

Applicant/Violator System Office System Advisory Memorandum



SAM # 21 DATE: November 1, 2000

Subject: "UPSTREAM" OWNERSHIP and CONTROL INFORMATION in AVS

The purpose of this System Advisory Memorandum (SAM) is to remind you, Federal and State regulatory authorities, of the requirement to obtain "upstream" ownership and control information in permit applications as well as the requirement to enter this information in the Applicant/Violator System (AVS). We, the Office of Surface Mining, are aware of the uncertainty in some States regarding the Federal requirements for ownership and control information in permit applications, the utility of the information, and whether States should continue to enter and maintain this information in AVS. This uncertainty has arisen in the wake of the decision in *National Mining Association v. U.S. Dept. of the Interior*, 177 F.3d 1 (D.C. Cir. 1999) (NMA II). This SAM will reinforce our regulatory requirements in these matters.

What is our authority for requiring "upstream" ownership and control information?

On May 28, 1999, the U.S. Court of Appeals for the District of Columbia Circuit expressly upheld the permit application information requirements we adopted in our April 21, 1997, interim final rule (IFR). The court concluded that "the Secretary may require schedule information not specifically listed in any of the cited provisions of the Act [i.e., sections 507 and 510]." *Id.* at 9.

The IFR, at 30 CFR § 778.13(c), requires an applicant to provide specific information "[f]or each person who owns or controls the applicant under the definition of owned or controlled and owns or controls in § 773.5" This information is sometimes referred to as "upstream" ownership and control information.

The court's ruling means that our regulations will continue to require that applicants list their "upstream" owners and controllers in permit applications. The Federal regulations at 30 CFR § 778.13(c) implement the application requirements under section 507(b) of the Surface Mining Control and Reclamation Act of 1977, as amended (SMCRA or the Act).

Why do we continue to require "upstream" ownership and control information?

There are several reasons why we continue to require "upstream" ownership and control information and why the information is important to the effective implementation of the Act.

Foremost, much of the information is required from applicants under section 507(b) of SMCRA. In addition, the information provided by applicants pertaining to "upstream" owners and controllers is necessary to enforce section 510(c) of SMCRA as well as other sections of the Act. For example, we may use the information submitted under section 507 to: determine future permit eligibility of an applicant's or a permittee's owners or controllers; determine the identity of the "real" or "true" applicant, if different from the "nominal" applicant; and identify persons who may be subject to individual civil penalties or other enforcement actions.

With regard to future eligibility, we note that an applicant's owners or controllers may one day apply for permits themselves, thus becoming subsequent applicants. In this respect, the previous applicant will be "downstream" from the subsequent applicant. "Downstream" ownership and control relationships are relevant to permit eligibility determinations under section 510(c) of SMCRA.

Regulatory authorities are also required to verify that ownership and control information submitted in applications is accurate and complete. Our regulations pertaining to the verification of ownership or control application information are found at 30 CFR § 773.22.

Are regulatory authorities required to enter and maintain "upstream" ownership and control information into AVS?

The regulation requiring the entry and maintenance of ownership and control information in AVS is found at 30 CFR § 773.22(d). The May 28, 1999, decision of the D.C. Circuit did not alter our ability to require applicants to disclose "upstream" ownership and control information or the obligation of regulatory authorities to enter the information in AVS. Thus, this SAM is also a reminder that regulatory authorities must enter and maintain all ownership and control information in AVS. The requirement includes "upstream" ownership and control information submitted by applicants in their applications or otherwise provided to regulatory authorities.

How do I obtain more information concerning this SAM?

If you have any questions regarding this System Advisory Memorandum, please contact the AVS Office at (800) 643-9748.

Does this SAM affect other documents?

No. This SAM reflects current Federal requirements and policies. It does not affect other System Advisory Memoranda or other related OSM documents.

Signed; _____

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