

approval of transfer, assignment, or sale of permit rights, under the specified circumstances. SMCRA Section 511(a)(3) and 30 CFR 774.13(d) provide that incidental boundary revisions do not require application for a new permit, and hence are not prohibited under the specified circumstances; conversely, those Federal provisions require that extensions to the permit area other than incidental boundary revisions require application for a new permit, which would subject such extensions to denial under SMCRA 510(c) and 30 CFR 773.15(b).

Thus under two sets of circumstances (existing violations on operations owned or controlled by the applicant or by any person who owns or controls the applicant, as discussed in Finding No. 6 above, or demonstrated pattern of violations by the applicant, as discussed above), both the Federal provisions and the proposed Montana provisions prohibit the issuance of new permits, extensions to the permit area other than incidental boundary revisions, and approval of the transfer, sale, or assignment of permit rights. And in those circumstances, both the Federal and the proposed Montana provisions would allow the approval or issuance of permit revisions.

Based on the above discussion, the Director finds that Montana's proposed revisions at MCA 82-4-227 (11) and 12 regarding the scope of permitting actions subject to denial are no less stringent than the scope of permitting actions subject to denial under SMCRA Section 510(c), and are no less effective than the scope of permitting actions subject to denial under the Federal regulations at 30 CFR 773.15(b), 774.13, and 773.17 in implementing those requirements of SMCRA. Therefore the Director is approving the proposed revisions.

8. MCA 82-4-227(13), Lands Designated by Congress as Unsuitable for Surface Coal Mining

Subject to valid existing rights, existing 82-4-227(13), MCA, prohibits strip- or underground-coal-mining operations "on private lands within the boundaries" of certain specified Federal land management areas designated by Congress (national park system, national wildlife refuge system, etc.). Montana proposes to revise this provision by deleting the word "private," so that it would read "on lands within the boundaries" of those areas (see Administrative Record No. MT-11-04). Montana also proposes a nonsubstantive editorial change to the provision.

SMCRA Section 552(e)(1) provides that, subject to valid existing rights, no

surface coal mining operations shall be permitted "on any lands within the boundaries" of the specified land management areas.

Montana's proposed revision, by removing the word which limited the applicability of the provision to only a specified subset of lands, would extend the applicability to all lands within the boundaries of the specified areas; this is the equivalent of the Federal provision, which is applicable to "any" lands within the specified boundaries. Therefore the Director finds that Montana's provision as revised is no less stringent than SMCRA Section 552(e)(1), and is approving the proposed revisions.

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

2. Federal Agency Comments

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Montana program.

a. The Billings Area Office of the Bureau of Indian Affairs responded on August 11, 1993, with suggestions for additional editorial revisions (Administrative Record No. MT-11-06). The State Conservationist of the Soil Conservation Service (SCS) responded on August 18, 1993 (Administrative Record No. MT-11-08) with similar suggestions for additional editorial revisions.

Some of the instances where additional revision was suggested by these comments are interpreted by OSM as typographical errors in the preparation of this submittal. For instance, the second sentence of MCA 82-4-227(2) (introductory text) as contained in this submittal appears to be redundant of the last sentence and should be deleted. Similarly, 82-4-227(2)(d) as contained in this submittal has a typographical error in the parenthetical provision. OSM interprets these as typographical errors in the preparation of this submittal because they are not indicated as intentional proposed changes by strikeout or underline. These errors do not exist in the enacted statutes previously approved by OSM. Others of these

comments did address provisions that Montana does propose to revise; one of these items in BIA's comments has been addressed in Finding No. 2 above. BIA's and SCS's remaining suggestions will be forwarded to Montana for its consideration. However, except for the instance addressed in Finding No. 2, OSM does not find that any of the editorial imperfections identified in these agency comments render the proposed Montana statutes less stringent than SMCRA or less effective than the Federal regulations in meeting SMCRA's requirements.

b. The Mine Safety and Health Administration responded on August 12 and 26, 1993, that it did not find any apparent conflict with its regulations (Administrative Record Nos. MT-11-07 and MT-11-11).

c. The Office of Trust Responsibilities of the Bureau of Indian Affairs stated in a response dated on September 24, 1993, that they had no objection to the proposed amendment because they did not believe it would affect Indian Lands (Administrative Record No. MT-11-16).

d. The Montana State Office of the Bureau of Land Management responded on September 1, 1993 (Administrative Record No. MT-11-15), that it supports the proposed amendment, but offered no detailed comments.

e. Two agencies responded that they had no comments: U.S. Fish and Wildlife Service (August 26, 1993; Administrative Record No. MT-11-10); Bureau of Mines (August 30, 1993; Administrative Record Nos. MT-11-13 and MT-11-14).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Montana proposed to make in its amendment pertain to air or water quality standards. Therefore, pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (Administrative Record No. MT-11-03). EPA responded on August 27, 1993, that it had no comments (Administrative Record No. MT-11-12).

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed