



Chapter 11

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OSM’s Applicant Violator System: Recent Developments, Continuing Uncertainty¹

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¹ Although the authors have been involved in representing parties in certain of the cases discussed herein, the opinions or views expressed are solely those of the authors.

[1] — *Fincastle Mining, Inc. v. Babbitt*. 346
 [2] — *Coteau Properties Co. v. Dept. of Interior*. 347
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 [4] — *National Wildlife Fed’n v. Babbitt*. 351
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§ 11.01. Introduction.

Effective November 28, 1994, new regulations govern the use of the Applicant Violator System (AVS) by the Department of Interior’s Office of Surface Mining Reclamation and Enforcement (OSM) and by state regulatory authorities, and provide standards and procedures for challenging ownership and control determinations. Companion regulations issued by the Interior Department’s Office of Hearings and Appeals (OHA) allow for temporary relief from OSM ownership and control decisions. Although these rules offer some hope for more immediate relief from adverse ownership and control decisions, they impose procedural and substantive requirements that may well make it more difficult to resolve AVS-related questions.

In the area of judicial review, OSM’s initial series of three ownership and control regulations have been upheld against facial challenges at the Federal district court level, and yet another in a series of company-specific challenges has been dismissed as a jurisdictionally improper challenge to the rules. However, recent decisions involving the application of the AVS regulations — both from the Interior Department and from the courts — suggest that there is a limit to OSM’s authority in this area. This chapter provides a summary of these recent AVS developments.²

² A more detailed treatment of the AVS and OSM regulations implementing this complex permit-blocking scheme can be found in any of numerous papers on the subject, including two excellent articles published as a part of the Annual Institute proceedings of this Foundation. *See* Means, “The Applicant Violator System: A Critical Evaluation,” 10 *E. Min. L. Inst.* 6 (1989); Conrad, “The Applicant Violator System Under the Surface Mining Control and Reclamation Act of 1977: Constitutional Concerns,” 8 *E. Min. L. Inst.* 10 (1987).