

Review of Permits during Oversight

Issue:

[Directive REG-8, Oversight of State Regulatory Programs](#), has sometimes been interpreted as authorizing OSM to conduct an oversight review of state-issued permits and state permitting procedures only when inspections or other information available to OSM indicate that permitting deficiencies have resulted in on-the-ground problems. An associated issue centers on OSM's authority to require that permittees and states take action to correct permit defects identified during oversight evaluations of state programs.

Issue Resolution:

Review of State-Issued Permits and State Permitting Procedures

OSM's authority and responsibility to conduct reviews of state-issued permits is clearly stated in 30 CFR 701.4(b)(1). In addition, we interpret Directive REG-8 as authorizing oversight reviews of state permits and permitting procedures whenever appropriate or necessary. Since 1996, OSM has conducted an average of 20 special studies of state permitting activities each year, although the number of studies varies considerably from year to year. In 2009, OSM conducted 10 special studies of state permitting activities. This year, 2010, OSM will conduct more reviews of state-issued permits and state permitting procedures than we did in 2009 in the course of evaluating the National Priority Review Topics, as well as whenever oversight inspections or other information indicate that permits may be deficient.

OSM will revise Directive REG-8 to clarify our authority and responsibility to conduct reviews of state permitting procedures and state-issued permits, including assessments of the adequacy and effectiveness of the state's policies, procedures, and actions regarding new permits, permit revisions, permit renewals, midterm permit reviews, bonding, and the transfer, assignment or sale of permit rights. The revisions will emphasize that, whenever oversight inspections or other information indicate that permits may be deficient, OSM will review the state's permitting process and evaluate the adequacy and effectiveness of the state's policies and procedures and permitting activities as they relate to the issues identified.

Permit Defects

In accordance with the June 11, 2009, MOU, OSM committed to "remove impediments to its ability to require correction of permit defects in SMCRA primacy States." OSM is in the process of implementing this MOU provision.

Once the impediments are removed, OSM will revise and reinstate [Directive INE-35, Ten-Day Notices](#), to provide guidance and procedures for correcting permit defects through the Ten-Day Notice (TDN) process. From 1990 until October 2006, Directive INE-35 set forth OSM policy and procedures for handling permit defects within the TDN process. Among other things, the

directive defined “permit defect” to mean any procedural or substantive deficiency in a permit-related action taken by the regulatory authority and also defined “appropriate response” by a state to a TDN for a permit defect. In October 2006, OSM rescinded Directive INE-35.

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