

approved, implementing State regulations that are no less effective in meeting SMCRA's requirements than 30 CFR Part 772 and 30 CFR 701.5.

c. Right of Entry of Inspect

As noted above, Montana proposes at MCA 82-4-226(8) that "[t]he department may inspect these prospecting and reclamation operations [i.e., prospecting under notices of intent] at any reasonable time."

SMCRA Section 512 does not directly address right of entry requirements for coal exploration operations. The Federal regulations at 30 CFR 840.12(a) require that State regulatory program have authorities that grant their representatives the right of entry to, upon, and through any coal exploration operation without advance notice and upon presentation of appropriate credentials. This right of entry is not limited to "reasonable times." At 30 CFR 840.12(b), the Federal regulations further require State program to have authority for their representatives to inspect any monitoring equipment or method of exploration and to have access to and copy any records required under the approved State program, at reasonable times without advance notice, upon presentation of appropriate credentials. Both paragraphs further provide that no search warrant is required for right of entry, except that a state may provide for its use with respect to entry into a building.

Montana's proposed provision, by providing right of entry to prospecting operations (under notices of intent) only at "reasonable times," would grant right of entry at fewer times than required by the Federal regulation. Further, Montana's proposal does not provide authority for inspection of monitoring equipment or prospecting methods, nor authority for access to and copying of any records required by the Montana program, for prospecting operations conducted under notices of intent. Nor does the proposal address the issue of warrants.

Based on the above discussion, the Director finds that, in regard to prospecting under notices of intent, the Montana proposal is less effective than the Federal regulations in implementing SMCRA's requirements. The Director is approving the last sentence of Montana's proposed statutory provision at MCA 82-4-226(8) except the word "reasonable." However, the Director is requiring Montana: (1) To amend this enacted provision to remove the word "reasonable;" (2) to amend this statutory provision, or otherwise amend its program, to provide authority for the inspection of monitoring equipment and

prospecting methods for prospecting conducted under notices of intent, and access to and copying of any records required by the Montana program, at any reasonable time without advance notice upon presentation of appropriate credentials; and (3) to provide for warrantless right of entry in a manner no less effective in achieving SMCRA's requirements than the Federal regulations at 30 CFR 840.12.

6. *MCA 82-4-227(11), Refusal of Permit; Scope of Operations on Which Violations Require Permit Denial*

Existing 82-4-227(11), MCA, requires that when information available to DSL indicates that strip- or underground-coal-mining operations owned or controlled by the applicant is currently in violation of certain specified Federal or State laws or rules, DSL shall not issue a permit or major revision until the applicant submits certain proofs regarding the abatement of those violations. Montana is proposing to revise this provision to add the same requirement for violations on strip- or underground-coal-mining operations owned or controlled by any person who owns or controls the applicant. Montana also proposes nonsubstantive editorial revisions to the provision.

SMCRA Section 510(c) requires that when specified violations exist on any surface coal mining operation owned or controlled by the applicant, the permit shall not be issued without submission of certain proofs regarding the abatement of those violations. The Federal regulations at 30 CFR 773.15(b)(1) interpret this requirement to include existing violations on any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant.

Therefore both the Federal and the proposed Montana provisions require that permits be denied (without submission of certain proofs) for specified violations, not only on operations owned or controlled by the applicant, but additionally on operations owned or controlled by any person who owns or controls the applicant. Therefore the Director finds Montana's proposed addition of the phrase "or by any person who owns or controls the applicant" to be no less stringent than SMCRA Section 510(c) and no less effective in implementing those SMCRA requirements than the Federal regulations at 30 CFR 773.15(b)(1), and the Director is approving the proposed addition of the phrase.

7. *MCA 82-4-227(11) & (12), Refusal of Permit; Scope of Permitting Actions Subject to Denial*

Existing 82-4-227(11), MCA, requires that under the circumstances discussed in Finding No. 6 above, DSL shall not issue a "strip- or underground-coal-mining permit or major revision." Montana is proposing to revise this provision to require, under the specified circumstances, denial of a "strip- or underground-coal-mining permit or amendment, other than an incidental boundary revision." Similarly, existing 82-4-227(12), MCA, requires that when DSL finds (after opportunity for hearing) that the applicant owns or controls any strip- or underground-coal-mining operation which has demonstrated a pattern of willful violations (of specified character) of certain Federal or State laws, DSL shall not issue a "strip- or underground-coal-mining permit or major revision" until the applicant submits certain proofs regarding the abatement of violations. Montana is proposing to revise this provision to require, in those circumstances, denial of a "strip- or underground-coal-mining permit or amendment, other than an incidental boundary revision." Montana is also proposing nonsubstantive editorial revisions to this provision.

In both proposed provisions, Montana's revisions would have the effect of allowing the issuance of major revisions under the specified circumstances, but prohibit the issuance of "amendments," except that incidental boundary revisions could be issued.

OSM notes that under MCA 82-4-225, "amendments" are increases or decreases in the acreage to be affected under a permit; the same procedures required of new permits apply to amendments (except for incidental boundary revisions). Additionally, an existing provision of the Montana program, ARM 26.4.412(4)(a), prohibits approval of the transfer, sale, or assignment of permit rights under both sets of circumstances described above (current violations and patterns of violations).

SMCRA Section 510(c) and the Federal regulations at 30 CFR 773.15(b) prohibit the issuance of permits under both sets of specified circumstances, but do not address permit revisions. SMCRA Section 511, which specifies the requirements for permit revisions, does not prohibit the approval of permit revisions under the specified circumstances; and the Federal regulations at 30 CFR 773.15(b), 774.13, and 773.17 do not prohibit permit revision approval, but do prohibit the