



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

Subject Number:

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Date: 11/10/87

Subject: Findings and Determinations for Revisions and Renewals of Federal Permits.

Approval:

Jed D. Christensen

Title: Director, OSMRE

1. PURPOSE. This directive establishes policy and procedures concerning (1) the findings required for approval of applications for revisions of Federal permits, (2) the determinations required for approval of applications for renewal of Federal permits, and (3) the findings required for denial of applications for renewal of Federal permits.

2. DEFINITIONS.

a. Federal permit. A permit issued by OSMRE in its capacity as the regulatory authority on Federal lands (in States without cooperative agreements to regulate mining on such lands), on Indian lands, or under a Federal program for a State. For this directive, the term "Federal permit" also includes permits issued by OSMRE for operations on Federal lands where OSMRE and the State have dual permitting responsibilities.

b. Federal permitting entity (FPE). The OSMRE organizational unit with responsibility for receiving and processing applications for renewals and revisions, i.e., the appropriate Eastern or Western Field Operations office.

3. POLICY/PROCEDURES.

a. Permit renewals. The Federal regulations at 30 CFR 774.15 and the State or Federal program counterparts thereof establish requirements that the regulatory authority must follow when reviewing applications for permit renewals. If an applicant for permit renewal submits a complete and accurate application and complies with all procedural requirements, the application may be denied only if the FPE finds any of the situations listed in the State or Federal program counterpart to 30 CFR 774.15(c)(1)(i)-(vi) to exist, or if the FPE is unable to make the applicable additional findings required by section 3.c. of this directive. National Environmental Policy Act (NEPA) compliance requirements do not apply to permit renewals. When making a decision on renewal applications that have been found to be complete and accurate and to have met all appropriate procedural requirements, the FPE shall proceed as detailed below:

(1) Renewals without revision. If the applicant does not propose any revision to the permit at the time of permit renewal, the FPE shall determine whether any of the situations listed in the State or Federal program counterpart to 30 CFR 774.15(c)(1)(i)-(vi) exist. If none do, the FPE shall prepare the findings for approval (Appendix 1) unless the findings required by section 3.c. of this directive cannot be made. In the latter case, or if one or more of these situations do exist, the FPE shall prepare and document the findings for denial (Appendix 2).

(2) Renewals with revision(s). If the renewal application contains one or more proposed revisions to the permit (either significant or nonsignificant), the FPE shall review the application in accordance with both the renewal requirements of section 3.a. of this directive and the revision requirements of section 3.b. The FPE shall then prepare and document the findings appropriate to the type of revision(s) involved (Appendix 3 or 4) and either the findings relating to approval or denial of the renewal (Appendix 1 or 2). When necessary to ensure timely action on the revision application, the FPE may separate the portions of the application requesting renewal from those proposing revisions and process them as separate applications.

b. Permit revisions. Incidental boundary revisions are considered to be minor revisions. Unless otherwise provided by these guidelines or the appropriate State or Federal program, minor revisions are not subject to the notice and public participation requirements of the State or Federal program counterparts to 30 CFR 773.13, 773.19(b)(1) and (3), and 778.21.

The FPE shall review all applications for revisions to permits that include Federal lands to determine whether operations on lands containing leased Federal coal are involved. If so, and if the FPE determines that the revision would constitute a mining plan modification as defined at 30 CFR 746.18(d), the revision application must be processed in accordance with 30 CFR 746.18(b), 746.13 and 746.14. Any mining plan modification requires the approval of the Assistant Secretary-Land and Minerals Management.

The FPE shall process all applications for permit revisions in accordance with the requirements, guidelines and time frames established pursuant to the State or Federal program counterpart to 30 CFR 774.13. When making a decision on an application, the FPE shall also adhere to the following requirements:

(1) Minor revisions. Applications with minor revisions shall be approved if they meet the criteria of the

State or Federal program counterpart to 30 CFR 774.13(c) and if any applicable findings required by section 3.c. of this directive can be made. If so, the FPE shall prepare and document the appropriate findings (Appendix 3). NEPA compliance requirements do not apply to minor revisions.

(2) Significant revisions. Applications for significant revisions shall be approved if they meet the criteria of the State or Federal program counterparts to 30 CFR 773.15(c) and 774.13(c), if all applicable findings required by section 3.c. of this directive can be made, and if they comply with the requirements of NEPA and other applicable environmental laws. If so, the FPE shall prepare and document the appropriate findings (Appendix 4). Refer to the OSMRE NEPA Compliance Handbook for the appropriate NEPA documentation required to accompany the findings.

(3) Denials. If the revision application is not complete and accurate, the permittee shall be given the opportunity to correct the deficiency(s). If the complete and accurate revision application must be denied, the permittee shall be informed in writing by the FPE with an explanation of the reason(s) for denial.

c. Additional requirements.

(1) Violations review. For all applications for renewals and revisions, the findings specified under the State or Federal program counterpart to 30 CFR 773.15(b) for unabated violations and patterns of violations are required only when the identity of any persons required to be listed in the permit application pursuant to the State or Federal program counterparts to 30 CFR 778.13(a) or (c), i.e., officers, partners, principal shareholders, directors and similar persons, has changed. If such a change has occurred, the FPE shall require the applicant to supply the associated violation information on the new individual(s) required by the State or Federal program counterpart of 30 CFR 778.14 and shall prepare the requisite findings.

(2) Federal lands review. When Federal lands are included in the permit area, the FPE shall conduct a review in accordance with paragraphs (b) and (e) of section 522 of SMCRA when processing a revision or renewal application if such a review was not conducted during the permit issuance process. The FPE shall then prepare and document an appropriate set of findings (Appendix 5). Pursuant to section 522(e)(2)(B) of SMCRA, subject to valid existing rights, no surface coal mining operations may be permitted within the boundaries of the Custer National Forest.

4. REPORTING REQUIREMENTS. None.
5. REFERENCES. Handbook on Procedures for Implementing the National Environmental Policy Act, OSMRE, 1981.
6. EFFECT ON OTHER DOCUMENTS. Supersedes memorandum dated June 24, 1986, from the Assistant Director, Program Policy, to the Assistant Directors, Field Operations, entitled "Documentation of Findings and Determinations for Permit Renewals and Revisions."
7. EFFECTIVE DATE. Upon issuance.
8. CONTACT. Chief, Branch of Federal and Indian Programs, (202) 343-1864.

Therefore, in accordance with [the State or Federal program counterpart to 30 CFR 774.15(c)], I conclude that there is no basis for denying the requested renewal. Renewal of Federal permit [number] is hereby approved.

Assistant Director
[title] Field Operations**

[date]

- * Delete in Federal program States
** Or designee

Instructions:

1. The applicable State or Federal program may require additional or slightly different determinations. This document shall be adapted to each State as necessary.
2. All items that are both bracketed and underlined shall be replaced with the applicable specific name, date, reference or number.

Determinations for Approval of Permit Renewal Application[Permit Number][Company Name][Mine Name]

Based on a review of the complete permit renewal application, the existing permit (including all conditions and revisions approved through [date]), the operation's compliance record and all materials submitted by the applicant, I, in consultation with [name of State agency*] and OSMRE's [City] Field Office, have determined that none of the criteria for permit renewal denial found in [the State or Federal program counterpart to 30 CFR 774.15(c)] exist.

In addition, as indicated below, one of the two following findings applies to this application:

- [] The application does not indicate that the applicant has added a new partner, officer, principal, principal shareholder, director or person with a similar ownership or control function required to be listed in the application pursuant to [the State or Federal program counterpart to 30 CFR 778.13(c)].
- [] The application indicates that the applicant has added a new partner, officer, principal, principal shareholder, director or person with a similar ownership or control function required to be listed in the application pursuant to [the State or Federal program counterpart to 30 CFR 778.13(c)]. However, no surface coal mining and reclamation operation owned or controlled by such new persons is currently in violation of SMCRA, any State or Federal program under SMCRA, or any State or Federal law, rule or regulation adopted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection except as provided in [the State or Federal program counterpart to 30 CFR 773.15(b)(1)(i) and (ii)].

Findings for Denial of Permit Renewal Application[Permit Number][Company Name][Mine Name]

Based on a review of the renewal application, the existing permit (including all conditions and revisions approved through [date]), the operation's compliance record, and all materials submitted by the applicant, I, after consultation with [name of State agency*] and OSMRE's [city] Field Office, find that:

[Check all boxes that apply.]

- The terms and conditions of the existing permit are not being satisfactorily met.
- The present surface coal mining and reclamation operations are not in compliance with the environmental protection standards of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the [State or, in Federal program States, Federal] regulatory program.
- The requested renewal substantially jeopardizes the operator's continuing ability to comply with SMCRA and the [State or, in Federal program States, Federal] regulatory program on existing permit areas.
- The operator has not provided evidence of having liability insurance or self-insurance as required by [the State or Federal program counterpart to 30 CFR 800.60].
- The operator has not provided evidence that any existing performance bond required for the operation will continue in full force and effect for the proposed period of renewal, as well as any additional bond required.
- The applicant has not submitted additional revised or updated information as required.
- The application indicates that the applicant has added a new partner, officer, principal, principal shareholder, director or person with a similar ownership or control function required to be listed in the application pursuant to [the State or Federal program counterpart to 30 CFR 778.13(c)]. A review of the new

individual's compliance record indicates that the findings concerning unabated violations and patterns of violations contained in [the State or Federal program counterpart to 30 CFR 773.15(b)] cannot be made at this time.

Therefore, I deny the renewal of Federal permit [number].

Assistant Director
[title] Field Operations**

[date]

- * Delete in Federal program States
- ** Or designee

Instructions:

1. The applicable State or Federal program may require additional or slightly different determinations. This document shall be adapted to each State as necessary.
2. All items that are both bracketed and underlined shall be replaced with the applicable specific name, date, reference or number.
3. Attach a written statement explaining the basis for each denial finding checked.

Findings for Approval of Applications for Minor Revisions

[Permit Number]
[Revision Number]
[Company Name]
[Mine Name]

Based on a review of the application for the permit revision described below:

including all material submitted by [name of company] through [date], I find that:

1. Reclamation as required by the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the [State or, in Federal program States, Federal] regulatory program can be accomplished under the reclamation plan contained in the permit application package, as revised.
2. The application is complete and accurate and the applicant has complied with all requirements of SMCRA and the [State or, in Federal program States, Federal] regulatory program.
3. No other requirements under the [State or Federal program counterpart to 30 CFR 773.15(c)] are applicable.*
4. As indicated, one of the two following findings applies to this application:
 - [] The application does not indicate that the applicant has added a new partner, officer, principal, principal shareholder, director or person with a similar ownership or control function required to be listed in the application pursuant to [the State or Federal program counterpart to 30 CFR 778.13(c)].
 - [] The application indicates that the applicant has added a new partner, officer, principal, principal shareholder, director or person with a similar ownership or control function required to be listed in the application pursuant to [the State or Federal program counterpart to 30 CFR 778.13(c)]. However, no surface coal mining and reclamation operation owned or controlled by such new person is currently in violation of SMCRA, any State or Federal program under SMCRA, or any State or Federal law, rule or regulation adopted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection except as provided in [the State or Federal program counterpart].

to 30 CFR 773.15(b)(1)(i) and (ii)].

Therefore, the application for Revision [number] to Federal Permit [number] is hereby approved.

Assistant Director
[title] Field Operations**

[date]

* If any requirements are applicable, revise this finding to indicate which requirements apply and list the associated findings on an attached sheet.

** Or designee

Instructions:

1. The applicable State or Federal program may require additional or slightly different determinations. This document shall be adapted to each State as necessary.
2. All items that are both bracketed and underlined shall be replaced with the applicable specific name, date, reference or number.

Findings for Approval of Applications for Significant Revisions

[Permit Number]
[Revision Number]
[Company Name]
[Mine Name]

Based on a review of the application for the permit revision described below:

(including all conditions and revisions approved through [date]), the operation's compliance record, and all materials submitted by the applicant, I, after consultation with [name of State agency*] and OSMRE's [city] Field Office, find that:

1. The applicant has demonstrated that reclamation as required by the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the [State or, in Federal program States, Federal] regulatory program can be accomplished under the reclamation plan contained in the application.
2. The applicant and the application have complied with all requirements of SMCRA and the [State or, in Federal program States, Federal] regulatory program.
3. The application for the revision is complete and accurate.

[NOTE: If the revision does not affect the basis on which Findings 4-14 were originally made at the time of permit approval, the unaffected findings do not need to be restated. Instead a substitute finding ("No other findings are pertinent to this revision since the basis of the original findings has not been affected by the revision.") may be made. If the basis for some of these findings has been affected, a similar substitute finding may be made; however, it must specifically identify the unaffected findings.]

4. The permit file reflects that OSMRE has met its responsibilities under NEPA and other applicable environmental laws, orders, and agency procedures. The environmental documentation is acceptable for purposes of this permit revision.
5. The permit area is not within an area under study or administrative proceedings under a petition to have an area designated as unsuitable for surface coal mining operations, or, if within such an area, the applicant has demonstrated the existence of substantial legal and financial commitments, made

prior to January 1, 1977, in relation to the operation covered by the application.

6. The permit area is not within an area designated as unsuitable for mining pursuant to CFR Part 769 or subject to the prohibitions or limitations of the [State or Federal program counterparts to 30 CFR 761.11 and 761.12].
7. If the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted the documentation required under the [State or Federal program counterpart to 30 CFR 778.15(b)].
8. Based on an assessment of the probable cumulative impacts of all anticipated coal mining on the hydrologic balance in the cumulative impact area, the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.
9. The applicant has demonstrated that any existing structure will comply with the [State or Federal program counterpart to 30 CFR 701.11(d)] and the applicable performance standards of 30 CFR Subchapter B or the [State or Federal program counterpart to 30 CFR Subchapter K].
10. The applicant has paid all reclamation fees from previous and existing operations as required by 30 CFR Subchapter R.
11. The applicant has satisfied the applicable requirements of the [State or Federal program counterpart to 30 CFR Part 785].
[List all special categories of mining that are included in the application and attach a sheet containing the specific findings required for each such category. If the application includes none of the special categories, this finding shall be revised to so indicate.]
12. The applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural postmining land use in accordance with the requirements of the [State or Federal program counterpart to 30 CFR 816.111(d) or 817.III(d)].
13. The operation will not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of their critical habitats, as determined under the Endangered Species Act of 1973.
14. The [name of FPE] has taken into account the effect of the revision on properties listed on or eligible for listing on the National Register of Historic Places.

15. For a proposed remaining operation where the applicant intends to reclaim in accordance with the requirements of [the State or Federal program counterpart of either 30 CFR 816.106 or 817.106], the site of the operation is a "previously mined area" as defined in [the State or Federal program counterpart of 30 CFR 701.5].

16. As indicated, one of the following findings applies to this application:

[] The application does not indicate that the applicant has added a new partner, officer, principal, principal shareholder, director or person with a similar ownership or control function required to be listed in the application pursuant to [the State or Federal program counterpart to 30 CFR 778.13(c)].

[] The application indicates that the applicant has added a new partner, officer, principal, principal shareholder, director or person with a similar ownership or control function required to be listed in the application pursuant to [the State or Federal program counterpart to 30 CFR 778.13(c)]. However, no surface coal mining and reclamation operation owned or controlled by such new person is currently in violation of SMCRA, any State or Federal program under SMCRA, or any State or Federal law, rule or regulation adopted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection except as provided in [the State or Federal program counterpart to 30 CFR 773.15(b)(1)(i) and (ii)].

Therefore, the application for Revision [number] to Federal Permit [number] is hereby approved.

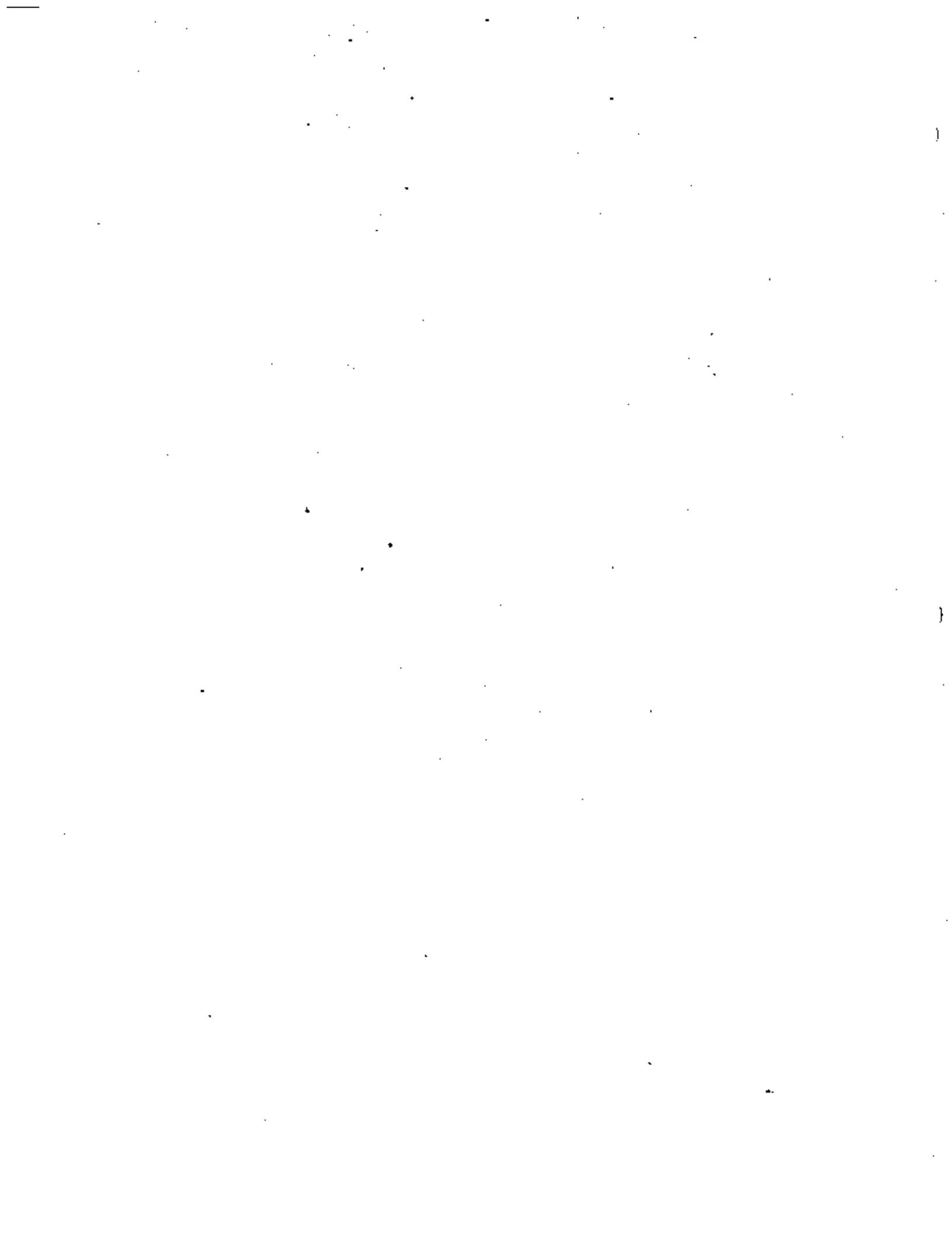
Assistant Director
[title] Field Operations**

[date]

* Delete in Federal program States
** Or designee

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Findings for Approval of Permit Revision and Renewal Applications
for Operations on Federal Lands

[Permit Number]
[Revision Number]
[Company Name]
[Mine Name]

Based on a review of the description of the proposed area of mining, I find that this area is:

1. Not designated as unsuitable for mining pursuant to section 522(b) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) or 30 CFR Part 769, and
2. [Check the applicable box.]
 - [] Not on any Federal lands within the boundaries of any national Forest.
 - [] Located on Federal lands within the boundaries of the [name] National Forest. However, the applicant has demonstrated valid existing rights to mine the area included within this application.
 - [] Located on Federal lands within the boundaries of the [name] National Forest. However, the surface operations and impacts of the mine will be incident to an underground coal mine and, based on OSMRE's analysis and on the concurrence of the Forest Service, will not be incompatible with any significant recreational, timber, economic, or other values of the [name] National Forest.
 - [] Located on Federal lands west of the 100th meridian within the boundaries of the [name] National Forest. However, the Secretary of Agriculture has found that these lands do not have significant forest cover and that surface mining would comply with the Multiple Use Sustained Yield Act of 1960, the Federal Coal Leasing Amendments Act of 1976, the National Forest Management Act of 1976, and the provisions of SMCRA. Based on OSMRE's analysis and the concurrence of the Forest Service, the mine will not be incompatible with any significant recreational, timber, economic, or other values of the [name] National Forest.

Assistant Director
[title] Field Operations*
[date]

* Or designee

Instructions: All items that are both bracketed and underlined shall be replaced with the applicable specific name, date, reference or number.