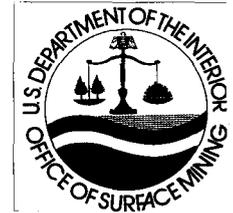


Applicant/Violator System Office System Advisory Memorandum



SAM # 8 **DATE: October 22, 2009**

Subject: JURISDICTION for DECIDING CHALLENGES to OWNERSHIP or CONTROL LISTINGS and FINDINGS

This System Advisory Memorandum provides guidance concerning jurisdiction for challenges to ownership or control listings in the Applicant/Violator System (AVS) and regulatory findings of ownership or control. This SAM replaces previous SAM # 8, "Jurisdiction for Deciding Challenges to Ownership or Control Listings and Findings" dated May 19, 2009.

Why is this guidance necessary?

This re-issued SAM is necessary to correct misstatements in previous SAM # 8. This guidance is necessary to convey the policy change promulgated in our 2000 rulemaking affecting jurisdiction for deciding challenges to ownership or control listings and findings. This SAM also conveys the effect of a subsequent 2007 rule amendment to the jurisdiction provisions. The 2007 amendment clarifies the jurisdiction and scope of ownership or control challenges.

What is the policy change that affects jurisdiction in these matters?

In our 2000 rule (65 FR 79582, December 19, 2000), we, the Office of Surface Mining Reclamation and Enforcement (OSM), promulgated a policy change that overturned our 1994 regulation covering the jurisdiction of ownership and control challenges. In 1994, we stipulated all ownership or control challenges should be directed to OSM. In the 2000 rule, we changed the jurisdiction regulation to provide for State or Federal jurisdiction over challenges, depending upon whether the challenge concerned a State or Federal pending application or issued permit. This significant policy change means that almost all challenges to ownership or control listings or findings will be reviewed and decided upon by the State regulatory authorities, not OSM. Under the 2000 rule change, OSM's jurisdiction in ownership or control challenges is limited to instances where a challenge involves a Federal pending application or issued permit.

The 2000 rule change means States no longer may defer the review and subsequent decision or finding in these matters to OSM, and in particular, to the AVS Office. However, we, the AVS Office, continue to offer investigative assistance to State regulatory authorities. States desiring assistance in developing and analyzing evidence concerning challenges or other regulatory matters may contact us at any time.

What is the significance of the 2007 amendment on jurisdiction?

In the 2007 rule, we amended the ownership or control challenge procedures to clarify scope and jurisdiction questions as to whether an ownership or control challenge may be brought if there is no pending application for a surface coal mining permit. The amendment in the 2007 rule clarifies that a challenge can be brought without there being a pending application.

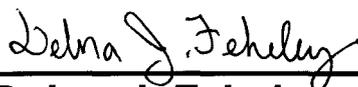
Are there other jurisdiction effects relevant to this discussion?

The current rules mean that jurisdiction in ownership or control challenges falls to the regulatory authority with jurisdiction over any pending application or any surface coal mining operation relevant to the challenger. Challengers with pending applications or issued permits in more than one jurisdiction must challenge in each jurisdiction where there is a pending application or issued permit. Absent a pending application or issued permit, a person must challenge an ownership or control listing or finding before the regulatory authority that is the source of the listing or finding.

Where can I obtain more information on challenges to ownership or control listings and findings?

For discussion of the jurisdiction policy change concerning challenges to ownership or control listings and findings, please consult the *Federal Register* notice at 65 FR 79582, December 19, 2000. For discussion of the jurisdiction amendment, please consult the *Federal Register* notice at 72 FR 68000, December 3, 2007.

If you have questions regarding jurisdiction in challenges to ownership or control listings and findings, please contact your User Assistance Liaison at 1.800.643.9748. If you wish to request investigative assistance, please contact Stephanie Varvell, Investigation Team Leader, AVS Office.

Signed: 

Debra J. Feheley, Chief
Applicant/Violator System Office