

Applicant/Violator System Office System Advisory Memorandum



SAM # 5 **DATE:** *March 31, 2008*

Subject: STATE VIOLATION INFORMATION: ENTRY and MAINTENANCE

This System Advisory Memorandum (SAM) discusses the policies and regulatory requirements affecting the use of the Applicant/Violator System (AVS) by approved State programs to enter and maintain State violation information. This feature of AVS is designed to (1) enable State regulatory authorities to comply with provisions in section 510(c) of the Surface Mining Control and Reclamation Act of 1977, as amended (SMCRA or the Act), (2) assist Federal and State regulatory authorities to assess the existence and status of State cessation orders and civil penalties relevant to permit eligibility and other permitting actions, and (3) enable any user to view this information in AVS.

Why is this guidance necessary?

This SAM replaces the April 24, 2000, edition of SAM # 5 on the same subject. We, the Office of Surface Mining Reclamation and Enforcement (OSM), have published two final rules since the earlier SAM. It is therefore important that we re-issue this SAM to assure that OSM policies as well as the regulatory requirements on this subject are in the hands of OSM's approved State programs, those most affected by these changes.

On December 19, 2000, we published a final rule that revised our regulations governing the effects of unabated or uncorrected violations on the eligibility of applicants for permits and other permitting actions, post-permit issuance information requirements for regulatory authorities and permittees, improvidently issued permits, and related subjects (65 FR 79582). On December 3, 2007, we published a final rule (72 FR 68000) that further revised definitions and provisions concerning control, ownership, permit eligibility, applicant information, alternative enforcement, and related subjects that we adopted in the 2000 final rule. As a result of these regulatory changes, we find it necessary to revise policy information we previously transmitted to assist States and other AVS users concerning State violation information.

OSM also has not yet notified States to submit proposed program amendments to be no less effective than the relevant Federal rules promulgated in 2000 and 2007 for approval. Therefore, while States as yet have no regulatory mandate to implement the revised Federal rules, OSM has maintained a consistent policy concerning State violation data since 1986/87 and first transmitted a policy memorandum to States and all other interested parties on November 25, 1991 and later as a SAM on October 4, 1993.

What are the regulatory requirements for entry and maintenance of State violations?

We adopted requirements in our 2000 final rule for regulatory authorities to enter and maintain State violation information at 30 CFR 774.11(a)(2) and (a)(4). These provisions were unchanged in our 2007 final rule.

We promulgated these provisions as the minimum Federal requirements for entry and maintenance of accurate and complete violation information in AVS so that this critical tool performs at maximum effectiveness and efficiency.

The provisions adopted at 30 CFR 774.11(a)(2) and (a)(4) reflect the intent of paragraph seven of the 1986/87 Memoranda of Understanding (MOU) and the spirit of the 1991 MOU which OSM executed with State programs regarding AVS operation. We stated our intention to promulgate provisions equivalent to the remaining relevant provisions in the Memoranda of Understanding (MOU) in our December 21, 1998, proposed rule (63 FR 70580). This proposed rulemaking formed the basis of the 2000 final rule.

The provisions at 30 CFR 774.11(a)(2) and (a)(4) require regulatory authorities to enter into AVS:

- All unabated and uncorrected violations within 30 days after the abatement or correction period for a violation expires, and
- All changes in violation status within 30 days after the abatement, correction, or termination of a violation, or a decision from an administrative or judicial tribunal.

Unabated and uncorrected violations include, but may not be limited to:

- Notices of violation (or State counterpart non-compliance) (30 CFR 843.12)
- Cessation orders (30 CFR 843.11, 774.11)
- Civil penalties equal to or greater than \$5,000¹ (30 CFR Part 845)
- Bond forfeitures (30 CFR 800.50)
- Suspension or rescission of a permit (30 CFR 773.21-773.23)

Changes in violation status include, but may not be limited to:

- Abatement, i.e., reclamation of on-the-ground violations
- Execution of an agreement to abate on-the-ground violations
- Payment of Federal and/or State civil penalties, reclamation fees, and other Federal and/or State penalties and fees
- Execution of an agreement to remit all unpaid debt

¹ States may choose to also enter civil penalties of lesser amounts.

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- Termination due to abatement or correction by a third party
- Results of an administrative or judicial decision

For further reference, see the new definition of *violation* and the revised definition of *violation notice* adopted in our 2000 final rule.

When should State violations be entered into AVS?

As indicated above, States must enter a violation once it is unabated or uncorrected for more than 30 days. States must update violation status information within 30 days of the change in the status of a violation. See 30 CFR 774.11(a). You may contact your AVS User Assistance Liaison in the AVS Office at 1.800.643.9748 for assistance with entry of State violation data into AVS.

How are State violations maintained?

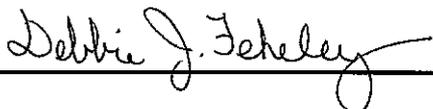
Maintenance of State-issued violations in AVS is restricted to the regulatory authority with jurisdiction over a violation. It is critical to the accuracy, efficiency, and continued effectiveness of AVS that the status of each violation is kept current. You may contact your AVS User Assistance Liaison in the AVS Office at 1.800.643.9748 for assistance with maintenance of State violation data in AVS.

Does this SAM affect other documents?

This SAM reflects current Federal requirements and policies. It supersedes previous SAM # 5, "Entering and Maintaining State Violations in the AVS," dated April 24, 2000.

How do I obtain more information concerning this SAM?

You may direct any question concerning this or any other SAM to your AVS User Assistance Liaison at 1.800.643.9748.

Signed:  _____

**Debbie J. Feheley, Chief
Applicant/Violator System Office**