STATEMENT OF POLICY

Upon examination of the issue, the Department has concluded that the regulation contained at 30 CFR 843.12(a)(2) was properly and lawfully promulgated; therefore there is no need to reconsider the issue.

It is the Department's opinion, as set forth in the original preamble to 30 CFR 843.12, that "Congress did (not) intend OSM to sit idly by while...violations ripen into imminent hazards." 44 FR 15302, March 13, 1979. Rather as the preamble stated, the legislative history indicates that when "an OSM inspector discovered a violation at the mine, he must
report the violation to the operator and the state and give the state 10 days to take appropriate action to require the 
operator to correct the violation. If the State takes such action, OSM does nothing further.” 44 FR 15303. However, if 
the state fails to take adequate action or show good cause for such failure, OSM under 30 CFR 843.12 shall issue a 
notice violation. As the preamble further stated, in situations where “the State had already been given an opportunity to 
take 'appropriate action' and had failed to do so in ten days, the OSM inspector could issue the notice on the spot without 
re-referring the case to the State.” 44 FR 15303. n1

n1 As the Office of Surface Mining has previously stated in papers filed with the Interior Board of Surface Mining and 
Reclamation Appeals, any OSM determination as to the adequacy or inadequacy of state action or whether an OSM 
inspection is required as a result of a citizen complaint is reviewable by the Office of Hearings and Appeals without 
regard to the existence, or invocation, of state administrative or judicial remedies. See Reply in Opposition, Donald St. 
Clair, et al v. OSM, IBSMA No. 82-33 at 11.

William P. Pendley, Acting Assistant Secretary, Energy and Minerals.

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