

Applicant/Violator System Office System Advisory Memorandum



SAM # 22 DATE: May 10, 2001

Subject: Jurisdiction for Deciding Ownership or Control Challenges

This System Advisory Memorandum (SAM) provides guidance regarding jurisdiction for deciding ownership or control challenges prior to States adopting counterparts to the recently revised ownership and control and related rules. 65 FR 79582 (December 19, 2000).

Why is this guidance necessary?

This guidance is necessary because, on December 19, 2000, we, the Office of Surface Mining Reclamation and Enforcement, revised our rules governing jurisdiction in deciding challenges of ownership and control listings or findings. The revised rules became effective in Federal program States on January 18, 2001. However, the rules will not become effective in primacy States until States adopt and receive approval of counterpart regulations. We are providing this guidance to explain how we will implement the changes in jurisdiction for deciding ownership or control challenges in primacy States until those States amend their programs to include counterpart regulations.

How do the revised rules differ from the previous rules?

The revised regulations provide that we have jurisdiction only if a challenge concerns a pending Federal permit application or a Federally issued permit. If a challenge concerns a pending State permit application or a State-issued permit, the State with jurisdiction over the application or permit is the proper jurisdiction for deciding the challenge. *See* 30 CFR 773.26(a). This differs from the 1994 AVS Procedures rule at previous 30 CFR 773.25(b), under which jurisdiction varied with the type and nature of the challenge. We made the change to allow ownership or control challenges to proceed in one forum.

What will we do when notified of an ownership or control challenge?

1. If an ownership or control challenge involves a pending Federal permit application or a Federally issued permit, we will decide the challenge.

2. If the challenge involves a pending State permit application, we will offer the State regulatory authority with jurisdiction over the application the opportunity to assume jurisdiction over the challenge.
3. If the challenge involves a State-issued permit, we will offer the State regulatory authority with jurisdiction over the permit the opportunity to assume jurisdiction over the challenge.
4. When a State declines to take jurisdiction of an ownership or control challenge, we will decide the challenge. When this occurs, we may request copies of source documentation or other information from each affected State.
5. We will post all decisions on ownership or control challenges on AVS and the AVS Office home page as required under 30 CFR 773.28(d). The AVS Office will contact each State regulatory authority every month to collect this information.

How do I obtain more information about this SAM?

If you have any question 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. This policy will expire when a State amends its program to include counterparts to our revised rules on ownership or control challenges.

Signed; _____

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