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|  | U.S. DEPARTMENT OF THE INTERIOR OFFICE OF SURFACE MINING DIRECTIVES SYSTEM | Subject Code: INE-5 |
| | | Transmittal Number: 939 |
| | | Date: |
| Subject: Mining Without A Permit and/or Mining Off A Valid Permit | | |
| Approval: Brent Wahlquist | | Title: Director |

1. **Purpose.** The purpose of this Directive is to establish the Office of Surface Mining Reclamation and Enforcement's (OSM) policy when an authorized representative of the Secretary encounters operations that are being conducted without a valid surface coal mining permit or activities that are being conducted off a validly issued surface coal mining permit. Additionally, this Directive sets forth OSM's policy on enforcement of 30 CFR 843.11 in primacy states.

2. **Summary of Changes.**

a. The former background section has been deleted and the Directive restructured to comply with the organizational requirements of OPM-1.

b. The Policy section has been revised to set forth OSM's policy for authorized representatives of the Secretary regarding mining without a valid permit and mining off a valid permit including enforcement actions taken in primacy states.

c. The Procedures section has been streamlined to reference the applicable regulatory provisions rather than restate or paraphrase them in this Directive.

3. **Definitions.** None

4. **Policy.** In accordance with 30 CFR 843.11(a)(2), except in the limited circumstances of this subsection, an authorized representative of the Secretary must issue a Cessation Order for surface coal mining operations being conducted by any person without a valid surface coal mining permit or mining off a valid permit.

If a state regulatory authority has taken enforcement action that achieves the same result as the issuance of a Federal Imminent Harm Cessation Order (IHCO), the authorized representative may not issue an IHCO. The issuance of a Federal IHCO is inappropriate where only reclamation activities are being conducted pursuant to approval by the regulatory authority.

5. **Responsibilities.** It is the ultimate responsibility of the Regional Director to assure that the policy and procedures contained in this directive are fully complied with.

6. **Procedures.** A Federal IHCO issued pursuant to the above policy shall order the immediate cessation of mining and impose appropriate remedial measures, citing section 506(a) and 30 CFR 843.11(a)(2), or the state primacy program equivalent. All appropriate corrective action must be set forth in the IHCO.

In cases of the exceptions identified in 30 CFR 843.11(a) (2) (i) and (ii), a Notice of Violation should be issued for mining without a permit or mining off a valid permit and order the cessation of mining within a reasonable time based on the individual circumstances. Where the exceptions in 30 CFR 843.11(a) (2) (i) and (ii) apply in a primacy state, the authorized representative will issue a Ten-Day Notice consistent with the requirements in 30 CFR 843.12(a)(2).

In states with approved programs or where Federal lands cooperative agreements exist with the state regulatory authority, a Federal IHCO will not be issued where the state regulatory authority takes appropriate action that meets the objectives of this section and 30 CFR 842.11(b)(3). However, if the state fails to take appropriate action, the authorized representative shall issue any required IHCO. If, however, the authorized representative disagrees that the action taken by the state regulatory authority was arbitrary, capricious, or an abuse of discretion, he shall not take separate enforcement action, but refer the matter to his supervisor for further resolution.

7. **Reporting Requirements.** None

8. **References.**

- a. Section 506(a), 521(a) (2), 521(a) (3), and 521(a) (5) of SMCRA.
- b. 30 CFR 843.11(a) (2) (45 FR 18555) April 29, 2982.

9. **Effect on Other Documents.** Revises Directive INE-5, Transmittal No. 340 dated May 27, 1987.

10. **Effective Date.** Upon issuance

11. **Distribution.** By electronic format

12. **Appendices.** None

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