

Standard Operating Procedure (SOP)¹ for District Mining Operations: Third-Party Interference

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Background

The Department's regulations governing mining activities establish the criteria for bond release. See 25 Pa. Code 86.172 and 25 Pa. Code 77.243. The Department cannot release any portion of the liability under bonds related to a permit until it finds that the permittee has complied with the bond release criteria.

Sometimes a third-party's activities on the permit area interferes with the ability of the permittee to successfully establish the post-mining land use. These activities may be beyond the control of the permittee. Some examples of third-party interference that the Department has encountered include:

1. Oil and gas drilling activities
2. Recreational vehicle damage such as from quads and motor bikes.
3. Landowners changing the post-mining land use such as building structures on the property or planting crops on areas not designated as cropland.

In 1990, the Office of Surface Mining Reclamation and Enforcement (OSMRE) produced a report titled COALEX STATE COMPARISON REPORT -144, which discusses the states' involvement with third-party interference. The report's summary of states' responses to an OSMRE questionnaire indicated that all of the states require the permittee to resolve the third-party interference problem by either correcting the damage or revising the permit to change the post-mining land use. Some states responded that they would consider exempting the permittee in specific circumstances.

Procedures

The Department generally attempts to resolve the third-party interference by either having the responsible third-party repair the damage or by holding the permittee responsible for repairing the damage. Examples of the problems and possible resolutions include:

1. Oil and gas drilling activities

¹ Disclaimer: The process and procedures outlined in this Standard Operating Procedure (SOP) are intended to supplement existing requirements. Nothing in the SOP shall affect regulatory requirements. The process, procedures and interpretations herein are not an adjudication or a regulation. There is no intent on the part of DEP to give the rules in this SOP that weight or deference. This document establishes the framework within which DEP will exercise its administrative discretion in the future. DEP reserves the discretion to deviate from this policy statement if circumstances warrant.

Resolution: Areas affected by oil and gas drilling activities can be transferred out of the mine permit area and are regulated by the Oil & Gas regulations.

2. Recreational vehicle damage such as quads and motor bikes.

Resolution: Permittee is responsible for repairing the damage.

3. Landowners changing the post-mining land use such as building structures on the property or planting crops on areas not designated as cropland.

Resolution: Permittee revises the permit to change the post-mining land use to the appropriate land use.

In few specific cases, repairing the damage or changing post-mining land use may not be possible. In such cases, a reviewer should consider and document the following:

- How the Department has verified the third-party's role in the interference
- Whether the third party's activity is beyond the permittee's control
- How the interference affects the permittee's ability to achieve the post-mining land use
- Whether the interference has the potential to cause environmental harm to air, water or land resources or danger to the public health and safety
- The size and scope of the area under review

The reviewer should report these factors in the inspection report accompanying the review of the completion report to the district mining manager, who will consult with regional counsel.

Below are examples of how a reviewer may assess these factors. These are only examples of the process and not a statement that similar situations would be handled the same way. A reviewer must evaluate an individual situation based on its own merits.

Example 1

A 100 acre mining permit has a post-mining land use of cropland. The landowner builds a pole building on the reclaimed area after the affected areas have been backfilled, topsoiled and planted. The pole building is 20 feet by 40 feet. The landowner uses the building for a woodworking shop. The remaining area within the permit is achieving its post-mining land use.

Discussion: The landowner built the pole building and the permittee had no control to prevent the landowner from interfering. The remainder of the permit area is achieving the post-mining land use and the area covered by the pole barn represents 1% of the permit area. The pole barn doesn't present a threat to the environment or public health and safety. This may be a situation where the Department could accommodate the pole building without requiring the permittee to change the post-mining land use.

Example 2

A 100 acre mining permit has a post-mining land use of pastureland or land occasionally cut for hay. The landowner has been farming the 100 acre area within the permit and planting row crops.

Discussion: The farming activities prevent the permittee from achieving the post-mining land use of pastureland and the permittee had no control to prevent the landowner from interfering. The activities have impacted a majority of the permit area. In this case, the permit area is not achieving the post-mining land use. Given the extent of the use and the size of the area, the Department should not allow the activity without a permit revision to change the post-mining land use.

Example 3

A 50 acre surface mining permit has a post-mining land use of pastureland or land occasionally cut for hay. The site has been planted and stable for the past 5 years. All-terrain vehicles (ATVs) have entered the site and destroyed a portion of the planted area covering approximately 1 acre. The permittee had blocked entrance to the site and posted no trespassing signs after planting the site.

Discussion: The third party influence is beyond the control of the permittee. The portion of the destroyed area is about 2% of the total area reclaimed, which may not be significant compared to the total area reclaimed (absent other considerations such as whether the affected area is on a slope, creating a potential for environmental harm through erosion). Nonetheless, the ATV activity may interfere with the permittee's ability to meet revegetation standards under Section 87.155. In such a case, a Department action against the third-party or a revision of the permit to change the post-mining land use may not be practicable, and the program should consult legal counsel.

Example 4

A 50 acre surface mining permit has a post-mining land use of pastureland or land occasionally cut for hay. The site has been planted and stable for the past 5 years. The landowner has contracted timber harvesting on a nearby tract. The timber company destroyed approximately 1 acre skidding trees across the reclaimed area. The permittee has provided a letter in which they requested the logging company to replant the destroyed vegetation, with no success.

Discussion: The third party influence is beyond the control of the permittee. The portion of the destroyed area is about 2% of the total area reclaimed, which may not be significant compared to the total area reclaimed (absent other considerations such as whether the affected area is on a slope, creating a potential for environmental harm through erosion). Nonetheless, the logging activity may interfere with the permittee's ability to meet the revegetation standards under

Section 87.155. In such a case, a Department action against the third-party or a revision of the permit to change the post-mining land use may not be practicable, and the program should consult legal counsel.