

## § 773.21

has been corrected, is in the process of being corrected, or is the subject of a good faith appeal, and

(ii) Whether the permittee or any person owned or controlled by the permittee continues to be responsible for the violation, penalty, or fee.

(c) *Remedial measures.* (1) A regulatory authority which, under paragraph (b) of this section, finds that, because of an unabated violation or a delinquent penalty or fee, a permit was improvidently issued must use one or more of the following remedial measures:

(i) Implement, with the cooperation of the responsible agency, the permittee, and persons owned or controlled by the permittee, a plan for abatement of the violation or a schedule for payment of the penalty or fee;

(ii) Impose on the permit a condition requiring abatement of the violation or payment of the penalty or fee within a reasonable time;

(iii) Suspend the permit until the violation is abated or the penalty or fee is paid; or

(iv) Rescind the permit.

(2) If the regulatory authority decides to suspend the permit, it must afford at least 30 days written notice to the permittee. If the regulatory authority decides to rescind the permit, it must issue a notice in accordance with § 773.21 of this part. In either case, the permittee must be given the opportunity to request administrative review of the notice under 43 CFR 4.1370 through 4.1370 through 4.1377, where OSM is the regulatory authority, or under the State program equivalent, where a State is the regulatory authority. The regulatory authority's decision will remain in effect during the pendency of the appeal, unless temporary relief is granted in accordance with 43 CFR 4.1376 or the State program equivalent.

[62 FR 19459, Apr. 21, 1997]

### **§ 773.21 Improvidently issued permits: Rescission procedures.**

A regulatory authority which, under § 773.20(c)(1)(iv) of this part, elects to rescind an improvidently issued permit must serve on the permittee a notice of proposed suspension and rescission which includes the reasons for the find-

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ing of the regulatory authority under § 773.20(b) of this part and states that:

(a) *Automatic suspension and rescission.* After a specified period of time not to exceed 90 days, the permit automatically will become suspended, and not to exceed 90 days thereafter rescinded, unless within those periods the permittee submits proof, and the regulatory authority finds, consistent with the provisions of § 773.25 of this part, that:

(1) The finding of the regulatory authority under § 773.20(b) of this part was erroneous;

(2) The violation has been abated, or the penalty or fee paid, to the satisfaction of the responsible agency;

(3) The violation, penalty, or fee is the subject of a good faith appeal, or of an abatement plan or payment schedule that is being met to the satisfaction of the responsible agency; or

(4) The permittee and all persons owned or controlled by the permittee are no longer responsible for the violation, penalty, or fee.

(b) *Cessation of operations.* After permit suspension or rescission, the permittee must cease all surface coal mining and reclamation operations under the permit, except for violation abatement and for reclamation and other environmental protection measures as required by the regulatory authority.

[62 FR 19459, Apr. 21, 1997]

### **§ 773.22 Verification of ownership or control application information.**

(a) In accordance with § 773.15(c)(1) of this part, prior to the issuance of a permit, the regulatory authority shall review the information in the application provided pursuant to § 778.13 of this chapter to determine that such information, including the identification of the operator and all owners and controllers of the operator, is complete and accurate. In making such determination, the regulatory authority shall compare the information provided in the application with information from other reasonably available sources, including—

(1) Manual data sources within the State in which the regulatory authority exercises jurisdiction, including: (i) The regulatory authority's inspection and enforcement records and (ii) State

corporation commission or tax records, to the extent they contain information concerning ownership or control links; and

(2) Automated data sources, including: (i) The regulatory authority's own computer systems and (ii) the Applicant/Violator System.

(b) If it appears from the information provided in the application pursuant to § 778.13(c) through (d) of this chapter that none of the persons identified in the application has had any previous mining experience, the regulatory authority shall inquire of the applicant and investigate whether any person other than those identified in the application will own or control the operation (as either an operator or other owner or controller).

(c) If, as a result of the review conducted under paragraphs (a) and (b) of this section, the regulatory authority identifies any potential omission, inaccuracy, or inconsistency in the ownership or control information provided in the application, it shall, prior to making a final determination with regard to the application, contact the applicant and require that the matter be resolved through submission of (1) An amendment to the application or (2) a satisfactory explanation which includes credible information sufficient to demonstrate that no actual omission, inaccuracy, or inconsistency exists. The regulatory authority shall also take action in accordance with the provisions of § 843.23 of this chapter (or the State program equivalent), where appropriate.

(d) Upon completion of the review conducted under this section, the regulatory authority shall promptly enter into or update all ownership or control information on AVS.

[59 FR 54353, Oct. 28, 1994]

**§ 773.23 Review of ownership or control and violation information.**

(a) Following the verification of ownership or control information pursuant to § 773.22 of this part, the regulatory authority shall review all reasonably available information concerning violation notices and ownership or control links involving the applicant to determine whether the application can be

approved under § 773.15(b) of this part. Such information shall include—

(1) With respect to ownership or control links involving the applicant, all information obtained under §§ 773.22 and 778.13 of this chapter; and

(2) With respect to violation notices, all information obtained under § 778.14 of this chapter, information obtained from OSM, including information shown in the AVS, and information from the regulatory authority's own records concerning violation notices.

(b) If the review conducted under paragraph (a) of this section discloses any ownership or control link between the applicant and any person cited in a violation notice—

(1) The regulatory authority shall so notify the applicant and shall refer the applicant to the agency with jurisdiction over such violation notice; and

(2) The regulatory authority shall not approve the application unless and until it determines, in accordance with the provisions of §§ 773.24 and 773.25 of this part (or the State program equivalent), (i) That all ownership or control links between the applicant and any person cited in a violation notice are erroneous or have been rebutted, or (ii) that the violation has been corrected, is in the process of being corrected, or is the subject of a good faith appeal, within the meaning of § 773.15(b)(1) of this part (or the State program equivalent).

(c) Following the regulatory authority's decision on the application (including unconditional issuance, conditional issuance, or denial of the permit) or following the applicant's withdrawal of the application, the regulatory authority shall promptly enter all relevant information related to such decision or withdrawal into AVS.

[59 FR 54354, Oct. 28, 1994; 59 FR 61656, Dec. 1, 1994]

**§ 773.24 Procedures for challenging ownership or control links shown in AVS.**

(a)(1) Any applicant or other person shown in AVS in an ownership or control link to any person may challenge such link in accordance with the provisions of paragraphs (b) through (d) of this section and § 773.25 of this part, unless such applicant or other person is