



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

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Subject: Permit Fees in Federal Program States and On Indian Lands

Approval:

M. Hart

Title: Director

1. Purpose. This directive establishes the Office of Surface Mining Reclamation and Enforcement (OSM) procedures for the collection, disposition, and refund of permit fees paid to OSM by applicants for review and processing of surface coal mining permit applications in Federal program States and on Indian lands.

2. Summary. This directive provides policy and procedural guidance for OSM employees responsible for the collection, disposition, and refund of permit fees submitted by permit applicants pursuant to OSM's regulations at 30 CFR 736.25 and 750.25. Those rules require permit applicants in Federal program States and on Indian lands to submit payment to OSM, in accordance with a specified fee schedule, to obtain administrative completeness and technical reviews of their permit applications, and for decision document preparation.

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. Collection Officer. An employee who receives, has custody of, or accounts for monies, negotiable instruments, remittances, repayments, and collections of loans and other funds received as a result of Government activities, and deposits same into an appropriate commercial depository which has been authorized to maintain a U.S. Treasury demand account. Collection Officers are designated through a formal nomination procedure set forth in the Department of the Interior Manual.

c. Federal Permit. A permit issued by OSM under the Surface Mining Control and Reclamation Act of 1977 (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" includes only those permits issued by OSM for operations in Federal program States and on Indian lands.

d. Federal Permitting Entity (FPE). The OSM organizational unit with responsibility for receiving and processing permit applications and other materials related to Federal permits,

i.e., the Division of Federal Programs in the Western Support Center in Denver, or the Division of Tennessee Permitting in the Knoxville Field Office (KFO).

e. Permit Application. The documents and other information filed with the regulatory authority under 30 CFR Chapter VII for the issuance of a permit to conduct surface coal mining and reclamation operations.

f. Technical Review. The technical review of a permit application 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. Policy. Section 507(a) of SMCRA provides that an application for a surface coal mining permit shall be accompanied by a fee determined by the regulatory authority.

On July 19, 1990, OSM promulgated final rules at 30 CFR 736.25 and 750.25 establishing a system of fees to be paid to OSM by permit applicants to obtain processing and issuance of new surface coal mining permits, in Federal program States and on Indian lands, respectively.

The regulations establish identical fee schedules for Federal program States and Indian lands, charging a separate fee for each of the three major components of OSM's permit application review process, and supplemented by an acreage-fee surcharge calculated on a sliding scale basis. The final rules provide for full payment of all permit fees by the applicant when the application is submitted, or for prescribed partial payments prior to each stage of review and processing. The rules also provide for a full refund of fees if a permit is denied for certain specified reasons, and for specified refunds of fees that have been paid for a particular stage of review if an operator withdraws an application. Any new or pending permit application must be assessed a fee for any stage of review begun on or after August 20, 1990. Permit fees are also to be assessed for new permits to change permit boundaries (except incidental boundary revisions) submitted under 30 CFR 774.13(d).

b. Responsibilities.

(1) The Assistant Director, Reclamation and Regulatory Policy, provides national policy direction and guidance in the development and implementation of OSM's permit fee collection system.

(2) The Assistant Director, Western Support Center, and Assistant Director, Field Operations, are responsible for ensuring the implementation and maintenance of the permit fee tracking and collection systems within their respective FPE's.

(3) The Assistant Director, Finance and Accounting, is responsible for overseeing the fiscal management and administration of permit fee monies collected by OSM under the permit fee collection system.

(4) The Chief, Division of Tennessee Permitting (DTP) in KFO, and the Chief, Division of Federal Programs (DFO) in Denver, are responsible for ensuring in their respective FPEs, that permit fees are collected and paid in full by permit applicants in accordance with the procedures outlined in this directive, prior to the issuance of surface coal mining permits to such applicants.

(5) OSM Collection Officers in each FPE are responsible for promptly notifying the Chief, DTP or DFO, as applicable, upon receipt of permit fees from permit applicants, and for forwarding such fees to OSM's Division of Financial Management (DFM), or depositing such funds into an approved commercial depository, in conformance with this directive and other established guidelines.

(6) DFM is responsible for establishing and maintaining a permit fee accounting system, for disposition of permit fees, and for promptly notifying the appropriate FPE of any deficiencies, overpayments, or other discrepancies in fee payments or refunds.

c. Collection of Permit Fees. This section of the directive specifies the procedures for collecting full or partial payment of permit fees from permit applicants in Federal program States and on Indian lands during the permit application review process. Fees are collected to conduct the ACR and technical review of the permit application, and prepare the decision document.

Procedures for the permit application review process for surface coal mining operations where OSM is the regulatory authority, including Federal program States and Indian lands, can be found in OSM Directive REG-34, "Processing Applications for Federal Permits."

(1) Pre-Application. At this stage, the FPE provides potential applicants with the necessary information to prepare and submit a permit application for proposed surface coal mining and reclamation operations. In addition to the permit application information provided by the FPE in accordance with OSM Directive REG-34, Section 4(c)(1), the FPE should also advise potential applicants of OSM's permit fee collection system and include a copy of the fee schedule appended hereto as Appendix 1.

The FPE should inform applicants that payment of the ACR, technical review (plus acreage), and decision document fees must be received by OSM prior to each stage of review, and that payment of the ACR fee should therefore accompany the permit application. The FPE should advise potential applicants that the acreage fee applies only to disturbed areas within the permit area and should be calculated by applying the per-acre fee schedule specified in Appendix 1 to the projected area of disturbance specified in the permit application. The FPE should further advise potential applicants that permit fees may be paid in full when the application is submitted in order to avoid delays between each stage of review and processing pending OSM's receipt of fee payment from the applicant. Applicants should be instructed to submit payment in the form of a certified check, bank draft or money order, payable to Office of Surface Mining, Attention: OSM Collection Officer.

(2) Administrative Completeness Review (ACR) Fees. Upon receipt of a new permit application and the ACR fee payment specified in Appendix 1, the FPE begins the ACR. Only those applications received on or after August 20, 1990, will be assessed an ACR fee. OSM Directive REG-34 sets forth the procedures for conducting the ACR.

When the application is determined to be administratively complete, the FPE sends a letter advising the applicant of the completeness determination. For applicants who have chosen to pay by stage of review and have submitted only the ACR fee, the letter should state that payment of the technical review basic fee and acreage fee, calculated according to the permit fee schedule set forth in Appendix 1, must be received before the technical review can begin, and specify the amount due OSM. For applicants who have paid their permit fees in full with the initial application submittal, the letter should state that the technical review will begin without delay. If the pre-paid fees were inadequate, the letter should explain the shortage and request further payment if fees were insufficient to cover the technical review. If pre-paid fees were sufficient to cover the technical review but not the decision document fee, the applicant should be so informed and technical review begun without delay.

(3) Technical Review and Decision Document Fees. Technical review fees are calculated according to the schedule in Appendix 1. The calculation of acreage fees only considers any acres, or a fraction thereof, in the permit application that will be disturbed under the proposed operation. Per-acre fees do not apply to previously disturbed areas that will not be redisturbed under the permit. The technical review begins after the application is determined to be administratively complete and the technical review basic fee and acreage fees have been received by the FPE. Technical review fees will be assessed only for those

applications for which the technical review was begun on or after August 20, 1990.

When an application is determined to be technically adequate, the FPE sends a letter advising the applicant of the technical adequacy determination. For applicants who have chosen to pay by stage of review, the letter should state that the decision document fee must be received before decision document preparation can begin, and specify the amount due OSM. For applicants who have paid their permit fees in full with the initial application submittal, the letter should state that the decision document preparation will now begin without delay. If the "pre-paid" fees submitted were inadequate, the letter should explain the shortage and request further payment sufficient to cover the decision document preparation.

d. Disposition of Permit Fees. Upon receipt of partial or full payment of permit fees from an applicant, the OSM Collection Officer should immediately notify the Chief, DTP or DFO, as applicable. The Collection Officer should then either promptly deposit the funds into an approved commercial depository in conformance with collection guidance, or promptly forward such payment to OSM's Division of Financial Management (DFM) for deposit into an approved commercial depository. In either case, the Collection Officer must submit an "Abstract of Remittance" to DFM at the time of deposit or forwarding of the permit fee. In addition, when a deposit is made other than by DFM, the Collection Officer must submit a confirmed copy of the SF-215 Deposit Ticket with the "Abstract of Remittance" to DFM.

DFM should establish a Federal permit fee account for the escrow of pre-permit collections and another for posting such funds once a permit has been issued. The fees collected for each permit application will be held in escrow pending completion of the permit application review and issuance of the Federal permit.

The FPE should promptly notify DFM in writing when the permit for a particular application is issued so that the permit fee monies for that application can then be released by DFM to the Treasury's General Fund in accordance with guidelines set forth in the Treasury Financial Manual.

e. Refund of Permit Fees. The rules at 30 CFR 736.25(b) and 750.25(b) set forth the criteria for the refund of permit fees in Federal program States and on Indian lands, respectively, upon receipt of a written request from an applicant. The criteria for granting a full refund of fees are OSM's denial of a permit based upon information unavailable prior to permit application submittal concerning endangered or threatened species or their critical habitats, or concerning cultural or historic resources; or a determination of unsuitability for mining or a denial of valid existing rights to surface mine subsequent to permit

application submittal. The criterion for granting a partial refund of permit fees is the withdrawal of the permit application by the applicant before completion of a stage of review for which the applicant has submitted the required fee.

No interest will be paid on refunded fees in Federal program States or on Indian lands in accordance with the rule at 30 CFR 736.25(b)(4) or 750.25(b)(4), as applicable.

The procedures for granting a refund request because of permit denial or application withdrawal are described below.

(1) Permit Denial. Upon receipt of a written request from an applicant for a refund of permit fees based upon OSM's denial of the permit for the reason(s) cited above, the FPE must make a determination of whether the applicant lacked sufficient information prior to submittal of an application to predict a denial of the permit. Upon a positive determination, the FPE notifies DFM in writing that the permit for a particular application has been denied and that a full permit fee refund is necessary. The notification to DFM should contain the following information:

- o name and address of applicant;
- o reason for permit denial and/or termination of permit application review; and
- o amount to be refunded to applicant.

DFM will then arrange for the monies to be refunded to the applicant in accordance with established procedures.

(2) Application Withdrawal. Upon receipt of a written request from an applicant for withdrawal of a permit application and a refund of fees, the FPE will immediately cease processing of that application. The FPE will then determine the refund amount for the withdrawn application as follows:

- o Any fees for a stage of OSM review or processing not yet begun will be refunded.
- o Any fees for a stage of OSM review or processing already completed will not be refunded.
- o Where the ACR or technical review, or decision document preparation has begun but is not yet completed, partial refund will be made of any fee amounts remaining after deduction of actual costs incurred by OSM for that stage of review or processing. The FPE will use the cost accounting system already in place to determine actual costs by multiplying the hours spent by each reviewer in processing the particular stage of permit

review, by the hourly salary of that reviewer, and adding a 35 percent overhead charge to that amount. Refund amounts for the technical review portion of the permit application review process will be determined using the above formula to calculate actual costs and deducting that amount from the combined total technical review and acreage fee payment for the withdrawn application.

The FPE will then notify DFM in writing that the permit application has been withdrawn and that a permit fee refund is necessary. The notification should contain:

- o name and address of applicant;
- o stage of review completed or partially completed at the time of the withdrawal request; and
- o amount to be refunded to applicant.

DFM will then arrange for the monies to be refunded to the applicant in accordance with established procedures.

5. Reporting Requirements. To conform with the Department of the Interior's cost recovery guidelines, the FPE will be responsible for furnishing by November 1 of each year to the Chief, DFM, the following information for the most recent fiscal year:

- o the citation or legal authority to collect Federal Permit fees,
- o the cost, including direct and indirect, of services provided,
- o the actual fees assessed during the year,
- o projected receipts for the next fiscal year, and
- o the fee schedule.

6. Effect on Other Documents. This directive provides procedural guidance in the implementation of the permit fee system established at 30 CFR 736.25 and 750.25.

7. References.

- a. Department of the Interior Manual.
- b. Treasury Financial Manual.
- c. Directive REG-34, " Processing Applications for Federal Permits."

8. Effective Date. Upon issuance.

9. Contact. Branch of Federal and Indian Programs, (202) 208-2700.

10. Keywords. Federal permit, permit fee.

11. Appendices.

Appendix 1 Fee Schedule For a New Permit.

Appendix 1

<u>Fee Schedule For a New Permit</u>	
Administrative completeness review	\$250.00
Technical review	
Basic fee	\$1350.00
Fee per acre of disturbed area in permit area	
First 1,000 acres \$13.50/acre	
Second 1,000 acres \$6.00/acre	
Third 1,000 acres \$4.00/acre	
Additional acres \$3.00/acre	
Decision document	\$2000.00
<u>Total</u>	<u>\$3600.00</u>
<u>plus</u>	<u>acreage</u>
<u>fees</u>	