



# State of Utah

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April 16, 1992

**TO:** AVS Representatives  
Alaska, Colorado, Montana, New Mexico, Wyoming

**FROM:** Joseph C. Helfrich, Western States Ad Hoc AVS Committee  
Representative

A handwritten signature in black ink, appearing to read "JCH".

Enclosed are copies of minutes of the two most recent meetings of the Ad Hoc AVS Committee on March 5 and March 25, 1992. Please review these in preparation for the upcoming OSM/State National Meeting in Lexington, Kentucky, on May 5 and 6, 1992, of which several of these issues will be discussed. In particular, your thoughts on the National Registry Concept would be appreciated in order to determine whether the states should endorse such an approach. Please call if you have any questions regarding these documents.

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enclosures  
cc: AVS Admin File  
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**MINUTES**  
**Ad Hoc AVS Committee**  
**March 5, 1992 - 9:00 A.M.**  
**Radisson Park Terrace Hotel - Washington, D.C.**

A meeting of the Ad Hoc AVS Committee was held on March 5, 1992 at the Radisson Park Terrace Hotel in Washington, D.C. The meeting commenced at 9:00 a.m. A copy of the agenda and a list of attendees are attached.

**I. Discussion of Draft Permit Application Information Format**

The states noted that they have completed a draft permit application information format but are still revising the draft to account for state comments. Furthermore, given the outstanding issues concerning operation of AVS and implementation of the AVS settlement agreement (many of which would be discussed later in the meeting), the states noted their hesitancy in moving forward with the draft until these issues were resolved in a fashion that would dictate whether any further adjustments to the draft format were in order.

**II. Discussion of Potential Rulemaking to Clarify Various AVS Issues**

Annetta Cheek briefed the committee on a draft proposed rule that is intended to address several issues associated with the implementation of AVS and with OSM's underlying rules. Among the areas addressed in the rule are "deemed" v. "presumed" owners and controllers; transfer, sale or assignment of permit rights; successors in interest; change of operators; and permit application information. Following Ms Cheek's overview, the committee discussed various portions of the draft proposal in some detail. The committee agreed to meet again on March 25 in Herndon at the IMCC's offices to pursue discussion of the draft proposal as well as other associated issues raised in connection with the proposal including the definition of "operator" and "permittee" for purposes of AVS.

**III. Discussion of National Licensing System Concept**

The state representatives suggested that it might be worth considering a different mechanism for gathering, screening and verifying ownership and control data. The states presented the idea of a national licensing or certification system whereby OSM would act as the primary repository for all ownership and control information and would issue certifications to permittees that the ownership and control information for the permittee was accurate and complete. OSM would be responsible for all links, for resolving rebuttals of presumptions and for verification of information. The states would assist OSM by updating any new information that they receive during the permitting process and entering state violation data and would continue to assist with the certification of information as part of their inspection responsibilities. Discussion ensued about various aspects of the system and its impacts upon the existing AVS. OSM agreed to consider this concept further and the committee will discuss it again at the March 25 meeting.

#### IV. AVS Oversight

Larry Grascch of OSM's AVS office in Lexington briefed attendees on a draft oversight document that is intended to be used during the annual state program evaluation process. The states presented a list of concerns with the document and requested OSM to revise the document with those concerns in mind. Mr. Grascch stated that he had received a number of concerns from OSM staff as well and that he would be revising the document to take all of the comments into consideration. The states requested an opportunity to review the revised document and OSM assented to this request.

One suggestion offered by the states on the document was to remove the "management" type portions of the document and put them into a separate, guidance type of document for use by program managers. The states noted that significant segments of the document could be treated in this way, which would reduce the document to a more reasonable level of oversight.

#### V. Update on AVS Settlement Agreement Negotiations

Harvey Blank of the Solicitor's Office presented an update of recent negotiations between the Interior Department and the environmental plaintiffs in the AVS settlement agreement proceeding (*SOCM v. Lujan*) concerning efforts to amend the agreement. Among the issues being discussed are the termination date, data requirements, certain procedures under the agreement, use of the NWF data, removal of footnote 4 regarding "dualing computers", and a new approach to violations. The states raised concerns regarding use of ELA and MSHA data bases and urged OSM to discuss this as part of the negotiations. The states also requested an opportunity to review the amended settlement agreement to the extent that OSM believed it contained impacts on state AVS responsibilities.

#### VI. AVS Funding Update

Russ Frum discussed state expenditures of FY 1991 and 1992 AVS moneys. He noted that all FY 1991 moneys must be obligated (even if not expended) by March 30, 1992. FY 1992 moneys must be applied for by and have a performance period starting date of September 30, 1992 -- even though the state could take up to a year (i.e. until September 30, 1993) to obligate the funds. Beginning in Fiscal Year 1993, states will receive only 50% funding of their AVS responsibilities.

#### VII. Unpermitted Violators -- How to Capture on AVS

OSM noted that it is changing AVS so that if a violator without a permit is found, he can be identified with an entity number and entered into AVS. This will be effective for SMCRA violations only. OSM will communicate this to the states.

### VIII. Use of EIA and MSHA Data

The states noted their concern and viewpoint that the EIA and MSHA data bases are of relatively little value to them. The EIA data is useless and the MSHA data is stale and is seldom updated, according to the states. The states urged OSM to delete the requirement in the settlement agreement to use these data bases. OSM noted that footnote 2 of the agreement allows them to propose the deletion of these two data bases. The states noted that the most that should be stated is an optional check of the MSHA data base as part of the permit review process.

### IX. Information from OSM-1 Form in AVS

The states noted that they are beginning to see mineral owners showing up on AVS and that they were under the impression that this information (from the OSM-1 Form) would not be loaded onto AVS. OSM stated that OSM-1 Form information is being loaded into AVS and that AVS will link these mineral owners to violators as "(b)(6)" owners or controllers. The states cautioned OSM about the use of mineral owner information, particularly with regard to where mineral owners are showing up in organizational family trees (OFT's) and what the implications of this may be for the states in the future. OSM indicated that mineral owners will be in AVS but will not be used for blocking purposes because they will not be part of OFT's -- they will only be part of the permit information. OSM stated that this is required by the AML Act of 1990. OSM will send out a written communication on this matter.

### X. Recent Data Inaccuracies, Deficiencies and Discrepancies

The state AVS users raised a number of operational and data concerns associated with AVS including significant system down times, the appearance of new option screens without any information on what they are and continuing problems with multiple entries for the same name.

OSM noted that it will be switching computer systems in the next year. The agency is converting from the USGS Amdahl computer to a new system operated by Data General. It will be housed in Lexington, Kentucky where the majority of the AVS office will soon be located.

The committee agreed to meet again on March 25 in Herndon, Virginia at the IMCC office complex to continue discussions on several of the above issues.

There being no further business, the meeting adjourned at 3:00 p.m.

**AGENDA**  
**Ad Hoc AVS Committee**  
**Thursday, March 5, 1992 - 9:00 A.M.**  
**Radisson Park Terrace Hotel - Washington, D.C.**

- I. Discussion of Draft Permit Application Information Format
- II. Discussion of National Licensing System Concept
- III. Discussion of Potential Rulemaking to Clarify Various AVS Issues
  - Transfer, Sale, Assignment of Permit Rights
  - Change of Operators, Definitions of "Permittee" and "Operator"
  - Limitation on Percentage of Ownership for AVS Purposes
- IV. Status of AVS Oversight Activity
  - Directive INE-32
  - Draft AVS Oversight Guidance Document
- V. Update on AVS Settlement Agreement Negotiations
- VI. Update on AVS Funding
- VII. Unpermitted Violators -- How to Capture on AVS?
- VIII. Use of EIA and MSHA Data--Purpose and Value
- IX. Recent Data Inaccuracies, Deficiencies and Discrepancies
- X. Information from OSM-1 Form in AVS

MINUTES  
Ad Hoc AVS Committee  
March 25, 1992 - Herndon, Virginia

A meeting of the Ad Hoc AVS Committee took place on March 25, 1992 at the Sugar Oak Office Complex (IMCC's offices) in Herndon, Virginia. A list of attendees is attached.

The first portion of the meeting was dedicated to a discussion of several AVS issues between the committee and Tom Galloway and Cathy Carlson of National Wildlife Federation. The focus of the discussion was on ways to address some of the states' concerns associated with the implementation of the AVS and the underlying rules. Among the topics addressed were: the definition of "owns and controls" in OSM's rules (particularly with respect to the 10% ownership rule); the concepts of "operators" and "contractors" for AVS blocking purposes; procedures related to the transfer, sale, and assignment of permit rights; the reliability and effectiveness of AVS data and databases (especially the EIA and MSHA databases); and the proposed removal of the presumption of abatement for outstanding notices of violation. Although no formal agreements were reached on these issues, the participants identified several potential routes of relief.

The participants also discussed the proposed amendments to the SOCM settlement agreement, the concept of a national certification system for ownership and control data, use of data from the revised OSM-1 Form, and potential use of data from the NWF computer system.

Following lunch, Mr. Galloway and Ms Carlson departed and the committee pursued further discussion on several of the issues raised during the morning session, as follows:

- Definition of "owns or controls" - OSM agreed to pursue the possibility of limiting the 10% ownership provision of this rule (the "dilution" principle) so as to reduce the information burden associated with AVS. OSM will discuss this issue with the Solicitor's office and will attempt to incorporate a proposal on dilution in Annetta's draft proposed rule.
- Definition of "operator" - the states suggested the following definition: "any person not a wage employee of the permittee who removes coal". OSM will attempt to address this issue in Annetta's draft rule - either in rule language or in the preamble.

"Transfer, sale, assignment of permit rights" - there was a suggestion that the various transactions encompassed by this definition be separated for purposes of defining when public notice and 510(c) checks are required prior to approval of the TSA, when required after the fact, or when not required at all. The various transactions at issue include: 1) full blown sale of a permit where a change in the actual permittee occurs; 2) sale of a permittee with no permittee name change; 3) sale of a permittee with a change in name; 4) change of operator but permittee remains the same; and 5) change in officers and directors. One concern is which of these transactions can take place pending review of the TSA. Another concern is the need for a mechanism to handle those situations 1) where a regulatory authority discovers an ineligible applicant and 2) where a new operator is found on a site and the operator has an outstanding violation. There was a sense that permit transfers should be separated from operator changes in terms of procedures. OSM agreed to incorporate as many of these concerns as possible into Annetta's draft proposed rule.

National Certification System - Annetta distributed a draft executive summary of the national certification or "registry" concept for discussion (copy attached) which was based on a meeting between Greg, Annetta and Russ following the IMCC winter meeting and the March 5 Ad Hoc Committee meeting. Although there was agreement that the draft summary did a good job of capturing the idea, there remains considerable skepticism by some states about the advisability of moving forward with such an approach, particularly from a primacy perspective. There is special concern in the area of permitting authority in terms of where and how states regain responsibility under such a certification system for purposes of deciding whether to issue a permit. Given the serious concerns raised by the states, there was agreement to table further action on this concept until after the national meeting in Lexington, at which time all of the states would discuss this concept in greater detail.

The committee agreed to meet again on May 4 in Lexington in conjunction with the national meeting if necessary.

There being no further business, the meeting adjourned at 3:15 p.m.



*Perm Check*

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**NATIONAL REGISTRY**

**PROPOSAL:** The States who are members of the AVS Ad Hoc Committee have requested that OSM consider revising the current AVS database and associated procedures to create what is essentially a national registry of companies and individuals (entities) involved in the surface coal mining business. Under this concept, OSM would assume responsibility for the "510(c) check" required by the Surface Mining Act. The States suggest that responsibility for ownership and control information should be centralized; the current situation under which OSM has responsibility and authority to maintain some ownership and control data and the States have authority and responsibility for other data is viewed as confusing and duplicative. Furthermore, the current process sometimes results in conflicts between OSM and individual permitting authorities, and even among permitting authorities, concerning specific cases of ownership and control. Reportedly, at least some elements of industry also desire that there be one central point of contact for updating and challenging ownership and control information.

Specifically, the States request that OSM assume responsibility for all information on owners and controllers of entities involved in the surface coal mining industry. This would include not only obtaining initial information on ownership and control relationships, but also verifying that information and keeping it up to date. Additionally, OSM would be charged with maintaining historical information on violations of SMCRA and related acts, and for relating such violations to specific owners and controllers. Furthermore, OSM would be responsible for processing all requests to rebut links between individual entities or between violations and their purported owners and controllers.

OSM would certify that certain entities are eligible to receive permits to conduct surface coal mining operations, based on the information in AVS at the time of certification. This certification could be done directly on the AVS system. Alternately, OSM could issue a paper record of its certification of an entity. When an entity wanted to apply for a permit, it would demonstrate to the permitting authority that it was certified by OSM as being eligible to receive a permit. This would mean that it was linked to no outstanding violations at the time of certification, and that OSM believed that its ownership and authority data on the entity was complete and accurate. When the entity applied for a permit, it would be required to affirm that the information contained in the AVS on which OSM's certification was based remains complete and accurate. Changes of ownership and control which could have an immediate effect on the mining process would have to be updated as they occurred; others could be updated on an annual or other periodic basis, through a periodic update process administered by OSM.

Individual permitting authorities would remain responsible for obtaining permit specific information. That is, the permitting authority would establish a relationship between a specific entity (the permittee) and a permit. Permitting authorities would also establish and maintain relationships between operators or contractors and specific permits, and

would continue to check, through the regular inspection process, that the permittee, operator, and/or contractor designations remained accurate. Changes to such categories would be processed through a transfer, assignment or sale process by the permitting authority. Permitting authorities would also assist OSM in the development and verification of ownership and control data on new applicants to the system, and by conducting research in files locally available to the permitting authority, upon request from OSM.

#### IMPLICATIONS:

Staffing: While required changes to the current AVS database would be minimal, other program elements would be affected significantly. On a national basis, the total number of personnel required to maintain and verify ownership and control information would decrease, because of an economy of scale and because only one staff person would be needed to deal with a block of entities listed on the system, rather than a staff person in each State in which a particular entity did business. However, workload for OSM would increase, since it would be responsible for maintenance of considerable data currently maintained by the States. This additional expenditure could be offset, in part, by some reduction in the annual grants to the States that are used for AVS maintenance. Specific personnel needs are being developed.

Most of the data entry and maintenance could be conducted either at one central OSM office or at AVS staff in the field offices. Each field office should have at least one experienced AVS person, familiar with the ownership and control and violation data on entities operating in the office's area of responsibility. This individual should be available to industry to provide assistance in answering questions and correcting errors in the data, and, possibly, to be responsible for basic ownership and control data maintenance in the area covered by the field office.

Data Quality: Data consistency in AVS should increase under this program, since data will be entered by fewer locations than is currently the case. Consistency in evaluation of data and documentation, documentation requirements, and particularly in the analysis of rebuttals of ownership and control information should also improve. This last function would all be handled by the central OSM office.

Database: The database could continue to operate with the current configuration, with access in each of the permitting authorities, on-line, to the central database. However, since the data entry activities of each permitting authority would be significantly reduced, consideration could be given to changing the system so that the permitting authorities were limited to read-only access available through dial-up capabilities. Entry of permit specific information, including violations, that would be collected by the permitting authority could be accomplished by the central OSM office. Permitting authorities could transmit the information to AVS electronically or, for States with limited permitting actions, on paper copies.

While this is a less elegant method than the current on-line process, it could represent

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cost-savings to the government which would help offset the need for additional data management staff. It is possible that system configuration could be simplified if access could be limited to read-only, dial up capabilities. This issue needs to be examined in more detail. Additionally, this method, under which OSM would enter even the permit specific data collected by the permitting authorities, would contribute further to data consistency and would help reduce data entry and quality problems.

If the agency decides to move forward with this proposal, implications for the configuration of the hardware and software should be undertaken immediately.

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