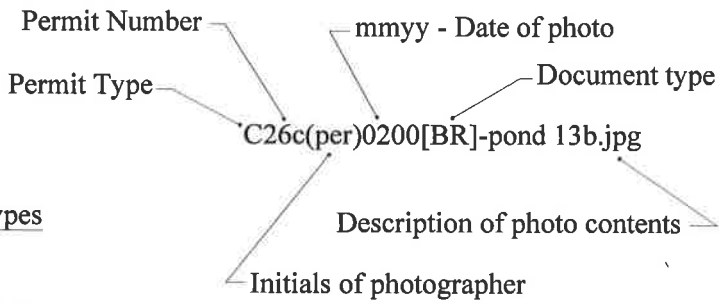
[3] Recommended scanning resolutions:

Standard color print	600dpi
Standard black & white print	300dpi
Color slide	600dpi

SMRD digital photo naming convention;

Where(Who)When-What
No spaces

A&P / I&E Example:



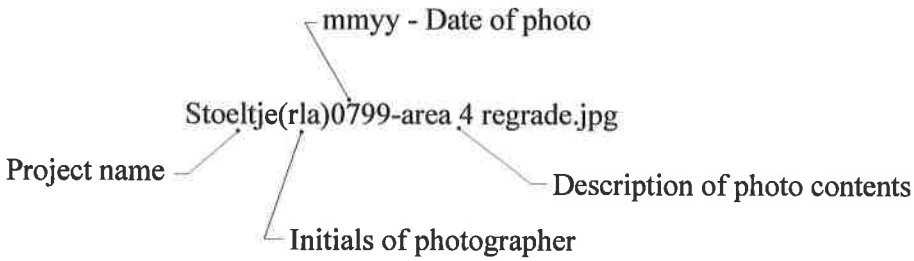
Permit Types

C - Coal
U - Uranium
CX - Coal Exploration
UX - Uranium Exploration

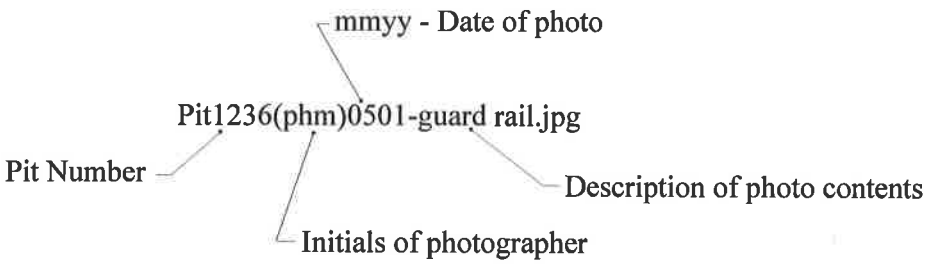
Document Types

CI - Complete Inspection
PI - Partial Inspection
SI - Special Inspection
EX - Exploration Inspection
BR - Bond Release
SR - Special Report
AD - Advisories
DR - Directives
PS - Permanent Structures
TA - Technical Analysis

AML Example:



P&Q Example:



	RAILROAD COMMISSION OF TEXAS **SURFACE MINING AND RECLAMATION DIVISION** # DIRECTIVE NOTICE	DIRECTIVE ID: **PR-AP-145(b)(1)** REVISION NO.: EFFECTIVE DATE: **January 1, 2003**

SUBJECT: **Reclamation Timetable**

APPROVAL: Melvin B. Hodgkins TITLE: Director

I. PURPOSE

This Directive Notice provides guidance to Applications and Permits Section staff responsible for reviewing permit application information required by Section 12.145(b)(1) of the Coal Mining Regulations. This Directive is intended to ensure that permit application reviewers understand the type of information and the level of detail required to adequately illustrate the time sequence for each major step of the reclamation plan.

II. REGULATION REFERENCE

Coal Mining Regulations (CMR) §12.145 (Reclamation Plan: General Requirements for Surface Mining), §12.312 (Procedures for Seeking Release of Performance Bonds), and §12.383 (Contemporaneous Reclamation).

III. RECLAMATION TIMETABLE

The CMR at §12.383 requires reclamation to occur as contemporaneously as practicable with mining operations. The reclamation plan included in the permit application must describe each major reclamation activity performed and contain a detailed reclamation timetable to illustrate the timeframes for accomplishing these major reclamation activities [CMR §12.145(b)(1)]. The times appropriate for considering reclamation bond release applications (reclamation milestones) must also be identified in the reclamation plan [CMR §12.312].

The reclamation timetable must identify the dates of anticipated completion of each major reclamation activity (i.e., rough backfilling and grading, topsoil or topsoil-substitute material redistribution, revegetation - both temporary and permanent) and reclamation performance milestones (i.e., initiation of extended responsibility period and applications for release of reclamation bond liability). The timetable must be sufficiently detailed to allow the Commission to verify whether reclamation activity is contemporaneous and reclamation performance milestones are being met during the permit term.

The reclamation timetable may vary for different mining scenarios within a mine. The timetable need not be specific to any one parcel or tract of land but may be specific to a particular postmine land use. The timetable must illustrate the chronological sequence of completed reclamation activity and milestones, and ultimately show how many years will elapse after mining before a permittee files an application for release of Phase III reclamation-bond liability for a given tract of land with the Commission.

IV. RECLAMATION ACTIVITY AND MILESTONE

The following briefly describes the reclamation activities and milestones that must be discussed in detail in the permit application and shown in a figure or table illustrating the reclamation timeline. Also identified is the preferred event used to date index the time required for completion of a reclamation activity or milestone. The initial reference date in the timeline must be the date of coal removal.

Rough backfilling and grading: Completion of this activity indicates that the permittee has achieved approximate original contour (AOC) of the mined landscape. The time required for completion of this activity should be referenced to coal removal on a given tract or parcel of land.

Redistribute topsoil or approved substitute material: Completion of this activity must be referenced to completion of rough backfilling and grading.

Temporary vegetation: This activity is proposed when seasonal conditions prevent planting permanent vegetation. The event usually is associated with completion of topsoil or approved substitute-material redistribution during seasons not suitable for planting permanent vegetation. The reclamation timetable must reference this activity to the completion of topsoil or substitute material redistribution.

Permanent vegetation: Most postmine land uses require planting permanent vegetation as a primary reclamation activity. Planting of temporary vegetation may precede this activity. The reclamation timetable should be differentiated based on vegetation type (e.g., grasses, trees, crops) and, as appropriate, be referenced to planting temporary vegetation or to the completion of topsoil or substitute-material redistribution.

Extended Responsibility Period: Land must be entered into the extended responsibility period ERP) after permanent vegetation has been planted and augmentation has ceased. This milestone is critical to ensure the timely release of land from reclamation liability. Any delay in affirming that lands are suitable for entering into the ERP will also cause a delay in eligibility for final reclamation bond release. The reclamation timetable must identify the initiation of the ERP in relation to completion of planting permanent vegetation. There should be no unusually long time lag between completion of planting permanent vegetation and entering land into ERP. Lengthy delays for entering land into ERP must be fully explained in the permit application.

Phase I release of reclamation bond liability: This is the first major milestone that formally documents reclamation success. The primary performance standards are; 1) reclaimed land meets approximate original contour, 2) is free of acid- and toxic- forming material and, 3) has established drainage control. The timetable must reflect the proposed date for submission of an application for Phase I bond release in reference to completion of topsoil or substitute material redistribution. It is not necessary to have permanent vegetative cover or land in ERP to file a Phase I bond release application. It is essential that any permit that is bonded under the "worst case pit " bonding method submit Phase I bond release applications in a timely manner as this bonding method does not contain any reclamation costs for backfilling and grading drastically disturbed mine areas except for the "worst case pit(s)."

Phase II release of reclamation bond liability: This reclamation milestone for agronomic land uses is met when permanent vegetation has been successful established. For non-agronomic land uses the demonstration is that vegetation, if required, be sufficient to control erosion. The timetable must reflect the date for submission of an application for Phase II bond release referenced to the date land was entered into the ERP. In some instances, applicants may choose to submit a combined Phase I and II bond release application. In these instances, it is important to also reference the date of application submission to the date of completion of topsoil or substitute material redistribution.

Phase III release of reclamation bond liability: A Phase III bond release application must be submitted as soon as practicable after the period of extended responsibility. The timing for this final reclamation milestone must be referenced to the date land was entered into the ERP.

	RAILROAD COMMISSION OF TEXAS SURFACE MINING AND RECLAMATION DIVISION **DIRECTIVE NOTICE**	DIRECTIVE ID: **PR-AP-226** REVISION NO.: EFFECTIVE DATE: **July 1, 2004**

SUBJECT: **Non-Significant Permit Revision Application Review Procedures and Duties of Staff**

APPROVAL: Melvin B. Hodgkiss TITLE: **Director**

I. PURPOSE

This Directive provides guidance to Staff in the Application and Permits Section on responsibilities and procedures in reviewing and evaluating non-significant (administrative) permit revision applications. Non-significant permit revisions are actions requested by permittees to the original permit that do not constitute a significant departure from the approved method or conduct of mining and reclamation operations.

II. Regulation References

16 *Texas Admin. Code* §12.1 et seq. [the "Texas Coal Mining Regulations" (TCMR)], Subchapter G (Surface Coal Mining and Reclamation Operations and Coal Exploration Procedures Systems).

TCMR, Subchapter G, Division 13 [Permit Reviews, Revisions, and Renewals, and Transfer, Sale, and Assignment of Rights Granted Under Permits, §12.226 (Permit Revisions)].

16 *Texas Admin. Code* §1.201 (Time Periods for Processing Applications and Issuing Permits Administratively).

III. Technical Review Period

A. A written response to an application for a non-significant permit revision must be made within 60 calendar days of receipt of a complete application. To be considered complete, the application must include a completed Form SMRD-2C and a $500 revision application fee.

B. The appropriate Technical Group Leader will assign the revision application to a Staff member for review.

C. Staff review of the application must be completed within 58 calendar days of the Commission's receipt of a complete application and will be documented in the following manner:

1. If the review finds no application deficiencies, the Section Manager will be provided a written technical summary and evaluation of the applicant's proposed revision (technical review memorandum), accompanied by a draft transmittal letter for the Division Director's consideration and approval.

2. If the review finds application deficiencies, the Section Manager will be provided a list of deficiency comments with precise citations to applicable Regulation sections and a draft deficiency comment letter for the Division Director's consideration and approval.

D. For some applications, more than one technical reviewer will be required to review and evaluate the application. In such cases, the Section Manager will assign a technical review coordinator and a review team using the permit review assignment sheet. The technical review coordinator will be responsible for assembling the written review sections of the review team into a cohesive document within the time frames described in this Directive.

E. If Staff resources are not sufficient to meet the review timeframes for reasons including but not limited to staffing vacancies, unusually high workload, etc., the Section Manager will confer with the Director and then consult with and provide the applicant with written notice of a revised schedule (see attached Staff review schedule revision letter). A copy of this notice will also be provided to the Commission Executive Director.

F. Within 30 days of receiving the Permittee's responses to Staff's deficiency comments, Staff is to finalize and close its review of the revision application if there are no further comments (Section III.C.1), or issue further comments if necessary (Section III.C.2).

IV. Technical Review Memorandum

A. Staff's final technical review will be documented by memorandum. The Staff Reviewer will route the memorandum through his or her Technical Group Leader and Section Manager to the Director. The Technical Group Leader, Section Manager and Director will review and comment and/or sign (or initial) the memorandum. The memorandum will contain a heading with this routing, in addition to the name of the applicant; the permit number, mine name, and the subject of the non-significant permit revision.

B. The memorandum will contain a brief introduction identifying the receipt or letter date of the revision application as well as the subject and purpose of the revision. The next section of the memorandum will contain a ***Proposal Summary*** of the applicant's proposed revision. In this summary, the Staff Reviewer will briefly enumerate each of the applicant's proposed elements of the approved permit being revised. Under a separate ***Technical Review Summary*** heading, the Staff Reviewer will provide an evaluation of the applicant's proposal, enumerating the technical and regulatory sufficiency of each component of the revision; including specific citations to applicable Regulation sections. Finally, the review memorandum will contain a brief conclusion under the heading ***Conclusions and Recommendations*** on the regulatory sufficiency of the proposed revision and the Staff Reviewer's technical recommendations for approval or denial. Documentation of the Staff Reviewer recommendation that the revision application is not a significant departure from the approved operation or reclamation plan will also be contained in the conclusion of the memorandum.

C. In addition to the specific technical review unique to each revision application, the review memorandum must, at a minimum, contain an analysis of whether the non-significant revision application meets the following conditions:

- The affected area must be adequately bonded;
- The affected area must not impact any structures or sites listed for protection under §12.71;
- The proposed revision must not alter the findings of the approved probable hydrologic consequences (PHC) or contain a revised PHC; and
- The proposed revision application must contain information to address the need for any variances allowed under §§12.71(a), 12.355, 12.382, 12.384 and 12.399.

Attachments: Template for Comment Letter
Template for Technical Review Memorandum
Template for Approval Letter
Staff Review Schedule Revision Letter to the Applicant

TEMPLATE

MEMORANDUM

TO: Melvin B. Hodgkiss, P.E. Director

THRU: John Caudle, P.E., Manager, Applications and Permits
_____ (Name and title of Supervisor)

FROM: _____ (Your Name and Title)

SUBJECT: Name of Mine, Permit No. _____ Revision Name and, if applicable, Number

DATE: _____

The Surface Mining and Reclamation Division received _____''s (mining company name) application to revise Permit No. ____ on _____ (date of receipt). _____ (mining company name) proposes to revised sections _____ of this permit. The following Staff will review this application as indicated below.

Staff Reviewer	**Sections**

The 60-day review period begins _____ (date), and ends _____ (date).

_____
(Your Name)

File Ref. No. _____

TEMPLATE

NON-SIGNIFICANT PERMIT REVISION APPLICATION COMMENT LETTER TO THE APPLICANT

Date

Mining Company Representative, Title
Mining Company Name
Mining Company Address

RE: Name of Mine, Permit No. _____
Revision Application Name and, if applicable, Number

Dear _____ (Mining Company Representative):

I have received _____'s (mining company name) _____(revision application name), submitted by letter dated _____. In your application you propose to revise section(s) _____ of Permit No. ____. The submittal included _____ (identify the components of the submittal package, including the application fee).

Staff has reviewed your revision application, and has _____ (number of) comments (attached). _____ (mining company name) must satisfactorily address these comments for Staff to complete its review of the submittal. At this time, the application is not considered complete and is not accepted for filing.

If you have any questions, please feel free to call me or _____ (permit coordinator name), coordinator for the review of this permit application.

Sincerely,

Melvin B. Hodgkiss, Director
Surface Mining and Reclamation Division

MBH/
Enclosure
File Reference No. _____

Name of Mine, Permit No. ____
Name of Revision
Date of Comment Letter

1. Comment No. 1 with appropriate Regulation citation.
2. Comment No. 2 with appropriate Regulation citation.
3. Comment No. 3 with appropriate Regulation citation.
4. Etc.

File Reference No. _____

TEMPLATE

NON-SIGNIFICANT PERMIT REVISION APPLICATION APPROVAL (OR DENIAL) LETTER TO THE APPLICANT

Date

Mining Company Representative, Title
Mining Company Name
Mining Company Address

RE: Name of Mine, Permit No. _____
Revision Application Name and, if applicable, Number

Dear _____ (Mining Company Representative):

Review of _____'s (mining company name) _____(revision application name), submitted by letter dated _____, and (if applicable) supplemented by letter dated _____ in response to my comments dated _____, is complete. _____ (revision name) was accompanied by _____ (date of payment, if submitted separate from application), payment of $500 application fee. The application is considered complete and is accepted for filing.

In your application, you propose to revise section(s) _____ of Permit No. ____. The application includes _____ (identify the components of the submittal package, as taken from the "Applicant's Proposal" section in the attached review memorandum).

The application _____ (identify the results as taken from the "Proposal Evaluation" section in the attached review memorandum).

I find that the revised _____ (identify the components of the revision) do(es) not constitute a significant departure from the approved _____ (appropriate component of the permit). _____ (The subject of the revision application) meets (or does not meet) the requirements and performance standards of §§ (specify the applicable sections of the Regulations), and is approved/denied for _____ (the applicable component of the permit) of Permit No. _____. (If approved)_____ (Name of revision) is hereby approved and your permit has been revised accordingly.

I have enclosed Staff's review memorandum for this application. Do not hesitate to call _____ (Permit Coordinator's name and title), should you have any questions.

Sincerely,

Melvin B. Hodgkiss, Director
Surface Mining and Reclamation Division

MBH/
Enclosure
File Reference No. _____

TEMPLATE

NON-SIGNIFICANT PERMIT REVISION APPLICATION REVIEW MEMORANDUM

M E M O R A N D U M

TO: Melvin B. Hodgkiss, P.E. Director

THRU: John Caudle, P.E, Manager, Applications and Permits
_____ (Supervisor's Name and Title)

FROM: _____ (Reviewer's Name and Title)

SUBJECT: Name of Mine, Permit No. _____
Revision Application Name and, if applicable, Number

DATE: _____

INTRODUCTION

_____ (mining company name) submitted _____ (revision application name) for the _____ (name of mine, if applicable) and supplemented by letter dated _____(date of receipt). My technical review is summarized below.

_____'S (MINING COMPANY'S NAME) PROPOSAL

1. Enumerate a summary of what the mining company is proposing to revise in the approved permit.

2. Continue the enumeration to include all of the components of the revision application, including the application-revision fee (and date of payment), any revised sections, plans, maps, figures, tables, and text.

PROPOSAL EVALUATION

1. Enumerate the technical and regulatory sufficiency of each component of the revision, and include specific citations to applicable Regulation sections.

2. Continue to enumerate the evaluation to include an analysis of whether the non-significant revision application meets the following conditions:

   The affected area is adequately bonded;

   The affected area does not impact any structures or sites listed for protection under §12.71;

The proposed revision does not alter the findings of the approved probable hydrologic consequences (PHC) or contain a revised PHC; and

The proposed revision application contains information to address the need for any variances allowed under §§12.71(a), 12.355, 12.382, 12.384 and 12.399.

CONCLUSIONS AND RECOMMENDATIONS

Conclude with a summary of the regulatory sufficiency of the proposed revision and your technical recommendations for approval or denial. If recommendation in concluding paragraph below is that the revision does not constitute a significant departure from the approved reclamation plan, document the supporting facts.

The information provided in _____ (revision application name) meets (or does not meet) the requirements of §§_____ for (the subject of the revision). This revision appears to/does (es) not appear to constitute a significant departure from the approved reclamation plan in accordance with §12.226. I recommend approval (or denial) of _____'s (mining company name) plan for _____ (subject of the revision application).

_____
(Name of Reviewer)

INITS/
File Ref. No. _____

TEMPLATE

STAFF REVIEW SCHEDULE REVISION LETTER TO THE APPLICANT

Date

Mining Company Representative, Title
Mining Company Name
Mining Company Address

RE: Name of Mine, Permit No. _____
Revision Application Name and, if applicable, Number
Staff Review Schedule Revision

Dear (Mining Company Representative):

Staff has received _____'s (mining company name) _____ (revision application name) application, submitted _____ (date) for the _____ (name of mine), Permit No. _____.

Please be advised that Staff currently anticipates completing its technical review by _____ (date), revised from _____, the original deadline for the end of the 60-day review period for evaluating permit renewal applications. The reason for this delay is _____.

If you have any questions, please contact me or Mr. John Caudle, Manager of the Division's Applications and Permits Section.

Sincerely,

Melvin B. Hodgkiss, Director
Surface Mining and Reclamation Division

MBH/
File Reference No. _____

	RAILROAD COMMISSION OF TEXAS SURFACE MINING AND RECLAMATION DIVISION **DIRECTIVE NOTICE**	DIRECTIVE ID: PR-AP-309(j) REVISION NO.: EFFECTIVE DATE: December 1, 1998

SUBJECT: **Procedures for Reviewing Legal and Financial Information Required for a Coal Mining Permit Self Bond or Self Bond with Third Party Guarantee**

APPROVAL: Melvin B. Hodgkiss	TITLE: Director

I. PURPOSE

The purpose of this document is to describe the procedures and identify Railroad Commission departments and/or staff positions responsible for performing reviews of self-bond documents and related financial information submitted by applicants or permittees.

II. REGULATION REFERENCE

The following regulations identify the specific financial information data required to be submitted and describe the financial performance criteria necessary to meet the requirements for consideration of a self bond.

16 TAC §12.309 (j)(2) - Terms and Conditions of the Bond, Self-Bonding- **Requirements for business and governmental entities**
16 TAC §12.309 (j)(3) - Terms and Conditions of the Bond, Self-Bonding - **Requirements for a third-party guarantee**
16 TAC §12.309 (j)(4) - Terms and Conditions of the Bond, Self-Bonding - **Limitations**
16 TAC §12.309 (j)(4) - Terms and Conditions of the Bond, Self-Bonding - **Indemnity agreement**
16 TAC §12.309 (j)(6) - Terms and Conditions of the Bond, Self-Bonding - **Current financial information**
16 TAC §12.309 (j)(7) - Terms and Conditions of the Bond, Self-Bonding - **Substitute bonding**

III. RESPONSIBILITIES

After a permit application for surface coal mining and reclamation operations has been approved but before such permit is issued, the applicant must file with the Commission a (reclamation) performance bond or bonds payable to the Commission (16 TAC §12.301). The Commission may accept a self-bond in lieu of a surety or collateral bond if the permittee meets the requirements of 16 TAC §12.309(j) and any additional requirements of §§12.309(a) through (d).

The primary responsibility for coordinating staff review of the self-bond documents (including financial information) will be with the Surface Mining and Reclamation Division (SMRD). The SMRD will also be responsible for tracking and ensuring that timely annual financial update information is filed with the Commission and reviewed to ensure that criteria for continued self-bonding has been demonstrated. Assisting the SMRD in the review of these documents will be staff in the Office of General Counsel (OGC) -Environmental Section and the Finance and Administration Division. The attached diagrams indicates the coordination of the self-bond and financial information review effort.

IV. PROCEDURES

In the case of new or replacement bonds instruments or documents, after completion of the legal and financial review, the SMRD shall file for docketing the bond and related financial information, together with staff's review and recommendation, with the hearings examiner in the Office of General Counsel-Surface Mining Section. The hearings examiner will proceed with a review of the filing and present the case to the Commissioners for their consideration and action.

In the case of annual self-bond financial update information filings, the SMRD shall coordinate the review with the assistance from OGC- Environmental Section and Finance and Administration Division staffs. Upon completion of review, the SMRD shall inform the permittee of the review results. In the case where the review indicates that criteria for continued self-bonding has not been met, the Director, SMRD will notify the permittee to submit an appropriate substitute bond in accordance with 16 TAC §12.309(j)(7) or show cause why the self-bond should remain in effect. If the permittee elect to proceed with a show cause hearing, the SMRD will file the request with the OGC-Surface Mining Section and request that the hearing process be initiated.

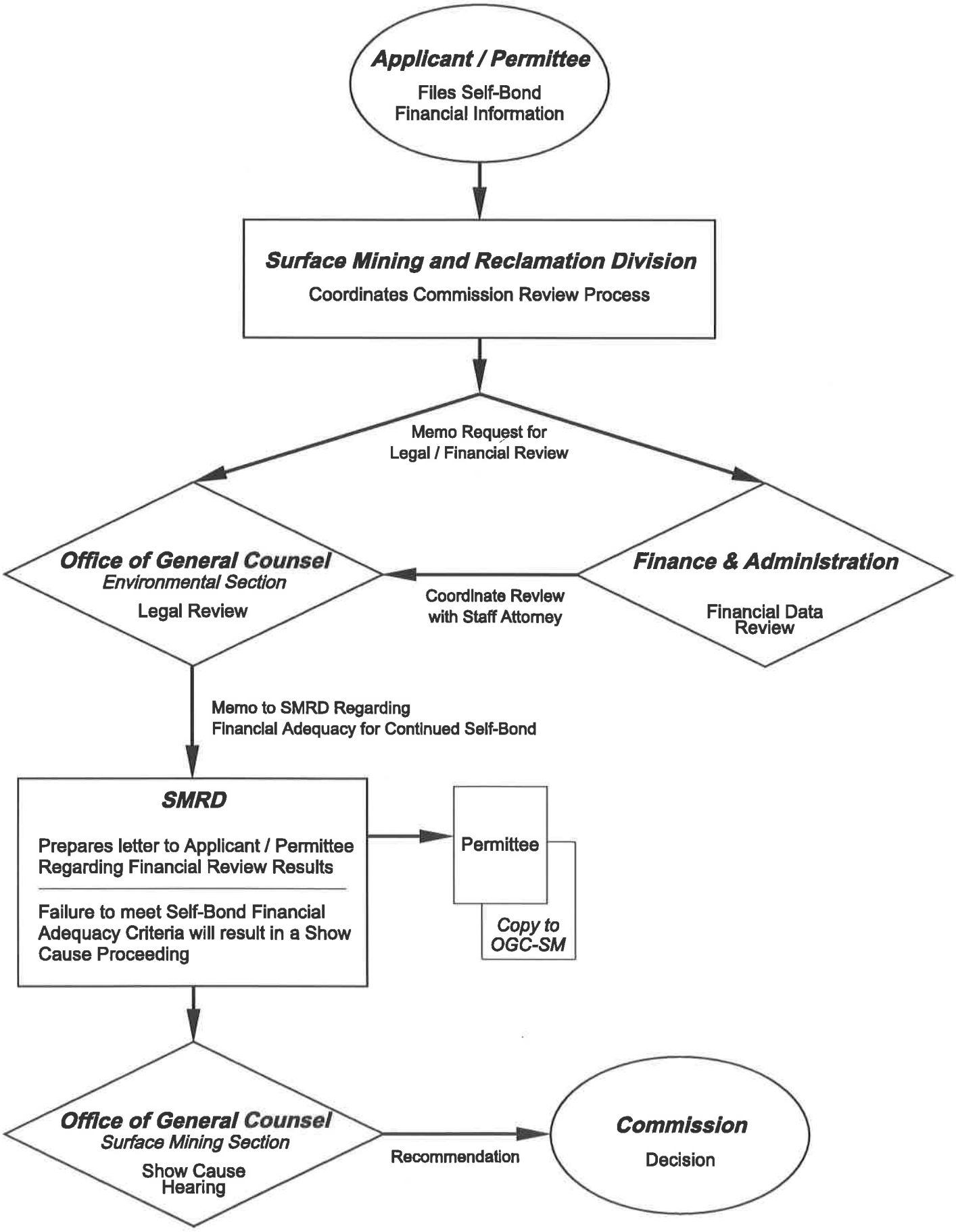
If an appropriate substitute bond is not received and favorably acted on by the Commission within 90 days of date of notification, the SMRD, in accordance with 16 TAC §12.309(j)(7), will issue permittee a cessation order for coal extraction (reclamation operations are to continue) and mining of coal shall not resume until the Commission has determined that an acceptable bond has been posted.

V. ATTACHMENTS

Figure 1. Review of Update Financial Information for Self-Bond

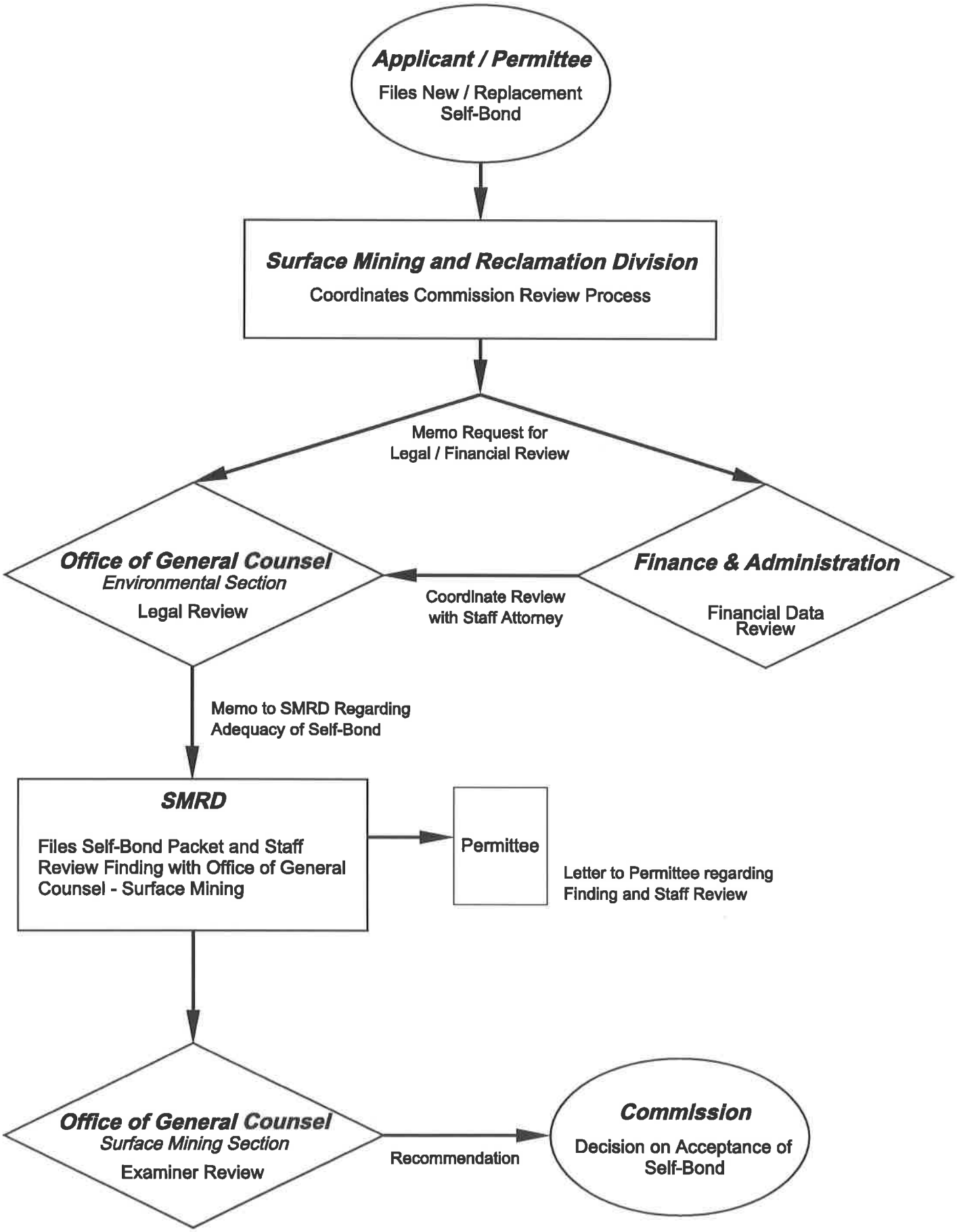
Figure 2. Review of New/Replacement Self-Bond

Figure 1. Review of Update Financial Information for Self-Bond



12/01/1998

Figure 2. Review of New / Replacement Self-Bond



12/01/1998

	RAILROAD COMMISSION OF TEXAS **SURFACE MINING AND RECLAMATION DIVISION** # DIRECTIVE NOTICE	DIRECTIVE ID: **PR-AP-RE** REVISION NO.: EFFECTIVE DATE: **October 10, 2003**
SUBJECT: **Application Review Procedures and Duties of Permit Review Staff for Significant Permit Actions**		
APPROVAL: Melvin B. Hodgkiss		TITLE: Director

I. PURPOSE

This Directive provides guidance to Staff in the Application and Permit Section on responsibilities and procedures in reviewing and evaluating new, renewal, renewal/revision mining permit applications, and significant permit revision applications (hereafter designated significant actions). Furthermore, this Directive is intended to ensure that good communications have been established between the Staff and applicant allowing for the efficient use of time and resources in Staff's review of applications and applicant's response to any deficiencies that may be identified, thereby expediting the mine permitting process for significant actions.

II. REGULATION REFERENCES

16 *Texas Admin. Code* §12.1 et seq. [the "Texas Coal Mining Regulations" (TCMR)], Subchapter G (Surface Coal Mining and Reclamation Operations and Coal Exploration Procedures Systems).

TCMR, Subchapter J (Bond and Insurance Requirements for Surface Mining and Reclamation Operations).

TCMR, Subchapter K (Permanent Program Performance Standards): Division 2 (Permanent Program Performance Standards – Surface Mining).

16 *Texas Admin. Code* §1.201 (Time Periods for Processing Applications and Issuing Permits Administratively).

III. PRE-APPLICATION CONSULTATION AND COORDINATION

Prior to filing a permit application with the Surface Mining and Reclamation Division, Staff and applicant will hold a meeting(s) to discuss and coordinate information requirements for applications for significant actions. Upon scheduling the first pre-application meeting, the Application and Permits Section Manager will designate a Staff Permit Coordinator (PC) and application review team. During the initial meeting the applicant will be given a computer disk containing relevant regulations and guidance documents together with an application administrative completeness checklist. Meeting(s) will be held between the reviewers and applicant to discuss the following three categories of application information requirements:

(1) scope and form of administrative and legal information, including necessary right-of-entry and ownership and control information (16 *Texas Admin. Code* §§12.116-12.123);
(2) environmental baseline information requirements (16 *Texas Admin. Code* §§12.124-12.138); and
(3) operations and reclamation plan information (16 *Texas Admin. Code* §§12.139-12.154).

The PC or Staff review member designee will prepare notes on the meeting within one week of the meeting and provide a copy to the applicant (see attached example).

IV. ADMINISTRATIVE REVIEW PERIOD

The PC is responsible for coordinating the review and processing of the application. Upon receipt of an application, the PC, in consultation with the Applications and Permits Section manager, will establish application review timelines for the review team.

The PC will complete an application completeness review [see definition TCMR 12.3(5)] within one week of receipt of the application to determine if all required information as identified in TCMR Subchapter G is present. The PC will then prepare a letter to the applicant, noting administrative completeness or incompleteness (see attached example notification of administrative completeness). The PC will advise the applicant by phone or email of the results of the completeness review before the letter is sent. This contact will also be documented in the application review administrative record. If the application is found to be incomplete, the letter will identify for the applicant the specific information that causes an incompleteness determination. If the application is found to be administratively complete, the application will be filed with the Office of General Counsel (see attached example of transmittal to Hearings Section) for processing in accordance with the Commission's General Rules of Practice and Procedures (GRPP) and the Administrative Procedures Act (APA).

V. TECHNICAL REVIEW PERIOD

(1) Within two weeks of administrative completeness, the PC will transmit the permit application information on cultural resources to the Texas Historical Commission for comment per Memorandum of Understanding dated September 10, 1991 with the Historical Commission.

(2) For all new mine permit applications, the PC will coordinate with the applicant a site visit to the proposed permit area for the review team.

(3) Review team staff will consult with applicant on an as-needed basis by telephone and/or e-mail during the course of his or her review to clarify questions regarding conflicting or missing information and any substantive deficiencies identified. For each substantive deficiency noted, the reviewer will identify the specific regulation(s) and/or technical issue underlying the deficiency. Substantive deficiencies are regulatory and technical issues wherein the applicant has not adequately addressed some specific element of a regulation section or where there is a technical omission, error, or inconsistency. Reviewer and applicant will identify and discuss possible remedies necessary to correct a substantive deficiency. During the technical review period, the PC and reviewers will also be available for meetings with the applicant to discuss substantive deficiencies and any necessary remedies.

(4) The PC will compile a list of editorial comments provided by the review team. Editorial comments are minor mistakes in the application such as typographical errors, misspellings, inconsistent cross-reference of data, etc. The PC will informally transmit this information to the applicant via e-mail or facsimile prior to completion of the substantive review of the application.

(5) The PC will compile the technical evaluations received from reviewers and will prepare the Technical Analysis (TA) document. The PC will edit the TA document for regulatory consistency, content, clarity, and sufficiency. The TA document will contain a summary of the application document and Staff's evaluation of applicant's administrative and right-of-entry information, environmental baseline information, and proposed operation and reclamation plan. Each substantive deficiency will contain a reference to a specific rule requirement or the underlying technical concern along with a description of the remedy to resolve the deficiency. The Technical Analysis document will not contain non-substantive editorial comments. The TA document will be submitted to management for review within 110 days after receipt of a complete application for a significant action with the exception of a permit renewal application, which will be submitted within 55 days after receipt of a complete application.

(6) The PC will, within 120 days of receipt of a complete application for a significant action (60 days for a renewal application), file Staff's TA document with the Commission's Office of General Counsel (OGC), through the Commission's Docket Services office and at the same time transmit the completed TA document to the applicant. At this time the PC will also contact the applicant to schedule a meeting to discuss the Technical Analysis review findings (see attached examples of TA transmittal letters).

(7) In the event that the PC recognizes the review team is not able to meet the review timeframes set forth in the foregoing, management will consult with the applicant and provide written notice of the likely delay. The notice will identify the reasons for the delay and a revised review schedule (see attached Staff review schedule-revision letter). A copy of this notice will also be provided to the Commission Executive Director.

VI. REVIEW OF PUBLIC AND STATE AND FEDERAL AGENCY COMMENTS

(1) The PC will provide copies of the complete application to reviewing State and Federal agencies upon receipt of each agency's request for a copy of the application in accordance with the requirements of 16 *Texas Admin. Code* §12.207(c). The PC will provide two copies of the application to the Texas Parks and Wildlife Department (see attached application transmittal letter to reviewing agencies).

(2) The PC will provide two copies of the TA document to the Texas Parks and Wildlife Department and, if requested, any other reviewing agency.

(3) Assigned reviewers will summarize and respond to all agency comments in a subsequent addendum to the TA document. Time to respond to agency review comments will be established by the Hearings Examiner.

(4) If the applicant files a supplement to the application, Staff will review applicant's supplement and respond with a TA addendum within 30 days, unless a substantive revision to the proposed mining and operation plan is made to the application in the supplemental filing. If a substantive revision is made, the review shall be completed within 60 days from receipt of the supplement. During this review time period the PC will request that the Hearings Examiner review the public notice to ensure that no material change, requiring additional notice, has occurred with this supplemental filing to the application. The PC will prepare a letter to the applicant documenting the timing of this action (see attached example letter concerning substantive revisions in application supplements). The procedure outlined in Section IV of this Directive Notice shall be followed for review of application supplements based on timeframes noted in this paragraph.

(5) The PC will provide copies of all supplements to requesting agencies, and will provide copies of the TA addenda document to the Texas Parks and Wildlife Department and, if requested, any other reviewing agency (see attached example of the application supplement transmittal letter to reviewing agencies).

VII. HEARINGS

If a pre-hearing conference and/or hearing are held regarding a permit application, the PC shall:

(1) Request assignment of a Staff Attorney from the Office of General Counsel.

(2) Coordinate with the assigned Staff Attorney in the preparation of review team members for hearing testimony.

(3) Coordinate lodging and transportation of review team members and files to the place of hearing, if outside Austin.

VIII. STAFF RESPONSES TO THE HEARINGS EXAMINER

The PC will facilitate Staff responses to all requests, rulings, and directions from the Hearings Examiner within the time schedule established by the Hearings Examiner.

IX. PERMIT AND ISSUANCE PROCESS

(1) Upon circulation of a Proposed Order or Proposal For Decision by the Hearings Examiner, the PC will facilitate the preparation for filing of Staff comments or exceptions to such documents, in accordance with the schedule and timeframe established by the Hearings Examiner. Coordination with review-team members may be necessary.

(2) Upon consideration of a substantive permit action by the Commission, the PC will transmit a copy of the complete application, TA documents, and Commission Order to the federal Office of Surface Mining in Tulsa, Oklahoma.

Attachments: Meeting Minutes Comment/ Acknowledgement Letter to the Applicant,
Administrative Completeness Notification to the Applicant,
Application Transmittal Letter to the Hearings Section,
Staff Review Schedule-Revision Letter to the Applicant,
TA Document Transmittal Letter to the Applicant with Certificate of Service,
TA Document Transmittal Letter to the Hearings Examiner with Certificate of Service,
Application Transmittal Letter to Reviewing Agencies,
TA Document Transmittal Letter to Reviewing Agencies,
Application Supplement Transmittal Letter to Reviewing Agencies, and
TA Document Addendum Transmittal Letter to Reviewing Agencies

TEMPLATE

ADMINISTRATIVE COMPLETENESS NOTIFICATION TO THE APPLICANT

Date

Mining Company Representative (Signer of Form SMRD-1C), Title
Mining Company Name
Mining Company Address

RE: Name of Mine, Permit No. _____(Type of Significant Action) Application Administrative Completeness

Dear Mining Company Representative:

Staff has received _____ (name of mining company) _____ (type of significant action) application, submitted _____ (date) for the _____ (name of mine), Permit No. _____ (if not a new permit application) in _____ (name of county or counties), Texas.

Staff has reviewed this application for administrative completeness, and has found that the application contains a signed Form SMRD 1-C, an application fee of $_____, and completed sections intended to address applicable Texas Coal Mining Regulations, (**pick one** of the following phrases) and is declared administratively complete **OR** with the exception of the following sections or elements: _____ (itemize exceptions if any occur, and request the applicant to provide these sections or elements to continue processing of the application upon receipt of any missing elements).

(If the application is administratively complete) The application has been transferred to the Commission's Office of General Counsel – Surface Mining Section, for docketing in accordance with 16 *TAC* §§1.24 and 1.41 (*General Rules of Practice and Procedure*). Staff will evaluate the application for technical and regulatory sufficiency, and provide its evaluation in a Technical Analysis document by _____ (date), the end of the (**pick one**) 120-day review period for evaluating new, renewal/revision permit applications and significant permit revision applications **OR** the 60-day review period for evaluating permit renewal applications.

Any further inquiries regarding public notice and permit-application processing should be directed to the Hearings Examiner. If you have any questions, please contact me or _____, the Permit Coordinator for this application.

Sincerely,

Melvin B. Hodgkiss, Director
Surface Mining and Reclamation Division

MBH/
xc: Mr. Colin Linebarger, Director of Hearings Division
File Reference No. _____

TEMPLATE

APPLICATION TRANSMITTAL LETTER TO THE HEARINGS DIVISION

Date

DOCKET SERVICES
Mr. Colin Linebarger, Director
Hearings Division
Office of General Counsel
Railroad Commission of Texas
1701 N. Congress Avenue
P. O. Box 12967
Austin, Texas 78711-2967

RE: Mining Company Name
Name of Mine
_____ (Type of Significant Action) Application

Dear Mr. Linebarger:

Enclosed is a _____ volume application from the _____ (Mining Company Name) received on _____. _____(Mining Company Name) proposes a _____(type of significant action) permit application for surface coal mining and reclamation operations in parts of _____ (name of county or counties) for a five-year permit term. The _____(type of significant action) permit area is approximately _____ (number of) miles _____ (compass direction) from the town of _____, and is approximately _____ acres in size.

I have determined that the application is administratively complete and request that the application be processed in accordance with 16 *Texas Administrative Code* §§1.24 and 1.41 (*General Rules of Practice and Procedure*). Please assign a Hearings Examiner to review the draft notice and provide any comments, as necessary, to the applicant within ten days. The name and address of the applicant's representative is:

Mining Company Representative (Signer of Form SMRD-1C), Title
Mining Company Name
Mining Company Adddress

By this letter of transmittal, I certify that the original TA document, the original Form SMRD-1C for this application, and a copy of a check in the amount of $_____ are maintained in the Division's permit application record. Should you have any questions, please feel free to call me or _____ (Permit Coordinator name), coordinator for the review of this permit application.

Sincerely,

Melvin B. Hodgkiss, Director
Surface Mining and Reclamation Division

MBH/
Enclosure
xc: _____, Mining Company Representative
File Reference No. _____

TEMPLATE

STAFF REVIEW SCHEDULE REVISION LETTER TO THE APPLICANT

Date

Mining Company Representative (Signer of Form SMRD-1C), Title
Mining Company Name
Mining Company Address

RE: Docket No. _____
Name of Mine, Permit No. _____(Type of Significant Action) Application
Staff Review Schedule Revision

Dear Mining Company Representative:

Staff has received _____ (name of mining company) _____ (type of significant action) application, submitted _____ (date) for the _____ (name of mine), Permit No. _____ (if not a new permit application) in _____ (name of county or counties), Texas.

Please be advised that Staff currently anticipates completing its Technical Analysis document by _____ (date), revised from _____, the original deadline for the end of the (**pick one**) 120-day review period for evaluating new, renewal/revision permit applications and significant permit revision applications **OR** the 60-day review period for evaluating permit renewal applications. The reason for this delay is _____.

If you have any questions, please contact me or _____, the Permit Coordinator for this application.

Sincerely,

Melvin B. Hodgkiss, Director
Surface Mining and Reclamation Division

MBH/
xc: _____, Hearings Examiner
File Reference No. _____

TEMPLATE

TA DOCUMENT TRANSMITTAL LETTER TO THE APPLICANT

Date

Mining Company Representative (Signer of Form SMRD-1C), Title
Mining Company Name
Mining Company Address

RE: Docket No. _____
Name of Mine, Permit No. _____(Type of Significant Action) Application
Mining Company Name
Staff Technical Analysis Document

Dear Mining Company Representative:

Enclosed is Staff's Technical Analysis (TA) document for the above-referenced _____(type of significant action) application.

Any supplemental documents you may wish to submit in response to Staff's review must be filed with the Hearings Examiner, and an additional _____ copies (one for our files, three for Staff review, two for Texas Parks and Wildlife Department review, and _____ for other agency review) served on the Surface Mining and Reclamation Division Staff. Any changes to the application (i.e. additions, deletions, wholesale replacements, etc.) must be accomplished through a supplemental document with these changes clearly identified in an errata sheet(s) included in the supplemental document.

If you have any questions, please feel free to call me or _____ (Permit Coordinator name), coordinator for the review of this permit application. **(If the Examiner has designated other Parties, use the following sentence and the attached Certificate of Services)**. Copies of this letter and TA document have been transmitted in accordance with the enclosed certificate of service.

Sincerely,

Melvin B. Hodgkiss, Director
Surface Mining and Reclamation Division

MBH/
Enclosure
xc: _____, Hearings Examiner (w/o enclosure)
File Reference No. _____

CERTIFICATE OF SERVICE

I, Melvin B. Hodgkiss, certify that on this date, _____, true and correct copies of the enclosed letter and Technical Analysis document were sent by separate letter via first-class mail to the individual(S) listed below:

_____ (Party Name)
_____ (Address)

_____ (Party Name)
_____ (Address)

_____ (Party Name)
_____ (Address)

_____

Melvin B. Hodgkiss, Director
Surface Mining and Reclamation Division
Railroad Commission of Texas
P.O. Box 12967
Austin, Texas 78711-2967

TEMPLATE

TA DOCUMENT TRANSMITTAL LETTER TO THE HEARINGS EXAMINER

Date

DOCKET SERVICES
_____, Hearings Examiner
Office of General Counsel–Hearings Division
Railroad Commission of Texas
1701 N. Congress Avenue
P. O. Box 12967
Austin, Texas 78711-2967

RE: Mining Company Name
Docket No. _____
Name of Mine, Permit No. _____(Type of Significant Action) Application
Staff Technical Analysis Document

Dear Examiner _____:

Enclosed is Staff's Technical Analysis (TA) document for the above-referenced _____(type of significant action) application.

By this letter of transmittal, I certify that the original TA document, the original Form SMRD-1C for this application, and a copy of a check in the amount of $_____ are maintained in the Division's permit application record. Copies of this letter and TA document have been transmitted in accordance with the enclosed certificate of service(S).

Sincerely,

Melvin B. Hodgkiss, Director
Surface Mining and Reclamation Division

MBH/
Enclosure
File Reference No. _____

CERTIFICATE OF SERVICE

I, Melvin B. Hodgkiss, certify that on this date, _____, true and correct copies of the enclosed letter and Technical Analysis document were sent by separate letter via first-class mail to the individual(S) listed below: **(If the Examiner has designated other Parties, include them in addition to the Mining Company)**.

_____ (Mining Company Representative as Signed on Form SMRD-1C), _____(Title)
_____ (Mining Company Name)
_____ (Mining Company Address)

_____ (Party Name)
_____ (Address)

_____ (Party Name)
_____ (Address)

_____ (Party Name)
_____ (Address)

_____

Melvin B. Hodgkiss, Director
Surface Mining and Reclamation Division
Railroad Commission of Texas
P.O. Box 12967
Austin, Texas 78711-2967

TEMPLATE

APPLICATION AND TA TRANSMITTAL LETTER TO REVIEWING AGENCIES

Date

Reviewing Agency Contact Person
Reviewing Agency Name
Reviewing Agency Address

RE: Docket No. _____
Name of Mine, Permit No. _____ (Type of Significant Action) Application
Mining Company Name
Copy of Application

Dear Reviewing Agency Contact Person:

In response to your request received _____, enclosed are copies of the administratively complete application (number of volumes). Also included is a copy of the Staff's Technical Analysis (TA) document dated _____. Future supplements to the application and addenda to the TA will be forwarded to you when they are received or completed. Any comments you may have regarding this application should be filed with the Hearings Examiner, _____.

Sincerely,

Melvin B. Hodgkiss, Director
Surface Mining and Reclamation Division

MBH/
Enclosures
xc: _____, Hearings Examiner w/o enclosures
File Reference No. _____

TEMPLATE

TA DOCUMENT TRANSMITTAL LETTER TO REVIEWING AGENCIES

Date

Reviewing Agency Contact Person
Reviewing Agency Name
Reviewing Agency Address

RE: Docket No. _____
Name of Mine, Permit No. _____ (Type of Significant Action) Application
Mining Company Name
Staff's Technical Analysis Document Addendum No. __

Dear Reviewing Agency Contact Person:

In response to your request received _____, enclosed is a copy of the Staff's Technical Analysis (TA) Document dated _____. Future TA addenda to the TA will be forwarded to you when they are completed. Any comments you may have regarding this application should be filed with the Hearings Examiner, _____.

Sincerely,

Melvin B. Hodgkiss, Director
Surface Mining and Reclamation Division

MBH/
Enclosure
xc: _____, Hearings Examiner w/o enclosures
File Reference No. _____

TEMPLATE

APPLICATION SUPPLEMENT TRANSMITTAL LETTER TO REVIEWING AGENCIES

Date

Reviewing Agency Contact Person
Reviewing Agency Name
Reviewing Agency Address

RE: Docket No. _____
Name of Mine, Permit No. _____ (Type of Significant Action) Application
Mining Company Name
Copy of Application Supplement No. _____

Dear Reviewing Agency Contact Person:

Attached is a copy of _____ (name of mining company) Supplement No. _____ for the above-referenced application in response to your request received _____ (date of original agency request for a copy of the application).

Any comments you may have regarding the supplemented application should be filed with the Hearings Examiner, _____.

Sincerely,

Melvin B. Hodgkiss, Director
Surface Mining and Reclamation Division

MBH/
Enclosures
xc: _____, Hearings Examiner w/o enclosures
File Reference No. _____

TEMPLATE

TA ADDENDUM TRANSMITTAL LETTER TO REVIEWING AGENCIES

Date

Reviewing Agency Contact Person
Reviewing Agency Name
Reviewing Agency Address

RE: Docket No. _____
Name of Mine, Permit No. _____ (Type of Significant Action) Application
Mining Company Name
Staff's Technical Analysis Document Addendum No. __

Dear Reviewing Agency Contact Person:

In response to your request received _____, enclosed are copies of the Staff's Technical Analysis (TA) Document Addendum No. __ dated _____. Future TA addenda to the TA will be forwarded to you when they are completed. Any comments you may have regarding this application should be filed with the Hearings Examiner, _____.

Sincerely,

Melvin B. Hodgkiss, Director
Surface Mining and Reclamation Division

MBH/
Enclosures
xc: _____, Hearings Examiner w/o enclosures
File Reference No. _____

TEMPLATE

MEETING MEMORANDUM

TO: Melvin B. Hodgkiss, Director

THRU: John Caudle, P.E., Manager, Applications and Permits
_____ (Name of Your Supervisor)

FROM: _____ (Your Name and Title)

SUBJECT: Name of Mine, Permit No. _____(Type of Significant Action) Application

DATE: _____

_____ (Name and Title of Mining Company Principal Representative) of _____ (Mining Company Name), met Surface Mining and Reclamation Division (SMRD) Staff at _____ (Time) on _____ (Day), _____ (Date), to discuss _____. The following people attended:

_____ (Mining Company's Principal Representative's Name)	(Mining Company Name)
_____ (Mining Company's Representative's Name)	(Mining Company Name)
_____ (Consultant's Name)	(Consultant Company Name)
	SMRD
	SMRD

Review the meeting topics, and include salient information about who said what. Be sure to include specific information about any agreements. Attach any printed agendas, exhibits, or documents that the mining company or consultant presented at the meeting.

_____
(Your Name)

File Ref. No.

RAILROAD COMMISSION OF TEXAS

SURFACE MINING AND RECLAMATION DIVISION

TELEPHONE MEMO TO THE FILE

Date of Call:

Incoming Call: (Time)

(or)

Outgoing Call: (Time)

Permit No.

Name of Caller: (If the Applicant or a Consultant calls you, include their Name, Title, and Telephone Number)

Person Called: (Include the Applicant's or a Consultant's Name, Title, and Telephone Number if you are calling them)

Subject of Call: Application Section Number(s) _____

==========

Information for File:

_____
(Your Name)

File Ref. No.

	RAILROAD COMMISSION OF TEXAS **SURFACE MINING AND RECLAMATION DIVISION** # DIRECTIVE NOTICE	DIRECTIVE ID: **PR-IN-670** REVISION NO.: **2** EFFECTIVE DATE: **June 1, 2003**
SUBJECT: **Types of Inspections and Reports**		
APPROVAL: Melvin B. Hodgkiss		TITLE: **Director**

I. PURPOSE

This Directive Notice describes procedures inspectors in the Inspection and Enforcement Section are expected to follow in conducting inspections and in the preparation of compliance inspection reports for coal mining operations.

II. REGULATION REFERENCE

16 Texas Administrative Code §12.670, *.671,* .673, .312, .327, .395, .331, .225, *Normal Husbandry Practices for Surface-Mined Lands in Texas* Guidance Document, *Notices of Violation and Cessation Orders* Directive PR-IN-678 and *OSM Directive 883,* REG-8.

III. RESPONSIBILITIES

An inspector's primary responsibility is to conduct periodic unannounced inspections of all coal mining and coal exploration operations to ensure compliance with the permit, the Coal Mining Regulations and the Act. In accordance with §12.670, the Commission must conduct an average of one partial inspection per month and one onsite complete inspection per calendar quarter at each permitted coal mining and reclamation operation. As described in §12.671, inspectors shall have the right to enter any coal exploration or coal surface mining and reclamation operation without advance notice. Each inspector has appropriate credentials identifying him/her as an individual authorized to conduct inspections and inquiries under this rule, and will present this identification upon request by the permittee or operator. Inspections include review of records and observation of mining and reclamation activities to determine compliance with permit conditions and regulation performance standards. Notices of Violation (NOV) shall be issued where activities are identified as non-compliant with permit conditions or performance standards. All inspections should also document off-site impacts observed during the inspection in accordance with the requirements included in State Oversight Directive Guidance Document, Reg-8. Inspections are to be documented in inspection reports on appropriate form(s).

It is important that inspection procedures are conducted uniformly at all permitted mine sites by all inspectors. Adequate documentation is required to confirm compliance with the regulations and identification of activities as non-compliant with permit conditions or performance standards. To achieve this goal, the following considerations must be included in the inspection process and subsequent inspection report development:

A. Inspectors shall implement the following coordination responsibilities.

1. As described in Directive PR-IN-678, when inspectors rotate mine inspection assignments, consultation with the previous inspector about on-going activities/concerns is required. If possible, the new rotation inspector shall accompany the previous inspector on an initial inspection.
2. Inspectors entering a coal mining operation will make every reasonable effort to inform mine operators of their presence and the purpose of the inspection if a designated mine office exists in reasonable proximity with the mine area. Appropriate credentials are provided to all inspectors and should be shown upon request.

3. Pending permit actions and their status should be reviewed in preparation for an inspection. Any discrepancies between information in the permit and mine site information should be reviewed with the inspector's supervisor and/or representatives of the Applications and Permits staff.
4. Concerns about activities or practices that may lead to enforcement actions must be clearly documented in a written inspection report. Documentation should include a description of the perceived problem or practice, photographs, and a description of any relevant discussions with the operator.

Since appropriate safety equipment, transportation, training and environmental monitoring equipment are provided to all Commission inspectors, it is the inspectors responsibility to conduct and complete an inspection with minimum disruption to mining and reclamation operations conducted within the permitted area. To this end, site specific MSHA training and annual updates should be obtained at each mine-site, where available. Copies of training identification cards should be provided to the Division Safety Coordinator.

IV. TYPES OF INSPECTIONS

Complaint Inspection: An on-site inspection resulting from a citizen complaint alleging a violation at a mining operation. Inspector must notify complainant as far in advance of the inspection as possible to give the complainant an opportunity to accompany the inspector on the inspection. Complainant has the right to request anonymity. The inspector is required to notify the complainant in writing within 10 days after the inspection, describing any enforcement action taken or explaining why no enforcement action was taken, as well as informing the complainant of the right of appeal. Unless anonymity is requested by the complainant, the permittee alleged to be in violation must also be given a copy of the results of the inspection.

Bond Release Inspection: Within 30 days of a request from an operator, an on-site inspection is conducted to evaluate reclamation work for compliance with required performance standards.

Exploration Inspection: On-site reviews of all exploration permit conditions and requirements (plugging requirements and depth and area limitations) as required.

Well Plugging Inspection: On-site verification of casing or sealing of wells and bore holes as required.

Mid-Term Permit Review Inspection: A review and inspection of a permit during the middle of the permit term to assess compliance with regulatory standards.

Special Inspections: An on-site inspection limited to special purposes, such as data collection and soil/water/vegetation monitoring.

V. INSPECTION REPORT

In preparing for an on-site inspection, the inspector must review the permit file to include current activities and pending applications, as well as inspection and enforcement history. An inspector's on-site review includes an examination of records kept on-site by the permittee as required. The actual on-site review includes an evaluation of the operator's compliance with applicable performance standards, current status of the operation and sample taking as needed.

For every mine site inspection, a written report is required for documentation purposes, with copies to the permittee and the Office of Surface Mining, as appropriate. The original is sent to the Division's central files. The inspection report should include the following information:

Mine Name
County
Operator
Date of Inspection
Permit Number
Inspector's Name
Mine Representatives Present
Weather Conditions
Type of Inspection Performed

The narrative portion of the inspection report must include a description of all activities observed. The report must also include a description of all enforcement actions issued, including type of action, location, collection of evidence and abatement procedures. It should include a description of all enforcement actions abated. The inspection report narrative should be clear, concise, and understandable to someone who has never been at the inspection site. The inspector should describe in simple language "what I saw during this inspection...". The narrative should also include a summary of closeout discussions with representatives of the permittee or operator at the conclusion of the inspection.

The inspection report must also include either a clear statement indicating that **NO** off-site impacts were observed during the inspection or be accompanied by an attached off-site impact reporting form containing a complete description of the off-site impact(s) observed as defined in OSM REG – 8.

Complete inspections of mine sites that contain areas entered into the Extended Responsibility Period (ERP) should also include a clear statement that lands within the ERP are in compliance with the requirements of *Normal Husbandry Practices for Surface-Mined Lands in Texas* Guidance Document.

A draft inspection report should be submitted to the inspector's supervisor within three work days of the inspection with a final report submitted two work days after supervisor has returned draft inspection report. Normally, five days is allowed for the completion of the inspector's report and for the distribution of the report: Central Files, Permittee, and OSM.

VI. ATTACHMENTS:

Attachment 1. Pages I-4 through I-8, of REG – 8, OSM Directive No. 883.

Attachment 2. Off-site impact reporting form (OSM, Reg-8)

I. OFF-SITE IMPACTS

OSM will evaluate and report on the effectiveness of State programs in protecting the environment and public from off-site impacts resulting from surface coal mining and reclamation operations. The goal is for each inspectable unit to have minimal or no off-site impacts. However, the objective is that State and OSM programs direct efforts to continually decrease the occurrence of off-site impacts.

Purpose and Goal:

This goal and objective was chosen because a main premise of SMCRA is the protection of the public, property, and the environment outside areas authorized for mining and reclamation activities. SMCRA and equivalent State program provisions require that impacts to areas outside the permit area be minimized. The oversight strategy described here will measure the success in meeting this goal at each inspectable unit. This measurement is intended to identify and report, for each inspectable unit, the number and degree of off-site impacts, determine causes of the impacts, and identify where improvements may be made to lessen the number and degree of impacts. If evaluation of data related to off-site impacts indicates program or implementation-related problems, OSM and States will implement changes, where possible, to minimize recurring impacts. Therefore, the objective of this measurement is that State and OSM Programs direct efforts to decrease the occurrence of off-site impacts.

Because of significant variations between States in the number, size, and type of mines, and methods of data collection, data reported under this measurement cannot be used for comparisons between States. The goal is to decrease the number of impacts, not to compare State to State.

Definition of Off-Site Impact:

For purposes of this directive, an off-site impact is defined as anything resulting from a surface coal mining and reclamation activity or operation that causes a negative effect on resources (people, land, water, structures). The applicable State program must regulate or control the mining or reclamation activity or result of the activity causing an off-site impact. In addition, the impact on the resource must be substantiated as being related to a mining or reclamation activity and must be outside the area authorized by the permit for conducting mining and reclamation activities.

For example, a blasting operation that exceeds the State program's limits for vibration or air blast at a structure outside the permit area would be reported as an off-site impact where impacts to a resource (people, land, water, structure) are substantiated. However, a violation may exist that does not result in an off-site impact if damage to the resource cannot be substantiated. A second example may be where another State or Federal agency has cited a violation, for instance water quality. In this case, an off-site impact would be recorded, even though no violation was noted by the State regulatory authority. A third example is where a buffer zone within a permit area is disturbed in violation of the State program. In this case, an off-site impact would be recorded. A final example applies to State programs that allow permitted land to be bonded at a later date, but prior to disturbance. If a mining operation causes a disturbance in the non-bonded portion of the permit area, an offsite impact would be recorded.

Although the great majority of off-site impacts will be events that constitute violations of the regulatory program and may be cited as such, there may be exceptions to this general rule. For example, a breached diversion ditch may have caused sediment to leave the permit area, causing an off-site impact. However, a violation may not have been cited because the violation may have been corrected during or prior to the inspection. This example should be identified as an off-site impact even though no violation was cited. Other examples may exist where off-site impacts caused by a regulated activity are documented, but, for whatever reason, a violation was not cited.

Impacts related to planned mine subsidence are not considered off-site impacts if the subsidence occurs within the area authorized for mining. Impacts related to subsidence may be addressed through other oversight processes.

Impacts Not Prohibited by the State Program:

There are many impacts from mining and reclamation that are not regulated or controlled by SMCRA or State Programs. There are also impacts that occur outside the permit even though a mine is in compliance with State program provisions. One example is a sediment control structure that meets all design standards. A rainfall event that exceeds the design standard causes the sediment control structure to discharge water that does not meet the effluent limits, resulting in an off-site impact. In this example off-site water quality impact occurs but, unless the condition is regulated by some aspect of the State program other than the design standard under the definition, an off-site impact would not be recorded because all program requirements were met. Another example may be nuisance impacts such as those related to blasting or dust. Blasting operations may be in full compliance with the program although local residents are impacted from noise or vibrations. Dust from coal stockpiles or spoil piles may annoy local residents, but dust may not be regulated by the State program.

Although the main purpose of OSM oversight is to evaluate a State's effectiveness in implementing its approved program, opportunities may exist where a State and OSM may agree to collect information on off-site impacts in addition to those regulated or controlled by the State program. Such information could be used to identify areas in State and/or Federal standards where improvements may be made that would further minimize off-site impacts. Such information could be very important to improving mining and reclamation programs. Although information on these types of impacts is not required by this Directive and should not be reported in Table 4 of the Annual Oversight Report, OSM is encouraged to work with States to develop acceptable methods for considering this type of information. In cases where such information is collected, the results should be reported in a separate oversight report and summarized in the annual report.

Impacts on Bond Forfeiture Sites - Report off-site impacts identified on bond forfeiture sites separately in Table 4 and address them in a report narrative. Such impacts may be identified either through special oversight studies or through routine measurement of off-site impacts. Table 4 should include all off-site impacts identified on bond forfeiture sites during the evaluation period. Off-site impacts that were identified and reported in prior years should be clearly footnoted in the table so that new impacts can be distinguished from impacts that continue to exist that were reported in prior years. The magnitude of off-site impacts, especially those that continue from year to year, should be properly characterized. The extent of evaluation and reporting of off-site impacts associated with bond forfeiture sites should be determined based upon the significance of these sites in individual States.

Positive impacts - Documented positive impacts; e.g., improvement in water quality due to reclamation of re-mined areas, also may be considered and reported in the overall evaluation narrative. Consideration of positive impacts is encouraged, but should not be reported in Table 4.

Resources and Type and Degree of Impacts:

The off-site resources that may be affected during mining and reclamation operations include land, water, people, and structures. Water resources include surface and ground water quality and quantity. Fish and wildlife resources that may be impacted are included as part of water and land resources. The types of impacts that may affect these resources include, but are not limited to, blasting, land stability, hydrologic impacts, unauthorized encroachments onto protected or non-permitted areas, and other impacts.

The off-site information to be collected, evaluated, and reported are the number of off-site impacts and the degree of impact. Additional information that should be gathered from each impact includes the type of impact and the resource affected. Each impact may affect more than one resource; i.e., a blasting impact may affect both land and people. Classify the degree of impact as minor, moderate or major. General guidelines for assessing the degree of impact are:

Minor:

- Small amount of disturbance outside of permit or authorized area
- Small amount of sediment, flyrock, or erosion outside permit or authorized area
- Low volume or short duration water discharge that marginally exceeds effluent limits and has a marginally negative impact on receiving stream water quality
- Impact does not interfere with land use
- Impact does not jeopardize public safety
- Impact does not cause damage to uncontrolled structures or restricted areas

Moderate:

- Anything not fitting guidelines for minor or major impact

Major:

- Large amount of disturbance outside of permit or authorized area
- Large amount of sediment, flyrock, or erosion outside permit or authorized area
- High volume or long duration water discharge of poor quality enters a high quality stream
- Impact interferes with land use
- Impact jeopardizes public safety or causes personal injury
- Impact causes damage to uncontrolled structures or restricted areas
- Mining without a permit

Sources of Information for Off-Site Impacts:

One overall objective of this measurement is to determine, for each inspectable unit, whether off-site impacts occurred. The primary source of information for identifying off-site impacts should be State inspections. Existing State inspection procedures should result in the identification of off-site impacts for each inspectable unit. These determinations are the most effective data for use by the State and OSM to determine whether off-site impacts occurred. State enforcement actions, citizen complaint files, and civil penalty assessment data can also be factored into off-site impact determinations. OSM/State performance agreements should identify how States will collect and provide information to OSM on all off-site impacts that are identified on State inspections. OSM offices are encouraged to include some level of independent or joint evaluation with the States and not to rely solely on information provided by the States. Such evaluation can consider OSM Ten-Day notices and inspections, citizen complaints (alleged impacts must be substantiated), special oversight studies, and information from other State and Federal environmental regulatory agencies. A variety of sources must be considered to provide a credible

evaluation of the off-site impacts in each State. The sources of information and the basis used to identify and report the number of off-site impacts must be explained in the narrative description of the evaluation.

Reporting:

An off-site impact oversight report will be prepared for each State. The report will include the number and percentage of inspectable units free of off-site impacts in addition to the type and degree of off-site impacts identified. This report is independent from the annual report and will be used as supporting documentation for the annual report. It will include detailed information on data collection, verification, and analysis, discuss any conclusion on the effectiveness of the State program in preventing off-site impacts, and discuss measures taken to address any identified program or implementation deficiencies. It will identify and report on the number and degree of off-site impacts, provide a general evaluation of causes of repetitive impacts where possible, and identify where improvements may be made to lessen the number and degree of impacts.

Table 4:

Report the data collected in Table 4 of the annual report, along with a narrative summary of the findings from the overall evaluation with proper reference to the data provided in Table 4. In general, Table 4 will be used to report off-site impacts that are identified throughout the evaluation period. Table 4 provides a separate section for reporting off-site impacts related to bond forfeiture sites. Information concerning impacts that are not prohibited by the State Program/SMCRA, such as subsidence and water supply impacts, impacts that are not regulated by the State Program and, positive impacts should not be included in Table 4 information. Address all such impacts, when evaluated, in the narrative description of the off-site impact evaluation and supplement with other tables as necessary. Information reported in Table 4 will not stand alone and must always be fully explained by a supporting narrative.

STATE TABLE 1. OFF-SITE IMPACTS

This form is to be completed by reclamation specialists for any inspection that observes off-site impacts and for Notice of Violations that involves off-site impacts. Attach this page to the inspection report.

Company: _____ Mine: _____

Unit No.: _____ Permit No.: _____ Date: _____ Inspection: _____

Nov Issued: Yes ☐ No ☐ Complaint _____

CONDITION OBSERVED:		RESOURCES AFFECTED BY OFF-SITE IMPACTS					
		People	Air	Land	Water	Structures	Other-List
TYPE OF INCIDENCE	Blasting						
	Mass Stability						
	Hydrologic						
	Encroachments						
	Other-List						
DEGREE OF IMPACT	Minor						
	Moderate						
	Major						
EXTENT	Reparable						
	Irreparable						
STATE ACTION	Problem Resolved						
	Problem Unresolved						
LOCATION OF OCCURENCE	Within Permit						
	Outside Permit*						

*Is property controlled by operator? Yes ☐ No ☐

In the space provided below, briefly explain the "Degree of Impact" and determination. If no NOV was issued, please explain why none was required.

Explanation:

	RAILROAD COMMISSION OF TEXAS SURFACE MINING AND RECLAMATION DIVISION **DIRECTIVE NOTICE**	DIRECTIVE ID: **PR-IN-678** REVISION NO.: **2** EFFECTIVE DATE: **February 8, 2010**

SUBJECT: **Notices of Violation and Cessation Orders**

APPROVAL: John H. Caudle TITLE: **Director**

I. PURPOSE

The Coal Mining Regulations indicate that an authorized representative of the Commission shall issue a Notice of Violation (NOV) if, on the basis of an inspection, the representative finds a violation of the Texas Surface Coal Mining and Reclamation Act (Act), Coal Mining Regulations, or any condition of a permit or exploration approval. The Surface Mining and Reclamation Division Director, Inspection and Enforcement (I&E) Section Manager and I&E Inspectors are all considered "authorized representatives" of the Commission as that term is used in Sections §§ 12.677 and 12.678.

This Directive Notice is intended to provide inspectors with general guidance regarding the evaluation of facts surrounding a potential NOV. The intent of this process is to ensure that violations issued are supported by sound legal principal and technical facts that will withstand an appeal of the violation. This document is not intended to replace an inspector's responsibility to become familiar with all aspects of the inspection and enforcement procedures contained in the Act and the Regulations. Furthermore, nothing in this Directive Notice shall be interpreted in any way to prevent an inspector from executing inspection and enforcement duties and responsibilities.

II. REGULATION REFERENCE

Title 16, Texas Administrative Code, §§12.670, 12.673, 12.674, 12.677, 12.678, 12.680, 12.682
TEX. NAT. RES. CODE ANN. CH. 134.161, .162, .164 and
Directive Notice PR-IN-670 (Types of Inspections and Reports)

III. TYPES OF ENFORCEMENT ACTION

The Regulations provide for two types of enforcement actions: Notice of Violation (NOV) and Cessation Order (CO).

An enforcement action must be prepared in writing. It must clearly describe the nature and effect of the violation and be technically correct, supported by both regulatory requirements and data collected during the investigation. It must be written with the intent to withstand informal and formal appeals procedures contained in the Act and Regulations.

A. Notice of Violation

A NOV is issued when there is a violation of law, Regulation or any condition of a permit or exploration approval, and the violation does not create imminent or extreme danger or harm to the environment or the public. A NOV is issued using Form SMRD-NOV with appropriate attachments and shall contain the information required by §12.678(b)(1)-(4). The NOV must be clear and concise, written legibly, and must be signed by the inspector.

B. Cessation Order

A CO is issued in lieu of an NOV if the inspector discovers a violation of law, Regulation or any condition of a permit or exploration approval which creates imminent or extreme danger to the health and safety of the public, or is causing environmental harm to land, air or water resources. In this case, an "Imminent Harm Cessation Order" shall be issued on Form SMRD-CO. Additionally, if the inspector discovers that the remedial action required by a previously issued NOV has not been completed within the required abatement period, a CO, called a "Failure to Abate Cessation Order," may be issued as defined in §12.677(b).

IV. EVALUATION PROCESS

It is important that enforcement standards are applied uniformly at all mining operations by all inspectors and adequate documentation is developed to support any enforcement action. All observations of conditions that may lead to or may be a violation should be discussed with the operator during the inspection or at the close-out meeting. To assist inspectors in accomplishing these objectives the following actions are to be taken:

A. Inspector coordination responsibilities:

1. When inspectors rotate mine inspection assignments, consultation with the previous inspector about on-going activities/concerns is required. If possible, the new inspector shall accompany the previous inspector on an initial inspection.
2. Inspectors should discuss potential compliance issues with their supervisor and new inspector prior to initiation of a new inspector rotation.
3. Pending and approved permit actions and their status must be reviewed in preparation for each inspection. Any discrepancies between information in the permit and mine site observations should be reviewed with the inspector's supervisor and/or representatives of the Applications and Permits Section staff.
4. Concerns about activities or practices that may lead to future enforcement actions must be clearly documented in the written inspection report. Documentation should include a description of the perceived problem or practice and any relevant discussions with the operator.

B. During an inspection conditions or situations may be observed requiring prompt action to remain in compliance or corrective action required to ensure compliance. These observations, and the options that the inspector feels are available to the operator/permittee, are to be brought to the attention of the mine operator/permittee during the inspection or at the inspection close-out meeting. At any time the inspectors evaluation of the condition or situation may change from their initial assessment, based on the review of additional information obtained from research of permit documents, regulations or information provided by the operator.

1. The inspector should discuss the condition or situation with mine personnel during the inspection if they are present. If they are not present, then the condition or situation should be described during the inspection close-out meeting. This discussion should include the actions necessary to remain in compliance or to correct non-compliance.
2. The inspector should document the condition or situation observed (including photographs, GPS collected data) and any directed actions to be taken by the operator. If a deadline for these actions is indicated it should also be documented in the inspection report. These conditions will then be identified in a cover letter from the Manager of the Inspection and Enforcement Section and note that prompt attention is required to eliminate these issues from becoming enforcement issues.

3. If the situation or condition has been noted previously by the inspector and no action has been taken within a reasonable or prescribed time, or the situation or conditions merits enforcement action as described in this Directive Notice, then the inspector shall inform the operator during the inspection close-out meeting what actions will be taken by the inspector. These actions could include gathering more information to determine whether a violation has occurred; consultation with the other inspectors, inspector's supervisor or Applications and Permits Staff; or the issuance of a violation if conditions warrant immediate action.

C. Inspectors must consult with their supervisor prior to taking enforcement actions for violations that do not constitute imminent or extreme danger or harm to the environment or the public. Consultation may involve discussions with representatives of the Applications and Permits staff. This consultation should focus on developing the following type of information:

1. What are the requirements of the specific regulatory citation(s) that are the subject of the potential enforcement action?
2. Is the area/activity of concern causing environmental damage/harm?
3. Is the area/activity of concern contained within the approved permit boundary and/or disturbance area or is it affecting property outside of the permit boundary and/or bond areas?
4. Has the area/activity of concern been previously discussed with the operator and documented in a written inspection report?
5. Is there an off-site impact associated with the violation?
6. Has a similar violation previously been issued to any other permitted mine?

V. RESPONSIBILITIES

An inspector's primary responsibility is to monitor the mine operation to ensure compliance with the terms of the approved permit and the Texas Coal Mining Regulations. Should an inspector observe areas of noncompliance, an appropriate enforcement action shall be initiated. Inspectors must involve their supervisor in this process. Inspectors will consult with their supervisor when writing a violation to ensure that regulatory standards are applied uniformly between inspectors and mining operations. The supervisor's concurrence regarding the enforcement action is not necessary, however, for the inspector to take enforcement action. Should the inspector's supervisor not agree with the enforcement action contemplated by the inspector, the supervisor will advise the Director of their concern.

Upon a request by the operator, the issuing inspector may consider extending the time for abatement of an enforcement action. If a request for an extension to the abatement period exceeds 90 days, the issuing inspector must document for the file the reasons for recommending approval or denial of the request. If the inspector recommends approval of the extension request, the inspector's supervisor must also review the request and provide a recommendation regarding approval or denial. The supervisor must concur with the inspector in granting the request before it is presented for further review by the Director who must concur in order for an extension to the abatement period beyond 90 days to be granted.

The issuing inspector has the authority to modify or vacate an enforcement action if found by further review of the facts that it is improperly written or is not legally supportable. Inspectors that modify or vacate an enforcement action must provide a clear statement of the reasons for their action in the modification or vacation notice. Should the inspector's supervisor disagree with the inspector's decision the supervisor will advise the Director of their concern.

An issuing inspector shall terminate an enforcement action by written notice to the permittee, when the abatement of the violation is confirmed. If the issuing inspector is not available to terminate an enforcement action, the inspector's supervisor may terminate the enforcement action upon confirming that the abatement of the violation had occurred.

The Director, on his own initiative or on the advice of an Inspection and Enforcement Section Manager, may investigate the merits of an enforcement action issued by an inspector. The Director will discuss his findings with the issuing inspector. If the Director finds, on the basis of his interpretation of the facts and the regulation, that the enforcement action does not have merit, the Director may issue a modification notice or vacate the enforcement action as may be appropriate. The Director will prepare a memorandum addressed to the issuing inspector detailing the relevant facts of his decision and explaining why the violation was modified or vacated.

VI. ENFORCEMENT ACTION PROCEDURES

A draft notice of violation or cessation order must be reviewed for technical and grammatical content by the inspector's supervisor. The final signed notice of violation or cessation order will be hand-delivered or mailed to the appropriate representative of the mining or exploration operation. A copy should also be sent by facsimile transmission or by e-mail. Upon its issuance, the inspector must verbally notify the permittee of the enforcement action and the required remedial actions and timeframes for bringing the condition into compliance.

Within three (3) working days after an enforcement action is issued, the inspector shall provide a draft Inspector's Statement to the supervisor for technical and grammatical content review. The Inspector's Statement is a narrative discussion of the facts of the violation and shall include the following information as appropriate:

A. A detailed description of the violation(s). The description must document the condition or situation in violation and the relevant law, Regulation or a permit condition or exploration approval. Copies of excerpts from relevant Commission Orders, administrative approval letters, technical analysis documents or technical review reports should be included as an attachment to the Inspector's Statement.

B. The location of the violation(s) including the precise location (GPS) and acreage affected, if appropriate, must be included. The location information must be sufficient to clearly determine if the area/activity subject of the enforcement action is within the approved permit boundary and/or bonded area or affecting property outside of the permit boundary and/or bond areas. Appropriate maps or diagrams (to scale) should also be included as an attachment to the Inspector's Statement.

C. A description of any operator comments concerning why the violation(s) occurred. If the area/activity of concern has been previously discussed with the operator and documented in written inspection report(s), copies of relevant inspection report(s) should be included.

D. A description of the impact of violation(s) on the environment and/or public must be provided. If there was an off-site impact associated with the violation, a copy of the off-site impact form should be attached.

E. Photographs of the violation or area subject to the violation must be attached to the Inspector's Statement.

The Inspector's Statement may be accompanied by supporting documents such as copies of previous inspection reports, relevant correspondence and photographs. The completed Inspector's Statement must be signed and forwarded to the Assessment Officer by memorandum within five working days of the enforcement action. A copy of the Inspector's Statement shall also be sent to the operator by letter over the signature of the inspector's supervisor.

	RAILROAD COMMISSION OF TEXAS **SURFACE MINING AND RECLAMATION DIVISION** # DIRECTIVE NOTICE	DIRECTIVE ID: **PR-IN-687** REVISION NO.: **1** EFFECTIVE DATE: **February 12, 2010**
SUBJECT: **Civil Penalty Point Assessment Guideline**		
APPROVAL: John E. Caudle		TITLE: Director

I. PURPOSE

To provide a consistent guideline for the Surface Mining and Reclamation Division's Assessment Officer in assessing points for cessation orders (CO) (except for those issued for failure to abate) and notice of violations (NOV) in accordance with §12.687 (relating to Points System for Penalties) of the Texas Coal Mining Regulations.

II. REGULATION REFERENCES

Texas Administrative Code §§12.686-687

III. ASSESSMENT PROCEDURE

A point assessment is made for each NOV and CO to determine the amount of the civil penalty. In assessing the civil penalty, the assessor assigns a penalty point value for each of the following four categories in determining the total points assessed:

A. History of Previous Violations

Up to 30 points may be assigned based on the history of violations issued for the same permit for the 12-month period prior to the notice of violation being assessed. Points assigned for previous violations are one (1) point for each past violation contained in an NOV and five (5) points for each past violation contained in a CO.

For purposes of assigning history points, violations may only be counted if the notice or order is not subject to pending administrative or judicial review or if the time to request such review or to appeal any administrative or judicial decision has expired.

History points shall be assessed regardless of whether the violation led to a civil penalty. History points shall not be assessed for violations for which the notice or order was vacated.

B. Seriousness

Assessing the seriousness of a violation first requires a determination of whether the violation can or did cause ***damage*** or was the violation of an ***administrative*** requirement. Up to 30 points may be assessed for damage violations while administrative violations may be assigned up to 15 points. In each category, the assessor begins with the initial point value from the appropriate schedule and makes adjustments up or down based on all available information (ie: inspection reports, Statement of Inspector's Observations, permittee's additional information as allowed for in §12.691).

Damage Violations. Violations that threaten to or actually bring about environmental damage, personal injury or property damage are considered damage violations. Some examples of damage violations would be those that concern infractions involving topsoil handling, sediment control, effluent limitations, backfilling and grading, acid or toxic forming materials handling or revegetation.

Point assessment procedures are concerned with the impact that the regulations are designed to prevent. In the case of damage violations the impact is the environmental harm, personal injury, or property damage that resulted or could have resulted from the violation had it not been cited.

The assessment of seriousness for damage violations has two components: (1) the probability of occurrence, and (2) the extent of actual or potential damage. The first component is a determination of whether damage (the undesirable impact) occurred or the degree of likelihood that it would occur. The second component is a quantitative measure of how much damage has resulted or would result from the violation if the inspector had not cited the operator.

1. Probability of Occurrence

In assessing penalty points for the probability of occurrence, the assessor evaluates the available facts in determining the appropriate category of likelihood for damage that the violated standard was designed to prevent (see examples in Appendix A). When more than one type of damage could result from the violation the assessor should use the primary impact for determining probability (the impact that would result in the greatest actual or potential damage).

After determining the appropriate probability category in which the violation falls, the assessor works within the point range, increasing or decreasing from the initial points based on all available facts.

Probability of occurrence	Initial Points	Point Range
No chance of occurrence	0	0
Insignificant chance of occurrence	2	1-4
Chance to occur	6	5-9
Significant chance to occur	12	10-14
Occurred	15	15

2. Potential or Actual Damage

The determination of the extent of damage is a measure of both actual and potential damage of all types of damage and not just damages concerned with the prime impact identified in the probability determination.

The extent of damage (actual and potential) is made after examining the facts surrounding the damage and the physical evidence of the impacted area as reported in the Statement of Inspector's Observations. Determining the degree of potential damage involves evaluating how much damage would have occurred under normal climatic and operational conditions if the inspector had not cited the violation. The greater the actual or potential environmental harm or damage to property or people, the more points that will be

assigned. The initial points assigned are adjusted within each point range category based facts surrounding the violation.

Location of Potential or Actual Damage	Initial Points	Point Range
Damage is confined within the permit area	4	0-7
Damage will extend outside the permit area	11	8-15

Administrative (Obstruction) Violations. Administrative violations are those that prevent the inspector from reviewing the overall operations of the mine to determine compliance with the regulations. Similarly, such violations may also prevent the public from identifying the mine site or exercising rights under the Regulations or the Act. These violations generally involve the permittee's failure to keep records, authorizations, approved plans, or maps, thereby obstructing the inspector from evaluating compliance, or failure to post a proper permit sign which might hinder the public or inspector from identifying the mine site. When the violation constitutes an obstruction, the seriousness evaluation is based on the degree to which the violation prevented or impeded enforcement by an inspector or review initiated by the public. The major distinction made in assessing points for administrative violations is actual versus potential obstruction to the inspector and the public. The initial points assigned are adjusted within each point category based on facts surrounding the violation.

Degree of Obstruction	Initial Points	Point Range
Potential or slight obstruction	2	0-4
Moderate obstruction	8	5-11
Significant obstruction	14	12-15

C. Degree of Fault

Assessing this criterion involves determining the permittee's degree of fault in committing a violation, either through an act or failure to act. Up to 25 points may be assigned based on the degree of fault described as follows.

The regulations apply the standard of reasonable care to permittees. Ignorance of the regulations or the law is not a no-negligence situation. Permittees are required to know the regulations. In assessing negligence, the acts of all persons working on the coal exploration or surface coal mining and reclamation site shall be attributed to the permittee to whom the notice or order was issued, unless that permittee establishes that they were acts of deliberate sabotage. In assessing negligence points, the assessor works within the point range schedule for the determined degree of fault, increasing or decreasing from the initial points based on all available facts.

No negligence. An inadvertent violation, which was unavoidable by the exercise of reasonable care. A no-negligence situation is one where the operator acted reasonably but a violation occurred anyway due to acts of nature (unpredictable natural event) or to vandalism. A non-negligent violation can become negligent if the permittee fails to promptly rectify the violation.

Negligence. The failure of a permittee to prevent the occurrence of any violation of the permit or any requirement of the Act or this Chapter (relating to Coal Mining Regulations) due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Act due to indifference, lack of diligence, or lack of reasonable care.

Negligence, therefore, is the failure of a permittee to exercise the degree of care normally expected of a careful and reasonable operator. Negligent acts include:

- Committing an act that constitutes a violation absent facts that indicate a higher degree of fault.
- Failing to do something that is required.
- Attempting to do something required but not doing it properly.

Permittees are charged with the responsibility of knowing the regulations. A permittee is also responsible for all that occurs on the permittee's site: therefore, it is not a no-negligence situation when the act or omission was by an employee or subcontractor working on the site. As the regulations establish what is considered the standard of reasonable care, almost every violation involves some degree of fault.

Examples of when to assess points on the low end of the range for negligence include:

- The permittee is trying to do something but is doing it wrong:
- A permittee is actively correcting a problem but an NOV for the problem being corrected is issued.

Degree of fault greater than negligence.

1. **Recklessness.** Recklessness is a disregard of a known or obvious high risk. A permittee is reckless in the situation where it would have been obvious to a reasonable operator that the operator's course of conduct (either an action or failure to take an action) was likely to cause a serious amount of damage or harm, and the operator followed the course anyway.

   Reckless conduct also exists in the instance where the operator is engaged in an activity that is inherently dangerous and, therefore, requires a greater degree of care to insure safety. Blasting can be reckless in situations in which the operator has not followed reasonable precautions.

2. **Knowing or Intentional Conduct.** Knowing or intentional conduct occurs when the permittee is aware that he is, or will be, in violation of the regulations and fails to correct or avoid the situation.

   An example of when a permittee is considered to have committed a knowing or intentional violation is when the permittee has previously been warned or cited regarding the same situation on the same site concerning a specific permit condition being violated or flagrant disregard for the regulations.

Degree of fault points are assessed according to the following schedule:

Degree of Fault	Initial Points	Point Range
No negligence	0	0
Negligence	7	1-12
Recklessness	16	13-20
Knowing or Intentional Conduct	23	21-25

D. Good Faith

While the degree of fault determination concerns behavior before a violation is issued, good faith determinations are concerned with the permittee's actions after the violation is issued. Up to ten (10) good faith points may be awarded (deducted) if a permittee took extraordinary measures to abate the violation in the shortest possible time and that abatement was achieved before the time set for abatement.

The mere fact that a violation was abated before the prescribed date does not automatically mean the permittee should receive good faith points. Extraordinary measures are required. Examples of extraordinary measures include, use of extra equipment or personnel, or working beyond normal hours to abate the violation in the shortest possible time.

Good faith points can only be awarded when a violation has been abated. When the assessor cannot consider a good faith because the assessment must be completed before the abatement date, the assessor shall note this on the assessment worksheet and provide an explanation. In this instance, when a good faith determination may not be possible, the violation my be reassessed for good faith after the violation abatement if the inspector documents extraordinary measures were taken to abate the violation as rapid as possible.

Good faith points cannot be awarded when no remedial action is prescribed or the inspector sets no abatement date.