



United States Department of the Interior



OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

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FIELD OFFICE

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MEMORANDUM

O. S. M. - MORCC
Alton, Illinois

TO: Al Klein, Regional Director
Appalachian Regional Coordinating Center

FROM: Mary Josie Blanchard, Assistant Director
Program Support

SUBJECT: Response to Request for Policy Guidance Concerning Permit Renewals

Your office submitted an issue paper requesting policy guidance regarding the inconsistency in enforcement procedures when operators fail to promptly file, or the State regulatory authority (RA) fails to promptly process permit renewals. Specifically, your office requested enforcement policy guidance when: 1) renewals are filed in a timely manner, but the RA has not issued the permit prior to expiration of the existing permit; 2) the permit renewal was not filed in a timely manner, and the existing permit expires; and 3) the permit renewal was not filed, and the existing permit expires.

The Interior Board of Surface Mining Appeals (IBSMA), in Claypool Construction Company v. the Office of Surface Mining Reclamation and Enforcement (OSM), 2 IBSMA 81, May 16, 1980, held that an operator conducting surface coal mining operations without a permit did not necessarily demonstrate the existence of significant, imminent harm. In order to address its concerns with the Claypool decision, OSM published the Cessation Orders rule on April 29, 1982 (47 FR 18555). The Cessation Orders rule appears to provide the best guidance for the questions you have posed.

1. What happens if an operator timely submits a renewal application, and the existing permit expires before the renewal is approved by the SRA?

In the April 29, 1982, preamble, OSM revised its rules to require that a Notice of Violation (NOV), instead of a Cessation Order (CO), be issued for mining without a permit. The operator would continue to operate under the terms and conditions of the expired permit. The remedial action would be for the operator to obtain the renewal. The time for abatement could be extended beyond the statutory maximum of 90 days in such a case. The preamble also appears to indicate that an

NOV should be assessed such that it would not require a penalty when the complete and accurate renewal was timely submitted. The rationale for this is that, although the operator would have met all of the requirements for permit renewals, the renewal could not occur due to administrative delay on the part of the RA.

2. What happens if an operator does not timely submit a renewal application and the existing permit expires before the renewal is approved by the RA?

It would appear from the preamble discussion that, if the operator submitted an application for a renewal that was not timely, the RA could take into consideration when the operator did submit the renewal and issue a NOV instead of a CO. Whether there should be a penalty associated with the NOV would appear to be up to the RA. The remedial action would be to obtain the renewal, and the operator would continue to operate under the terms and conditions of the existing permit. However, because the renewal was not timely filed, the operator could only receive an abatement period of 90 days with no subsequent extensions.

3. What happens if an operator does not submit a renewal application, and the existing permit expires?

The preamble discussion is very specific on this point. If the operator has not filed a renewal application and the existing permit expires, the RA must issue a CO. The remedial action in the CO could be to submit a renewal application, at which time the CO would be terminated and a NOV issued. The remedial action required in the NOV would be to obtain a permit renewal. The time for abatement could not extend beyond the statutory maximum of 90 days.

The issue paper recommended that rulemaking be conducted to establish "temporary" or "interim" permits in order to resolve these issues. I do not agree. Neither the Surface Mining Control and Reclamation Act nor its legislative history provides support for such an action, and I believe that OSM and the State regulatory authority already have the enforcement tools and expertise needed to resolve these permitting issues.

cc: Director
Margy White
Rick Seibel
Brent Wahlquist