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	U·S·DEPARTMENT OF THE INTERIOR OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT DIRECTIVES SYSTEM	Subject Number: INE-31 Transmittal Number: 376 Date: 9/23/87

Subject: TERMINATION OF FEDERAL PERMITS

Approval: Jed D. Christensen **Title:** Director

1. PURPOSE. The purpose of this directive is to establish agency-wide policy for the termination of Federal permits for coal mining and reclamation that overlap or duplicate State permits for surface coal mining and reclamation operations on Federal lands pursuant to the terms of a full-delegation cooperative agreement with a State.

2. DEFINITIONS.

a. Federal permit. Any permit issued by OSMRE in its capacity as the regulatory authority on Federal or Indian lands or, under a Federal program for a State, on State and private lands. This term also includes all permits issued by OSMRE in States where OSMRE and the State have dual permitting responsibilities on Federal lands.

b. Federal permitting entity (FPE). The OSMRE organizational unit with responsibility for receiving and processing permit applications and other permitting materials, i.e., the Western Field Operations office or the Division of Tennessee Permitting.

c. Full-delegation cooperative agreement. A cooperative agreement between OSMRE and a State for the permitting and regulation of coal mining and exploration operations on Federal lands that does not provide for dual OSMRE/State permitting of such operations, i.e., only the State issues a permit.

3. POLICY/PROCEDURES. Federal permits shall be terminated as soon as practicable after approval of a full-delegation cooperative agreement.

a. When to Initiate Termination. Termination of a permit will normally occur at issuance of the State permit or at a major event in the permitting cycle, such as (1) mid-term permit review, (2) permit renewal, (3) significant permit revision, or (4) application to mine coal on adjacent land, provided a State permit has been issued or revised under the terms of the cooperative agreement.

b. Responsibilities.

(1) Federal permitting entities. Prior to initiation of action to terminate a Federal permit, the FPE will:

(a) assure compliance of the State regulatory authority permit with the provisions of the cooperative agreement and the Federal lands program, 30 CFR Chapter VII, Subchapter D, including the requirement of 30 CFR 740.15(b) that the performance bonds required for operations on Federal lands are made payable to the United States and to the State.

(b) determine whether all permit conditions appropriate for transfer have been converted and incorporated in the State regulatory authority permit.

(c) for operations where there is Federal coal, review the mining plan and incorporate into the mining plan approval those pertinent conditions of the Federal permit being terminated which the State did not or could not require of the operator. Such conditions must be added to the mining plan approval to assure compliance with all applicable Federal statutes and Executive Orders that have a bearing on the Secretary's decision. Such conditions are not intended to duplicate any Surface Mining Control and Reclamation Act-related conditions in the State regulatory authority's permit.

(d) for operations involving Federal surface/private coal, discuss with and obtain agreement from the land management agency on disposition or resolution of the conditions that the State regulatory authority has not included in its permit.

(e) coordinate with the appropriate Field Office on disposition of any enforcement problems at the minesite.

(2) Field Offices. Prior to initiation of action to terminate a Federal permit, the Field Office will conduct an on-site review to determine whether the operation is working on the ground as was proposed and to determine whether permit conditions are appropriate for transfer or conversion. To avoid unnecessary duplication of inspection activities, a recent complete Federal inspection may be substituted for the on-site review.

c. NEPA Compliance. The regulatory action of permit termination is categorically excluded from the National Environmental Policy Act (NEPA) process where the Federal permit and/or mining plan have been previously covered by the NEPA process (516 DM 2, Appendix 1, 1.5). Where permit termination

is combined with mining plan and/or permitting actions, additional NEPA compliance documents may be required.

d. Termination Action.

(1) No Federal coal involved. For permits where no Federal coal is involved, the termination action will consist of the letter of termination.

(2) Federal coal involved/mining plan modification. For permits involving Federal coal, where the Federal permit termination is occurring in conjunction with mining plan modification, the termination action will occur by the signature of the Assistant Secretary-Land and Minerals Management or designee on the mining plan approval document. The recommendation memorandum from the Assistant Director for Field Operations (ADFO) or designee shall include the number and date of issuance of the Federal permit to be terminated and a discussion of the disposition of the previous Federal permit terms and conditions. The memorandum shall discuss whether the Federal terms and conditions were no longer necessary, absorbed by the State permit, retained and incorporated into the mining plan approval or a special use permit, or handled in some other manner. The letter of termination will be used to notify the operator.

(3) Federal coal involved/no mining plan modification. For permits involving Federal coal, where termination of the Federal permit is occurring without modification of the mining plan, such as at mid-term permit review or permit renewal, the termination action will consist of the letter of termination.

(4) Letter of Termination.

(a) The letter of termination advises the permittee of the decision to terminate the Federal permit, which is specifically identified by number in the letter, in light of 1 the existence of the full delegation cooperative agreement; 2 the issuance of a State permit; 3 review of the mining plan, if Federal coal is involved; and 4 incorporation of all necessary permit conditions in the State permit or other documents.

(b) The letter of termination shall provide a discussion of the disposition of all Federal permit conditions including 1 identification of Federal permit conditions that were the basis for the mining plan approval that remain in effect and 2 identification of Federal permit conditions related to the reserved Secretarial authority of 30 CFR 745.13 that remain in effect.

(c) The letter of termination shall describe any new Federal conditions that are not included in the State permit, but have been incorporated by modification into the mining plan.

(d) The letter of termination shall include a legal description and appropriate maps showing the location of the approved mining plan area. The letter shall contain the statement that, "The current mining plan approved on (date) covers all or portions of Federal Coal Leases (insert appropriate lease numbers) as described below:

(Legal description of Leased Federal Coal within approved mining plan area) as shown on the map appended hereto as attachment A."

(e) The letter of termination shall be signed by the ADFO or designee and is sent to the permittee whenever a Federal permit is terminated. Copies shall be provided to the State regulatory authority, the appropriate Field Office(s) and other Federal agencies by the ADFO.

e. Transfer of Files. At or after termination of the Federal permit, copies of permit files and other pertinent information relating to the Federal permit that will not be needed for future mining plan approvals are to be provided to the State regulatory authority, if requested.

4. REPORTING REQUIREMENTS. None.

5. REFERENCES. 30 CFR Chapter VII, Subchapter D
30 CFR Chapter VII, Subchapter T for States with approved cooperative agreements

6. EFFECT ON OTHER DOCUMENTS. This directive incorporates and supersedes applicable provisions contained in a memorandum of September 12, 1985, from the Director to the Assistant Secretary-Land and Minerals Management entitled, "Federal Lands Procedures for Cooperative Agreement States."

7. EFFECTIVE DATE. Upon issuance.

8. CONTACT. Branch of Federal and Indian Programs, Division of Regulatory Programs, (202)343-1864.