

**ALABAMA SURFACE MINING COMMISSION
ADMINISTRATIVE CODE**

**CHAPTER 880-X-11B
INSPECTION AND ENFORCEMENT PROCEDURES INSPECTIONS**

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880-X-11B-.01 Scope.

This Rule sets forth procedures governing inspections.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 73, 74, 75, 76, 79, 80, 81, 82, 83, 87, 92, 93, 94.

History:

880-X-11B-.02 Inspections.

(1) The State Regulatory Authority shall conduct an average of at least one partial inspection per month of each active surface coal mining and reclamation operation under its jurisdiction and shall conduct such partial inspections of each inactive site under its jurisdiction as are necessary to ensure effective enforcement of the state program. A partial inspection is an on-site or aerial review of a person's compliance with some of the permit conditions and requirements imposed under the State program. No aerial review may be counted as a partial inspection unless it is appropriately documented with observable factors noted. The inspector shall collect evidence of any violation of those conditions or requirements observed.

(2) The State Regulatory Authority shall conduct an average of at least one complete inspection per calendar quarter of each active or inactive surface coal mining and reclamation operation under its jurisdiction. A complete inspection is an on-site review of a person's compliance with all permit conditions and requirements imposed under the State program, within the entire area disturbed or affected by surface coal mining and reclamation operations.

This includes collection of evidence with respect to every violation of those conditions or requirements.

(3) The State Regulatory Authority shall conduct periodic inspection of all coal exploration operations required to comply in whole or in part with the Act, or these regulations. Such inspections shall include the collection of evidence with respect to every violation of any condition of the exploration approval, or any requirement of the Act, or these regulations.

(4) Aerial inspections shall be conducted in a manner which will reasonably ensure the identification and documentation of conditions at each surface coal mining and reclamation site inspected. Any potential violation observed during an aerial inspection shall be investigated on-site within three (3) days; provided that any indication of a condition, practice or violation constituting cause for the issuance of a cessation order pursuant to Rule 11C-.02 shall be investigated on site immediately, and provided further, that an on-site investigation of a potential violation observed during an aerial inspection shall not be considered to be an additional partial or complete inspection for the purposes of paragraphs (1) and (2) of this Rule.

(5) The inspections required under Paragraphs (1), (2), (3) and (4) of this Rule shall:

(a) Be carried out on an irregular basis, so as to monitor compliance at all operations, including those which operate nights, weekends, or holidays;

(b) Occur without prior notice to the person being inspected or any agent or employee of such person, except for necessary on-site meetings; and

(c) Include the prompt filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of the Act, these regulations, the exploration approval and the permit.

(6)(a) An authorized representative of the State Regulatory Authority shall immediately conduct an inspection to enforce any requirement of the Act, these regulations, or any condition of a permit or an exploration approval imposed under the Act, or these regulations --

1. When the authorized representative has reason to believe, on the basis of information available to him or her (other than information resulting from a previous inspection), that there exists a violation of the Act, these regulations, or any condition of a permit or an exploration approval, or that there exists any condition, practice or violation which creates an imminent danger to the health or safety of the public or is causing or can

reasonably be expected to cause a significant, imminent environmental harm to land, air or water resources; and

2. The person supplying the information provides adequate proof that imminent danger to the public health and safety or a significant, imminent environmental harm to land, air or water resources exists.

(b) An authorized representative shall have reason to believe that a violation, condition or practice exists if the facts alleged by the informant would if true constitute a condition, practice or violation referred to in Paragraph (5)(a)1.

(7) For the purposes of this section, an inactive surface coal mining and reclamation operation is one for which:

(a) The State Regulatory Authority has secured from the permittee the written notice provided for under Section 880-X-10C-.64 or 880-X-10D-.62 of this chapter; or

(b) Reclamation Phase II as defined at Section 880-X-9D-.03 of this chapter has been completed and the liability of the permittee has been reduced by the State Regulatory Authority in accordance with the State program.

(8) Abandoned site means a surface coal mining and reclamation operation for which the Alabama Surface Mining Commission has found in writing that:

(a) All surface and underground coal mining and reclamation activities at the site have ceased;

(b) The Alabama Surface Mining Commission has issued at least one notice of violation or the initial program equivalent, and either:

1. Is unable to serve the notice despite diligent efforts to do so; or

2. The notice was served and has progressed to a failure-to-abate cessation order or the initial program equivalent;

(c) The Alabama Surface Mining Commission:

1. Is taking action to ensure that the permittee and operator, and owners and controllers of the permittee and operator, will be precluded from receiving future permits while violations continue at the site; and

2. Is taking action pursuant to Code of Alabama, §9-16-94(e), §9-16-94(f); §9-16-93(d), or §9-16-93(f) to ensure that abatement occurs or that there will not be a

recurrence of the failure-to-abate, except where after evaluating the circumstances it concludes that further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs; and

(d) Where the site is, or was, permitted or bonded:

1. The permit has either expired or been revoked; and
2. The Regulatory Authority has initiated and is diligently pursuing forfeiture of, or has forfeited, any available performance bond.

(9) In lieu of the inspection frequency established in paragraphs (1) and (2) of this section, the Regulatory Authority shall inspect each abandoned site on a set frequency commensurate with the public health and safety and environmental considerations present at each specific site, but in no case shall the inspection frequency be set at less than one complete inspection per calendar year.

(a) In selecting an alternate inspection frequency authorized under the paragraph above, the Regulatory Authority shall first conduct a complete inspection of the abandoned site and provide public notice under paragraph (9) (b) of this section. Following the inspection and public notice, the Regulatory Authority shall prepare and maintain for public review a written finding justifying the alternative inspection frequency selected. This written finding shall justify the new inspection frequency by affirmatively addressing in detail all of the following criteria:

1. How the site meets each of the criteria under the definition of an abandoned site under paragraph (8) of this section and thereby qualifies for a reduction in inspection frequency;
2. Whether, and to what extent, there exist on the site impoundments, earthen structures or other conditions that pose, or may reasonably be expected to ripen into, imminent dangers to the health or safety of the public or significant environmental harms to land, air, or water resources;
3. The extent to which existing impoundments or earthen structures were constructed and certified in accordance with prudent engineering designs approved in the permit;
4. The degree to which erosion and sediment control is present and functioning;

5. The extent to which the site is located near or above urbanized areas, communities, occupied dwellings, schools and other public or commercial buildings and facilities;

6. The extent of reclamation completed prior to abandonment and the degree of stability of unreclaimed areas, taking into consideration the physical characteristics of the land mined and the extent of settlement or revegetation that has occurred naturally with them; and

7. Based on a review of the complete and partial inspection report record for the site during at least the last two consecutive years, the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate.

(b) The public notice and opportunity to comment required under paragraph (9)(a) of this section shall be provided as follows:

1. The Regulatory Authority shall place a notice in the newspaper with the broadest circulation in the locality of the abandoned site providing the public with a 30-day period in which to submit written comments.

2. The public notice shall contain the permittee's name, the permit number, the precise location of the land affected, the inspection frequency proposed, the general reasons for reducing the inspection frequency, the bond status of the permit, the telephone number and address of the Regulatory Authority where written comments on the reduced inspection frequency may be submitted, and the closing date of the comment period.

Author: Randall C. Johnson

Statutory Authority: Code of Ala. 1975, §§9-16-71, 73, 74, 75, 76, 79, 80, 81, 82, 83, 87, 92, 93, 94.

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Ed. Note: On December 4, 1998, the Office of Surface Mining approved this rule making adopted by the commission on July 16, 1998. The effective date of this rule will be January 3, 1999.

880-X-11B-.03

Requests For Inspections.

(1) Any person who is or may be adversely affected by a surface mining operation may request an inspection under Rule 880-X-11B-.02(5), by furnishing to an authorized representative of the State

Regulatory Authority a signed, written statement (or an oral report followed by a signed, written statement) giving the authorized representative reason to believe that a violation, condition, or practice referred to in Rule 880-X-11B-.02(5)(a)1, exists and setting forth a phone number and address where the person who is or may be adversely affected can be contacted.

(2) The identity of any person supplying information to the State Regulatory Authority, relating to a possible violation or imminent danger or harm shall remain confidential with the Regulatory Authority, if requested by that person, unless that person elects to accompany the inspector on the inspection.

(3) If an inspection is conducted as a result of information provided to the State Regulatory Authority by a person as described in Paragraph (1) of this Rule, the person shall be notified as far in advance as practicable when the inspection is to occur and shall be allowed to accompany the authorized representative of the State Regulatory Authority during the inspection. The State Regulatory Authority shall consult with all State and Federal agencies charged with the enforcement of mine safety regulations and shall ensure that the person accompanying the inspector complies with appropriate safety standards and regulations. The State Regulatory Authority shall provide that the person accompanying the inspector assumes the risk of personal injury where such injury results from the conduct of the operator which is neither negligent or intentional and where the person accompanying the inspector fails to comply with appropriate safety standards and regulations. Such person has a right of entry to, upon and through the coal exploration or the surface coal mining and reclamation operation about which he or she supplied information, but only if he or she is in the presence of and is under the control, direction and supervision of the authorized representative of the State Regulatory Authority while on the mine property. Such right of entry does not include a right to enter buildings without consent of the person in control of the building or without a search warrant.

(4) Within ten days of the inspection or, if there is no inspection, within 15 days of receipt of the person's written statement, the State Regulatory Authority shall send the person the following:

(a) If an inspection was made, a description of the enforcement action taken, which may consist of copies of the inspection report and all notices of violation and cessation orders issued as a result of the inspection or an explanation of why no enforcement action was taken;

(b) If no inspection was conducted, an explanation of the reason why; and

(c) An explanation of the person's right, if any, to informal review of the action or inaction of the State Regulatory Authority under Rule 880-X-11B-.06.

(5) The State Regulatory Authority shall give copies of all materials in Paragraphs (4) (a) and (b) of this Rule within the time limits specified in those Paragraphs to the person alleged to be in violation, except that the name of the person who is or may be adversely affected shall be removed unless disclosure of the person's identity is permitted under Paragraph (2) of this Rule.

(6) When a written complaint is received by the State Regulatory Authority concerning blast effects from a particular surface mine, a copy of that complaint will be forwarded to the surface mine operator. The surface mine operator shall attempt to resolve the problem and report the results of these efforts to the State Regulatory Authority in writing within 15 days. If the issue cannot be resolved, the State Regulatory Authority shall hold an informal conference with both parties within 15 days after receipt of the operator's response. Based on information presented at the conference, the State Regulatory Authority shall determine whether the cause of the complaint is related to blasting at the surface mine. This determination shall be based on consideration of any or all of the following information:

(a) Whether the complaint is in fact the result of blasting at the surface mine;

(b) Whether there is reasonable correlation between the incidents complained of and the dates and times reported in the operator's blast report record;

(c) Ground vibration records that may be submitted by the operator; and

(d) Results of any applicable preblast surveys conducted for or by the operator.

If the investigation shows that ground vibrations and airblast do not exceed the limits specified by these regulations and the permit at the complainant's structure, the State Regulatory Authority shall advise the complainant in writing that the operator is presently meeting minimum requirements.

Author:

Statutory Authority: Code of Ala. 1975, §9-16-71, 73, 74, 75, 76, 79, 80, 81, 82, 83, 87, 92, 93, 94.

History:

880-X-11B-.04 Right Of Entry.

(1) Each authorized representative of the State Regulatory Authority conducting an inspection under Rule 880-X-11B-.02:

(a) Shall have a right of entry to, upon, and through any coal exploration, permitted or unpermitted surface coal mining and reclamation operation, without advance notice or a search warrant, upon presentation of appropriate credentials; and

(b) May, at reasonable times and without delay, have access to and copy any records, and inspect any monitoring equipment or method of operation, required under the Act, these regulations, or any condition of an exploration approval or permit imposed under the Act or these regulations.

(2) No search warrant shall be required with respect to any activity under Paragraph (1) except that a search warrant shall be required for entry into a building without proper consent.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 73, 74, 75, 76, 79, 80, 81, 82, 83,87, 92, 93, 94.

History:**880-X-11B-.05 Review Of Adequacy And Completeness Of Inspections.**

Any person who is or may be adversely affected by a surface coal mining and reclamation operation or a coal exploration operation may notify the Director of the State Regulatory Authority in writing of any alleged failure on the part of the State Regulatory Authority to make adequate and complete inspections as provided in Rules 880-X-11B-.02(1), (2), (3), (4), (5)(a)1. The notification shall include sufficient information to create a reasonable belief that said Rules are not being complied with and to demonstrate that the person is or may be adversely affected. The Director shall within 15 days of receipt of the notification determine whether said Rules are being complied with, and if not, shall immediately order an inspection to remedy the non-compliance. The State Regulatory Authority shall also furnish the complainant with a written statement of the reasons for such determination and the actions, if any, taken to remedy the noncompliance.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 73, 74, 75, 76, 79, 80, 81, 82, 83,87, 92, 93, 94.

History:

880-X-11B-.06 Review Of Decision Not To Inspect Or Enforce.

(1) Any person who is or may be adversely affected by a coal exploration or surface coal mining and reclamation operation may ask the State Regulatory Authority to review informally an authorized representative's decision not to inspect or take appropriate enforcement action with respect to any violation alleged by that person in a request for inspection under Rule 880-X-11B-.03. The request for informal review shall be in writing and include a statement of how the person is or may be adversely affected and why the decision merits review.

(2) The State Regulatory Authority shall conduct the informal review and inform the person, in writing, of the results of the review within 30 days of his or her receipt of the request. The person alleged to be in violation shall also be given a copy of the results of the review, except that the name of the person shall not be disclosed unless confidentiality has been waived.

(3) Informal review under this Rule shall not affect any right to formal review under §§5, 9, 10, and 27 of the Act.

Author:

Statutory Authority: Code of Ala. 1975, §9-16-71, 73, 74, 75, 76, 79, 80, 81, 82, 83, 87, 92, 93, 94.

History: