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	U· S· DEPARTMENT OF THE INTERIOR OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT DIRECTIVES SYSTEM	Subject Number: REG-17 RESCINDED Transmittal Number: 382 Date: 10/6/87

Subject: MIDTERM REVIEW OF FEDERAL PERMITS

Approval: Jed V. Christensen | Title: Director

1. PURPOSE. This directive establishes the policies and procedures that Federal permitting entities are to follow when conducting midterm reviews of Federal permits.

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, 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. For this directive, where OSMRE has assumed permitting responsibility pursuant to 30 CFR Part 733, State-issued permits shall be considered Federal permits.

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 reclamation operations and coal exploration activities on Federal lands that provides for State permitting of such operations.

3. POLICY/PROCEDURES.

a. Background. Section 511(c) of the Surface Mining Control and Reclamation Act of 1977 provides that the regulatory authority shall, within a time limit prescribed in regulations promulgated by the regulatory authority, review outstanding permits, and that it may require reasonable revision or modification of the permit during the permit term. The Federal regulations at 30 CFR 774.11 implement these statutory provisions by requiring that the regulatory authority review each permit no later than the middle of each permit term or every five years, whichever is more frequent.

In addition, permits with variances for either mountaintop removal or a delay in contemporaneous reclamation for combined surface and underground mining operations must be reviewed no later than three years from the date of issuance of the permit. Also, permits containing experimental practices or variances from approximate original contour shall be reviewed at least every two and one-half years from the date of issuance.

b. Responsibilities. The FPE is responsible for conducting the required midterm and special purpose permit reviews of all Federal permits. The State regulatory authority has this responsibility for all permits for which it has primary authority, including State permits issued for operations on Federal lands pursuant to a full delegation cooperative agreement or a less-than-full delegation cooperative agreement that provides for State permitting on Federal lands.

c. Policy. The FPE shall conduct the midterm permit review as an evaluation of the adequacy of the permit, not as an evaluation of the permittee's compliance with permit provisions. The FPE shall coordinate midterm permit reviews with Field Offices, interested Federal agencies and Indian tribes, and the permittee. Site visits are not required unless the results of coordination efforts, permitting reports, or inspection and enforcement documents indicate the existence of problems requiring such visits or unless available documentation provides an inadequate basis for the requisite determination of adequacy or finding of need. Subject to resource availability, the FPE may conduct site visits as part of the review process for other permits if it determines that the site visits would be beneficial.

In developing the schedule for reviews, the FPE shall accord higher priority to active mines than to inactive mines. When practical, the FPE shall schedule the midterm reviews to coincide with the required reviews for the special categories of mining as set forth in the State or Federal program counterparts to 30 CFR 774.11(a)(2) and (3).

For operations on Federal lands under a cooperative agreement that requires both OSMRE and the State to issue separate permits for the same operation, the FPE shall, when possible, minimize duplication of State and Federal efforts by evaluating the State's midterm review of the State permit. Where the State review provides adequate detail and analysis, the appropriate determination of adequacy or finding of need for the corresponding Federal permit should be based on the State review rather than on an independent midterm review.

When, pursuant to any review, the FPE determines that permit revisions are necessary or appropriate to maintain or achieve compliance with the applicable State or Federal program, the FPE

shall order the permittee to revise the permit accordingly, and, in accordance with the applicable program counterpart to 30 CFR 774.11(c), shall prepare and document written findings explaining the need for the revisions. If the review finds no need for permit revisions, the FPE shall prepare and document a determination of adequacy.

The FPE may also identify permit provisions that are no longer relevant or which have been rendered obsolete or inefficient by technological advances. The FPE shall notify the permittee in writing that the irrelevant, obsolete, or inefficient provisions are being considered for deletion from the permit. If the permittee concurs, these provisions may be deleted.

d. Review elements and procedures. The FPE shall:

(1) Review all permit documents, including the permit application package, permit revisions, bond releases or bond release applications, monitoring data, and any annual or other reports, to identify all potential problem areas and determine whether revisions are needed. Notify the appropriate Field Office, any land managing Federal agencies or Indian tribes, and the permittee of the review and obtain their comments and recommendations concerning the adequacy of the permit. Place emphasis on all variances, provisions for any of the special categories of mining listed in 30 CFR Part 785, and any nonstandard permit conditions.

(2) Determine whether the permit file contains an up-to-date set of documents, including maps, reflecting all revisions approved since permit issuance.

(3) Evaluate whether the assumptions underlying the findings made prior to the approval of the permit and any variances or special mining practices remain valid and whether, under current permit provisions, the site can be successfully reclaimed to achieve the approved postmining land use.

(4) Review the site's inspection and enforcement history, including all enforcement actions and citizen complaint records, to identify any permit-related problems that may not have been identified during review of the permit file.

(5) Review all changes in the pertinent State or Federal regulatory program made since permit issuance and determine whether any permit provisions need to be revised for the operation to remain in compliance with the current approved program.

(6) (a) Using OSMRE's Handbook for Calculation of Reclamation Bond Amounts (unless the applicable State or Federal

program prescribes use of a different standard), determine the adequacy of the bond posted for the permit area.

(b) If the permittee has posted a surety bond, verify that the surety company appears on the current list of approved sureties maintained by the Department of the Treasury (Treasury Circular 570, "Surety Companies Acceptable on Federal Bonds") and that the bond does not exceed the surety's underwriting limits as stated in that publication. For bonds made payable to both the United States and the State, assure that the surety company is licensed to do business in the State where the operation is located.

(c) For collateral bonds, in accordance with the State or Federal program counterpart to 30 CFR 800.21(e)(2), evaluate the bond value of the collateral to assure that it does not exceed the current market value of the property or assets.

(d) For self-bonds, review the information submitted pursuant to the State or Federal program counterpart to 30 CFR 800.23(b)(3) and (4) and any annual updates to determine that the permittee or parent corporation guarantor satisfy the self-bond criteria.

(7) Prepare a report summarizing the review process and its conclusions, including either a determination of adequacy if no revisions are necessary or a finding of need if the permit must be [illegible]sed to maintain or achieve compliance with the approved program. Notify the permittee of any required revisions, specifying the date by which the proposed revisions must be submitted, or any unilateral deletions of permit provisions.

(8) Maintain all checklists, worksheets, reports, findings and correspondence in a designated midterm permit review file in a manner consistent with OSMRE Directive INF-1.

4. REPORTING REQUIREMENTS. None.

5. REFERENCES.

a. Handbook for Calculation of Reclamation Bond Amounts, OSMRE, 1987.

b. OSMRE Directive INF-1, "Policy and Procedural Guidelines for the OSMRE Records Management System," Transmittal No. 285, October 9, 1986, as modified by Transmittal No. 299, November 17, 1986.

c. Treasury Circular 570, "Surety Companies Acceptable on Federal Bonds," revised annually as of July 1 and published in the Federal Register by the Department of the Treasury.

d. 30 CFR Part 774.

6. EFFECT ON OTHER DOCUMENTS. Supersedes memorandum entitled "Policy and Guidance for Midterm Permit Review," May 20, 1986, from the Deputy Director, Operations and Technical Services to the Assistant Directors, Field Operations, and the Field Office Directors.

7. EFFECTIVE DATE. Upon issuance.

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