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	U·S·DEPARTMENT OF THE INTERIOR OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT DIRECTIVES SYSTEM	Subject Number: INE-42 Transmittal Number: 665 Date: MAR 26 1991

Subject: Verification of Federal Permittee Ownership and Control Information After Site Disturbance

Approval: Title: Director

1. Purpose. This Directive establishes procedures for conducting reviews of permit application information concerning ownership and control after site disturbance where the Office of Surface Mining Reclamation and Enforcement (OSM) is the regulatory authority. It is OSM's policy to conduct these reviews whenever there is reason to believe that a change has occurred in the ownership or control of the permittee or operator of a mine site and, at a minimum, as a matter of routine within two months after initial disturbance of a permitted site and at least annually thereafter as long as coal extraction on a permitted site has not been completed.

2. Summary of Changes. This Directive is being changed to modify the enforcement action procedures required where a successor in interest or operator not listed on the permit application is found to be conducting surface coal mining operations on the site. The changes are found in Section 3, "Definitions" and Section 4.c.(2)(b), "Procedures."

This Directive implements the verification procedures required by provisions of the Settlement Agreement between Save Our Cumberland Mountains, Inc., et al., and Manuel Lujan, Jr., Secretary of the United States Department of the Interior, et al., dated January 24, 1990 (hereafter "Settlement Agreement").

3. Definitions.

a. Transfer, assignment, or sale of permit rights (permit transfer) is a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit. This definition is based on the common understanding of the terms to include any effective shift in control over rights, in addition to technical changes in ownership. The term includes, for example, changes such as a new officer, director, or owner of 10 percent or more of any class of voting stock as well as the addition of a new operator (not listed in the original permit) who actually performs surface coal mining operations. (See 30 CFR 701.5 and 44 FR 15106, March 13, 1979.)

b. Successor in interest is any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights. The definition of successor in interest is provided to insure consistency with use of the term "transfer,

sale, or assignment of rights" within the same or similar context in 30 CFR 774.17. It, therefore, includes a new or successor operator, in addition to a successor permittee. (See 30 CFR 701.5 and 44 FR 15106, March 13, 1979.)

c. Ownership or other effective control is any one or a combination of relationships specified under 30 CFR 773.5.

4. Policy/Procedures.

a. General. Within 2 months after initial disturbance of a permitted site and annually thereafter, as long as coal extraction on a permitted site has not been completed, OSM shall take reasonable steps to determine whether the ownership and control information contained in the application, concerning at a minimum the permittee, the operator for the site, or an approved successor in interest, and the Mine Safety and Health Administration (MSHA) number (if required), was and remains complete and accurate. For Federal permittees, such steps shall consist of a pre-inspection verification check of the Applicant/Violator System (AVS) and MSHA, Abandoned Mine Land (AML), and Energy Information Agency (EIA) data, and an on-site inquiry during a regular inspection.

If OSM determines, as a result of the actions taken under the preceding paragraph, that the application information may have been incomplete or inaccurate, or may have changed, it shall promptly contact the permittee and require that the matter be resolved expeditiously through submission of a satisfactory explanation, amendment to the application, or application for a transfer, assignment, or sale of permit rights. Where OSM has reason to believe that an omission or inaccuracy was intentional, additional measures and sanctions may be imposed on the permittee as described herein.

In addition, it is OSM's policy to take the necessary actions specified by this Directive whenever there is reason to believe that a change has occurred in the ownership or control of a permittee or operator under a Federal permit.

b. Responsibilities.

(1) Inspectors are responsible for verifying during an inspection within 2 months after initial disturbance of a permitted site and at least annually thereafter, as long as coal extraction on the permitted site has not been completed, whether the ownership and control information contained in the application, concerning at a minimum the permittee, the operator for the site, and the MSHA number remain complete and accurate, and for reporting this information to the Field Office Director.

(2) Field Office Directors are responsible for:

(a) Ensuring that reviews of ownership and control data are appropriately scheduled and documented for each permit;

(b) Notifying the Federal Permitting Entity (FPE) if an inspector determines or other available information indicates that the application information is incomplete, inaccurate, or may have changed; and

(c) Issuing enforcement actions, where necessary.

(3) Federal Permitting Entities (FPE) are responsible for:

(a) Contacting the permittee and requesting an explanation, amendment to the application, or application for a transfer, assignment, or sale of permit rights, if notified that an inspector has determined or other available information indicates to the FPE that the permit application information is incomplete, inaccurate, or may have changed;

(b) Querying the AVS and reviewing MSHA, AML, and EIA information to determine if the permit had been improvidently issued; and

(c) Ensuring that the ownership and control information is entered into AVS.

(4) The AVS Office is responsible for:

(a) Updating AVS; and

(b) Making data from AVS, MSHA, AML, and EIA available to OSM's Field and Area Offices and providing reports to field inspector staff.

c. Procedures.

(1) The Field Office Director shall ensure that routine reviews of ownership and control data are scheduled and performed as required by the Settlement Agreement. For newly-permitted sites, these reviews shall take place within 2 months after initial disturbance of the permitted site and at least annually thereafter, as long as coal extraction on the permitted site has not been completed. For other active sites, this review shall occur during the normal course of the next inspection and annually thereafter.

(2) When scheduled to verify ownership and control information, the inspector shall review the AVS, MSHA, AML, and EIA information, as made available by the AVS computer, before conducting an inspection. Based on this initial review, the inspector shall compare the ownership and control information on the permit application with the data obtained from these sources and note any changes. During the course of the inspection, the inspector shall make inquiries to verify the identities of the permittee, the operator for the site, the MSHA number, and other reasonably available ownership and control information (e.g., the identities of the mine superintendent and his or her supervisors); shall discuss any discrepancies indicated by the data checks; and shall document this review and inquiry (including a summary of discussions held) on a copy of the form in Appendix 1 to this Directive.

Where possible, the inspector's inquiry should be made based on discussions with persons on the minesite. If no representative of the permittee is present on the site during the inspection, the inspector should attempt to conduct the inquiry with the permittee or operator by telephone or by mail, and again during the next scheduled inspection at which there are representatives of the permittee onsite.

If this review and inquiry indicate that there has been a change in the ownership and control data, the following actions shall be taken:

(a) The FPE shall promptly contact the permittee and request an explanation, amendment to the application, or application for a transfer, assignment, or sale of permit rights. After receiving the response from the permittee, the FPE shall:

1. Determine whether an omission or inaccuracy was intentional, and if so, consult with the Field Office Solicitor about whether to refer the matter for possible prosecution of the permittee under SMCRA section 518(g); and

2. Ensure that the ownership and control information is entered into AVS.

(b) If an inspector or the FPE determines that a successor in interest (including an operator) who was not identified in the permit and for whom a transfer, assignment, or sale of permit rights has not been approved is conducting surface coal mining operations on the site, the inspector or the FPE will notify the Field Office Director who shall take immediate enforcement action and refer the case to the appropriate Field Assessment Unit for assessment of a civil penalty pursuant to Directive CAA-1. Such enforcement action shall normally consist of a notice of violation (NOV) issued to the approved permittee and a cessation order (CO) issued to the unapproved successor in

interest. The remedial measures specified in such NOV and CO shall require the cessation of all surface coal mining operations by the unapproved successor in interest until the following conditions have been met:

1. The permittee has submitted to the FPE a complete application for transfer, assignment, or sale of permit rights;

2. The FPE has determined that adequate bond coverage and liability insurance exist with respect to surface coal mining operations by such successor in interest; and

3. The FPE has determined, in accordance with the procedures set forth in Directive INE-33, that such successor in interest is eligible to succeed to mining rights under the permit.

If the final decision on the application for transfer, assignment, or sale of permit rights is a denial of the application, the FPE shall notify the Field Office Director who shall require the immediate cessation of mining by anyone on the site other than the permittee or an operator approved in either the permit or in a separate transfer, assignment, or sale of permit rights.

(c) The Field Office Director shall notify the FPE promptly that the permit application information may have been incomplete or inaccurate, or may have changed; and

(d) The Field Office Director shall schedule a reinspection of the site within 3 working days to ensure that the unapproved successor in interest has ceased surface coal mining operations. Where surface coal mining operations have not been ceased by the previously identified unapproved successor, the inspector shall issue a Failure to Abate Cessation Order against the approved permittee and follow the alternative enforcement procedures of Directives INE-4 and INE-30.

5. Reporting Requirements. FPEs are responsible for providing case-specific data to the AVS Office for inclusion in quarterly reports required by the Settlement Agreement. The AVS Office will specify separate from this Directive the format, contents, and schedule for the reports.

6. Effect on Other Documents. This Directive supersedes Directive INE-42, Transmittal Number 637, dated September 18, 1990.

7. References.

a. Settlement Agreement Between Save Our Cumberland Mountains, Inc., et al., and Manuel Lujan, Jr., Secretary of the United States Department of the Interior, et al., dated January 24, 1990.

b. Directive INE-4, "Notice of Potential Liability for an Individual Civil Penalty."

c. Directive INE-30, "Alternative Enforcement Referrals for Criminal Penalties, Individual Civil Penalties, and Injunctive Relief."

d. Directive INE-33, "510(c) Permit Review Procedures for Federal Permit Applicants."

e. Directive CAA-1, "Civil Penalty Assessment Manual."

8. Effective Date. Upon Issuance.

9. Contact. Chief, Branch of Inspection and Enforcement, (202) 208-2550 or FTS 268-2550.

10. Keywords. Permittee; Operator; Transfer, Assignment, or Sale of Permit Rights; Settlement Agreement, Improvidently Issued Permit.

11. Appendix 1. Verification of Federal Permittee Ownership and Control Information.

Appendix 1

VERIFICATION OF FEDERAL PERMITTEE OWNERSHIP AND CONTROL INFORMATION

INFORMATION FROM PERMIT

Permit Number _____

Permittee(s) _____

Operator(s) _____

MSHA Number(s) _____

PRE-INSPECTION CHECK OF FILES

Indicate by checking that the following data sources were reviewed for changes in ownership and control information. Attach copies of reports that show any apparent changes.

_____ AVS _____ MSHA _____ AML _____ EIA

Are there apparent changes to the O/C information from that stated in the permit application? _____ No. _____ Yes.*

INSPECTION

Name and Title of Person(s) Interviewed _____

_____

Has there been a change in permittee? _____ No _____ Yes*

Has there been a change in or addition of an operator? ___ No ___ Yes*

Has the MSHA Number changed? _____ N/A _____ No _____ Yes*

Have there been any other O/C changes? _____ No _____ Yes*

Were O/C discrepancies discussed? _____ N/A _____ No _____ Yes*

* For any "yes" answer, list the new information, the date of the change, and whether there is an application for transfer, assignment, or sale of permit rights pending (continue on reverse). _____

_____

Has coal extraction on this site been completed? ___ Yes ___ No

_____ _____

Inspector's Name and Signature Date