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U·S·DEPARTMENT OF THE INTERIOR OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT DIRECTIVES SYSTEM	Subject Number: INE-36 RESCINDED Transmittal Number: 470 Date: 9/26/88

Subject: Suspension and Revocation of Federal Permits Due to Patterns of Violations

Approval: **Title:** Deputy Director

1. Purpose. This directive provides guidance for determining the existence of patterns of violations under 30 CFR 843.13 and for taking action to suspend or revoke a Federal permit when required. This directive also supersedes Directive INE-36, transmittal number 406, dated December 23, 1987.

2. Definitions. As set forth in 30 CFR 843.5, the following definitions apply:

a. Unwarranted failure to comply means the failure of a permittee to prevent the occurrence of any violation of his or her permit or any requirement of the Surface Mining Control and Reclamation Act (the Act), due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Act due to indifference, lack of diligence, or lack of reasonable care.

b. Willful violation means an act or omission which violates the Act, the regulations, the applicable program, or any permit condition required by the Act, the regulations, or the applicable program, committed by a person who intends the result which actually occurs.

3. Policy/Procedures.

a. Background.

This directive delegates additional responsibilities to the Assistant Directors for Eastern and Western Field Operations and the Field Office Directors that were previously delegated to the Deputy Director, Operations and Technical Services. It also provides procedures which clarify that the final decision to suspend or revoke a permit rests with the Office of Hearings and Appeals.

b. Policy. The Office of Surface Mining Reclamation and Enforcement (OSMRE) is required to issue an order to a permittee requiring the permittee to show cause why its permit and right to mine under the Act should not be suspended or revoked, if it is determined that a pattern of violations exists, or has existed, and that the violations were caused by the permittee willfully or through unwarranted failure to comply with the requirements of the Act, the regulatory program, or the permit conditions.

The order requiring the permittee to show cause why its permit should not be suspended or revoked will be issued only after a review of the history of violations of the permittee has been conducted. This review may be prompted by the conditions existing during two or more Federal inspections of the permit area within any 12-month period after appropriate circumstances have been considered, as provided in the Federal, Federal lands or Indian lands program counterpart to 30 CFR 843.13(a)(2). However, a review of a permittee's history of violations shall occur as required by the program counterpart to 30 CFR 843.13, (1) once the permittee has been cited for violations of the same or related requirements during three or more Federal inspections of the permit area within any 12-month period, (2) upon a permittee's failure to abate a violation contained in a notice of violation or cessation order within the abatement period set in the notice or order as subsequently extended, or (3) as indicated by issuance of a failure to abate cessation order or other mechanism to trigger civil penalties assessed under section 518(h) of the Act.

c. Responsibilities.

(1) Field Office Directors are responsible for the determination as to whether a pattern of violations exists or has existed, and whether such violations were caused by the unwarranted failure of the permittee to comply with any requirement of the Act or any permit conditions or were willfully caused by the permittee. Field Office Directors are also responsible for recommending whether permit suspension or revocation should be sought.

(2) Assistant Directors for Eastern and Western Field Operations are responsible for reviewing and concurring with the Field Office Directors' determination that a pattern of violations exists, deciding whether to seek permit suspension or revocation, and issuing orders to show cause why a permit should not be suspended or revoked.

(3) Assistant Director, Finance and Accounting is responsible for assisting the Assistant Directors for Eastern and Western Field Operations and Field Office Directors in developing report formats for data contained in the Collection Management Information System (CMIS) or its successor and providing such reports to those offices upon request.

d. Procedures.

(1) The Assistant Directors for Eastern and Western Field Operations in conjunction with the Assistant Director, Finance and Accounting, will establish procedures whereby data from CMIS is incorporated into the process of reviewing a permittee's history of violations to the extent necessary to identify all potential patterns of violations cases.

(2) Where the Field Office has reason to suspect that a pattern of violations exits, it will conduct a review of the permittee's history of violations issued under the criteria contained in 30 CFR 843.13(a)(4). In

conducting this review, the following criteria as specified in 30 CFR 843.13(a)(2) and (3) will be used:

(a) The number of violations cited on one or more occasions, of the same or related requirements of the Act, the Federal rules, the Federal program, or the permit (Note that the issuance of a cessation order for a given violation as a result of a permittee's failure to abate the same violation previously cited in a notice of violation constitutes only one violation for the purposes of determining the existence of a pattern of violations);

(b) The number of violations, cited on one or more occasions of different requirements of the Act, the Federal rules, the Federal program or the permit; and

(c) The extent to which the violations are isolated departures from lawful conduct.

(3) From the facts ascertained from the review, the Field Office Director will make an initial determination relative to the existence of the suspected pattern. If the Field Office Director determines that inadequate facts exist to support a pattern of violations, the occurrence of the review will be documented in writing and retained in the field office records. No further action is required.

(4) If the Field Office Director determines initially that a pattern exists, the facts ascertained during the review to support the determination will be thoroughly documented in writing and submitted to the appropriate Assistant Director for Field Operations for concurrence. The Field Office Director will also recommend whether to pursue permit suspension or revocation. The minimum permit suspension period that can be recommended is three (3) working days, as provided by 43 CFR 4.1194(b). If the Assistant Director finds that the existence of a pattern is not adequately supported and does not concur with the initial determination, the Assistant Director will notify the Field Office Director in writing of the decision and no further action will be taken.

(5) If the Assistant Director concurs with the initial determination that a pattern of violations exists and the recommendation to pursue permit suspension or permit revocation, he will (with coordination from the Office of the Solicitor) issue an order to show cause. The decision relating to the appropriateness of suspending a permit and the length of such suspension versus revocation of a permit will be made by the Assistant Director. The Assistant Director's decision on whether to suspend or revoke a permit and for how long is case-specific and will be based on the permittee's history of previous patterns and the Field Office Director's recommendation on the type of violations (unwarranted failure to comply or willful violation), the permittee's compliance record (e.g., whether the permittee previously had a permit suspended or revoked), or if the permittee continued to mine on a suspended permit. In the latter instance, permit revocation would be appropriate. Upon issuance of an order to show cause, the Assistant Director, as required by 30 CFR 843.13(a)(1),

shall promptly file a copy of any such order with the Office of Hearings and Appeals and the State Regulatory Authority, if any.

(a) The order to show cause why a permit and right to mine under the Act should not be suspended or revoked should clearly present adequate evidence, as required by 43 CFR 4.1190(b) that a pattern of violations exists or has existed, thus making the provisions of the Federal, Federal lands, or Indian Lands program counterpart to 30 CFR 843.13 applicable to the particular situation, and that these reasons are the basis for issuance of the show cause order.

(b) Once the order to show cause is filed with the Office of Hearings and Appeals, the permittee shall have thirty days to file an answer to the order.

(c) If the permittee files an answer to the show cause order and requests a hearing, the Office of Hearings and Appeals will give thirty days written notice of the date, time and place of the hearing to the Assistant Director, the permittee, the State regulatory authority, if any, and any intervenor. The Assistant Director shall publish the notice, if practicable, in a newspaper of general circulation in the area of the surface coal mining and reclamation operations, and shall post it at the State or field office closest to those operations.

(d) Within sixty days after the hearing, and within the time limits set forth in 43 CFR 4.1194-4.1195, the Office of Hearings and Appeals will issue a written determination as to whether a pattern of violations exists and, if appropriate, shall issue an order, in accordance with 30 CFR 843.13(b) and (c). The Office of Hearings and appeals will make a written determination as to whether a pattern of violations exists even if the permittee does not file an answer to the order, or does not request a hearing, or if a hearing is requested and the permittee fails to appear.

(i) When the determination is made to revoke the permit and the right to mine under the Act, the permittee will be required to immediately cease mining activities on the permit area.

(ii) When the determination is made to suspend the permit and right to mine under the Act, the permittee will be required to complete all affirmative obligations to abate all conditions, practices, or violations as specified in the order.

4. Reporting Requirements. None.

5. References.

30 CFR 843.5
30 CFR 843.13
43 CFR 4.1190
43 CFR 4.1194

Directive OPM-5, transmittal number 415, sections 3.a.(2), 3.c.(23)(b), (c), and (d).

6. Effect on Other Documents.
Supersedes Directive INE-36, dated December 23, 1987.

7. Effective Date. Upon issuance.

8. Contact. Chief, Branch of Inspection and Enforcement, (202) 343-4550.