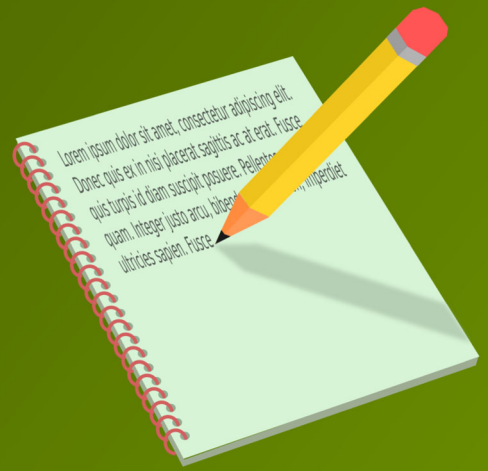


NOTES FROM THE FIELD

Having the back of your staff, a view from both sides

By Dean Spindler



Even though I have written on the topic of professional integrity and mutual respect between rank and file, and between staff and leadership before, a fresh discussion seems appropriate as this topic seems to pop up regularly. The importance of your staff trusting that you “have their back”, when you are higher in the agency organizational hierarchy, cannot be understated. However, that trust must go both ways and that trust must be earned. Over the course of 44 years I have served in roles as tech support, field inspector, midline manager of inspectors, field and technical staff trainer, a short stint as acting LRD supervisor while a permanent replacement could be vetted, and lastly, as a part time retired contractor. While serving in each of these roles, I have had the unique opportunity to have a view of both sides of the trust coin.

At each level of the organizational hierarchy, whether you are the staff member making the decision or administrator supporting the decision, you are acutely aware that your decisions (perhaps to deny a permitting action, or to take enforcement actions in the field) will be subject to scrutiny, both by the operator and the agency. Agency protocol on the level of inspector autonomy for taking enforcement action has varied over time and under different programs. Small staffs seem to have more individual authority, whereas, with larger organizations the decision making can become more bureaucratic.

Under certain administrations, I have had inspectors ask me, in confidence, that if they wrote a violation would it be overruled at a higher level? My first response was always “Is it a solid decision with good documentation? If so, then write the violation.” As a side note, some administrations did require staff to discuss the nature and circumstances of a potential violation with a supervisor before the violation was officially written. This practice was meant to ensure all applicable evidence had been collected and appropriate citations/regulations bases were covered. The practice was not meant to second guess the decision-making process of the inspector, but inevitably it felt that way at times for some staff. In addition, under some circumstances, particularly with inexperienced staff, an evaluation may need to be made by senior staff regarding the nature and circumstance of the potential violation, particularly if the issue is minor or murky and the solution is overkill.

In either case, the field inspector needed to know that it is always necessary to write a solid violation and any oversight is for the benefit of the inspector and the Department, if the case were to be challenged. In the early days, it was routine for the greatly increased regulatory enforcement powers of SMCRA and the regulations behind them to be challenged. Some of the greatest advice, and explanation for supervisory oversight, ever handed down to me was simply “how will you justify your decision if challenged in court?”. Part of building trust with your staff is knowing how to explain the rationale behind oversight and, when a decision must be overruled, doing so with honesty and integrity.

NOTES FROM THE FIELD

cont.



Agency supervisors need to ensure decisions are warranted. Another notable comment made to me by the Division Supervisor when I first started my career was that if I was going to shut down a mining operation or deny a specific mining activity and put people out of work, I had better be sure and double check all my facts. If the facts and evidence backed the decision, he would run any interference and handle any political inquiries that might occur.

At the same time, you, as the inspector or technical staff decision maker, must also ensure your decisions are based on law and/or science and not for personal or philosophical reasons. It can be easy to lose sight of the intent of the regulations, especially for an inspector who is saddled with a problem mine. One such intent is to prevent problems rather than just deal with them after the fact (proactive vs. reactive regulatory guidance!). On occasion, the road leading to bond forfeiture is inevitable when dealing with an uncooperative operator. Sometimes all the best efforts at educating the operator and repeated efforts to prevent problems are not enough. In these cases, the agency administrators are apprised of the situation and the violation sequence begins to expedite the forfeiture, if probable environmental degradation is likely. This may involve a series of violations, even if relatively minor, with short abatement dates. This strategy will be affected by the type of regulatory program.

I once had a division supervisor tell me he always looked to the inspector or technical staff as the best source for a course of action or decision. However, on a few occasions, those opinions had to be overridden, as they were not balanced, reasonable or based on a complete knowledge of the situation. He took no pleasure having to exercise that authority. But, as the proverbial “buck stopped with him”, the difficult decisions had to be made. He did make sure the overruled staff member received an explanation of his reasoning so that the decision did not appear arbitrary or motivated by non-legitimate reasons. In other words, he still had their back.



I cannot tell you that during the four decades that I worked in reclamation that every manager, field inspector, or technical staff held the values or attributes mentioned above. But I CAN tell you the good ones last, and the bad ones...not so much!