

Surface Mining Reclamation and Enforcement, Interior

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to-read manner on the mine identification sign, or on the mine bulletin board posted by the minesite office.

(d) The Office shall furnish copies of notices and orders to the State regulatory authority, if any, after their issuance. The Office may furnish copies to any person having an interest in the surface coal mining and reclamation operation or the permit area, such as the owner of the fee, a corporate officer of the permittee, or the bonding company.

(Surface Mining Control and Reclamation Act of 1977, secs. 201, 501, 521(a)(5) (30 U.S.C. 1211, 1251, 1271(a)(5)))

[45 FR 2628, Jan. 11, 1980, as amended at 56 FR 28445, June 20, 1991]

§ 722.15 Informal public hearing.

(a) Except as provided in paragraphs (b) and (c) of this section, a notice of violation or cessation order which requires cessation of mining, expressly or by necessary implication, shall expire within 30 days after it is served unless an informal public hearing has been held within that time. The hearing shall be held at or reasonably close to the minesite so that it may be viewed during the hearing or at any other location acceptable to the Office and the person to whom the notice or order was issued. The Office of Surface Mining office nearest to the minesite shall be deemed to be reasonably close to the minesite unless a closer location is requested and agreed to by the Office. Expiration of a notice or order shall not affect the Office's right to assess civil penalties with respect to the period during which the notice or order was in effect. No hearing will be required where the condition, practice or violation in question has been abated, or the hearing has been waived. For purposes of this section only, mining means (1) extracting coal from the earth or from coal waste piles and transporting it within or from the permit area, and (2) the processing, cleaning, concentrating, preparing or loading of coal where such operations occur at a place other than at a minesite.

(b) A notice of violation or cessation order shall not expire as provided in paragraph (a) of this section if the informal public hearing has been waived or if, with the consent of the person to

whom the notice or order was issued, the informal public hearing is held later than 30 days after the notice or order was served. For purposes of this section:

(1) The informal public hearing will be deemed waived if the person to whom the notice or order is issued:

(i) Is informed, by written notice served in the manner provided in paragraph (b)(2) of this section, that he will be deemed to have waived an informal public hearing unless he requests one within 30 days after service of the notice or order, and

(ii) Fails to request an informal public hearing within that time.

(2) The written notice referred to in paragraph (b)(1)(i) of this section shall be delivered to such person by an authorized representative or sent by certified mail to such person no later than five days after the notice or order is served on such person.

(3) The person to whom the notice or order is issued shall be deemed to have consented to an extension of the time for holding the informal public hearing if his request is received on or after the 21st day after the service of the notice of order. The extension of time shall be equal to the number of days elapsed after the 21st day.

(c) The Office shall give as much advance notice as is practicable of the time, place, and subject matter of the informal public hearing to:

(1) The person to whom the notice or order was issued;

(2) Any person who filed a report which led to the notice or order; and

(3) The State regulatory authority, if any.

(d) The Office shall also post notice of the hearing at the regional district or field office closest to the minesite, and publish it, where practicable, in a newspaper of general circulation in the area of the mine.

(e) Section 554 of Title 5 of the United States Code, regarding requirements for formal adjudicatory hearings, shall not govern the conduct of these informal public hearings. An informal public hearing shall be conducted by a representative of the Office, who may accept oral or written arguments and any other relevant information from any person attending.

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(f) Within five business days after the date of the informal public hearing, the Office shall affirm, modify, or vacate the notice or order in writing and send its decision to:

(1) The person to whom the notice or order was issued;

(2) Any person who filed a report which led to the notice or order; and

(3) The State regulatory authority, if any.

(g) The granting or waiver of an informal public hearing shall not affect the right of any person to formal review under sections 518(b), 521(a)(4), or 525 of the Act.

(h) The person conducting the hearing for the Office shall determine whether or not the minesite should be viewed during the hearing. In making this determination the only consideration shall be whether a view of the minesite will assist the person conducting the hearing in reviewing the appropriateness of the enforcement action or the required remedial action.

(Surface Mining Control and Reclamation Act of 1977, secs. 201, 501, 521(a)(5) (30 U.S.C. 1211, 1251, 1271(a)(5)))

[45 FR 2628, Jan. 11, 1980]

§ 722.16 Pattern of violations.

(a) The regulations of this section set forth the procedures governing the suspension or revocation of State permits and rights to mine under this Act based on a pattern of violations arising during Federal inspections during the initial regulatory program.

(b) *Definitions.* As used in this section—

(1) *Violations of the same or related requirements of the Act, regulations or permit conditions* means noncompliance with any single section of parts 715, 716, or 717 of this chapter.

(2) *Violations of different requirements of the Act, regulations, or permit conditions* means noncompliance with different sections of parts 715, 716, or 717 of this chapter.

(3) *Unwarranted failure to comply* means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of the Act or these regulations due to indifference, lack of diligence, lack of reasonable care; or the failure to abate any violation of such permit, the Act

or regulations due to indifference, lack of diligence, or lack of reasonable care.

(4) *Willful violation* means an intentional action or omission which violates the Act, regulations or permit conditions required under the Act.

(5) *Inspection* as used in this section means any visit to the mine.

(c) *Order to show cause.* (1) If the Director determines that a pattern of violations of any requirements of the Act, the regulations, or a permit condition imposed under the Act or regulations exists, or has existed, and that such violations are caused by the unwarranted failure of the permittee or were willful violations, the Director shall issue an order to the permittee to show cause why the permit should not be suspended or revoked.

(2) The Director may determine that a pattern of violations exists or has existed, after considering the circumstances, including—

(i) The number of willful violations or violations caused by unwarranted failure to comply with the same or related requirements of the Act, regulations, or permit conditions during two or more Federal inspections;

(ii) The number of willful violations or violations caused by unwarranted failure to comply with different requirements of the Act, regulations, or permit conditions; and

(iii) The extent to which the violations were isolated departures from lawful conduct.

(3) Violations of the same or related requirements of the Act, regulations, or permit conditions required by the Act during three or more Federal inspections within any 12-month period which were either caused by the unwarranted failure of the permittee to comply with the Act, the regulations or permit conditions required by the Act, or were willful violations, shall constitute a pattern of violations. A show cause order shall issue unless the Director finds that it would not further enforcement of the performance standards of the Act.

(d) *Suspension or revocation of permit.*

(1) The order to show cause shall be issued and a public hearing, if requested, shall be conducted under the procedures of 43 CFR part 4.