

problem for the administration of the statute.

Based on Montana's representations in its July 28, 1994, response (Administrative Record No. MT-11-19), OSM finds that the Montana program contains provisions at ARM 26.4.303(15) and 26.4.405(6)(k) that are no less stringent than the requirements of Section 510(b)(6) of SMCRA, and that Montana has adequate statutory authority for the promulgation and enforcement of these regulatory provisions. Therefore the Director finds that the proposed repeal of 82-4-224, MCA, does not render the Montana program any less stringent than SMCRA, and is approving the proposed repeal of that section.

#### 4. MCA 82-4-226(1), Requirement for Prospecting Permit

Montana proposes to delete the introductory phrase "[o]n and after March 16, 1973," from the beginning of this subsection, which (with an exception discussed in Finding No. 5 below) makes it unlawful to prospect on land not included in a valid strip-mining or underground-mining permit without the possession of a valid prospecting permit. Under the proposed revision, the requirement for a prospecting permit would not be limited to the period after March 16, 1973.

Since any current or future prospecting would be subject to this subsection either with or without this time-limiting introductory phrase, the Director finds this proposed revision to be nonsubstantive in nature, and thus that the proposed revised statute is no less effective in meeting SMCRA's requirements than the Federal regulations and no less stringent than SMCRA. The Director approves the proposed revision.

#### 5. MCA 82-4-226(1) and (8), Prospecting Under Notice of Intent

At MCA 82-4-226(1), Montana proposes an exception to the provision that it is unlawful to conduct prospecting operations without a prospecting permit; the exception proposed is provided in proposed new subsection MCA 82-4-226(8). Proposed subsection MCA 82-4-226(8) would provide as follows:

(8) Prospecting that is not conducted in an area designated unsuitable for coal mining pursuant to 82-4-227 or 82-4-228 and that is not conducted for the purpose of determining the location, quality, or quantity of a natural mineral deposit is not subject to subsections (1) through (7). However, a person who conducts this prospecting shall file with the department a notice of intent to prospect, containing the information required

by the department, before commencing prospecting operations. If this prospecting substantially disturbs the natural land surface, it must be conducted in accordance with the performance standards of the department's rules regulating the conduct and reclamation of prospecting operations that remove coal. The department may inspect these prospecting and reclamation operations at any reasonable time.

OSM notes that subsections (1) through (7) of MCA 82-4-226 currently specify the requirements for prospecting permits, bonds, and reports; these requirements currently apply to all prospecting operations.

Montana is not at this time proposing as a program amendment any regulations to implement this proposed statutory provision. In its July 28, 1994, letter (Administrative Record No. MT-11-19), Montana expressed its intent to promulgate such rules in the near future. Further, OSM is aware that Montana has in fact initiated State rulemaking proceedings to promulgate such rules. Because Montana is not now proposing regulations to implement these proposed statutory revisions, but has initiated efforts to do so, OSM has reviewed the proposed statutory provisions only in comparison to the requirements of SMCRA, where they exist, rather than in comparison to the requirements of the implementing Federal regulations. Therefore, the Director notes here that, to the extent he approves these statutory provisions (as discussed below), Montana may not implement these statutory provisions concerning prospecting under notices of intent, until such time as Montana proposes, and OSM approves, State regulations that (in conjunction with these statutory provisions) are no less stringent than SMCRA Section 512 and no less effective in achieving those requirements than the implementing Federal regulations at 30 CFR Part 772.

OSM notes that under MCA 82-4-203(20), "mineral" means coal and uranium. OSM also notes that it has codified at 30 CFR 926.16(f) a requirement that Montana amend its definition of the term "prospecting" to be no less effective in implementing SMCRA's requirements than the Federal definition of the term "coal exploration."

#### a. Prospecting (Coal Exploration) Under Notices of Intent

Section 512(a) of SMCRA requires that each State and Federal program include a requirement that coal exploration operations which substantially disturb the natural land surface be conducted in accordance with exploration regulations issued by

the regulatory authority. Moreover, section 512(a) of SMCRA provides that such regulations must include, at a minimum: (1) The requirement that prior to conducting any exploration, a person must file with the regulatory authority notice of intention to explore (including a description of the proposed area and the proposed time period); and (2) provisions of reclamation in accordance with the performance standards of SMCRA Section 515. Section 512(d) requires that no operator shall remove more than 250 tons of coal pursuant to an exploration permit without the specific written approval of the regulatory authority. As noted above, OSM has promulgated regulations implementing these statutory provisions at 30 CFR Part 772; but Montana's proposed statutory provisions are being reviewed in comparison to the statutory requirements of SMCRA rather than to the Federal regulatory requirements.

The proposed Montana statute would prohibit prospecting (coal exploration) under notices of intent on lands designated as unsuitable for mining, and would additionally prohibit prospecting under notices of intent if the prospecting is conducted for the purpose of determining the location, quality, or quantity of a coal deposit, no matter on what lands or the degree of disturbance. There is a prohibition against exploring under a notice of intent on land designated as unsuitable for mining in the Federal regulations at 30 CFR 772.11(a) and 772.12(a), but there is no Federal prohibition against exploring under a notice of intent when the purpose is to determine the location, quality, or quantity of a coal deposit. Under SMCRA Section 505(b), no State law which provides for more stringent land use and environmental controls than SMCRA shall be construed as being inconsistent with SMCRA.

However, SMCRA Section 512(d) explicitly prohibits the removal of more than 250 tons of coal pursuant to exploration activities without the specific written approval of the regulatory authority. OSM interprets this requirement for "specific written approval," together with the title of SMCRA Section 512 ("Coal Exploration Permits"), as a requirement that a coal exploration permit be obtained for exploration activities that will remove more than 250 tons of coal (see 48 FR 40622, 40622, 40626; September 8, 1983). The proposed Montana provision does not correspondingly prohibit prospecting under notices of intent when more than 250 tons of coal will be removed. In its letter of July 28, 1994 (Administrative Record No. MT-11-19),