



## United States Department of the Interior

OFFICE OF SURFACE MINING  
RECLAMATION AND ENFORCEMENT  
Washington, D.C. 20240



November 15, 2010

### Memorandum

To: Regional Directors  
From:   
Joseph G. Pizarchik  
Director

Subject: Application of the Ten-Day Notice Process and Federal Enforcement to Permitting Issues Under Approved Regulatory Programs

It has come to my attention that there has been some confusion within the Office of Surface Mining Reclamation and Enforcement (OSM) regarding OSM's oversight and enforcement responsibilities with respect to permitting issues arising under approved state or tribal regulatory programs. The source of confusion appears to be an October 21, 2005, letter decision from a former Assistant Secretary for Land and Minerals Management (the *Mettiki* decision), which called into question OSM's legal authority to conduct oversight and enforcement relative to state or tribal permitting decisions.

Based upon my request for legal advice, the Office of the Solicitor has concluded that section 521(a) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. § 1271(a), and OSM's Ten-Day Notice (TDN) and pertinent Federal enforcement regulations at 30 CFR Parts 842 and 843, along with the legal precedent interpreting those provisions, authorize OSM to issue TDNs to state and tribal regulatory authorities and take appropriate enforcement actions with respect to alleged violations or violations of permitting requirements. The Solicitor's Office has also determined that this analysis represents a better reading of SMCRA and OSM's implementing regulations than does the *Mettiki* decision, which does not identify or discuss the most relevant statutory and regulatory provisions.

Based upon this legal advice and the authority vested in me as the Director of the Office of Surface Mining Reclamation and Enforcement, and with the concurrence of the Office of the Assistant Secretary for Land and Minerals Management, I am issuing this memorandum, effective immediately, to reject the rationale set forth in the *Mettiki* decision and to reaffirm OSM's historic position on this issue. This guidance clarifies that OSM's TDN and pertinent Federal enforcement regulations at 30 CFR Parts 842 and 843 apply to *all* types of violations, including violations of performance standards or permit conditions and violations of permitting

requirements. This guidance does not alter the case-specific outcome of the previously-decided *Mettiki* matter.

In sum, OSM must engage in oversight and enforcement relative to state and tribal permitting issues under section 521(a) of SMCRA and OSM's relevant regulations at 30 CFR Parts 842 and 843. All organizational units of OSM with oversight and enforcement responsibilities with respect to state or tribal regulatory programs are directed to follow the TDN and pertinent Federal enforcement regulations at 30 CFR Parts 842 and 843 and apply them to *all* types of violations, including violations of performance standards or permit conditions and violations of permitting requirements.

I concur:   
Sylvia V. Baca  
Deputy Assistant Secretary  
Land and Minerals Management

11-16-10  
Date