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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: 637 Date: 9/18/90

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

Approval: Jeremy Adaling **Title:** Director Deputy Assistant Secretary LMMC

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 within 2 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. 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 issued by OSM. 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.)

4. Policy/Procedures.

a. General. Subparagraph 3.1.4 of the Settlement Agreement requires that 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, 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.

Subparagraph 3.1.5 of the Settlement Agreement requires that if OSM determines, as a result of the actions taken under subparagraph 3.1.4, 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.

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 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 that 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 information is entered into AVS files.

(4) The AVS Office is responsible for:

(a) updating AVS files; 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 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 Office, 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) Where an operator not listed on the permit application is found to be conducting surface coal mining operations on the site, the inspector shall issue a Notice of Violation (NOV) against the permittee and operator requiring all surface coal mining operations by that operator to cease immediately until an application for transfer, assignment, or sale of permit rights is approved. Surface coal mining operations on the site may continue if resumed by the permittee or by the operator identified in the approved permit;

(b) 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

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

(3) 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:

(a) 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

(b) ensure that the information is entered into AVS files.

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.

6. Effect on Other Documents. None.

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. Temporary Directive 90-01, "Improvidently Issued Permits."

f. Directive AML 15-1, "Abandoned Mine Land (AML) Fee Citations."

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