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	U. S. DEPARTMENT OF THE INTERIOR OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT DIRECTIVES SYSTEM	Subject Number: INE-34 Transmittal Number: 391 Date: 10/1/87

Subject: Guidelines for Responding to Improvidently Issued Permits

Approval: Jed D. Christensen | Title: Director

1. PURPOSE. This directive establishes policy and procedures for suspending or revoking improvidently issued Federal surface coal mining permits and requesting the suspension or revocation of State issued permits.

2. DEFINITIONS. Improvidently Issued Permit - A permanent program permit which should not have been issued because the requirements of section 510(c) of the Surface Mining Control and Reclamation Act (SMCRA) were not met for the following reasons:

a. The permittee has outstanding Federal failure to abate cessation orders (FTACO), or owes civil penalties assessed under SMCRA section 518(h) and such cessation orders or penalties were outstanding (and not the subject of a good faith appeal) at the time of issuance.

b. The permittee owns or controls, or is owned or controlled by a person responsible for such unabated violations or unpaid penalties.

Unpaid Abandoned Mine Land (AML) fees* or unpaid 518(a) civil penalties that were owed at the time of permit issuance will not result in a determination that a permit was improvidently issued. However, in the event that the Office of Surface Mining Reclamation and Enforcement (OSMRE) demonstrates that a permit has been improvidently issued and that there are also unpaid AML fees or unpaid 518(a) civil penalties that were owed at the time of permit issuance, that improvidently issued permit shall continue to be subject to suspension or revocation until the owed monies have been paid or a written payment scheduled has been executed.

*This directive does not address the issuance of ten-day notices, notices of violation or cessation orders for the purposes of recovering delinquent, unpaid or underpaid AML reclamation fees. The guidance for issuing such enforcement actions is found in OSMRE directive, INE-18 "Authorized Representatives" issued June 6, 1986.

3. POLICY/PROCEDURES.

a. Background. Section 201(c)(1) of SMCRA states that the Secretary acting through OSMRE shall-- "...order the suspension, revocation, or withholding of any permit for failure to comply with any of the provisions of this Act or any rules and regulations adopted pursuant thereto." Section 510(c) of SMCRA expressly prohibits issuance of permits to any applicant who owns or controls any surface coal mining operation which is currently in violation of the Act or any law, rule or regulation pertaining to air or water environmental protection. In response to public concerns that violators of SMCRA were continuing to obtain permits, sometimes through new entities, OSMRE agreed to take steps to enhance its implementation of section 510(c) of SMCRA. The measures OSMRE agreed to take were incorporated on February 1, 1985, when U.S. District Court Judge Barrington Parker issued a Revised Order (Revised Parker Order) in Save Our Cumberland Mountains, Inc., et al. v. Clark and Council of Southern Mountains, Inc., et al. v. Clark. Under the order, OSMRE must promptly inform the state regulatory authority (SRA), if any, if it learns that persons with outstanding FTACO's or unpaid civil penalties assessed under section 518(h) of SMCRA have received a permanent program permit or own or control such permittees. Upon identification of these persons, the Revised Parker Order requires that OSMRE request the SRA to suspend or revoke the permit and for OSMRE to do so in cases where OSMRE is the regulatory authority. If the SRA does not initiate such action or fails to act or justify its inaction, OSMRE is required to take enforcement actions to cause the permittee in question to cease mining until the violations are abated and monies paid, or the relationship to the violator is severed.

b. Policy.

Whenever OSMRE obtains information that a permit has been improvidently issued, it will request the SRA having jurisdiction over such permit to suspend or revoke the permit. OSMRE will take the same actions in cases arising under a Federal program, Federal lands program, or Indian lands program. Where necessary, OSMRE will take additional enforcement measures against the permittee when warranted using the procedures set forth below.

c. Procedures.

(1) Primacy States. Upon discovery by OSMRE that an SRA may have improvidently issued a permit, the procedures listed in sections 3.c.(1)(i) and 3.c.(1)(ii) shall be implemented within 30 days:

(i) The Field Office Director before determining whether a permit has been improvidently issued shall review the following information on each alleged violator: the entity to which a permit has been issued; the permit number(s) in question; the name of the violator; the relevant FTACO(s) and 518(h) civil penalties which existed prior to issuance of the permit at issue, the AML fees and 518(a) civil penalties owed to OSMRE prior to the issuance of the permit at issue; the State in which the violator, or the entity the violator owns or controls, or the entity owning or controlling the violator is permitted; and ownership or control information describing the connection between the permit holder and the violator where appropriate.

(ii) Upon determination by the Field Office Director that the permit(s) in question was issued in violation of section 510(c) of SMCRA, the Field Office shall request the SRA, using Attachment A, to suspend or revoke the permit. The Field Office shall concurrently inform the permittee of his or her rights and obligations using Attachment B. The Field Office may choose to consult with the Field Solicitor before sending Attachments A and B.

(iii) If the State does not act to suspend or revoke the permit(s) or justify its inaction within 30 days of such notice, and if a person responsible for the outstanding cessation order fails to abate the violation, pay the penalties or execute an appropriate written abatement plan or payment schedule, the Field Office shall immediately issue a ten-day notice (TDN) requesting the SRA to initiate proceedings to suspend or revoke the permit (See Attachment C).

(iv) If at the end of the TDN period, the State does not initiate proceedings to suspend or revoke the permit, the Field Office shall issue a notice of violation (NOV) to the permittee for improperly obtaining a permit, as shown in Attachment D. The NOV will provide 10 days for abatement of the outstanding Federal violations and payment of the monies owed or the execution of a written abatement plan or payment schedule to be approved by OSMRE or require that all mining cease at the end of the 10 day period and remain ceased until the requirements of the NOV have been met. Such an NOV shall not be terminated unless and until the violator completes the corrective action required.

(v) If at the end the 10 day period the NOV remains unabated and mining has not ceased, the Field Office shall issue an FTACO to the permittee directing the cessation of mining at each site permitted since the issuance of the violation or assessment of penalties or fees as shown in Attachment E.

(vi) When the permittee refuses to cease mining after issuance of an FTACO, the Field Office shall immediately contact the Field Solicitor to obtain a restraining order prohibiting the permittee from further mining. A penalty of $750 for up to 30 days shall be assessed for each day the FTACO remains unabated and if the FTACO remains unabated for more than 30 days, the case shall be reviewed for further alternative enforcement action.

(2) Federal programs, Federal lands programs and Indian lands. Upon discovery by OSMRE that it may have improvidently issued a Federal permit, the procedures listed in sections 3.c.(2)(i) and 3.c.(2)(ii) shall be implemented within 30 days:

(i) The Field Office Director before determining whether a permit has been improvidently issued shall review the following information on each alleged violator: the entity to which a permit has been issued; the permit numbers in question; the name of the violator; the relevant FTACO(s) and 518(h) civil penalties which existed prior to issuance of the permit at issue, the AML fees and 518(a) civil penalties owed to OSMRE prior to the issuance of the permit at issue; the State in which the violator, or the entity the violator owns or controls, or the entity owning or controlling the violator is permitted; and ownership or control information describing the connection between the permit holder and the violator where appropriate.

(ii) Upon determination by the Field Office Director that the permit was issued in violation of section 510(c) of SMCRA, the Field Office shall use Attachment F to notify the permittee that unless it refutes OSMRE's information, abates the violation(s) in question, pays the penalties or AML fees owed, or enters into a written abatement plan or payment schedule within 30 days from receipt of this notice, his or her permit right to mine will be suspended. The Field Office may choose to consult with the Field Solicitor before sending Attachment F.

(iii) If within 30 days from receipt of the notice to suspend the permit in question, the permittee does not refute OSMRE's information, does not abate the violation(s) in question or does not pay the penalties or AML fees owed, and does not enter into a written abatement plan or payment schedule, the Field Office Director shall use Attachment G to inform the permittee that its permit has been suspended and that mining must cease and remain ceased.

(iv) Upon concurrence by the Field Office Director that the permittee has successfully refuted OSMRE's information or has complied with the requirements of this directive, the Field Office shall use Attachment H to notify the permittee that its permit is no longer in violation of section 510(c) of SMCRA and that mining may resume. The Field Office may choose to consult with the Field Solicitor before sending Attachment H.

d. Special criteria governing cases involving bankruptcy law. Violators who have filed for protection under Chapter 11 or 13 of the Bankruptcy code shall be addressed in the following manner:

(1) Have their permits suspended or revoked if they have outstanding unabated violation(s) which were issued prior to the violator's petition for bankruptcy.

(2) Not have their permit(s) suspended or revoked during the course of bankruptcy proceedings if they have pre-petition Federal violations which have been abated, and pre-petition penalties and fees remain unpaid. The collection of penalties and fees must be pursued in bankruptcy court.

(3) If the violator has both outstanding unabated violation(s) and unpaid penalties and fees, permit suspension or revocation is not applicable toward the collection of the penalties. Therefore, if you are requesting the State to suspend or revoke the permit(s) of an entity where the violator is protected by Chapter 11 or 13 of the Bankruptcy Code, ensure that if it becomes necessary to issue TDN's, NOV's or CO's, those documents reflect the pursuit of the abatement of all pre-petition outstanding violations and not the payment of pre-petition penalties and fees.

e. Responsibilities. Field Office Directors shall be responsible for monitoring and tracking all cases referred for suspension and revocation.

4. REPORTING REQUIREMENTS. To fulfill the obligations of the Revised Parker Order, Field Office Directors shall prepare a quarterly report detailing suspension and revocation proceedings (See Attachment I), and forward the report to the Solicitor.

5. REFERENCES. a. Sections 201(c)(1), 510(c) and 518(h) of SMCRA.

b. Settlement in: Save Our Cumberland Mountains, Inc., et al. v. Clark, Civil Action No. 81-2134 (D.D.C.) (Parker,J); Council of the Southern Mountains, Inc., et al. v. Clark, Civil Action No. 81-2134 (D.D.C.).

c. Memorandum to the Deputy Director, Administration and Finance, and Deputy Director, Operations and Technical Services, "Impact of bankruptcy on OSMRE's enforcement and collection efforts" dated November 24, 1986 from the Assistant Solicitor, Branch of Enforcement and Collections, Division of Surface Mining.

6. EFFECT ON OTHER DOCUMENTS. Supersedes "Implementation of Suspension/Revocation Procedures under the Revised Parker Order" memorandum dated January 13, 1986 by the Deputy Director, Operations and Technical Services, OSMRE.

7. EFFECTIVE DATE. Upon Issuance.

8. Contact. Chief, Branch of Inspection and Enforcement, (202) 343-4550.

Attachment A

DRAFT TRANSMITTAL TO STATE

Dear [State R. A.]:

Section 510(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) prohibits a regulatory authority from issuing a permit to an applicant if the application or other information indicates that "any surface coal mining operation owned or controlled by the applicant is currently in violation of this Act" or certain other environmental laws.

The Office of Surface Mining Reclamation and Enforcement (OSMRE) has determined that the permit (or permits) identified on the enclosed listing (or listings) have been issued by [Name of State regulatory authority] in apparent violation of Section 510(c). As evidence of this determination, the enclosed listing (or listings) shows an entity who: (1) has outstanding Federal failure-to-abate cessation orders and/or unpaid civil penalties assessed in accordance with Section 518 (h); and, (2) is permitted, owns or controls, or is owned or controlled by an entity identified as being permitted within your State. As further support for this determination, the listing (or listings) shows that the cessation order(s) and/or unpaid penalties existed at the time the specified permit (or permits) was issued.

Because the permit (or permits) apparently has been issued in violation of Section 510(c), OSMRE is formally requesting that you initiate proceedings to suspend or revoke the permit (or permits). OSMRE is making this request pursuant to Section 201(c) of SMCRA which provides that "[t]he Secretary acting through [OSMRE] shall . . . order the suspension, revocation, or withholding of any permit for failure to comply with any of the provisions of this Act or any rules and regulations adopted pursuant thereto . . ." (Emphasis added). Suspension or revocation of such permits should continue until such time as the following conditions are met:

1. Abatement of all such outstanding Federal violations has occurred and all such outstanding civil penalties have been paid, or

2. A written abatement plan and/or written payment schedule for each entity, each separate violation and the total of such civil penalties has been submitted to and approved by OSMRE; and

3. Payment or execution of a written payment schedule for any Abandoned Mine Land fees assessed in accordance with Section 402(a) of SMCRA; and/or any unpaid section 518(a) penalties of SMCRA which were delinquent at the time of permit issuance.

Violators who have filed for protection under Chapter 11 or 13 of the Bankruptcy Code may nevertheless have their permits suspended or revoked if the violator has outstanding unabated violations which were issued prior to the violator's petition for bankruptcy. If the violator is protected by Chapter 11 or 13 and has pre-petition Federal violation(s) which have been abated, but pre-petition penalties and fees remain unpaid, permit suspension or revocation is not applicable during the course of the bankruptcy proceedings. The collection of penalties may, however, be pursued in bankruptcy court. If the violator has both outstanding violation(s) and unpaid penalties, and permit suspension or revocation is applicable toward the abatement of the violation(s), but not toward the collection of penalties.

During your review of the subject permits, please determine whether all Federal violations set forth in the attached listing (or listings) were included, as required, in the permit application and whether the names of all corporate officers or 10% stockholders were listed as required by the State's permit application information collection requirements. If you find any omissions, please notify me.

If you believe there is a reason why any of the listed permits should not be suspended or revoked, please submit that explanation to OSMRE for our review. Reasons may include evidence that the subject violations have been abated, civil penalties have been paid, the subject entitiy is not, in fact, permitted in your State, or other information you believe has bearing on the case. If the permittee has additional applications pending, the permits should be withheld, as required by Section 510(c) of SMCRA, until the violation(s) have been abated and/or the 518(h) civil penalties have been paid.

In each instance, OSMRE will allow the State 30 days in which to notify this Field Office of the actions taken or planned. Please provide us with a schedule of the actions you will implement during the course of your suspension or revocation procedures. If the State fails to show that the permits were properly issued and if suspension or revocation proceedings are not initiated within 30 days of the receipt of this request, OSMRE is required to immediately issue a Ten-Day Notice directing the State to suspend or revoke the permits in question.

If after the Ten-Day Notice has been issued, the State does not initiate suspension or revocation proceedings, OSMRE will issue a notice of violation requiring the abatement of all such outstanding Federal violations and/or the execution of a written abatement plan for each violation and/or written payment schedule for all such civil penalties to be approved by OSMRE. The notice of violation will further require that if these conditions are not met after 10 days, all mining is to cease. If mining does not cease, OSMRE will then issue a cessaton order to the permittee directing the cessation of all mining at each site permitted since the issuance and/or assessment of the Federal violation(s) and penalties and will assess a penalty of $750 for each day the violation remains unabated and/or the civil penalties remain unpaid for up to 30 days or $22,500 in penalties. Further, OSMRE may pursue additional alternative enforcement actions.

If a violating entity notifies you that it wishes to abate the outstanding violations(s) and/or pay the civil penalties owed, please direct the violator to have an authorized representative contact me immediately.

If you have any questions concerning this request or the violators and permittees which have been identified, please contact me.

Sincerely,

Field Office Director

Enclosures

Attachment B

DRAFT TRANSMITTAL TO PERMITTEE

Dear [Permittee]

Section 510(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) prohibits a regulatory authority from issuing a permit to an applicant if the application or other information indicates that "any surface coal mining operation owned or controlled by the applicant is currently in violation of this Act" or certain other environmental laws.

[Paragraph to be used if violator and permittee are the same entity. Use (1) and (2) as they apply.]

The Office of Surface Mining Reclamation and Enforcement (OSMRE) determined that [permittee] has received permit number(s) _____ in apparent violation of Section 510(c). The basis for this determination is as follows:

(1) [Permittee] has outstanding Federal failure-to-abate cessation order(s) and/or unpaid civil penalties assessed in accordance with Section 518(h) of SMCRA against the cessation order(s) as follows:

Federal Cessation Order	Section 518 Penalties
[insert CO number(s)]	[insert 518(h) penalties as appropriate]

EXAMPLE:

85-XX-XX	518(h) = $_____

(2) these cessation order(s) and penalties were unabated and/or unpaid at the time that [permittee] received permit number(s) _____.

[Paragraph to be used if the violator and permittee are linked through ownership or control. Use (1) and (2) as they apply.]

The Office of Surface Mining Reclamation and Enforcement (OSMRE) determined that [permittee] has received permit number(s) _____ in apparent violation of Section 510(c). This determination is based upon the following:

(1) [Permittee] has ownership or control connection to [violator]. [Violator] has outstanding Federal failure-to-abate cessation order(s) and/or unpaid penalties assessed in accordance with Section 518(h) of SMCRA against the cessation order(s) as follows:

Federal Cessation Order	Section 518 Penalties
[insert CO number(s)]	[insert 518(h) penalties as appropriate]

[Format same as previous example]

(2) These cessation order(s) and penalties were unabated and/or unpaid at the time that [permittee] received permit number(s) _____. The ownership or control connection in this case is through [individual], who is the _____ of [permittee] and the _____ of the [violator].

CONTINUED TEXT

Because the permit number(s) _____ has/have been issued in apparent violation of Section 510(c), OSMRE has requested that [Name of State R. A.] initiate proceedings to suspend or revoke it/them. OSMRE has made this request pursuant to Section 201(c) of SMCRA which provides that "[t]he Secretary acting through [OSMRE] shall . . . order the suspension, revocation, or withholding of any permit for failure to comply with any of the provisions of this Act or any rules and regulations adopted pursuant thereto . . ." (Emphasis added). Suspension or revocation of such permits should continue until such time as the following conditions are met: [Tailor (1) and (2) to the specifics of the permittee.]

(1) abatement of Federal cessation order number(s) _____ and/or payment of Section 518(h) penalties totalling $ _____, or

(2) execution of a written abatement plan by [violator] and/or [permittee], for cessation order number(s) _____, and/or execution of a written payment schedule by [violator] and/or [permittee] for Section 518 civil penalties totalling $ _____, and payment or execution of a payment schedule for unpaid section 402 Abandoned Mine Land fees and/or section 518(a) totalling $ _____ which OSMRE determined existed at the time of permit issuance. All abatement plans and payment schedules must be submitted to and approved by OSMRE.

In addition, OSMRE has requested that any additional permit applications by [violator or permittee] and entities linked to [violator] through ownership or control, pending anywhere in the United States, be withheld as required by Section 510(c) of SMCRA. These permits should be withheld until the violation(s) are abated and all SMCRA civil penalties are paid, or written abatement and payment schedules are executed and approved. If you believe there is a reason why your permit(s) should not be suspended or revoked, please submit that explanation to OSMRE for our review. Reasons may include evidence that the subject violations have been abated or otherwise resolved, all civil penalties have been paid, the subject entity is not permitted in [State], or other information that you believe has a bearing on the case.

In each instance, OSMRE will allow the State 30 days in which to notify this Field Office of the actions taken. If the State fails to show that the permits were properly issued and if suspension or revocation proceedings are not initiated within 30 days of the receipt of this request, OSMRE is required to immediately issue a Ten-Day Notice directing the State to suspend or revoke the permit(s) in question.

If the State does not initiate suspension or revocation proceedings after the Ten-Day Notice has been issued, OSMRE will issue a notice of violation to the permittee directing the abatement of all such outstanding civil penalties, or the execution of a written abatement plan for each violation and/or a written payment schedule for all such civil penalties to be submitted to and approved by OSMRE. The notice of violation will further require that if these conditions are not met within 10 days, all mining is to cease.

If mining is not ceased, OSMRE will then issue a failure-to-abate cessation order against the permittee directing the cessation of all mining at each site permitted since the issuance and/or assessment of the Federal violation(s), penalties to the violator; and, will assess a penalty of $750 for each day (up to 30 days or $22,500 in penalties) the permittee fails to act. Further, OSMRE may pursue additional alternative enforcement actions.

If you wish to abate the outstanding violation(s) and/or pay the civil penalties owed, please contact me immediately at (telephone number).

Sincerely

Field Office Director

Attachment C

3/26/85

Office of Surface Mining
Reclamation and Enforcement

DRAFT TEN-DAY NOTICE

umber: X - - - - TV ____ Telephone Number:

n-Day Notice to the State of (fill in State name)

ou are notified that, as a result of review of entities with outstanding violations (e.g. a federal inspection, tizen information, etc.) the Secretary has reason to believe that the person described below is in violation the Act or a permit condition required by the Act. If the State Regulatory Authority fails within ten days ter receipt of this notice to take appropriate action to cause the violation(s) described herein to be cor- cted, or to show cause for such failure and transmit notice of your action to the Secretary through the iginating office designated above, then a Federal inspection of the surface coal mining operation at hich the alleged violation(s) is occurring will be conducted and appropriate enforcement action as re- ired by Section 521(a)(1) of the Act will be taken.

rmittee: (fill in permittee information) County: ☐ Surface
Operator if the Permit)

ailing Address: ☐ Underground

rmit Number: ____ Mine Name: ____ ☐ Other ____

ATURE OF VIOLATION AND LOCATION: This entity, or persons who own or control this ntity, or entities owned or controlled by the violator, have outstanding Federal violations and/or unpaid civil penalties assessed in accordance with Section 518(h) of SMCRA, and was improvidently granted a permit in violation of Section 510(c) of SMCRA. In addition, where noted OSMRE has determined that civil penalties assessed in accordance with Section 518(a) of SMCRA or Abandoned Mine Land fees assessed in accordance with Section 402 of SMCRA were also outstanding at the time of permit issuance

ATURE OF VIOLATION AND LOCATION: ____

Section of State Law, Regulation or Permit Condition believed to have been violated:

Remarks or Recommendations: Failure by the State to initiate suspension or revocation proceedings will result in the issuance of a Federal notice of violation to the permittee.

Date of Notice: ____ Signature of Authorized Rep.: ____

Print Name and ID: ____

ormation. Original-State's Copy, Blue-Field Office, Yellow-Inspector's Copy

IE-160 (3/81)

Attachment D

4-12-85
AMENDED 6-3-85 and 11/7/85

U.S. DEPARTMENT OF THE INTERIOR
Office of Surface Mining Reclamation and Enforcement
DRAFT **NOTICE OF VIOLATION**
Permanent Regulatory Procedures

1. Notice of Violation Number — — — TV

2. Name (fill in ALL permittee information) ☐ Permittee ☐ No Permit

3. Mailing Address

4. Name of Mine ☐ Surface ☐ Underground ☐ Other (Specify) _____

5. Telephone Number | 6. County | State

7. Operator's Name (If other than permittee)

8. Mailing Address

Originating Office Address

Telephone Number

9. Date of Inspection

10. Time of Inspection From ____ am/pm To ____ am/pm

11. State Permit Number | 12. NPDES Number | 13. MSHA ID Number | 14. OSM Mine Number

UNDER THE AUTHORITY OF THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 (P.L. 95-87; 30 U.S.C. 1201), THE UNDERSIGNED AUTHORIZED REPRESENTATIVE OF THE SECRETARY OF THE INTERIOR has conducted an inspection of the above mine on the above date and has found violation(s) of the Act, the regulations or required permit condition(s) listed in the attachment(s). This Notice constitutes a separate Notice of Violation for each violation listed.

You must abate each of these violation(s) within the designated abatement time. You are responsible for doing all work in a safe and workmanlike manner.

THE UNDERSIGNED AUTHORIZED REPRESENTATIVE HEREBY FINDS THAT THIS NOTICE ☐ DOES NOT ☐ DOES REQUIRE CESSATION OF MINING EXPRESSLY OR IN PRACTICAL EFFECT. Therefore, you ☐ are ☐ are not entitled to an informal public hearing on request, within 30 days after service of this notice (30 CFR 843.15).

This Notice shall remain in effect until it expires as provided on the reverse or is modified, terminated, or vacated by written notice of an authorized representative of the Secretary. The time for correction may be extended by an authorized representative for good cause. If you need additional time to correct the violation(s), please contact the field office named above.

IMPORTANT—Please Read Information on the Back of this Page

15. Print Name of Person Served (fill in ALL service information)

16. Date of Service

16. Print Title of Person Served

18. Print Name of Authorized Representative

20. Signature of Authorized Rep

D Number

DRAFT NOV AMENDED: 6-3-85 and 11/7/85

U.S. DEPARTMENT OF THE INTERIOR
Office of Surface Mining Reclamation and Enforcement

NOV Number

Violation Number of

NOTICE OF VIOLATION (CONTINUATION)

NATURE OF PERMIT CONDITION VIOLATED, PRACTICE OR VIOLATION

The permittee named herein, or an entity owned or controlled by the permittee, or a person who owns or controls the permittee, has failed to abate Federal violations: (LIST UNABATED NOVs and COs) and/or pay Section 518(h) penalties. In addition at the time of permit issuance OSMPE has determined that outstanding Section 518(a) civil penalties and/or Section 402 Abandoned Mine Land fees existed.

PROVISION(S) OF THE REGULATIONS, ACT OR PERMIT VIOLATED

Section 521 (if unabated COs and NOVs)

Section 518 (if unpaid civil penalties)

Section 402 (if unpaid AML fees)

Section 510(c) of the Surface Mining Control and Reclamation Act of 1977.

PORTION OF THE OPERATION TO WHICH NOTICE APPLIES

This notice applies to all mining operations on permit number(s): (LIST PERMIT NUMBER(S)) granted after the issuance of (LIST CO NUMBER(S)).

******* USE ONE NOV FOR EACH PERMIT NUMBER ******

CORRECTIVE ACTION REQUIRED *(Including Interim Steps, If Any)*

Abate all outstanding Federal violations and/or pay all outstanding 518(a), or 518(h) civil penalties or Abandoned Mine Land Reclamation fees:

or,

Execute, to the satisfaction of OSM, a written plan for the abatement of all outstanding Federal violations and/or a written schedule for the payment of all outstanding 518(a) or 518(h) civil penalties or Abandoned Mine Land Reclamation fees.

or,

Cease all mining on permit number (list permit numbers) within 10 days and remain ceased until the above conditions are met.

TIME FOR ABATEMENT *(Including Time for Interim Steps, If Any)*

The time for abatement shall be no longer than 10 days from the date of this notice.

Attachment E

6-5-85

U.S. DEPARTMENT OF THE INTERIOR
Office of Surface Mining Reclamation and Enforcement
DRAFT **CESSATION ORDER**
Permanent Regulatory Procedures

1. Cessation Order Number — — —
TV

Originating Office Address

2. Name (fill in ALL permittee information) ☐ Permittee ☐ No Permit

3. Mailing Address

4. Name of Mine ☐ Surface ☐ Underground ☐ Other (Specify) _____

Telephone Number

5. Telephone Number | 6. County | State

7. Operator's Name (if other than permittee)

9. Date of Inspection

8. Mailing Address

10. Time of inspection From ____ am/pm To ____ am/pm

11. State Permit Number | 12. NPDES Number | 13. MSHA ID Number | 14. OSM Mine Number

UNDER THE AUTHORITY OF THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 (P.L. 95-87; 30 U.S.C. 1201), THE UNDERSIGNED AUTHORIZED REPRESENTATIVE OF THE SECRETARY OF THE INTERIOR has conducted an inspection of the above mine on the above date and has found that a Cessation Order must be issued for each violation(s) of the Act, the regulations, or required permit conditions listed in the attachment(s). This Order constitutes a separate Cessation Order for each condition, practice, or violation listed.

In accordance with Section 521(a) of the Surface Mining Control and Reclamation Act of 1977, YOU ARE ORDERED TO CEASE IMMEDIATELY the operations described in the attachment(s) and to perform the corrective actions described in the attachment(s) within the designated abatement time. Reclamation operations not directly the subject of this Order shall continue while this Order is in effect.

You are responsible for doing all work in a safe and workmanlike manner.

THE UNDERSIGNED AUTHORIZED REPRESENTATIVE HEREBY FINDS THAT THIS ORDER ☐ DOES NOT ☐ DOES REQUIRE CESSATION OF MINING EXPRESSLY OR IN PRACTICAL EFFECT. Therefore, you ☐ are ☐ are not entitled to an informal public hearing on request, within 30 days after service of this Order (30 CFR 843.15).

This Order shall remain in effect until it expires as provided on the reverse or is modified, terminated, or vacated by written notice of an authorized representative of the Secretary.

IMPORTANT—Please Read Information on the Back of this Page

15. Print Name of Person Served (fill in ALL service information)

18. Date of Service

16. Print Title of Person Served

19. Print Name of Authorized Representative

17. Signature of Person Served

20. Signature of Authorized Representative

ID Number

DRAFT CO: 6-5-85

U.S. DEPARTMENT OF THE INTERIOR
Office of Surface Mining Reclamation and Enforcement

Cessation Order Number — — —

Violation Number ___ of ___

CESSATION ORDER *(CONTINUATION)*

NATURE OF PERMIT CONDITION VIOLATED, PRACTICE OR VIOLATION

The permittee named herein has failed to abate (INSERT NOV#). Further, the permittee, or an entity owned or controlled by the permittee, or a person who owns or controls the permittee, has failed to abated Federal violations: (LIST UNABATED NOVs and COs) and/or pay Section 518(a) or 518(h) penalties or Abandoned Mine Land Reclamation fees (LIST SECTION and AMOUNT AS APPROPRIATE). Because these unabated violations and/or 518(h) penalties existed at the time of permit issuance, the permittee has obtained a permit in violation of Section 510(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

PROVISION(S) OF THE REGULATIONS, ACT OR PERMIT VIOLATED

Sections 518(h) and 510(c) of SMCRA. In addition, Sections 521, 518 and 402 of SMCRA (LIST AS APPROPRIATE).

Mark "X" in the appropriate box

☐ The condition, practice, or violation is creating an imminent danger to the health or safety of the public.

☐ The condition, practice, or violation is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

☒ The permittee or operator has failed to abate Violation No. 1 of 1 included in Notice of Violation No. — — — within the time for abatement originally fixed or subsequently extended pursuant to Section 521(a)(3) of the Act. INSERT NOV # ISSUED TO THE PERMITTEE

OPERATIONS TO BE CEASED IMMEDIATELY

All operations are to be ceased immediately on permit number: (LIST PERMIT NUMBER) granted after the issuance of (LIST CO NUMBER(S)).

****** USE ONE CO FOR EACH PERMIT NUMBER ******

You are to begin immediate reclamation of the disturbed area, or in the event reclamation has begun, continue reclamation.

CORRECTIVE ACTION AND TIME FOR ABATEMENT *(If Applicable — Not Required if F.T.A)*

ATTACHMENT F

DRAFT TRANSMITTAL TO PERMITTEE

Dear [Permittee]:

Section 510(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) prohibits a regulatory authority from issuing a permit to an applicant if the application or other information indicates that "any surface coal mining operation owned or controlled by the applicant is currently in violation of this Act" or certain other environmental laws.

[Paragraph to be used if violator and permittee are the same entity. Use (1) and (2) as they apply.]

The Office of Surface Mining Reclamation and Enforcement (OSMRE) has determined that [permittee] has received permit number(s) _____ _____ in apparent violation of Section 510(c). This basis for this determination is as follows:

(1) [Permittee] has outstanding Federal failure-to-abate cessation order(s) and/or unpaid civil penalties assessed in accordance with Section 518(h) of SMCRA against the cessation order(s) as follows:

Federal Cessation Order	Section 518 Penalties
[insert CO number(s)]	[insert and 518(h) penalties as appropriate]

EXAMPLE:

85-XX-XXX	518(h) = $ _____

(2) these cessation order(s), penalties were unabated and/or unpaid at the time that [permittee] received permit number(s) _____.

[Paragraph to be used if the violator and permittee are linked through ownership or control. Use (1) and (2) as they apply.]

The Office of Surface Mining Reclamation and Enforcement (OSMRE) has determined that [permittee] has received permit number(s) _____ in violation of Section 510(c). This determination is based upon the following:

(1) [Permittee] has an ownership or control connection to [violator]. [Violator] has outstanding Federal failure-to-abate cessation order(s) and/or unpaid civil penalties assessed in accordance with Section 518(h) of SMCRA against the cessation order(s) as follows:

Federal Cessation Order(s)	Section 518 Penalties
[insert CO number(s)]	[insert 518(h) penalties as appropriate]

[Format same as previous example]

(2) these cessation order(s), penalties were unabated and/or unpaid at the time [permittee] received permit number(s) _____. The ownership or control connection in this case is through [individual], who is the _____ of [permittee] and the _____ of the [violator].

CONTINUE TEXT

Because permit number(s) _____ has/have been issued in apparent violation of Section 510(c), OSMRE is initiating proceedings to suspend or revoke it/them. OSMRE is taking this action pursuant to its authority in Section 201(c) of SMCRA which provides that "[the] Secretary, acting through [OSMRE], shall...order the suspension, revocation, or withholding of any permit for failure to comply with any of the provisions of this Act or any rules and regulations adopted pursuant thereto... Suspension or revocation of this permit should continue until such time as the following conditions are met:"

[Tailor (1) and (2) to the specifics of the permittee.]

(1) abatement of Federal cessation order number(s) _____ and/or payment of Section 518 penalties fees totalling $ _____, or

(2) execution of a written abatement plan by [violator] and/or [permittee], for cessation order number(s) _____ and/or execution of a written payment schedule by [violator] and/or [permittee] for Section 518 civil penalties totalling $ _____. All abatement plans and payment schedules must be submitted to and approved by OSMRE; as well as payment or execution of payment schedules for unpaid section 402 Abandoned Mine Land fees and/or Section 518 (a) civil penalties totalling $ _____, which OSMRE determined existed at the time of permit issuance.

ATTACHMENT G

Dear Permittee:

Section 510(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) prohibits a regulatory authority from issuing a permit to an applicant if the application or other information indicates that "any surface coal mining operation owned or controlled by the applicant is currently in violation of the Act" or certain other environmental laws.

On [insert date] this office informed you by letter (copy enclosed) that you had been issued a surface coal mining permit in violation of Section 510(c) of SMCRA. In that letter you were informed that you had 30 days from receipt of that notice to notify this office of the action(s) you took to correct the violation(s) [list violations and permits], and/or pay the penalties and fees owed [list the penalties and fees owed]. You were informed that if at the end of 30 days you had not taken appropriate action to correct those violation(s) and/or pay the penalties or fees owed, your permit(s) would be suspended.

It is the determination of this office that you have not taken appropriate action, as described in our letter of [date] to correct the violation(s) and/or pay the penalties or fees owed [insert the appropriate information], and therefore in accordance with Section 201(c) of SMCRA your permit(s) [list permit number(s)] are hereby suspended until the violation(s) are abated or penalties and fees paid.

In accordance with 43 CFR, Part 4, Section 4.1282 you have the right to appeal the decision within 20 days from the date of receipt of this notice. You may appeal by filing a written notice of appeal with [name and address of OSMRE official whose decision is being appealed] and at the same time send a copy of the notice to the Board of Land Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203. The notice of appeal shall indicate that an appeal is intended and must identify the decision and date of the decision being appealed. The notice may include a statement of reasons for the appeal and any arguments that you choose to make. If the notice of appeal does not include a statement of reasons for the appeal, a statement must be filed with the Board within 20 days after filing of the notice of appeal.

If you wish to abate the outstanding violation(s) and/or pay the civil penalties and fees owed, please contact me immediately at [telephone number].

Sincerely,

Field Office Director

Enclosure

In addition, OSMRE will withhold any additional permit applications by [violator or permittee] and entities linked to [violator] through ownership or control, pending anywhere in the United States, as required by Section 510(c) of SMCRA and request State regulatory authorities to do the same. These permit applications should be withheld until the violation(s) are abated and all SMCRA civil penalties are paid, or written abatement and payment schedules are executed and approved. If you believe there is a reason why your permit(s) should not be suspended or revoked, please submit that explanation to OSMRE for our review. Reasons may include evidence that the subject violations have been abated or otherwise resolved, all civil penalties or fees have been paid, or other information that you believe has bearing on the case.

You will be allowed 30 days from receipt of this notice to notify this Field Office of your actions taken to correct the violation(s) and/or pay the penalties owed. If at the end of 30 days you have not taken appropriate action to correct the violation(s) and/or pay the penalties owed, your permit(s) will be suspended or revoked.

If you wish to abate the outstanding violation(s) and/or pay the civil penalties owed, please contact me immediately at [telephone number].

Sincerely,

Field Office Director

ATTACHMENT H

Dear Permittee:

On [date of letter] this office informed you by letter (copy enclosed) that your permit(s) [list permit number(s)] was being suspended until you took appropriate action to correct the violation(s) and/or pay the Section 518(c) or (h) penalties or fees owed under the Surface Mining Control and Reclamation Act of 1977. It is the determination of this office that you have taken appropriate action in this matter to abate the outstanding violation(s) [list the violation(s)] on permit(s) [list the permit(s) number(s)]. Therefore, the order of suspension is hereby terminated and you may resume surface coal mining operations.

If you have any questions, please contact me at [telephone number].

Sincerely,

Field Office Director

Enclosure

Attachment 1-Page 1

INDEXED SECT 3 REPORT
APPLICANT VIOLATOR WATCH OPS

FOR PERIOD BEGINNING: 10/01/06
ENDING: 12/31/06

ST	PERMITTEE NAME	PERMIT NO.	VIOLATOR NAME	VIOLATIONS	S/N	DEFERRED TO O.A.	10-DAY NOTICE (DATE)	NOV ISSUED (DATE)	CO ISSUED (DATE)	SETT AGREES (DATE)	REMARKS
AL	DEADY MOUNTAIN MINING	P-3303 P-3236 P-3242 P-3241 P-3363 P-3349 P-3300	CALVERT & MARSH	C00-2-94-17 C01-10-50-1	N N	4/16/06	5/15/06				OWN/CONTROL--GEORGE SIMMONS IS PRESIDENT OF DEADY MOUNTAIN MINING AND IS CHAIRMAN OF THE BOARD OF CALVERT AND MARSH. DNR REVOKED ALL 7 PERMITS AS OF 10/6/06. CASE CLOSED.
AL	P & P MINING & REAL ESTATE INC	3366	BOSTON COAL CO.	C00-2-106-1 C00-2-04-1 C00-2-97-13	I N P	10/30/05	5/15/06				OWNERSHIP/CONTROL--JOHN PRESCOTT IS PRES. OF P&P AND BOSTON COAL. ON 10/16/06, STATE ALS REVOKED PERMIT. CASE CLOSED.
IN	GREAT LAKES COAL CO.	S-00416 S-00421 P-00414	GREAT LAKES LTD PARTNERSHIP	C79-3-3-3 C06-3-12-5 C06-3-35-1 C06-3-35-2 C06-3-35-3 C02-3-42-1 C06-3-35-8 C06-3-35-10	I I I I I I I I	03/15/05	04/12/05 04/30/06	04/30/05 03/14/06		03/29/06	OWNERSHIP/CONTROL--GREAT LAKES COAL CO AND GREAT LAKES LIMITED PARTNERSHIP SHARE THE SAME OFFICERS, SPECIFICALLY ALL DUNKE, BRIAN BRUNS AND HARLEY SOLTIS. AGREEMENT MADE TO PAY $35,000 IN CIVIL PENALTIES BUT COMPANY NEVER SIGNED AGREEMENT. COURT DATE SCHEDULED FOR 1/07 FOR COLLECTION OF CIVIL PENALTIES. TOM ISSUED 1/30/06 FOR NON-PAYMENT OF ANL FEES WITHIN 30 HOURS. AN INFORMAL HEARING ON 3/14 RESULTED IN AN AGREEMENT TO PAY ANL FEES. PAYMENT OF $40,000 WAS MADE ON 3/30/06 AND NOV WAS TERMINATED. COMPANY HAS SINCE DEFAULTED ON AGREEMENT. FOR AND SOL AWAITING OUTCOME OF 1/07 HEARING FOR COLLECTION OF CIVIL PENALTIES TO DETERMINE IF NETWORTH IS ADEQUATE PRIOR TO PURSUING ANL COLLECTION.
IN	COAL FUELS ENERGY & RESOURCES	000-3219	SAME AS PERMITTEE (PREVIOUSLY "COAL FUELS INC")	C00-2-94-16 C00-2-94-19 C79-2-94-4 C79-2-94-2 C00-2-94-17 C00-2-94-18 C00-2-94-6 C00-2-94-7	N N T T T N N N	3/29/06	3/29/06	3/10/06	8/30/06		OWNERSHIP/CONTROL--PERMITTEE AND VIOLATOR ARE THE SAME COMPANY. PERMITTEE HAS FILED FOR CHAPTER 11 BANKRUPTCY RELIEF. SOL TO INVESTIGATE POSSIBLE AGREEMENT OF CO's.

ENFORCEMENT [illegible] REPORT
APPLICANT VIOLATOR MATCH UPS

FOR PERIOD BEGINNING: 10/01/86
ENDING: 12/31/86

ST	PERMITTEE NAME	PERMIT NO.	VIOLATOR NAME	VIOLATIONS	I/O	REFERRED TO U.S.A.	30-DAY NOTICE (DATE)	NOV ISSUED (DATE)	CO FILED (DATE)	SUIT AGAINST (DATE)	REMARKS
				C04-2-44-2	I						
KY	DIANE COAL COMPANY	860-3013	CHILDERS BROTHERS	C04-2-34-9 C04-2-110-3	O O	5/1/86	5/1/86	7/30/86			OWNERSHIP/CONTROL—EDGAR CHILDERS IS 1/3 PARTNER IN CHILDERS BROTHERS. HE IS THE HUSBAND OF DIANE CHILDERS, AND IS SOLE OWNER OF DIANE COAL. [illegible] HAS CEASED DUE TO [illegible]. SITE LAST INSPECTED 12/11/86.
KY	[illegible] COAL CO.	860-3013	ELAB COAL CO.	C04-2-34-17 C04-2-44-17	O O	6/3/85	9/13/85	01/30/86	02/26/86		OWNERSHIP/CONTROL—LUKE WALKER IS LISTED AS OWNER OF [illegible] COAL CO. AND ELAB COAL CO. AS [illegible] OF 2/26/86 CO. SOLICITOR IS PURSUING [illegible] OF CO's.
KY	LANDON ENERGY, INC.	960-5000	KENNETH R CRAWFORD, JR.	C04-2-97-1 C04-3-8-13	O O	7/21/86	7/21/86				OWNERSHIP/CONTROL - KENNETH CRAWFORD, JR., LINKED TO PERMITTEE THROUGH COMMON OWNERSHIP OF FAMILY BUSINESSES. PER FIELD OFFICE, OSM COMMENCED SUSPENSION/REVOCATION PROCESS. STATE ISSUED ORDER OF NON-COMPLIANCE. CRAWFORD REQUESTED AND WAS GRANTED TEMPORARY RELIEF. AWAITING PRELIMINARY HEARING.
KY	LANDON ENERGY, INC.	960-5000	ANNA LEE COAL CO.	C04-3-3-8 C04-3-3-6	O I	7/21/86	7/21/86				OWNERSHIP/CONTROL - KENNETH CRAWFORD, JR. LISTED AS AN OWNER OF ANNA LEE. OTHER EVIDENCE SUPPORTS OWNERSHIP/CONTROL LINKAGE. PER FIELD OFFICE, OSM COMMENCED SUSPENSION/REVOCATION PROCESS. STATE ISSUED ORDER OF NON-COMPLIANCE. CRAWFORD REQUESTED AND WAS GRANTED TEMPORARY RELIEF. AWAITING PRELIMINARY HEARING.
KY	JASPER [illegible] COALS & ENERGY	860-5040	DEAN TRUCKING CO., INC.	C04-13-200-1	O	6/14/85	7/21/85			10/10/85 12/17/86	OWN/CONTROL — JAMES DEAN, CAB. [illegible] FED. COURT ON [illegible] HELD DEAN PARTIES [illegible] SETTLEMENT AGREEMENT DUE TO [illegible] CO. COURT ON [illegible] [illegible] RECLAMATION