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U. S. DEPARTMENT OF THE INTERIOR  
OFFICE OF SURFACE MINING  
RECLAMATION AND ENFORCEMENT  
**DIRECTIVES SYSTEM**

Subject Number:

INE-34

Transmittal Number:

659

Date: FEB 22 1991

Subject: Improvidently Issued Permits

Approval: *[Signature]* Title: Director

1. Purpose. This directive establishes procedures to address improvidently issued permits where the Office of Surface Mining Reclamation and Enforcement (OSM) is either the regulatory authority or acting in its Federal enforcement and oversight capacity in primacy States.

2. Summary. This directive reflects comprehensive revisions to Directive INE-34, Transmittal No. 381 (10/1/87), to implement the Improvidently Issued Permit Rule at 30 CFR 773.20, 773.21, 843.13, and 843.21 (54 FR 18438, April 28, 1989).

3. Definitions.

a. Improvidently Issued Permit - In accordance with 30 CFR 773.20(b), a permanent program surface coal mining and reclamation permit with respect to which, when evaluated against the permit review criteria required under the regulatory program at the time of permit issuance, the regulatory authority finds that:

(1) the permit should not have been issued because an unabated violation, or delinquent civil penalty or abandoned mine land reclamation (AML) fee existed at the time the permit was issued; or the permit was issued on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the appropriate regulatory authority, but a cessation order for non-abatement was subsequently issued. (Note: The NOV presumption is being removed from the Federal rules and from approved State programs for future permits. Refer to directive INE-33, "510(c) Permit Review Procedures for Federal Permit Applications");

(2) the violation remains unabated or the penalty or fee remains unpaid and is not the subject of a good faith appeal, or an abatement plan or payment schedule with which the permittee or person responsible is complying to the satisfaction of the appropriate regulatory authority; and

(3) where the permittee is linked to the violation, penalty or fee through ownership or control, the link between the permittee and person responsible still exists, or where the link is severed, the permittee continues to be responsible for the violation, penalty or fee.

b. Person Responsible - a person who is directly or indirectly responsible for an unabated violation or a delinquent penalty or fee. A person is directly responsible for an unabated violation or a delinquent penalty or fee where such person has been cited for the violation or has been assessed the penalty or fee. A person is indirectly responsible where such person owned or controlled the person cited for the violation or assessed the penalty or fee. (A person who is merely owned or controlled by the person responsible for the unabated violation, penalty or fee would not be directly or indirectly responsible, even though such person is linked to the unabated violation or delinquent penalty or fee through ownership or control).

By the way of illustration, if A controls B and C, and B is a violator but A and C are not, then B is directly responsible for a violation, A is indirectly responsible for a violation, and C is merely linked to a violation through ownership and control. A, B, and C are all ineligible to receive permits. If the links between A and B and A and C are later severed, A and B would still be ineligible to receive permits because they remain responsible (indirectly or directly) for a violation; C, on the other hand, would become eligible to receive a permit because it never was responsible (indirectly or directly) for a violation, and its ownership and control link to a violator has been severed. See 54 FR 18445.

c. Violations Review Criteria - those permitting provisions of a regulatory program under which the regulatory authority reviews the relationship between the applicant and outstanding violations and delinquent penalties and fees and determines whether a permit should be issued, issued conditionally or denied. The violations review criteria to determine whether a permit has been improvidently issued includes all delinquent AML fees; all unabated violations of Federal and State environmental laws, rules and regulations pertaining to air or water quality connected with any surface coal mining operation; any bond forfeiture involving a violation that was unabated at the time of permit issuance and other bond forfeitures which a regulatory authority construes as blocking future permit issuance; all unabated notices of violation (NOV's) and cessation orders (CO's); all delinquent civil penalties imposed under section 518 of the Surface Mining Control and Reclamation Act of 1977 (the Act) or a State program counterpart; and the ownership and control criteria applicable under the regulatory program at the time of permit issuance (including at a minimum actual control demonstrated by any person identified in section 507(b)(4) of the Act). Refer to 54 FR 18440-18441, (April 28, 1989) for guidance concerning effective dates for consideration of each review criteria.

#### 4. Policy/Procedures.

a. Background. Sections 201(c) and 510(c) of the Act require a regulatory authority to withhold a surface coal mining and reclamation permit from any applicant who is either directly or indirectly responsible for an outstanding violation of the Act or certain other environmental laws and regulations or is linked to such a violation through a relationship of ownership or control. OSM has implemented these provisions by regulations at 30 CFR 773.5 and 773.15. Each State regulatory program is required to contain counterparts consistent with those regulations.

Through administrative error or otherwise, regulatory authorities have not always made the connection between an applicant and an unabated violation or a delinquent penalty or fee and as a result, some permits have been improvidently issued. To bring permittees into compliance, OSM promulgated a final rule, which became effective May 30, 1989, governing improvidently issued permits. This rule adds to Part 773 general procedures governing improvidently issued permits and the suspension and rescission of such permits, and to Part 843, procedures for OSM to respond to improvidently issued State permits. In addition to the rules, the Settlement Agreement Between Save Our Cumberland Mountains, Inc., et al. and Manuel Lujan, Jr., Secretary, United States Department of the Interior, et al., executed on January 24, 1990, (the Settlement Agreement), committed OSM to an implementation plan and schedule for reviewing improvidently issued permits and preparing a quarterly report on the results of such review.

The following procedures implement the requirements of the new final rule and the Settlement Agreement. Under the rule and this directive, any existing or future permit may be reviewed to determine if it was issued improvidently. However, the rule does not change any permitting standard either retroactively or prospectively; rather, the violations review criteria of the regulatory program at the time of permit issuance will be used to determine the current violation review status of the permit.

b. Policy. Whenever OSM has reason to believe that a Federal permit has been improvidently issued, it shall be agency policy to immediately conduct a review to determine whether the permit was, in fact, improvidently issued and to take steps to bring the permit into compliance in accordance with the procedures specified in section 4.d.(1) below. Where OSM has reason to believe that a permit approved pursuant to a State program has been improvidently issued, it shall be agency policy to immediately notify the State regulatory authority of the matter, and to follow-up with the State to ensure that the permit is brought into compliance by implementing the procedures specified in section 4.d.(2) below.

c. Responsibilities.

(1) Assistant Director for Field Operations is responsible for approving and issuing notices of proposed and actual suspension and rescission for Federal permits in accordance with 30 CFR 773.21 (section 4.d.(1)(c)-(g) of this directive) and providing internal procedures for Field Permitting Units and Field Office Directors to implement the requirements of this directive.

(2) Field Permitting Units are responsible for conducting permit reviews and preparing written findings when determining that a Federal permit has been improvidently issued as required under 30 CFR 773.20(a); imposing remedial measures required under 30 CFR 773.20(c); preparing for the approval of the Assistant Director for Field Operations notices of proposed suspension and rescission in accordance with 30 CFR 773.21; and tracking and monitoring the progress of any Notice of Proposed Suspension and Rescission, Notice of Permit Suspension, or Notice of Permit Rescission.

(3) Field Office Directors are responsible for implementing the requirements of 30 CFR 843.21 (section 4.d.(2) of this directive) in primacy States, including issuing initial 30-day notification letters and ten-day notices (TDN's), evaluating State responses, and where necessary, issuing Federal notices of violation and taking additional enforcement measures.

(4) AVS Office is responsible for reviewing AVS data to identify potentially improvidently issued permits and for notifying Field Offices and Field Permitting Units of such cases. The AVS Office is also responsible for prescribing detailed reporting requirements to comply with the Settlement Agreement.

d. Procedures.

(1) Federal Permits.

(a) Whenever the appropriate Field Permitting Unit determines that a Federal permit has been improvidently issued because of an unabated violation or a delinquent penalty or fee, it shall immediately notify the permittee by certified mail using the letter format specified in Appendix A and, as an attachment, either or both Appendices A - 1 and A - 2 as appropriate to indicate the basis for OSM's determination that the permit was improvidently issued. This notification shall provide a period of 15 days from the date of receipt within which the permittee or the person responsible may contact the Field Permitting Unit either to submit proof refuting OSM's determination or to cooperate in developing a plan for abatement or in resolving the debt. The permittee will be referred to the Division of Debt Management for debt resolution and to the

appropriate Field Office Director and Office of the Field Solicitor for abatement plans.

(b) Where the permittee complies with paragraph (a) above by entering into an abatement plan or payment schedule, the Field Permitting Unit shall immediately incorporate the terms of the plan or schedule into the permit as a permit condition.

(c) Where the permittee does not contact the Field Permitting Unit or otherwise cooperate to develop an abatement plan or payment schedule within the 15-day period, or if the permittee does not comply with the terms of an abatement plan or payment schedule, the Field Permitting Unit shall immediately prepare a transmittal for the approval of the Assistant Director for Field Operations. The transmittal shall explain the actions taken pursuant to paragraph (a) above and the reasons why they were unsuccessful. It shall be accompanied by a Notice of Proposed Suspension and Rescission using the letter format specified in Appendix B and, as an attachment, a copy of the initial letter (Appendix A and Appendices A - 1 and A - 2 as appropriate). The notice shall specify a reasonable period (e.g., 30 days) not to exceed 90 days after which the permit will automatically be suspended and shall specify a period thereafter not to exceed 90 days after which the permit will automatically be rescinded unless the permittee submits proof that:

1. the written finding is erroneous;
2. the permittee or other person responsible has abated the violation or paid the penalty or fee;
3. the violation, penalty or fee is the subject of a good faith appeal or of an abatement plan or payment schedule with which the permittee or other person responsible is in compliance; or
4. since the finding was made, the permittee has severed any ownership or control link with the person responsible for the violation, penalty or fee and the permittee does not otherwise continue to be responsible for the violation, penalty or fee.

(d) Each Notice of Proposed Suspension and Rescission shall contain a statement explaining that the permittee may file an appeal for administrative review of the notice under 43 CFR 4.1280 - 4.1286, but that the procedures of 43 CFR 4.21(a) shall not apply to suspend the effect of the notice.

(e) Immediately upon receipt of a Notice of Proposed Suspension and Rescission, the Assistant Director for Field Operations shall make any necessary modifications and

transmit the notice to the permittee by certified mail or, if the notice is not approved, document in writing the reasons for such denial consistent with 30 CFR 773.20 - 773.21.

(f) Where the permittee fails to satisfy the requirements necessary to avoid automatic suspension or rescission, the Field Permitting Unit shall immediately prepare for the approval of the Assistant Director for Field Operations, a Notice of Permit Suspension or a Notice of Permit Rescission, as sequentially appropriate. Examples of these notices are provided in Appendices B - 1 and B - 2 respectively. Both notices carry the same right of appeal as that contained in the Notice of Proposed Suspension and Rescission. The Field Permitting Unit shall ensure that these notices are prepared sufficiently in advance so that they may be received by the permittee on or about the dates specified for suspension and rescission in the Notice of Proposed Suspension and Rescission.

## (2) State Program Permits

Field Office Directors shall implement the following procedures whenever there is reason to believe that a permit approved pursuant to a State program meets the criteria for an improvidently issued permit in 30 CFR 773.20(b) (or the State program equivalent) and the State has not taken appropriate action to bring the permit into compliance in accordance with 30 CFR 773.20 and 773.21 (or the State program equivalents).

(a) Using Appendix C, and as an attachment, either or both Appendices C - 1 and C - 2 as appropriate, the Field Office Director shall send an initial notice by certified mail to the regulatory authority, with a copy to the permittee, stating the Field Office's basis for its belief and providing a 30-day response period from date of issuance.

(b) Within the 30-day period, the regulatory authority will be expected to demonstrate to the Field Office Director in writing either that:

1. the permit does not meet the definition of an improvidently issued permit; or

2. the regulatory authority is acting in compliance with the State program equivalents of 30 CFR 773.20 and 773.21.

(c) Where the Field Office Director finds at the expiration of the 30-day period that the State regulatory authority has not demonstrated either of the above, the Field Office Director shall issue a TDN stating the reasons for the finding and requesting the regulatory authority to take appropriate action under the State program equivalents of 30 CFR

773.20 and 773.21.

(d) When determining whether a State response to a TDN is appropriate, good cause shall not include the lack of State program equivalents of 30 CFR 773.20 or 773.21.

(e) Where the regulatory authority does not take appropriate action within the ten-day period or show good cause for not taking such action, the Field Office Director shall take appropriate remedial action by issuing a notice of violation to the permittee which requires by a specified date:

1. cessation of mining operations and commencement or continuation of reclamation; or

2. abatement of the violation, or payment of the penalty or fee or execution of an abatement plan or payment schedule; or

3. a showing that any ownership or control link with the person responsible for the violation, penalty or fee is severed and the permittee does not continue to be responsible for the violation, penalty or fee; or

4. a showing that the violation, penalty or fee is the subject of a good faith appeal.

(f) The notice of violation shall be terminated upon satisfactory completion by the permittee of the requirements of paragraph (e) above.

(g) A civil penalty shall not be assessed for a notice of violation issued pursuant to paragraph (e) above.

(3) Effect of Bankruptcy on Suspension and Rescission

In cases where a violator or permittee has filed a petition for protection under the bankruptcy laws, the following shall apply to this directive:

(a) Debts that have not been discharged in bankruptcy. No action should be taken to suspend or rescind a permit based on pre-petition debts (unpaid civil penalties or AML fees) that are owed by the permittee or anyone linked to the permittee through ownership or control as long as the permittee is protected by the automatic stay in bankruptcy. Action should be taken to suspend or rescind the permit in accordance with this directive where:

1. one or more debts are post-petition, even though the permittee is protected by the automatic stay;

2. someone other than the permittee (i.e. someone linked to the permittee through ownership or control) is protected by the automatic stay, even though the debts are pre-petition; or

3. pre-petition debts are owed by the permittee, but the automatic stay has expired and the debts have not been discharged.

(b) Debts that have been discharged in bankruptcy. No action should be taken to suspend or rescind a permit based on any debts (unpaid civil penalties or AML fees) that have been discharged in bankruptcy, whether such debts were owed by the permittee or by someone linked to the permittee through ownership or control.\*

(c) Unabated Violations. Action should be taken to suspend or rescind a permit based on any unabated violation that has not been discharged in bankruptcy, regardless of when the violation was cited with respect to the filing of the bankruptcy petition or whether the permittee is protected by the automatic stay.\*

#### 5. Reporting Requirements.

All improvidently issued permits identified through automated review of the AVS are subject to the provisions of the Settlement Agreement. Field Office Directors and Field Permitting Units shall report all improvidently issued permits to the AVS Office together with the status and remedial actions taken to bring these permits into compliance as required by this directive. The AVS Office will specify what information is needed for inclusion in the quarterly reports required by the Settlement Agreement.

6. Effect On Other Documents. This directive supersedes Temporary Directive 90-01 (10/10/89).

#### 7. References.

a. Sections 201(c), 510 (c) and 518(h) of the Act.

b. 30 CFR 773.5, 773.15, 773.20 (54 FR 18438) , 773.21 (54 FR 18438), 843.21 (54 FR 18438).

\* Consult with the appropriate Field Solicitor's Office for guidance on whether particular debts or abatement obligations have been discharged.

c. Settlement Agreement Between Save Our Cumberland Mountains, Inc., et al. and Manuel Lujan, Jr., Secretary, United States Department of the Interior, et al. (January 24, 1990), approved by the district court September 5, 1990.

8. Effective Date. Upon issuance.

9. Contact. Chief, Branch of Inspection and Enforcement, Commercial (202) 208-2550, FTS 268-2550.

10. Keywords. Improvidently issued permit; Ten-Day Notice; Permitting.

11. List of Appendices.

Appendix A: SAMPLE NOTIFICATION TO PERMITTEE (FEDERAL PERMITS)

Appendix A - 1: BASIS FOR DETERMINING IMPROVIDENTLY ISSUED FEDERAL PERMITS

Appendix A - 2: BASIS FOR DETERMINING IMPROVIDENTLY ISSUED FEDERAL PERMITS (OWNERSHIP AND CONTROL RELATIONSHIP)

Appendix B: SAMPLE NOTICE OF PROPOSED SUSPENSION AND RESCISSION (FEDERAL PERMITS)

Appendix B - 1: SAMPLE NOTICE OF FEDERAL PERMIT SUSPENSION

Appendix B - 2: SAMPLE NOTICE OF FEDERAL PERMIT RESCISSION

Appendix C: SAMPLE INITIAL NOTICE TO THE STATE REGULATORY AUTHORITY

Appendix C - 1: BASIS FOR DETERMINING IMPROVIDENTLY ISSUED STATE PERMITS

Appendix C - 2: BASIS FOR DETERMINING IMPROVIDENTLY ISSUED STATE PERMITS (OWNERSHIP AND CONTROL RELATIONSHIP)

[Appendix A]

SAMPLE NOTIFICATION TO PERMITTEE  
(FEDERAL PERMITS)

Dear [Permittee]

Section 510(c) of the Surface Mining Control and Reclamation Act of 1977 (the Act) prohibits a regulatory authority from issuing a surface coal mining and reclamation permit to any applicant who is either directly or indirectly responsible for a violation of the Act or certain other environmental laws or is linked to such a violation through a relationship of ownership or control.

The Office of Surface Mining Reclamation and Enforcement (OSM) has reviewed the circumstances under which you received permit(s) [insert No(s).] and has found that this/these permit(s) was/were issued in apparent violation of the requirements of section 510(c). The basis for this finding is indicated on the enclosure(s).

In accordance with 30 CFR 773.20(c), OSM is required to take appropriate remedial measures, which may include permit suspension and rescission, in order to bring the above permit(s) into compliance with section 510(c) of the Act. To avoid suspension and rescission of the above permit(s), you are hereby provided a 15 day period from receipt of this letter in which to contact OSM at the address below in order either to submit proof that the information in the enclosure(s) is erroneous or to cooperate with OSM to develop a plan for abatement of any outstanding violation or arrange for payment of any penalty or fee owed.

[insert Field Permitting Unit Address/Phone/Contact]

Sincerely,

[Chief, Permitting Unit or other  
person designated by the Assistant Director for Field Operations]

Enclosure

Page \_\_\_\_\_ of \_\_\_\_\_

[Appendix A - 1]

BASIS FOR DETERMINING IMPROVIDENTLY ISSUED FEDERAL PERMITS  
PERMIT NO(S). [INSERT]

At the time you received the above permit(s), you were and continue to be responsible for the outstanding obligations indicated below:

- \_\_\_\_\_ You have not abated notice(s) of violation [insert No(s).] and/or cessation order(s) [insert No(s).].
- \_\_\_\_\_ You have not abated violation(s) cited under other environmental laws as follows: [insert the applicable regulatory authority and violation identification information].
- \_\_\_\_\_ You have not paid civil penalties in the amount of [insert] assessed under Section 518 of the Act in connection with [insert the enforcement action No(s). and respective penalty amount(s)].
- \_\_\_\_\_ You have not paid the Abandoned Mine Reclamation Fee required by Section 402 of the Act in the amount of [insert permit No(s)., MSHA No(s). and respective amount(s) owed].
- \_\_\_\_\_ Permit No(s). [insert No(s).] was/were issued to you with the presumption that notice of violation [insert No.] was in the process of being corrected, but cessation order [insert No.] has been subsequently issued for failure to abate.

[Appendix A - 2]

BASIS FOR DETERMINING IMPROVIDENTLY ISSUED FEDERAL PERMITS  
PERMIT NO(S). [INSERT]

At the time you received the above permits, you were linked through an ownership or control relationship under 30 CFR 773.5 to [insert the entity link]. This entity was and continues to be responsible for the outstanding obligation(s) identified below. Consequently, the above permits issued to you may be subject to suspension and rescission unless the outstanding obligations incurred by the entity to which you have been linked are satisfied.

- \_\_\_ Notice(s) of Violation [insert No(s).] and/or Cessation Order(s) [insert No(s).] has/have not been abated.
- \_\_\_ Violations cited under other environmental laws have not been abated as follows: [insert the applicable regulatory authority and violation identification information].
- \_\_\_ Civil penalties in the amount of [insert] assessed under Section 518 of the Act have not been paid. [insert the enforcement action No(s). and respective penalty amount(s)].
- \_\_\_ Abandoned Mine Reclamation Fees required by Section 402 of the Act in the amount of [insert] have not been paid [insert permit No(s)., MSHA No(s). and respective amount(s) owed].
- \_\_\_ Permit No(s). [insert] was/were issued to the entity to which you have been linked with the presumption that notice(s) of violation [insert No(s).] was/were in the process of being corrected, but cessation order(s) [insert No(s).] has/have been subsequently issued for failure to abate.

[Appendix B]

SAMPLE NOTICE OF PROPOSED SUSPENSION AND RESCISSION  
PERMIT NO(S). [INSERT]

Dear [Permittee]

Section 510(c) of the Surface Mining Control and Reclamation Act of 1977 (the Act) prohibits a regulatory authority from issuing a surface coal mining and reclamation permit to any applicant who is either directly or indirectly responsible for a violation of the Act or certain other environmental laws or is linked to such a violation through a relationship of ownership or control.

By the enclosed letter dated [insert date and enclose initial letter and associated attachments], this office informed you that you had been issued the above surface coal mining and reclamation permit(s) in apparent violation of section 510(c) of the Act. In that letter, you were provided a 15-day opportunity to contact this office and either submit proof that the Office of Surface Mining Reclamation and Enforcement's (OSM's) determination was erroneous or to cooperate to develop a plan for abatement of any outstanding violation or a schedule for payment of any penalty or fee owed.

Our records indicate that you have not [insert the appropriate phrase] [contacted this office as requested nor otherwise cooperated to develop an abatement plan or payment schedule]/[complied with an abatement plan or payment schedule imposed as a permit condition to bring the above permit(s) into compliance]. Consequently, in accordance with 30 CFR 773.20 and 773.21, you are hereby notified that the above permit(s) shall automatically become suspended on [insert reasonable date not to exceed 90 days] and thereafter automatically rescinded on [insert reasonable date not to exceed 90 days]. During permit suspension or rescission, you must cease all surface coal mining operations under the permit except for violation abatement and for reclamation and other environmental protection measures as may be required.

You may avoid this automatic suspension and rescission if, within the time periods specified above, you submit to this office proof that:

1. OSM's determination that the above permit(s) was improvidently issued is erroneous;

2. you or another person responsible has abated the violation or paid the penalty or fee on which OSM's determination was based;

3. the violation, penalty or fee on which OSM's determination was based is the subject of a good faith appeal pursuant to 30 CFR 773.15(b) or of an abatement plan or payment schedule with which you are in compliance; or

4. since OSM made its determination, you have severed any ownership or control link with the person responsible for the violation, penalty or fee and you are no longer directly or indirectly responsible for the violation, penalty or fee.

You have the right to appeal this decision under 43 CFR 4.1280-4.1286 within 20 days from receipt of this notice. You may appeal by filing a written notice of appeal with [name and address of OSM official whose decision is being appealed] and at the same time sending a copy of the notice of appeal to the Board of Land Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203. The notice of appeal shall indicate that an appeal is intended and must identify the decision and date of the decision being appealed. The notice may include a statement of reasons for the appeal and any arguments that you choose to make. If the notice of appeal does not include a statement of reasons for the appeal, a statement must be filed with the Board within 20 days after filing of the notice of appeal. In accordance with 30 CFR 773.21(c), timely filing of an appeal shall not suspend the effect of OSM's decision in this notice to suspend and rescind the permit(s) identified above.

If you have any questions regarding this matter, please contact:

[insert Permitting Unit address/telephone No./contact]

Sincerely,

Assistant Director  
Field Operations

Enclosure

{Appendix B - 1}

SAMPLE NOTICE OF FEDERAL PERMIT SUSPENSION

Dear [Permittee]

By letter dated [insert date], you were issued a Notice of Proposed Suspension and Rescission on the basis that you were issued permit [insert No(s).] in apparent violation of Section 510(c) of the Surface Coal Mining and Reclamation Act of 1977 (the Act). Section 510(c) of the Act prohibits a regulatory authority from issuing a surface coal mining and reclamation permit to any applicant who is either directly or indirectly responsible for a violation of the Act or certain other environmental laws or is linked to such a violation through a relationship of ownership or control.

The Proposed Notice of Suspension and Rescission explained that the above referenced permit(s) would automatically be suspended on [insert date] and thereafter automatically rescinded on [insert date] unless you submitted certain information to this office prior to these dates. Our records indicate that you have not satisfied this requirement. Consequently, you are hereby notified that permit [insert No(s).] is/are suspended. You shall immediately cease all surface coal mining operations under the permit(s), except for violation abatement and for reclamation and other environmental protection measures as may be required.

This permit suspension may be terminated if, prior to the date specified for automatic permit rescission, you submit to this office proof that:

1. OSM's determination that the above permit(s) was/were improvidently issued is erroneous;
2. you or a person responsible has abated the violation or paid the penalty or fee;
3. the violation, penalty or fee on which OSM's determination was based is subject to a good faith appeal pursuant to 30 CFR 773.15(b) or of an abatement plan or payment schedule with which you or a person responsible is in compliance; or
4. since this determination was made, you have severed any ownership or control link with the person responsible for the violation, penalty or fee and you are no longer directly or indirectly responsible for the violation, penalty or fee.

You have the right to appeal this decision under 43 CFR 4.1280 - 4.1286 within 20 days from receipt of this notice. You may appeal by filing a written notice of appeal with [name and address of OSM official whose decision is being appealed] and at the same time sending a copy of the notice of appeal to the Board of Land Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203. The notice of appeal shall indicate that an appeal is intended and must identify the decision and date of the decision being appealed. The notice may include a statement of reasons for the appeal and any arguments that you choose to make. If the notice of appeal does not include a statement of reasons for the appeal, a statement must be filed with the Board within 20 days after filing of the notice of appeal. In accordance with 30 CFR 773.21(c), timely filing of an appeal shall not suspend the effect of this agency's decision in this notice to suspend the permit(s) identified above.

If you have any questions regarding this matter, please contact:

Sincerely,

Assistant Director  
Field Operations

[Appendix B - 2]

SAMPLE NOTICE OF FEDERAL PERMIT RESCISSION

Dear Permittee:

By letter dated [insert date], this office notified you that permit(s) [insert No(s).] was/were suspended and that unless you satisfied certain requirements, the permit(s) would be rescinded on [insert date]. Our records indicate that you have not satisfied the requirements necessary to terminate permit suspension and to avoid permit rescission. Consequently, you are hereby notified that the above referenced permit(s) is/are rescinded. No further surface coal mining operations under this/these permit(s) are allowed, except for violation abatement and for reclamation and other environmental protection measures which may be required.

You have the right to appeal this decision under 43 CFR 4.1280 - 4.1286 within 20 days from receipt of this notice. You may appeal by filing a written notice of appeal with [name and address of OSM official whose decision is being appealed] and at the same time sending a copy of the notice of appeal to the Board of Land Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203. The notice of appeal shall indicate that an appeal is intended and must identify the decision and date of the decision being appealed. The notice may include a statement of reasons for the appeal and any arguments that you choose to make. If the notice of appeal does not include a statement of reasons for the appeal, a statement must be filed with the Board within 20 days after filing of the notice of appeal. In accordance with 30 CFR 773.21(c), timely filing of an appeal shall not suspend the effect of OSM's decision in this notice to rescind the permit(s) identified above.

If you have any questions regarding this matter, please contact:

[insert Permitting Unit address/telephone No./contact]

Sincerely,

Assistant Director  
Field Operations

[Appendix C]

SAMPLE INITIAL NOTICE TO THE STATE REGULATORY AUTHORITY

Dear [State regulatory authority]

Section 510(c) of the Surface Mining Control and Reclamation Act of 1977 (the Act) prohibits a regulatory authority from issuing a surface coal mining and reclamation permit to any applicant who is either directly or indirectly responsible for a violation of the Act or certain other environmental laws or is linked to such a violation through a relationship of ownership or control. All State regulatory programs approved by the Secretary of the Interior are required to contain this prohibition.

The Office of Surface Mining Reclamation and Enforcement (OSM) has reason to believe that permit(s) [insert No(s).] issued to [insert name of permittee] was/were issued in apparent violation of the requirements of section 510(c) and [cite appropriate sections of State's statute and rules]. The basis for this finding is indicated in the enclosure(s).

In accordance with 30 CFR 843.21, we hereby request that, within 30 days from the date of this notice you demonstrate to this office in writing that either:

1. the permit(s) subject of this notice does/do not meet the criteria for an improvidently issued permit under 30 CFR 773.20(b) or the State program equivalent; or

2. your agency is implementing remedial measures in compliance with 30 CFR 773.20 and 773.21 or the State program equivalents.

If a response is not received by this office within the 30-day period, or if you do not make the demonstration requested above, in accordance 30 CFR 843.21(c) OSM will issue a ten-day notice to address this matter.

Sincerely,

Field Office Director

Enclosure

[Appendix C - 1]

BASIS FOR DETERMINING IMPROVIDENTLY ISSUED STATE PERMITS  
PERMIT NO(S). [INSERT]

At the time the above permit(s) was/were issued, the permittee was, and continues to be, responsible for the outstanding obligations indicated below:

- \_\_\_ Notice(s) of Violation [insert No(s).] and/or Cessation Order(s) [insert No(s).] has/have not been abated.
- \_\_\_ Violations cited under other environmental laws have not been abated as follows: [insert the applicable regulatory authority and violation identification information].
- \_\_\_ Civil penalties in the amount of [insert] have not been paid in connection with [insert the enforcement action(s) and respective penalty amounts].
- \_\_\_ Abandoned mine reclamation fees required by Section 402 of the Act in the amount of [insert] have not been paid [insert the permit No(s)., MSHA No(s). and respective amount owed].
- \_\_\_ Permit No(s). [insert No(s).] was/were issued with the presumption that Notice(s) of Violation [insert No(s).] was/were in the process of being corrected, but Cessation Order(s) [insert No(s).] has/have been subsequently issued for failure to abate.

[Appendix C - 2]

BASIS FOR DETERMINING IMPROVIDENTLY ISSUED STATE PERMITS  
PERMIT NO(S). [INSERT]

At the time the above permit(s) was/were issued, the permittee was linked through an ownership and control relationship to [insert the entity link]. This entity was and continues to be responsible for the outstanding obligations(s) indicated below. Consequently, the above permit(s) may be subject to suspension and rescission unless the outstanding obligation(s) incurred by the entity to which the permittee is linked have been satisfied.

\_\_\_\_\_ Notice(s) of Violation [insert No(s).] and/or Cessation Order(s) [insert No(s).] has/have not been abated.

\_\_\_\_\_ Violations cited under other environmental laws have not been abated as follows: [insert the applicable regulatory authority and violation identification information].

\_\_\_\_\_ Civil penalties in the amount of [insert] have not been paid. [insert the Enforcement Action No(s). and respective penalty amount(s)].

\_\_\_\_\_ Abandoned mine reclamation fees required by Section 402 of the Act in the amount of [insert] have not been paid [insert the permit No(s)., MSHA No(s). and respective amount owed].

\_\_\_\_\_ Permit No(s). [insert] was/were issued to the entity to which the permittee was linked with the presumption that Notice(s) of Violation [insert No(s).] was/were in the process of being corrected, but Cessation Order(s) [insert No(s).] has/have been subsequently issued for failure to abate.