



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

Subject Number:
REG-34

Transmittal Number:
591

Date:
1/9/90

Subject: Processing Applications For Federal Permits

Approval: 

Title: Director

1. Purpose. This directive outlines the basic procedures for the review and processing of applications for new permits for surface coal mining operations where the Office of Surface Mining Reclamation and Enforcement (OSM) is the regulatory authority.
2. Summary. This directive describes procedures to assist OSM employees in the review of permit applications to conduct surface coal mining operations under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).
3. Definitions.
 - a. Administrative Completeness Review (ACR). The ACR is the review of a permit application to determine if the application is an "administratively complete application" as defined in 30 CFR 701.5.
 - b. Federal permit. A permit issued by OSM under SMCRA in its capacity as the regulatory authority on Federal lands (in States with limited or no 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 OSM for operations on Federal lands where OSM and the State have dual permitting responsibilities.
 - c. Federal permitting entity (FPE). The OSM organizational unit with responsibility for receiving and processing applications and other materials related to Federal permits, i.e., the Western Field Operations (WFO) office or the Division of Tennessee Permitting in the Knoxville Field Office (KFO) under Eastern Field Operations.
 - d. Technical Review. The technical review includes all reviews other than the ACR necessary to ensure that the applicant has complied with the requirements of SMCRA and the regulatory program, and for the FPE to make the findings and determinations required for the permit application decision.

4. Policy/Procedures.

a. Applicability of this directive. This directive applies to OSM permitting actions. OSM issues permits under SMCRA in its capacity as the regulatory authority in Federal program States, on Indian lands, and on Federal lands, except where the permitting authority has been fully delegated to a State with an approved State program and a cooperative agreement under the Federal lands program (30 CFR Chapter VII, Subchapter D). The text of each State-Federal cooperative agreement may be found at 30 CFR Chapter VII, Subchapter T.

Where OSM issues a permit on Federal lands in a State with an approved regulatory program, the FPE shall apply the approved State program counterparts to the Federal regulations cited in this directive to reach decisions on permit applications. In States with approved State programs, applications for permits on Federal lands shall be submitted on the State application form if one is in use in that State.

b. Responsibilities.

(1) Assistant Director, Program Policy provides national policy direction and guidance for the review of permit applications.

(2) Assistant Director, Eastern/Western Field Operations assures implementation of requirements of SMCRA and its implementing regulations and OSM policy directives.

(3) Division of Tennessee Permitting in KFO or Federal Programs Division in WFO;

- o assigns a team leader or project manager to coordinate the permit application review and processing;
- o assigns responsibility for the administrative completeness review and the technical review to appropriate staff members; and
- o assures technical and legal sufficiency of the SMCRA permit and signs the permit.

(4) The team leader or project manager;

- o oversees the preparation of all required letters, findings, and other permit documentation and ensures that they comply with applicable statutes and regulations; and

- o coordinates arrangements for and participates in site visits and informal conferences.
- (5) Administrative and technical review staff:
- o complete assigned duties in accordance with the requirements of SMCRA, its implementing regulations, and internal OSM policy directives; and
 - o prepare letters, findings, and other documentation as required.

c. Procedures for Processing a Permit Application. The regulatory requirements for surface coal mining operations permits are at 30 CFR Chapter VII, Subchapter G. In particular, Parts 773 and 777 through 785 contain the requirements for obtaining permits for surface coal mining operations and the minimum requirements for permit application contents and processing. This directive outlines the basic components of permit application review and approval and issuance of a Federal permit. It does not provide the detail that can be found in the referenced regulations nor repeat the procedures for specific components where detailed procedures can be found in written directives issued by OSM. Instead the user is referred to the regulations and directives for further guidance.

(1) Pre-Application

(a) Conference and Contacts. The FPE sends permit application information to applicants and advises them of how many copies of the application are required to be submitted. The permit application information should include a statement encouraging the applicant to meet with OSM prior to submission of the application. The applicant should be advised that early consultation with OSM regarding baseline data collection may reduce information collection activities and will minimize delays after the application is submitted.

The applicant should also be encouraged to contact relevant State and Federal agencies to obtain information necessary to complete a permit application. The FPE should inform the applicant of what information should be provided to those contacted. Agencies appropriate for pre-application contacts include, but are not limited to, those State agencies handling issues related to historic preservation, fish and wildlife, and water resources, and such Federal agencies as the Forest Service, the Fish and Wildlife Service, the Bureau of Land Management, the Bureau of Indian Affairs, and the Army Corps of Engineers.

(b) Alluvial Valley Floor Determinations. For western mines in the arid and semiarid areas west of the 100th meridian west longitude only, applicants can request that the FPE make a pre-application alluvial valley floor determination under 785.19(a), rule on the applicability of statutory exclusions under 785.19(b), or issue a summary denial under 785.19(c).

(2) Administrative Completeness Review (ACR)

Upon receipt of a new permit application, the ACR begins. The purpose of the ACR is to ensure that the application includes sufficient data or material in response to each regulatory requirement to initiate public review of the permit application and to allow the FPE to proceed with the technical review. Thus, the ACR should not be so detailed as to enable the FPE to tell the applicant what specific information is necessary to make the application technically and legally adequate; this occurs after the ACR.

The ACR may lead to a determination of completeness, a letter to the applicant regarding incomplete information, or a rejection of the permit application. If the review indicates that any required information has been omitted from the application, the FPE sends a letter to the applicant specifying what items of information are needed and requesting the additional information. The administrative review letter details all administrative inadequacies in the permit application. The FPE should cite the authority by which additional information is requested from the applicant.

If the applicant's response to the administrative review letter is insufficient, the FPE sends additional letters as necessary. When the application is determined to be administratively complete, the FPE notifies the applicant of this and of the requirement to begin publication of the newspaper notice under 30 CFR 773.13(a)(1).

The FPE may reject the application if it is flagrantly deficient, i.e., if it is apparent that no serious effort to comply with the applicable regulatory program has been made.

(3) 510(c) Compliance Review Procedures

Directive INE-33 sets forth the procedures for conducting compliance reviews in order to determine whether to issue, issue conditionally, or deny applications for Federal permits in accordance with section 510(c) of SMCRA. It includes procedures for making the findings required under 30 CFR 773.15(b)(1) and 773.15(c)(7) or for conditioning a permit under 773.15(b)(2). An initial compliance review using the Applicant Violator System (AVS) is required no later than 15 days after receipt of the

permit application. A second check of the AVS is required at the time of the actual decision on the permit application (see section 4.c.(12) of this directive).

(4) Coordination with Other Governmental Agencies

After the FPE makes a determination of administrative completeness of an application, the FPE notifies the appropriate local, State, and Federal government agencies in accordance with 30 CFR 773.13(a)(3), of the applicant's intention to mine, the application number or other identifier, and the location where the application can be inspected, along with any other required information, and requests comments from those agencies within a reasonable time. The FPE should request comments within 30 days of receipt (60 days for the State Historic Preservation Officer) unless there is public controversy or complex issues associated with the proposed operations that are likely to require more review time.

Agencies notified include local, State, and Federal governmental agencies with interests in or jurisdiction over the affected lands. This includes such agencies as the Soil Conservation Service district office, the local U.S. Army Corps of Engineers district engineer, the National Park Service, State and Federal fish and wildlife agencies, the State water quality control agency, and the State Historic Preservation Officer. This list will vary from State to State depending on the specific lands involved and identification of the agencies having an interest or jurisdiction over those lands.

The review of the permit application should be coordinated with reviews under the other laws listed in 30 CFR 773.12, such as the Endangered Species Act and the National Historic Preservation Act. It should also be combined with any unsuitability review coordination required under 30 CFR 761.12. The FPE must determine, in consultation with relevant State and Federal agencies, whether any lands where mining is prohibited or limited are included in the proposed permit area.

Certain proposed operation and reclamation plans that are included in permit applications require the expert review and approval of the Mine Safety and Health Administration (MSHA) in conjunction with OSM. MSHA review is concerned with the safety of mine workers and the protection of underground mines. The FPE should obtain MSHA review according to the procedures for coordinating permitting activities with MSHA set out in Directive REG-11.

(5) Site Visits

After determining that the application is administratively complete, OSM staff shall visit the proposed mining site

contained in a permit application to become familiar with the proposed operation and to determine whether the operation and reclamation plan is consistent with actual site conditions. The FPE notifies the applicant in advance of the time of the visit and of any requirement to mark features contained in the application. Staff making the site visits should include the project leader and any needed technical specialists and inspectors. The team should include the person responsible for preparing National Environmental Policy Act (NEPA) documents, if initial scoping raises a potential issue under NEPA.

(6) Public Participation

The steps required to assure public participation opportunities in permit processing are set out in 30 CFR 773.13. After the permit application is determined to be administratively complete, the FPE advises the applicant to publish a notice of the proposed operation in a newspaper local to the mine area once a week for 4 consecutive weeks under 30 CFR 773.13(a)(1). The public comment period extends for 30 days after the last publication of the newspaper advertisement. The FPE requires the applicant to submit proof of publication, such as copies of the weekly announcement or a statement from the newspaper, to OSM within 4 weeks of the last date of publication (30 CFR 778.21).

The FPE also informs the applicant that to facilitate public review, under 30 CFR 773.13(a)(2), the applicant must file a copy of the complete permit application at the courthouse of the county where the mining is proposed to occur, or at another public office approved by the FPE, by the first date of newspaper advertisement of the application. The FPE should inform the applicant that it is the responsibility of the applicant to keep the public review copy up-to-date until the end of the appeal period for the decision on the application. At that time, the applicant should either remove the copy or inform the office holding the copy that it may be destroyed.

The FPE should inform the applicant that the public review copy need not contain confidential information exempt from disclosure under 30 CFR 773.13(d)(3). Directive REG-15 contains OSM's policy and procedures for maintaining the confidentiality of permit application information submitted by the applicant and marked confidential. The FPE should also review the permit application for possible withholding from public disclosure of information on the nature and location of archeological resources on public or Indian lands, as required under the Archeological Resources Protection Act of 1979 and outlined in Directive TSR-7 "Protecting Historic Properties."

The FPE files comments and objections received on the application at the same public office at which the application is filed and sends copies of them to the applicant (30 CFR 773.13(b)(3)). This includes any comments and objections received from the public entities reviewing the application, from any person having an interest which is or may be adversely affected by the decision on the application, and from officer/heads of Federal, State or local government agencies.

(7) Informal Conferences

The FPE shall schedule an informal conference upon receiving a written request under 30 CFR 773.13(c) within the public comment period from any person having an interest which is or may be adversely affected by the decision on the application or by an officer or head of a Federal, State, or local government agency. When the FPE schedules an informal conference, he informs the requestor and the applicant, and informs the public by publishing a newspaper notice at least 2 weeks before the scheduled conference so that interested parties other than those requesting the conference can attend. Under 30 CFR 773.13(c)(2)(iv), an electronic or stenographic record of the conference shall be made unless waived by all parties.

The regulations at 30 CFR 773.15(a) require OSM to issue a written decision either granting, requiring modification of, or denying a permit application within 60 days of the close of an informal conference, unless a later time is necessary to provide an opportunity for a hearing on a violation appeal. Because of this requirement, the FPE should schedule an informal conference at such time as to assure that a decision can be made within 60 days of its close.

(8) Technical Review

The technical review begins after the application is determined to be administratively complete. Its main purposes are to determine that (1) the application is technically accurate; (2) the applicant has complied with the requirements of SMCRA and the regulatory program; and (3) the applicant has demonstrated that reclamation can be accomplished under the reclamation plan contained in the permit application. Through the technical review, the FPE determines if the required findings can be made (see section 4.c.(11) of this directive).

Each permit application is reviewed for technical adequacy by staff members trained in the disciplines of engineering, hydrology, biology, geology, and reclamation, as appropriate. The technical reviewers look for completeness, accuracy, compliance with performance standards, and assurance that reclamation can be accomplished. It is important that the technical reviewers document their findings concerning whether

the application is adequate or inadequate. This documentation should be kept in the permit file as it will be used in case of a challenge to a permit approval or denial.

In reviewing a permit application, the technical reviewer uses the permitting requirements in 30 CFR Parts 777-785 as a guide to the minimum standards for information that must be contained in the permit application. For the technical review, the reviewer determines, using the information in the permit application, whether the applicable performance and design standards of 30 CFR Parts 810, and 816 through 828 will be met under the proposed operation.

For example, the permitting requirements for hydrologic information are found at 30 CFR 780.21 for surface mines and 784.14 for underground mines. The application must include a probable hydrologic consequences (PHC) determination that will be evaluated during the technical review for adequacy. A cumulative hydrologic impact assessment (CHIA) is prepared by OSM staff. Both the PHC and the CHIA cover surface and ground water systems and are used to determine whether a proposed mining operation has been designed to prevent material damage to the hydrologic balance inside and outside the permit area.

Applicable parts of the following regulations in 30 CFR Subchapter G should be consulted during the technical review.

Part	Title
777	General Content Requirements for Permit Applications
779	Surface Mining Permit Applications - Minimum Requirements for Information on Environmental Resources
780	Surface Mining Permit Applications - Minimum Requirements for Reclamation and Operation Plan
783	Underground Mining Permit Applications - Minimum Requirements for Information on Environmental Resources
784	Underground Mining Permit Applications - Minimum Requirements for Reclamation and Operation Plan
785	Requirements for Permits for Special Categories of Mining

OSM has issued directives to clarify policy or procedures for certain regulatory requirements. The following directives include information that may assist the technical reviewer. Additional directives that provide further guidance may be issued from time to time.

- REG-7 Experimental Practices.
- REG-20 Affected Area Calculations for Underground Mines.
- REG-24 Processing Petitions to Designate Lands as Unsuitable for Surface Coal Mining Operations and Termination of Previous Designations.
- REG-27 Water Replacement.
- TSR-3 Sediment Control Using the Best Technology Currently Available.
- TSR-5 Alternative Postmining Land Use Requirements for Real Property Improvements.
- TSR-6 Drainage Control on Valley and Durable Rock Fills.
- TSR-7 Protecting Historic Properties.
- TSR-10 Use of Wetland Treatment Systems for Coal Mine Drainage.
- Temporary Interim Procedures for Determination of Valid Existing Rights.

Based on any technical deficiencies in the permit application identified during the technical review, the FPE sends a technical deficiency letter to the applicant which specifically states what additional information will be needed to fulfill the technical permit application requirements and the authority by which the information is required. The first technical deficiency letter should detail all technical inadequacies in the permit application unless the complexity of the permit or the issues addressed or the expediency of review of the application, indicates that letters on a certain issue or issues should be sent individually. When the additional information required in the letter is received, it is reviewed for technical adequacy. If the additional information is still insufficient, additional technical deficiency letters are sent as needed.

(9) NEPA Compliance

For all Federal permitting actions, the FPE must prepare either an environmental assessment (EA) and a finding of no significant impact (FONSI) or an environmental impact statement (EIS). The NEPA analysis is an integral part of the permit application review and decisionmaking process and the NEPA documents must be included in the decision document. The NEPA documents and analysis should address cumulative impacts as well as the impacts of the operations subject to approval.

The OSM NEPA handbook (Directive REG-1) establishes guidance in preparing NEPA compliance documents on proposed permit decisions. The decision on whether an EIS or EA and FONSI is needed should be made according to the OSM NEPA handbook. For actions covered by an EIS, the Record of Decision (ROD) required under the NEPA regulations (40 CFR 1505.2) is to be integrated into the documentation of the permit decision. See section 2.E.3.w.(1) of the OSM NEPA handbook for the requirements of an ROD.

(10) Performance Bonds and Liability Insurance

Bonding and insurance requirements for surface coal mining and reclamation operations are found in 30 CFR Subchapter J, Part 800. A permit application must contain either a certificate of liability insurance or evidence of self-insurance. Besides the liability insurance, the FPE ensures that sufficient funds are available for reclamation by requiring a performance bond. The amount of the bond is determined by the FPE according to the requirements of 30 CFR 800.14(a) and Directive TSR-1, the "Handbook for Calculation of Reclamation Bond Amounts."

The FPE should consult Directive REG-28, "Bond Forms and Procedures", for policy and operational guidelines on the implementation of OSM and Department of Treasury requirements for the acceptance, retention, and return of performance bonds in connection with the issuance of mining permits by OSM for mining operations subject to a Federal program and operations on Federal or Indian lands. That directive includes examples of acceptable bond forms, receipt forms, and power of attorney forms to be used in connection with reclamation performance bonds. The example bond forms may need to be modified for a particular State. Therefore, the appropriate Field Solicitor should review the bond forms.

(11) Permit Application Decision

The FPE prepares a decision package for each permit application decision. It includes documentation of compliance with all requirements that must be fulfilled in order to issue a permit. The documentation includes any necessary concurrences from other agencies required under 30 CFR 773.12; copies of any written comments or objections submitted under 30 CFR 773.13; records of any informal conference or hearing held on the application under 30 CFR 773.13(c); the findings for permit application approval (see Appendix 1); permit conditions (see Appendix 2); NEPA compliance documents; the CHIA; a chronology demonstrating that required permit application steps have been performed by OSM and the applicant; and a summary discussion of the permitting issues and recommended special conditions.

The FPE must make the written findings required under 30 CFR 773.15(b), 773.15(c), 761.12(d)(4), and 780/784.22(d) before the permit application can be approved. Additional findings under 30 CFR 785 are required for permits for special categories of mining. If the FPE cannot make any one or more of the required findings, and the permit applicant is unable or unwilling to modify the application to address identified deficiencies, the FPE must deny the permit application. See Appendix 1 for Findings documentation.

The permit decision package must include the conditions required under 30 CFR 773.17, as well as any special conditions required for permit application approval for which a need was identified during the permit application review and initial 510(c) compliance review. Conditions may not be used to elicit information or analyses or to remedy defects in the information required to be submitted before permit approval. See Appendix 2 for Conditions documentation.

(12) Notifications and Permit Issuance

After preparing the decision package but before issuing the permit, the FPE shall notify the applicant of the fact that the application has been approved pending a final 510(c) compliance check, and of the amount required for the reclamation performance bond. At the same time, the FPE shall request that the applicant update, correct, or indicate that no change has occurred in, the identification of interests or violation information previously submitted. Based on the response, the FPE will amend the permit approval decision where appropriate in accordance with Directive INE-33.

Upon the final 510(c) clearance and submittal of an adequate and acceptable reclamation performance bond, the FPE issues the permit to the applicant. The permit is issued for a fixed term of 5 years or less and carries with it the right of successive renewal upon expiration of the term of the permit (30 CFR 774.15). The initial term may exceed 5 years if the requirements of 30 CFR 778.17(b) are met.

The FPE issues notification of the permit application decision to any commenters in accordance with 30 CFR 773.19(b)(1) and 43 CFR Part 4 Subpart L. The FPE notifies local government officials in the local political subdivision in which the land to be affected is located, within 10 days after issuance of the permit in accordance with 30 CFR 773.19(b)(2). The 30 day period in which any person with an interest which is or may be affected by a permit decision may request administrative and judicial review, is determined in accordance with 30 CFR Part 775 and 43 CFR Part 4 Subpart L.

5. Reporting Requirements. None.

6. Effect on Other Documents. This directive provides a policy framework for the more detailed guidance manuals prepared by the FPEs.

7. References.

a. Directive INE-33, "Permit Review Procedures for Federal Permit Applicants."

b. Directive REG-1, "Handbook on Procedures for Implementing the National Environmental Policy Act (NEPA)."

c. Directive REG-7, "Experimental Practices."

d. Directive REG-11, "Coordination of Permitting Activities with the Mine Safety and Health Administration."

e. Directive REG-15, "Policy and Procedures for Maintaining Confidentiality of Permit Application Information."

f. Directive REG-20, "Affected Area Calculations for Underground Mines."

g. Directive REG-24. "Processing Petitions to Designate Lands as Unsuitable for Surface Coal Mining Operations and Termination of Previous Designations."

h. Directive REG-27, "Water Replacement."

i. Directive REG-28, "Bond Forms and Procedures."

j. Directive REG-31, "Preparation of Mining Plan Decision Documents."

k. Directive TSR-1, "Handbook for Calculation of Reclamation Bond Amounts."

l. Directive TSR-3, "Sediment Control Using the Best Technology Currently Available."

m. Directive TSR-5, "Alternative Postmining Land Use Requirements for Real Property Improvements."

n. Directive TSR-6, "Drainage Control on Valley and Durable Rock Fills."

o. Directive TSR-7, "Protecting Historic Properties."

p. Directive TSR-10, "Use of Wetland Treatment Systems for Coal Mine Drainage."

q. Temporary Directive, "Interim Procedures for Determination of Valid Existing Rights."

r. Applicable Memoranda of Understanding with other Federal agencies.

8. Effective Date. Upon issuance.

9. Contact. Branch of Federal and Indian Programs, Division of Regulatory Programs, (202) 343-1864.

10. Keywords. Federal permit, permit application review, permit processing.

11. Appendices.

Appendix 1	Examples of Findings for Approval of Permit Applications
Appendix 2	Examples of Permit Conditions

APPENDIX 1 Findings for Approval of Permit Applications

1. The permit application is complete and accurate and the applicant has complied with all requirements of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the [State or, in Federal program States, Federal] regulatory program.

2. The applicant has demonstrated that reclamation as required by SMCRA and the [State or, in Federal program States, Federal] regulatory program can be accomplished under the reclamation plan contained in the permit application.

3. The proposed permit area is:

a. Not within an area under study or administrative proceedings under a petition, filed pursuant to 30 CFR Parts 764 and 769, to have the area designated as unsuitable for surface coal mining operations.

or

a. Within an area under study or administrative proceedings under a petition, filed pursuant to 30 CFR Parts 764 and 769, to have the area designated as unsuitable for surface coal mining operations; however, the applicant has demonstrated that before January 4, 1977, he had made substantial legal and financial commitments in relation to the operation covered by the permit application.

b. Not within an area designated as unsuitable for mining pursuant to 30 CFR Parts 762, 764, and 769 or subject to the prohibitions or limitations of the [State or Federal program counterpart to 30 CFR 761.11 and 761.12].

c. Not unsuitable for mining in accordance with section 522(b) of SMCRA. [Include for Federal lands.]

d. Not on any lands within the boundaries of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act or study rivers or study river corridors as established in any guidelines pursuant to that Act, and National Recreation Areas designated by Act of Congress.

e. Not on any Federal lands within the boundaries of any national forest. [Revise as applicable for VER or existing operation.]

or

e. Located on Federal lands within the boundaries of the (NAME FOREST) National Forest. However, based on OSM's analysis and on the concurrence of the Forest Service, the surface operations and impacts of the proposed operation are incident to an underground coal mine and will not be incompatible with significant recreational, timber, economic, or other values of the (NAME FOREST) National Forest.

or

e. Located on Federal lands west of the 100th meridian within boundaries of the (NAME FOREST) National Forest. However, the Secretary of Agriculture finds that these lands do not have significant forest cover and that this surface coal mining operation complies with the Multiple Use-Sustained Yield Act of 1960 (16 U.S.C. 528-531), the Federal Coal Leasing Amendments Act of 1976 (Pub. L. 94-377, 30 U.S.C. 201 et seq.), the National Forest Management Act of 1976 (90 Stat. 2949), and the provisions of SMCRA. Based on OSM's analysis and on the concurrence of the Forest Service, the proposed operation will not be incompatible with significant recreational, timber, economic, or other values of the (NAME FOREST) National Forest.

f. Not on any lands where mining will adversely affect any publicly owned parks or any places included on the National Register of Historic Places.

or

f. On lands where mining will adversely affect the (NAME PARK OR PLACE) which is included on the National Register of Historic Places; however, the (NAME AGENCY) has approved the proposed permit application in accordance with 30 CFR 761.12(f).

g. Not within 100 feet, measured horizontally, of the outside right-of-way line of any public road.

or

g. Within 100 feet, measured horizontally, of the outside right-of-way line of public road(s). However, the applicant has obtained the approval of (NAME AGENCY) in accordance with 30 CFR 761.12(d).

h. Not within 300 feet, measured horizontally, of any occupied dwelling.

or

h. Within 300 feet of (NUMBER) occupied dwelling(s); however, the applicant has complied with the requirements of 30 CFR 761.12(e) to allow operations within 300 feet of the occupied dwellings(s).

i. Not within 300 feet, measured horizontally, of any public building, school, church, community, or institutional building or public park, or within 100 feet, measured horizontally, of a cemetery.

4. No operations proposed in the permit application involve the surface mining of coal where the private mineral estate to be mined has been severed from the private surface estate.

or

4. For mining operations proposed in the permit application where 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)].

5. OSM has made an assessment of the probable cumulative impacts of all existing and anticipated coal mining on the hydrologic balance in the cumulative impact area and has determined that the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

6. The proposed operation will not use any existing structures.

or

6. The applicant has demonstrated that the existing structure(s) to be used in the proposed operation will comply with the [State or Federal program counterpart to 30 CFR 701.11(e)] and the applicable performance standards of 30 CFR Chapter VII, Subchapter B or the [State or Federal program counterpart to 30 CFR Chapter VII, Subchapter K].

7. The applicant has paid all reclamation fees from previous and existing operations as required by 30 CFR Chapter VII, Subchapter R.

8. The requirements for special categories of mining do not apply to this operation.

or

8. 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 in the application and include the specific findings required for each such category.]

9. The applicant has satisfied, if applicable, 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 817.111(d)].

10. No remining operation is proposed.

or

10. The applicant does not intend to reclaim the proposed remining operation in accordance with the requirements of the [State or Federal program counterpart of either 30 CFR 816.106 or 817.106].

or

10. The site of the proposed 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], is a "previously mined area" as defined in the [State or Federal program counterpart of 30 CFR 701.5].

11. Based on the review of violations required at 30 CFR 773.15(b)(1), OSM has determined that any surface mining operation owned or controlled by the applicant, or by any person who owns or controls the applicant, is not currently in violation of SMCRA or any other law, rule, or regulation referred to in 30 CFR 773.15(b)(1) (except (IDENTIFY VIOLATION) is being appealed before (IDENTIFY APPEAL ENTITY)).

12. Based on OSM's records, the applicant, anyone who owns or controls the applicant, and the operator, do not control and have not controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of SMCRA of such nature and duration, and with resulting irreparable damage to the environment as to indicate an intent not to comply with SMCRA.

13. The permit file reflects that OSM has met its responsibilities under the National Environmental Policy Act (NEPA) and other applicable environmental laws, executive orders, and agency procedures. The environmental documentation is acceptable for purposes of this permit application.

14. The proposed 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.

15. The [name of FPE] has taken into account the effect of the proposed mining operations on properties listed on or eligible for listing on the National Register of Historic Places. (This finding may be supported in part by inclusion of appropriate permit conditions or changes in the operation plan protecting historic resources, or a documented decision that the FPE has determined that no additional protection measures are necessary.)

NOTES

-- Where more than one finding has the same number or letter, the FPE should only use the finding applicable to the specific operation.

-- The applicable State or Federal program may require additional or slightly different findings. These findings should be adapted to each State as necessary.

-- All items that are both bracketed and underlined should be replaced with the applicable name, date, reference or number.

APPENDIX 2 Permit Conditions

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

This permit is issued for the United States of America by the Office of Surface Mining Reclamation and Enforcement (OSM) to:

(NAME COMPANY)
(ADDRESS)

for the (surface or underground) coal mining operation:

(NAME MINE)
(NAME COUNTY) County, (NAME STATE)

(Give location by Section numbers or Latitude and Longitude.)

- Sec. 1 STATUTES AND REGULATIONS - This permit is issued pursuant to the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq., hereafter referred to as SMCRA, and the Federal Program for (NAME STATE) (30 CFR Part (NUMBER)). This permit is subject to all applicable regulations of the Secretary of the Interior that are now in force, except as expressly limited herein, or hereafter in force, and all such regulations are made a part hereof.
- Sec. 2 The permittee is authorized to conduct surface coal mining and reclamation operations only on those lands specifically designated as the permit area on the maps submitted with the permit application and described above, and authorized for the term of the permit and that are subject to the performance bond or other equivalent guarantee in effect pursuant to 30 CFR Chapter VII, Subchapter J.
- Sec. 3 The permittee is authorized to conduct surface coal mining and reclamation operations only as described in the approved permit application, subject to any conditions of the approved permit and all other applicable laws and regulations.
- Sec. 4 The permittee shall comply with the terms and conditions of the permit, all applicable performance standards of SMCRA, and the requirements of the regulatory program.
- Sec. 5 This permit becomes effective on the date it is signed, and is effective for a permit term of 5 years except that it will terminate if the permittee has not begun

the surface coal mining operations covered herein with 3 years of the date of permit issuance. This permit may be renewed for areas within the approved permit area boundaries in accordance with the regulations at 30 CFR 774.15.

Sec. 6 The permit rights may not be transferred, assigned, or sold without the approval of OSM. Transfer, assignment, or sale of permit rights must be done in accordance with 30 CFR 774.17 (and 740.13(e)).

Sec. 7 The permittee shall allow the authorized representatives of the Secretary, including but not limited to inspectors and fee compliance officers, without advance notice or a search warrant, upon presentation of appropriate credentials, and without delay to:

a. Have the rights of entry provided for in 30 CFR 842.13 and 840.12; and

b. Be accompanied by private persons for the purpose of conducting an inspection in accordance with 30 CFR Parts 840 and 842, when the inspection is in response to an alleged violation reported by the private persons.

Sec. 8 The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of this permit including, but not limited to:

a. Any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance;

b. Immediate implementation of measures necessary to comply; and

c. Warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance.

Sec. 9 The operator shall pay all reclamation fees required by 30 CFR Chapter VII, Subchapter R, for coal produced under this permit.

Sec. 10 As applicable, the permittee shall comply with 30 CFR 701.11(d) and 30 CFR Chapter VII, Subchapter B or K,

for compliance, modification, or abandonment of existing structures.

- Sec. 11 If, during the course of mining operations, previously unidentified prehistoric or historic resources are discovered, the permittee shall ensure that the resources are not disturbed and shall notify the State Historic Preservation Officer (SHPO) and OSM. The permittee shall take such necessary actions as are required by the SHPO in coordination with OSM.
- Sec. 12 APPEALS - The permittee shall have the right to appeal:
- a. Under 30 CFR 775, 842, 843, or 845 from an action or decision of any official of OSM, by contacting the U.S. Department of the Interior, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203; or
 - b. Under applicable regulations, any action or decision of any other official of the Department of the Interior arising in connection with this permit.
- Sec. 13 Within 30 days after a cessation order is issued under 30 CFR 843.11 for operations conducted under this permit, except where a stay of the cessation order is granted and remains in effect, the permittee shall either submit to OSM the following information, current to the date the cessation order was issued, or notify OSM in writing that there has been no change since the immediately preceding submittal of such information:
- (1) Any new information needed to correct or update the information previously submitted to OSM by the permittee under 30 CFR 778.13(c); or
 - (2) If not previously submitted, the information required from a permit applicant by 30 CFR 778.13(c).
- Sec. 14 WAIVERS* - The applicant has requested and OSM has waived the following requirements: (List requirement and section of the regulations under which it is waived.)
- Sec. 15 SPECIAL CONDITIONS* - The permittee shall comply with the following special conditions: (List special conditions, if any.)

* Include these sections in the permit only if there are waivers or special conditions.