

	U.S. DEPARTMENT OF THE INTERIOR OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT DIRECTIVES SYSTEM	Subject Code: INE-34
		Transmittal Number: 954
		Date: NOV - 3 2008
Subject: Improvidently Issued Permits		
Approval: Brent Wahlquist <i>Brent Wahlquist</i>		Title: Director
CHANGE NOTICE-RESCISSION		

1. **Purpose.** The purpose of this Change Notice is to rescind Directive INE-34, Improvidently Issued Permits. The directive was based upon a Settlement Agreement between Save Our Cumberland Mountains, Inc. (SOCM), et al., and the Secretary of the Interior, et al., and addressed Office of Surface Mining Reclamation and Enforcement (OSM) procedures and responsibilities concerning improvidently issued Federal permits as well as OSM's policy, procedures, and responsibilities, in its oversight capacity, with respect to improvidently issued state permits.

2. **Summary of Changes.** On May 22, 1992, a Federal Court decision vacated the above-referenced SOCM Settlement Agreement. The current directive relies upon a regulatory scheme that has been significantly revised as a result of additional litigation and new rulemaking with respect to the implementation of section 510 (c) of the Surface Mining Control and Reclamation Act. The current directive applies the definitions of "ownership" and "control" to improvidently issued permits in a manner that has been superseded by subsequent rulemaking. The current directive also authorizes a Federal role in state permitting that we have found to be unwarranted, unnecessary, and inconsistent with Federal regulations and Departmental policy. Our 2007 Ownership and Control; Permit and Application Information; Transfer, Assignment, or Sale of Permit Rights; Final Rule, (72 FR 68000) removed 30 CFR 843.21. Section 843.21 contained Federal procedures relative to state-issued permits that may have been improvidently issued based on certain ownership or control relationships. The section provided for direct Federal inspection and enforcement, including our authority to issue notices of violation and cessation orders, if, after an initial notice, a state failed to take appropriate action or show good cause for not taking action with respect to an improvidently issued state permit. Therefore, this directive is obsolete and is rescinded.

3. **Effects on Other Documents.** This rescission notice applies to all previous editions of Directive INE-34.

4. **Effective Date.** Upon issuance

5. **Distribution.** By electronic format

Contact: Appalachian Region, Applicant/Violator System Office