

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

§ 843.22

abatement plan or payment schedule is entered into, or the permittee and all persons owned or controlled by the permittee are no longer responsible for the violation, penalty, or fee. Under this paragraph, good cause does not include the lack of State program equivalents of §§ 773.20 and 773.21 of this chapter.

(e) *Remedies to notice of violation.* Upon receipt from any person of information concerning the issuance of a notice of violation under paragraph (d) of this section, OSM will review the information and:

(1) Vacate the notice of violation if it resulted from an erroneous conclusion under this section; or

(2) Terminate the notice of violation if:

(i) All violations have been abated and all penalties or fees have been paid;

(ii) The permittee or any person owned or controlled by the permittee has filed and is pursuing a good faith appeal of the violation, penalty, or fee, or has entered into and is complying with an abatement plan or payment schedule to the satisfaction of the responsible agency; or

(iii) The permittee and all persons owned or controlled by the permittee are no longer responsible for the violation, penalty, or fee.

(f) *No civil penalty.* OSM will not assess a civil penalty for a notice of violation issued under this section.

[62 FR 19461, Apr. 21, 1997]

§ 843.22 Enforcement actions at abandoned sites.

The Office may refrain from issuing a notice of violation or cessation order for a violation at an abandoned site, as defined in § 842.11(e) of this chapter, if abatement of the violation is required under any previously issued notice or order.

[53 FR 24882, June 30, 1988]

§ 843.24 Oversight of State permitting decisions with respect to ownership or control or the status of violations.

(a) The Office shall take action pursuant to paragraphs (b) and (c) of this section whenever it determines, through its oversight of the implementation of State programs, that a State has issued a permit without complying

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

with the State program equivalents of §§ 773.22, 773.23, 773.24, 773.25, and 843.23 of this chapter.

(b) If, as a result of its determination that a State has failed to comply with the provisions set forth in paragraph (a) of this section, the Office has reason to believe that the State has issued a permit improvidently within the meaning of § 773.20 of this chapter, the Office shall initiate action under the provisions of § 843.21 of this part.

(c) If the Office determines that a State's failure to comply with the State program equivalents of §§ 773.22, 773.23, 773.24, 773.25, and 843.23 of this chapter was knowing, it shall initiate action under §§ 735.21 or 886.18 (as allowed by law) and/or § 733.12(b) of this chapter, unless the State's action was the result of a mandatory injunction of a court of competent jurisdiction.

[59 FR 54356, Oct. 28, 1994]

§ 843.25 Energy Policy Act enforcement in States with approved State programs.

(a) *State-by-State determinations.* By July 31, 1995, OSM will determine for each State with an approved State regulatory program whether:

(1) Direct Federal enforcement of the Energy Policy Act and implementing Federal regulations will occur under paragraph (b) of this section with respect to some or all surface coal mining operations in each State, or

(2) The procedures of §§ 843.11 and 843.12(a)(2) will apply to State enforcement of the Energy Policy Act, or

(3) A combination of direct Federal enforcement and State enforcement will occur.

(4) Before making this determination, OSM will consult with each affected State and provide an opportunity for public comment. OSM will publish its determination in the FEDERAL REGISTER.

(b) *Interim Federal enforcement.* (1) If OSM determines under paragraph (a) that direct Federal enforcement is necessary, §§ 817.41(j), 817.121(c)(2), and 817.121(c)(4) of this chapter will apply to each underground mining operation subject to that determination that is conducted in a State with an approved State regulatory program.