



U. S. DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
DIRECTIVES SYSTEM

Subject Number:

INE-8

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Subject: Service of Notices of Violation and Cessation Orders

Approval: James R. Harris *[Signature]* Title: Director, Office of Surface Mining

1. Purpose. This directive provides guidance concerning service of notices of violation (NOV's) and cessation orders (CO's) and to assure that CO's for non-abatement are issued and served only after proper service of the underlying NOV's.

2. Definitions. None.

3. Policy/Procedures.

a. Basic Procedures. An NOV or CO must be served in order to be effective. 30 CFR 843.14 (47 FR 35620, August 16, 1982) states that the inspector must give to the agent of the permittee at the coal mining operation a copy of the NOV or CO. If no such agent is available, the copy must be given to the individual who appears to be in charge or to an employee. If no one is present at the minesite, the NOV or CO must be sent by certified mail or must be delivered by hand to the person to whom it is issued or his designated agent. Service is complete upon tender of the notice or order and is not incomplete because of refusal to accept.

b. Lack of Service of NOV. A CO for non-abatement may not be issued for failure to abate an NOV if the NOV has not been properly served.

c. Certified Mail "Unclaimed". When the NOV or CO has been sent by certified mail and has been returned marked "unclaimed" or "addressee unknown" or "left no forwarding address," the inspector must make every reasonable effort to determine whether or not the mail was truly undeliverable or was refused. In some cases, mail marked "unclaimed" may actually have been refused. The inspector or his or her appropriate representative, e.g., secretary, must contact the post office to determine the true circumstances of the undelivered NOV or CO. If indeed, the mail was unclaimed, an attempt must be made to find the correct address of the permittee and to resend the NOV or CO. Sometimes it may be necessary to make repeated efforts to find the correct address of the permittee. A record of each attempt must be made. The inspector or his or her supervisor must make the decision when to cease further attempts.

d. Certified Mail Refused. Service is considered complete if the certified mail was refused. In some cases, mail which is marked "unclaimed" actually may have been refused. In such cases, the inspector must include in the record the evidence he or she

3.d.

has concerning refusal. The inspector should explain why the mail was refused if the circumstances surrounding the case are known. A copy of the refused NOV or CO must be sent to the permittee by regular mail. The transmittal must be documented in the file in order to prove service in any later proceedings.

e. Lack of Service of CO. If there has been proper service on the underlying NOV, but the CO for failure to abate cannot be properly served, the CO is not effective and must be vacated but only after reasonable attempts to serve it have failed.

f. Reissuance of CO. Inspectors must take advantage of opportunities to serve an operator when an operator has been located following issuance of an NOV or CO for which service was incomplete. It will be necessary to adjust the abatement date.

g. Corporate entities. When an NOV or CO cannot be served to a corporation, it is possible that the Secretary of State, Corporation Division, or equivalent office can provide information concerning the correct address of the permittee.

4. Reporting Requirement. None.

5. Reference. 30 CFR 843.14 (47 FR 35620, August 16, 1982).

6. Effect on Other Documents. Replaces Directive, "Service of Notices of Violation (NOV's) and Cessation Orders (CO's)," INE-8, dated May 19, 1981.

7. Contact. Chief, Branch of Inspection (FTS 343-5384).