

Applicant/Violator System Office System Advisory Memorandum

SAM # 23 DATE: September 9, 2004



Subject: TRANSFER, ASSIGNMENT, or SALE of PERMIT RIGHTS

This System Advisory Memorandum pertains to transfer, assignment or sale of permit rights (TAS) under 30 CFR 774.17. In light of legal developments, and in partial settlement of the National Mining Association's challenge to the Office of Surface Mining Reclamation and Enforcement's (OSM) 2000 Ownership and Control rule (65 FR 79582 (December 19, 2000)), OSM plans to propose revised TAS rules by the end of this calendar year.

In the interim, and consistent with legal decisions binding on OSM, OSM will not consider a change of an officer, director, or minority shareholder of a permittee or operator to automatically constitute a transfer, assignment, or sale of permit rights requiring OSM's approval under 30 CFR 774.17. However, OSM will continue to require its approval for any actual change in "ownership or other effective control" (see definition of transfer, assignment, or sale of permit rights at 30 CFR 701.5).

Under this interpretation, and consistent with the current definitions of own, owner, or ownership and control or controller at 30 CFR 701.5, OSM will continue to deem a change of permittee, operator, or majority shareholder of a permittee or operator as a per se change of "effective control," and thus subject to the provisions of 30 CFR 774.17. However, with regard to a change of an officer, director, or minority shareholder, if the permittee does not voluntarily indicate that there has been a change of effective control, OSM would bear the burden of finding that there has been a change of effective control before requiring compliance with 30 CFR 774.17. If OSM makes such a finding, the burden of proof shifts to the permittee to demonstrate that there has not been a change of effective control.

The remaining provisions of 30 CFR 774.17 have not been affected by legal developments. Thus, all provisions of 30 CFR 774.17 not addressed in this interpretative guidance shall remain in force and effect, and OSM will continue to apply and enforce these provisions as it has since their promulgation, until such time as they are modified by rulemaking.

This interpretation will stand until final rules revising the current regulatory provisions under 30 CFR 774.17 are adopted. For this SAM, if you have any questions, please contact Earl Bandy or Ann Singleton at 1.800.643.9748.

Signed; _____

Earl D. Bandy, Jr., Chief,

Applicant/Violator System Office