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	U·S·DEPARTMENT OF THE INTERIOR OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT DIRECTIVES SYSTEM	Subject Number: REG-12 RESCINDED Transmittal Number: 358 Date: 07/21/87

Subject: Timing of Enforcement Actions for Violations Observed During Onsite Inspections

Approval: **Title:** Acting Director

1. PURPOSE.

This directive outlines the policy concerning the timing of enforcement actions which OSMRE will employ when (1) conducting oversight evaluations of State enforcement of approved State programs, (2) implementing, administering and enforcing a Federal program in States without approved State regulatory programs, (3) enforcing an approved State program for operations over which the State lacks regulatory authority, and (4) regulating operations on Indian lands.

2. DEFINITIONS. None.

3. POLICY/PROCEDURES.

a. Background. Section 521(a)(5) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) requires that enforcement actions be issued promptly. Section 521(d) of SMCRA requires that every State program include both enforcement provisions which are no less stringent than those specified by SMCRA and enforcement procedures which are the same as or similar to those of SMCRA. Accordingly, each State program approval notice contains a determination that the State regulatory authority has the authority to issue a notice or order to the permittee promptly upon observing a violation of the approved permit, the State program or State laws or regulations [30 CFR 732.15(b)(8)].

Notices or orders issued long after observation of the violation frustrate SMCRA's requirement for prompt elimination of a violative condition or practice and minimization of environmental harm. Such delays may also make it more difficult for the inspector to discuss the nature of the violation and required corrective action with the permittee.

b. Policy. When a violation is observed while conducting a Federal inspection of a minesite not regulated by the State, the inspector shall issue the appropriate notice of violation or cessation order to the permittee or his representative or other employee prior to leaving the minesite. This requirement also applies to Federal inspections of minesites regulated by the State when the inspector observes a violation which creates an imminent danger to the health or safety of the public or which is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources. Exceptions shall be limited to those circumstances where sample analysis, technical assistance or

further investigation is needed to confirm the existence of the violation. Where one of these exceptions applies, the inspector shall explain the nature of the possible violation to the operator and inform him that a violation may be issued in the future.

The provisions of 30 CFR 843.14(a)(2) or the State or Federal program counterpart thereof, which allow the use of certified mail in place of personal service, shall be implemented only when there is no operator or other representative of the permittee present at the close of the inspection and where the permittee's office is not reasonably close to the minesite or the inspector's planned travel route. Where certified mail is used in place of personal service, the notice or order shall be mailed as soon as practical after completion of the inspection.

Nothing in this directive shall be interpreted as countermanding the provisions of OSMRE Directive INE-13 concerning the issuance of enforcement actions for violations corrected before the inspector leaves the minesite. Nor shall this directive be construed to apply to the issuance of ten-day notices or subsequent Federal enforcement actions.

When evaluating a State's performance in implementing its approved program with respect to the timing of enforcement actions, OSMRE personnel shall use the standards set forth in this directive unless the approved State program contains alternative standards.

4. REPORTING REQUIREMENTS. None.

5. REFERENCES. OSMRE Directive INE-13, "Revision of Inspection and Enforcement Policy", Transmittal No. 166, April 11, 1983.

6. EFFECT ON OTHER DOCUMENTS. Supersedes memorandum of April 8, 1983, to Field Office Directors from the Assistant Director, Program Operations and Inspection.

7. EFFECTIVE DATE. Upon Issuance.

8. CONTACT. Chief, Division of Regulatory Programs (202) 343-5351.