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	U. S. DEPARTMENT OF THE INTERIOR OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT **DIRECTIVES SYSTEM**	Subject Number: INE-35 Transmittal Number: 401 Date: 11/17/87

Subject: Ten-Day Notices

Approval: [signature] Title: Director

1. PURPOSE. This directive establishes procedures for the issuance, evaluation, and disposition of ten-day notices required under section 521(a)(1) of the Surface Mining Control and Reclamation Act (the Act) in States with approved regulatory programs.

2. DEFINITIONS.

a. Ten-day Notice. Standard form IE-160 (3/81) or an equivalent approved by the Assistant Director for Field Operations, used to notify a State regulatory authority that an authorized representative of the Secretary has reason to believe that a person is in violation of any requirement of the State program or any permit condition imposed under the State program.

b. Reason to believe. An authorized representative shall have reason to believe that a condition, practice, or violation exists if available information or facts alleged by an informant would, if true, constitute a condition, practice, or violation under the State program.

3. POLICY/PROCEDURE.

a. Policy. An authorized representative of the Secretary shall issue a ten-day notice to the State regulatory authority whenever there is reason to believe that a violation of the State program exists. Reason to believe a violation exists may originate from field inspections, written statements provided by any person or public agency, or from inspection and enforcement or other reports generated in connection with the administration or oversight of a State program. However, in the case of the latter, an authorized representative shall take all reasonable precautions to assure the information used as a basis for a ten-day notice is both current and reliable, which may first require contacting the regulatory authority to verify the case facts or conducting an inspection pursuant to Directive INE-27 or otherwise as necessary to confirm the reliability of information alleged in document reviews. The ten-day notice requirement will be waived where a person provides adequate proof that an imminent danger/harm exists and that the State has failed to take appropriate action or where a State inspector agrees to take prompt and appropriate action to cause a violation to be corrected as a result of a joint OSMRE/State inspection.

b. Procedures.

(1) Issuance of Ten-day Notices.

Ten-day notices shall not be issued directly to individual State inspectors but, rather, shall be either hand delivered or sent by certified mail to an appropriate official at the local State office with jurisdiction over the surface coal mining or coal exploration operation. At the same time, a copy of each ten-day notice shall be provided to the permittee in accordance with Directive INE-3. The ten-day notice period shall commence on the day following receipt by the State and expire ten calendar days thereafter in accordance with the time computation provided under 30 CFR 700.15. Field Offices shall establish monitoring systems which effectively track ten-day notice expiration dates. In addition, a chronological case file for each ten-day notice which contains all documents, evidence, and correspondence associated with the case shall be established for each evaluative year.

(2) State Ten-day Notice Responses.

Ten-day notices require written responses from the State within the ten-day period. Interim responses may be accepted initially as good cause where a reasonable extension beyond ten days is necessary to conduct a technical investigation, to make the permit revision finding required under 30 CFR 774.11(c), or otherwise to determine if a violation exists in unusual or complex circumstances. If no response is received within the ten-day period, the Field Office shall immediately contact the appropriate State official to determine the status of the response in order to determine whether a Federal inspection will be necessary.

(3) Evaluation of State Responses.

State ten-day notice responses shall be evaluated on the basis of whether the State took appropriate action under the approved State program necessary to cause the alleged violation to be corrected or whether the State has shown good cause under its approved program for not taking such action. Evaluations shall only consider the case record; unless unusual circumstances are present, it is not appropriate to reinspect the operation as part of the evaluation since the decision resulting from the evaluation must be a decision on whether or not to reinspect. Violations alleged in a ten-day notice which have been corrected or are no longer present when the State conducts its inspection will constitute good cause for not taking appropriate action (except where State laboratory analysis of samples collected during a previous joint OSMRE/State inspection has confirmed the existence of the violation). OSMRE evidence collected to support a ten-day notice shall be made available to the State for its discretionary use.

(4) Upon conclusion of the State ten-day notice evaluation, the Field Office shall immediately notify the State of its decision in writing or orally followed in writing. Any ten-day notice response for which it appears the State has failed to take appropriate action or to show good cause for not taking such action shall be immediately reviewed by the Field Office Director who will be responsible for making the final determination on whether a Federal inspection is warranted. Where it is determined that the State has shown good cause for not taking action to cause a violation to be corrected, a Federal inspection shall not be ordered.

4. REPORTING REQUIREMENTS. None.

5. REFERENCES. Section 521(a)(1) and (a)(2) of the Act; 30 CFR 842.11(b), 843.12 and 700.15; and Directive INE-27, entitled: Use of Ten-Day Notices to Address Permit Revisions.

6. EFFECT ON OTHER DOCUMENTS. Supersedes the following documents:

a. November 18, 1982 memorandum from the Assistant Director, Program Operations and Inspection, subject: Policy on Decision Regarding Appropriate State Action after 10-day Notice.

b. March 15, 1984 memorandum from the Assistant Director, Program Operations and Inspection, subject: Ten-Day Notice Guidance.

c. August 2, 1985 memorandum from the Director, subject: Ten-Day Notices Based on State Inspection Reports.

7. EFFECTIVE DATE. Upon Issuance.

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

	U. S. DEPARTMENT OF THE INTERIOR OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT DIRECTIVES SYSTEM	Subject Number: INE-27 Transmittal Number: 397 Date: 11/10/87

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

Approval: Jed 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