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	U. S. DEPARTMENT OF THE INTERIOR **OFFICE OF SURFACE MINING** **RECLAMATION AND ENFORCEMENT** **DIRECTIVES SYSTEM**	**Subject Number:** INE-32 **Transmittal Number:** 379 **Date:** 10/1/87

Subject: Oversight Procedures for States' Use of the Applicant Violator System

Approval: Jed D. Christensen **Title:** Director

1. Purpose. This directive provides oversight procedures for evaluating the use of the Applicant Violator System by States with approved regulatory programs.*

2. Definitions. Applicant Violator System (AVS). A computerized system which identifies permanent program permit applicants, permittees, persons and entities responsible for unabated cessation orders or who owe Abandoned Mine Land Reclamation (AML) fees or civil penalties assessed under section 518(h) of the Surface Mining Control and Reclamation Act of 1977 (the Act), and persons who own or control, or are owned or controlled by, such entities. Data will be entered into the AVS in two phases. The information currently contained in the system includes:

- Permanent program permittees (State and Federal)
- Pending permit applicants
- Entities with unabated Federal cessation orders
- Entities with unpaid Federal 518(h) civil penalties
- Entities with delinquent AML fees
- Entities with bond forfeitures
- Identities of persons who own or control permittees, applicants or entities responsible for unabated Federal cessation orders or unpaid Federal civil penalties or fees

The additional information to be loaded into the system during the second phase (October 1, 1988) will include:

- Entities with unabated State cessation orders and unpaid State civil penalties associated with cessation orders
- Identities of persons who own or control, or are owned or controlled by entities responsible for unabated State cessation orders and unpaid State civil penalties.
- Air and water quality violations related to coal mining and the owners and controllers of entities responsible for such violations

*The primary focus of this directive is the Applicant Violator System. Some of the procedures in this directive may be related to the review of the States' overall permitting program which are described in the Directive entitled "Oversight of State Programs--Annual Evaluations," (REG-8).

AVS Memorandum of Understanding (AVS MOU). An agreement between the Office of Surface Mining Reclamation and Enforcement (OSMRE) and the State regulatory authorities. The MOU's set forth the terms for OSMRE and the States to participate in implementing the Applicant Violator System, through which all permit applications are reviewed, and includes the terms under which the States and OSMRE will maintain the system, and collect, enter, and update the data in the AVS.

3. Policy/Procedures.

a. Background. The Applicant Violator System (AVS) was developed to assist OSMRE and the State regulatory authorities in complying with the permitting requirements of the Act and approved State programs. The system also enables OSMRE to meet its obligations under the Revised Parker Order (Save Our Cumberland Mountains, Inc., et al. v. Clark, Civil Action No. 81-2134 (D.D.C.) and Council of Southern Mountains, Inc., et al. v. Clark, Civil Action No. 79-1521 (D.D.C.).

Under the revised Parker Order, OSMRE is obligated to:

(1) Establish and maintain a computerized system which identifies permanent program permit applicants, permittees, persons/entities responsible for unabated Federal cessation orders and associated civil penalties, and persons who own or control such entities.

(2) Update the system at least quarterly.

(3) Withhold permits, and request States to withhold permits, for new mining operations from individuals/entities responsible for such violations and/or unpaid civil penalties.

(4) Identify situations where such a violator may have received a permit and take steps to correct such situations.

(5) Demonstrate, in order to terminate the Revised Parker Order, that the AVS is fully implemented and enforced for a period of one year after the minimum requirements of the AVS are operational (i.e., Phase 1).

b. Policy. As an integral part of OSMRE's annual State program oversight responsibilities, it is OSMRE's policy to evaluate the States' permitting actions to determine how well the States have integrated the AVS into their permit review and approval process, and to assure that the States are complying with the provisions of their AVS memorandum of understanding (MOU).

The following three key objectives are hereby established for evaluating the States' use of the AVS.

(1) State Data: To ensure that the States are contributing accurately and timely applicant and ownership data to the AVS.

(2) Permit Blocking Usage: To determine whether and how effectively the States are using the AVS during the permitting process.

(3) Improvidently Issued Permits: To determine how the States act to correct situations where permits have been issued improvidently and to take Federal action when necessary in compliance with the Revised Parker Order.

c. Procedures/Responsibilities.

(1) Assistant Directors for Eastern and Western Field Operations are responsible for:

(a) Providing guidance to the field offices on the procedures for monitoring the States' use of the AVS.

(b) Assuring that the field offices are conducting oversight activities in accordance with the requirements of this directive.

(c) Assuring that Field Offices coordinate any investigative work needed to eliminate false matches concerning ownership and control with the AVS Clearinghouse, if required, prior to submitting formal notification to the States to either not issue a permit or to revoke or suspend a permit in accordance with the procedures outlined in the Directive entitled, "Guidelines for Responding to Improvidently Issued Permits."

(d) Compiling data from the field offices on improvidently issued permits and State permitting actions for the quarterly court reports (per the Revised Parker Order).

(2) Field Office Directors are responsible for conducting oversight activities and field investigations necessary to determine whether and to what extent the States are using the AVS, blocking permits from being issued to violators or entities related to violators through common ownership or control, and complying with the provisions of their AVS MOU's. Specific responsibilities include:

(a) Permit Application Entry

Determining whether the States are entering all permanent program permit applications into the AVS. This would be accomplished by taking a periodic inventory of the States' permit applications and comparing it to the data in the AVS to determine whether all of the applications have been entered. Field Offices should be insuring that the name of the applicant and the date the State regulatory authority concluded the four week public notice period held persuant to the State's counterpart to 30 CFR 773.13(a) and (b) are included. Suggested approaches for constructing inventories include but are not limited to:

(1) Obtaining copies of the State's permits if this a normal course of business for the field offices.

(2) Using notifications of the State's receipt of the permit applications.

(3) Conducting site visits to the State offices to obtain the information.

(b) Timeliness of Data Entry

Determining whether the States are entering data into the AVS in a timely manner. The timeliness of data entry is governed by the States' AVS MOU. Field Office Directors should obtain from the State, a copy of the State's guidelines and schedule for data input. Under the AVS MOU, data is to be entered into the AVS, at a minimum, on a quarterly basis. In order to check the timeliness of data entry, the field offices should compare by use of sampling the data in their inventory with that in the AVS to ascertain the dates when the application should have been entered into the system under the State's schedule versus the date the application was actually entered into the system by the State.

(c) Data Accuracy

Determining the level of accuracy of the AVS data entry by the States. The field offices are to evaluate whether the States are entering data from the permit applications into the AVS in a complete and accurate manner. For example, the field offices will determine whether all names of stockholders and officers as required by the approved State program are being entered, and whether they are being entered in accordance with applicable data entry instructions provided by OSMRE.

(1) In States which receive few applications, the field offices should obtain copies of the relevant portions of permit applications for comparison with the data entered in the AVS. For States which receive many applications, a sample should be used to verify data entry accuracy.

(2) Where data entry problems are procedural or technical in nature and are identified during the course of the field office conduct of oversight activities, the field offices should notify the State informally of the discrepancies and request the State to explain why the discrepancies occurred and to take appropriate steps so that the data on the application matches the data entered into the AVS.

(d) Revised Data

Determining whether the States are entering revised data on ownership and control into the AVS and whether such entries are timely, accurate and documented (see paragraph (h) below). This responsibility pertains to permit application updates and applications for permit revisions in cases where changes to ownership and control apply. According to the provisions of each States' AVS memorandum of understanding (MOU), the States are required to update the data in the AVS, at a minimum, on a quarterly basis. The process for determining whether the States are entering revised data into the AVS is similar to that for entering new permit applications into the system as described above in paragraphs (a)-(c), i.e., the field offices should compare a sample of the State's data with that in the AVS and assure that the State has included appropriate documentation to support the update.

(e) Adequate Documentation

(1) Monitoring whether the States had adequate documentation or rationale to support changes to the ownership and control data entered into the AVS.

(2) Determining whether a State has obtained adequate documentation to disavow a match between a permit applicant and a violator identified by the AVS. Examples of documentation sufficient to disavow a match based on ownership and control, as well as false-positive AVS links, may be found in the directive entitled "510(c) Permit Procedures for Federal Permit Applications."

(f) Querying the AVS

Monitoring the States' query of the AVS. States are expected to query the AVS for each permitting action in accordance with their AVS MOU. The AVS Clearinghouse shall provide the field offices with system-generated reports reflecting the dates of the States' queries on specific entities or persons in the AVS. The field offices shall then conduct a sample analysis of the reports to determine whether these requirements were met and monitor for trends.

(g) Case-specific Problems, Trends, or Program Changes

(1) Responding to a variety of case-specific problems found during the oversight activities. In situations where a State issues a permit to an entity matched to a violator and adequate documentation is not in the State's permit file to justify disavowal of the match, the Field Office Director shall consult the AVS Clearinghouse to ascertain whether any supplemental information exists (e.g. information not yet entered into the AVS) to either confirm or disavow the match before discussing the discrepancy with the State. If the AVS Clearinghouse confirms the match, then the Field Office Director will informally notify the State of the discrepancy, request an explanation of the State's action, and ask the State to correct the discrepancy by requiring a permit revision, condition, or, where necessary, taking action under its approved program to suspend or revoke the permit. If the discrepancy is not resolved, then the Field Office Director shall implement the procedures outlined in the Directive entitled "Guidelines for Responding to Improvidently Issued Permits" in order to fulfill the requirements of the Revised Parker Order.

(2) Alerting the appropriate Assistant Director for Field Operations and the AVS Clearinghouse of problems or trends which may affect the States' ability to satisfy the requirements of their AVS MOU, or any additional matters which should be incorporated in the MOU.

(3) Monitoring State program amendments and other changes to the implementation of the approved program which could result in the failure to meet the requirements of the Act and approved State program particularily as they pertain to permit issuance and blocking.

(4) Gather figures of permitting actions, responses to improvidently issued permits and noteworthy case-specific problems which indicate program deficiencies.

(h) Systemic Deficiencies

In conducting the reviews as required in paragraphs (a)-(g) above, Field Office Directors should take steps to determine whether patterns or trends exist with regard to any problems identified as deficiencies. If the Field Office Directors identify such deficiencies, they should further determine whether the identified problems are systemic in nature by reviewing the systems and procedures being used by the State. Field Office Directors should consult with the State informally to seek the State's explanation regarding systemic trends and deficiencies, and should recommend appropriate remedies.

(3) Assistant Director, Information Systems Management is responsible for assuring that the AVS Clearinghouse provides information and/or reports to Field Offices on the use of the AVS by State regulatory authorities.

(4) The AVS Clearinghouse shall be responsible for:

(a) Providing the field offices with system-generated reports of the dates each permit application was entered into the AVS by the States, and the dates of State queries on applicants and State permit decisions.

(b) Providing the field offices with copies of system-generated query reports that show applicant-violator matches and permittee-violator matches.

(c) Alerting the field offices about data entry problems.

(d) Providing any other reports that the Assistant Directors for Eastern and Western Field Operations or the Field Office Directors may need to effectively conduct their oversight activities.

(e) Assisting the field offices in designing oversight reports and obtaining appropriate data.

(f) Assisting the States and the field offices in resolving case-specific and system related problems identified during the conduct of oversight activities, and confirming or disavowing matches by providing updated information to the States and field offices upon request.

4. Reporting Requirements.

a. The Field Office Directors are responsible for preparing and reporting on the oversight activities as required in the directive entitled, "Oversight of States Programs--Annual Evaluations," (REG-8).

b. On a quarterly basis, the field offices shall provide certain information on all matches identified by the AVS to the Assistant Directors for Eastern and Western Field Operations. To the extent that a match occurs between a permittee and a violator, the reporting requirements shall be governed by the requirements of that portion of the directive entitled, "Guidelines for Responding to Improvidently Issued Permits" under the Revised Parker Order, and include an explanation as to the basis upon which the State decided to issue the permit. The Assistant Directors for the Eastern and Western Field Operations are responsible for compiling this data for inclusion in the reports to the U.S. District Court per the Revised Parker Order and forwarding the data to the Office of the Solicitor.

c. The AVS Clearinghouse shall be responsible for providing quarterly reports on matches between applicants and violators to the Office of the Solicitor for inclusion in the quarterly court reports.

5. References.

a. Settlement in: Save Our Cumberland Mountains, Inc., et al. v. Clark, Civil Action No. 81-2134 (D.D.C.) (Parker, J. B); Council of the Southern Mountains, Inc., et al. v. Clark, Civil Action No. 79-1521 (D.D.C.).

b. Directive entitled, "Oversight of State Programs--Annual Evaluations," (REG-8).

c. Directive entitled, "Guidelines for Responding to Improvidently Issued Permits."

d. The Memoranda of Understanding between OSMRE and the primacy States on use of the AVS.

6. Effect on Other Documents. None.

7. Effective Date. October 1, 1987.

8. Contact. Chief, Branch of Inspection and Enforcement (FTS 343-4550).