This document has been
Rescinded and is located
in our Archive files.

For Active files, visit
http://www.osmre.gov/directiv.htm

	U· S· DEPARTMENT OF THE INTERIOR **OFFICE OF SURFACE MINING** **RECLAMATION AND ENFORCEMENT** **DIRECTIVES SYSTEM**	Subject Number: INE-38 Transmittal Number: 507 Date: 1/17/89

Subject: Abandoned Sites

Approval: Title: Deputy Director

1. PURPOSE. This Directive provides guidance for selecting and documenting appropriate routine inspection frequencies for abandoned sites under a Federal, Federal lands or Indian lands program as authorized under 30 CFR 842.11(e)-(f).

2. SUMMARY. On August 1, 1988, a final rule became effective (53 FR 24872, June 30, 1988) which enables OSMRE to reduce nonproductive inspections and issuance of duplicative enforcement actions at abandoned sites and thereby concentrate inspection resources at minesites where they will more likely secure compliance. The rule amends 30 CFR 842.11 by adding a definition of the term "abandoned site" and allows OSMRE to select an appropriate inspection frequency for such sites based on the standard "as necessary to monitor for changes in environmental conditions or operational status." In addition, the rule adds to the Federal enforcement regulations at 30 CFR Part 843, a new section 843.22 which authorizes OSMRE to refrain from issuing additional enforcement actions at abandoned sites for violations which can be abated under the remedial actions imposed under any previously issued enforcement action.

3. DEFINITIONS. Abandoned Site means a surface coal mining and reclamation operation for which the regulatory authority has found in writing that each of the criteria under 30 CFR 842.11(e) has been met.

4. POLICY/PROCEDURES.

a. Policy. When conducting routine inspections under a Federal, Federal lands or Indian lands program in accordance with 30 CFR 842.11, it shall be OSMRE's policy to: (1) ensure through the inspection and enforcement process that reclamation at each site proceeds as contemporaneously as practicable with mining operations; (2) ensure that where reclamation or abatement of other violations is not being achieved because a site has been abandoned, all alternative enforcement actions necessary to qualify an operation under the definition of an "abandoned site" are promptly taken; (3) adjust the frequency of inspections at sites which qualify under the definition of "abandoned site" to the minimum necessary to monitor for environmental changes and to avoid the nonproductive expenditure of inspection and enforcement resources and; (4) ensure that reclamation specialists refrain from issuing additional enforcement actions for violations at abandoned sites where compliance with previous unabated enforcement actions would achieve the same result.

b. Procedures. To implement the above policy, Field Office Directors shall:

(1) Immediately implement the alternative enforcement procedures required under Temporary Directive 88-12 and Directives INE-33 and REG-10 once it becomes evident that all mining and reclamation activities at a site have been abandoned and a violation contained in a failure-to-abate cessation order remains unabated for more than 30 days.

(2) Determine which sites currently on the inspectable units list(s) qualify under the definition of "abandoned site" and within the first full inspection quarter following the effective date of this Directive, make the written finding prescribed below to designate an appropriate inspection frequency for each site.

(3) Upon initiating the alternative enforcement, permit blocking and bond forfeiture requirements contained in the Directives referenced above, use Appendix 1 for each abandoned site to document how each of the criteria under the definition apply and the reasons for selecting a designated inspection frequency. Field Offices may develop alternative formats to Appendix 1, provided any such appendix meets all requirements contained in this Directive and imposes no additional criteria which may increase the number of inspections beyond those prescribed.

(4) At a minimum, apply the following criteria when establishing an appropriate routine inspection frequency.

(a) Since enforcement action taken at the inspector level has normally become ineffective to compel compliance at abandoned sites, determination of the appropriate inspection frequency must weigh the utility of continued inspections against the extent to which conditions at the site constitute potential danger to the public health or safety or significant harm to the environment. To determine the potential for such danger or harm, the following factors shall be evaluated at each abandoned site:

(1) the extent of completed or partially completed backfilling and grading and the extent and the success of either natural or planted vegetation to stabilize the soil.

(2) the stability of backfilled areas, spoil piles, spoil downslope, highwalls, fills, and impounding structures.

(3) the extent and impact of continuing erosion and offsite sedimentation, intercepted drainage, impounded water, or acid mine drainage.

(4) the density and proximity of dwellings, schools, churches, or other public facilities.

(5) whether it has been concluded that further enforcement under 30 CFR 842.11(ii) offers little or no likelihood of successfully compelling abatement, whether diligent attempts to locate the responsible parties continue to fail, or whether the responsible parties are bankrupt or in bankruptcy proceedings.

(b) Based on the probability that conditions at the site may cause danger to the public health and safety or significant harm to the environment, the following inspection schedule is provided as guidance. The actual number however, may vary from this schedule depending on the site-specific circumstances.

Probability of Occurrence	Recommended Inspections/Yr.
None or Improbable	0
Probable	1
Highly Probable	2 - 4

(5) Inspection frequencies designated in accordance with this Directive shall be adjusted as necessary in response to new information substantially affecting the status of environmental conditions or operational status at the site. Any change from a previously designated inspection frequency under this Directive will necessitate completion of a new Appendix 1.

5. REPORTING REQUIREMENTS. For each abandoned site, Field Offices shall complete Appendix 1 transmitted with this Directive and maintain the original in the permit file.

6. EFFECT ON OTHER DOCUMENTS. None

7. REFERENCES. 30 CFR sections 840.11(g); 842.11(e); and 843.22.

8. EFFECTIVE DATE. Date of issuance.

9. CONTACTS. Chief, Branch of Inspection and Enforcement, (202) 343-4550, FTS 343-4550.

10. KEYWORDS. Abandoned Site, Inspection frequency, Alternative enforcement.

11. LIST OF APPENDICES. Appendix 1 - Abandoned Site Inspection Frequency Designation Form.

APPENDIX 1

ABANDONED SITE INSPECTION FREQUENCY DESIGNATION

Permittee:

Permit No.:

Part I Definition Criteria

A. Cessation of Mining and Reclamation. Describe the length of time since mining and reclamation activities have ceased and if known, the business or operational status of the permittee or operator.

B. Enforcement Actions. List all unabated notices of violation or cessation orders; the service status of each; and whether any have progressed to an FTA-CO.

C. Permit Blocking. Indicate the action being taken to ensure that the permittee and operator, and owners and controllers of the permittee or operator, are registered under the AVS system and are thereby precluded from obtaining new permits while violations continue at the abandoned site.

D. Alternative Enforcement. Indicate the actions being taken (including referrals to the Solicitor) under 518(e) or (f) or 521(a)(4) or (c) or whether it has been concluded that further enforcement offers little likelihood of success.

E. Bond Forfeiture. Where the site is bonded, indicate the status of permit revocation and formal bond forfeiture proceedings.

Part II Designated Inspection Frequency/Reasons

A. After evaluation of the factors under section 4.b.(4) of the Abandoned Sites Directive, it has been found that the probability that the conditions at the site may cause danger to the public health and safety or significant harm to the environment is:

Probability of Occurrence		No. of Inspections	
None or Improbable	____	(0 inspections)	____
Probable	____	(1 inspection)	____
Highly Probable	____	(2-4 inspections)	____

B. Additional Factors/Reasons (if applicable)

Recommended by _____ Date _____

Field Office Director Concurrence _____