



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

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Subject:

Vacation of Notices of Violation and Cessation Orders

Approval:

Jed D. Christensen

Title: Director

1. Purpose. This directive provides guidance on the vacation of Notices of Violation (NOV) and Cessation Orders (CO).

2. Definitions.

a. Vacation means to cancel, annul, and make legally void any NOV or CO issued by the Office of Surface Mining Reclamation and Enforcement (OSMRE) pursuant to section 521 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

b. Vacation or Termination of Notice of Violation or Cessation Order Form (IE-159). The official form used by OSMRE to execute the vacation of an NOV or CO issued by OSMRE.

3. Policy/Procedures.

a. Background. Section 521(a)(5) of SMCRA authorizes the modification, vacation, or termination of any NOV or CO issued under section 521. This vacation authority enables OSMRE to remedy erroneous or improper enforcement actions without imposing on the operator the expense and delay of a formal administrative review. Such enforcement actions will usually be NOV's issued for violations later found not to have existed or failure-to-abate CO's for which the underlying NOV's were not properly served.

b. Policy.

(1) Authority to vacate NOV or CO. OSMRE directive, "Delegation of Authority," OPM-5, October 1, 1986, delegates this authority to Authorized Representatives as defined in OSMRE directive "Authorized Representatives," INE-18, June 6, 1986.

(2) Restrictions on Vacating NOV's and CO's.

(a) Authorized Representatives under INE-18 are granted separate enforcement responsibilities under Title IV and Title V of SMCRA. An Authorized Representative may vacate only those types (Title IV or Title V) of enforcement actions which he or she is authorized to issue. However, the Authorized Representative vacating the NOV or CO is not required to be the same Authorized Representative who issued the enforcement action.

(b) An authorized Representative may not issue a vacation action for a NOV or CO on appeal with the Office of Hearings and Appeals (OHA) until OHA formally renders a decision to vacate the NOV or CO in question.

c. Responsibilities.

(1) Field Office Directors are responsible for (1) ensuring that vacations are effected only in appropriate circumstances; (2) determining before vacating any NOV or CO that the enforcement action is not under appeal; and (3) recommending to the appropriate Assistant Director for Field Operations the vacation of any NOV or CO under appeal to OHA that should be vacated through formal motion from the Division of Surface Mining (DSM).

(2) Assistant Directors for Field Operations are responsible for (1) approving or disapproving recommendations from Field Office Directors to seek vacation of NOV's or CO's under appeal to the OHA; and (2) requesting that DSM file an appropriate motion where that Assistant Director for Field Operations concurs with the Field Office Director's recommendation to vacate.

d. Procedures.

(1) Field Office Director.

(a) Each Field Office Director will contact DSM before vacating any NOV or CO to determine whether an appeal is on file at OHA.

(b) Where the NOV or CO intended to be vacated is on appeal, the Field Office Director will recommend to the appropriate Assistant Director for Field Operations that the action be vacated through formal motion to OHA.

(2) Assistant Directors - Field Operations.

(a) The appropriate Assistant Director for Field Operations will approve or disapprove the Field Office Director's recommendation to vacate. If approved, the Assistant Director for Field Operations will request that DSM file the required motion. If the Assistant Director does not approve the recommendation, he or she will notify the Field Office Director.

(b) The Assistant Director will keep the Field Office Director informed of DSM efforts to pursue and have granted the motion to allow OSMRE to vacate the NOV or the CO in question.

4. Reporting Requirements. None.

5. References.

(a) The Surface Mining Control and Reclamation Act of 1977, section 521.

(b) Directive, Authorized Representatives, INE-18, June 6, 1986.

(c) Directive, Delegation of Authority, OPM-5, October 1, 1986.

6. Effects on Other Documents. None.

7. Effective Date. Upon issuance.

8. Contact. Division of Regulation and Inspection, 202-343-4295.

9. Rescission and Cancellation. This directive rescinds and supersedes any previous guidance on the same issue.