Final Report

A Review of Ohio's Implementation of Ownership and Control Provisions and Use of AVS

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Prepared by

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Introduction and Background

OSM's Applicant/Violator System (AVS) was established to assist states in determining the eligibility of permit and AML contractor applicants. The AVS is a database that states can use to evaluate a permit applicant's or AML contractor's mining history and relationships to past operators. The database contains ownership and control information and information on violations. The applicable laws and regulations defining ownership and control (O&C) and the conditions under which the State may or may not issue permits are:

> Ohio Revised Code (ORC) 1513.07(B)(2)(e)(i) & (ii); (E)(3)(a); (E)(3)(b); and (E)(6)
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> Ohio Administrative Code (OAC) 1501:13-4-03(A-C); 13-5-01(D&E); 13-14-02(A)(8)
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> Ohio's Policy & Procedure Directive (PPD) – I&E 95-1
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> OSM Directive INE-32
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> Federal Regulations
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> AVS Advisory Memorandum dated February 8, 2000
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> Memorandum of Understanding between Ohio and the Office of Surface Mining concerning Ohio's use of the AVS.

The AVS contains State-issued cessation orders and State civil penalty data. States are required to enter all cessation orders and civil penalties in amounts greater than $5,000 into the AVS. However, a State may choose to enter civil penalties of lesser amounts. The State is responsible for prompt and accurate maintenance of its violation records within established time frames. Those time frames specify that the State is not obligated to input a violation until it has remained unabated for 30 days. The State then has 30 days to enter the unabated violation information into the AVS. The State also has 30 days to update information to reflect any action that affects the status of a violation, including a bond forfeiture order.

States must also enter information concerning bond forfeitures. The date the forfeiture order is signed is the date that should be reflected in the AVS. The forfeiture information is entered and updated through the "Application/Permit Maintenance" option from the AVS main menu. The procedure is discussed in Section E of the AVS Users' Guide: Applications/Permits, and Section J: Data Entry Standards.

In 2003, OSM's Lexington Applicant/Violator System Office conducted an analysis of Ohio's use and operation of the AVS for the period of September 1, 2002 – August 31, 2003 (see Attachment A). The purpose of their analysis was to determine if Ohio was

entering the following information in the AVS in a timely, complete, and accurate manner:

- New permit applications and issued permit data
- State violation data, including failure-to-abate cessation orders, imminent harm cessation orders, state civil penalty violations in amounts greater than $5,000 (DMRM enters $2,500 and greater), bond forfeitures; and suspended/revoked permits.
- Request 510(c) checks or evaluations prior to permit issuance
- Verify ownership and control information and enter relevant updates

Purpose

OSM's Directive REG-8, Oversight of State Regulatory Programs, requires each OSM office to annually evaluate at least one aspect of customer service in each state program. In the 2004 Performance Agreement between Ohio and OSM, we agreed to a review of how Ohio's permitting section reviews ownership and control information provided in permit applications. The purpose of the review was to evaluate how effectively Ohio consults with OSM's AVS office prior to issuing a permit to ensure that they only issue permits to those eligible in accordance with their laws and regulations and the MOU between Ohio and OSM. As a part of this review, OSM also followed up on areas that the AVS office recommended for review.

Methodology

On January 8, 2004, we sent a draft outline for this review to DMRM for their review and comments. On February 6, 2004, DMRM responded that they did not have any comments on our proposed review. On March 10, 2004, we met with two of DMRM's permit managers to review their process. We reviewed DMRM's files for a sample of all permits, adjacent areas, and renewals issued since January 1, 2003, for compliance with the above-referenced laws and regulations.

General Information

From our discussion with the DMRM staff, we learned that each permit file should contain a pre-initial checklist that contains the date of the AVS check. When they perform this pre-initial check in AVS, they also do an OSM recommendation. In addition, DMRM performs AVS checks when they are ready to approve and issue permits.

The AVS (system) check is when a State uses the evaluation option in the AVS to run an evaluation report on an entity or an application/permit record without asking OSM to conduct a quality check for them. States can request the quality check on-line from AVS. When a State requests a quality check, the AVS provides a narrative with the most up-to-date information about any violation that may appear on the evaluation report.

One of DMRM's permit managers enters all of the civil penalty assessments (CPA) in DMRM's computerized tracking system (CTS). All of the district offices must send him a copy of the CPA when they issue it in order for him to be aware of it and enter it into the AVS. The permit manager frequently runs the CTS report to monitor any delinquencies.

Summary of Permit Reviews

D-192 Renewal	The permit file did contain documentation of O&C/AVS checks and Written Findings. However, the Written Findings referenced application DR-820-1. We found the Written Findings for 192 in 820.
D-674-2 Adjacent Area	The permit file did contain documentation of O&C/AVS checks. However, the file did not contain the Written Findings.
D-1163-5 Adjacent Area	The permit filed contained documentation of O&C/AVS checks and Written Findings.
D-1171 D-1171-1 D-1171-2 Renewal & Adjacent Area	The permit file contained documentation of O&C/AVS checks for D-1171, D-1171-1, and D-1171-2. However, the file did not contain the Written Findings.
D-2066-1 Adjacent Area	The permit file did contain documentation of O&C/AVS checks. However, the file did not contain the Written Findings, although a note in the file said they were completed on 1/15/03.
D-2110-2 Adjacent Area	The permit file did contain documentation of O&C/AVS checks. However, the file did not contain the Written Findings.
D-2165 New Permit	The permit file did contain documentation of O&C/AVS checks and Written Findings.
D-2171 New Permit	The permit file did contain documentation of O&C/AVS checks and Written Findings.
D-2178 New Permit	The permit file did contain documentation of O&C/AVS checks. However, the file did not contain the Written Findings, although a note in the file said they were completed 09/18/03.
D-2184 New Permit	The permit file contained documentation of O&C/AVS checks and Written Findings.
D-2185 New Permit	The permit file did contain documentation to show that O&C and AVS checks were completed as required. However, the file did not contain the Written Findings as required by DMRM policy.

Finding:

For the eleven permits reviewed, the files did contain all of the information required by ORC 1513.07 as outlined on Attachment A. However, of these eleven permits reviewed, six did not have the Written Findings in the file required by OAC 1501:13-5-01 (E), which specifies what the Written Findings must contain. Paragraph (E)(7) requires that

the Written Findings contain verification that there are no outstanding civil penalties (the AVS check) for the applicant or any person who owns or controls the applicant.

OSM sent DMRM a list of the permits missing Written Findings on April 1, 2004. On that same day, the manager of DMRM's Permit Section sent an e-mail to all of the application managers instructing them to review all of the permits they are responsible for to ensure that the files contain the Written Findings. He also stated that no further permits would be approved and/or issued unless the Written Findings are attached as part of the signature package.

DMRM is performing O&C/AVS checks when they receive an application, when it is deemed complete, when it is approved, and just prior to issuance. Their permit application form requires the applicant to also provide O&C information, as well as information on any outstanding violations or penalties. Although from our review it was apparent that they are performing this check, not all of the files contained the pre-initial sheet with the dates of the AVS checks. We did find printouts from the AVS system in some of the files and the pre-initial sheet in other files.

Recommendation:

If DMRM's application managers are required to submit the Written Findings with the signature package, this should address any future issues concerning the inclusion of the Written Findings.

With regard to the AVS compliance checks, DMRM should consider a similar requirement for the pre-initial sheets or establish some other uniform method to document that all of the AVS checks were completed as required.

Finding:

According to DMRM, their process for performing AVS checks on AML contractors is that they send the AVS form to the potential contractor. That contractor completes the form and submits it to the AVS office. Once the AVS completes its review, it sends the results back to the contractor, who submits those results with its contract to DMRM.

According to the AVS office, most States either perform the check themselves on-line or forward the AVS form completed by the successful bidder to the AVS for the AVS office to perform the review and return the results to the State office.

Recommendation:

DMRM should consider using one of the two options described by the AVS office. We have provided the name and phone number of our contact in the AVS office to DMRM and suggested that they contact the AVS for further information on these options.

Finding:

We reviewed Ohio's Imminent Harm Cessation Orders (IHCO), Cessation Orders, and bond forfeitures to determine if they were entered into the AVS within the 60-day time frame specified.

According to our database, Ohio issued six IHCO's in 2003. For each of these, the time span from date of issuance to date of abatement was less than 60 days. Therefore, these did not have to be entered in the AVS.

Ohio had one Cessation Order during that time period for an operator whose permit was expired. The operator appealed to the Reclamation Commission, who granted temporary relief. The Order was issued on January 31, 2003, and was terminated on December 12, 2003. Since the Commission granted temporary relief, Ohio was not required to enter this in the AVS.

Ohio had three bond forfeitures during this period. These were for D-0440 - - bond forfeiture date August 18, 2003; D-0777 - - bond forfeiture date February 24, 2003; and D-1185 - - bond forfeiture date May 27, 2003. On June 21, 2004, OSM's AVS office checked the system and found that DMRM had not entered these forfeitures. According to the AVS records, all three have a bond status of active.

As discussed above concerning outstanding violations, the paperwork has to be sent to the appropriate person in DMRM for him/her to enter it in the AVS. Our discussion of these bond forfeitures with DMRM revealed that copies of these three forfeitures did not get sent to the appropriate person for entry in the AVS.

Recommendation*:*

This is a weakness in DMRM's process for ensuring that unabated violations and bond forfeitures are entered in the AVS. If the person responsible for doing the AVS entries does not receive copies of the paperwork, he/she has no way of knowing it exists or that it needs to be entered in the AVS. DMRM has assured us that they will immediately enter the three forfeitures identified above and that they will establish a process to ensure that everything that should be is entered in the AVS.

Summary

- DMRM is effectively consulting with OSM's AVS office prior to issuing permits to ensure that they only issue permits to those eligible in accordance with their laws and regulations and the MOU between Ohio and OSM.
- DMRM could improve their documentation of their AVS checks to verify ownership and control information and to ensure that there are no outstanding violations by requiring that each file contain the same documentation (either printed copies of DMRM's system checks in AVS or OSM's quality checks).

- DMRM could revise their process for performing the AVS checks on AML contractors to make it more streamlined.
- To ensure that unabated violations and bond forfeitures are entered into the AVS, DMRM needs to revise their process to provide a way of tracking these to ensure that they are sent to the person responsible for entering them in the ABS.

Written Findings Pertaining to Concerns Identified in the November 4, 2003, Analysis by OSM's AVS Office

OSM AVS Concern: Was permit D-1092 renewed?

Finding: No, final bond was released in February of 2003 and the permit has been retired.

OSM AVS Concern: Check to see what process DMRM uses to monitor conditionally issued permits. AVS shows that DMRM conditionally issued the following list of permits (see below).

Finding: OSM found from reviewing these permits, that all of the conditions were not AVS-related. The AVS office informed us that they do not have any requirements to enter the conditions for conditionally issued permits in the AVS. DMRM's field staff is responsible for monitoring the conditions.

Permit No.	Permittee	Seq. No.	Status
D-360/12	Ohio Valley Coal Co.	20	Archeology and non-AVS conditions remain
D-425/3	American Energy Corp.	10	Archeology condition remains
D-1112/1	Buckeye Industrial	1	Archeology condition lifted
D-1149/2	Holmes Limestone	2	401/404 conditions remain
D-1181/2	Daron Coal Co.	2	401/404 conditions lifted
D-2018/1	Sands Hill Coal Co.	1	401/404 conditions lifted
D-2066/1	Penn Ohio Coal Co.	3	401/404 condition remains
D-2087/1	Cravat Coal Co.	1	401/404 condition lifted Archeology condition remains
D-2095/1	Cravat Coal Co.	1	401/404 condition remains
D-2110/1	Oxford Mining Co.	1	Lifted
D-2149/1	Marietta Coal Co.	1	401/404 & archeology conditions remain
D-2161	Cravat Coal Co.	0	401/404 condition remains
D-2162	Buckeye Industrial	0	401/404 Condition remains
D-2166	Penn Ohio Coal Co.	0	Lifted

OSM AVS Concern: For D-1185, the State issued violation 11173 on September 4, 2002, and entered it into AVS on February 11, 2003. Please explain the reason for the delay in entering the outstanding violation information into AVS. Also, does the State civil penalty violation remain outstanding?

Finding: DMRM explained that they were entering delinquent civil penalty assessments in AVS At the same time they were sending them to the Attorney General's office for

collection, which is usually every quarter. They stated that they would consider entering them once they become delinquent. CPA 11173 is still outstanding.

OSM AVS Concern: It appears that Ohio had 16 out of 60 instances in which they did not request timely evaluation reports prior to issuance (within 5 days of permit issuance).

Finding: Ohio informed us that their policy had been to request the evaluation reports within ten days of permit issuance. However, they have now changed that to five days.

OSM AVS Concern: Our reports indicate that Ohio may have issued four permits without obtaining an OSM data evaluation.

Finding: We checked Ohio's permit files and found the following:

D-1149, sequence 3:	files showed AVS check on 9/12/02 and issuance on 9/13/02
D-1163, sequence 2:	AVS check was performed on 4/10/03 and renewal was issued same date
D-1182, sequence 1:	AVS check was performed on 6/17/03 and renewal was issued same date
D-1183, sequence 1:	No AVS check was performed for this transfer as Penn Ohio Coal Company and Kimble Clay & Limestone are the same company.

OSM AVS Concern: It appears that Ohio issued these five permits (or renewals), even though our evaluation results determined there were some outstanding violations at the time of their evaluation request: D-192; D-706; D-706/7; D-807; and D-1038.
Finding: According to DMRM, these permits/renewals were issued because the AML fee violations were against another permittee, not the operators who were associated with the permit applicants.