Applicant/Violator System Office System Advisory Memorandum

SAM # 2 DATE: June 19, 2012

***Subject*: PERMIT ELIGIBILITY EVALUATIONS**

This System Advisory Memorandum (SAM) discusses the policies and regulatory requirements affecting use of the Applicant/Violator System (AVS) to evaluate the eligibility of applicants' pending applications for surface coal mining permits and other permitting actions. The evaluation feature of AVS is designed to assist federal and state regulatory authorities in making permit eligibility determinations.

Why is this guidance necessary?
This SAM replaces previous SAM # 2; "Permit Eligibility Evaluations" dated May 19, 2009. The purpose of this SAM is to give regulatory authorities guidance concerning the use of AVS in evaluating an applicant's permit eligibility. It also addresses our recent policy change of no longer requiring regulatory authorities to request an AVS narrative when the evaluation results indicate the applicant is not associated with any violations.

This SAM discusses when regulatory authorities should use AVS to produce an evaluation of an applicant or operator's coal mining permit application; when regulatory authorities should request an AVS evaluation narrative; and recommendations as to what to do when compliance problems are identified.

Finally, this guidance is provided to clarify that permit eligibility determinations are made by the regulatory authority with jurisdiction over the permit application, not by the AVS Office or the nationwide computer system.

How do I use AVS to evaluate an applicant's eligibility status?
To use AVS to evaluate an applicant's pending permit application a user must access AVS on a computer internet connection at https://avss.osmre.gov. By following the step-by-step instructions found in the AVS Users Guide at http://www.arcc.osmre.gov/divisions/avso/avso.shtm a user can evaluate an application record. Evaluating an application record will evaluate an applicant's eligibility status as well as any operators or contractors associated with the permit application. The evaluation report may return results of no violations retrieved by the system or reveal unabated and uncorrected violations on surface coal mining operations as well as violations that are in the process of being abated through an abatement plan or corrected through a payment schedule.

If an application evaluation reveals violations, regulatory authorities should request an evaluation narrative from AVS. We will use the report generated from the AVS and

conduct additional research to determine if the evaluation results are accurate to provide the most up-to-date evaluation narrative possible for users to make informed permitting decisions. We will then post the results of our review in AVS as an evaluation narrative within two business days of receiving the narrative request.

If an application evaluation reveals there are no violations retrieved by the system, there is no additional research we can perform on this type of evaluation result so there is no requirement for regulatory authorities to request an AVS narrative. You should, however, print the evaluation report reflecting no violations were retrieved and maintain this report in your permit file to show you conducted a 510(c) check prior to making your permitting decision. If you wish to request an AVS narrative when no violations are retrieved, users may do so and we will process the request.

Regulatory authorities will use the evaluation and evaluation narrative along with any other available information to determine permit eligibility. *See* 30 CFR 773.9, 773.10, and 773.11. Regulatory authorities will review histories of compliance with respect to the relevant sections and provisions of the Surface Mining Control and Reclamation Act of 1977, as amended (SMCRA or the Act), including but not limited to, sections 402, 506, 507, 510, 511, and 515, and the state counterparts of the Act and federal rules, including any other applicable air or water quality laws, relevant to an applicant, an applicant's operator, and operations an applicant or its operator own or control.

When should I evaluate an applicant's pending permit application using AVS?
Our regulations require that a regulatory authority perform an evaluation twice and at specified intervals, before the regulatory authority makes their permit eligibility determination. *See* 30 CFR 773.12(c). However, we remind all users that an evaluation may be performed or an evaluation narrative may be requested at any time.

The first time a regulatory authority generates an evaluation and may request an evaluation narrative is after a pending application is determined to be administratively complete and an application record has been created in AVS. The first evaluation is important because it provides the applicant an opportunity to correct any problems that may exist before the regulatory authority makes a final permitting decision. *See* 30 CFR 773.11(b).

Under 30 CFR 773.12(c), regulatory authorities must request a second evaluation within five business days before a permit is issued. The second evaluation is especially important because of the amount of time that may have elapsed between the receipt of the application and the permitting decision. Changes in applicant and operator information and the status of violations can occur in the intervening time. Any change might affect the outcome of an evaluation and thus, a permitting decision.

Although not specified in our rules, we also recommend that regulatory authorities periodically perform additional evaluations for a pending application, especially if violations were identified in the first report.

What should I do if violations are identified in an evaluation?
We recommend that a regulatory authority immediately notify an applicant of violations identified in an evaluation. Only the regulatory authority with jurisdiction can determine if abatement or correction of a violation has been performed to its satisfaction or can negotiate the terms of compliance for an uncorrected or unabated violation.

While an application is pending, an applicant or operator or other person, has the opportunity to pursue one or more courses of action described below to resolve violations.

- An applicant or operator, an owner or controller of an applicant or operator, or other person with authority may resolve the violation. Resolution might include negotiating an agreement with the regulatory authority with jurisdiction over the violation to abate an on-the-ground violation or to correct other violations, including paying delinquent debts.

- Any person associated with a violation may challenge their relationship concerning ownership or control of the entity cited with a violation under 30 CFR 773.25, 773.26, and 773.27. This action does not challenge the existence of the violation.

- A person with authority to conduct business on behalf of the applicant or operator may provide the regulatory authority with updated or corrected information, properly documented, so that the information in AVS may be kept accurate, complete, and up-to-date.

Does this SAM affect other documents?
This SAM reflects current federal requirements and policies. It supersedes SAM # 2, "Permit Eligibility Evaluations," dated May 19, 2009.

How can I obtain more information about the subject of this SAM?
For specific instructions on how to obtain an evaluation or how to request an evaluation narrative access the AVS Users' Guide at http://www.arcc.osmre.gov/divisions/avso/avso.shtm. You may also contact an AVS User Assistance Liaison by email or by calling 1.800.643.9748 for assistance in obtaining an evaluation or an evaluation narrative or for assistance in interpreting the results.

You will find your AVS User Assistance Liaison using the web address mentioned above.

Signed: Debra J. Feheley

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