

§ 843.16

30 CFR Ch. VII (7-1-00 Edition)

(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 subsection:

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

(i) Is informed, by written notice served in the manner provided in paragraph (b)(2) of this section, that he or she will be deemed to have waived an informal public hearing unless he or she requests one within 30 days after service of the notice; 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 5 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 or her request is received on or after the 21st day after service of the notice or 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 that notice or order; and

(3) The State regulatory authority, if any.

(d) The Office shall also post notice of the hearing at the State or field office closest to the mine site and, where practicable, publish it 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 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.

(f) Within five days after the close of the informal public hearing, the Office shall affirm, modify, or vacate the notice or order in writing. The decision shall be sent 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 section 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 mine site should be viewed during the hearing. In making this determination the only consideration shall be whether a view of the mine site will assist the person conducting the hearing in reviewing the appropriateness of the enforcement action or of the required remedial action.

§ 843.16 Formal review of citations.

(a) A person issued a notice of violation or cessation order under § 843.11 or § 843.12, or a person having an interest which is or may be adversely affected by the issuance, modification, vacation or termination of a notice or order, may request review of that action by filing an application for review and request for hearing under 43 CFR part 4, within 30 days after receiving notice of the action.

(b) The filing of an application for review and request for a hearing under this Section shall not operate as a stay of any notice or order, or of any modification, termination or vacation of either.

§ 843.17 Failure to give notice and lack of information.

No notice of violation, cessation order, show cause order, or order revoking or suspending a permit may be vacated for failure to give the notice to the State regulatory authority required under § 842.11(b)(1)(ii)(B) of this chapter or because it is subsequently

determined that the Office did not have information sufficient, under §§ 842.11(b)(1) and 842.11(b)(2) of this chapter, to justify an inspection.

§ 843.18 Inability to comply.

(a) No cessation order or notice of violation issued under this part may be vacated because of inability to comply.

(b) Inability to comply may not be considered in determining whether a pattern of violations exists.

(c) Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty under part 845 of this chapter and of the duration of the suspension of a permit under § 843.13(c).

§ 843.20 Compliance conference.

(a) A permittee may request an on-site compliance conference with an authorized representative to review the compliance status of any condition or practice proposed at any coal exploration or surface coal mining and reclamation operation. Any such conference shall not constitute an inspection within the meaning of section 517 of the Act and § 842.11.

(b) The Office may accept or refuse any request to conduct a compliance conference under paragraph (a). Where the Office accepts such a request, reasonable notice of the scheduled date and time of the compliance conference shall be given to the permittee.

(c) The authorized representative at any compliance conference shall review such proposed conditions and practices as the permittee may request in order to determine whether any such condition or practice may become a violation of any requirement of the Act of any applicable permit or exploration approval.

(d) Neither the holding of a compliance conference under this section nor any opinion given by the authorized representative at such a conference shall affect:

(1) Any rights or obligations of the Office or of the permittee with respect to any inspection, notice of violation or cessation order, whether prior or subsequent to such conference; or

(2) The validity of any notice of violation or cessation order issued with

respect to any condition or practice reviewed at the compliance conference.

§ 843.21 Procedures for improvidently issued State permits.

(a) *Initial notice.* If OSM has reason to believe that a State surface coal mining and reclamation permit meets the criteria for an improvidently issued permit in § 773.20(b) of this chapter, or the State program equivalent, and the State has failed to take appropriate action on the permit under State program equivalents of §§ 773.20 and 773.21 of this chapter, OSM will issue to the State, and should provide to the permittee, an initial notice stating in writing the reasons for that belief.

(b) *State response.* Within 30 days of the date on which an initial notice is issued under paragraph (a) of this section, the State must demonstrate to OSM in writing either that:

(1) The permit does not meet the criteria of § 773.20(b) of this chapter, or the State program equivalent; or

(2) The State is in compliance with the State program equivalents of §§ 773.20 and 773.21 of this chapter.

(c) *Ten-day notice.* If OSM finds that the State has failed to make the demonstration required by paragraph (b) of this section, OSM will issue to the State a ten-day notice stating in writing the reasons for that finding and requesting that within 10 days the State take appropriate action under the State program equivalents of §§ 773.20 and 773.21 of this chapter.

(d) *Federal enforcement.* After 10 days from the date on which a ten-day notice is issued under paragraph (c) of this section, if OSM finds that the State has failed to take appropriate action under the State program equivalents of §§ 773.20 and 773.21 of this chapter, or to show good cause for such failure, OSM will take appropriate remedial action. Such remedial action may include the issuance to the permittee of a notice of violation requiring that by a specified date all mining operations must cease and reclamation of all areas for which a reclamation obligation exists must commence or continue unless, to the satisfaction of the responsible agency, any violation, penalty, or fee on which the notice of violation was based is abated or paid, an