

**CHAPTER 5**

**INSPECTION, MONITORING AND ENFORCEMENT**

**TABLE OF CONTENTS**

	<u>Page</u>
<b>A. Inspections</b> .....	5-1
1. Bureau of Oil and Gas Management .....	5-1
2. Department of Transportation .....	5-2
3. U. S. Forest Service .....	5-2
4. State Forest Lands Inspections .....	5-3
5. State Game Lands Inspections .....	5-3
6. Fish and Boat Code .....	5-4
7. State Police Fire Marshall Division .....	5-4
<b>B. Enforcement Remedies</b> .....	5-4
1. Statutory Remedies Available for Use by the Department .....	5-4
a. Clean Streams Law .....	5-4
b. Act 359 - Oil and Gas Conservation Law .....	5-6
c. Act 223 - The Oil and Gas Act .....	5-6
d. Act 214 - The Coal and Gas Resource Coordination Act .....	5-7
e. Dam Safety and Encroachments Act .....	5-8
f. Solid Waste Management Act .....	5-8

	<u>Page</u>
2. Other Agency Remedies .....	5-9
a. The Department of Transportation .....	5-9
b. State Police .....	5-10
c. Pennsylvania Fish and Boat Commission .....	5-10

## CHAPTER 5

### INSPECTIONS, MONITORING AND ENFORCEMENT

Inspections, monitoring and, when necessary, enforcement remedies may be carried out by state and federal agencies. The following constitutes a brief review of inspections, monitoring practices, and the enforcement remedies.

#### A. Inspections

##### 1. Bureau of Oil and Gas Management

The Bureau of Oil and Gas Management Oil and Gas Inspectors and Water Quality Specialists are in the field for all phases of the drilling, operation, production, plugging, and site restoration of oil and gas wells and the enforcement of all laws and regulations that are relevant to the oil and gas industry. (See Appendix 1, 25 PA Code 78.901-906 Oil and Gas Well Activities - Statement of Policy).

Bureau staff may make the following checks:

- a. The location is checked to see that the plat and ground location agree.
- b. During drilling operations, bureau staff may:
  - (1) check to see that a drilling log is being kept,
  - (2) witness the placing of the ground-water protective casing to check adequate depth and cementing,
  - (3) check coal protective casing string thickness to see if it adheres to 25 PA Code 78.84(c) requirements,
  - (4) check coal protective casing placement and cementing.

- c. Checks on safety of operations regarding people and property may be made including BOP testing and operator certification.
- d. Bureau staff may inspect for unpermitted discharges to stream and ground water, check erosion and sedimentation plans, and check that the general operation is in accordance with the applicable laws and regulations.
- e. Plugging operations may be inspected to see if producing formations and fresh ground water are being protected. The inspector may look at the type of materials used, the depth of plugs, and vent pipe construction.

## 2. Department of Transportation

With the Department of Transportation (PennDOT) acting as the lead agency, inspectors from within PennDOT, the State Police, the Department and the Public Utility Commission enforce the hazardous materials and motor carrier safety regulations using road-side inspections.

The inspection may involve weighing the vehicle, review of the driver's log and qualifications or review of the vehicle itself. An inspection report is prepared and the original given to the driver. All violations noted must be corrected and the form signed by the carrier and returned to PennDOT.

Hazardous materials carriers may also undergo a terminal review, whereby a PennDOT inspector would visit the carrier's central office or terminal and review the documentation required to comply with the regulations.

## 3. U. S. Forest Service

The U. S. Forest Service is not an enforcement agency from the standpoint of issuing citations for oil and gas violations. Enforcement is coordinated with the Department, Fish and Boat Commission and the U. S. Environmental Protection Agency.

On national forest land, the forest service has field personnel to work with oil and gas developers to arrive at a plan of operations that will minimize the amount of surface impact from a development.

Forest service specialists can help in many areas. Specialists include oil, gas and mineral technicians, foresters, engineers, hydrologists, soil scientists, landscape architects, and others. If you would like assistance, contact the district ranger in the area of your development.

#### 4. State Forest Lands Inspections

Once under lease, the state lands are subject to periodic checks and/or inspections. All roads and well locations must be approved by the Forestry staff located in the district in which the well is located. All roads and locations must be laid out according to plans adopted by the Bureau of Forestry and inspected after construction.

During the drilling operations, all wells are inspected periodically by the forestry field staff and, at times, by the Harrisburg Minerals Section staff to determine if all lease provisions are being adhered to.

After the well has been completed, the well site and roads must be restored and replanted and the roads graded. The work is inspected by the forestry field staff as often as is necessary until the site and roads are returned to their approximate original condition. For active gas fields and gas storage fields, inspections are also made throughout the life of these fields to determine if lease provisions are being carried out.

#### 5. State Game Lands Inspections

Prior to the drilling of any well for oil and gas on state game lands, the proposed site is inspected and approval obtained before location of the road and well site. During drilling operations, inspections are made by the Game Commission staff to determine if lease provisions are being upheld. After operations are completed, periodic inspections are made while the site and road are being restored and planted.

**6. Fish and Boat Code**

The Fish and Boat Commission does not typically inspect oil and gas well locations. Reaction to citizen complaints or identification of problems through routine patrol are the most common ways of Fish and Boat Commission intervention.

**7. State Police Fire Marshall Division**

State Police Rules and Regulations governing flammable and combustible liquids (including crude oils) pertaining to the storage, handling and use require approval for all crude oil storage, except in Philadelphia and Allegheny counties, and for storage at oil refinery facilities. (See Chapter 2 for details.)

- a. The inspection of the installation is made by a state police officer. Subsequent inspections typically take place when there is a change or addition made to the equipment.

**B. Enforcement Remedies**

**1. Statutory Remedies Available For Use by the Department**

**a. Clean Streams Law**

- (1) Civil Actions - The Clean Streams Law authorizes the Department to file equity actions to abate nuisances or to restrain, correct, or prevent violations of the Act. The Act also authorizes suits to compel compliance by citizens having an interest which is or may be adversely affected by a violation.
- (2) Civil Penalties - When a complaint is filed by the Department, the Department may assess civil penalties for violations of the Act, regulations, orders or permit conditions. Such penalty shall not exceed \$10,000 per day of each violation.

Factors considered in determining the amount of penalty include, among other things, the willfulness of the violation, damage to waters of the Commonwealth or their uses, and cost to the Department.

- (3) Criminal Actions - The Department may bring summary proceedings before a district justice for any violation of the Act, regulations, orders or permit conditions. Fines for summary offenses shall not be less than \$100 nor more than \$10,000 for each offense and, in default of payment, imprisonment for a period of ninety days.

Willful or negligent violations of the Act, regulations, orders or permit conditions constitute misdemeanors and are subject to a fine of not less than \$2,500 nor more than \$25,000 for each separate violation, or imprisonment of not more than one (1) year or both.

Repeat conviction of a misdemeanor carries a fine of \$2,500 to \$50,000 or imprisonment for up to two (2) years or both for each separate offense.

Each day of continued violation constitutes a separate offense.

- (4) Enforcement Orders - The Department is authorized to issue administrative orders to aid in enforcement of the Act. Such orders may include, but are not limited to, orders modifying, suspending or revoking permits and orders requiring cessation of operations which result in violations of the Act. Such orders are appealable to the Environmental Hearing Board which may also grant a supersedeas.
- (5) Remedies under the Clean Streams Law are cumulative. Thus, the Department may use any combination of the penalties or remedies authorized by the Act.

b. Act 359 - Oil and Gas Conservation Law

- (1) Violation of any provision of the Act; violation of any rule, regulation or order; drilling or deepening a well without a permit; making a false statement or entry in a required report or record; removing, destroying, altering or falsifying such record, account or memorandum in order to evade the Act; or aiding or abetting any other person in the violation of the Act, rule, regulation, or order constitutes unlawful conduct, for which a fine of not less than \$500 nor more than \$5,000 or imprisonment for up to six (6) months, or both, may be imposed. Each day of violation, after notification by the Department, constitutes a separate offense.
- (2) The Department is also authorized to sue for injunctive relief to prevent a party from continuing a violation or from carrying out the threat of violation.

c. Act 223 - The Oil and Gas Act

- (1) Any person who violates any provision of the Act is guilty of a summary offense and upon conviction, shall be sentenced to pay a fine of not more than \$300.00 or undergo imprisonment of not more than 90 days, or both. Each day's continuance of such violation shall be a separate and distinct offense. Any person who willfully violates the Act or an order of the Department is guilty of a misdemeanor; upon conviction such person is subject to a fine of not more than \$5,000, or imprisonment of not more than one (1) year, or both. Each day's continuance of such a violation constitutes a separate offense.
- (2) In addition to any proceeding under any other remedy available at law or in equity for a violation of a provision of the Act, a rule or regulation or an order of the Department, the Environmental Hearing Board, after hearing, may assess a civil penalty, whether

or not the violation was willful, not to exceed \$25,000, plus \$1,000 for each day of continued violation.

- (3) The Oil and Gas Act provides additional and cumulative remedies to control activities related to drilling for, or production of, oil and gas. The Department may issue enforcement orders, suspension and revocation orders and cessation orders. The Department may rely on remedies authorized by this Act, equity, and common and statutory law.

d. Act 214 - The Coal and Gas Resource Coordination Act

- (1) Any person who fails to plug a gas well penetrating a workable coal seam in accordance with the procedures prescribed by Section 13 of the Act, or as ordered or approved by the Department pursuant to Section 13, is guilty of a summary offense and, upon conviction, shall be sentenced to pay a fine of not more than \$300 or undergo imprisonment of not more than 90 days, or both. Each day's continuance of such violation shall be a separate and distinct offense.
- (2) Any person who willfully fails to plug a gas well penetrating a workable coal seam in accordance with Section 13 of the Act, is guilty of a misdemeanor and, upon conviction, shall be sentenced to pay a fine of not more than \$5,000, or undergo imprisonment of not more than one year, or both. Each day's continuance of such violation shall be a separate and distinct offense.
- (3) The Department may issue such orders as are necessary to aid in the enforcement of the Act, and the Department may sue to enjoin violations of the Act and to provide for enforcement.
- (4) In addition to proceeding under any other remedy available at law or in equity for a violation of Section 13 or any order of the Department, the Environmental Hearing Board, after hearing, may assess a civil penalty not to exceed \$25,000 plus \$1,000 for

each day of continued violation. A civil penalty may be assessed whether or not the violation was willful.

e. Dam Safety and Encroachments Act

- (1) Civil Actions - The Department is authorized to sue for abatement of or prevention of unlawful conduct.
- (2) Civil Penalties - The Environmental Hearing Board may assess civil penalties for unlawful conduct under the Act of up to \$10,000 plus \$500 per day of continued violation.
- (3) Criminal Penalties - Any person who engages in unlawful conduct as defined by the Act is guilty of a summary offense and is subject to a fine of not less than \$100 nor more than \$1,000 for each offense. If within two (2) years of conviction of a summary offense that person again engages in unlawful conduct, such person is guilty of a misdemeanor and subject to a fine of \$500 to \$5,000 for each offense and imprisonment of up to one (1) year, or both. Each day of violation constitutes a separate violation.
- (4) The Department is authorized to issue orders requiring, among other things, cessation of activities which violate the Act and orders revoking, suspending or modifying permits. The Act states that failure to comply with an order for which a supersedeas has not been granted is contempt, and the courts may assess penalties from \$100 to \$10,000 plus \$500 per day for such contempt of the order.
- (5) The Act states that all remedies provided are cumulative and additional.

f. Solid Waste Management Act

- (1) Civil Remedies - The Department may sue for injunctive relief to restrain violations or threats of violations of the Act.

- (2) Civil Penalties - The Department is authorized to assess a civil penalty against a person for violation of the Act, regulations, orders or permit conditions. A person receiving such an assessment has thirty (30) days to appeal to the Environmental Hearing Board. The maximum civil penalty is \$25,000 per offense and each day of violation is a separate offense.
- (3) Criminal Penalties - Violation of the Act, regulations, orders or permit conditions is a summary action and shall be subject to a fine of \$100 through \$1,000. Violations of the Act, regulations, orders or permit conditions also constitute a misdemeanor subject to fines from \$1,000 through \$25,000 per day for each violation or imprisonment of up to one (1) year, or both. Repeat conviction raises the penalties to \$2,500 to \$50,000 per day and two (2) years imprisonment. Violation of hazardous waste provisions in the Act can result in even higher penalties.
- (4) Enforcement Orders - The Department may issue orders requiring, among other things, cessation of unlawful activities, revoking, modifying or suspending permits or corrections of inadequate systems. Violation of such order subjects the violator to contempt proceedings.

## 2. Other Agency Remedies

### a. The Department of Transportation

Citations may be issued for any violation detected during a roadside inspection. The inspector is given the discretion to determine when citation(s) will be issued and whether they will be issued to the driver and/or the carrier.

The fine structure for these violations is dependent upon both the type of violation and the party cited as follows:

Basic violation

Citation to driver	\$ 25.00	per violation
Citation to carrier	\$ 50.00	per violation

Out-of-Service violation (vehicle or operator is detained)

Citation to driver	\$ 50.00	per violation
Citation to carrier	\$ 100.00	per violation

In addition, a driver who fails or refuses to comply with the inspector may have the vehicle taken into temporary custody in order to complete the inspection. The driver could be liable for any costs incurred in the inspection as well as a \$500.00 fine if found guilty.

The hazardous materials fine structure is based on a scale of \$50.00 to \$1,000.00 per violation. The actual fine amount is set by the magistrate who weighs the severity of the violation in establishing the fine.

b. State Police

State Police Rules and Regulations cover storage and handling of flammable and combustible liquids (including crude oils).

- (1) Failure to comply with the regulations will result in the issuance of an order of removal or remedy. Failure to comply with such order is punishable under summary proceedings with a penalty of \$50 to \$200 plus the cost of prosecution.

c. Pennsylvania Fish and Boat Commission

Every violation is considered individually and penalties are dictated by law. Penalties range from a summary offense of the second degree which includes a fine of \$25 or imprisonment not exceeding 20 days to a misdemeanor of the third degree which carries a fine not less than \$250 nor more than \$2500 or imprisonment not exceeding 90 days, or both.

In addition to the previous penalties, a fine of \$10 may be imposed for each fish killed in the event of a pollution incident.