



Standard Operating Procedure (SOP)¹ for District Mining Operations

Compliance Checks

SOP No. BMP-015

February 01, 2024

BACKGROUND

Compliance checks are an important step in the Department's review of a permit application. Under the permit review criteria of [25 Pa. Code § 86.37\(a\)](#) (coal operations) and [25 Pa. Code § 77.126\(a\)](#) (noncoal operations), a permit application will not be approved unless the Department determines that certain outstanding violations related to the mining activities of the applicant have been corrected or are in the process of being corrected. Since an outstanding violation can result in the denial of a permit application, it is critical to conduct a compliance check during the permit application review process.

Compliance checks are also a necessary step for the approval of a mining license. The criteria for blocking the approval of a mining license differs from that of a mining permit. The regulations (both coal and noncoal) state that failing to comply with "an adjudicated proceeding (meaning the appeal period is over and there is no appeal, or the appeal is resolved), cessation order, consent order and agreement or decree" is the basis for blocking the issuance of a license ([25 Pa. Code § 86.355](#), [25 Pa. Code § 77.51](#)). Therefore, a compliance order must be older than the 30-day appeal period and not under appeal to be a block.

One very important part of conducting a compliance check is determining the level of control or ownership that a party with unresolved mining violations has over the mining operation with a permit under review. The purpose of this step is to ensure a mining operator has not accrued outstanding violations of a mining operation, only to abandon that operation to pursue mining elsewhere. For coal operations, [25 Pa. Code § 86.1](#) defines **owned or controlled** and **owns or controls** as one or a combination of the relationships specified in subparagraphs (i)—(iv). For noncoal operations, [25 Pa. Code § 77.1](#) defines a **related party** to the permittee, as a way of establishing levels of control.

This SOP aims to provide guidance on conducting a compliance check for both mining permits and licenses. Due to the complexity of these checks, however, compliance or licensing staff are encouraged to consult with the District Mining Office where the violation has originated or with Bureau of Mining Program staff for assistance.

¹Disclaimer: The process and procedures outlined in this SOP are intended to supplement existing requirements. Nothing in the SOP shall affect regulatory requirements. The process, procedures and interpretations herein are not an adjudication or a regulation. There is no intent on the part of the Department to give the rules in this SOP that weight or deference. This document establishes the framework within which the Department will exercise its administrative discretion in the future. The Department reserves the discretion to deviate from this policy statement if circumstances warrant.

Permitting Action/Type of Check Required

The table below indicates each type of permitting action and the compliance check that needs to be run according to the regulations (* indicates further information in notes below chart). Current license and insurance are required unless otherwise indicated below in Additional Comments field.

Permitting Action	eFACTS	AVS	None	Additional Comments
New Coal Permit	X	X		
New Noncoal	X			Includes Small Noncoal
Transfer Coal Permit	X	X		Violation against current permit holder will not block transfer
Transfer Large and Small Noncoal Permits	X			Violation against current permit holder will not block transfer
Major Revision - Coal	X	X		Includes Auger Mining Auths, GP12*, Adding Blast Plan*
Major Revision - Large Noncoal Permit	X			
Minor Revision - Coal Permit			X	
Minor Revision – Noncoal Permit			X	
GP104/Individual NPDES/Noncoal NPDES Renewal	X			Any NPDES issued separately from a mining permitting action. Current license and insurance <i>not</i> required.
Renewal Coal Permit*	X			
Rec Only Renewal Coal Permit or Renewals for water treatment only			X	Only current insurance required
Auger Safety Permit			X	If augering is already approved in the permit
Blasting Activity Permits*	X			
New GP-103, GP-105 (or GP-105 10-year renewal), GP-106	X			
All Completion Reports	X			Only review for outstanding civil penalties – only collateral bonds can be collected. Current license and insurance <i>not</i> required.
Bond Increments – Increasing Coal Operations	X	X		
Bond Increments – Increasing Noncoal Operations	X			
All other bond adjustments			X	With the exception of releasing bond (see below)
Releasing Bond	X			Only review for outstanding civil penalties – only collateral bonds can be collected. Current license and insurance <i>not</i> required.

*GP-12 - The issuance of a GP-12 should be in the context of a mining permit, either with the initial issuance or with a major revision adding the GP-12 authorization, so the compliance checks are dictated by the mining permit action.

*Blast Plans – Coal and Noncoal (Not Revisions) - The blast plan itself is not subject to a permit block. A permit revision adding blasting is.

*Blasting Activity Permits (BAPs) - [25 Pa. Code § 211.121\(e\)](#) describes a permit block for noncompliance. However, this is more in line with the concept of the lack of ability or willingness to comply rather than “routine violations.”

*Renewals - Per 30 CFR 774.15(c)(ii) – AVS is not necessary. The eFACTS compliance check is run prior to the approval of a permit renewal. However, only violations or penalties on the permit being renewed will block the approval of the renewal. Because the renewal regulations at [25 Pa. Code § 86.55\(g\)\(2\)](#) refer to the “present mining activities” only the permit being renewed is subject to a block.

*NPDES Authorizations (GP-104/Individual NPDES/NPDES Renewals) - The NPDES regulations ([25 Pa. Code § 92a.75\(b\)\(1\)](#)) require that the permittee be in compliance prior to permit re-issuance. Since the NPDES permitting action will be synchronized with a mining permit action, the compliance check conducted for the mining permit will suffice. In cases where a NPDES permit needs to be issued separately, for instance a Noncoal NPDES renewal, then a compliance check needs to be conducted.

Adding a Contract Operator vs. Existing Contract Operator

If a request is made with the licensing section to add a contract operator and a compliance check reveals any outstanding violations, the contract operator will be blocked from being added as a contract operator to any permit.

If a compliance check is run for a permitting action and an existing contract miner (contract operator) for the permittee is in violation on any site, then that violation will appear on the compliance check. However, the only violations that affect the permittee are the ones where the permittee has employed the contract operator and the contract operator is in violation on that particular permit. Therefore, a permit block will be in place for a permit where either the permittee or the contract operator is in violation. (See Example 1 below). In order for the compliance check to link the violations to the contract operator, the contract operator’s information needs to be added to the Related Clients tab on the enforcements screen in eFACTS. This connection should be made in eFACTS for any violations issued to the permittee that the contract operator was also responsible for.

Due to the complexity of these checks, it is recommended that staff performing the compliance check reach out to Bureau of Mining Program staff for clarification on the final determination of whether there would be a license block when there is uncertainty.

COMPLIANCE CHECK PROCEDURES

STEP 1: Running the eFACTS Outstanding Enforcements with Relations Report

The eFACTS Outstanding Enforcements with Relations report, referred to as the “Compliance Check” is used to determine if an applicant is “in violation” or not. The report is divided into two sections, “Section A” reports the violations that would potentially provide a block to permit and/or license

issuance, and “Section B” reports those violations that are potentially subject to a conditional issuance. Notices of Violation (NOV) are displayed, but do not block permits or licenses. The report requires interpretation on the part of the compliance staff to determine if something is in fact a block. For instance, a compliance order in Satisfactory Progress shows up in Section A. However, one needs to determine if the Satisfactory Progress is over 90 days and whether or not a milestone due date has passed which would invalidate the Satisfactory Progress status. Looking at the enforcements screen in eFACTS provides this type of information.

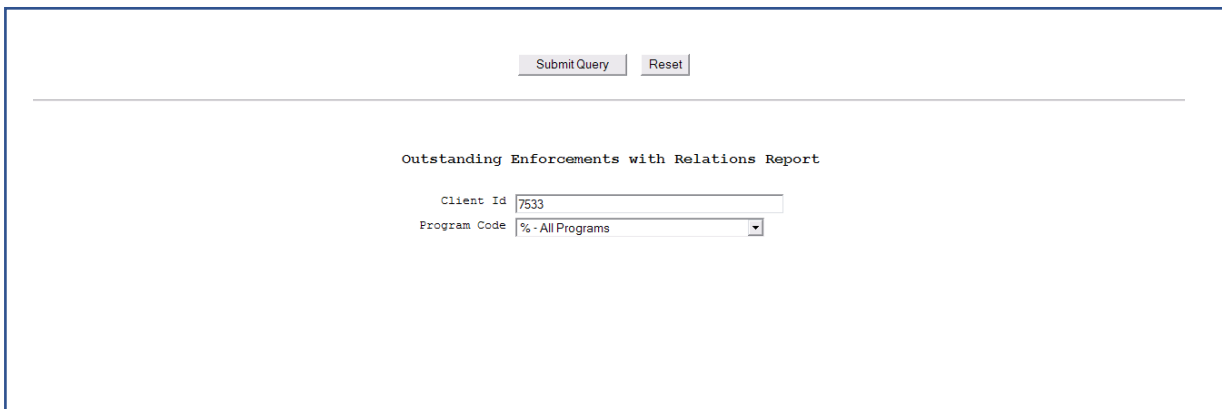
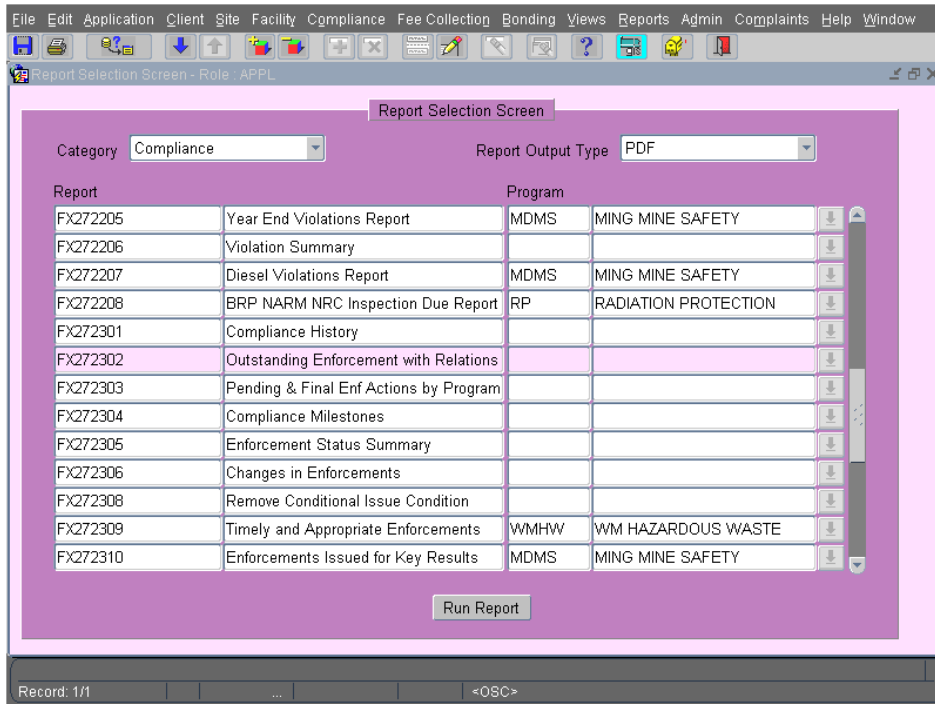
It is also important to evaluate the decision to deny an application in light of what is being accomplished by the permitting action under review. For instance, if an operator is renewing a NPDES permit which will incorporate more stringent effluent limits, but outstanding violations exist against the permittee, it would not be advantageous to the Commonwealth to deny or delay this permitting action which would result in a permit being more effective in preventing pollution. In extenuating circumstances an authorization may be issued. The rationale on whether to issue or deny a permitting action should be documented with supporting information.

(Note: For the purpose of this document, Notice of Violation (NOV) is excluded from the term violation)

Running the Report

The Compliance Check is run using the following procedure:

- Open Oracle Web Applications
- Log into eFACTS (username/password/prod)
- Select “Reports”
- In the “Category” dropdown select “Compliance”
- Leave “Report Output Type” set to “PDF”
- Select Report “FX272302 – Outstanding Enforcement w/Relations”
- Click on “Run Report”
- Enter appropriate Client ID
- Do not enter a Program Code (both MCM (coal) & MIM (noncoal) are to be reviewed)
- Click on “Submit Query”
- Open the report (will open in a new screen)
- Print the report



How the Report Works

The report is broken into groups indicating the level of the relationship to the applicant. The different levels indicate how many steps there are between related clients. The report presents the data in the order from the selected client (Current Client – Level 1) to entities with lower levels of ownership or control and then sorts the levels into Section A and Section B based on the status of the open violations.

Levels - Ownership and Control

The Compliance Check will represent the degree of ownership or control in a range of levels from high (Level 1) to minimal (Level 5). The level of the relationship gives some idea of how closely related the clients are, but an evaluation is required to identify indirect links. Indirect links are reported and require interpretation of the information on the report, but may not result in blocking permits or licenses, or in a conditional issuance. The issue with respect to a related client is control. If the applicant is in a position to control the outcome of the violation, then the permit block is in place. If

there is no ability to control the resolution of a violation, then a block is not appropriate. Direct links are the result of control over the blocking violation and the pending permit. An entity can be in a position of control even at a Level 4 relationship, so an evaluation is always required.

- Level 1 – Current Client Relationships includes Parents, Subsidiaries, Officers and Contractors
- Level 2 – Relationships for Level 1 Clients
- Level 3 – Relationships for Level 2 Clients
- Level 4 – Etc.

Example 1

The following excerpt shows a violation for a contractor. These unpaid civil penalties would only be a permit block for Fairview Coal for the Johnson Run Mine. This block is the result of Big Mack Leasing being a contractor for that permit along with the fact that Big Mack is in violation for having outstanding civil penalties.

Current Client			
Client Id: 39357		Client Name: FAIRVIEW COAL CO	
Level 1 - Relationships for Current Client			
<u>Clnt Id</u>	<u>Title</u>	<u>Related To</u>	
8309	BIG MACK LEASING CO	Contractor for Owner or Operat	5506
5506	JOHNSON RUN MINE	Facility Owned By	39357
			JOHNSON RUN MINE FAIRVIEW COAL CO
Section A			
Penalties			
Enf Id:98833	Client Id: 8309	Client AKA: 4375	Date Executed: 02/07/2002
Tracking#: 021010	Enf Type: Compliance Order		
Prog Specific Id: 03000103	ICS Org: 4830	Date Referred:	Pen Amt: \$2,210.00
Pen Final Status:	Payment Due Date: 11/13/2002	Pen Appeal Status:	
Enf Id:98834	Client Id: 8309	Client AKA: 4375	Date Executed: 02/28/2002
Tracking#: 021019	Enf Type: Compliance Order		
Prog Specific Id: 03000103	ICS Org: 4830	Date Referred:	Pen Amt: \$2,210.00
Pen Final Status:	Payment Due Date: 11/13/2002	Pen Appeal Status:	

Sections Within the Levels of Ownership and Control

For each client found with an open enforcement, the report displays the path of how the client is related back to the Current Client and will then display the enforcements and penalties in either Section A or Section B.

"Section A" of the report lists the enforcements and penalties that block permit issuance.

These include:

- Open Enforcements (except Consent Orders & Agreements and Consent Adjudications)
- Enforcements in Satisfactory Progress because Satisfactory Progress over 90 days needs to be explained every time for it to not block.
- Consent Order & Agreements or Consent Adjudications with overdue milestones
- Closed Enforcements with Final Enforcement Status of "Unresolvable" or "Forfeited"
- 86514*Overdue Civil Penalty Payments

"Section B" lists the enforcements and penalties that may require conditional issuance. These include:

- ❑ Open Enforcements that are under appeal where a supersedeas has been issued
- ❑ Enforcements in Satisfactory Progress because this typically requires conditional issuance
- ❑ Open Consent Order & Agreements or Consent Adjudications (no overdue milestones)
- ❑ Penalties with a payment due date greater than today's date (not overdue)
- ❑ Penalties that are under appeal. Note that an appealed penalty will not be a block or conditional issue because as part of the appeal an appeal bond in the amount for the penalty is required.

*The displayed report requires further interpretation to determine what is or isn't blocking – See Example 2 below.

(**Note:** The data that determines whether penalties are reported comes from the "Payments" tab on the Enforcement Details Screen in eFACTS.)

Example 2

Date of Report

Enforcement Type (Note: NOV is not a permit block)

Outstanding Enforcements with Relations Report

Report Printed: 11/01/2011 10:58 am Page 1 of 1

Report Parameters:
 Program Code - All
 Client Id - 7533

Current Client
 Client Id: 7533 Client Name: AMERIKOHL MINING INC

Section A

<div style="border: 1px solid black; padding: 2px; width: fit-content;">Level "1"</div>	<p>Enforcements</p> <p>Enf Id: 275294 Client Id: 7533 Client AKA: 1475 Date Executed: 09/22/2011</p> <p>Tracking#: NOV Enf Type: Notice of Violation</p> <p>Prog Specific Id: 04070103 ICS Org: 5330 Date Referred: Progress Date:</p> <p>Date Modified: Appeal Status: Date Final: Final Status:</p>	<div style="border: 1px solid black; padding: 2px; width: fit-content;">Section "A"</div>
	<p>Enf Id: 260001 Client Id: 7533 Client AKA: 1475 Date Executed: 07/01/2010</p> <p>Tracking#: NOV Enf Type: Notice of Violation</p> <p>Prog Specific Id: 04070103 ICS Org: 5330 Date Referred: Progress Date:</p> <p>Date Modified: Appeal Status: Date Final: Final Status:</p>	
	<p>Section B</p> <p>Enforcements</p> <p>Enf Id: 108226 Client Id: 7533 Client AKA: 1475 Date Executed: 11/06/2002</p> <p>Tracking#: 023090 Enf Type: Consent Order and Agreement</p> <p>Prog Specific Id: 1475 ICS Org: 5340 Date Referred: Progress Date:</p> <p>Date Modified: Appeal Status:</p>	<div style="border: 1px solid black; padding: 2px; width: fit-content;">Section "B"</div>

Level 2 - Relationships for Level 1 Clients

Clnt Id	Title	Related To
143444	JOHN R PICCOLOMINI I	Owned By
68373	PICCOLOMINI JOHN R I	Contractor for Owner or Operat
717490	BEAGLE CLUB SURFACE	Facility Owned By
		68373 PICCOLOMINI JOHN R I
		717490 BEAGLE CLUB SURFACE
		7533 AMERIKOHL MINING INC

Section A

Penalties

Enf Id: 267851 Client Id: 143444 Client AKA: 6595 Date Executed: 02/15/2011

Tracking#: 111006 Enf Type: Cessation Order

Prog Specific Id: 6595 ICS Org: 5330 Date Referred: Pen Amt: \$10,500.00

Pen Final Status: Payment Due Date: 06/06/2011 Pen Appeal Status: EHB

CO&A in Section B is a "Conditional Issue"

Contractor Cease Order is a block on the specific mine site, not on other sites owned or controlled by the Client.

Understanding Status of Report Components

Satisfactory Progress

Satisfactory Progress is used to indicate that an operator is working towards the correction of a violation, but the enforcement is still open. If there is an open enforcement that has not passed a milestone date, contact the inspector or compliance specialist from the office where the violation originated to find out if the enforcement can be placed in Satisfactory Progress status. The recommendation for Satisfactory Progress status must be documented in an inspection report and the compliance specialist must extend the milestone dates not to exceed 90 days from the start of the violation date and enter the progress date in eFACTS. Satisfactory Progress becomes null when the milestone date has passed and the licensing or permitting action will be blocked.

If there are extenuating circumstances that warrant the Satisfactory Progress status to extend beyond 90 days that are outside of the reasons outlined in [25 Pa. Code § 86.211\(b\)](#), then coordination with upper management would be required.

Formal Civil Penalties

Formal Civil Penalty assessments are reported in Section B when the payment record is created. However, since the payment due date has not passed, they are not subject to conditional issue. The reason for this is that the assessment gives the operator time to pay or appeal the penalty. This appears in Section B up to the point where the due date passes. When a payment due date has lapsed without a payment being made or an appeal being perfected, the outstanding Civil Penalty is reported in Section A and is a permit block.

Subsidence Damage Compensation Orders

The Bituminous Mine Subsidence and Land Conservation Act (BMSLCA) explicitly provides that simply issuing an order for compensation for damage caused by subsidence is not to be considered a permit block. The Act allows for a 6-month period for the operator to pay the ordered compensation amount or perfect an appeal of the order. In order to perfect an appeal, it must be filed within 30 days and an amount equal to the compensation payment must be received within 60 days of receiving the order. Simply filing an appeal does not stay the permit block or conditional issuance if it is not perfected.

BMSLCA orders will be entered in eFACTS as Compliance Orders with a suffix (SA) on the docket number (reported in the Tracking # field on the outstanding enforcement report). This will make them easy to identify on the report. These orders should be immediately placed in Satisfactory Progress with a milestone reflecting the 6-month due date.

While these orders will show up in "Section B" of the report upon issuance, Subsidence Damage Compensation Orders should not affect permit issuance until either the 6-month period has expired, or the operator has perfected an appeal.

Once the operator has perfected an appeal, any permits should be issued conditionally. If a payment due date has lapsed without a payment being made or an appeal being perfected, the Satisfactory Progress status should be closed, and the order is reported in Section A and is considered a permit block.

If the operator fails to comply with the compliance order, a cessation order suspending the permit will be issued.

Example 3

The following excerpt shows records that are for Subsidence Damage Orders. The suffix “SA” indicates that these Orders were issued pursuant to the Subsidence Act and therefore should not block permits unless more than 60 days has lapsed without the appropriate payment being made.

Current Client			
Client Id: 259457	Client Name: CONSOL PA COAL CO LLC		
Section A			
Enforcements			
Enf Id: 358359	Client Id: 259457	Client AKA: 20059	Date Executed: 10/05/2017
Tracking#: 176002	Enf Type: Compliance Order		
Prog Specific Id: 30841316	ICS Org: 5350	Date Referred:	Progress Date: 07/17/2018
Date Modified:	Appeal Status: EHB	Date Final:	Final Status:
Enf Id: 420671	Client Id: 259457	Client AKA: 20059	Date Executed: 10/11/2023
Tracking#: 236005SA	Enf Type: Compliance Order		
Prog Specific Id: 30841317	ICS Org: 5350	Date Referred: 10/11/2023	Progress Date: 10/11/2023
Date Modified:	Appeal Status:	Date Final:	Final Status:
Enf Id: 420676	Client Id: 259457	Client AKA: 20059	Date Executed: 10/11/2023
Tracking#: 236006SA	Enf Type: Compliance Order		
Prog Specific Id: 30841317	ICS Org: 5350	Date Referred: 10/11/2023	Progress Date: 10/11/2023
Date Modified:	Appeal Status:	Date Final:	Final Status:
Enf Id: 420670	Client Id: 259457	Client AKA: 20059	Date Executed: 10/11/2023
Tracking#: 236001SA	Enf Type: Compliance Order		
Prog Specific Id: 30841317	ICS Org: 5350	Date Referred: 10/11/2023	Progress Date: 10/11/2023
Date Modified:	Appeal Status:	Date Final:	Final Status:

When to Use Conditional Issuance

Permits and licenses may be issued conditionally if the applicant and/or a related party are in compliance with pending schedules or are making Satisfactory Progress in resolving a violation. The enforcements and penalties listed in “Section B” of the report should be reviewed to determine if they require a condition to be added to the permit or license being issued.

The language used to add conditional issuance in a permit is as follows: “*This permit is being conditionally issued based on [the permittee’s] continued compliance with compliance order number [] dated [] on permit number []. Failure to comply with compliance order number [] will result in suspension of this permit.*”

Common examples of situations where conditional issuance is required include consent orders and agreements, administrative orders, appeals and permit/license blocks. Other occasions for the use of conditional issuances are also described below.

Consent Order and Agreements (CO&As)

CO&As are not issued strictly to resolve violations and penalties therefore investigating the purpose of the CO&A may be necessary. CO&As for the purposes of the Bond Credit Program or Voluntary Reclamation Agreements will not require conditional issuance and will not create a block. CO&As for

Trust Funds will require conditional issuance and can create a block if the milestone dates are missed (for example - annual meetings, fees or payments).

CO&As with past milestone due dates will be reported in “Section A” as a block, however, these should be checked since milestones can be used for follow-up actions required of the Department. CO&As with due dates in the future will be reported in “Section B.”

Administrative Orders

Administrative Orders may block permits or licenses or may require a conditional issuance. The specifics of the order should be investigated to determine the correct action to be taken (if any). The deciding factor as to whether an Administrative Order is a block is whether or not there is an outstanding violation.

Appeals and Permit/License Blocks

Enforcements that are under appeal require investigation to determine if they are a block or a conditional issuance. Most appeals do not stay the requirement to comply with the enforcement action. Therefore, an appealed order could still be a permit block.

For licenses, a compliance order must be adjudicated for the block to be in place. For appeals of civil penalties against either license or permits, the payment is required to perfect the appeal. Therefore, these would not result in a block or a conditional issuance.

Additional Instances of Conditional Issuance

Conditional issuances may also be given for enforcement actions that are in Satisfactory Progress or have pending civil penalty payment schedules in place.

STEP 2: License & Insurance Check

Before a permit is issued to an operator, the District Mining Office will verify that the operator has a valid Mine Operator’s License as required by [25 Pa. Code § 86.351](#) and [25 Pa. Code § 77.51](#) and that the liability insurance required by both [25 Pa. Code § 86.168](#) and [25 Pa. Code § 77.231](#) are still valid.

The License and Insurance Check is executed using the following procedure:

- ❑ Open Oracle Web Applications
- ❑ Log into eFACTS (username/password/prod)
- ❑ Select “Licensing”
- ❑ Query the form using the appropriate License ID or Licensee (Client ID) number
- ❑ On the “General” tab note the status and expiration date of the license
- ❑ On the “Mining” tab note the type of license (i.e. coal, large noncoal, small noncoal, contract operator registration, and/or ownership and control registration)
- ❑ On the “Insurance” tab note the expiration date of the insurance policy as well as the coverages (explosion and/or water loss)

Record License - Role : FC

Licenses

License Id 1475 Licensee 7533 1475 AMERIKOHL MINING, INC.

Client Type PACOR Pennsylvania Corporation Auth Id 1370750 Auth Type CCIMO Combined Coal

General Address Mining Waste Mgmt Insurance Authorizations RP VIN

Status ISSU Issued Status Date 10/05/2021 Account Id 383516

Program MCM MING COAL REGULATORY Date Last Due

Date Expires 10/31/2022 Date Renewal Printed 07/23/1999 Date Certificate Printed

Cond Issue Query on VIN Link Enfr/Per

Bond Agreement Information

Agmt Id Type Amount

Comment were 1-02360, 3-02861 & 8-00136. Lic. 5-11920 and 5-12303 merged into this one in 11/98.

Created 09/12/1999 BATCH UPDATE

Updated 10/05/2021 ULRICH DONNA M

Select All Back Go To

Record License - Role : FC

Licenses

License Id 1475 Licensee 7533 1475 AMERIKOHL MINING, INC.

Client Type PACOR Pennsylvania Corporation Auth Id 1370750 Auth Type CCIMO Combined Coal

General Address Mining Waste Mgmt Insurance Authorizations RP VIN

Mineral Prod BCIM Bituminous & Industrial Mineral

Date Intent Violation Responsible DMO Date Correction Letter Date Intent Corrections Date Intent to Deny AVS Send Renewal Mail

Mining Authorized

Type	Status	Date Status
CMOP Coal Mine Operator License	ISSUD Issued	10/05/2021
CONOP Contract Operator Registration	ISSUD Issued	10/05/2021
IMMLG Noncoal Operator License - Large mir	ISSUD Issued	10/05/2021

O & C Updates

Received Correction Approved

Select All Back Go To

Record License - Role : FC

Licenses

License Id 1475 Licensee 7533 1475 AMERIKOHL MINING, INC.

Client Type PACOR Pennsylvania Corporation Auth Id 1370750 Auth Type CCIMO Combined Coal

General Address Mining Waste Mgmt Insurance Authorizations R/P VIN

Expiration Date 11/01/2022 Water Loss Coverage Explosion Coverage

Coverage Amounts

Bodily Injury 0 Property Damage 0 Combined Bodily/Property 2,000,000

Insurance Policies

Company	Policy #
24557 INS35505 ROCKWOOD CASUALTY INS CO	GPL 0012577
24557 INS35505 ROCKWOOD CASUALTY INS CO	CGL 0043981

Select All Back Go To

STEP 3 (If Required): AVS Check

The Applicant/Violator System (AVS) is an automated information system owned and operated by the Federal Office of Surface Mining Reclamation & Enforcement (OSMRE). [25 Pa. Code § 86.37\(a\)\(9\)](#) and [86.37\(a\)\(16\)](#) provides that the Department submits information on applicants, permittees, operators, application, and permit records, as well as unabated or uncorrected environmental violations of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) are maintained in this nationwide database.

The primary purpose of AVS is to assist OSMRE and states in making a permit eligibility determination required under Section 510(c) of SMCRA for applicants of surface coal mining permits. Section 510(c) of SMCRA prohibits issuance of a new permit to any applicant who owns or controls mining operations having unabated or uncorrected violations anywhere in the United States until those violations are abated or corrected or are in the process of being abated or corrected to the satisfaction of the agency with jurisdiction over the violation. The data contained in AVS also assists OSMRE and states in determining the eligibility of bidders on Abandoned Mine Land program contracts under Title IV of SMCRA.

An AVS check must be run for all new coal mining permits, major revisions that include new acreage or require public notice, permit transfers, changes in contract operators, changes in the organizational structure of a permittee or contractor involving a transfer in ownership or control, and Government Financed Construction Contracts (GFCCs).

For new permits, major revisions, and/or permit transfers, the federal regulations require that the Regulatory Authority (RA) performs an evaluation twice and at specified intervals before the RA makes their permit eligibility determination. The first time an evaluation is generated is after a pending application is determined to be administratively complete. The first evaluation is important because it

provides the applicant an opportunity to correct any problems that may exist before the RA makes a final permitting decision. If a violation is identified in the evaluation, the RA should immediately notify the applicant as to the violation so that they can begin the process of correcting the outstanding violation. The RA must request a second evaluation within 5 business days prior to permit issuance. The second evaluation is especially important because of the amount of time that may have elapsed between the receipt of the application and the permitting decision.

It is the policy of the Department to withhold permit or license issuance based on Federal or State Cessation Orders, Federal or State Civil Penalties, outstanding Federal Abandoned Mine Land Reclamation Fees, or Bond Forfeitures.

Executing the AVS Check

As of February 1, 2024, the AVS System is still not accessible to anyone outside of OSMRE. AVS checks should be requested by sending the permittee name and address to avshelp@osmre.gov.

This section will be updated when the AVS System becomes available again.

Timing

The eFACTS compliance check must be dated for the same day that the permitting action is being taken. AVS checks must be performed within 5 business days of a permitting action being taken. Keep in mind it can take up to 24 hours for an evaluation narrative to be developed, if requested. Keep these timeframes in mind when coordinating the compliance check(s) and permitting action.

Additional Compliance Reports

Checking for Pattern of Violation - eFACTS Compliance History Report

The “Compliance History” report in eFACTS can be helpful in determining if a Pattern of Violation exists. This report contains all violations for an operator, whether open or resolved. Can be run as part of a permit compliance checks or during the enforcement actions to identify if a pattern has concerned.

Running the Report

- Open Oracle Web Applications
- Log into eFACTS (username/password/prod)
- Select “Reports”
- In the “Category” dropdown select “Compliance”
- Leave “Report Output Type” set to “PDF”
- Select Report “FX272301 – Compliance History”
- Click on “Run Report”
- Enter appropriate Client ID
- The report can be run for either all Program Codes or you must select a specific Program Code (MCM (coal) or MIM (noncoal))
- The report can be narrowed down by selecting an enforcement type
- The report can be constrained by entering beginning and end dates
- Click on “Submit Query”
- Open the report (will open in a new screen)
- Print the report

Pattern of Violation

The regulations advise a permit block when past or continuing violations show the applicant or operator lacks the ability or intention to comply with regulations or demonstrates a pattern of willful violations.

A pattern of violation can be detected when the same or similar performance standards were cited on three or more occasions in a 12-month period. If the result of this report shows that there may be a pattern of violation, it should be brought to the inspector supervisors' attention so that the appropriate compliance actions can be pursued, and the permit should not be issued.

Original SOP date 2024-Feb-01