

Applicant/Violator System Office System Advisory Memorandum



SAM # 5 DATE: October 3, 2016

***Subject:* STATE VIOLATION INFORMATION: ENTRY and MAINTENANCE**

This System Advisory Memorandum (SAM) discusses the regulatory requirements for use of the Applicant/Violator System (AVS) by State programs to enter and maintain State violation information. This function enables State regulatory authorities to comply with provisions in section 510(c) of the Surface Mining Control and Reclamation Act of 1977 requiring regulatory authorities to inquire if applicants for permitting actions have unabated or uncorrected violations and any user to view this information in the AVS.

This SAM replaces the February 25, 2013, edition of SAM # 5 on the same subject. This SAM has been rewritten to remove historical reference and to more simply state the requirements for entry and maintenance of State violation information.

Regulatory requirements for entry and maintenance of State violations

Regulatory authorities must enter a violation into the AVS if it is unabated or uncorrected for more than 30 days beyond the abatement or correction period. See 30 CFR 774.11(a)(2) and (a)(4).

The definition of *violation* and *violation notice* is found at 30 CFR 701.5. Types of unabated and uncorrected violations that are entered into the AVS include, but may not be limited to:

- Notices of violation¹ (or State counterpart non-compliance) (30 CFR 843.12)
- Cessation orders² (30 CFR 843.11)
- Civil penalties equal to or greater than \$5,000³ (30 CFR Part 845)
- Bond forfeitures (30 CFR 800.50)

¹ Only NOV's that remain uncorrected after the abatement period expires AND where there is no state mechanism for issuing a FTACO or State counterpart for non-compliance would be entered.

² When entering an FTACO into the AVS, the recommended date of violation to use in the AVS should be the effective date the underlying NOV was issued.

³ States may choose to also enter civil penalties of lesser amounts.

- Suspension or rescission of a permit (30 CFR 773.21-773.23)
- States must also update the AVS within 30 days of a violation status change such as abatement, correction, or termination, or a decision from an administrative or judicial tribunal. See 30 CFR 774.11(a).

Changes in violation status include, but may not be limited to:

- Abatement, i.e., reclamation of on-the-ground violations
- Execution of an agreement to abate on-the-ground violations
- Payment of State civil penalties, reclamation fees, and other State penalties and fees
- Execution of an agreement to remit all unpaid debt
- Termination due to abatement or correction by a third party
- Results of an administrative or judicial decision

Monitoring and Maintaining the Status of Violations

Maintenance of State-issued violations in the AVS is restricted to the regulatory authority with jurisdiction over a violation. It is critical to the accuracy, efficiency, and continued effectiveness of the AVS that regulatory authorities monitor the status of each violation and keep the AVS current.

Point of Contact for more information

If you have questions regarding the policies and procedures for the AVS operation of the entry and maintenance of state violations, please contact your AVS User Assistance Liaison at 1.800.643.9748 or view the AVS Users Guide at <http://www.osmre.gov/programs/avs.shtm>.

Signed: Stephanie L. Varvell

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