**Section 1773.25 Standards for Challenging Ownership or Control Links and the Status Violations**

a) The provisions of this Section shall apply whenever a person has and exercises a right, under the provisions of Section 1773.20, 1773.21, 1773.23 or 1773.24, to challenge an ownership or control link to any person and/or the status of any violation covered by a notice.

1. Agencies Responsible

1) Except as provided in subsection (b)(3):

A) The regulatory authority before which an application is pending shall have responsibility for making decisions with respect to ownership or control relationships of the application.

B) The regulatory authority that issued a permit shall have responsibility for making decisions with respect to the ownership or control relationships of the permit.

C) The regulatory authority for the State that issued a State violation notice shall have responsibility for making decisions with respect to the ownership or control relationship of the violation.

D) The regulatory agency that issued a violation notice, whether State or federal, shall have responsibility for making decisions concerning the status of the violation covered by the notice, i.e., whether the violation remains outstanding, has been corrected, is in the process of being corrected, or is the subject of a good faith appeal, within the meaning of Section 1773.15(b)(1).

2) OSM shall have responsibility for making decisions with respect to the ownership or control relationships of a federal violation notice.

3) With respect to information shown on AVS, the responsibilities referred to in subsection (b)(1) shall be subject to the plenary authority of OSM to review any State regulatory authority decision regarding an ownership or control link.

4) With respect to ownership or control information that has not been entered into AVS by the State and with respect to information shown on AVS relating to the status of a violation, State regulatory authorities' determinations are subject to OSM's program authority oversight under 30 CFR 733, 842 and 843.

c) Evidentiary Standards

1) In any formal or informal review of an ownership or control link or of the status of a violation covered by a violation notice, the responsible agency shall make a prima facie determination or showing that the link exists or existed during the relevant period, and/or that the violation covered by the notice remains outstanding. Once a prima facie determination or showing has been made, the person challenging the link or the status of the violation shall have the burden of proving by a preponderance of the evidence, with respect to any relevant time period, that:

A) The facts relied upon by the responsible agency to establish ownership or control or a presumption of ownership or control under the definition of "owned or controlled" or "owns or controls" in Section 1773.5, do not or did not exist;

B) A person subject to a presumption of ownership or control under the definition of "owned or controlled" or "owns or controls" in Section 1773.5 does not or did not in fact have the authority directly or indirectly to determine the manner in which surface coal mining operations are or were conducted; or

C) The violation covered by the violation notice did not exist, has been corrected, is in the process of being corrected, or is the subject of a good faith appeal within the meaning of Section 1773.15(b)(1), provided that the existence of the violation at the time it was cited may not be challenged, under the provisions of Section 1773.24, by the following persons:

i) A permittee, unless the challenge is made by the permittee within the context of Section 1773.20 and 1773.21;

ii) Any person who had a prior opportunity to challenge the violation notice and failed to do so in a timely manner; or

iii) Any person who is bound by a prior administrative or judicial determination concerning the existence of the violation.

2) In meeting the burden of proof set forth in subsection (c)(1), the persons challenging the ownership or control link or the status of the violation shall present probative, reliable and substantial evidence and any supporting explanatory materials, which may, if before the responsible agency, include:

A) Affidavits setting forth:

i) specific facts concerning the scope of responsibility of the various owners or controllers of an applicant, permittee, or any person cited in a violation notice; the duties actually performed by the owners or controllers; the beginning and ending dates of the owners' or controllers' affiliation with the applicant, permittee, or person cited in a violation notice; and the nature and details of any transaction creating or severing an ownership or control link; or

ii) specific facts concerning the status of the violation.

B) Certified copies of corporate minutes, stock ledgers, contracts, purchase and sale agreements, leases, correspondence or other relevant company records;

C) Certified copies of documents filed with or issued by any State, municipal or federal governmental agency;

D) An opinion of counsel, when supportive by:

i) Evidentiary materials;

ii) A statement by counsel that he or she is qualified to render the opinion; and

iii) A statement that counsel has personally and diligently investigated the facts of the matter or, when counsel has not so investigated the facts, a statement that the opinion is based upon information that has been supplied to counsel and that is assumed to be true;

E) If before any administrative or judicial tribunal reviewing the decision of the responsible agency, any evidence admissible under the rules of that tribunal.

d) Following any determination by a State regulatory authority or other State agency, or any decision by an administrative or judicial tribunal reviewing the determination, the State regulatory authority shall review the information in AVS to determine if it is consistent with the determination or decision. If it is not, the State regulatory authority shall promptly inform OSM and request that the AVS information be revised to reflect the determination or decision.

(Source: Amended at 43 Ill. Reg. 12897, effective October 16, 2019)