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	U· S· DEPARTMENT OF THE INTERIOR **OFFICE OF SURFACE MINING** **RECLAMATION AND ENFORCEMENT** **DIRECTIVES SYSTEM**	**Subject Number:** INE - 30 **Transmittal Number:** 371 **Date:** 8/28/87

Subject: Alternative Enforcement Referrals for Criminal Penalties and Civil Actions for Relief

Approval: Jed D. Christensen **Title:** DIRECTOR

1. Purpose. This directive establishes policy and procedures for Field Offices to refer enforcement cases to the Solicitor for criminal penalties or civil action for relief pursuant to sections 518(e) and 521(c) of the Surface Mining Control and Reclamation Act (SMCRA).

2. Definitions. None.

3. Policy/Procedures.

a. Background. Section 518(e) of SMCRA provides criminal penalties upon conviction when any person knowingly and willfully violates a condition of a permit or fails or refuses to comply with any order issued under sections 521 or 526 of SMCRA. Section 521(c) of SMCRA authorizes the Secretary to request a civil action for relief in the appropriate Federal district court when a permittee violates or fails or refuses to comply with any order or decision issued by the Secretary under SMCRA; interferes with or hinders an authorized representative in carrying out the provisions of SMCRA; or refuses entry to a mine site for inspection purposes or refuses to furnish information or records necessary in carrying out SMCRA.

Moreover, the Office of Surface Mining Reclamation and Enforcement is required under 30 CFR 845.15(b)(2) to take appropriate action pursuant to sections 518(e), 518(f), 521(a)(4), or 521(c) of SMCRA within 30 days after a violation has remained unabated for more than 30 days beyond its abatement period set in the notice or order to ensure that abatement occurs or to ensure that there will not be a recurrence of the failure to abate.

b. Policy.

(1) Field Offices shall use the transmittal form enclosed with this directive to request the Field Solicitor to initiate civil action for relief and/or criminal prosecution whenever:

(a) An imminent harm/danger cessation order is not abated within the prescribed time for abatement; or

(b) a permittee interferes with or hinders an authorized representative in his duties or refuses entry for the purposes of inspecting a mine or obtaining relevant inspection records; or

(c) mining is not ceased following service of an order requiring the cessation of mining and the permittee or operator has not obtained temporary relief from the order; or

(d) a violation contained in a failure-to-abate cessation order remains unabated for more than 30 days.

(2) Any inspector encountering circumstances which could lead to a criminal prosecution, shall immediately contact the appropriate Field Solicitor's Office for assistance and advice concerning appropriate documentation and investigation.

c. Responsibilities.

(1) In the case of 3(b)(1)(a), (b) and (c) above, the Field Office shall in addition to using the transmittal form, immediately contact the Field Solicitor by telephone or in person to request expedited injunctive proceedings and determine any additional information to be provided.

(2) In the case of 3(b)(1)(d) above, the Field Office shall within 30 days after the 30 day civil penalty cap has expired, request the Field Solicitor to consider civil action and/or criminal prosecution using and providing the information outlined in the transmittal form.

(3) Field Offices shall recommend criminal prosecution under section 518(e) of SMCRA whenever evidence indicates that a violation or noncompliance with an order was a knowing and willful act. Examples of knowing and willful violations are continued mining after receipt of an order requiring the cessation of mining operations and mining without a permit with knowledge that a permit is required. Page 3 of the transmittal request must be completed and included with all such recommendations.

(4) Field Offices shall promptly forward a copy of all transmittal forms to the appropriate Assistant Director for Field Operations in order for the Assistant Directors to provide data for reports. See section 4 (Reporting Requirements) below.

(5) Each transmittal request to the Field Solicitor shall specify the recommended priority based on the following criteria:

(a) Priority 1: An imminent harm/danger cessation order is unabated; the permittee is actively conducting mining operations after a cessation order has been issued; or a permittee interferes with or hinders an authorized representative in his duties or refuses entry for the purposes of inspecting a mine or obtaining relevant inspection records.

(b) Priority 2: A cessation order has been issued and the permittee has ceased mining or abandoned the site without abating a violation(s) which is or may become serious. An unabated violation would be considered serious if the extent and duration of the impact would progress to an imminent harm/danger condition; fail to stabilize naturally before causing substantial environmental damage to offsite air, water, or land resources; or substantially interfere with the planned postmining land use.

(c) Priority 3: The violation is administrative in nature or not judged by the Field Office to be serious; and based on available information or past experience, there is little likelihood of compelling abatement through civil action.

4. Reporting Requirements. Field Offices shall forward a copy of each transmittal request to the appropriate Assistant Director for Field Operations. Assistant Directors for Field Operations are responsible for providing case-specific data to the Solicitor for quarterly reports to the U.S. District Court as provided by the Revised Parker Order of February 1, 1985.

5. References.

a. 30 CFR 845.15(b)(2).
b. Section 518(e) of SMCRA.
c. Section 521(c) of SMCRA.
d. Settlement of Save Our Cumberland Mountains, Inc., et al. v. Clark, Civil Action No. 81-2134 (D.D.C.) (Parker, B.); Council of the Southern Mountains, Inc., et al. v. Clark, Civil Action No. 81-2134 (D.D.C).

6. Effect On Other Documents.

a. Supersedes "Processing of Alternative Enforcement Actions" memorandum signed August 6, 1984 by the Assistant Director, Program Operations and Inspection, OSMRE.

b. Supersedes "Processing of Alternative Enforcement Actions" memorandum signed June 28, 1984 by the Assistant Director, Program Operations and Inspection, OSMRE.

7. Effective Date. Upon Issuance.

8. Contact. Chief, Branch of Inspection and Enforcement, FTS-343-4550.

Field Office Transmittal Request For
Civil Action and/or Criminal Penalties

Field Office Recommended Priority: _____

Company Name _____
Defendant (If not company) _____ CMIS No. _____
Initial Referral _____ Addendum _____ Previous CO No: _____
Entity _____ Area Office _____

Principals: 1. _____
2. _____
3. _____

Address: 1. _____ SS No. _____
2. _____ SS No. _____
3. _____ SS No. _____

CO#	NOV#	ST	COUNTY	PERMIT#	INJ	CRIM

Basic Information

_____ Copy of entire underlying NOV, CO and inspector's statements
_____ Modification/Vacation/Termination Notices
_____ Service receipts
_____ Inspection reports
_____ Hearing or conference requests/ reports
_____ Administrative review requests/decisions
_____ Other pertinent documents (reports, letters, maps, photographs, etc.)

Supplemental Information

_____ Ownership information/company representative
_____ Chronology of events
_____ Recommendations for abatement
_____ Reclamation cost estimates
_____ Permit information (including other permits and status)
_____ Bond information
_____ Map to mine site
_____ Directions for service

Additional
Information: _____

_____

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_____

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_____

_____

_____

_____

_____ _____
Field Office Field Contact Person

_____ _____
Telephone number Date

*Use Page 3 only when recommending criminal prosecution under section 518(e).

Information Required For Recommended Criminal Action

1. Document those actions by the permittee/operator which you consider to be a knowing and willful violation of a permit condition or a knowing and willful refusal or failure to comply with a cessation order or decision of the Secretary.

2. List those persons allegedly responsible for the above-described knowing and willful actions, or failure or refusal to comply (indicate position in company and current address).

3. List any statements by persons which indicate an intention to violate a permit condition, or failure or refusal to comply with a cessation order or decision of the Secretary (include dates, time, name and current address of witnesses, and indicate whether witness is current employee of OSMRE).