

DIVISION OF MINED LAND RECLAMATION		PROCEDURE NO.	3.3.10
PROCEDURES MANUAL		ISSUE DATE	04/10/15
SUBJECT	Show Cause Order & Permit	Section	Reclamation Services & Administration
	Suspension/Revocation	Last Revised	2/11/02

OBJECTIVE AND INTENT:

To ensure DMLR properly identifies grounds for the issuance of a **Show Cause Order**, which may result in the suspension or revocation of a permit due to the permittee’s alleged pattern of violations or failure to pay a final civil penalty.

PROCEDURES:

Reclamation Services Section’s Responsibility -

The Field Inspector shall routinely review a permittee’s record of violations for his/her assigned permits to determine if a possible pattern of violations exists.

To identify a possible pattern of violations, the Inspector may access and obtain a current “Pattern of Violations Report” (DMLR.ENPR.02) from the DMLR computer system for his or her area.

The Supervisor must run the “Pattern of Violations Report” at least quarterly to determine whether a possible pattern of violations exists for any permit within his/her area of responsibility. The Supervisor shall inform the Inspector as to whether the report indicates a possible pattern of violations.

Based upon 2 or more inspections of the permit area within a 12 month period, the Inspector/Supervisor may determine that a pattern exists when the permittee has:

- **3 violations of the same or related requirements¹** of the Act, regulations, or the permit;
- **failed to abate a violation** cited in a NOV or CO within the set abatement period; or,
- a number of violations, cited on more than one occasion, of different requirements of the Act, regulations, or the permit.

In determining whether a pattern is present, the Inspector shall consider the circumstances that led to the violations. The Inspector must also determine the extent to which the violations were isolated departures from lawful conduct, or were caused by the permittee’s willful or unwarranted failure to comply with the requirements of the Act, regulations, or the permit.

If the permittee failed to abate a violation contained in a NOV or CO, the underlying NOV or CO and the failure to abate CO will be sufficient to show a pattern of violations.

Should the Inspector determine that a possible pattern of violations exists, he or she shall prepare a written fact sheet within 5 days, delineating the alleged pattern. The fact sheet shall provide the history of the specific violations, in concise chronological order (most recent date first), which are alleged to have established the pattern of violations.

The fact sheet shall be forwarded to the Supervisor, who in turn will forward a copy to the Reclamation Office Services Specialist.

¹ The performance standard codes utilized in inspections are not the performance standards in themselves. The Inspector must look specifically to the regulatory, statutory, or permit requirement/condition that has been violated to determine if a pattern is present.

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Concurrently, the Inspector shall immediately inform the permittee of the pattern determination. This will allow the permittee the opportunity to provide comments or evidence for the Inspector’s consideration.

The Inspector shall also inform the permittee of the right to submit to the Reclamation Services Manager (within 15 days) written comments that a pattern does not exist.

Information and comments received from the permittee must be discussed and evaluated between the Inspector and Supervisor and a determination made of the existence of a “Pattern of Violation”. If no information is received from the permittee, a decision determining whether a pattern of violations exist will be based upon the information contained in the official record.

After a determination has been made, and within 25 days of the fact sheet date, the Supervisor shall:

- contact the Assessments Section to see if the permittee has failed to pay civil penalties. If payment of DMLR assessed penalties are past due, they will be included in the order.
- send a final recommendation and supporting materials to the Reclamation Services Manager. A draft **Show Cause Order** or **Letter of Notification that a Pattern of Violations Does Not Exist** shall be prepared in consultation with the Reclamation Services Manager for his signature.

NOTE:

In the event that the permit’s bond is a surety or third party bond, the Reclamation Services Manager shall direct that the bond provider be notified in writing (certified mail, return receipt requested) of the potential show cause order. This will enable the bond holder to exercise influence over the permittee and possibly prevent suspension or revocation of the permit.

The Reclamation Services Manager shall review the recommendation within 30 days of the fact sheet date and issue a final decision concerning the possible pattern of violations. The written decision will be immediately communicated to the Supervisor and Inspector.

The Reclamation Services Manager shall sign and issue the **Show Cause Order** (with a copy to the surety, and if applicable to any lien holder) or **Letter of Notification that a Pattern of Violation Does Not Exist**.

The Reclamation Office Services Specialist shall place a copy of the final determination in the appropriate permit file.

Recording and Tracking Show Cause Order Actions (Pattern of Violations) -

After the Supervisor determines or concurs with the Inspector that a possible pattern exists, the Supervisor shall notify the Reclamation Office Services Specialist of the determination, who will:

- assign a tracking number for the determination and inform the Supervisor and Inspector of the number for future reference;
- enter relevant data into the DMLR computer system; and,
- prepare and maintain a file for tracking subsequent action concerning the determination.

Once a show cause order for a pattern of violations is issued, the Reclamation Office Services Specialist

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and Supervisor will monitor the 15 day period in which the permittee may submit a written request for a formal administrative hearing to contest the order.

If the permittee does not timely request a formal administrative hearing, the permit suspension or revocation will become final. The Reclamation Services Manager will prepare a letter for the Division Director’s signature which:

- notifies the permittee that the permit has been suspended or revoked, and if suspended,
- informs the permittee of the actions which must be taken to avoid permit revocation and forfeiture of the permit’s performance bond.

If the permittee fails to take action to avoid the bond forfeiture, **Procedure #3.3.09** shall be implemented immediately.

Permittee’s Right of Appeal -

The permittee shall have 15 days from receipt of the Show Cause Order to submit in writing:

- an answer as to why the permit should not be suspended or revoked, and/or
- a request for a formal public hearing to contest the order.

The hearing will be provided per 4 VAC 25-130.843.13(b).

If the final administrative or judicial appeal decision revokes or suspends the permit, (and the permittee’s right to mine under the Act,) the permittee shall be immediately instructed to cease surface coal mining operations on the permit area and to:

1. complete reclamation within the time specified in the decision (if the permit and right to mine under the Act were revoked); or
2. complete all affirmative obligations to abate all conditions, practices or violations, as specified in the decision (if the permit and the right to mine under the Act were suspended) .

The Inspector shall monitor the permit site to ensure compliance with the final administrative or judicial review decision.

Assessment Officer’s Responsibility -

The Assessment Officer may prepare a Show Cause Order to suspend or revoke the permit if the permittee failed to timely pay a final civil penalty (4 VAC 25-130.845.20(e)).

As previously stated, the Reclamation Services Section and Assessment Officer shall coordinate the preparation of show cause orders for patterns of violation to include the permittee’s failure to pay a final civil penalty.

If the Show Cause Order is to be issued only for the permittee’s failure to pay the civil penalty, the Assessment Officer will prepare the **Show Cause Order** (with a copy to the surety, and if applicable to any lien holder) for the Division Director’s signature. The Show Cause Order shall inform the permittee:

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- that the permit may be suspended or revoked for the permittee’s failure to pay the outstanding penalty debt.
- of the right to appeal.
- that payment of the outstanding civil penalty would terminate the order.

The Assessments Officer shall ensure that the Reclamation Services Manager and Reclamation Program Manager-Permitting are immediately notified of the termination of the “penalty” Show Cause Order.

If the permittee does not timely submit payment of the penalty, the Assessments Officer shall prepare an order of suspension for the Division Director’s signature. The order shall allow the permittee 30 days to submit payment in full. If payment is not received by the due date, an order of revocation shall be prepared by the Assessments Officer for the Division Director’s signature. These orders shall be sent to the permittee by certified mail, return receipt requested.

The Assessments Officer shall forward a copy of each suspension and revocation order (and any subsequent action thereof) to the Reclamation Field Inspector, Area Supervisor, Reclamation Services Manager, and Reclamation Program Manager-Permitting.

In the event that the permit was suspended for failure to pay a civil penalty and the permittee subsequently submits payment, the Assessments Officer shall prepare an order rescinding the suspension order. A copy of the termination of the Show Cause Order shall be provided to the Reclamation Field Inspector, Area Supervisor, Reclamation Services Manager, and Reclamation Program Manager-Permitting.