



Environmental Management Principles

COMPLIANCE & ENFORCEMENT

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1. INTRODUCTION

Enforcement of conditions of authority and environmental obligations is part of the regulatory framework to ensure that the exploration and mining industry meets environmental and rehabilitation performance outcomes expected by the NSW community and government. The enforcement process has the primary purpose of preventing the occurrence of unacceptable environmental outcomes, and is designed to promote a culture of voluntary compliance and due diligence.

Rehabilitation and environmental performance conditions are attached to all authorities issued under the Mining Act (1992). Conditions include procedural requirements regarding planning, monitoring and reporting, performance outcome requirements, security bonds, and limits or constraints to specified activities.

To encourage compliance, a range of enforcement actions may be applied including written directions, penalty infringement notices and prosecution. This policy describes the principles applied in investigating a non-compliance and selecting an enforcement action to suit the particular circumstances of an unsatisfactory environmental performance.

2. TYPES OF NON-COMPLIANCES

ILLEGAL MINING

Mining or exploring:

- outside a lease area:
- without a valid title.

UNDERTAKING PROSCRIBED OR NON-PERMITTED ACTIVITIES ON A MINING TITLE

Undertaking activities that:

- are proscribed by conditions of the authority;
- require specific prior notification or approval from the Department ,
- are contrary to, or outside the scope of a Mining Operations Plan (MOP) which has been accepted by the Department.

FAILURE TO LODGE A DOCUMENT OR REPORT REQUIRED

Failure to lodge in accordance with conditions of authority:

- an AEMR report;
- a MOP which is acceptable to the Department;
- a report specified in the MOP;
- a report or plan for which a direction has been issued by an Inspector of mines;
- a report or plan to meet specific reporting requirements of conditions of authority.

FAILURE TO MEET OUTCOMES REQUIRED

Failure to meet outcomes specified or required by:

- the MOP;
- a direction or notice issued by an inspector of mines;
- by any condition of authority that has a specified outcome.

FAILURE TO UNDERTAKE SITE ACTIVITIES REQUIRED

Failure to meet undertake site activities required by:

- a MOP in regard to rehabilitation progress, environmental risk management strategies, and monitoring of environmental performance, risk management or rehabilitation
- a direction or notice issued by an inspector of mines;
- any condition of authority that prescribes activities, including processes and protocols;

3. NON-COMPLIANCE INVESTIGATION

The Department has resolved to investigate suspected non-compliance with environmental conditions of mining titles and to document them in a systematic manner. This procedure applies regardless of how the non-compliance has been brought to the Department's attention.

An Inspector of Mines may undertake investigation of non-compliance and is empowered by section 247 of the Mining Act (1992) to:

- enter the land subject any authority issued under the act;
- inspect the land and any mining activities;
- remove samples of ore or mineral deposit.

Inspectors of mines are issued with a photographic authority to identify them as an inspector. The same authority is also valid for the Petroleum (Onshore) Act.

4. DIRECTIONS BY INSPECTORS

The Mining Act and typical conditions of title empower Inspectors to issue directions for a title holder to:

- Undertake mining operations, remedial actions, or supplementary studies to ensure that operation in the lease are conducted in accordance with "sound environmental practice."

Sound environmental practice may include requirements to add or improve environmental management strategies, undertake rehabilitation, or to increase the pace or progressive rehabilitation.

In some circumstances, the Inspector may exercise discretion to give a leaseholder the opportunity to propose activities as an amendment to a MOP rather than to issue a prescriptive direction.

- Cease specified activities and rectify the situation if an inspector believes that there is a non compliance with conditions of title.

A direction of this type is likely to be issued where the activities are believed to be increasing the amount of disturbance beyond MOP commitments, are causing environmental harm or increasing the risk of present or future environmental harm.

- Issue a formal notice under Section 240 of the Mining Act (1992) to undertake specified rehabilitation planning and implementation activities;

A notice of this type is likely to be issued where the progress or quality of rehabilitation is not considered satisfactory, and may lead to lease cancellation and/or forfeit of security bond.

5. PENALTY INFRINGEMENT NOTICES (PIN)

A penalty notice may be served *under section 375(a) of the Mining Act (1992)*. The level of penalty is prescribed by regulation and ranges up to 20 penalty units (\$2,300). A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay the penalty prescribed by the regulations. A penalty notice will generally be served if a person, without reasonable excuse, contravenes or fails to comply with conditions prescribed in *Schedule 7 of the Mining (General) Amendment Regulation 2000* including:

PINs are processed through the NSW Government's Infringement Processing Bureau, as are on the spot traffic fines and many other offences against NSW ordinances.

Usual practice is for an Inspector to issue a direction with a limit time for compliance in lieu of a PIN. Non compliance with that direction is likely to lead to a PIN. However, where environmental harm has occurred or is likely to occur or the title holder has a history of non compliance or has received previous directions, a PIN may be issued directly.

A PIN will not be served if the Environment Protection Authority has served a penalty notice or prosecuted the same offence.

6. PROSECUTION

A prosecution *under section 374A of the Mining Act (1992)* may be sought for a non compliance with title conditions which has resulted in environmental harm or an unacceptable risk of future significant environmental harm and is of a nature that a PIN is not considered appropriate or the title holder has a poor compliance record. A prosecution can give rise to a penalty of up to 200 penalty units (\$23,000).

A prosecution will not be sought under the Mining Act if there has been a penalty or prosecution for the same offence under another Act.

Any recommendation to prosecute will be referred to the Director General, who will decide whether prosecution is in the public interest after consideration of any pertinent advice.

7. CANCELLATION OF AN AUTHORITY

Failure to comply with written directions and notices will be considered as demonstrating an unwillingness or inability to comply with conditions of authority, and sufficient grounds for cancellation of an authority. However, where rehabilitation is not satisfactory, cancellation will generally be declined and directions and penalties may be applied to gain a satisfactory outcome.

8. SECURITY BONDS

While not to be regarded as a penalty, a non-compliance related to land disturbance and progressive rehabilitation aspects of a Mining Operations Plan may result in an immediate review of the adequacy of a security bond. Inadequate performance may also lead to the retention or forfeiture of the security bond.

9. REFERENCES

Environmental Management System document EDG08 provides a list of legislation, reference codes and best practice guidelines to enable adherence to policies and guidelines for exploration and mining activities . This document is available through the Department or its website.

For further information and contact details see www.dpi.nsw.gov.au/minerals
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