

US EPA ARCHIVE DOCUMENT

April 2, 2002; 1:00 – 3:00 PM

EPA / SMCRA-CCB Overview

This meeting with EPA followed my offer to review the SMCRA-CCB Overview paper with Dennis Rudy. The paper was emailed to Dennis 3/18/02.

Meeting consisted of informational discussion, mostly answering questions.

Items needing additional information.

- 1) OSM methods of addressing citizen complains.
- 2) Method of response given to citizen comments on permit applications.
- 3) Availability of PHC/CHIA reports for public comments.
- 4) Non-degradation – Relation to minimum concentration levels (MCL).
- 5) Material damage - Application to hydrology.

OSM: Randall Mills

EPA: Dennis Rudy
Truett DeGeare
Bonnie Robinson
Stuart Walker

1) OSM methods of addressing citizen complains.

A citizen can use the petition process to ask for a change addressing his complaint. The following text is taken from an OSM webpage, <http://www.osmre.gov/citizen.htm>.

Under the Surface Mining Law a citizen may request an inspection if a violation is suspected. If your request provides a reasonable basis to believe that a violation exists, you also have the right to accompany the mine inspector when he completes the inspection. The procedure for requesting an inspection should begin with filing a request with the state regulatory agency, or in the states of Tennessee and Washington, filing directly with the Office of Surface Mining.

The request may be made in writing or orally, although an oral request must be followed by a written statement. The state regulatory agency must make an inspection if you provide it with a reason to believe that a violation exists. An inspection must be made within 15 days of the citizen request, or if there is reason to believe that an imminent danger to the public or environment exists, an immediate inspection is required. **If the state regulatory authority does not conduct an inspection, or if you are dissatisfied with the inspection's thoroughness, you can request an informal review of that decision by the head of the agency. The agency must respond to a citizen's request for review in writing within a reasonable time period (usually no more than 30 days).**

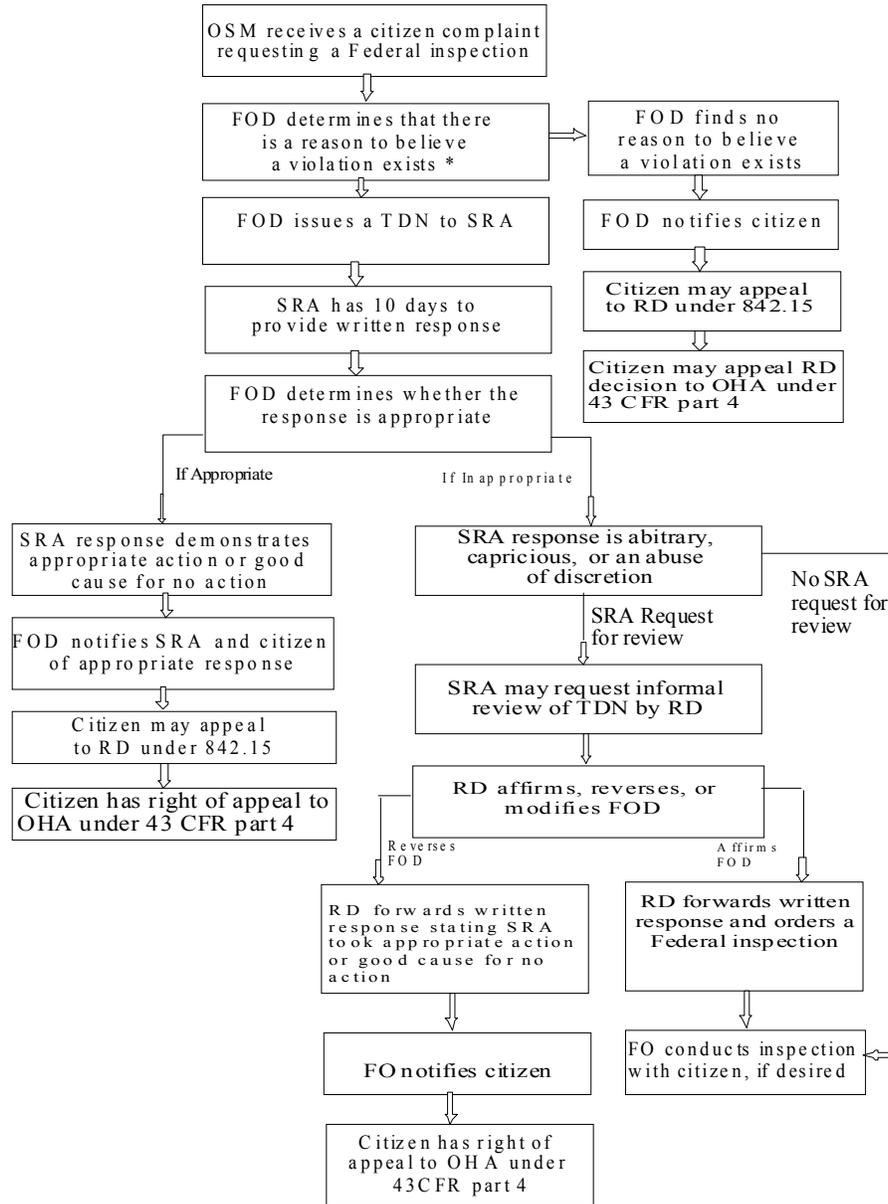
In states with an approved state regulatory program, you can file a citizen request with *BOTH* the state agency and Office of Surface Mining simultaneously. The state agency will bear the primary responsibility for conducting the inspection and for taking any enforcement action. If you make your request directly with the Office of Surface Mining the state regulatory authority will be notified and have 10 days to take action. If at the end of that period the state has not taken action, or not given good cause for their action, a federal inspection will be made.

Following is an electronic form that can be used to file a request for inspection. Sending this completed form will initiate the procedure described above -- the state and Office of Surface Mining will receive a copy and the state will investigate the facts you present on the form. Before sending this request for inspection form you may have questions or want to discuss the potential problem with the state agency responsible for the mine you think is in violation. The sample down-loadable form may be used as a guide to ensure you have collected the necessary information. If you have questions about filing a request for inspection you may also contact a local Office of Surface Mining office.

The form for the citizen request is not shown here, it can be viewed by going to the web page given above or <http://www.osmre.gov/form1.txt>.

The following graphic is a schematic of OSM's internal citizen complaint process. It was last modified in 1995 by moving the TDN appeal review to the Regions. The change decentralized the citizen complaint process and gave the Regional Directors more authority since they were closer to the local issues.

CITIZEN COMPLAINT PROCESS



* Some FODs forward citizen complaints to SRAs w/o prior investigation

FOD = Field Office Director
TDN = Ten Day Notice

RD = Regional Director
FO = Field Office

SRA = State Regulatory Authority
OHA = Office of Hearings and Appeals

There is also a process available to request changes not related to complaints. §700.12 Petitions to initiate rule-making. Any person can request the issuance, amendment, or repeal of any regulation under the Act (SMCRA). With the procedures, the OSM Director must respond with 90 days to grant or deny the petition. If the petition is granted, a rule-making process is initiated.

2) Method of response given to citizen comments on permit applications.

Under 30 CFR 773.6 (b), a citizen may file written objections or comments on a permit application within thirty days of the last required publication of the newspaper notice. The RA sends the applicant a copy and a copy is placed for public inspection at the same public office where the application is filed.

Persons with adversely affected interests may request an informal conference with the RA under §773.13(c) within thirty days of the last required publication of the newspaper notice.

Under 30 CFR 775.11 and within thirty days after an applicant or permittee is notified of the decision of the RA, the applicant, permittee or any person with an interest which is or may be adversely affected may request a hearing on the reasons for the decision.

Under 30 CFR 775.13, persons with adversely affected interests who have participated in administrative hearings may appeal the decision of the hearing to a judicial review by a court of competent jurisdiction.

3) Availability of PHC/CHIA reports for public comments.

The PHC is part of data collection and the permit application that is advertised and made available under 30 CFR 773.6(a). The CHIA is completed by the Regulatory Authority as part of their decision process to approve or disapprove the permit. The CHIA becomes part of the permit when the permit is approved but this is after the public review and comment period. It does become part of the files and could be viewed after the permit is approved or disapproved and therefore under 30 CFR 773.6(d)(1) where permit files held by the regulatory authority are to be available for public inspection and copying at reasonable times, except as provided in paragraph (d)(2) or (d)(3).

4) Non-degradation – Relation to minimum concentration levels (MCL).

MCL requirements come as a result of the Clean Water Act and EPA. SMCRA and our regulations require the operator to minimize disturbance of the hydrologic balance within the permit and adjacent areas, to prevent material damage to the hydrologic balance outside the permit area, to assure the protection or replacement of water rights, and to support approved postmining land uses in accordance with the terms and conditions of the approved permit and the performance standards, 30 CFR 816.41.

§816/817.42 Hydrologic balance: Water quality standards and effluent limitations. Discharges of water from areas disturbed by surface or underground mining activities shall be made in compliance with all applicable State and Federal water quality laws and regulations and with the effluent limitations for coal mining promulgated by the U.S. Environmental Protection Agency set forth in 40 CFR part 434.

5) Material damage - Application to hydrology.

Material damage of the hydrologic balance is not defined by OSM. The regulatory authority makes decisions on a case by case basis. Material damage is generally the unacceptable degradation of surface water and/or ground water. States tend to lean toward the Clean Water Act and effluent standards and coordinate with their state water quality division to define levels of degradation. OSM regulations require minimization of damage onsite and the prevention of material damage offsite. Of course, with bond release the onsite damages must be taken care of (past tense) and meet any applicable water standards.

§816/817.42 Hydrologic balance: Water quality standards and effluent limitations. Discharges of water from areas disturbed by surface or underground mining activities shall be made in compliance with all applicable State and Federal water quality laws and regulations and with the effluent limitations for coal mining promulgated by the U.S. Environmental Protection Agency set forth in 40 CFR part 434.

816/817.41(a) All surface mining and reclamation activities shall be conducted to minimize disturbance of the hydrologic balance within the permit and adjacent areas, to prevent material damage to the hydrologic balance outside the permit area, to assure the protection or replacement of water rights, and to support approved post-mining land uses in accordance with the terms and conditions of the approved permit and the performance standards of SMCRA.