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| | **U·S·DEPARTMENT OF THE INTERIOR**<br>**OFFICE OF SURFACE MINING**<br>**RECLAMATION AND ENFORCEMENT**<br>**DIRECTIVES SYSTEM** | **Subject Number:** INE-27<br>**Transmittal Number:** 397<br>**Date:** 11/10/87 |

**Subject:** Use of Ten-Day Notices to Address Permit Revisions

**Approval:** Fred D. Christensen | **Title:** Director

1. PURPOSE. This directive establishes the procedures to be taken when, based on the results of a field inspection, an authorized representative has reason to believe that: (a) the regulatory authority has issued a permit containing omissions or other permit defects; or (b) a permittee is conducting a practice within the permit area which appears to be inconsistent with the approved operations and reclamation plan.

2. DEFINITIONS. None.

3. POLICY/PROCEDURES.

a. Policy. In both situations above, Field Offices shall issue a ten-day notice to inform the regulatory authority of the need for a permit revision, provided that the alleged problem results from, or has been verified by, a field inspection. Alleged problems identified in the course of administrative permit reviews without field verification shall be addressed and resolved through programmatic discussions with the regulatory authority. The ten-day notice requirement will be waived where a permit problem is causing a condition or practice which requires issuance of an imminent danger/harm cessation order or where a State inspector agrees to take prompt and appropriate action consistent with this directive as a result of a joint OSMRE/State inspection.

b. Procedures.

(1) In the case of 1.(a) above, an appropriate response by the regulatory authority to a ten-day notice would include the following:

(a) requirement of interim steps where necessary and consistent with the approved permit to minimize any potential environmental harm until a permit revision can be approved; and

(b) a good faith application for the required revision has been received from the permittee and a specific time frame for an approval decision has been established in accordance with the State analog to 30 CFR 774.13(b)(1); or

(c) the permittee has been notified in writing in accordance with the State analog to 30 CFR 774.11(b) that a revision is required within a reasonable time and a specific time frame for an approval decision has been established in accordance with the State analog to 30 CFR 774.13(b)(1); or

(d) a showing of good cause for not requiring a revision which may include an affirmation that the basis for the written finding required under the State analog to 30 CFR 774.11(c) is being evaluated and that a final response to the ten-day notice can be expected within a specified and reasonable time frame.

(2) In the case of 1.(b) above, an appropriate response from the regulatory authority to a ten-day notice would include:

(a) the necessary permit revision has been approved and the permittee is now in conformance with the operations and reclamation plan; or

(b) a notice of violation has been issued providing reasonable time based on the circumstances for the permittee to cease an unauthorized practice and either perform any necessary remedial action to conform with the approved operations and reclamation plan, or submit and diligently pursue approval of a permit revision which, if approved, would authorize the practice. Because the violation cannot be terminated until the operation is in accordance with an approved plan, the regulatory authority may appropriately extend the abatement period in accordance with the application processing time frames established under the State analog to 30 CFR 774.13(b)(1). If the application is withdrawn or disapproved, a reasonable time period should then be provided to abate the violation to conform with the plan as originally approved.

4. REPORTING REQUIREMENTS. None.

5. REFERENCES. None.

6. EFFECT ON OTHER DOCUMENTS. Supersedes directive INE-27, Ten-Day Notice Procedures to Address Permit Revisions, Transmittal No. 342, dated 6-2-87.

7. EFFECTIVE DATE. Upon issuance.

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