

DIVISION OF MINED LAND RECLAMATION		PROCEDURE NO.	3.7.01
PROCEDURES MANUAL		ISSUE DATE	August 2, 2005
SUBJECT	CSMCRA/Clean Water Act Violations Settlement Agreements	Section	CS
		Last Revised	

OBJECTIVE AND INTENT:

To provide guidance to the Division in the determination to proceed with appropriate enforcement action and/or prepare a settlement agreement that concerns water quality violations subject to the Coal Surface Mining Control and Reclamation Act of 1979 (CSMCRA), State Water Control Law (SWCL), and federal Water Pollution Act of 1972, commonly known as the Clean Water Act (CWA).

GENERAL:

In determining whether to pursue enforcement action under the SWCL or CWA (per 45.1-254 of the Code of Virginia), the Division will consider the nature, extent, and seriousness of the water quality violations. Each situation that may be subject to this procedure will be evaluated upon its unique circumstances. Any agreement that may arise under this process will be tailored to address the situation so as to abate current deficiencies and problems, to minimize future adverse environmental impacts, and hold the permittee accountable for the violations.

PROCEDURES:

Enforcement action determination –

When significant violation(s) of the National Pollutant Discharge Elimination System (NPDES) permit occurs, the Reclamation Services Manager (RSM) and Chief Engineer (CE) will evaluate the actual and potential environmental impacts of the violation to determine whether enforcement action under the SWCL/CWA is appropriate and should be initiated.

SWCL/CWA enforcement would be considered when there is a major effluent violation discharge event or series of events from a regulated operation and the discharge(s), individually or cumulatively, may adversely impact the environment or pose a threat to the public health and safety. In addition, should the permittee have a documented history of failing to conduct or provide water monitoring in compliance with the NPDES permit(s), SWCL/CWA enforcement may be pursued by the Division.

The determination should consider whether the –

- Environmental impacts to offsite areas are or may be significant (e.g., fish kills, damage to sensitive aquatic habitat).
- Violation poses a threat to public water sources or private water supplies.
- Company received a potential economic benefit as a result of the failure to ensure the discharges met the effluent discharge standards.

The Reclamation Enforcement Inspector and Supervisor will take the lead in gathering relevant data and evidence that will be forwarded to the RSM and CE. Assistant from the Water

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Quality section and Technical Services Section will be provided as needed.

Once the RSM and CE determine that SWCL/CWA action is appropriate, a meeting will be arranged with the permittee to inform it of the action that may be pursued. The DMLR will also inform the permittee’s representatives of the potential option to resolve the problems under a settlement agreement.

Settlement Agreements –

A copy of the relevant supporting evidence and reports will be forwarded to the Legal Services Officer who will prepare the draft agreement after consideration of –

- Company’s written request for a settlement agreement, which should include an explanation of why violations occurred, what interim remedial measures were taken to correct the problem(s), and what actions will be taken to prevent additional violations.
- The Reclamation Inspector(s) and/or Supervisor(s) reports concerning the SWCL, CWA, and/or CSMCRA violations/deficiencies.
- The extent of actual or potential environmental harm or threat to the public health and safety posed by the SWCL, CWA, and/or CSMCRA violations.
- Prior settlement agreements’ terms and conditions - that may be similar to the current situation.
- Any information or input that may be requested or provided by other State or federal agencies with jurisdiction or legal interest in the matter (e.g., Department of Environmental Quality, Division of Game and Inland Fisheries, Division of Forestry, Office of Surface Mining, EPA, etc.).

Input will also be solicited from the CE, RSM, and appropriate DMLR staff. The Water Quality section staff will be requested to provide relevant data regarding SWCL, CWA, and National Pollutant Discharge Elimination System permit requirements and conditions.

The settlement agreement will set out a summary of the facts of the violation(s) and the terms of the agreement, which may include (as applicable) –

- Remediation work to correct or mitigate offsite adverse impacts from the discharge(s). The DMLR may propose watershed restoration or other water quality improvement projects as abatement to address the situations where the impacts of the violation discharges cannot be physically corrected with best technology available.
- Reimbursement of costs (This will primarily address the Virginia Department of Environmental Quality’s investigation costs and the estimated fish and wildlife replacement costs received from the Division of Game and Inland Fisheries.).

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- The use of EPA models (e.g., BEN Model) to calculate any actual or potential economic benefit that the permittee may have gained from the violation(s).
- Appropriate penalties, civil charges, or donation amounts.

Once the draft is prepared, reviewed, and determined by the CE to adequately address the agency's position and concerns, a copy will be sent to the permittee (or its counsel, if requested) for review and comment. The CE shall take the lead in discussing the potential settlement with the permittee's representative(s). The DMLR Management team and DMME Deputy Director will review a finalized draft agreement.

Changes that are acceptable to the agency may be made during the review and comment process. If the permittee agrees to the settlement proposal, a signed copy will be requested and forwarded to the Legal Services Officer. After ensuring the signed agreement is the same as agreed upon, it shall then be forwarded to the Division Director and/or Deputy Director for final execution.

A copy of the executed agreement will be sent by certified mail or hand delivered to the permittee (or its counsel/legal representative), copies may be provided to appropriate DMLR personnel and other State/federal agencies (if deemed necessary), and a copy will be retained by the Legal Services Officer.

Collected penalties levied pursuant to the CSMCRA shall be dispensed in accordance with §45.1-246D. Monies collected to compensate other State agencies' expenses (e.g., fish replacement, investigation costs) shall be transferred to the appropriate agency account. Civil charges collected under the SWCL shall be transferred to the Virginia Emergency Environmental Relief fund. Donations for watershed restoration or other environmental abatement programs administered by the DMME shall be placed in the appropriate agency fund. Any other donations or contributions shall be distributed in accordance with the terms and conditions of the settlement agreement.