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	U· S· DEPARTMENT OF THE INTERIOR OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT DIRECTIVES SYSTEM	Subject Number: INE-33 Transmittal Number: 570 Date: AUG 25 1989

Subject: Permit Review Procedures for Federal Permit Applications

Approval: /s/ Henry M. Snyder **Title:** Director

1. Purpose. This Directive sets forth the procedures for conducting compliance reviews in order to determine whether to issue, issue conditionally, or deny applications for new Federal permits in accordance with section 510(c) of the Surface Mining Control and Reclamation Act of 1977 (the Act) and 30 CFR 773.15(b).

2. Summary. This Directive reflects amendments to the Federal rules under the ownership and control rule (53 FR 38868, October 3, 1988), and the ownership and control information update rule (54 FR 8982, March 2, 1989). The following information highlights the significant changes being made to the Office of Surface Mining Reclamation and Enforcement (OSMRE) Directive INE-33 dated October 1, 1987, to reflect the new rules and to clarify additional policy information.

a. The definition section is amended to:

(1) Include a reference to 518(a) and 518(f) civil penalties (paragraphs 3.a. and 3.e.);

(2) Incorporate the definition of "owned or controlled" and "owns or controls" (paragraph 3.b.);

(3) Incorporate the definition of "transfer, assignment, or sale of permit rights" (paragraph 3.d.);

(4) Include bond forfeitures where violations upon which the forfeitures were based have not been corrected (paragraph 3.e.); and

(5) Include as a part of the definition of "permit conditioning" an outstanding compliance problem which is in the process of being corrected to the satisfaction of the issuing regulatory authority (paragraph 3.g.).

b. The "Policy/Procedures" section incorporates the previous concept statement into the new "Background" section and references the amended regulations at 30 CFR 773.15(b) (paragraph 4.a.). The "Policy/Procedures" section also includes a new "Applicability" section which applies to compliance reviews needed on applications for new Federal permits or for a transfer, assignment, or sale of permit rights under a Federal permit (paragraph 4.a.(2)).

c. The procedures in this Directive have been reorganized. Two sections which provide guidelines for analyzing synonymous links and responding to rebuttals of presumptive ownership and control now appear in Appendices 1 and 2.

d. The Directive now specifies that permits may also be conditionally approved on the basis of proof submitted under 30 CFR 773.15(b)(1)(i) that a compliance problem is in the process of being corrected or pending the outcome of an appeal described in 30 CFR 773.15(b)(1)(ii).

e. The Directive now specifies that permits shall be blocked in cases where compliance problems exist and the applicant or person affected cannot rebut the presumption of ownership or control to the satisfaction of OSMRE, and in those instances where permit conditioning is not possible.

3. Definitions.

a. Applicant Violator System (AVS). A computerized system which identifies permanent program permit applicants, permittees, persons and entities who are responsible for unabated cessation orders or who owe Abandoned Mine Land Reclamation (AML) fees or civil penalties assessed under sections 518(a), 518(f), and 518(h) of the Act, and persons who own or control, or are owned or controlled by such entities. Data currently contained in the system include:

- Permanent program permittees (State and Federal);
- Pending permit applicants;
- Entities with unabated Federal cessation orders;
- Entities with unpaid Federal 518(a) and (h) civil penalties;
- Persons with unpaid Federal individual civil penalties (518(f));
- Entities with delinquent abandoned mine land reclamation fees (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 AML fees.

b. Owned or Controlled and Owns or Controls mean any one or combination of relationships specified in paragraphs (1) and (2) below.

(1)(a) Being a permittee of a surface coal mining operation; (b) based on instruments of ownership or voting securities, owning of record in excess of 50 percent of an entity; or (c) having any other relationship which gives one person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts surface coal mining operations.

(2) The following relationships are presumed to constitute ownership or control unless the person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted:

(a) Being an officer or director of an entity;

(b) Being the operator of a surface coal mining operation;

(c) Having the ability to commit the financial or real property assets or working resources of an entity;

(d) Being a general partner in a partnership;

(e) Based on the instruments of ownership or the voting securities of a corporate entity, owning of record 10 through 50 percent of the entity; or

(f) Owning or controlling coal to be mined by another person under a lease, sublease, or other contract and having the right to receive such coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.

As used in this Directive, the phrases "linked through ownership or control" and "common ownership and control" would signify that the entities are related due to one or more of the ownership and control criteria, and that one entity's compliance problems will impact on a related entity's permit application approval.

c. Revised Parker Order. The consent order issued January 31, 1985, in Save Our Cumberland Mountains, Inc. et al. v. Clark, Civil Action No. 81-2134 (D.D.C.) (Parker, J.). The revised Parker Order requires OSMRE, among other things, to take the following actions with respect to the use of the AVS in the permitting process:

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

(2) Withhold permits for new mining operations from individuals/entities responsible for such violations and/or unpaid civil penalties.

(3) In establishing and implementing the AVS, use no less inclusive a class of persons for ownership and control linkages than the names of every officer, director, and any person owning of record 10 percent or more of any class of voting stock of corporations which apply for permits, and the name of all partners of partnerships which apply for permits. Such information is required on all permanent program permits under section 507(b)(4) of the Act.

d. Transfer, Assignment, or Sale of Permit Rights (permit transfer) is a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by OSMRE. This definition is based on the common understanding of the terms to include any effective shift in control over rights, in addition to technical changes in ownership. The term includes, for example, changes such as a new officer,

director, or owner of 10 percent or more of any class of voting stock as well as the addition of a new operator (not listed in the original permit) who actually performs surface coal mining operations. See 30 CFR 701.5 and 44 FR 15106, March 13, 1979.

e. Compliance Problems. These are problems which would cause a permit or permit transfer to be conditionally approved or blocked and include the following types of problems:

(1) Unabated Federal or State failure to abate and imminent harm cessation orders.

(2) Past due 518(a), 518(f), or 518(h) Federal civil penalties and equivalent State civil penalties. A 518(a) civil penalty is a penalty assessed on a Notice of Violation (NOV). A 518(f) penalty is an individual civil penalty assessed against a corporate officer, director, or agent. A 518(h) civil penalty is a penalty assessed on a Failure-To-Abate Cessation Order (FTACO) or equivalent penalty assessed for failure to abate an Imminent Harm Cessation Order (IHCO). A Federal civil penalty will be considered past due if it remains unpaid after a Final Order has been issued and a payment schedule has not been executed.

(3) Delinquent AML fees or reports. Delinquent AML fees are those which are not paid within 30 days after the end of each calendar quarter. Delinquent AML fees include those fees stemming from the results of an AML fee audit. An AML fee report is delinquent if not submitted within 30 days after the end of each calendar quarter on Form OSM-1, "Coal Production and Reclamation Fee Report."

(4) Bond forfeitures where violations upon which the forfeitures were based have not been corrected.

(5) Unabated violations of Federal and State laws, rules, and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation.

(6) A demonstrated pattern of willful violations of the Act of such nature and duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the Act. The applicant or operator must be given an opportunity for a hearing before this finding can be made, as required by section 510(c) of the Act.

(7) All other outstanding violations whether they occurred under the interim or permanent regulatory program, as listed in 30 CFR 773.15(b)(1), for which a NOV or Cessation Order has been issued. In the absence of a FTACO, the Field Permitting Unit (FPU) may presume that NOV issued pursuant to 30 CFR 843.12 or under a Federal or State program has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, except where evidence to the contrary is set forth in the permit application, or where the NOV is issued for nonpayment of abandoned mine reclamation fees or civil penalties.

f. Permit Blocking. The decision by the FPU to deny a permit or permit transfer or to withhold a permit or permit transfer until compliance problems are resolved to the point where the permit can be issued or issued conditionally.

g. Permit Conditioning. The action taken by the FPU to attach specific conditions to a permit or permit transfer when an applicant and/or entities linked to the applicant through common ownership or control: (1) have filed and are presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of a current violation and/or debt (including a good faith defense to an AML collection suit); or (2) have an outstanding compliance problem which is in the process of being corrected to the satisfaction of the issuing regulatory authority; and (3) in addition, where the applicant is protected by the automatic stay in bankruptcy from the commencement or continuation of an action to collect a prepetition debt, the permit or permit transfer should be conditioned on the payment of any amount not discharged in bankruptcy, once the automatic stay has expired. (Where only an entity linked to the applicant through common ownership or control is in bankruptcy, permit blocking is appropriate, not permit conditioning.)

4. Policy/Procedures.

a. Background.

(1) General. Section 510(c) of the Act states that the regulatory authority shall not issue a permit if any surface coal mining operation owned or controlled by the applicant is currently in violation of the Act or any other environmental law in connection with a surface coal mining operation until the applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the issuing regulatory authority. OSMRE has implemented this provision in 30 CFR 773.15(b). This Directive provides procedures that are consistent with those rules as amended. The revised regulations add definitions of the terms "owns or controls" and "owned or controlled," and clarify the scope of review of an applicant's environmental compliance record prior to the issuance of a new permit, as well as that of entities related to the applicant through common ownership or control. This Directive also provides procedures for OSMRE to comply with the Revised Parker Order to withhold permits for new mining operations from individuals/entities responsible for unabated Federal FTACOs and/or unpaid civil penalties. The Revised Parker Order also requires OSMRE to develop, maintain, and use the AVS. This Directive explains how the AVS will be used in the compliance review process.

(2) Applicability of this Directive. This Directive applies to compliance reviews needed on applications for new Federal permits or for a transfer, assignment, or sale of permit rights under a Federal permit. Applications for permit revisions, permit renewals, and mine plan reviews conducted under the Mineral Leasing Acts are not subject to compliance reviews. In addition, where OSMRE issues a permit on Federal lands in a State with an approved regulatory program, the responsibilities (section 4.b.) and procedures (section 4.c.) of this Directive are applicable, but the FPU must apply the standards of the approved State program in rendering decisions on

applications. Therefore, while section 4.d. of this Directive ("Criteria for Decisions") may serve as general guidance, the FPU should apply the approved State program counterparts to the Federal regulations cited therein to reach decisions on permit applications. To the extent that a State program does not contain a counterpart (e.g., most States are still in the process of amending their programs to add a definition of "owns or controls"), the FPU should determine and abide by the State's current operating policy and practice. In no case shall the FPU substitute a Federal provision for that of an approved State program or apply a Federal provision even where a counterpart does not exist under the approved State program. This Directive applies to all permits issued in Federal program States and on Indian lands.

b. Responsibilities.

(1) Field Permitting Units are responsible for:

(a) Ensuring that permit and permit transfer applications contain the required information on all owners and controllers and their owners and controllers;

(b) Reviewing permit applications and applications for a transfer, assignment, or sale of rights in accordance with section 510(c) of the Act, 30 CFR 773.15(b), and the Revised Parker Order;

(c) Deciding whether to issue, issue conditionally, or block permits and permit transfers, and documenting the basis underlying the decisions;

(d) Obtaining from the Environmental Protection Agency (EPA) or appropriate State air and water regulatory authorities information concerning air or water environmental protection violations incurred in connection with any surface coal mining operation for use in permit application decisions;

(e) Coordinating with the applicant the resolution of compliance problems and reviewing and deciding whether information submitted by a person is sufficient to rebut a form of presumptive ownership or control. This may include referring the applicant to other appropriate agency units, the Office of the Solicitor, or other regulatory authorities which have cited a violation or penalty problems;

(f) Approving, blocking, or conditioning new permits and permit transfers; and

(g) Upon approval, blockage, or conditioning of permits and permit transfers, documenting the manner in which applicants resolved compliance problems and compiling data on permitting decisions for statistical and tracking purposes. If the AVS or other information result in a deny or condition recommendation based on a Parker Order violation, the FPU will need to report the disposition of the permit application to the Division of Debt Management for inclusion in the quarterly reports filed with the U.S. District Court.

(2) Field Office Directors are responsible for providing and verifying information concerning outstanding Federal violations upon request from the FPU. In the case of State violations and civil penalties, the Field Office Directors shall be the liaison between OSMRE and the States for purposes of gathering State violation and State civil penalty data needed for permit decisions until such information becomes available through the AVS.

(3) Division of Debt Management is responsible for:

(a) Assisting FPUs and permit applicants in resolving case-specific matters regarding monies owed to OSMRE including civil penalties, abandoned mine land fees reported from the AML fee system or from fee compliance audits, interest, late fees, and administrative costs, and for providing information about payment plans; and

(b) Through the Division's AVS Clearinghouse:

(i) Providing assistance to FPUs in their use of the AVS;

(ii) Assisting FPUs in resolving case-specific and system-related problems; and

(iii) Programming the AVS to permanently break false matches.

c. Procedures. The FPU shall schedule and implement the following procedures for each permit or permit transfer compliance review:

(1) Entry of AVS Data and Initial Compliance Review. The ownership and control data from all Federal permit and permit transfer applications shall be entered into the AVS by the FPU no later than 15 days after receipt of the application. At that time, if the AVS or other available information reveals that an applicant has compliance problems or is linked to an entity which has compliance problems, then the FPU shall inform the applicant that the permit will be blocked until the compliance problems are resolved. This initial identification of compliance problems may be complicated by synonymous names of persons or entities. The guidelines found in Appendix 2 of this Directive may be of assistance to FPUs in determining which links are valid or invalid.

(2) Second Compliance Check for Permit Approval Decision.

(a) Data on State Compliance Problems.

(i) Until the data on State violations and civil penalties are entered into the AVS, Field Office Directors shall continue to obtain data from the States. FPUs should initiate such requests with the appropriate Field Office(s) no later than the end of the initial compliance review period. Data should be compiled by the Field Office Directors in sufficient time to be useful at the time of the application approval

decision. Should there be a substantial delay between the time the State data is obtained and the decision on the application (i.e., more than 60 days), the FPU should request the appropriate Field Office(s) to reverify the data with the State regulatory authorities.

(ii) FPUs should request data from those States where the applicant and affiliates as well as the operator listed on the application are known to have operated, and border States (where coal mining occurs) of the Federal program State where the permit application is pending. The Field Office responsible for oversight activities in a given State is responsible for obtaining the State violation data and reporting the information obtained back to the FPU within the schedule prescribed by the FPU.

(b) Second AVS Check. The AVS shall be rechecked at the time of the actual decision on the permit or permit transfer application in order for the application decision data to be current.

d. Criteria for Decisions.

(1) Analysis of Data and Identification of Compliance Problems. Upon receipt of the data from the AVS or State agencies, the data shall be analyzed by the FPU to identify any compliance problems for which the applicant is responsible directly or indirectly through an ownership or control relationship. To the extent that the specific case involves the need to distinguish valid from invalid links or to consider information submitted by a person to rebut a form of presumptive ownership or control, the FPU should follow the guidelines contained in Appendices 1 and 2 of this Directive.

(2) Documentation of Basis for Permit Approval Decisions. After all available information is analyzed, a decision on the application will be made based on the following documented information:

(a) Based on available information concerning compliance problems, make the determination required by 30 CFR 773.15(b)(1) as to whether any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant (including the operator specified in the application) currently has a compliance problem. If a compliance problem exists, the applicant or persons who own or control the applicant shall be required, before the permit is issued, to:

(i) Submit proof that the compliance problem has been or is in the process of being corrected to the satisfaction of the issuing regulatory authority (where the applicant is in bankruptcy, any pre-petition debts are deemed to be "in the process of being corrected" as long as the automatic stay remains in effect); or

(ii) Establish that the applicant, or any person owned or controlled by either the applicant or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the compliance problem. If the initial judicial review authority under 30 CFR 775.13 affirms

the compliance problem, then the applicant shall submit the proof required under 30 CFR 773.15(b)(1)(i) within 30 days of the judicial action.

(iii) In accordance with 30 CFR 773.15(b)(2), any permit or permit transfer that is issued on the basis of proof submitted under 30 CFR 773.15(b)(1)(i) that a compliance problem is in the process of being corrected, or pending the outcome of an appeal shall be conditionally issued.

(b) Make a finding under 30 CFR 773.15(b)(3) to determine whether the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled any surface coal mining and reclamation operations with a demonstrated pattern of willful violations of the Act of such nature and duration, and with resulting irreparable damage to the environment as to indicate an intent not to comply with the Act. If such a finding is made, the permit or permit transfer shall not be granted. Before such a finding becomes final, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 30 CFR 775.11.

(c) To the extent that a compliance problem is identified based on a presumptive ownership or control relationship, the permit or permit transfer shall be blocked (or conditioned, if the conditions specified in 4.d.(2)(a) above are met) unless the person submits information which the FPU finds satisfactory to rebut the presumption.

e. Permit Decision Options.

(1) Permit Approval. A permit or permit transfer application may be approved when the applicant and all entities linked to the applicant through common ownership and control do not have any compliance problems.

(2) Permit Conditioning.

(a) A permit or permit transfer shall be issued conditionally pending the outcome of an appeal of a compliance problem as provided under 30 CFR 773.15(b)(1)(ii). A good faith defense to an AML fee collection suit may also qualify a permit or permit transfer to be issued conditionally.

(b) If an applicant has entered into an abatement plan for outstanding violations or a payment plan for outstanding civil penalties or AML fees, the permit or permit transfer shall be conditioned upon the performance of abatement work or the payment of the civil penalties or AML fees in accordance with the approved plan.

(c) Any permit that is issued on the basis of proof submitted under 30 CFR 773.15(b)(1)(i) that a compliance problem is in the process of being corrected shall be conditionally approved.

(d) Where the applicant is protected by the automatic stay in bankruptcy from the commencement or continuation of an action to collect a pre-petition debt, the permit or permit transfer should be conditioned on the

payment of any amount not discharged in bankruptcy, once the automatic stay has expired. (Where only an entity linked to the applicant through common ownership or control is in bankruptcy, permit blocking is appropriate, not permit conditioning.)

(3) Permit Blocking. Permits and permit transfers shall be blocked in cases where compliance problems are identified and the applicant or person affected cannot rebut the presumption of ownership or control to the satisfaction of the FPU, and in those instances where permit conditioning is not possible. In the event that compliance problems cannot be resolved, a decision denying the permit should be issued in accordance with 30 CFR 773.19.

f. Permit Issuance: Final Compliance Review. After the applicant is notified by the FPU that his/her application has been approved, but before the permit or permit transfer is issued, the FPU shall implement the requirements of 30 CFR 778.13(i) and 778.14(d) by requiring the applicant to update, correct, or indicate that no change has occurred in the identification of interests (30 CFR 778.13(a)-(d)) or violation information (30 CFR 778.14) the applicant previously submitted as part of the application. The FPU shall conduct a final compliance review as required by 30 CFR 773.15(e) using the procedures and criteria of sections 4.c. and 4.d. of this Directive based on any new information submitted by the applicant. Based on the results of the final compliance review, the FPU shall reconsider its permit or permit transfer approval decision, document the results of this reconsideration, and amend the permit approval decision where appropriate under the criteria of section 4.d. of this Directive.

5. Reporting Requirements. To the extent the AVS or other information result in a deny recommendation based on a Parker Order violation, the FPU will need to report the disposition of the permit application to the Division of Debt Management for inclusion in the quarterly reports filed with the U.S. District Court.

6. Effect on Other Documents. Supersedes Directive INE-33, Transmittal Number 380, entitled "510(c) Permit Review Procedures for Federal Permit Applications," dated October 1, 1987.

7. References.

a. Sections 507(b)(4), 510(c), 518(a) and (h) of the Act.
b. 30 CFR 773.5, 773.15(b).
c. 30 CFR 775.11, 775.13(c).
d. 30 CFR 778.13(d), 778.15(a) and (b).
e. Settlement in: Save Our Cumberland Mountains, Inc. et al. v. Clark, Civil Action No. 81-2134 (D.D.C.) (Parker, J.).

8. Effective Date. Upon Issuance.

9. Contact. Chief, Branch of Inspection and Enforcement (202) 343-4550.

10. Keywords. Permit applications, Violations, Civil penalty, Abandoned mine land reclamation fee (AML fee), Owned or controlled and owns or controls, Section 510(c) of the Act, 30 CFR 773.15.

11. List of Appendices.

Appendix 1: Assessment of Data Rebutting the Presumption of Control.

Appendix 2: Analysis and Disavowal of Links.

APPENDIX 1

Assessment of Data Rebutting the Presumption of Control

If an applicant and a violator have or have had an ownership or control relationship, the permit or permit transfer shall be blocked unless the applicant or the person can rebut the presumption of ownership or control. A person need not hold the same position in each entity to establish the presumptions, as long as he or she owns or controls the applicant and also owns or controls or previously owned or controlled the violator. A person presumed to own or control an entity can rebut the presumption by submitting evidence which establishes to the satisfaction of the FPU that he or she does not (or did not) in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation was or is conducted. The amount of proof required will be determined on a case-by-case basis. While there is a limit to the ability to anticipate what evidence might rebut the presumptions of ownership and control, the following types of documentation should be considered in evaluating a potential rebuttal:

1. Copies of legal documents showing the date of the transfer or sale of a previously related entity, stock transfer records, or reports filed with the State corporation commission.

2. Company or State corporation reports or the equivalent records which legally certify that the person is or was incorrectly identified as being or having been affiliated with the violator or applicant, or sworn affidavits stating that:

(a) the individual did not own a 10 percent or greater interest in the violator entity;

(b) the individual was not an officer or director of the violator entity;

(c) the individual did not exercise any control over the manner in which the surface coal mining operations of the violator entity were conducted;

(d) if a general partner in a partnership, the individual's responsibilities precluded control over the surface coal mining operations; or

(e) the individual did not own or control the coal to be mined by the violating entity under a lease, sublease, or other contract, or having the right to receive such coal after mining.

The FPU is responsible for determining the validity and adequacy of the information submitted to rebut the presumption of ownership or control. The analysis of the information shall include, but is not limited to: contacting the Field Solicitor to verify the authenticity of the information, and where necessary, to obtain a legal opinion (e.g., verify against any available data stemming from pending investigations); contacting AML fee compliance auditors

to verify data against any relevant data obtained from fee compliance audits; or contacting the State in which the violation occurred to verify the information submitted against State corporation contacts or similar types of available information.

FPUs should retain copies of any documentation which supports the statements made in affidavits, such as cancelled checks made out for the purchase of an individual's interest in the operation or payment of penalties/fees, letters of resignation, and company records or memoranda.

Analysis and Disavowal of Links

Valid links between different individuals/entities, based on confirmation of information supplied by permit or permit transfer applicants, are those that are related due to one or more of the ownership and control criteria (see paragraphs 3.c. (1) and (2) of this Directive). Invalid links, based on confirmation of information supplied by permit applicants, are individuals/entities that while using the same name(s) as another individual/entity are not related due to one or more of the ownership and control criteria. Methods for determining valid or invalid links are described in the following "Analysis of Links."

1. Analysis of Links.

If situations occur where the AVS or other information identifies possible links between different entities based on synonymous entity names or synonymous names of individuals, then the FPU should:

a. Analyze the information and if necessary, seek additional data concerning the entities or individuals from other sources, and document the results. The applicant or individual(s) in question should not be contacted directly unless all other means of obtaining the necessary information (or confirmation of information) to either substantiate or disavow the apparent link between persons and entities have been exhausted.

b. Confirm or disavow whether two or more similar or related names are really representing the same individual. While there is no uniform method, the following analytical approach should generally be applied:

(1) Determine whether there are common social security numbers (if available) or dates of birth between the individuals;

(2) Determine whether there are additional links which are also common between the applicant and the other entities in question (i.e., other common officers, shareholders, company addresses and telephone numbers); and

(3) Determine whether the addresses or phone numbers for the individuals are different.

c. Check other information sources in order to obtain additional data or confirmation of existing data. Such other sources include, but are not limited to data from other permit applications on file if not already in the AVS, the Keystone Coal manual, MSHA data, information from State corporation commissions or Secretaries of State, net worth determinations, and information from the Office of the Solicitor gained during litigation.

A similar analysis should be conducted if synonymous company names exist. Usually the determining factor will be common officers and owners. A preliminary indicator may be the listing and location of the company's permits (together with the permit identification numbers) held over the prior 5 years

listed on the application as required by 30 CFR 778.13(d). The same sources of other information should be used where necessary.

The permit application files should include sufficient documentation to show that where synonymous relationships were identified, the analysis was conducted to substantiate or disavow the match. A description of the specific analysis performed, the extent to which other sources of information were consulted, and the rationale to support the conclusions reached shall also be maintained in the permit files. In cases where the applicant or individual in question was consulted, a memorandum documenting the telephone conversation will normally suffice.

2. Breakage of Links.

All breakage of links (including those resulting from the successful rebuttal of the presumption of ownership or control by an individual) must be analyzed on a case-by-case basis. FPUs should review the information submitted by the individual or entity and consult with the AVS Clearinghouse, the Division of Debt Management, and the Office of the Solicitor in order to determine the extent to which the individual or entity should be held responsible for the compliance problem.

To the extent that an individual successfully rebuts an ownership or control link, or should the FPU find that the information concerning ownership or control is incorrect, the FPU will need to coordinate an AVS update with the AVS Clearinghouse in order to program the AVS to break a link on a permanent basis.

If the match identifies allegedly outstanding penalties or fees, any documentation reflecting the final payment of Federal penalties or fees provided by the applicant should be forwarded by the FPU to the Division of Debt Management in order for the AML fee database or the Collections Management Information System (CMIS) to be updated. Similarly, should an applicant submit a copy of a termination or vacation of a violation, the FPU should confirm with the issuing field office that the violation has in fact been terminated or vacated. If so, the FPU should forward a copy of the termination or vacation to the Division of Debt Management in order for CMIS to be updated.

When the AML fee database or CMIS are updated, the AVS will automatically be updated electronically.