



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

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Michael O. Leavitt
Governor
Lowell P. Braxton
Division Director

OSM Outgoing

November 12, 1998

FIELD(1)

Re: Excellence in Surface Mining Award Program

FIELD(2)

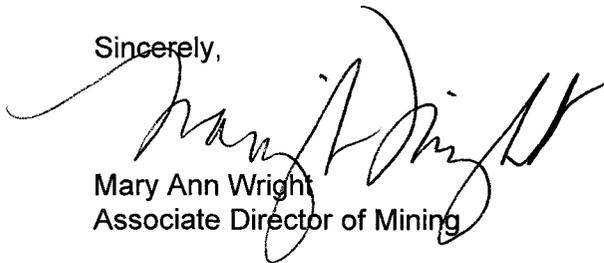
The U. S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement is accepting nominations for the 1999 Excellence in Surface Coal Mining and Reclamation Awards Program. The Division would like to again this year inform Utah coal operators about participation in this program.

The program is designed to recognize exemplary performance by coal mining operators under Title V of SMCRA. It is also an important mechanism to provide public recognition for the outstanding contributions made by coal operators, and to transfer successful reclamation technology for use in other areas of the nation.

Enclosed is a copy of the Excellence in Surface Mining Award document from the Office of Surface Mining for 1999, which will provide guidance and establish the criteria and procedure for selection. All submittals must meet the criteria enumerated in the enclosure and must be received by the Division on or before January 15, 1999.

The Division appreciates the enthusiasm and support from the Utah operators in the past and is looking forward to your submittals for this year's program.

Sincerely,



Mary Ann Wright
Associate Director of Mining

vb
Enclosure
cc: L. Braxton
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HELPER UT 84526



IN REPLY REFER TO:

United States Department of the Interior

OFFICE OF SURFACE MINING

Reclamation and Enforcement
1999 Broadway, Suite 3320
Denver, Colorado 80202-5733

October 1, 1998

Mr. Lowell P. Braxton, Acting Director
Division of Oil, Gas and Mining
1594 West North Temple, Suite 1210
P.O. Box 145801
Salt Lake City, Utah 84114-5801

Dear Mr. Braxton:

The Office of Surface Mining (OSM) reviewed Utah's March 20, 1998, formal amendment (State Program Amendments Tracking System (SPATS) No. UT-037-FOR). The amendment consists of rules concerning water replacement and subsidence.

OSM finds one provision of the proposed formal amendment to be less effective than the Federal counterpart regulations, and believes a second provision may be less effective as well. Those provisions are identified in the enclosure to this letter.

Additionally, OSM requests additional clarification from the Division of Oil, Gas and Mining (DOGM) on three topics which also are identified in the enclosure. OSM needs the additional clarification to complete its review of Utah's proposed amendment and to respond to public comments it received.

We would be happy to meet with you to discuss our review findings or any matters of concern regarding the proposed amendment. Please call Ron Sassaman at (303) 844-1521 if you have any questions.

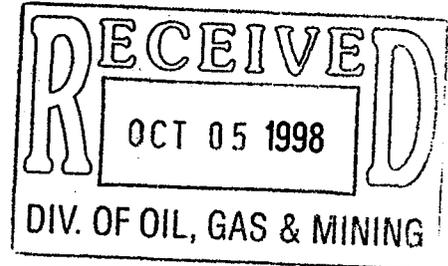
Sincerely,

James F. Fulton

James F. Fulton, Chief
Denver Field Division

Enclosure

cc: Regional Solicitor - Rocky Mountain Region



cc: R Daxter's Please File
M Wright this copy in
L BRESM OSM
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ISSUES IDENTIFIED BY OSM FOR UTAH'S MARCH 20, 1998, FORMALLY-
PROPOSED AMENDMENT
(SPATS NO. UT-037-FOR)

1. Pre-subsidence surveys; effect of denial of access to conduct surveys.

Utah Admin. R. 645-301-525.130

Proposed Utah Admin. R. 645-301-525.100 through 525.130 establish requirements for pre-subsidence surveys in applications for underground coal mining and reclamation activities. At Utah Admin. R. 645-301-525.130, Utah proposes that, "If the applicant cannot make this survey because the owner will not allow access to the site, the applicant will notify the owner, in writing, of the effect that the denial of access will have as described in R645-301-525." The effect of that denial is no rebuttable presumption that damage was caused by subsidence.

The Federal counterpart regulation at 30 CFR 784.20(a)(3) references 30 CFR 817.121(c)(4), entitled "Rebuttable presumption of causation by subsidence." This regulation includes the specific provision at subsection 817.121(c)(4)(iii) that no rebuttable presumption exists when access to conduct the pre-subsidence survey is denied. Referenced R645-301-525 in the proposed rule includes provisions for pre-subsidence surveys, protected areas, subsidence control, subsidence control plan contents, repair of damage, compliance, and public notice of proposed mining. Because it is less specific than 30 CFR 784.20(a)(3) in its reference to the provision notifying owners of the results of denying access, proposed Utah Admin. R. 645-301-525.130 may be less effective than the counterpart Federal regulation in ensuring that owners will be adequately notified of those results.

DOG M should revise proposed Utah Admin. R. 645-301-525.130 to include a reference to Utah Admin. R. 645-301-525.540 through -525.545 or specifically to Utah Admin. R. 534-301-525.543. OSM believes that including a more specific reference will ensure applicants provide sufficient notice to owners that there will be no presumption of causation by subsidence if the owners deny applicants access to perform pre-subsidence surveys. Alternatively, DOGM should explain why it believes the proposed rule as written is no less effective than the counterpart Federal regulation.

OK

2. Subsidence control plan contents.

Utah Admin. R. 645-301-525.490

Proposed Utah Admin. R. 645-301-525.400 through -525.490 include provisions for subsidence control plan contents. At Utah Admin. R. 645-301-525.490, DOGM proposes that subsidence control plans include "Other information specified by the

Division as necessary to demonstrate that the operation will be conducted in accordance with R645-301-525.300.” The Federal counterpart regulation to Utah Admin. R. 645-301-525.490, found at 30 CFR 784.20(b)(9), references 30 CFR 817.121.

Referenced Utah Admin. R. 645-301-525.300 in DOGM’s proposed rule is less inclusive than the Federal counterpart regulation at 30 CFR 817.121. Proposed Utah Admin. R. 645-301-525.300 requires information showing that an operation will be conducted in accordance with measures to prevent or minimize subsidence-caused damage. The Federal counterpart regulation requires information showing that an operation will be conducted according to provisions for the following: preventing or minimizing damage; repairing damage to surface lands; repairing or compensating for damage to non-commercial buildings and dwellings and related structures; establishing a rebuttable presumption of causation by subsidence, with provisions addressing damage within the angle of draw, approval of a site-specific angle of draw, and no presumption where access for a pre-subsidence survey is denied; rebuttal of the presumption; information to be considered in determining the cause of damage; and adjusting the bond amount for subsidence damage.

DOGM should revise proposed Utah Admin. R. 645-301-525.490 to include Utah Admin. R. 645-301-525.200, -525.300, -525.500, and -525.600. This change will ensure that Utah’s rules authorize DOGM to require sufficient information demonstrating that an operation will be conducted in accordance with all applicable provisions for subsidence control. OK

3. Clarification of the scope of the terms “State-appropriated water” and “State-appropriated water supply.”

UCA 40-10-18(15)(c)
Utah Admin. R. 645-100-200

In its January 29, 1997, letter clarifying the term “State-appropriated water” used at UCA 40-10-18(15)(c), DOGM explained that, “Under Utah water law, a person or entity cannot be a ‘legitimate’ water user if he/she/it is using water that has not been appropriated by the State” (Utah administrative record No. UT-1094). In the same letter, DOGM added that “The deliberately broad phrase ‘any state-appropriated water’ covers the universe of legal water uses by the universe of legal water users.” The proposed definition of “State-appropriated water supply” at Utah Admin. R. 645-100-200 means “State-created water rights which are recognized under the provisions of the Utah Code” and is based on the term “State-appropriated water” as used in the Utah Code.

OSM received public comments on this amendment questioning the scope of Utah’s

proposed water replacement provisions. One comment specifically stated that "Utah Code Ann. § 40-10-18 is not limited to water 'supply' but all state-appropriated water. Also, many water rights in Utah, including those in coal mining areas, predate statehood and thus are not state-created, but are recognized by Utah law." The comment raises a question concerning DOGM's clarification that "State-appropriated water" covers all legal uses of water in Utah. It also prompts the need for clarification of DOGM's proposed definition of "State-appropriated water supply."

OSM requests DOGM further clarify its definition and interpretation of the term "State-appropriated water" to address the assertion that legal water rights exist in the State that are recognized by Utah law but are not created by the State. *DM*

4. Clarification of the scope of water replacement with respect to "developed" water supplies.

UCA 40-10-18(15)(c)
Utah Admin. R. 645-100-200

As noted above, OSM received public comments concerning the scope of DOGM's proposed water replacement rules. Utah's use of the term "State-appropriated water supply" is based on the term "State-appropriated water" in the Utah Code. Both terms differ substantively from the Federal counterpart term "drinking, domestic or residential water supply". Several comments suggested expanding Utah's water replacement provisions.

In responses to comments received during the State's rulemaking process, DOGM explained that it intends to require replacement of "developed" water supplies through its proposed water replacement rules. DOGM's interpretation of its proposed rules does not appear to be consistent with the January 29, 1997, letter clarifying use of the underlying term "State-appropriated water" at UCA 40-10-18(15)(c). As stated in that letter, "State-appropriated water" covers " * * * the universe of legal Utah water uses by the universe of legal water users." Depending on what DOGM considers "developed" water supplies to be, some waters covered by the term "State-appropriated water" in the Utah Code might not be included in the proposed definition of "State-appropriated water supply" or covered by various rules incorporating that term throughout the proposed amendment. Further, at this time OSM is not aware of provisions in the Energy Policy Act or its legislative history supporting a conclusion that Congress intended to require replacement only of "developed" water supplies.

OSM requests information from DOGM describing what constitutes a developed water supply in its interpretation of the proposed rules. OSM also requests DOGM clarify how that interpretation is consistent with its interpretation of the term "State-appropriated water" at UCA 40-10-18(15)(c). *DM*

5. Clarification of the proposed definition of "replacement of water supply."

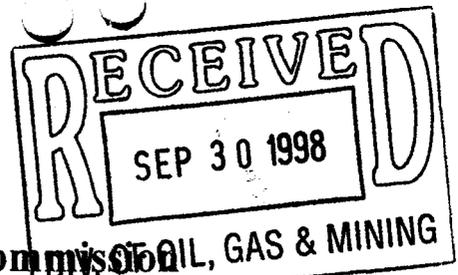
Utah Admin. R. 645-100-200

Utah's statutory provision for replacing water adversely affected by underground coal mining operations is found at UCA 40-10-18(15)(c). It requires replacement of adversely affected "State-appropriated water." Proposed Utah Admin. R. 645-301-731.530 also requires replacement of "State-appropriated water" that is adversely affected by underground mining activities. The State's statutory provision for replacing water adversely affected by surface coal mining operations is found at UCA 40-10-29(2). That provision requires replacement of " * * * the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source * * * ." Utah's rule for replacing water adversely affected by surface coal mining reads similarly and is found at Utah Admin. R. 645-301-731.800.

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Utah's proposed definition of "replacement of water supply" at Utah Admin. R. 645-100-200 requires replacement of adversely affected "State-appropriated water supplies." Use of the term "State-appropriated water supplies" is based on the term "State-appropriated water" at UCA 40-10-18(15)(c). As noted above, that statutory provision addresses replacement of water adversely affected by *underground* coal mining operations. DOGM clarified the scope of the term "State-appropriated water" in its January 29, 1997, letter to cover all legitimate water uses, including State-appropriated agricultural irrigation and industrial water. However, defining "replacement of water supply" in terms of "State-appropriated water supplies" establishes the scope of "replacement of water supply" in terms of underground coal mining operations only. As OSM explained in the preamble to the final rule approving the Federal counterpart definition of "replacement of water supply" (60 FR 16722, 16726; March 31, 1995), the Federal definition applies to underground *and* surface coal mining operations that affect water supplies. OSM's explanation added that the final rule is intended to apply to replacement of water supply under sections 717(b) and 720(a)(2) of SMCRA, which are the Federal counterparts to UCA 40-10-29(2) and 40-10-18(15)(c), respectively. Reference to "protected water supplies" in the Federal definition of "replacement of water supply" is broad enough to include water adversely affected by surface and underground operations.

OSM requests clarification from DOGM of its proposed definition of "replacement of water supply." That clarification should state whether "replacement of water supply," as proposed to require replacement of adversely affected State-appropriated water supplies, requires replacement of water adversely affected by surface *and* underground coal mining operations under UCA 40-10-18(15)(c) and 40-10-29(2).



OSM Incoming

Interstate Mining Compact Commission COAL, GAS & MINING

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September 25, 1998

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COALEX REGULATORY DEVELOPMENT REPORT

PROPOSED RULES, NOTICES, ANNOUNCEMENTS AND REQUESTS FOR COMMENT

OSM ANNOUNCES WITHDRAWAL OF PROPOSED MISSISSIPPI AMENDMENT

The Office of Surface Mining (OSM) announced the withdrawal of an amendment to the Mississippi regulatory program which was intended as a complete revision of the Mississippi regulations. Mississippi submitted a new amendment on March 26, 1998 which replaces the one that was withdrawn. [63 FR 44192 August 18, 1998]

MSHA PROPOSES TO REMOVE REGULATIONS FOR LIGHTING EQUIPMENT, ETC.

The Mine Safety and Health Administration (MSHA) proposed to remove approval regulations for lighting equipment for illuminating underground workings; portable coal dust/rock dust analyzers; and continuous duty, warning light, portable methane detectors. The proposal would also make conforming amendments to safety regulations that require the use of this approved equipment in underground coal mines and in gassy underground metal and nonmetal mines. Written comments should be submitted by November 2, 1998. [63 FR 47120 September 3, 1998]

MSHA PROPOSES TO REMOVE REGULATIONS ON APPROVED BOOKS & RECORDS

As part of its review of existing regulations, MSHA proposed to remove part 75, subpart S, from title 30 of the Code of Federal Regulations (CFR). Conforming amendments to these other MSHA standards would be made, as appropriate. Written comments should be submitted by November 2, 1998. [63 FR 47122 September 3, 1998]

MSHA TO UPDATE PROCEDURES FOR COAL MINE RESPIRABLE DUST SAMPLERS

MSHA proposed to update the incorporation by reference of Informational Report No. 1121 (MSHA IR 1121) with the revision of MSHA IR 1240, "Calibration and Maintenance Procedures for Coal Mine Respirable Dust Samplers". IR 1240 addresses improved technology and describes the standard procedures currently used by MSHA for calibration and maintenance of approved personal samplers and associated equipment. Written comments should be submitted by November 2, 1998. [63 FR 47123 September 3, 1998]

MSHA ANNOUNCES PETITIONS FOR MODIFICATION

MSHA announced that the following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977: Clinchfield Coal Co. (Cherokee Mine, Dickenson County, VA); The Kedco, Inc. (No. 2 Mine, Mingo County, WV); Manna Coal Corp. (Mine No. 1, Buchanan County, VA); Leeco, Inc. (Mine No.68, Perry County, KY); Webster County Coal Corp. (Dotiki

Mine, Webster County, KY); Mississippi Potash, Inc. (Mississippi Potash West Mine (Eddy County, NM) and Colorado Yule Marble Co. (Yule Quarry, Gunnison County, CO). [63 FR 48765 September 11, 1998]

NPS ANNOUNCES NOMINATIONS FOR LISTING IN THE NATIONAL REGISTER

The National Park Service (NPS) announced its nominations for properties being considered in the National Register of Historic Places. The list includes sites in these locations: Montgomery County, AL; Los Angeles and Santa Clara Counties, CA; Palm Beach County, FL; Hancock, Knox, Lincoln, Somerset and York Counties, ME; Washington County, MD; Jackson County, MO; Schuyler County, NY; and Robeson County, NC. Written comments should be submitted by October 7, 1998. [63 FR 50582 September 22, 1998]

MSHA ANNOUNCES REQUEST FOR COMMENTS ON INFORMATION COLLECTION

MSHA is soliciting comments concerning the proposed extension of the information collection related to the Refuse Piles and Impounding Structures, Recordkeeping and Reporting Requirements. Written comments should be submitted by November 9, 1998. [63 FR 48247 September 9, 1998]

OSM ANNOUNCES WITHDRAWAL OF PROPOSED ARKANSAS PROGRAM AMENDMENT

OSM announced the withdrawal of a previously proposed amendment and the receipt of a new amendment to the Arkansas regulatory program. Both amendments pertain to revegetation success standards. Arkansas proposed to revise its regulations and to add policy guidelines for determining Phase III revegetation success for areas being restored to various land uses. Arkansas intends to revise its program to be consistent with the corresponding Federal regulations. Written comments should be submitted by October 13, 1998. [63 FR 48661 September 11, 1998]

OSM OPENS COMMENT PERIOD ON PROPOSED AMENDMENT TO MARYLAND PROGRAM

OSM announced receipt of a proposed amendment to the Maryland regulatory program. The proposed amendment provides that administrative review and award of costs decisions formerly appealed to the Board of Review will now be reviewed in accordance with State Government Article, sec. 10-215, Annotated Code of Maryland. The amendment is intended to revise the Maryland program to be consistent with the corresponding Federal regulations. Written comments should be submitted by October 21, 1998. [63 FR 50176 September 21, 1998]

OSM OPENS COMMENT PERIOD ON PROPOSED AMENDMENT TO NORTH DAKOTA PROGRAM

OSM announced receipt of a proposed amendment to the North Dakota regulatory program. The proposed amendment consists of the addition of the definition of water supply, and the revision of existing rules on rulemaking notices, consolidation of information in permits, water management design plans, annual maps, wildlife monitoring reports, subsoil removal approvals, soil respreading requirements, sedimentation pond performance standards, and noncoal waste disposal. In addition, OSM is proposing to remove the program requirement at 30 CFR 934.16(n) concerning the submission of specific fish and wildlife resource information. The amendment is intended to revise the North Dakota program to be consistent with the corresponding Federal regulations and "incorporate additional flexibility afforded by the revised Federal regulations and provide additional safeguards, and clarify ambiguities, and improve operational efficiency." Written comments should be submitted by October 21, 1998. [63 FR 50177 September 21, 1998]

NOTE: The comment period for the following two items is closed; however, the items are included here for general information.

OSM PROPOSED REVISIONS TO ITS RULES RE: FINANCING OF AML PROJECTS

OSM proposed to revise its rules regarding the financing of Abandoned Mine Land (AML) projects that involve the incidental extraction of coal. Projections of receipts to the AML fund through the year 2004, when the authority to collect fees will expire, indicate that there will be insufficient money to address all problems currently listed in the AML Inventory System. Therefore, OSM is seeking an innovative way for AML agencies to maximize available funds to increase AML reclamation. The first proposed revision would amend the definition of government-financed construction to allow less than 50 % government funding

when the construction is an approved AML project. The second proposed revision would add a new section which would require specific consultations and concurrences with the Title V regulatory authority for AML construction projects receiving less than 50 % government financing. The comment period closed July 27, 1998. [63 FR 34768 June 25, 1998]

ARMY CORPS OF ENGINEERS PROPOSED TO MODIFY NATIONWIDE PERMITS

The Army Corps of Engineers proposed changes to its Nationwide General Permit Program by phasing out nationwide permit 26 (NWP 26) which covered certain activities in isolated water and waters above the "headwaters" point on streams. The Corps proposed to issue 6 new NWPs, modify 6 existing NWPs, add one new NWP condition and modify 6 existing NWP conditions which would become effective when NWP 26 expires. These NWPs are activity-specific and most are restricted to discharges of dredged or fill material into non-tidal waters of the United States. These NWPs will allow the Corps to improve overall environmental protection by allowing the Corps to prioritize its work in non-tidal waters based on the quality of impacted aquatic systems and the specific impacts of a proposed project. The comment period closed August 31, 1998. [63 FR 36040 July 1, 1998]

FINAL RULES

OSM APPROVES AMENDMENT TO MISSOURI AML RECLAMATION PLAN

OSM approved a proposed amendment to the Missouri abandoned mine land reclamation plan. The amendment is intended to revise the Missouri plan to allow the Missouri Department of Natural Resources, Land Reclamation Commission, Land Reclamation Program to assume responsibility for administering the AML reclamation emergency program in Missouri on behalf of OSM. The amendment became effective on June 24, 1998. [63 FR 34277 June 24, 1998]

OSM APPROVES AMENDMENT TO VIRGINIA PROGRAM

OSM announced approval of an amendment to the Virginia regulatory program. This amendment revises numerous provisions of the Virginia program, including revisions of the definitions of "other treatment facilities" and "previously mined area"; revisions, deletions and additions to reclamation plan rules; revisions to rules on disposal of excess spoil, impoundments, backfilling and grading, inspections, etc. The amendment is intended to revise the Virginia program to be consistent with the Federal regulations and became effective on June 24, 1998. [63 FR 34280 June 24, 1998]

OSM APPROVES AMENDMENT TO MISSISSIPPI PROGRAM

OSM announced the approval of an amendment to the Mississippi regulatory program pertaining to the small operator assistance program, variances from performance standards, enforcement, and administrative and judicial review proceedings. The amendment is intended to revise the Mississippi program to be consistent with SMCRA and became effective on June 25, 1998. [63 FR 34597 June 25, 1998]

OSM APPROVES AMENDMENT TO ALABAMA PROGRAM

OSM announced the approval of an amendment to the Alabama regulatory program which includes revisions to and additions of statutes pertaining to the small operator assistance program, the repair of homes and other structures materially damaged by underground coal mining, and the replacement of affected water supplies. The amendment is intended to revise the Alabama program to be consistent with SMCRA. It became effective on July 1, 1998. [63 FR 35805 July 1, 1998]

OSM APPROVES CHANGES TO WEST VIRGINIA PROGRAM

OSM approved the clarification of three final rule decisions, the removal of a required amendment and the vacating of its retroactive approval of amendments to the West Virginia regulatory program. The clarifications concern West Virginia statutes pertaining to administrative appeals and the State Environmental Quality Board and the required amendment pertains to termination of jurisdiction. These actions are intended to comply with a settlement agreement reached in West Virginia Mining and

Reclamation Association (WVMRA) v Babbitt, No. 2: 96-0371 (S.D. W.VA.). These changes became effective July 14, 1998. [63 FR 37774 July 14, 1998]

OSM APPROVES AMENDMENT TO KENTUCKY PROGRAM

OSM announced the approval, with an exception, of an amendment to the Kentucky regulatory program. This amendment provides that areas reclaimed following the removal of temporary structures, such as sedimentation ponds, roads, and small diversions, are not subject to a revegetation responsibility period and bond liability period separate from that of the permit area or incremental area served by such facilities. The amendment is intended to clarify ambiguities in the State regulations and improve operational efficiency. It became effective on August 4, 1998. [63 FR 41423 August 4, 1998]

EPA ISSUES A NOTICE OF INTERPRETATION RE: NPDES GENERAL PERMITS

EPA issued a final modification of National Pollutant Discharge Elimination System (NPDES) general permits intended to clarify an interpretation of the technology-based effluent limitations applicable to point sources of "mine drainage" at active ore mining and dressing operations, which was contained in a recently-issued NPDES general permit for storm water associated with industrial activity. With this interpretation, EPA modified the NPDES general permits issued by EPA Regions 1,6,9 and 10, where EPA is the permit issuance authority. EPA intends that the interpretation apply nationwide in all EPA Regions. The permit modifications became effective on September 8, 1998. [63 FR 42534 August 7, 1998]

OSM APPROVES AMENDMENT TO OKLAHOMA PROGRAM

OSM announced the approval of an amendment to the Oklahoma regulatory program pertaining to normal husbandry practices and nonaugmentative reclamation activities. The amendment identifies seeding, planting, fertilizing and other practices that may be performed without restarting the five-year period of operator responsibility for reclamation success. The effective date for the final rule was August 10, 1998. [63 FR 42575 August 10, 1998]

OSM APPROVES AMENDMENT TO MISSISSIPPI PROGRAM

OSM approved, with additional requirements, an amendment to the Mississippi regulatory program. Mississippi proposed to replace all of its currently approved regulations for surface coal mining and reclamation operations with new regulations. The amendment is intended to revise the Mississippi program to be consistent with the corresponding Federal regulations, provide additional safeguards and improve operational efficiency. The amendment became effective August 13, 1998. [63 FR 43305 August 13, 1998]

MSHA REMOVES RULES RE: FLAME SAFETY LAMPS AND SINGLE-SHOT BLASTING UNITS

MSHA removed approved regulations for flame safety lamps and single-shot blasting units because advances in technology have made these devices obsolete and have made the regulations unnecessary. This final rule will also make conforming amendments to safety regulations for underground coal mines which require the use of this approved equipment. The rule becomes effective on November 2, 1998. [63 FR 47118 September 3, 1998]

EPA ANNOUNCES NOTICE OF EFFLUENT GUIDELINES PLAN

The Environmental Protection Agency (EPA), announced its plans for developing new and revised effluent guidelines, which regulate industrial discharges to surface waters and to publicly owned treatment works. Comments to the proposed plan, published on May 28, 1998, are discussed in this notice. [63 FR 47285 September 4, 1998]

FEDERAL REGISTER NOTICE CORRECTIONS

OSM: CORRECTION TO NOTICE RE: LOUISIANA PROGRAM

OSM made two corrections to rule document 98-12249 published on May 8, 1998, 63 FR 25391: (1) On page 25393, in the first column, under the heading E. Section 5333. Hydrologic Balance:

Impoundments, in the sixth line, "(120" should read "(210"; (2) On page 25394, in the table, in the third column, the second line, "A.2a", should read "A.2.a". [63 FR 38881 July 20, 1998]

OSM: CORRECTION TO NOTICE RE: KENTUCKY PROGRAM

In rule document 98-20468, July 31, 1998, 63 FR 40825, make the following correction: "917.17 [Corrected]. On page 40827, in the third column, in amendatory instruction 4., in the first line, "917.16" should read "917.17".

OSM ANNOUNCEMENTS, NEWS RELEASES AND FACT SHEETS

OSM's Western Regional Coordinating Center approved a plan to allow managed grazing on reclaimed lands at Peabody Western Coal Co.'s Kayenta Mine on the Navajo Reservation in Arizona. This action authorizes a local resident to graze livestock on two tracts of land totaling about 128 acres.

OSM's Appalachian Clean Streams Initiative Team, Jean O'Dell and David Best, are recipients of the DOI Environmental Achievement Award for 1998. The Team was selected because of its "exceptional achievement and teamwork in accelerating the cleanup of streams polluted by acid mine drainage from abandoned coal mines and preventing new sources of contaminated drainage." The award ceremony was held in Interior's Museum in Washington, DC on September 17, 1998.

OSM's Lexington Field Office prepared a draft Performance Agreement on Mountaintop Removal coal mining in Kentucky, modeled after the study of mountaintop removal in West Virginia. During September, representatives from OSM had meetings with the Kentucky regulatory authority, industry and the environmental community to discuss the Agreement. Field work is planned for October and November, and the draft report will be available for review at the end of December, 1998.

OSM announced the awarding of the following grants:

<u>TO</u>	<u>AMOUNT</u>	<u>FOR</u>	<u>DATE</u>
Ohio	\$ 6,887,380	AML Program	6/18/98
Pennsylvania	325,000	SOAP	6/24/98
Ohio	1,400,240	Surface effects of coal minng	7/02/98
Maryland	25,000	SOAP	7/07/98
Oklahoma	231,188	AML Program	7/07/98
West Virginia	150,000	AML Program	7/09/98
Crow Tribe	1,652,548	AML Program in Montana	7/14/98
Virginia	1,000,000	AML Program	7/14/98
Hopi Tribe	524,948	AML Program in Arizona	7/28/98
Wyoming	259,950	AML Program	7/30/98
Iowa	155,371	Surface effects of coal mining	8/04/98
Pennsylvania	7,398,654	AML Program	8/05/98
Virginia	274,764	Coal bed mapping project	8/25/98
Alabama	100,000	AML Program	9/09/98



IN REPLY REFER TO:

United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
1999 Broadway, Suite 3320
Denver, Colorado 80202-5733

June 24, 1998

Mr. Lowell P. Braxton, Acting Director
Division of Oil, Gas and Mining
1594 West North Temple, Suite 1210
P.O. Box 145801
Salt Lake City, UT 84114-5801

Dear Mr. Braxton:

Thank you for your June 8, 1998, letter transmitting the formal amendment to section 40-10-11 of the Utah Code Annotated. This amendment proposes changes to update language used to describe Utah's coal mine permit application approval process. It also proposes a change to section 40-10-11(3) to satisfy the required amendment described at 30 CFR 944.16(f)(2).

OSM has begun processing your Code amendment and identified it as UT-039-FOR.

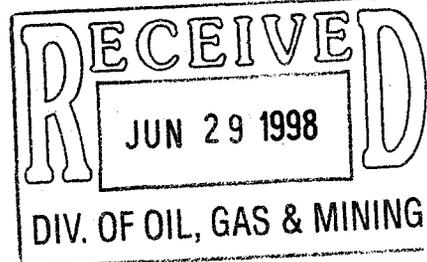
Please contact Ron Sassaman at (303) 844-1521 if you have any questions.

Sincerely,

James F. Fulton acting for
James F. Fulton, Chief
Denver Field Division

Ron Daniels
Ut-039-FOR

*Please cc forward
and filing in "OSM
Mining"*





State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Michael O. Leavitt
Governor
Ted Stewart
Executive Director
James W. Carter
Division Director

1594 West North Temple, Suite 1210
Box 145801
Salt Lake City, Utah 84114-5801
801-538-5340
801-359-3940 (Fax)
801-538-7223 (TDD)

June 8, 1998

James Fulton, Chief
Office of Surface Mining
Western Regional Coordinating Center
1999 Broadway, Suite 3320
Denver, Colorado 80202-5733

Re: Required Program Amendment to the Utah Program

Jin
Dear Mr. Fulton:

During the 1998 Legislature, Senate Bill 169 was passed with the purpose of updating certain Utah Coal Regulatory Program language and complying with an outstanding required program amendment from 1997. As you know, the 1998 Legislature afforded Utah its first opportunity to correct the statutory language, as the Utah Legislature only meets for 45 days each year. This letter submits for your review the necessary materials to fulfill the needs of the outstanding required amendment at 30 CFR 944.16(f)(2) as well as an update of one section of the Utah Code.

Please consider S.B. 169, which contains the newly revised section of the Utah Code, UCA 40-10-11, as both a formal program amendment and as a means of satisfying the outstanding required amendment referenced above. To assist in your review I have included with this letter three enclosures, the enrolled (passed) copy of Senate Bill 169, an excerpt of 30 CFR 944.16 which details the required amendment, and an excerpt from the 8/4/97 Federal Register analysis of Utah's previous attempt to satisfy the required amendment.

Thank you for your attention to this matter, if there is any more information required for this Coal Regulatory Program action, let me know.

Sincerely,

Lowell P. Braxton
Acting Director

dr

Enclosures (3)

cc: M. Wright
P. Grubaugh-Littig
R. Daniels

o:osmfult.ltr



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Michael O. Leavitt
Governor
Ted Stewart
Executive Director
Lowell P. Braxton
Division Director

1594 West North Temple, Suite 1210
PO Box 145801
Salt Lake City, Utah 84114-5801
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801-359-3940 (Fax)
801-538-7223 (TDD)

May 13, 1998

James Fulton, Chief
Denver Field Division
Office of Surface Mining
Western Regional Coordinating Center
1999 Broadway, Suite 3320
Denver, Colorado 80202-5733

Re: Deficiency in Water Replacement Rule R645-301-731.530

Jim
Dear Mr. Fulton:

Our respective staffs have agreed on a course of action to resolve the perceived deficiency contained in the above-cited Utah Administrative Rule and this letter is to confirm the Division's planned course of action to correct the deficiency. You will recall that R645-301-731.530 is the rule in which the Division mistakenly utilized the term "underground mining activities" when it more correctly should have used the term "underground coal mining and reclamation activities" which is defined at rule R645-100-200. Not using the defined term was an oversight.

I have asked the Board of Oil, Gas and Mining to endorse our plans to begin the informal phase of the rulemaking process, which will lead to a formal rule change using the latter rather than the former term. We plan on September 30, 1998 as the date by which the described rule change will be in place as a final rule.

If there are any additional steps which you see need to be taken for your office to proceed with action in approving the balance of the water replacement rules, please let me know.

Sincerely,

Lowell P. Braxton
Acting Director



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Michael O. Leavitt
Governor

Ted Stewart
Executive Director

Lowell P. Braxton
Division Director

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PO Box 145801
Salt Lake City, Utah 84114-5801
801-538-5340
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801-538-7223 (TDD)

May 12, 1998

File

Sarah E. Donnelly, Chief
Technical Training Program
Office of Surface Mining
Reclamation and Enforcement
Washington, D.C. 20240

Dear Ms. Donnelly:

This letter is to follow up on a verbal request by the state of Utah to have a special training session to be presented locally in Utah's coal fields concerning evidence preparation and testimony for some local water users. Some of our coal staff would attend and some coal operator environmental staff have expressed an interest in attending as well.

We have had several subsequent discussions concerning such a special training session to be conducted by OSM's Technical Training Branch and I have also discussed this request with our OSM Field Division Chief, Jim Fulton. I have reviewed the three course outlines which you had Mary Dyson send to me for the Evidence Preparation and Testimony course, the Enforcement Procedures course and the Expert Witness and Testimony course. The water users groups have indicated that they could and would attend a one/two-day course. Since many of them have farm and ranch obligations, it would be difficult to go beyond that time frame. They also expressed that the mid to late fall time frame is their best time to do such. Right now, we have scheduled a separate full day with them on water rights issues for November 17, 1998.

I believe a class embodying several of the key elements of the Evidence Preparation and Testimony course would be the most helpful to the notion of requesting the class. For a two-day class, perhaps the following sections would work: "Pre-test & Answer Period", the "Evidence Management", the "Legal Overview of Evidence", and a couple of hours on a "Testimony or Evidence Preparation Exercise". For a one-day class, my suggestion would then be to focus on the first two sections mentioned. Please let me know what you believe would work best for this situation and I will work with you on scheduling a time for it just as soon as possible.

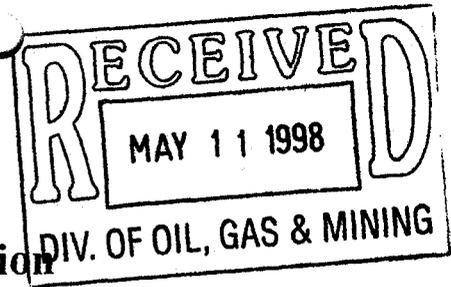
Thank you for maintaining an excellent set of courses for state and federal employees and for considering extending an opportunity to a group of citizens in our state as well. Please call me at (801) 538-5306.

Sincerely,

Mary Ann Wright
Associate Director of Mining

vb

cc: Jim Fulton, WRCC, OSM



Interstate Mining Compact Commission

459-B Carlisle Drive, Herndon, VA 20170-4819

Phone: 703/709-8654 Fax: 703/709-8655

Web Address: www.imcc.isa.us E-Mail: gconrad@imcc.isa.us or bbotsis@imcc.isa.us

File
Tom Incoming

May 1, 1998

COALEX REGULATORY DEVELOPMENT REPORT

COMMISSIONERS

GOV. FOB JAMES, JR.
Alabama, Chairman

GOV. JAMES S. GILMORE, III
Virginia, Vice Chairman

GOV. GEORGE V. VOINOVICH
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Maryland

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West Virginia

ASSOCIATE MEMBER

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New York

EXECUTIVE DIRECTOR

GREGORY E. CONRAD

PROPOSED RULES, NOTICES AND REQUESTS FOR COMMENT

OSM REOPENS COMMENT PERIOD ON PROPOSED AMENDMENT TO KENTUCKY PROGRAM

OSM reopened the public comment period on a proposed amendment to the Kentucky regulatory program. Kentucky submitted a letter requesting the removal of an amendment at 30 CFR 917.17(a) which required that Kentucky maintain a staffing level of 156 field inspectors and provided justification for the request. The amendment is intended to revise the Kentucky program to be consistent with the corresponding federal regulations. Written comments should be submitted by May 12, 1998. [63 FR 20561, April 27, 1998]

OSM OPENS COMMENT PERIOD ON PROPOSED AMENDMENTS TO MISSISSIPPI PROGRAM

OSM announced receipt of proposed amendments to the Mississippi regulatory program. Mississippi proposes to replace all of its currently approved regulations for surface coal mining and reclamation operations with new regulations. The amendments are intended to revise the Mississippi program to be consistent with the corresponding federal regulations, provide additional safeguards and improve operational efficiency. [63 FR 18173, April 14, 1998] The second proposed amendment consists of revisions to the Mississippi Surface Coal Mining and Reclamation Law pertaining to the small operator assistance program, variances from performance standards, enforcement, and administrative and judicial review proceedings. This amendment is intended to revise the Mississippi program to be consistent with SMCRA. [63 FR 18172, April 14, 1998] Written comments should be submitted by May 14, 1998.

OSM REOPENS COMMENT PERIOD ON PROPOSED AMENDMENT TO TEXAS PROGRAM

OSM announced receipt of revisions pertaining to a previously proposed amendment to the Texas regulatory program. The revisions pertain to terms and conditions of bonds, release of performance bonds, backfilling and grading, and prime farmland. The amendment is intended to revise the Texas program to be consistent with the corresponding federal regulations. Written comments should be submitted by May 14, 1998. [63 FR 23407, April 29, 1998]

MSHA ANNOUNCES PETITIONS FOR MODIFICATIONS

The Mine Safety and Health Administration (MSHA) announced that the following parties have filed petitions to modify the application of mandatory safety standards under section 101 (c) of the Federal Mine Safety and Health Act of 1977: Energy West Mining

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MAY 11 1998
MSHA (con'td)

Company (Trail Mountain Mine, Emery County, Utah); Peabody Coal Co. (Camp No. 1 Mine, Union County, KY); Consolidation Coal Co. (Rend Lake Mine, Jefferson County, PA); Fray Mining, Inc. (Mine No. 3, Buchanan County, KY); Mountaineer Mining Management, Inc. (No. 3 Mine, Boone County, WV); Marrowbone Development Co. (North Marrowbone Creek Mine, Mingo County, WV); Eagle Energy, Inc. (Mine No. 1, Boone County, WV). Written comments should be submitted by May 14, 1998. [63 FR 18232, April 14, 1998]

OSM ANNOUNCES REQUEST FOR COMMENTS ON INFORMATION COLLECTION

OSM has submitted a request to OMB to renew its approval of the collection of information for the permanent program performance standards - underground mining activities, 30 CFR Part 817. OSM is requesting a 3-year term of approval for this information collection activity. Written comments on this information collection request should be submitted by May 22, 1998. [63 FR 19945, April 22, 1998]

OSM OPENS COMMENT PERIOD ON PROPOSED AMENDMENT TO MISSOURI PLAN

OSM announced receipt of a proposed amendment to the Missouri Abandoned Mine Land Reclamation Plan pertaining to a formal request by the Missouri Department of Natural Resources, Land Reclamation Commission, and Land Reclamation Program to assume responsibility of the abandoned mine land reclamation (AMLR) emergency program in Missouri. The proposed amendment is intended to provide information to verify that Missouri has the authority under its existing plan to conduct the AMLR emergency program on behalf of OSM. Written comments should be submitted by May 22, 1998. [63 FR 19874, April 22, 1998]

MSHA EXTENDS COMMENT PERIOD ON PPL

Due to requests from the mining community, MSHA is extending the comment period on its draft policy letter (PPL) relating to the approval guidelines for storage plans for Self-Contained Self-Rescue (SCSR) Devices in underground coal mines. Written comments should be submitted by May 29, 1998. [63 FR 19873, April 22, 1998]

OSM REOPENS COMMENT PERIOD ON PROPOSED AMENDMENT TO OHIO PROGRAM

OSM reopened the comment period on a proposed amendment to the Ohio regulatory program. The amendment provides that areas reclaimed following the removal of temporary structures that are part of the sediment control system, such as sedimentation ponds, roads, and small diversions, are not subject to a revegetation responsibility period and bond liability period separate from that of the permit area or increment served by such facilities. The amendment also authorizes, as a husbandry practice that will not restart the revegetation responsibility period, the repair of damage to land and/or established permanent vegetation that has been unavoidably disturbed. The amendment is intended to improve operational efficiency of the Ohio program. Written comments should be submitted by May 29, 1998. [63 FR 23405, April 29, 1998]

OSM OPENS COMMENT PERIOD ON PROPOSED AMENDMENT TO ALABAMA PROGRAM

OSM announced receipt of a proposed amendment to the Alabama regulatory program. The amendment consists of revisions to and additions of statutes pertaining to the small operator assistance program, the repair of homes and other structures materially damaged by underground coal mining and the replacement of affected water supplies. The amendment is intended to revise the Alabama program to be consistent with SMCRA. Written comments should be submitted by May 29, 1998. [63 FR 23403, April 29, 1998]

MSHA ANNOUNCES REQUEST FOR COMMENTS ON INFORMATION COLLECTION

MSHA is soliciting comments concerning the proposed extension of the information collection related to the Certificate of Training, MSHA Form 5000-23, and new optional Certificate of Task Training, MSHA Form 5000-23T. Written comments should be submitted by June 1, 1998. [63 FR 15897, April 1, 1998]

OSM ANNOUNCES REQUEST FOR COMMENTS ON INFORMATION COLLECTION

OSM announced its intention to request approval for the collection of information for: State processes for designating areas unsuitable for surface coal mining operations, 30 CFR Part 764; and Special permanent program performance standards – operations in alluvial valley floors, 30 CFR Part 822. Written comments should be submitted by June 5, 1998. [63 FR 16825, April 6, 1998]

MSHA ANNOUNCES REQUESTS FOR COMMENTS ON INFORMATION COLLECTION

MSHA is soliciting comments concerning the proposed extension of the information collection related to the submission of hazardous condition complaints addressed in 30 CFR 43.2, 43.7, 43.7 and 43.8. [63 FR 20660, April 27, 1998] MSHA is also soliciting comments concerning the proposed extension of the information collection related to the application for a permit to fire more than 20 boreholes, for the use of nonpermissible blasting units and for the use of nonpermissible explosives and nonpermissible shot-firing units and posting of warning notices with regard to mis-fired explosives. [63 FR 20659, April 27, 1998] Written comments should be submitted by June 26, 1998.

OSM ANNOUNCES REQUEST FOR COMMENTS ON INFORMATION COLLECTION

OSM is announcing its intention to request approval for the collection of information for the Procedures and Criteria for Approval or Disapproval of State Program Submissions at 30 CFR Part 732. Written comments should be submitted by June 26, 1998. [63 FR 20649, April 27, 1998]

MSHA OPENS COMMENT PERIOD ON PROPOSED RULE RE: NEW HEALTH STANDARDS

MSHA announced the opening of the comment period on the proposed rule which would establish new health standards for underground coal mines that use equipment powered by diesel engines. The proposed rule would reduce the risks of serious health hazards that are associated with exposure to high concentrations of diesel particulate matter (dpm) by requiring that mine operators install and maintain high-efficiency filtration systems on certain types of diesel-powered equipment. Underground coal mine operators would also be required to train miners about the hazards of dpm exposure. Written comments should be submitted by August 7, 1998. [63 FR 17492, April 9, 1998]

FINAL RULES, INTERPRETIVE BULLETINS, ETC.

EPA ANNOUNCES DELEGATION OF AUTHORITY TO NEW MEXICO

EPA approved the delegation of authority to the State of New Mexico to implement and enforce the New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP). [63 FR 5891, February 5, 1998]

OSM APPROVES AMENDMENT TO OKLAHOMA PLAN

OSM approved a proposed amendment to the Oklahoma abandoned mine land reclamation plan. The amendment is intended to revise the Oklahoma plan to allow the state to assume responsibility for administering an emergency response reclamation program in Oklahoma on behalf of OSM. The rule became effective on February 5, 1998. [63 FR 8123, February 18, 1998]

OSM APPROVES AMENDMENT TO OHIO PROGRAM

OSM approved a proposed amendment to the Ohio program. Ohio proposed revisions to its statutes pertaining to attorney fees which are intended to revise the Ohio program to be consistent with the corresponding federal regulations. The rule became effective on February 24, 1998. [63 FR 9137, February 24, 1998]

OSM APPROVES AMENDMENTS TO TEXAS PROGRAM

OSM approved two proposed amendments to the Texas program. The first amendment proposed revisions to statutes pertaining to eligibility of land and water, small operator assistance, definitions, exemptions, applicability to governmental units, coal exploration operations, prohibition of surface coal mining in certain areas, filing of a schedule of notices of violation, effect of past or present violations, improvidently issued permits, performance standards and cessation orders. The amendment is intended to revise the Texas program to be consistent with SMCRA and became effective on March 3, 1998. [63 FR 10317, March 3, 1998]

The second amendment consists of recodification of the Texas Coal Mining Regulations into the Texas Administrative Code at Title 16, Chapter 12, conforming syntax and allowing for the publication of the rules in the Texas Administrative Code in full text rather than by reference. This amendment became effective on April 22, 1998. [63 FR 19821, April 22, 1998]

OSM APPROVES AMENDMENT TO KANSAS PROGRAM

OSM approved a proposed amendment to the Kansas program. Kansas proposed revisions to and additions of a number of regulations, including those pertaining to communications, petitions to initiate rulemaking, notice of citizen suits, preparation and submission of reports by the permittee, definitions, permit applications, administrative hearing procedures, civil penalties, permit review, permit revision, permit renewals, permit conditions, permit suspension or revocation, termination of jurisdiction, exemption for coal extraction incident to government-financed highway or other construction, exemption for coal extraction incidental to the extraction of other minerals, coal exploration, bonding procedures, performance standards, SOAP, lands unsuitable, training, certification and responsibilities of blasters, inspection and enforcement, etc. The amendment is intended to revise the Kansas program to be consistent with the corresponding federal regulations and became effective on March 3, 1998. [63 FR 10309, March 3, 1998]

OSM ANNOUNCES FINAL RULE REMOVING 30 CFR SECTION 870.17

OSM announced its removal of 30 CFR section 870.17, the regulation which concerned the scope of audits conducted in connection with OSM's abandoned mine land reclamation program. Section 870.17 was the subject of litigation between OSM and the National Mining Association (NMA). While OSM did not agree with all of the arguments made by the NMA, it recognized the serious nature of the issues raised. OSM retains general audit authority under section 402 (c) of SMCRA and administrative authority under section 201 (c) of SMCRA. The removal of the section became effective April 2, 1998. [63 FR 10307, March 3, 1998]

OSM APPROVES AMENDMENT TO LOUISIANA PROGRAM

OSM approved a proposed amendment to the Louisiana program which consists of the addition of a definition for "replacement of water supply". The amendment is intended to revise the Louisiana program to be consistent with the corresponding federal regulations and became effective on March 11, 1998. [63 FR 11829, March 11, 1998]

OSM APPROVES AMENDMENT TO INDIANA PLAN

OSM approved a proposed amendment to the Indiana abandoned mine land reclamation plan pertaining to procedures for ranking and selecting reclamation projects, coordination with other programs, reclamation of private land, public participation policies, organization of designated agency, AVS requirements, flora and fauna of southwestern Indiana and the emergency response reclamation program. The amendment is intended to revise the Indiana plan to be consistent with the federal regulations and SMCRA and became effective on March 16, 1998. [63 FR 12648, March 16, 1998]

OSM APPROVES AMENDMENTS TO MARYLAND PROGRAM

OSM approved two proposed amendments to the Maryland program. One amendment proposed revisions pertaining to excess spoil disposal, conditions of surety and collateral bonds and procedures for release of general bonds and is intended to revise the Maryland program to be consistent with the corresponding federal regulations. This amendment became effective on March 23, 1998. [63 FR 13781, March 23, 1998]

The second amendment pertained to regulations regarding a reduced bond liability period for land remained and is intended to revise the Maryland program to be consistent with the corresponding federal regulations and SMCRA. It became effective on April 20, 1998. [63 FR 19403, April 20, 1998]

OSM APPROVES AMENDMENT TO ILLINOIS PROGRAM

OSM approved a proposed amendment to the Illinois program which is intended to improve operational efficiency. OSM reconsidered two previously disapproved regulations concerning the determination of revegetation success for non-contiguous surface disturbance areas less than or equal to four acres after Illinois submitted explanatory information. The additional information clarified the regulations by providing an interpretation statement and specifying procedures and evaluation criteria that will be used in the implementation of the regulations. The amendment became effective on April 8, 1998. [63 FR 17094, April 8, 1998]

OSM APPROVES AMENDMENT TO PENNSYLVANIA PROGRAM

OSM approved, with certain exceptions, a proposed amendment to the Pennsylvania program which is intended to provide special authorization for coal refuse disposal in areas previously affected by mining which contain polluttional discharges. It became effective on April 22, 1998. [63 FR 19802, April 22, 1998]

MSHA REVISES SAFETY STANDARDS FOR ROOF BOLTS

MSHA is revising its safety standards for roof and rock bolts at metal and nonmetal mines and underground coal mines by updating the reference to the American Society for Testing and Materials (ASTM) standard for roof and rock bolts and accessories. The new reference reflects technological advances in the design of roof and rock bolts and support materials. The standards will become effective on June 22, 1998. [63 FR 20026, April 22, 1998]

MSHA REVISES CIVIL PENALTY ASSESSMENT AMOUNTS

MSHA is revising existing civil penalty assessment amounts under part 100. The final rule also adds a new provision which codifies the civil penalty amounts that may be assessed under sections 110(a), 119(b) and 110(g) of the Federal Mine Safety and Health Act of 1977. These changes are being made as a result of congressional legislation that requires that all civil penalties be increased by up to 10 % and be adjusted at least once every 4 year thereafter. This rule will become effective June 22, 1998. [63 FR 20032, April 22, 1998]

MSHA SUSPENDS BULLETIN INTERPRETING PHRASE "SIGNIFICANT AND SUBSTANTIAL"

On February 5, 1998, the Secretary of Labor issued a statement interpreting the phrase "significant and substantial" which is contained in sections 104(d) and (e) of the Federal Mine Safety and Health Act of 1977. The Secretary's interpretation was that a violation must be found to be "significant and substantial" as long as it is shown to present a hazard that is more than remote or speculative. The Secretary intended to challenge the Federal Mine Safety and Health Review Commission's interpretation of the phrase which is that a violation may be found to be "significant and substantive" only if it is shown to present a hazard that is reasonably likely to result in a reasonably serious illness or injury. [63 FR 6012, February 5, 1998]

As a result of concerns raised by the mining industry, MSHA is suspending the Interpretive Bulletin and will continue to accept written comments. [63 FR 20217, April 23, 1998]

NATIONAL PARK SERVICE PUBLISHED REVISIONS TO HISTORIC PRESERVATION GUIDELINES

The National Park Service published revisions to the Secretary of the Interior's Standards and Guidelines for Federal Agency Historic Preservation Programs Pursuant to Section 110 of the National Historic Preservation Act of 1966, as amended. [63 FR 20496, April 24, 1998]

OSM NEWS RELEASES

OSM announced that the compendium of information compiled to document the proceedings of OSM's Federal Coal Symposium held January 21, 1998, in Washington, DC, is available from OSM's home page (www.osmre.gov). [April 2, 1998]

OSM announced that its FY 1997 Annual Report (the Annual Report to Congress plus the Annual Financial Report) is available in print and through OSM's home page. [April 3, 1998]



IN REPLY REFER TO:

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
Interior Board of Land Appeals
4015 Wilson Boulevard
Arlington, Virginia 22203

orig → file
cc: M. Doughty
P. G. Pittig
Handstock
J. Helfric
PFO
4-16-98

PACIFICORP
v.
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
STATE OF UTAH, DIVISION OF OIL, GAS AND MINING,
INTERVENOR

IBLA 95-175

Decided April 1, 1998

Appeal from a decision of Administrative Law Judge Ramon M. Child, affirming Cessation Order No. 94-020-370-002, charging PacifiCorp with failure to obtain a permit for a coal preparation plant. Hearings Division Docket No. DV 94-15-R.

Reversed; Cessation Order No. 94-020-370-002 vacated.

1. Surface Mining Control and Reclamation Act of 1977: Citizen's Complaints: Generally—Surface Mining Control and Reclamation Act of 1977: Inspections: 10-Day Notice to State—Surface Mining Control and Reclamation Act of 1977: State Program: 10-Day Notice to State

The OSM is not required to follow the 10-day notice procedures of 30 C.F.R. § 842.11(b)(1)(ii)(B), when it receives a citizen's complaint which supplies adequate proof that an imminent danger to public health and safety or a significant, imminent environmental harm to land, air, or water resources exists and that the State regulatory authority has failed to take appropriate action.

2. Surface Mining Control and Reclamation Act of 1977: Cessation Orders: Generally—Surface Mining Control and Reclamation Act of 1977: Citizen's Complaints: Generally—Surface Mining Control and Reclamation Act of 1977: Tipples and Processing Plants: Generally

When OSM receives a citizen's complaint alleging that a coal preparation plant is an unpermitted surface coal mining operation, but OSM is aware that the operator of the plant has received an exemption from the state

regulatory authority and, upon inspection, finds no evidence of a significant, imminent environmental harm, it is error for OSM to issue a cessation order to the operator until it has resolved the jurisdictional dispute with the state.

3. Surface Mining Control and Reclamation Act of 1977: Cessation Orders: Generally--Surface Mining Control and Reclamation Act of 1977: Exemptions: Generally--Surface Mining Control and Reclamation Act of 1977: Tipples and Processing Plants: Generally

Under the Utah State program regulations, any person who operates or intends to operate a coal processing plant outside the permit area of any coal mining and reclamation operation must obtain a permit from the regulatory authority, unless the plant is located at the site of ultimate coal use. When the State regulatory authority has exempted a coal preparation plant from regulation because it is located at the site of ultimate coal use, a cessation order issued by OSM to the plant operator for failure to obtain a permit from the State regulatory authority will be vacated.

APPEARANCES: John S. Kirkham, Esq., David J. Jordan, Esq., Salt Lake City, Utah, for PacifiCorp; DeAnn L. Owen, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Office of Surface Mining Reclamation and Enforcement; Thomas A. Mitchell, Assistant Attorney General, State of Utah, for State of Utah, Division of Oil, Gas and Mining, Intervenor.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

PacifiCorp has appealed a December 12, 1994, Decision issued by Administrative Law Judge Ramon M. Child, affirming Cessation Order (CO) No. 94-020-370-002 (Ex. A-1), issued by the Office of Surface Mining Reclamation and Enforcement (OSM) to PacifiCorp based on OSM's determination that PacifiCorp's Hunter Coal Preparation Plant (Preparation Plant), a coal crushing and washing facility located in Emery County, Utah, was a "surface coal mining operation" operating without a permit in violation of the approved Utah State program. The CO directed PacifiCorp, which operates the Preparation Plant through its wholly owned subsidiary, Energy Western Mining Company (EWM), to cease receiving and processing coal at the Preparation Plant and to obtain a permit. By Order dated February 8, 1995, this Board granted the State of Utah, Division of Oil, Gas and Mining (DOG M), leave to intervene in this appeal.

Background

On September 7, 1994, Citizens Coal Council (CCC) filed a citizen's complaint with the Albuquerque Field Office, OSM, requesting an inspection of PacifiCorp's Preparation Plant. The CCC alleged that PacifiCorp

had built the Preparation Plant in 1990 and used it "since 1991 without ever getting a mining and reclamation permit * * * although the plant it replaced was permitted." (Ex. R-5.) It also alleged that the State, while aware of the situation, had failed to take action to permit the plant. Finally, OCC asserted that the failure to obtain a permit was "causing imminent harm of significant environmental damage." Id.

The OSM conducted an inspection of the Preparation Plant and on September 15, 1994, issued CO No. 94-020-370-002. (Ex. R-6.) On September 19, 1994, PacifiCorp filed an Application for Review and Petition for Temporary Relief of the CO with the Office of Hearings and Appeals. PacifiCorp also filed a Motion for a Temporary Restraining Order and Preliminary Injunction in the U.S. District Court, Utah. On September 19, 1994, that court issued an Order restraining the Department from enforcing the CO pending a decision on the matter.

On September 23, 1994, Administrative Law Judge Ramon M. Child conducted a hearing in the case in Salt Lake City, Utah. Only two witnesses testified at the hearing, Mitchell Scott Rollings, the OSM Reclamation Specialist who issued the CO, and James Blake Webster, the permitting administrator for Interwest Mining Company, a management subsidiary for coal mines owned by PacifiCorp. (Tr. 34, 84.)

Webster testified that PacifiCorp began construction of the Preparation Plant in the fall of 1989 on the same site where the Hunter Power Plant (Power Plant) was already located and that the Preparation Plant began to process significant amounts of coal in 1991. ^{1/} (Tr. 88.) The Preparation Plant facilities are separated from the Power Plant facilities by a fence line. (Tr. 124.) The two plants are connected by a conveyor belt for conveying processed coal to either the Power Plant or the Power Plant stockpile. (Tr. 86-87, 124, 129-30.) Webster testified that he was unaware of any environmental harm caused by the Preparation Plant. (Tr. 89-90.)

PacifiCorp owns three mines, each operated by EWM, that deliver coal to the Preparation Plant: the Cottonwood/Wilberg Mine, the Deer Creek Mine, and the Trail Mountain Mine. The mines are located from 12 to 23 miles from the Preparation Plant. (Tr. 126; Exs. R-6, at 3, R-10.) All the coal processed by the Preparation Plant is used by the adjacent Power Plant. (Tr. 66.) In January 1991, the State regulatory authority, DOGM, determined that the Preparation Plant did not need a surface coal mining permit because the plant was located at the site of ultimate coal use. (Ex. A-3.)

^{1/} Exhibit A-2, an oversized aerial photograph of the Power Plant site taken on July 13, 1994, was forwarded to the Board by Judge Child under separate cover from the remainder of the case record. The Board has no record of receipt of that exhibit. Nevertheless, we find that visual reference to that exhibit is not necessary for our adjudication of this appeal.

Rollings testified that, upon receipt of the citizen's complaint letter from CCC, he conducted an inspection of the Preparation Plant on September 8 and 9, 1994. (Tr. 106-107.) He stated that he offered DOGM officials the opportunity to accompany him, but that they declined. (Tr. 112.) He further testified:

On September 15[, 1994], when I came back to issue the cessation order, I again stopped in at the DOGM offices, talked with Mr. Braxton. The permit application had not been received. They had not addressed the issue of whether or not the plant had to be permitted and they again declined to go on with the inspection.

(Tr. 113.)

Rollings stated that in the course of his inspection he interviewed "a number of people that are listed in the inspection report" and "gather[ed] information about who owns what, who operates what, where the coal comes from and so on." (Tr. 116.) He also determined how much coal each of the three mines shipped to the Preparation Plant, and the union representation of the Power Plant and Preparation Plant employees. (Tr. 117-19.) Rollings stated that he looked at ownership factors, economic factors, and control factors in determining that the Preparation Plant operated in "connection with the mines" and was therefore subject to regulation. (Tr. 122.)

Although Rollings' inspections disclosed no imminent harm, he issued the CO pursuant to 30 C.F.R. § 843.11(a)(2) which provides that surface coal mining operations conducted without a valid permit constitute "a condition or practice which causes or can reasonably be expected to cause significant imminent environmental harm * * *." (Tr. 38-39.)

The CO charged PacifiCorp with "[f]ailure to obtain a permit [for the Preparation Plant] in accordance with all applicable requirements of the approved Utah program as found in the State of Utah, R645 Coal Mining Rules," specifically the following provisions: Utah Administrative Code (U.A.C.) R645-300-112.400 (1994) and U.A.C. R645-302-261 (1994). (Ex. A-1). The U.A.C. R645-300-112.400 (1994) requires all persons engaging in coal mining and reclamation operations to first obtain a permit from DOGM. The U.A.C. R645-302-261 provides:

R645-302-260 applies to any person who operates or intends to operate a coal processing plant outside the permit area of any coal mining and reclamation operation, other than such plants which are located at the site of ultimate coal use. Any person who operates such a processing plant will obtain a permit from [DOGM] in accordance with the requirements of R645-302-260.

Rollings opined that "one of the main reasons" coal preparation plants "have to be permitted is because of the environmental effects," such as the impact on ground water hydrology, associated with refuse piles which may remain in place for 30 years. (Tr. 134-35.)

Rollings testified that he understood the "whole purpose of the preparation plant [was] to get the coal ready to meet specs for the power plant." (Tr. 139.) He stated that he had "a problem" with "that term exemption" of end-user preparation plants as provided for in the DOGM regulations. (Tr. 136.) However, he admitted that OSM had determined that the DOGM regulations were no less effective than the Federal regulations and that DOGM regulations required a determination to be made whether a facility was located at the site of ultimate use. (Tr. 73-76.) According to Rollings there was a conflict: "OSM has determined that the prep plant needs a permit under the regulations and DOGM has determined that they do not." (Tr. 76.) He expressed his belief that DOGM was "not effectively interpreting their regulations." Id.

Judge Child's Decision

In his December 12, 1994, Decision, Judge Child affirmed issuance of the CO based on several conclusions of law. ^{2/} First, he determined that OSM established a prima facie case that it had authority to issue the CO based on 30 C.F.R. § 843.11(a)(2), which provides that surface coal mining operations conducted without a valid surface mining permit constitute a condition or practice which causes or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

Next, he concluded that "PacifiCorp's operation of the Preparation Plant constitutes 'coal mining and reclamation operation' which must be permitted under the Utah program." (Decision at 11.) He based his conclusion on an analysis of relevant Federal and State regulations. He cited 30 C.F.R. § 785.21(a), under which any preparation plant "operated in connection with a coal mine but outside the permit area for a specific mine" must be permitted. The Judge found that under the Federal program, as well as the Utah program, activities conducted on the surface of lands in connection with a surface mine, such as the processing and preparation of coal constituted surface coal mining operations requiring a permit.

The Judge then posed the question whether PacifiCorp's preparation plant was a coal mining or reclamation operation required under the Utah program to be permitted. He found that the issue turned upon the meaning to be given the phrases "in connection with a surface coal mine" and "located at the site of ultimate coal use." (Decision at 6.)

^{2/} In his Decision, Judge Child makes a finding of fact, in reliance on CCC's representation in its citizen's complaint, that the Preparation Plant replaced another such plant in Emery County, Utah, operated by PacifiCorp, which had been permitted by the DOGM. PacifiCorp vehemently denies that there is any factual basis for such a finding, stating that the Preparation Plant did not replace a previously permitted plant. It also provides the Mar. 2, 1995, Affidavit of Webster, wherein he states that the "Hunter Coal Preparation Plant" did not replace any off-site coal preparation plant. (PacifiCorp Brief, Ex. C.) There is no evidence in the record to support Judge Child's finding.

The Judge summarized the regulatory history of 30 C.F.R. § 785.21, the 1988 revision of which provides that any person operating a coal preparation plant "in connection with a coal mine but outside the permit area for a specific mine" was required to obtain a permit from the regulatory authority. (Decision at 7.)

Reviewing the regulatory history, the Judge noted that the preamble to the 1988 rulemaking focuses not upon physical proximity of a preparation plant to a coal mining operation but rather on "the economic, functional, and other types of connections or integrations with the mine operator or end user." (Decision at 7.) The Judge cited examples listed in the preamble for determining whether a facility operated "in connection with" a coal mine. Finally, the Judge quoted the 1988 preamble as stating, at 53 Fed. Reg. 47388 (Nov. 22, 1988), that "[c]oal preparation facilities which are being operated only in connection with an end user are not operations in connection with a coal mine." 3/ Id.

The Judge concluded:

In sum, OSM has modified the Federal regulations on several occasions in an attempt to make clear its unchanging intent that preparation plants outside the permit area of a specific mine must be permitted if they are operated "in connection" with a surface coal mine and will not be permitted only if they are operated solely "in connection with" the end user. It also consistently indicated that proximity to the mine is not a controlling factor.

Because the language of U.A.C. R645-302-261 of the Utah program is identical to one version of these Federal regulations, and because the intent of these Federal regulations has remained the same despite several modifications, R645-302-261 should be interpreted consistent with that intent. Thus, U.A.C. R645-302-261 must be interpreted as requiring a permit for all coal preparation plants operated in connection with a coal mine, leaving unregulated only coal preparation plants operated solely in connection with an end user or operated without connection to a mine or end user.

(Decision at 8.)

The Judge then found that PacifiCorp's preparation plant

receives all of its coal from the Mines; most of the coal from the Mines is processed at the Preparation Plant; and it is integrated with the Mines to the extent that their operators and

3/ The correct text of this excerpt from OSM's response to a commenter is stated in the section of this opinion styled Federal Regulatory History.

owners are identical and the [Cottonwood/Wilberg] mine manager supervises the Preparation Plant supervisor and is in charge of health and safety at the Preparation Plant.

(Decision at 8.) Thus, he concluded that the Preparation Plant was "clearly being operated 'in connection with' the Mines rather than being operated solely in connection with the Power Plant" and that the Preparation Plant was a "coal mining and reclamation operation" required to be permitted under the Utah program. (Decision at 9.)

Next, Judge Child concluded that "OSM was not required to follow the [10-day notice (TDN)] procedures at 30 C.F.R. § 842.11(b)(1)(ii)(B) (1) and 30 C.F.R. § 843.12(a)(2) prior to inspecting the Preparation Plant site and issuing the CO." (Decision at 11.) Finally, despite the fact that he concluded that the TDN procedures were not applicable, he applied them in concluding that "DOGM's interpretation of U.A.C. R645-302-261 was not 'appropriate action' [within the meaning of 30 C.F.R. § 843.11(b)(1)(ii)(B)(2)] because it was an abuse of discretion." Id.

For the reasons set forth below, we reverse Judge Child's Decision and vacate the CO.

Federal Regulatory History

Under section 701(27) of the Surface Coal Mining and Reclamation Act (SMCRA), 30 U.S.C. § 1291(27) (1994), the term "surface coal mining and reclamation operations" is defined to include "surface coal mining operations," which is in turn defined as:

(A) activities conducted on the surface of lands in connection with a surface coal mine * * *. Such activities include * * * the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine site * * *; and

(B) the areas upon which such activities occur or where such activities disturb the natural land surface. Such areas also shall include any adjacent land the use of which is incidental to any such activities, * * * and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities[.]

30 U.S.C. § 1291(28) (1994) (emphasis added).

In attempting to address the question of the permitting of coal processing plants in the regulations developed for the permanent regulatory program, OSM promulgated regulations in 1979, which included the following provision:

This Section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing coal processing plants or support facilities not within a

permit area of a specific mine. Any person who operates such a processing plant or support facility shall have obtained a permit from the regulatory authority under the regulatory program in accordance with the requirements of this section.

30 C.F.R. § 785.21(a) (1979), 44 Fed. Reg. 15377 (Mar. 13, 1979).

The State of Utah received conditional approval for its State regulatory program effective January 21, 1981.

Thereafter, in 1983 OSM published rulemaking to amend its regulations applicable to support facilities and coal preparation plants, stating that the "rule changes are necessary in order to clarify OSM's jurisdiction and to establish a clear set of regulatory requirements." 48 Fed. Reg. 20392 (May 5, 1983). In that rulemaking, OSM defined "Coal preparation plant" as "a facility where coal is subjected to cleaning, concentrating, or other processing or preparation in order to separate coal from its impurities." 30 C.F.R. § 701.5, 48 Fed. Reg. 20400 (May 5, 1983).

In the preamble to that rulemaking, OSM stated its belief that the phrase "in connection with," used in section 701(28)(A) of SMCRA should be "interpreted broadly," and it provided examples of that relationship: "facilities which receive a significant portion of their coal from a mine; facilities which receive a significant portion of the output from a mine; facilities which have an economic relationship with a mine; or any other type of integration that exists between a facility and a mine." 48 Fed. Reg. 20393 (May 5, 1983). Nevertheless, it further stated:

OSM does not believe that its jurisdiction extends to facilities which are operated solely in connection with the end user of the coal product. A facility will not be deemed to be operated in connection with a mine if it is located at the point of ultimate coal use unless it is also located at the site of the mine.

Id. (emphasis added).

It also amended 30 C.F.R. § 785.21(a) to read: "This section applies to any person who operates or intends to operate a coal preparation plant outside the permit area of any mine, other than such plants which are located at the site of ultimate coal use." Id. at 20400 (emphasis added). It explained that amendment as follows:

Several commenters indicated that OSM's proposed language [for 30 C.F.R. § 785.21(a)] "directly associated with the ultimate user" presented a confusing test. Commenters pointed out that a more appropriate and more useful test would be whether the plants were at the point of ultimate use. OSM agrees and

has adopted language to indicate that only plants situated at the point of ultimate coal use will be deemed to be not "in connection with" a mine.

Id. at 20398 (emphasis added).

In 1985, in response to litigation, OSM published an interim final rule amending, inter alia, 30 C.F.R. § 785.21, but not the language of subsection (a) relating to ultimate end use. 50 Fed. Reg. 28189 (July 10, 1985). At the same time, OSM proposed the same language to allow public comment on the rule. Id. at 28180. The final rule published in 1987 did not alter 30 C.F.R. § 785.21(a). However, in the preamble OSM stated:

Some commenters felt that the definition of surface coal mining operations should include an explanation of when "power plant" processing operations were "surface coal mining operations." Treatment of facilities located at the point of coal use was discussed in the preamble of the May 5, 1983 rulemaking (48 FR 20392). That discussion is entirely relevant and contains the following paragraph * * *.

52 Fed. Reg. 17726 (May 11, 1987).

The "following paragraph" included the sentence, quoted above, stating that a facility located at the point of ultimate coal use would not be deemed to be operating in connection with a mine "unless it is also located at the site of the mine." Id.

In 1988, OSM again amended its regulations "to clarify the circumstances under which coal preparation plants located outside the permit area of a mine are subject to the performance standards and permitting requirements" of SMCRA. 53 Fed. Reg. 47384 (Nov. 22, 1988). In that rulemaking, OSM amended 30 C.F.R. § 785.21(a) to eliminate the phrase "other than such plants which are located at the site of ultimate coal use." Amended 30 C.F.R. § 785.21(a) read, as follows:

This section applies to any person who operates or intends to operate a coal preparation plant in connection with a coal mine but outside the permit area for a specific mine. Any person who operates such a preparation plant shall obtain a permit from the regulatory authority in accordance with the requirements of this section.

Id. at 47391.

The basis for OSM's amendment is explained in the regulatory preamble:

[The OSM] continues to believe that regulation of facilities operated by or for the end user of coal at the point of such use

is not required under SMCRA because, by virtue of their association with the end user of the coal, such facilities are not operated "in connection with" a coal mine.

* * * * *

The first sentence of § 785.21(a), which specifies the requirements for permits for coal preparation plants not located within the permit area of a mine, previously read, "This section applies to any person who operates or intends to operate a coal preparation plant outside the permit area, other than such plants which are located at the site of ultimate coal use." Under this final rule, this sentence is replaced with, "This section applies only to any person who operates or intends to operate a coal preparation plant in connection with a coal mine but outside the permit area for a specific mine." Further, this language differs from the proposed rule in that it includes the clarifying phrase, "for a specific mine." The second sentence of paragraph (a) remains the same. Because the purpose of this rulemaking is to clarify that the rule applies only to coal preparation plants operated in connection with a coal mine, and [OSM] believes that this limitation necessarily excludes facilities at the site of ultimate coal use, the redundant phrase "other than such plants which are located at the site of ultimate coal use," is deleted in this final rule.

Id. at 47384-85.

Responding to a comment regarding a preparation plant used in connection with an end user, OSM stated:

Another commenter was concerned about the effect of the rule on a specific preparation plant that operates in connection with an end user, a power plant burning coal from a mine located about a mile away. Such plants were not subject to regulation under [OSM's] previous rules at 30 CFR Parts 785 and 827 because those rules explicitly excluded from jurisdiction "such plants which are located at the site of ultimate coal use."

As stated above, [OSM] has not changed its interpretation that operations in connection with an end user are not operations in connection with a coal mine. Coal preparation facilities which are being operated only in connection with another industrial facility, such as the power plant of concern to this commenter, do not operate in connection with a coal mine and are not subject to the rule.

Id. at 47388 (emphasis added).

Discussion

[1] We first address the contention of Intervenor DOGM that the CO in this case was issued in violation of the TDN procedures. The OSM disagrees, contending that it was required to issue the CO in this case because proof of the existence of environmental harm is not a prerequisite for SMCRA jurisdiction. It asserts that a CO must be immediately issued upon inspection following the filing of a citizen's complaint alleging unpermitted surface mining operations. (Reply Brief at 23.) The OSM argues that Federal policy to avoid placing the operator into a dispute between a primacy state and OSM applies to TDN procedures and not to cases such as that before us here, involving alleged imminent environmental harm. (Reply Brief at 25-26.)

The Department promulgated the regulations found at 30 C.F.R. § 842.11 to implement OSM's oversight enforcement authority over state programs as set forth in section 521(a)(1) of SMCRA, 30 U.S.C. § 1271(a)(1) (1994). The regulation at 30 C.F.R. § 842.11(b)(1)(ii)(B)(1), which Intervenor asserts should have been applied, provides, in pertinent part, that an authorized representative of the Secretary shall immediately conduct a Federal inspection when that representative has reason to believe, on the basis of information available to him or her, that (1) a violation exists; (2) the authorized representative has notified the state regulatory authority of the possible violation; (3) more than 10 days have passed since notification; and (4) the state regulatory authority has failed to take appropriate action to cause the violation to be corrected or to show good cause for such failure and to inform the authorized representative of its response.

In PacifiCorp v. OSM, 131 IBLA 17, 24 (1994), we explained:

The purpose of a TDN is to afford a primacy state with an opportunity to respond to notice from OSM that there is a possible violation before OSM takes action. A TDN is not an enforcement action; it is a "communication device" between OSM and the states. 53 FR 26742 (July 14, 1988).

However, OSM is not required to follow the TDN procedures of 30 C.F.R. § 842.11(b)(1)(ii)(B), when "[t]he person supplying the information supplies adequate proof that an imminent danger to public health and safety or a significant, imminent environmental harm to land, air or water resources exists and that the State regulatory authority has failed to take appropriate action." 30 C.F.R. § 842.11(b)(1)(ii)(C). Pursuant to regulation, 30 C.F.R. § 843.11(a)(2), the Secretary has determined that "[s]urface coal mining operations conducted without a valid surface coal mining permit constitute a condition or practice which causes or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources * * *." In Robert L. Clewell, 123 IBLA 253, 276 (1992), the Board ruled that a signed citizen's complaint alleging mining without a

permit and the failure of the State regulatory authority to take appropriate action was sufficient to meet the requirements of 30 C.F.R. § 842.11(b) (1) (ii) (C).

In the citizen's complaint filed in this case, CCC alleged that PacifiCorp was conducting surface coal mining operations without a permit and that DOGM had failed to take appropriate action to require a permit. Thus, the complaint in this case was sufficient to satisfy the requirements of 30 C.F.R. § 842.11(B) (1) (ii) (C). Accordingly, we must reject Intervenor's assertion that OSM was required to follow the TDN procedures of the regulations.

Nevertheless, the circumstances of this case dictate that OSM's action in issuing the CO was unquestionably premature. The record shows that on February 27 and 28, 1991, OSM conducted a complete, random sample oversight inspection of PacifiCorp's Cottonwood/Wilberg Mine. (Ex. A-4, Narrative at 1.) Prior to that inspection, OSM reviewed the records in the DOGM's office in Salt Lake City. In his inspection report, the OSM inspector noted that at the time of the records review he examined the DOGM memorandum granting PacifiCorp a permit exemption for the Preparation Plant in accordance with U.A.C. R614-302-261. ^{4/} Id. He further stated: "The rule cited is less effective than it's [sic] Federal counterpart found at 30 CFR, Sec. 785.21. This has been noted to AFO [Albuquerque Field Office] program specialists for possible 732 letter notification to DOGM." He further noted that "[t]his situation has been discussed with inspection participants and also with Blake Webster * * *." Id.

At the hearing, Rollings testified as follows in response to questions from counsel for PacifiCorp:

Q. And a 732 letter is a letter that the Office of Surface Mining sends to a state enforcement agency if they think the state agency's regs are less stringent than the federal regs?

A. That's correct.

Q. All right. Now it is a fact, isn't it, sir, that no 732 letter has ever been sent from OSM to the Utah Division of Oil, Gas and Mining?

A. About this specific issue or ever?

Q. About this issue. About this issue.

A. It was deemed not necessary.

^{4/} In its Intervenor's Brief, Intervenor explains that between 1991 and 1994 there was a numbering change for the U.A.C. and U.A.C. R614-302-261 became U.A.C. R645-302-261 without any substantive change.

Q. The answer then is no?

A. That's correct.

Q. You've never told them, by virtue of a 732 letter, we think your regulation is less stringent, you need to change it?

A. No, because it is not interpreted as being less stringent. The--after the--this--I don't recall which exhibit this was, the November 22nd, 1988 preamble, one of the requirements on page 47390, effect on state programs on the third column near the bottom, and that states that OSM--

* * * * *

THE WITNESS: OSM/RE will evaluate permanent state regulatory programs approved under section 503 of SMCRA to determine whether any changes in these programs will be necessary. If the director determines that certain state program provisions should be amended in order to be made no less effective than the revised Federal Rules, the individual states will be notified in accordance with the provisions of 30 CFR 732.17.

* * * * *

Q. Whoever the director [OSM] was in 1988, he specifically determined that the Utah reg was fine?

A. That's correct.

* * * * *

Q. That's the same regulation you and I have been talking about [U.A.C. R645-302-261] that says facilities at the site of ultimate use are exempt?

A. With--

Q. Same reg; right?

A. Depending on whose interpretation of that, yes. Yes.

Q. Well, do you think the State of Utah has not been effectively enforcing its regulations?

A. In this instance and given the memo that exists, the January 1991, OSM has determined that the prep plant needs a permit under the regulations and DOGM has determined that they do not.

Q. So you think that Utah is not effectively enforcing its regulations?

A. They're not effectively interpreting their regulations. I would say it's a matter of interpretation and it's a result of that enforcement.

(Tr. 73-76.)

It is apparent from the record in this case, as highlighted in the quoted exchange, that even before receipt of OCC's citizen's complaint, OSM was well aware of DOGM's interpretation of its regulation U.A.C. R645-302-261, as it related to the Preparation Plant. In 1991, an OSM inspector noted that OSM might have to invoke the procedures in 30 C.F.R. § 732.17 because he believed the State regulation in question to be less stringent than its Federal counterpart.

Under the procedures in 30 C.F.R. § 732.17(c) and (e), whenever the OSM Director becomes aware that "the approved State program no longer meets the requirements of the Act[, SMCRA,] or this chapter," he is required to "determine whether a State program amendment is required and notify the State regulatory authority of the decision." Rollings represented at the hearing that the OSM Director determined at some point that DOGM did not need to make any change to U.A.C. R645-302-261. Thus, we must assume that the OSM Director determined that U.A.C. R645-302-261 was no less stringent than its Federal counterpart 30 C.F.R. § 785.21(a).

[2] PacifiCorp argues that it is caught in the middle of a dispute between DOGM and OSM and that, by placing it in that position, OSM has acted contrary to the policy to avoid conflicts between the states and the Federal Government. The OSM responds by asserting that PacifiCorp

fails to point out that the SMCRA principles of 'primacy safeguards' and 'minimizing placing operators in the middle of a dispute between a primacy State and OSM,' specifically apply to the TDN rule and OSM policy to avoid the unnecessary issuance of a Federal NOV, not to cases, such as this, which involve alleged imminent environmental harm.

(Agency Response at 26.)

That assertion by OSM ignores its regulatory policy, as expressed in the rulemaking adopting 30 C.F.R. § 843.11(a)(2). Therein, in response to a comment that the presumption of environmental harm in 30 C.F.R. § 843.11(a)(2) violated due process because it sanctioned issuance of a cessation order without any hearing to determine whether a permit was required, OSM stated: "It will be the Office's policy in implementing these regulations to refrain from issuing a cessation order until it resolves any question concerning its jurisdiction over a given operation." 47 Fed. Reg. 18557 (Apr. 29, 1982) (emphasis added).

The policy goal of resolving jurisdictional issues prior to Federal enforcement was again expressed in a 1988 rulemaking adopting TDN procedures. In its discussion and response to comments, OSM voiced the hope that

[d]isagreements over the jurisdictional reach of State Programs and the Federal Act and regulations should be few and far between. * * * Under the previous ten-day-notice rules * * * operators could be given conflicting directions from two different governing entities. By this final rulemaking, [OSM] intends to allow a consistent and rational process to resolve disagreements and to avoid unnecessary issuance of a federal NOV to an operator merely because [OSM] and the state cannot resolve the disagreement between them on the eleventh day.

53 Fed. Reg. 26737 (July 14, 1988). See National Coal Association v. Interior Department, 39 ERC 1624, 1633 (D.D.C. 1994).

The OSM noted that

until jurisdictional deficiencies are resolved, the state program governs state and operator actions. Congress clearly intended operators to be responsible for complying with only one set of regulations—either state or federal, but not both. As a result, in primacy states the Act is implemented through the approved states program rather than directly.

53 Fed. Reg. 26737 (July 14, 1988). While that rationale was expressed in the context of discussions of the TDN procedures, it is arguably even more important to resolve jurisdictional disputes in cases such as this because of the impact of a cessation order on an operator. Moreover, as set forth above, in 1982, OSM announced that it was its policy to resolve permitting disputes with the state before it issued a CO.

It is clear that OSM's policy is to alleviate and encourage the settlement of jurisdictional disputes arising in connection with its enforcement responsibilities. Such a policy is supported by considerations of fairness to operators. Insofar as we can discover, this policy has not been modified or rescinded by subsequent rulemaking and it should have been followed in this case. It is especially compelling here, where the inspector determined prior to issuing the CO, that no imminent danger existed, and that the Preparation Plant had been exempted from regulation under DOGM rules.

Nevertheless, because OSM did not resolve the jurisdictional dispute prior to issuance of the CO, we must now determine whether OSM properly interpreted U.A.C. R645-302-261 to require a permit for the Preparation Plant. We conclude that Judge Child erred in holding that it did.

[3] The OSM contends that it is mandatory under the Utah program and under Federal regulation that DOGM apply the "in connection with test"

to the Preparation Plant. (Reply Brief at 7.) It argues that DOGM must broadly interpret the phrases "in connection with" and "resulting from or incident to" in order to include relationships between the Preparation Plant and the coal mines which are based on geographic proximity, economic, or functional factors, "or any other type of integration." Id. at 9. It further asserts that it "conducted an independent review of all factors of integration between the Preparation Plant and the Mines and concluded that the Mines are functionally and economically tied so as to constitute 'surface coal mining operations' which must be permitted under the Utah Program." Id. at 10.

The OSM contends that it has been its "unchanging intention" since 1982 that an off-site coal preparation plant must be permitted if it is operated in connection with a surface coal mine and is exempt from permitting only if it is operated solely in connection with the ultimate coal user. (Reply Brief at 12.) In support of this argument, OSM points to the preamble of the 1983 rulemaking, when the language contained in U.A.C. R645-302-261, "other than such plants located at the site of ultimate use," was added to the Federal regulations and states that "in interpreting this language OSM pointedly stated that, 'OSM does not believe that its jurisdiction extends to facilities which are operated solely in connection with the end user [ultimate user] of the coal product. 48 Fed. Reg. 20392, 20393 (May 5, 1983) (emphasis added).'" Id. at 13.

Both Judge Child and OSM focused on that language to support their interpretation of the regulations. However, each ignored the sentence that follows the one quoted above. That sentence, as set forth above in our section Federal Regulatory History, is: "A facility will not be deemed to be operated in connection with a mine if it is located at the point of ultimate coal use unless it is also located at the site of the mine." 48 Fed. Reg. 20393 (May 5, 1983) (emphasis added). Thus, even though OSM affirmed a policy of examining economic and functional relationships between preparation plants and mines to determine if the plants were operated "in connection with" a mine, it expressly stated in that rulemaking that facilities located at the point of ultimate coal use would not be required to obtain a permit unless the plant was located at the site of the mine.

The language of 30 C.F.R. § 785.21(a) adopted in 1983 was repeated in U.A.C. R645-302-261. Although OSM subsequently amended 30 C.F.R. § 785.21(a) in 1988, it made clear in the preamble to that rulemaking that it had no intention to disturb its prior interpretation regarding preparation plants located at the point of ultimate coal use. The OSM stated in the 1988 rulemaking that the purpose of the rulemaking was to clarify that 30 C.F.R. § 785.21 applied only to coal preparation plants operated in connection with a coal mine and that such a limitation "necessarily excludes facilities at the site of ultimate coal use." 53 Fed. Reg. 47384 (Nov. 22, 1988). Accordingly, it dropped the phrase "other than such plants which are located at the site of ultimate coal use" from the rule as "redundant." Id. In fact, in response to a comment concerning a specific

preparation plant that operated in connection with an end user, a power plant burning coal from a mine located about a mile away, OSM stated that "[s]uch plants were not subject to regulation under [OSM's] previous rules," and OSM "has not changed its interpretation that operations in connection with an end user are not operations in connection with a coal mine." *Id.* at 47388. Thus, we must conclude the OSM's "unchanging intent," was not as argued by OSM in this case, but as expressed in its regulatory pronouncements beginning in 1983, i.e., not to require the permitting of a preparation plant located at the point of ultimate coal use unless the plant was located at the site of the mine.

The Preparation Plant is located at the point of ultimate coal use, but it is not located at the site of any mine. The DOGM properly interpreted U.A.C. R645-302-261, in accordance with OSM's regulatory preamble policy statements, to exempt the Preparation Plant from obtaining a permit.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is reversed, and CO No. 94-020-370-002 is vacated.



Bruce R. Harris
Deputy Chief Administrative Judge

I concur:



John H. Kelly
Administrative Judge



State of Utah
 DEPARTMENT OF NATURAL RESOURCES
 DIVISION OF OIL, GAS AND MINING

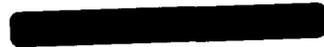
Michael O. Leavitt
 Governor
 Ted Stewart
 Executive Director
 Lowell P. Braxton
 Division Director

1594 West North Temple, Suite 1210
 PO Box 145801
 Salt Lake City, Utah 84114-5801
 801-538-5340
 801-359-3940 (Fax)
 801-538-7223 (TDD)

March 24, 1998



To: Coal file
w/ copy letter
 Date Sent to File: _____



Bob Evans
 Office of Surface Mining
 Three Parkway Center
 Pittsburgh, Pennsylvania 15220

Re: CMD in Utah

Dear Mr. Evans:

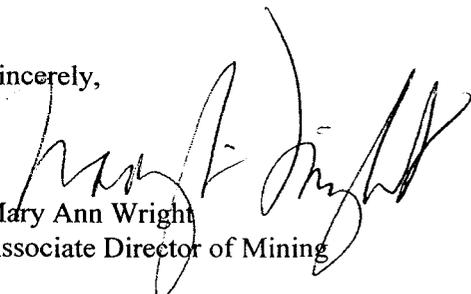
This is written in response to your inquiry into mine sites that are required to actively treat mine drainage. Since there is no need to complete the questionnaire, this letter should suffice to provide you with the information you request.

Utah does not have any bond forfeited sites which are currently requiring any type of water treatment plant. In regard to active permitted mines, there are several mines which from time to time exceed their UPDES permit for Total Dissolved Solids (TDS). When this occurs, we are notified as well as our state Division of Water Quality (DWQ). Utah does not currently have any active permitted coal mines which require a water treatment plant to allow discharge. No metals are in excess of UPDES limits on a regular basis. Also, no AMD problems are known to be present which require water treatment prior to discharge.

Currently, one mine does have a problem with some water they have encountered in underground mining. It is quite high in TDS and the DWQ will not issue the mine a discharge permit because it would degrade the receiving stream. To discharge the water would be in conflict with the Colorado River Salinity Control Act. The TDS is approximately 9000 mg/l. At some point the mine will need to remove this water or move it into mined out sections. If this site requires water treatment in the future, we will be sure to note it on a future survey.

The mine water contact for Utah's Coal Regulatory Program is Mr. Ken Wyatt at 801-538-5266 or kwyatt@state.ut.us. Please contact him if you have further questions.

Sincerely,


 Mary Ann Wright
 Associate Director of Mining

vb

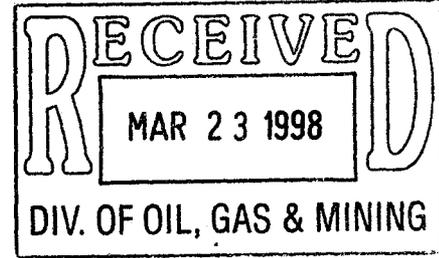
cc: L. Braxton
 K. Wyatt

MEMORANDUM

TO: State Regulatory Authorities

FROM: Greg Conrad, IMCC

RE: Completion of the Questionnaires Involving Bond Forfeitures and Currently Bonded Mine Sites That Are Required to Actively Treat Mine Drainage



On behalf on the Interstate Mining Compact Commission (IMCC) and Office of Surface Mining (OSM) joint work team, we are requesting your assistance in determining what information exists (and in what form) on the extent and magnitude of non-compliant discharges from "bond forfeited" and "currently permitted" coal mine sites. The discharges from these sites require chemical treatment to meet NPDES limits and can be acid or alkaline with unacceptable metals concentrations. We are referring to them as contaminated mine drainage (CMD) discharges. The reason we are compiling an inventory of CMD discharges is so that we can estimate the total cost of treating the water. This cost estimate in turn would serve as the basis for a potential funding request to Congress or for seeking other sources of potential funding for treatment ~~above and beyond what the bond would provide.~~ Please complete the attached questionn

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*Mary Ann, * I summarized this in an
I would say. Email p*

- 1) we have no "Forfeited bond" sites requiring treatment plants*
 - 2) we have some noncompliant TDS problems at active Permitted Mines. (Intermittent mostly)*
 - 3) No metals or other treatment @ any coal mines.*
 - 4) No AMD or ARD*
- (over)*

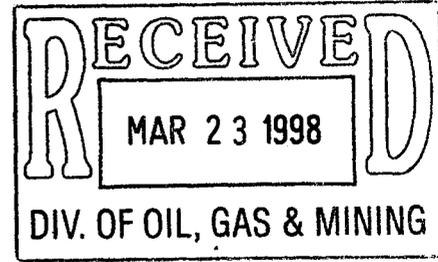
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We appreciate your cooperation in completion of this questionnaire. We would also appreciate it if you could provide the name, address, phone number, and e-mail of a contact person in case we have questions. If you have questions, please call me at (703) 709-8654 or Bob Evans of the OSM at (412) 937-2895. Please send the completed questionnaires to Bob at:

Office of Surface Mining
Three Parkway Center
Pittsburgh, PA 15220
E-mail: bevans@osmre.gov

Enclosures

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*Willow creek is not pumping their water.
They cannot get a permit to discharge the high TDS water into Willow Creek or Price River probably due to Colorado River Salinity Control Act*

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considered in compiling the inventory.

We appreciate your cooperation in completion of this questionnaire. We would also appreciate it if you could provide the name, address, phone number, and e-mail of a contact person in case we have questions. If you have questions, please call me at (703) 709-8654 or Bob Evans of the OSM at (412) 937-2895. Please send the completed questionnaires to Bob at:

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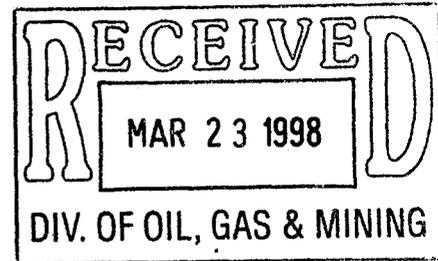
Enclosures

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The questionnaire is comprised of a series of tables. In Tables A and B please enter the percentage of sites that would fall in the "yes" column for both "Bond Forfeited" and "Currently Permitted" sites. The "no" column should be the remaining percentage (to make 100 percent) of the permits. If this is not true please indicate both percentages and add a note on the last page of the questionnaire. Table C-1 requests the following information for the mine sites: permit numbers; quadrangle, county, coal seam and watershed names; mining operation type; sample type and ID name or number; and geographic coordinates. Table C-2 lists the parameters that are frequently measured for individual CMD discharges and are useful in the determination of treatment cost. For CMD sites that are being treated, Table C-3 asks for information on type of treatment, the chemicals used in the treatment process, various treatment costs, and the location of sludge disposal activities. If the data solicited in Table C-1, C-2, and C-3 are readily available, we would like you to include it. The last page of the questionnaire is for any additional data or comments that you think should be considered in compiling the inventory.

We appreciate your cooperation in completion of this questionnaire. We would also appreciate it if you could provide the name, address, phone number, and e-mail of a contact person in case we have questions. If you have questions, please call me at (703) 709-8654 or Bob Evans of the OSM at (412) 937-2895. Please send the completed questionnaires to Bob at:

Office of Surface Mining
Three Parkway Center
Pittsburgh, PA 15220
E-mail: bevans@osmre.gov

Enclosures

QUESTIONNAIRE FOR BOND FORFEITURE & CURRENTLY PERMITTED SITES

General Information Questions:

Do you have information in a readily available form on noncompliant discharges at “Bond Forfeiture Sites” or “Currently Permitted Sites” in your State?

–If yes, please provide percentage estimates in each of the yes/no boxes to each of the questions under “Bond Forfeiture Sites” or under “Currently Permitted Sites” listed in Tables A and B.

–If no, please provide a description (on the last page of this questionnaire) of what information and data you do have (even if it is in the permit file) for “Bond Forfeiture Sites” and “Currently Permitted Sites” that have CMD problems.

Are the data for the mine sites in Tables A and B in a computerized database, spreadsheet, and/or GIS?

–If yes, please also describe the software package (name, version, operating system, etc) and attach a list containing the field names, type (numeric, alpha, date, etc.) , and description of the data fields that are being used. Please provide the data on disk or CD.

Table A: Compilation of Permit Information

	Bond Forfeiture Sites		Currently Permitted Sites	
	% Yes	% No	% Yes	% No
Does the list include the company name?				
Does the list include the mine name?				
Does the list include the surface mining permit number?				
Does the list include the NPDES permit number?				
Does the list include the quadrangle name(s) on which the mine site is located?				
Does the list include the county name in which the mine site is located?				
Does the list include the coal seam name(s)?				
Does the list include the major watershed name?				
Does the list include the type of mine site (surface, underground, auger, highwall miner, refuse disposal, preparation plant, loading facility)?				
Does the list include the UTM coordinates for the mine site?				
Does the list include the latitude-longitude locations for the mine site?				
Does the list include state plane coordinates (including zone) for the mine site?				
Does the list indicate if water treatment is being conducted at these sites?				
Does the list indicate if water treatment cost data are available for these sites?				

Instructions: Please estimate the percentage of the mine sites (both bond forfeitures and currently treating sites) that fall into each of the “yes” and “no” boxes for each of the questions.

Table B: Compilation of Mine Discharge Data

	Bond Forfeiture Sites		Currently Permitted Sites	
	% Yes	% No	% Yes	% No
Do you have maps (paper or digital) showing locations of the discharge(s)?				
Does the file indicate the number of point sources including ponds, mine entries, etc?				
Does the file indicate the number of nonpoint sources (seeps)?				
Does the file contain the UTM coordinates for each of the discharges (all sites)?				
Does the file contain the latitude-longitude locations for each of the discharges?				
Does the list include state plane coordinates (including zone) for each of the discharges?				
Does the file provide the name of the receiving stream?				
Does the file contain water quality data for each (or most) of the of the discharges?				
Does the file contain water quality data for upstream sites in the receiving stream?				
Does the file contain water quality data for downstream sites in the receiving stream?				
Do the permit datafiles include field pH for each sample?				
Do the permit datafiles include lab pH for each sample?				
Do the permit datafiles include field temperature for each sample?				
Do the permit datafiles include flow measurement for each sample?				
Do the permit datafiles include flow estimates for each sample?				
Do the permit datafiles include analyses for field dissolved oxygen for each sample?				
Do the permit datafiles include analyses for field specific conductance for each sample?				
Do the permit datafiles include analyses for lab specific conductance for each sample?				
Do the permit datafiles include analyses for total hot acidity for each sample?				
Do the permit datafiles include analyses for total alkalinity for each sample?				
Do the permit datafiles include analyses for total suspended solids for each sample?				
Do the permit datafiles include analyses for total iron for each sample?				
Do the permit datafiles include analyses for dissolved iron for each sample?				
Do the permit datafiles include analyses for total manganese for each sample?				
Do the permit datafiles include analyses for dissolved manganese for each sample?				
Do the permit datafiles include analyses for total aluminum for each sample?				
Do the permit datafiles include analyses for dissolved aluminum for each sample?				
Do the permit datafiles include analyses for sulfate for each sample?				

Instructions: Please estimate the percentage of the mine sites (both bond forfeitures and currently treating sites) that, fall into each of the "yes" and "no" boxes for each of the questions.

Instructions for Completion of Table C-1

Company Name: Please provide the name of the company that conducted the mining and reclamation operations at the site.

Mine Name: Please provide the name or number of the mine as it appears in the permit application.

SMCRA Permit #: Please provide the number for the Surface Mining Control and Reclamation Act (SMCRA) permit.

NPDES Permit #: Please provide the number for the National Pollutant Discharge Elimination System (NPDES) permit.

Quad Name: Please provide the name of the US Geological 7.5 minute quadrangle map (s) on which the mine site is located.

County Name: Please provide the name of the county (ies) in which the mine site is located.

Coal Seam: Please provide the name of the coal seam (s) that were mined at the site. Abbreviations will most likely be necessary so please add the names to the corresponding abbreviations on page 7.

Mine Type: Please provide the type of mining that is to occur at the site. Possible options include surface mining (SM), underground mining (UM), auger mining (AM), highwall miner (HM), refuse disposal (RD), preparation plant (PP), loading facility (LF), etc.

Major Watershed / Receiving Stream: Please provide the name of the major watershed or basin and receiving stream (s) in which the permit is located.

Sample Type: Please provide the sample type such as point source-pond discharge (pond), nonpoint source-backfill or outcrop seep discharge (seep), upstream sample (upstream), downstream sample (downstream), monitoring well (well), etc.

Sample ID: Please provide the number and / or name of the sample point.

Latitude / Longitude: Please provide the latitude and longitude of the sampling point if not providing UTM or state plane coordinates.

UTM Coordinates (Northing and Easting): Please provide the coordinates of the sampling point using the Universal Transverse Mercator system if not providing latitude / longitude or state plane coordinates.

State Plane Coordinates (Eastings): Please provide the coordinates of the sampling point using the state plane system(include zone) if not providing latitude / longitude or UTM coordinates.

Instructions for Completion of Table C-2

SMCRA Permit #: Please provide the number for the Surface Mining Control and Reclamation Act (SMCRA) permit.

Sample ID: Please provide the identification number and / or name of the sample point such as Spoil Seep 1, Rock House Creek Downstream, MW-1, etc.

Date: Please provide the date of collection for the highest and lowest flows for each of the water samples. The quality information that relates to the high and low flow sample dates should also be recorded if available. Having both high and low flow analyses for each sample site would be most beneficial for estimating treatment costs.

pH (field): Please provide the field pH (if available) for each sample provided.

pH (lab): Please provide the field pH (if available) for each sample provided.

Temp. (field): Please provide the field temperature measurement in degrees Celsius of the water samples at time of collection (if available) for each sample provided.

Flow Meas.: Please provide the flow measurement (if available) including the units of measure for each sample provided.

Flow Est.: Please provide an estimate of flow (if available and flow was not measured) including the units of measure for each sample provided.

Field Diss. Oxygen: Please provide the field dissolved oxygen measurement (if available) including the units for each sample provided.

Sp. Cond (field): Please provide the field measurement of specific conductance (if available) including the units for each sample provided.

Sp. Cond (lab): Please provide the lab measurement of specific conductance (if available) including the units for each sample provided.

Tot. Hot Acidity: Please provide the total hot acidity value (if available) including the units for each sample provided.

Total Alk.: Please provide the total alkalinity value (if available) including the units for each sample provided.

Tot. Susp. Solids: Please provide the total suspended solids value (if available) including the units for each sample provided.

Total Iron: Please provide the total iron value (if available) including the units for each sample provided.

Diss. Iron: Please provide the dissolved iron value (if available) including the units for each sample provided. Indicate if the iron species (ferrous or ferric) is known.

Tot. Mang.: Please provide the total manganese value (if available) including the units for each sample provided.

Diss. Mang.: Please provide the dissolved manganese value (if available) including the units for each sample provided.

Tot. Alum.: Please provide the total aluminum value (if available) including the units for each sample provided.

Diss. Alum.: Please provide the dissolved aluminum value (if available) including the units for each sample provided.

Sulfate: Please provide the sulfate value (if available) including the units for each sample provided.

Instructions for Completion of Table C-3

SMCRA Permit #: Please provide the number for the Surface Mining Control and Reclamation Act (SMCRA) permit.

Sample ID: Please provide the number and / or name of the sample point(s) that is/are being treated at the treatment site.

Treatment Type: Please identify type of treatment being conducted such as active chemical, passive chemical, physical (ponds), etc.

Neutralization Method / Chemicals: Please identify the chemicals being used to neutralize acidity at sites where this is occurring.

Type of Mechanical Aeration: Please identify the type of mechanical oxidation (if any) being used in the water treatment process.

Flocculents, Coagulants, and Oxidizers Used: Please identify the flocculents, coagulants, oxidizers or any other speciality chemicals being used in the water treatment process.

Total Cost per Year for Treatment Site: Please provide the total cost for water treatment at each site including sludge disposal.

Capital Cost of Treatment System: Please provide the capital cost for the treatment system.

Total Chemical Cost: Please provide the total cost per year for chemicals (neutralizing and other) at each of the treatment sites.

Sludge Disposal Cost: Please provide the sludge disposal costs for the treatment sites.

Sludge Disposal Location: Please provide the location of the sludge disposal location such as other surface mine pits, drying pits on site, refuse piles, solid waste landfills, underground mines, etc.

Contact person for your state:

NAME

ADDRESS

PHONE

E-Mail

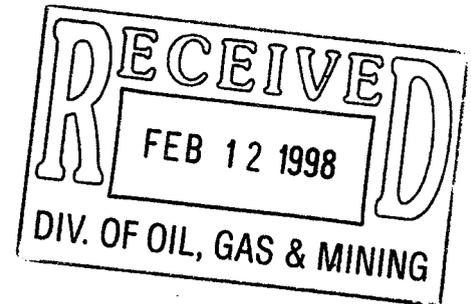


United States Department of the Interior

OFFICE OF SURFACE MINING

Reclamation and Enforcement
1999 Broadway, Suite 3320
Denver, Colorado 80202-5733

February 3, 1998



Lowell P. Braxton, Acting Director
Utah Division of Oil, Gas and Mining
1594 West North Temple, Suite 1210
Box 145801
Salt Lake City, Utah 84114-1203

Dear Mr. Braxton:

I am writing to provide you with information on OSM's Title V (Regulatory) Awards Program for 1998. As you know, OSM has utilized the Regulatory Awards program to recognize those coal mine operators who demonstrate a dedication to environmentally sound mining and reclamation practices by surpassing the basic legal reclamation requirements.

As announced by OSM Director Kathy Karpan on January 30, 1998, OSM is now accepting nominations for the 1998 Awards Program. One of this year's Title V awards, the "Best of the Best," will recognize specific individuals (including State program staff) responsible for the outstanding reclamation.

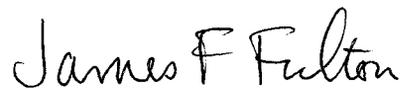
I am attaching a copy of Ms. Karpan's public announcement, and also instructions for nominating operations for awards. Nominations may be submitted by coal companies, State or federal program staff, industry associations, public interest groups, landowners, or other interested parties.

The deadline for interested parties to submit nominations to Utah is March 16, 1998. Utah should screen nominations, if applicable (possibly in conjunction with the OSM/Utah Oversight Team), and forward the best entries to me at the Denver Field Division by March 27.

I am also providing this information to the Utah Mining Association, the Western Interstate Energy Board, and the Citizen's Coal Council. OSM's AML Awards Program is also accepting nominations; I am providing information on that program to Mark Mesch.

I and my staff are available to answer any questions and to assist in the preparation of nomination packages. If you have any questions, or require any assistance, please contact Randy Pair at (303) 844-1446.

Sincerely,

A handwritten signature in black ink that reads "James F. Fulton". The signature is written in a cursive, slightly slanted style.

James F. Fulton, Chief
Denver Field Division

Enclosure

cc: Mary Ann Wright

OFFICE OF SURFACE MINING

For Release **January 30, 1997**

Alan Cole (202) 208-2719
acole@osmre.gov

***OSM ANNOUNCES SURFACE COAL MINING RECLAMATION
AWARDS PROGRAM FOR 1998***

Kathy Karpan, Director of the Interior Department's Office of Surface Mining (OSM), today gave the 1998 call for nominations for the Excellence in Surface Coal Mining and Reclamation Awards program, plus OSM awards for outstanding abandoned mine reclamation.

"With all the effort that's focused on improving the surface mining program," Karpan said, "it's equally important to recognize the tremendous reclamation success that's already been achieved. The national awards program does that publicly in a highly visible way. That's only appropriate, given the total involvement of the individual mine operators, and the state and tribal abandoned mine reclamation organizations.

"OSM started the annual awards program back in 1986, to give well-deserved public recognition to the people and organizations responsible for the nation's most outstanding achievements in environmentally sound surface mining and land reclamation," Karpan said. "As a bonus, OSM has found that the awards program also provides an extra incentive for operators to go above and beyond basic reclamation requirements as they try to win some of that positive recognition."

"We've also found that the awards program helps spread the word about the reclamation techniques that work best under various conditions, so that more mine operators can make the most successful reclamation technology a part of their own land restoration plans," Karpan said.

MORE

According to Karpan, the awards program is designed so that state and federal regulators can publicly recognize the coal mine operators who follow the surface mining law in the most exemplary manner. "Winners are mine operators who have developed innovative reclamation techniques, or who have completed mining and reclamation operations that resulted in the most outstanding on-the-ground results," she added.

OSM will present three categories of reclamation awards in 1998:

- **National Awards:** presented to coal mining companies for achieving the most exemplary mining and reclamation in the country. The award recognizes top-quality on-the-ground fulfillment of the goals of the surface mining law.
- **Director's Award:** a special award to one coal mining company from the OSM Director for outstanding achievement in a specific area of reclamation. This year the award will recognize a mine operator's special dedication and commitment that resulted in higher or better post-mining land use. (The higher or better use may be for the entire operation or only part of the permitted area.)
- **Best-of-the-Best Award:** One operation will be selected from this year's National Award winners to recognize the specific individuals (mine manager, reclamation specialist, state inspector, etc.) who were directly responsible for the outstanding reclamation accomplishment.

Nominations are due to the state regulatory authorities, or the OSM field office in non-primacy states, by **March 16, 1998**. Nominations will be screened by state surface mining regulatory agencies. The best entries for both National Awards and the Director's Award will be forwarded to appropriate OSM field offices by **March 27, 1998**. Field offices will evaluate and forward nominations to OSM headquarters for final judging by a panel composed of representatives from OSM and other Interior Department bureaus. Winners will be announced and awards presented at the National Mining Association's fall meeting.

National and Regional award nominations are also being accepted for outstanding **Abandoned Mine Reclamation**, Karpan said. Eligible projects are those sponsored by state or tribal abandoned mine reclamation agencies and carried out under Title IV of the Surface Mining Control and Reclamation Act. Nominations should be sent to the appropriate OSM field office or regional office, by **March 27, 1998**. Winners will be announced and awards presented at the annual meeting of the National Association of State Abandoned Mine Land Programs.

MORE

Detailed information about eligibility requirements, nomination procedures, rules, required information, judging criteria for each award type and OSM's regional and field office addresses is provided.

-DOI-

1998 Annual Excellence in Surface Coal Mining and Reclamation Awards

History and objectives of the program

Since passage of the Surface Mining Control and Reclamation Act (SMCRA) in 1977, land reclamation in the United States has become a built-in component of surface coal mining. In fact, successfully reclaimed land quickly begins to resemble its natural surroundings, with little about its finished appearance to suggest that it was ever mined. The better a coal mine is reclaimed, the less there is to see.

To make visible the accomplishments of those responsible for the nation's most outstanding achievements in environmentally sound surface mining and land reclamation, and to give them some well-earned public recognition, the Interior Department's Office of Surface Mining (OSM) initiated its annual Excellence in Surface Coal Mining Reclamation awards in 1986.

The awards program is designed so that state and federal regulators can transfer the outstanding reclamation methods and techniques to the coal mine operators who implement SMCRA throughout the country. The winners are the coal mine operators who have developed innovative reclamation techniques or who have completed mining and reclamation operations that resulted in outstanding on-the-ground performance.

This year three types of awards will be presented: 1. National awards, 2. Director's Award, and 3. Best-of-the-Best Award.

1. National Awards. These annual awards are presented to coal mining companies for achieving the most exemplary mining and reclamation in the country. The awards recognize on-the-ground achievement of the Surface Mining Law.

2. **Director's Award.** Each year, one coal mining operation in the country is selected to receive the Director's Award for outstanding achievement in a specific area of reclamation. This year the award will recognize a mine operator whose dedication and commitment has resulted in higher or better postmining land use following reclamation.

3. **Best-of-the-Best Award.** One operation will be selected from this year's National Award winners. This special award will recognize the specific individuals (mine manager, reclamation specialist, state inspector) who were directly responsible for the outstanding accomplishment.

OSM initiates the annual award process by requesting nominations from mine operators and others knowledgeable about the coal mining industry. Each state regulatory authority selects the best nominations for judging at the national level for the OSM's annual awards.

Who is eligible for an award?

Surface coal mining and reclamation operations that have been conducted under a SMCRA Title V permit (either interim or permanent program) may be nominated for an award. The operation's exemplary performance under a SMCRA permit may be achieved during active mining, during reclamation, following bond release, or throughout the entire process.

Although Title IV Abandoned Mine Land reclamation projects are not included in this program, this aspect of reclamation is eligible for an award if it is integrated with Title V permitted operations.

How to nominate a surface coal mining operation for an award.?

Nominating a surface coal mining operation for an OSMaward is the first step in the award selection process. Nominations may be submitted by coal companies, regulatory authorities, coal associations, public interest groups, or landowners. Company officials and employees may nominate their own operations.

National Coal Mining and Reclamation Awards.

A surface coal mining operation may be nominated for outstanding achievement in a specific portion of the reclamation (e.g., design and implementation of innovative

sedimentation control practices) or for outstanding overall performance in meeting goals of SMCRA. Beginning this year there are two broad award categories for the National Awards.

1. Ongoing mining or reclamation that has achieved excellent results but is unproven because not enough time has passed to verify the long-term effectiveness of the results. This category allows active mining and reclamation methods that show great promise to be eligible for recognition. Nominations in this category should include on-the-ground results for however long the results have been in place.

2. Reclamation that has achieved bond release, or where enough time has passed to verify the long-term success of the work. Nominations submitted in this category must contain information and/or data that verifies the results. For example, a nomination for increased soil productivity on a reclaimed site would be verified with several years of crop yield data.

Director's Award.

The Director's Award for 1998 will be presented for exemplary reclamation resulted in higher or better postmining land use. The nomination should include a description of the reclamation and specific land use(s) that resulted. The higher or better postmining land use may be for the entire operation or only a part of the permitted area.

Rules and required information.

Nominations should be submitted to the state regulatory authority, or in non-primacy states (Tennessee and Washington) to the local Office of Surface Mining field office. Nomination packages must be developed using the following format:

A. Cover sheet containing:

1. Company name.
2. Name and location of the nominated mining operation (nearest town).
3. Permit number(s) of site being nominated.
4. Award category. Nominations may be submitted in both the Director's Award and one of the two National Award categories.
5. Name, address, phone number, (and E-mail address if available) of person submitting nomination (and/or a company contact person).
6. Names and titles of all individuals directly responsible for on-the-ground reclamation at the nominated site.

B. Narrative description of the specific reclamation or environmental control techniques that resulted in exemplary performance under SMCRA. The narrative should be comprehensive; but, not exceed six single-spaced typewritten pages and should describe the mining operation and the specific activity nominated for an award using the following outline:

1. Brief history/background of the mining and reclamation.
2. Description of the nominated activity or reclamation practice, including specific problems, solutions, and unusual circumstances.
3. On-site effectiveness of the work. This should be documented and quantified with data. For example, successful handling of acid materials could be shown with water quality sampling data.
4. Transferability or value of the accomplishment(s) to other mining and reclamation operations.
5. Long-term benefits to the landowner and local or regional community.

C. Color photographs (not slides) should accompany the narrative description.

The photos should show both the specific activity and the surrounding reclamation. When examined with the narrative description, the photographs should provide a clear understanding of the exemplary accomplishments. Photographs should be 8"x 10" or smaller, and labeled to explain what the photo shows. "Before and after" photos are desirable, but not required. There is no limit to the number of photographs that may be submitted.

D. Format.

Each nomination package must contain the required information (described above) in a three-ring, loose-leaf binder, plus five high-quality, stapled machine copies (e.g., Xerox) for use by the judges. Additional supporting information may be submitted with the nomination; however, it must be separate from the required information described above. Materials for nominations judged at the national level will not be returned.

Selection of the 1998 award-winning operations

Nominations are due to the state regulatory authorities, or the OSMfield office in non-primacy states **March 16, 1998**. Nominations will be screened by the regulatory authority, and the best entries (a maximum of four National Awards and one Director's Award candidate from each state) forwarded to the appropriate OSM field offices by **March 27, 1998**. Field offices will evaluate and forward the nominations to the

appropriate OSM Regional Coordinating Center by **April 20, 1998**. The Regional Offices will review the submitted nominations to ensure nomination packages are complete and forward the packages to OSM Headquarters Washington, D.C., for judging on **May 5 - 7, 1998**.

Selection of winners consists of several steps. A site visit by a field office representative is made to ensure that:

- (1) on-the-ground performance conforms with the permit;
- (2) information in the nomination accurately reflects current site conditions;
- (3) other mining and reclamation activities at the site do not detract from the award-winning activity; and
- (4) each nominee's SMCRA compliance record is examined to ensure that there are no outstanding violations and to determine that there is no past record of poor cooperation in abating violations.

A panel of judges, composed of representatives of the Office of Surface Mining and other Interior Department bureaus, evaluates the nominations and selects the winners. Scoring is based on the following criteria:

Criteria	Maximum points
■ Clarity and completeness of nomination package	5
■ Difficulty of achieving reclamation under existing conditions	20
■ On-site effectiveness	30
■ Transferability of the technique or practice	12
■ Increased public awareness of SMCRA	8
■ Long-term benefits to the community	15
■ Exceeds the spirit and intent of SMCRA	10

Judges' scores are totaled, and winning nominations selected. Based upon the judges' decision, the number of National Awards may vary from year to year. Awards are not limited to one per state. Announcement of the 1998 award winners and presentation of awards will be made during the 1998 National Mining Association Fall Meeting.

Address questions regarding nominations or the award program to the OSM field offices or Chuck Meyers, OSM Headquarters Washington, D.C. Telephone (202)208-7940; E-mail, cmeyers@osmre.gov

TRANSACTION REPORT

P. 01

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Governor

Ted Stewart
Executive Director

Lowell P. Braxton
Division Director

1594 West North Temple, Suite 1210

PO Box 145801

Salt Lake City, Utah 84114-5801

801-538-5340

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UTAH DIVISION OF OIL, GAS AND MINING
FACSIMILE COVER SHEET

DATE:

February 10, 1998

FAX#:

703-709-8655

ATTN:

Joyce Scall

COMPANY:

IMCC

DEPARTMENT:

NUMBER OF PAGES (INCLUDING THIS ONE)

19

From:

Pamela Grubbaugh-LITTLE

If you do not receive all of the pages, or if they are illegible, please call (801)538-5340.

We are sending from a shared fax line.

2/10
This was a an OSM survey - Coalex

Please file in OSM

Incoming



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Michael O. Leavitt
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 Lowell P. Braxton
 Division Director

1594 West North Temple, Suite 1210
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 801-538-5340
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 801-538-7223 (TDD)

**UTAH DIVISION OF OIL, GAS AND MINING
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DATE: February 10, 1998
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 COMPANY: IMCS
 DEPARTMENT: _____
 NUMBER OF PAGES (INCLUDING THIS ONE) 19
 From: Pamela Gsubaugh-LITTLE

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We are sending from a sharp facsimile machine. Our telecopier number is (801)359-3940.

MESSAGES:
Here's the response to the
survey about Coalex and
Other Online Services.
Thanks.
PAM G-L

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Interstate Mining Compact Commission

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Herndon, Virginia 20170-4819
Phone: 703/709-8654
Facsimile: 703/709-8655

SURVEY OF STATE USERS OF COALEX AND OTHER ONLINE SERVICES

The IMCC is working with the Office of Surface Mining to determine future research needs and how best to meet those needs. To accomplish this task, we are asking a sampling of state staff performing SMCRA-related activities for feedback on the types of online services and other computer systems that are currently used for information retrieval (legal and otherwise). We are also interested in identifying types of information to which state staffers would like to have access but are not now available via online computer services or other computer systems.

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Please take the time to complete this survey and return it to **Joyce Zweben Scall** at the **IMCC Office by February 10, 1998**. If you have any questions, please contact Joyce directly by phone at **202/686-9138** or by e-mail at **jzscall@aol.com**.

[NOTE: For those unfamiliar with COALEX, the COALEX Library consists of several types of documents pertaining to SMCRA, including legislative history documents, OSMRE regulations, Interior administrative decisions and OSMRE policy directives. The Library is currently accessible through the LEXIS/NEXIS online service. For more information on COALEX visit the IMCC website, **www.imcc.isa.us**, or contact the IMCC office at 703/709-8654.]

RESPONDENT INFORMATION

Name	Daniel MOQUIN	State	Utah
Position/Function	A.A.G. / attorney	Agency Name	Office of the Attorney General
Phone No.	(801) 538-7227	Department/Division	Natural Resources
Fax No.	538-7440	Date	2/3/98
E-mail Addr.	Hrag. DMOQUIN@email.state.ut.us		

Provide a Short Description of Responsibilities

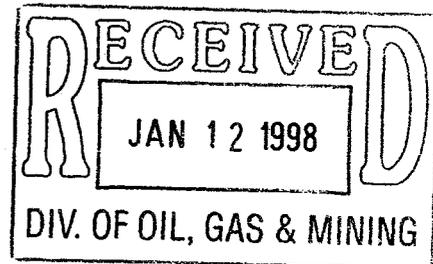
I am an assistant attorney general assigned to the Division of Oil, Gas and Mining. I represent the Division in matters concerning oil + gas, hardrock mining and coal issues. As the only attorney assigned to the Division, my responsibilities are quite varied.



*This is IMCC incoming
Copy Mary Anne
JAM*

Interstate Mining Compact Commission

459-B Carlisle Drive
Herndon, Virginia 20170-4819
Phone: 703/709-8654
Facsimile: 703/709-8655



January 7, 1998

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GREGORY E. CONRAD

MEMORANDUM

To: State SM CRA Regulators and COALEX Users

**From: Gregory E. Conrad, Executive Director
Joyce Zweben Scall, COALEX Researcher**

Re: Survey of Users of COALEX and Other Online Services

As has already been announced, the Interstate Mining Compact Commission (IMCC) reinstated the COALEX legal research service under a grant from OSM. The grant also includes funding to assist OSM in assessing current and future information requirements.

To begin the data gathering process, the IMCC, in conjunction with OSM, has developed the attached SURVEY OF STATE USERS OF COALEX AND OTHER ONLINE SERVICES. This Survey is aimed at identifying the following:

- The online services currently being used, e.g., LEXIS and WESTLAW, and the specific databases in these services that are searched frequently.
- Familiarity and expertise with the Internet and useful websites.
- State (in-house) systems that provide useful databases.
- Other computer systems accessible to state personnel, e.g., university developed.
- Types of material not currently available through the existing online services or in existing state databases that should be computerized or made searchable electronically.
- Suggestions on whether future systems should be developed for research via LEXIS or WESTLAW or through the Internet.

The Survey is the means to gather as much data as possible about research needs and desires from a cross-section of state personnel. After analyzing data from the completed Surveys, respondents' recommendations will be prioritized and the IMCC, working with OSM, will develop options for the most efficient ways to meet the identified information needs, as resource constraints allow.

Please take the time to complete the Survey and return it by **February 10, 1998** to **Joyce Zweben Scall** at the **IMCC office**. Your input will assist us in developing future electronic search and retrieval systems for OSM, the states and other interested parties. If there are others in your agency whose input would be valuable to us, please copy the Survey and pass it along to them for their response.

ACCESS TO ONLINE SERVICES, IN-HOUSE DATABASES AND OTHER COMPUTER INFORMATION

1. What computerized information do you have access to? Circle all that apply.

LEXIS-NEXIS

However, LEXIS-NEXIS is being cancelled.

WESTLAW

Internet (Specify)

In-house System (Specify)

Other (Specify)

None

USE OF COMPUTERIZED INFORMATION

2. Which of the services/databases, etc. do you actually use and how proficient are you at performing searches on them? For those services/databases that you actually use, indicate your proficiency by circling a number from 1 - 3, where:

- 1 = Use; have little knowledge of
- 2 = Use; have moderate knowledge of
- 3 = Use; have good to excellent knowledge of

LEXIS-NEXIS	1	2	<u>3</u>
WESTLAW	1	2	<u>3</u>
Internet	1	<u>2</u>	3
In-house System	1	2	3 (as specified above)
Other	1	2	3 (as specific above)

3. How frequently do you use these services/databases? Indicate frequency of use by circling a number from 1 - 3, where:

- 1 = Infrequent use, e.g., once a month or less
- 2 = Moderate use, e.g., once a week
- 3 = Frequent use, e.g., daily

LEXIS-NEXIS	1	<u>2</u>	3
WESTLAW	1	<u>2</u>	3
Internet	1	2	<u>3</u>
In-house System	1	2	3
Other	1	2	3

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1. What computerized information do you have access to? Circle all that apply.

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However, LEXIS-NEXIS is being canceled.

WESTLAW

Internet (Specify)

In-house System (Specify)

Other (Specify)

None

USE OF COMPUTERIZED INFORMATION

2. Which of the services/databases, etc. do you actually use and how proficient are you at performing searches on them? For those services/databases that you actually use, indicate your proficiency by circling a number from 1 - 3, where:

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- 2 = Use; have moderate knowledge of
- 3 = Use; have good to excellent knowledge of

LEXIS-NEXIS	1	2	<u>3</u>
WESTLAW	1	2	<u>3</u>
Internet	1	<u>2</u>	3
In-house System	1	2	3 (as specified above)
Other	1	2	3 (as specific above)

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LEXIS-NEXIS	1	<u>2</u>	3
WESTLAW	1	<u>2</u>	3
Internet	1	2	<u>3</u>
In-house System	1	2	3
Other	1	2	3

7. What do you dislike about these systems/databases?

LEXIS-NEXIS Cost

WESTLAW Cost

Internet Difficulty to search

In-house System

Other

8. If you could have access to additional services, systems, databases, which would you choose? Please list.

Don't know

9. Is there any information or types of documents that are not now available that you would like to have access to in computerized form?

Don't know

10. Would you be interested in receiving additional training or user guides? Please specify.

Yes, I would like additional suggestions on searching the Internet.

FOR LEXIS-NEXIS USERS

11. Do you use the Interior materials in LEXIS? If so, which libraries/files?

IBLA, IBSma files.

12. Do you use the COALEX Librarary materials? If so, which files?

I have not.

13. Do you use the Pennsylvania Environmental Hearing Board Decisions? Circle one.

Yes

No

14. What other libraries/files in LEXIS-NEXIS do you use most often and/or have found valuable for research? Please list.

Energy, Library

15. Are there any materials not now available in COALEX/LEXIS-NEXIS that you would like to have access to through that online service?

Don't know

7. What do you dislike about these systems/databases?

LEXIS-NEXIS Cost

WESTLAW Cost

Internet Difficulty to search

In-house System

Other

8. If you could have access to additional services, systems, databases, which would you choose? Please list.

Don't know

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Don't know

10. Would you be interested in receiving additional training or user guides? Please specify.

Yes, I would like additional suggestions on searching the Internet.

FOR WESTLAW USERS

16. Do you use the Interior Land Appeals decisions or other environmental databases available in WESTLAW? If so, indicate the databases you use.

GFS

17. Do you use any of the state administrative databases? If so, for which states?

Utah, Colorado, + Penn.

18. What other databases in WESTLAW do you use most often and/or have found valuable for research? Please list.

Qst general case law.

19. Are there any materials not now available in WESTLAW that you would like to have access to through that online service?

Don't know

FOR INTERNET USERS

20. Does your agency have a website? If so, who is the "Web Master"? What is the site address?

Yes. The Division of Oil, Gas + Mining.

<http://www.nr.state.ut.us/OCM/DOGM.htm>

21. What materials are available through your website (i.e., statutes, regulations, guidelines, policies, reports, studies, newsletters, alerts, etc.)?

All of the above.

22. What materials would you like added to your agency's website?

I do not know.

23. What federal, state, other websites do you use (i.e., the OSM website - www.osmre.gov)? Please provide their addresses.

1) OSM www.osmre.gov

2) Interior <http://www.umr.edu/~Library/gov/inter.html>

3) Cornell Law Library <http://www.law.cornell.edu/library/default.html>

4) MMS <http://www.mms.gov/>

5) Emory University <http://www.law.emory.edu/>

24. What materials would you like to see added to these websites?

IBSMN + IBLA decisions

25. How could the IMCC website be used to facilitate your research needs (i.e., linking state and federal websites and/or putting up additional information)? Please elaborate.

The linking of state and federal websites is an excellent suggestion. Additionally, I believe ^{that} a person should be able to access a COMLEX "report number topic and inquiry" by clicking the heading in the provided index. This would make the site extremely valuable and user friendly.

FOR WESTLAW USERS

16. Do you use the Interior Land Appeals decisions or other environmental databases available in WESTLAW? If so, indicate the databases you use.

GFS.

17. Do you use any of the state administrative databases? If so, for which states?

Utah, Colorado, + Penn.

18. What other databases in WESTLAW do you use most often and/or have found valuable for research? Please list.

Just general case law.

19. Are there any materials not now available in WESTLAW that you would like to have access to through that online service?

Don't know

FOR IN-HOUSE SYSTEM USERS

26. What systems are available and what types of materials do they contain?

N.A.

27. Who is responsible for maintaining the systems? Please provide names and phone numbers.

N.A.

28. What other types of materials would you like to see added to the in-house systems?

N.A.

USERS OF OTHER SYSTEMS

29. What other systems are available and what types of materials do they contain?

None.

30. Who is responsible for maintaining the systems? Please provide names and phone numbers.

N.A.

31. What other types of materials would you like to see added to these systems?

N.A.

FUTURE ACCESS TO COALEX MATERIALS

32. Some of the COALEX Library materials may be moved from LEXIS to another medium or service, e.g., CD-Rom, the OSM website, the IMCC website, etc. Would you consider it a problem to switch between media or services when conducting your research e.g., the legislative history of SMCRA would be accessed on CD-Rom, Interior administrative decisions would remain in COALEX, OSMRE policy directives would be accessed through the OSMRE website and state SMCRA-related statutes and regulations would be linked via websites? Please elaborate.

The only problem would be with the placing of materials on a CD-Rom. Our state computers are not equipped with CD-Roms. The CD-Roms have to be loaded on to the state network by our computer lab people. Thus, I am at the mercy of their schedules which often times means a considerable delay.

33. If all of the COALEX Library materials were to be removed from LEXIS, to what medium or service should they be moved?

The IMCC website.

ADDITIONAL COMMENTS

I am very happy that the COALEX material and services are available again. COALEX is an excellent resource.

PLEASE RETURN THE COMPLETED SURVEY BY FEBRUARY 10, 1998 TO:

JOYCE ZWEBEN SCALL
Interstate Mining Compact Commission
459-B Carlisle Drive
Herndon, Virginia 20170-4819

Phone: 703/709-8654
E-mail: gconrad@imcc.isa.us

12/29/97

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N.A.

Interstate Mining Compact Commission

459-B Carlisle Drive
Herndon, Virginia 20170-4819
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RESPONDENT INFORMATION

Name *Pamela Grubaug-Littig* State *Utah*
Position/Function *Permit Supervisor, Title I, Utah Coal Regulatory Program* Agency Name *DIVISION of Oil, Gas & Mining*
Phone No. *801-538-5268* Department/Division *DNR/DOG M*
Fax No. *801-359-3940* Date *2/4/98*
E-mail Addr. *pgrubaug@state.ut.us*

Provide a Short Description of Responsibilities

As permit supervisor, I am responsible for developing policies in the Utah Coal Regulatory Program, making as part of the mid-management team. I am also responsible for some permitting decisions.

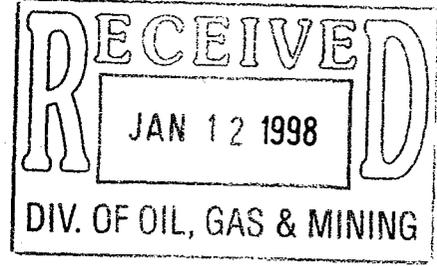
*Sam -
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responding to
this?*



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of Sam*

Interstate Mining Compact Commission

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January 7, 1998

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West Virginia

MEMORANDUM

To: State SM CRA Regulators and COALEX Users

From: Gregory E. Conrad, Executive Director
Joyce Zweben Scall, COALEX Researcher

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- Familiarity and expertise with the Internet and useful websites.
- State (in-house) systems that provide useful databases.
- Other computer systems accessible to state personnel, e.g., university developed.
- Types of material not currently available through the existing online services or in existing state databases that should be computerized or made searchable electronically.
- Suggestions on whether future systems should be developed for research via LEXIS or WESTLAW or through the Internet.

The Survey is the means to gather as much data as possible about research needs and desires from a cross-section of state personnel. After analyzing data from the completed Surveys, respondents' recommendations will be prioritized and the IMCC, working with OSM, will develop options for the most efficient ways to meet the identified information needs, as resource constraints allow.

Please take the time to complete the Survey and return it by **February 10, 1998** to **Joyce Zweben Scall** at the **IMCC office**. Your input will assist us in developing future electronic search and retrieval systems for OSM, the states and other interested parties. If there are others in your agency whose input would be valuable to us, please copy the Survey and pass it along to them for their response.

ASSOCIATE MEMBER

GOV. GEORGE PATAKI
New York

EXECUTIVE DIRECTOR

GREGORY E. CONRAD

ACCESS TO ONLINE SERVICES, IN-HOUSE DATABASES AND OTHER COMPUTER INFORMATION

1. What computerized information do you have access to? Circle all that apply.

LEXIS-NEXIS

WESTLAW

Internet (Specify) (*Netcape*)

In-house System (Specify)

Other (Specify)

None

USE OF COMPUTERIZED INFORMATION

2. Which of the services/databases, etc. do you actually use and how proficient are you at performing searches on them? For those services/databases that you actually use, indicate your proficiency by circling a number from 1 - 3, where:

- 1 = Use; have little knowledge of
- 2 = Use; have moderate knowledge of
- 3 = Use; have good to excellent knowledge of

LEXIS-NEXIS	<input checked="" type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3
WESTLAW	<input checked="" type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3
Internet	<input type="radio"/> 1	<input checked="" type="radio"/> 2	<input type="radio"/> 3
In-house System	<input checked="" type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3 (as specified above)
Other	<input checked="" type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3 (as specific above)

3. How frequently do you use these services/databases? Indicate frequency of use by circling a number from 1 - 3, where:

- 1 = Infrequent use, e.g., once a month or less
- 2 = Moderate use, e.g., once a week
- 3 = Frequent use, e.g., daily

LEXIS-NEXIS	<input checked="" type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3
WESTLAW	<input checked="" type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3
Internet	<input type="radio"/> 1	<input checked="" type="radio"/> 2	<input type="radio"/> 3
In-house System	<input checked="" type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3
Other	<input checked="" type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3

4. How easy are these systems/databases to use. Indicate ease of use by circling a number from 1 - 3 for each system used, where:

- 1 = Very difficult or confusing to use
- 2 = Moderately difficult or confusing to use
- 3 = Easy or not confusing to use

LEXIS-NEXIS	1	2	3
WESTLAW	1	2	3
Internet	1	2	3
In-house System	1	2	3
Other	1	2	3

Others - I don't know.

5. Please rate the systems/databases, for usefulness from 1 - 3, where:

- 1 = Least useful
- 2 = Moderately useful
- 3 = Extremely useful

LEXIS-NEXIS	1	2	3
WESTLAW	1	2	3
Internet	1	2	3
In-house System	1	2	3
Other	1	2	3

Others - I don't know.

6. For each system/database used, specify the files, websites and/or types of information searched that have proven useful or valuable to you. [NOTE: Additional information on use is requested below.]

LEXIS-NEXIS

WESTLAW

Internet

In-house System

Other

Don't use others.

ACCESS TO ONLINE SERVICES, IN-HOUSE DATABASES AND OTHER COMPUTER INFORMATION

1. What computerized information do you have access to? Circle all that apply.

LEXIS-NEXIS

WESTLAW

Internet (Specify) (*Netcape*)

In-house System (Specify)

Other (Specify)

None

USE OF COMPUTERIZED INFORMATION

2. Which of the services/databases, etc. do you actually use and how proficient are you at performing searches on them? For those services/databases that you actually use, indicate your proficiency by circling a number from 1 - 3, where:

- 1 = Use; have little knowledge of
- 2 = Use; have moderate knowledge of
- 3 = Use; have good to excellent knowledge of

LEXIS-NEXIS	<input checked="" type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	
WESTLAW	<input checked="" type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	
Internet	<input type="radio"/> 1	<input checked="" type="radio"/> 2	<input type="radio"/> 3	
In-house System	<input checked="" type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	(as specified above)
Other	<input checked="" type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	(as specific above)

3. How frequently do you use these services/databases? Indicate frequency of use by circling a number from 1 - 3, where:

- 1 = Infrequent use, e.g., once a month or less
- 2 = Moderate use, e.g., once a week
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LEXIS-NEXIS	<input checked="" type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	
WESTLAW	<input checked="" type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	
Internet	<input type="radio"/> 1	<input checked="" type="radio"/> 2	<input type="radio"/> 3	
In-house System	<input checked="" type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	
Other	<input checked="" type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	

7. What do you dislike about these systems/databases?

LEXIS-NEXIS - don't know

WESTLAW - don't know

Internet - Knowing addresses

In-house System don't know

Other

8. If you could have access to additional services, systems, databases, which would you choose? Please list.

I would choose a system that is user friendly.

9. Is there any information or types of documents that are not now available that you would like to have access to in computerized form?

Would like to have access to decisions affecting the Utah Coal Regulatory Program by subject.

10. Would you be interested in receiving additional training or user guides? Please specify.

I don't have enough experience to know whether a net Coalex is user friendly.

FOR LEXIS-NEXIS USERS

11. Do you use the Interior materials in LEXIS? If so, which libraries/files?

Not a User

12. Do you use the COALEX Librarary materials? If so, which files?

I have requested some COALEX references.

13. Do you use the Pennsylvania Environmental Hearing Board Decisions? Circle one.

Yes

No

14. What other libraries/files in LEXIS-NEXIS do you use most often and/or have found valuable for research? Please list.

Don't know

15. Are there any materials not now available in COALEX/LEXIS-NEXIS that you would like to have access to through that online service?

Unfortunately, I'm unfamiliar with these programs.

7. What do you dislike about these systems/databases?

LEXIS-NEXIS - don't know

WESTLAW - don't know

Internet - Knowing addresses

In-house System don't know

Other

8. If you could have access to additional services, systems, databases, which would you choose? Please list.

I would choose a system that is user friendly.

9. Is there any information or types of documents that are not now available that you would like to have access to in computerized form?

Would like to have access to decisions affecting the Utah Coal Regulatory Program by subject.

10. Would you be interested in receiving additional training or user guides? Please specify.

I don't have enough experience to know whether a user guide is user friendly.

FOR WESTLAW USERS

Robert Brown

16. Do you use the Interior Land Appeals decisions or other environmental databases available in WESTLAW? If so, indicate the databases you use.

17. Do you use any of the state administrative databases? If so, for which states?

18. What other databases in WESTLAW do you use most often and/or have found valuable for research? Please list.

19. Are there any materials not now available in WESTLAW that you would like to have access to through that online service?

FOR INTERNET USERS

<http://www.nr.state.vt.us/OGM/BOGM>

20. Does your agency have a website? If so, who is the "Web Master"? What is the site address?

Yes, the Department of Natural Resources,
Division of Oil, Gas, & Mining web site

21. What materials are available through your website (i.e., statutes, regulations, guidelines, policies, reports, studies, newsletters, alerts, etc.)?

All of the above

22. What materials would you like added to your agency's website?

Don't know

23. What federal, state, other websites do you use (i.e., the OSM website - www.osmre.gov)? Please provide their addresses.

1) OSM www.osmre.gov
2) MMS <http://www.mms.gov>-1

24. What materials would you like to see added to these websites?

BLA decisions

25. How could the IMCC website be used to facilitate your research needs (i.e., linking state and federal websites and/or putting up additional information)? Please elaborate.

The linking of state and federal websites
would be good. Accessing "COASX" report
in a user friendly

FOR WESTLAW USERS

Don't know

16. Do you use the Interior Land Appeals decisions or other environmental databases available in WESTLAW? If so, indicate the databases you use.

17. Do you use any of the state administrative databases? If so, for which states?

18. What other databases in WESTLAW do you use most often and/or have found valuable for research? Please list.

19. Are there any materials not now available in WESTLAW that you would like to have access to through that online service?

FOR IN-HOUSE SYSTEM USERS

26. What systems are available and what types of materials do they contain?

N/A

27. Who is responsible for maintaining the systems? Please provide names and phone numbers.

N/A

28. What other types of materials would you like to see added to the in-house systems?

N/A

USERS OF OTHER SYSTEMS

29. What other systems are available and what types of materials do they contain?

N/A

30. Who is responsible for maintaining the systems? Please provide names and phone numbers.

N/A

31. What other types of materials would you like to see added to these systems?

N/A

FUTURE ACCESS TO COALEX MATERIALS

32. Some of the COALEX Library materials may be moved from LEXIS to another medium or service, e.g., CD-Rom, the OSM website, the IMCC website, etc. Would you consider it a problem to switch between media or services when conducting your research e.g., the legislative history of SMCRA would be accessed on CD-Rom, Interior administrative decisions would remain in COALEX, OSMRE policy directives would be accessed through the OSMRE website and state SMCRA-related statutes and regulations would be linked via websites? Please elaborate.

*The only problem would be with the placing on
CD-Rom. State computers have them.*

33. If all of the COALEX Library materials were to be removed from LEXIS, to what medium or service should they be moved?

The IMCC website.

ADDITIONAL COMMENTS

PLEASE RETURN THE COMPLETED SURVEY BY FEBRUARY 10, 1998 TO:

JOYCE ZWEBEN SCALL
Interstate Mining Compact Commission
459-B Carlisle Drive
Herndon, Virginia 20170-4819

Phone: 703/709-8654 →
E-mail: gconrad@imcc.isa.us

12/29/97

703-709-8655 fax

FOR IN-HOUSE SYSTEM USERS

26. What systems are available and what types of materials do they contain?

N/A

27. Who is responsible for maintaining the systems? Please provide names and phone numbers.

N/A

28. What other types of materials would you like to see added to the in-house systems?

N/A

USERS OF OTHER SYSTEMS

29. What other systems are available and what types of materials do they contain?

N/A

30. Who is responsible for maintaining the systems? Please provide names and phone numbers.

N/A

31. What other types of materials would you like to see added to these systems?

N/A

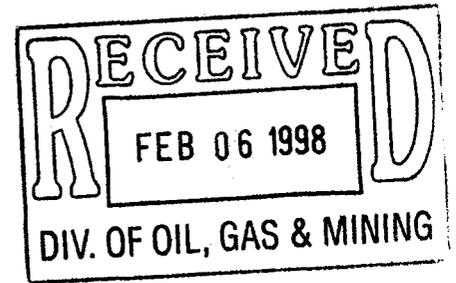


United States Department of the Interior

OFFICE OF SURFACE MINING

Reclamation and Enforcement
1999 Broadway, Suite 3320
Denver, Colorado 80202-5733

Mary Ann



February 3, 1998

Lowell P. Braxton, Acting Director
Utah Division of Oil, Gas and Mining
1594 West North Temple, Suite 1210
Box 145801
Salt Lake City, Utah 84114-1203

Dear Mr. Braxton:

I am writing to provide you with information on OSM's Title V (Regulatory) Awards Program for 1998. As you know, OSM has utilized the Regulatory Awards program to recognize those coal mine operators who demonstrate a dedication to environmentally sound mining and reclamation practices by surpassing the basic legal reclamation requirements.

As announced by OSM Director Kathy Karpan on January 30, 1998, OSM is now accepting nominations for the 1998 Awards Program. One of this year's Title V awards, the "Best of the Best," will recognize specific individuals (including State program staff) responsible for the outstanding reclamation.

I am attaching a copy of Ms. Karpan's public announcement, and also instructions for nominating operations for awards. Nominations may be submitted by coal companies, State or federal program staff, industry associations, public interest groups, landowners, or other interested parties.

The deadline for interested parties to submit nominations to Utah is March 16, 1998. Utah should screen nominations, if applicable (possibly in conjunction with the OSM/Utah Oversight Team), and forward the best entries to me at the Denver Field Division by March 27.

I am also providing this information to the Utah Mining Association, the Western Interstate Energy Board, and the Citizen's Coal Council. OSM's AML Awards Program is also accepting nominations; I am providing information on that program to Mark Mesch.

I and my staff are available to answer any questions and to assist in the preparation of nomination packages. If you have any questions, or require any assistance, please contact Randy Pair at (303) 844-1446.

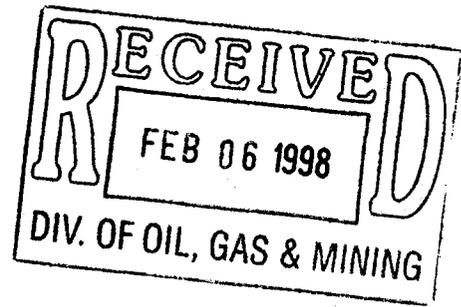
Sincerely,

James F. Fulton

James F. Fulton, Chief
Denver Field Division

Enclosure

cc: Mary Ann Wright ✓



OFFICE OF SURFACE MINING

For Release **January 30, 1997**

Alan Cole (202) 208-2719

acole@osmre.gov

***OSM ANNOUNCES SURFACE COAL MINING RECLAMATION
AWARDS PROGRAM FOR 1998***

Kathy Karpan, Director of the Interior Department's Office of Surface Mining (OSM), today gave the 1998 call for nominations for the Excellence in Surface Coal Mining and Reclamation Awards program, plus OSM awards for outstanding abandoned mine reclamation.

"With all the effort that's focused on improving the surface mining program," Karpan said, "it's equally important to recognize the tremendous reclamation success that's already been achieved. The national awards program does that publicly in a highly visible way. That's only appropriate, given the total involvement of the individual mine operators, and the state and tribal abandoned mine reclamation organizations.

"OSM started the annual awards program back in 1986, to give well-deserved public recognition to the people and organizations responsible for the nation's most outstanding achievements in environmentally sound surface mining and land reclamation," Karpan said. "As a bonus, OSM has found that the awards program also provides an extra incentive for operators to go above and beyond basic reclamation requirements as they try to win some of that positive recognition."

"We've also found that the awards program helps spread the word about the reclamation techniques that work best under various conditions, so that more mine operators can make the most successful reclamation technology a part of their own land restoration plans," Karpan said.

MORE

According to Karpan, the awards program is designed so that state and federal regulators can publicly recognize the coal mine operators who follow the surface mining law in the most exemplary manner. "Winners are mine operators who have developed innovative reclamation techniques, or who have completed mining and reclamation operations that resulted in the most outstanding on-the-ground results," she added.

OSM will present three categories of reclamation awards in 1998:

- **National Awards:** presented to coal mining companies for achieving the most exemplary mining and reclamation in the country. The award recognizes top-quality on-the-ground fulfillment of the goals of the surface mining law.
- **Director's Award:** a special award to one coal mining company from the OSM Director for outstanding achievement in a specific area of reclamation. This year the award will recognize a mine operator's special dedication and commitment that resulted in higher or better post-mining land use. (The higher or better use may be for the entire operation or only part of the permitted area.)
- **Best-of-the-Best Award:** One operation will be selected from this year's National Award winners to recognize the specific individuals (mine manager, reclamation specialist, state inspector, etc.) who were directly responsible for the outstanding reclamation accomplishment.

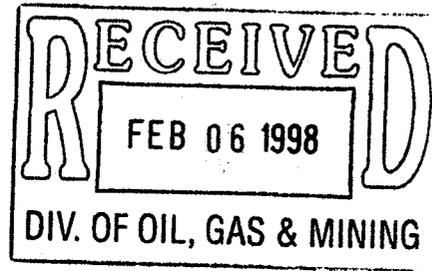
Nominations are due to the state regulatory authorities, or the OSM field office in non-primacy states, by **March 16, 1998**. Nominations will be screened by state surface mining regulatory agencies. The best entries for both National Awards and the Director's Award will be forwarded to appropriate OSM field offices by **March 27, 1998**. Field offices will evaluate and forward nominations to OSM headquarters for final judging by a panel composed of representatives from OSM and other Interior Department bureaus. Winners will be announced and awards presented at the National Mining Association's fall meeting.

National and Regional award nominations are also being accepted for outstanding **Abandoned Mine Reclamation**, Karpan said. Eligible projects are those sponsored by state or tribal abandoned mine reclamation agencies and carried out under Title IV of the Surface Mining Control and Reclamation Act. Nominations should be sent to the appropriate OSM field office or regional office, by **March 27, 1998**. Winners will be announced and awards presented at the annual meeting of the National Association of State Abandoned Mine Land Programs.

MORE

Detailed information about eligibility requirements, nomination procedures, rules, required information, judging criteria for each award type and OSM's regional and field office addresses is provided.

-DOI-



1998 Annual Excellence in Surface Coal Mining and Reclamation Awards

History and objectives of the program

Since passage of the Surface Mining Control and Reclamation Act (SMCRA) in 1977, land reclamation in the United States has become a built-in component of surface coal mining. In fact, successfully reclaimed land quickly begins to resemble its natural surroundings, with little about its finished appearance to suggest that it was ever mined. The better a coal mine is reclaimed, the less there is to see.

To make visible the accomplishments of those responsible for the nation's most outstanding achievements in environmentally sound surface mining and land reclamation, and to give them some well-earned public recognition, the Interior Department's Office of Surface Mining (OSM) initiated its annual Excellence in Surface Coal Mining Reclamation awards in 1986.

The awards program is designed so that state and federal regulators can transfer the outstanding reclamation methods and techniques to the coal mine operators who implement SMCRA throughout the country. The winners are the coal mine operators who have developed innovative reclamation techniques or who have completed mining and reclamation operations that resulted in outstanding on-the-ground performance.

This year three types of awards will be presented: 1. National awards, 2. Director's Award, and 3. Best-of-the-Best Award.

1. National Awards. These annual awards are presented to coal mining companies for achieving the most exemplary mining and reclamation in the country. The awards recognize on-the-ground achievement of the Surface Mining Law.

2. Director's Award. Each year, one coal mining operation in the country is selected to receive the Director's Award for outstanding achievement in a specific area of reclamation. This year the award will recognize a mine operator whose dedication and commitment has resulted in higher or better postmining land use following reclamation.

3. Best-of-the-Best Award. One operation will be selected from this year's National Award winners. This special award will recognize the specific individuals (mine manager, reclamation specialist, state inspector) who were directly responsible for the outstanding accomplishment.

OSM initiates the annual award process by requesting nominations from mine operators and others knowledgeable about the coal mining industry. Each state regulatory authority selects the best nominations for judging at the national level for the OSM's annual awards.

Who is eligible for an award?

Surface coal mining and reclamation operations that have been conducted under a SMCRA Title V permit (either interim or permanent program) may be nominated for an award. The operation's exemplary performance under a SMCRA permit may be achieved during active mining, during reclamation, following bond release, or throughout the entire process.

Although Title IV Abandoned Mine Land reclamation projects are not included in this program, this aspect of reclamation is eligible for an award if it is integrated with Title V permitted operations.

How to nominate a surface coal mining operation for an award.?

Nominating a surface coal mining operation for an OSM award is the first step in the award selection process. Nominations may be submitted by coal companies, regulatory authorities, coal associations, public interest groups, or landowners. Company officials and employees may nominate their own operations.

National Coal Mining and Reclamation Awards.

A surface coal mining operation may be nominated for outstanding achievement in a specific portion of the reclamation (e.g., design and implementation of innovative

sedimentation control practices) or for outstanding overall performance in meeting goals of SMCRA. Beginning this year there are two broad award categories for the National Awards.

1. Ongoing mining or reclamation that has achieved excellent results but is unproven because not enough time has passed to verify the long-term effectiveness of the results. This category allows active mining and reclamation methods that show great promise to be eligible for recognition. Nominations in this category should include on-the-ground results for however long the results have been in place.

2. Reclamation that has achieved bond release, or where enough time has passed to verify the long-term success of the work. Nominations submitted in this category must contain information and/or data that verifies the results. For example, a nomination for increased soil productivity on a reclaimed site would be verified with several years of crop yield data.

Director's Award.

The Director's Award for 1998 will be presented for exemplary reclamation resulted in higher or better postmining land use. The nomination should include a description of the reclamation and specific land use(s) that resulted. The higher or better postmining land use may be for the entire operation or only a part of the permitted area.

Rules and required information.

Nominations should be submitted to the state regulatory authority, or in non-primacy states (Tennessee and Washington) to the local Office of Surface Mining field office. Nomination packages must be developed using the following format:

A. Cover sheet containing:

1. Company name.
2. Name and location of the nominated mining operation (nearest town).
3. Permit number(s) of site being nominated.
4. Award category. Nominations may be submitted in both the Director's Award and one of the two National Award categories.
5. Name, address, phone number, (and E-mail address if available) of person submitting nomination (and/or a company contact person).
6. Names and titles of all individuals directly responsible for on-the-ground reclamation at the nominated site.

B. Narrative description of the specific reclamation or environmental control techniques that resulted in exemplary performance under SMCRA. The narrative should be comprehensive; but, not exceed six single-spaced typewritten pages and should describe the mining operation and the specific activity nominated for an award using the following outline:

1. Brief history/background of the mining and reclamation.
2. Description of the nominated activity or reclamation practice, including specific problems, solutions, and unusual circumstances.
3. On-site effectiveness of the work. This should be documented and quantified with data. For example, successful handling of acid materials could be shown with water quality sampling data.
4. Transferability or value of the accomplishment(s) to other mining and reclamation operations.
5. Long-term benefits to the landowner and local or regional community.

C. Color photographs (not slides) should accompany the narrative description.

The photos should show both the specific activity and the surrounding reclamation. When examined with the narrative description, the photographs should provide a clear understanding of the exemplary accomplishments. Photographs should be 8"x 10" or smaller, and labeled to explain what the photo shows. "Before and after" photos are desirable, but not required. There is no limit to the number of photographs that may be submitted.

D. Format.

Each nomination package must contain the required information (described above) in a three-ring, loose-leaf binder, plus five high-quality, stapled machine copies (e.g., Xerox) for use by the judges. Additional supporting information may be submitted with the nomination; however, it must be separate from the required information described above. Materials for nominations judged at the national level will not be returned.

Selection of the 1998 award-winning operations

Nominations are due to the state regulatory authorities, or the OSM field office in non-primacy states **March 16, 1998**. Nominations will be screened by the regulatory authority, and the best entries (a maximum of four National Awards and one Director's Award candidate from each state) forwarded to the appropriate OSM field offices by **March 27, 1998**. Field offices will evaluate and forward the nominations to the

appropriate OSM Regional Coordinating Center by **April 20, 1998**. The Regional Offices will review the submitted nominations to ensure nomination packages are complete and forward the packages to OSM Headquarters Washington, D.C., for judging on **May 5 - 7, 1998**.

Selection of winners consists of several steps. A site visit by a field office representative is made to ensure that:

- (1) on-the-ground performance conforms with the permit;
- (2) information in the nomination accurately reflects current site conditions;
- (3) other mining and reclamation activities at the site do not detract from the award-winning activity; and
- (4) each nominee's SMCRA compliance record is examined to ensure that there are no outstanding violations and to determine that there is no past record of poor cooperation in abating violations.

A panel of judges, composed of representatives of the Office of Surface Mining and other Interior Department bureaus, evaluates the nominations and selects the winners. Scoring is based on the following criteria:

Criteria	Maximum points
■ Clarity and completeness of nomination package	5
■ Difficulty of achieving reclamation under existing conditions	20
■ On-site effectiveness	30
■ Transferability of the technique or practice	12
■ Increased public awareness of SMCRA	8
■ Long-term benefits to the community	15
■ Exceeds the spirit and intent of SMCRA	10

Judges' scores are totaled, and winning nominations selected. Based upon the judges' decision, the number of National Awards may vary from year to year. Awards are not limited to one per state. Announcement of the 1998 award winners and presentation of awards will be made during the 1998 National Mining Association Fall Meeting.

Address questions regarding nominations or the award program to the OSM field offices or Chuck Meyers, OSM Headquarters Washington, D.C. Telephone (202)208-7940; E-mail, cmeyers@osmre.gov

OFFICE OF SURFACE MINING

For Release **January 30, 1997**

Alan Cole (202) 208-2719
acole@osmre.gov

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AWARDS PROGRAM FOR 1998***

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MORE

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MORE

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-DOI-

1998 Annual Excellence in Surface Coal Mining and Reclamation Awards

History and objectives of the program

Since passage of the Surface Mining Control and Reclamation Act (SMCRA) in 1977, land reclamation in the United States has become a built-in component of surface coal mining. In fact, successfully reclaimed land quickly begins to resemble its natural surroundings, with little about its finished appearance to suggest that it was ever mined. The better a coal mine is reclaimed, the less there is to see.

To make visible the accomplishments of those responsible for the nation's most outstanding achievements in environmentally sound surface mining and land reclamation, and to give them some well-earned public recognition, the Interior Department's Office of Surface Mining (OSM) initiated its annual Excellence in Surface Coal Mining Reclamation awards in 1986.

The awards program is designed so that state and federal regulators can transfer the outstanding reclamation methods and techniques to the coal mine operators who implement SMCRA throughout the country. The winners are the coal mine operators who have developed innovative reclamation techniques or who have completed mining and reclamation operations that resulted in outstanding on-the-ground performance.

This year three types of awards will be presented: 1. National awards, 2. Director's Award, and 3. Best-of-the-Best Award.

1. National Awards. These annual awards are presented to coal mining companies for achieving the most exemplary mining and reclamation in the country. The awards recognize on-the-ground achievement of the Surface Mining Law.

2. **Director's Award.** Each year, one coal mining operation in the country is selected to receive the Director's Award for outstanding achievement in a specific area of reclamation. This year the award will recognize a mine operator whose dedication and commitment has resulted in higher or better postmining land use following reclamation.

3. **Best-of-the-Best Award.** One operation will be selected from this year's National Award winners. This special award will recognize the specific individuals (mine manager, reclamation specialist, state inspector) who were directly responsible for the outstanding accomplishment.

OSM initiates the annual award process by requesting nominations from mine operators and others knowledgeable about the coal mining industry. Each state regulatory authority selects the best nominations for judging at the national level for the OSM's annual awards.

Who is eligible for an award?

Surface coal mining and reclamation operations that have been conducted under a SMCRA Title V permit (either interim or permanent program) may be nominated for an award. The operation's exemplary performance under a SMCRA permit may be achieved during active mining, during reclamation, following bond release, or throughout the entire process.

Although Title IV Abandoned Mine Land reclamation projects are not included in this program, this aspect of reclamation is eligible for an award if it is integrated with Title V permitted operations.

How to nominate a surface coal mining operation for an award.?

Nominating a surface coal mining operation for an OSMaward is the first step in the award selection process. Nominations may be submitted by coal companies, regulatory authorities, coal associations, public interest groups, or landowners. Company officials and employees may nominate their own operations.

National Coal Mining and Reclamation Awards.

A surface coal mining operation may be nominated for outstanding achievement in a specific portion of the reclamation (e.g., design and implementation of innovative

sedimentation control practices) or for outstanding overall performance in meeting goals of SMCRA. Beginning this year there are two broad award categories for the National Awards.

1. Ongoing mining or reclamation that has achieved excellent results but is unproven because not enough time has passed to verify the long-term effectiveness of the results. This category allows active mining and reclamation methods that show great promise to be eligible for recognition. Nominations in this category should include on-the-ground results for however long the results have been in place.

2. Reclamation that has achieved bond release, or where enough time has passed to verify the long-term success of the work. Nominations submitted in this category must contain information and/or data that verifies the results. For example, a nomination for increased soil productivity on a reclaimed site would be verified with several years of crop yield data.

Director's Award.

The Director's Award for 1998 will be presented for exemplary reclamation resulted in higher or better postmining land use. The nomination should include a description of the reclamation and specific land use(s) that resulted. The higher or better postmining land use may be for the entire operation or only a part of the permitted area.

Rules and required information.

Nominations should be submitted to the state regulatory authority, or in non-primacy states (Tennessee and Washington) to the local Office of Surface Mining field office. Nomination packages must be developed using the following format:

A. Cover sheet containing:

1. Company name.
2. Name and location of the nominated mining operation (nearest town).
3. Permit number(s) of site being nominated.
4. Award category. Nominations may be submitted in both the Director's Award and one of the two National Award categories.
5. Name, address, phone number, (and E-mail address if available) of person submitting nomination (and/or a company contact person).
6. Names and titles of all individuals directly responsible for on-the-ground reclamation at the nominated site.

B. Narrative description of the specific reclamation or environmental control

techniques that resulted in exemplary performance under SMCRA. The narrative should be comprehensive; but, not exceed six single-spaced typewritten pages and should describe the mining operation and the specific activity nominated for an award using the following outline:

1. Brief history/background of the mining and reclamation.
2. Description of the nominated activity or reclamation practice, including specific problems, solutions, and unusual circumstances.
3. On-site effectiveness of the work. This should be documented and quantified with data. For example, successful handling of acid materials could be shown with water quality sampling data.
4. Transferability or value of the accomplishment(s) to other mining and reclamation operations.
5. Long-term benefits to the landowner and local or regional community.

C. Color photographs (not slides) should accompany the narrative description.

The photos should show both the specific activity and the surrounding reclamation. When examined with the narrative description, the photographs should provide a clear understanding of the exemplary accomplishments. Photographs should be 8" x 10" or smaller, and labeled to explain what the photo shows. "Before and after" photos are desirable, but not required. There is no limit to the number of photographs that may be submitted.

D. Format.

Each nomination package must contain the required information (described above) in a three-ring, loose-leaf binder, plus five high-quality, stapled machine copies (e.g., Xerox) for use by the judges. Additional supporting information may be submitted with the nomination; however, it must be separate from the required information described above. Materials for nominations judged at the national level will not be returned.

Selection of the 1998 award-winning operations

Nominations are due to the state regulatory authorities, or the OSM field office in non-primacy states **March 16, 1998**. Nominations will be screened by the regulatory authority, and the best entries (a maximum of four National Awards and one Director's Award candidate from each state) forwarded to the appropriate OSM field offices by **March 27, 1998**. Field offices will evaluate and forward the nominations to the appropriate OSM Regional Coordinating Center by **April 20, 1998**. The Regional Offices will review the submitted nominations to ensure nomination packages are complete and forward the packages to OSM Headquarters Washington, D.C., for judging

on **May 5 - 7, 1998.**

Selection of winners consists of several steps. A site visit by a field office representative is made to ensure that:

- (1) on-the-ground performance conforms with the permit;
- (2) information in the nomination accurately reflects current site conditions;
- (3) other mining and reclamation activities at the site do not detract from the award-winning activity; and
- (4) each nominee's SMCRA compliance record is examined to ensure that there are no outstanding violations and to determine that there is no past record of poor cooperation in abating violations.

A panel of judges, composed of representatives of the Office of Surface Mining and other Interior Department bureaus, evaluates the nominations and selects the winners. Scoring is based on the following criteria:

Criteria	Maximum points
■ Clarity and completeness of nomination package	5
■ Difficulty of achieving reclamation under existing conditions	20
■ On-site effectiveness	30
■ Transferability of the technique or practice	12
■ Increased public awareness of SMCRA	8
■ Long-term benefits to the community	15
■ Exceeds the spirit and intent of SMCRA	10

Judges' scores are totaled, and winning nominations selected. Based upon the judges' decision, the number of National Awards may vary from year to year. Awards are not limited to one per state. Announcement of the 1998 award winners and presentation of awards will be made during the 1998 National Mining Association Fall Meeting.

Address questions regarding nominations or the award program to the OSM field offices or Chuck Meyers, OSM Headquarters Washington, D.C. Telephone (202)208-7940; E-mail, cmeyers@osmre.gov

1998 Annual National Abandoned Mine Reclamation Awards

History and overview of the program

The 1977 Surface Mining Control and Reclamation Act (SMCRA) was passed to ensure that lands mined for coal from that point on would be restored to original condition as part of the mining process, and to restore unreclaimed or inadequately reclaimed coal mined lands that were abandoned before 1977.

Today, after 20 years of abandoned mine land reclamation funded under SMCRA, thousands of dangerous health and safety problems resulting from abandoned mine lands throughout the country have been eliminated. Yet despite the country's significant progress in eliminating abandoned mine land problems, there is little public awareness that this reclamation has taken place. When there are highly visible scars at an unreclaimed landscape, most people recognize the result of past coal mining. But after abandoned mine problems are eliminated and reclamation is complete, it is nearly impossible for any observer to tell that health and safety problems once existed on the site. Ironically, the better the reclamation, the less apparent it is. Thus the best reclamation is virtually invisible.

To give well-earned public recognition to those responsible for the nation's most outstanding achievements in abandoned mine land reclamation, the Interior Department's Office of Surface Mining (OSM) began the annual National Abandoned Mine Land Reclamation Awards program in 1992. The program is designed to publicly recognize outstanding abandoned mine land reclamation and publicize the exemplary reclamation techniques.

The OSM initiates the annual award process by requesting nominations. This year a three-step selection process is being used. A nomination team at the State/Tribal and Field Office level selects the best project within each State/Tribal boundary. Projects are then sent to the regional level for a completeness review and forwarded to Washington, D.C., for national judging. This year there will be one winner in each OSM region and one national winner.

1. Regional Awards. Three awards will be presented (one from each OSM region) to the organization responsible for the project judged most exemplary in the region.
2. National Award. One award will be presented to the organization responsible for the

project judged to be the most outstanding Abandoned Mine Land reclamation in the country. A Regional award winner will not be eligible for the National Award.

What projects are eligible for an award?

Abandoned mine land projects funded wholly or in part by the Abandoned Mine Reclamation Fund are eligible for an award. This includes all coal, non-coal, high-priority, emergency, and Rural Abandoned Mine Program (RAMP) projects. Exemplary reclamation is eligible whether it is for one portion of the project or for the entire reclamation activity. Reclamation completed so recently that its ultimate success is still unknown is not eligible.

Abandoned mine land reclamation projects completed as an integral part of a Title V mining and reclamation operations are not included in this program. This aspect of abandoned mine reclamation is eligible for an award under OSM's Excellence in Surface Mining Reclamation Awards program.

The nomination process.

Nomination of an abandoned mine land reclamation project for an OSM national award is the first step in the annual award selection process. The State/Tribal AML programs provide nominations to appropriate OSM Field/Regional Office by **March 27, 1998**.

The projects are reviewed by the State/Tribal AML programs with OSM field offices, and/or others that have a role in on-the-ground abandoned mine reclamation. This team selects one project that represents the best AML project in the State or reservation. The selected reclamation can be any State, Indian tribe, OSM, RAMP, or Clean Streams Initiative project, as long as money from the AML fund was used for the work. The nominations will be forwarded by **April 20, 1998** to the appropriate Regional Offices for a completeness review. After nomination packages are reviewed by the OSM Regional Coordinating Centers, an to forwarded to OSM Headquarters.

There are no particular categories of reclamation used this year and a project may be nominated for a specific portion of the work (e.g., design and implementation of an innovative passive acid mine drainage system) or for outstanding overall performance.

Rules and required information.

Nominations developed by the State/Tribal/OSM team should be submitted to the OSM Regional Coordinating Center on or before **April 20, 1998**. The nomination package must use the following format:

A. Cover sheet(s) containing:

1. Name and location of the nominated abandoned mine land reclamation project (nearest town).
2. Name, address, and phone numbers of those submitting the nomination ("the team").
3. Project start and completion dates, construction costs, and name of organization(s) responsible for the reclamation.
4. Date submitted.

B. Narrative description of the work that resulted in exemplary abandoned mine land reclamation. The narrative should not exceed six single-spaced typewritten pages and should describe the reclamation and the specific activity nominated for an award using the following outline:

1. Brief history/background of the source of the abandoned mine land problems.
2. Description of the nominated reclamation, including specific problems, solutions, and why the team believes this is the best project in the state or reservation.
3. On-site effectiveness of the work. This should be quantified with data. For example, successful elimination of acid mine drainage could be shown with water quality sampling data.
4. Efficiency and innovation of both the design and techniques used to complete the reclamation.
5. Benefits to the landowner and local or regional community.

C. Color photographs (not slides) should accompany the narrative description.

The photos should show both the specific activity and the surrounding conditions. When examined with the narrative description, the photographs should provide a clear understanding of the exemplary reclamation accomplishments. Photographs should be 8" x 10" or smaller, and labeled to explain what the photo shows. "Before and after" photos are desirable, but not required. There is no limit to the number of photographs that may be submitted.

D. Format.

Each nomination package must contain the required information (described above) in a three-ring, loose-leaf binder, plus seven high-quality, stapled machine copies (e.g., Xerox) for use by the judges. Additional supporting information may be submitted with the nomination; however, this must be separate from the required information described above. Nominations judged at the national level will not be returned.

Selection process for the 1998 award-winning reclamation

National judging. A panel of eight judges (three from State/Indian programs, four from OSM, and one from RAMP) will select the best project from each region and one that represents the best in the country from the winning regional nominations. The composition of the national judging panel will be as follows:

1. Four OSM judges, one from Headquarters (the panel leader) and one from each OSM region, all with knowledge and experience in AML reclamation.
2. Three State/Indian program judges, one from each OSM region. These judges can not have been on the regional panel or be from a state/Tribe that has a nomination that will be judged at the national level.
3. One judge from the U.S. Department of Agriculture, Rural Abandoned Mine Program (RAMP). This judge can not have participated in the nomination or regional selection process.

Scoring is based on the following criteria:

Criteria	Maximum points
■ Effectiveness and clarity of the nomination	5
■ Difficulty of achieving reclamation under existing conditions	25
■ On-site effectiveness	40
■ Efficiency and innovation of reclamation technique	10
■ Benefits to the land owner or community	20

Judges' scores are totaled, and winning nominations selected. The announcement and presentation of the 1998 Annual AML Reclamation Awards will be made during the fall meeting of the National Association of Abandoned Mine Land Programs.

Address questions regarding nominations or the award program to the Office of Surface Mining field offices or Chuck Meyers, OSM Headquarters Washington, D.C. Telephone

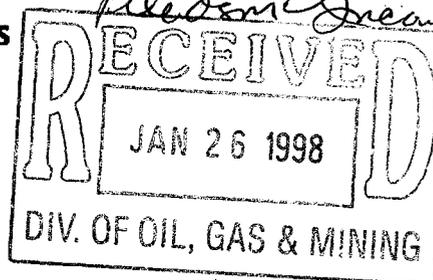
(202)208-7940; E-mail, [cmeyers @osmre.gov](mailto:cmeyers@osmre.gov)



IN REPLY REFER TO:

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
Interior Board of Land Appeals
4015 Wilson Boulevard
Arlington, Virginia 22203



Handwritten notes: (2-sided), Copy Mary Ann; Aaron, Joe, Paul, Wilson, Dearing

CITIZENS COAL COUNCIL, ET AL.

IBLA 94-366

Decided December 15, 1997

Appeal from Decisions of the Acting Director, Office of Surface Mining Reclamation and Enforcement, finding that a railroad and a pipeline, used to transport coal from surface mines, are not regulated by the Federal surface coal mining act. 94-16-Johnson/Bird.

Affirmed.

- 1. Surface Mining Control and Reclamation Act of 1977: Applicability: Generally

The OSM properly concluded that a railroad and a pipeline, used solely to transport coal from surface mines to remote electrical generating stations, are not "surface coal mining operations," within the meaning of section 701(28)(B) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1291(28)(B) (1994), and are therefore not subject to the requirements of that Act.



APPEARANCES: Walton D. Morris, Jr., Esq., Charlottesville, Virginia, for Appellants; James R. Bird, Esq., and Benjamin J. Vernia, Esq., Washington, DC, for the Peabody Western Coal Company; Jack D. Palma, II, P.C., Esq., Cheyenne, Wyoming, and Donald B. Atkins, Esq., Tulsa, Oklahoma, for Black Mesa Pipeline, Inc.; John B. Weldon, Jr., Esq., and Stephen E. Crofton, Esq., Phoenix, Arizona, for the Salt River Project Agricultural Improvement and Power District; Jon K. Johnson, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Office of Surface Mining Reclamation and Enforcement.

OPINION BY ADMINISTRATIVE JUDGE KELLY

The Citizens Coal Council, the Water Information Network, and the Diné-Hopi Alliance (collectively, Appellants) have appealed from two identical Decisions of the Acting Director, Office of Surface Mining Reclamation and Enforcement (OSM), dated February 25, 1994. Responding to Appellants' citizens complaints, OSM found that two transportation facilities associated with the Black Mesa/Kayenta Mines are not "surface coal mining operations" governed by the Surface Mining Control and Reclamation

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Act of 1977 (SMCRA), as amended, 30 U.S.C. §§ 1201-1328 (1994), and are therefore not subject to the permitting and other requirements of SMCRA.

The two mines are owned and operated by the Peabody Western Coal Company (PWCC), and are located in northeastern Arizona within the Navajo/Hopi Indian Reservations. The transportation facilities are a railroad, known as the Black Mesa and Lake Powell (BMLP) Railroad, which is owned (along with others) and operated by the Salt River Project Agricultural Improvement and Power District (SRP), and a coal slurry pipeline, which is owned and operated by Black Mesa Pipeline, Inc. (BMP). The PWCC, BMP, and SRP have all filed answers to Appellants' Statement of Reasons for Appeal (SOR) and all are joined as proper parties to this appeal.

The pipeline at issue is 273 miles long and is buried for most of its length. It carries coal from the Black Mesa Mine to the Mohave Generating Station, in Laughlin, Nevada. Coal extracted at the mine is crushed by PWCC and placed on a conveyor system, which is owned by PWCC, BMP, and the Mohave Generating Station, and operated by PWCC. That system carries the coal to a preparation plant, which is owned and operated by BMP, where it is further crushed and water is added to create a coal slurry. The conveyor system and preparation plant are all within the area proposed by PWCC for permitting under SMCRA as part of the Black Mesa Mine. The proposed mine permit would cover the conveyor system. The BMP has applied for a separate permit for the plant. Following preparation, the coal slurry leaves the plant by way of BMP's pipeline, traversing a portion of the proposed mine permit area and continuing on to the electrical generating station in Laughlin, Nevada, where it is used for fuel.

The railroad at issue is 83 miles long, and carries coal from the Kayenta Mine to the Navajo Generating Station, in Page, Arizona. Coal extracted at the mine is crushed by PWCC and placed on a conveyor system, which is owned and operated by PWCC. That system carries the coal to silos and a loadout facility, which are also owned by PWCC. The conveyor system, silos, and loadout facility are all within the permit area for the Kayenta Mine and covered by the mine permit. At the loadout facility, the coal is loaded into cars and transported by SRP's railroad to the electrical generating station in Page, Arizona, where it is used for fuel.

Title to the coal passes from PWCC to the electrical generating station either at the station (Black Mesa Mine) or at the loadout facility (Kayenta Mine). Further, the railroad and the pipeline are operated for the sole purpose of transporting all of the coal produced by PWCC at each mine to the respective electrical generating station. Throughout the 17-year operation of the mines from the enactment of SMCRA in 1977 to the 1994 Decisions at issue here, neither transportation facility has ever been permitted or otherwise authorized to operate under that Act.

In her Decisions, the Acting Director concluded that the railroad and pipeline are not "surface coal mining operations" regulated by SMCRA. She

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concluded that the applicable statutory standard is whether they can be considered facilities "resulting from or incident to" FWC's surface coal mining activities at the Black Mesa/Kayenta Mines, under section 701(28)(B) of SMRA, 30 U.S.C. § 1291(28)(B) (1994), as that standard is explicated in the preamble to 1988 final rulemaking, 53 Fed. Reg. 47377 (Nov. 22, 1988). (Decision at 1-2, 3.) Applying this standard, the Acting Director held that neither the railroad nor the pipeline can be considered to result from or be incident to FWC's mining activities since a substantial portion of each facility is located well beyond the minesite, the primary function of the facility is to supply coal to a power plant, and, because the facility is not owned or operated by FWC, it is more economically dependent on the generating station than on the mine. (Decision at 3; see id. at 4, 5.) The Acting Director also noted that weighing against SMRA regulation is the fact that neither the statute nor the regulations explicitly cover either facility and that regulating them at this point would "reverse long-standing decisions by [OSM] which have been relied upon" by the operator of the facility. Id. at 3, 5.

In their SOR, Appellants contend that the railroad and pipeline should be considered "surface coal mining operations," within the meaning of section 701(28)(B) of SMRA, 30 U.S.C. § 1291(28)(B) (1994), because they are "facilities 'resulting from or incident to' surface coal mines that [FWC] operates on Navajo lands." (SOR at 2 (quoting from 30 U.S.C. § 1291(28)(B) (1994)).) They argue that this is so because each facility is "functionally integrated with the mine it serves because it provides the sole means of transporting coal from the mine site directly to the mine's only customer" and serves no other mine, and each is "economically dependent upon the mine they serve because the mine is their sole source of cargo, and thus presumably their sole source of revenue." (SOR at 29, 30.) Appellants distinguish this situation from that of a common carrier, noting that each transportation facility and its respective mine and power plant are a "closed, unified industrial operation." Id. at 14, 16. They argue that to find that the facilities at issue here do not result from or are not incident to the mines, would exclude all such facilities from SMRA jurisdiction. Since the railroad and pipeline are section 701(28)(B) facilities, Appellants assert that OSM must require FWC to either amend its existing or proposed mine permits to encompass them or obtain separate permits for them. Failing such amendment or permit, OSM must preclude any further operation of these facilities.

[1] Section 701(28)(A) of SMRA provides that "surface mining operations" are "activities conducted on the surface of lands in connection with a surface coal mine," including "excavation * * *, and * * * chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, [and] loading of coal for interstate commerce at or near the mine site." 30 U.S.C. § 1291(28)(A) (1994). Subsection B further provides that such operations include the "areas upon which such activities occur or where such activities disturb the natural land surface." It also states that

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[s]uch areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities[.]

30 U.S.C. § 1291(28)(B) (1994) (emphasis added). In enacting SMRA, Congress stated that "surface coal mining operations" thus include "all roads, facilities[,] structures, property, and materials on the surface resulting from or incident to [surface coal mining] activities, such as refuse banks, dumps, culm banks, impoundments and processing wastes." S. Rep. No. 128, 95th Cong., 1st Sess. 98 (1977) (emphasis added).

We find nothing in section 701(28)(B) of SMRA, or its legislative history, which expressly provides that transportation facilities, especially ones that carry processed coal to a remote point of sale/use, should generally be considered "surface coal mining operations," subject to regulation under SMRA. Rather, the statute indicates that the point at which the coal is loaded for shipment, following all processing/preparation necessary for marketing and associated transportation, constitutes the last stage of mining and related operations subject to SMRA, either under section 701(28)(A) or (B). See Ann Lorentz Coal Co. v. OSM, 79 IBLA 34, 43, 91 Interior Dec. 108, 113 (1984). Congress made no specific provision for regulating the transportation of processed coal, even though that activity is itself a "major industrial sector," which encompasses railroads, barges, trucks, and pipelines "that collectively stretch over thousands of miles throughout the nation." (PWCC Answer at 7, 9.) The fact that it did not, strongly indicates that Congress did not intend to regulate the transportation of processed coal under SMRA, presumably leaving it to regulation pursuant to other Federal and state laws.

We turn to SMRA's implementing regulations. When the Department first promulgated regulations in 1979 designed to permanently govern surface coal mining activities, it established general standards for constructing and maintaining transportation facilities other than roads, which were said to include "[r]ailroad loops, spurs, sidings, surface conveyor systems, chutes, aerial tramways, or other transportation facilities." 30 C.F.R. § 816.180 (1979). The Department explained in the preamble to the final rulemaking that the regulation was intended to cover transportation facilities "incident to coal mining operations," which are required for the "[m]ovement of coal, equipment and personnel within the mine plan area." 44 Fed. Reg. 15260, 15261 (Mar. 13, 1979) (emphasis added).

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In 1983, the Department defined what constitutes facilities resulting from or incident to surface coal mining activities, termed "support facilities," requiring that they be operated "in accordance with a permit issued for the mine or coal preparation [plant] to which [they are] incident or from which [their] operation results." 30 C.F.R. §§ 701.5 and 816.181 (1983). It said that such facilities "may" include "railroads, surface conveyor systems, chutes, aerial tramways, or other transportation facilities." *Id.* However, the Department also stated, at the end of the regulation, that "[r]esulting from or incident to" a [surface coal mining] activity connotes an element of proximity to that activity." *Id.* Further, in the preamble to the final rulemaking, the Department indicated that whether the enumerated transportation facilities could be considered support facilities hinged on whether they did, in fact, result from or were incident to such activities. See 48 Fed. Reg. 20396 (May 5, 1983) ("[T]o be regulated under Section 701(28)(B) a facility must result from or be incident to an activity regulated under Section 701(28)(A)"); National Wildlife Federation (NWF) v. Hodel, 839 F.2d 694, 746 n.80 (D.C. Cir. 1988).

Moreover, the Department particularly stated that it would interpret the regulation "to include all facilities located up to the point of load-out of coal for interstate transport." 48 Fed. Reg. 20397 (May 5, 1983) (emphasis added). Thus, where coal was transported by rail, the regulation "would extend to the loadout facility located at or near the mine site from which run of mine coal is conveyed or trucked to the rail line and loaded," and this same principle would also apply in the case of other modes of transportation, such as trucks, barges, and pipelines. *Id.* This regulation would have clearly excluded that portion of the railroad and pipeline at issue here, which are located beyond the loadout point.

In 1988, the Department dropped that regulatory definition, leaving the requirement in 30 C.F.R. § 816.181 that "support facilities" be operated under the permit for the individual mine or coal preparation plant to which they were incident or from which their operation resulted. It rejected any categorical exclusion or inclusion in favor of a case-by-case determination of what facilities can properly be regulated under SMRA, and declined to define what facilities result from or are incident to mining activities. See 53 Fed. Reg. 47380, 47382 (Nov. 22, 1988).

However, in the preamble which accompanied its 1988 rulemaking, the Department provided that OSM would address three factors when deciding whether a facility is properly considered to result from or be incident to surface coal mining activities: (1) whether the facility is geographically proximate to the producing mine; (2) whether the facility is functionally tied to the particular mine in question; and (3) whether the facility is economically dependent upon that particular mine. 53 Fed. Reg. 47379, 47381 (Nov. 22, 1988). The Department noted that the factors of geographic proximity and function had been endorsed by the circuit court in NWF, when it reviewed the propriety of the prior "support facilities" definition in 30 C.F.R. § 701.5 (1983). See 839 F.2d at 765-66.

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Appellants assert that this case should be decided by applying the above three factors. (SOR at 8.) The other parties to the case likewise utilize those criteria. See Decision at 1, 3; OSM Answer at 9-10; PACC Answer at 18; SRP Answer at 14; BHP Answer at 10.

We conclude that, even applying the criteria outlined in the 1988 preamble but never formally adopted by the Department, the railroad and pipeline at issue here do not constitute facilities "resulting from or incident to" regulated surface coal mining activities, within the meaning of section 701(28)(B) of SMRA.

We agree with OSM that both the railroad and pipeline are not geographically proximate to the surface coal mining activities at issue here, since most of those transportation facilities are located many miles from the Black Mesa/Kayenta Mines. Indeed, 80 percent of the pipeline and railroad is located more than 54 and 16 miles, respectively, from the 2 mines. These facilities do not become geographically proximate because they originate at and traverse a small portion of the mine area that is currently permitted or proposed for permitting. (SOR at 11, 18.) To so hold would render all transportation facilities proximate unless the coal is first transported outside the mine area by other means and then placed into the facility. We do not think this is what the Department intended. Nor is geographic proximity affected by the particular use made of the facilities or, generally, the functional and economic concerns that animate the other criteria. Id.

Next, we conclude that, in order to be considered to "result[] from or (be) incident to" surface coal mining activities which are themselves subject to SMRA regulation under section 701(28)(A) of SMRA, within the meaning of 30 U.S.C. § 1291(28)(B) (1994), facilities must be functionally and economically tied to regulated surface coal mining activities, and thus be justifiably also subject to such regulation. This does not mean that the facilities must be actually "involved in excavation, processing or loading coal," i.e., section 701(28)(A) activity. (SRP Answer at 16.) Rather, there must be a direct and meaningful connection to such activity. See United States v. Devil's Hole, Inc., 747 F.2d 895, 897-98 (3d Cir. 1984) (mining waste piles used to recover anthracite silt - "incidental facility"); Paul F. Kuhn, 120 IBLA 1, 30-32, 98 Interior Dec. 231, 246-47 (1991) (natural gas pipeline section relocated from mine area - "incidental facility"). We think that is the clear intent of Congress in expanding the definition of "surface coal mining operations" to include "incidental facilities" and also of the Department when it adopted the relevant criteria. See NRP, 839 F.2d at 743, 744; 53 Fed. Reg. 47379 (Nov. 22, 1988); 48 Fed. Reg. 20393 (May 5, 1983). Indeed, to hold otherwise would bring facilities within the ambit of SMRA regulation that are not somehow functionally and/or economically tied to regulated surface coal mining activity. We find nothing to indicate that Congress and the Department intended to do so.

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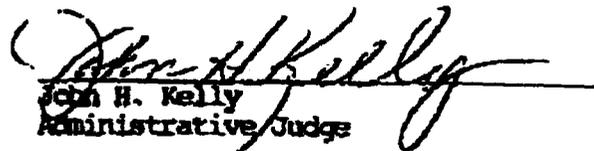
At the present time, the railroad and pipeline are functionally tied to and economically dependent on the surface coal mining activities at issue here in the limited sense that they currently serve only to transport all of the coal from the Black Mesa/Kayenta Mines to the final point of use and derive all of their revenues from that service. However, there is no evidence that the two facilities are otherwise functionally tied, in any way, to the actual operation of or the conducting of any particular surface coal mining activity regulated by SICRA.

As the circuit court instructed in NWE, 839 F.2d at 745, the phrase "resulting from or incident to" requires some type of proximate causation, "[o]therwise, every support facility that could be considered a 'but for' result of a surface coal mining operation would be subject to SICRA regulation." We conclude that the railroad and pipeline are not functionally tied to any regulated surface coal mining activity, other than by the mere fact that they transport the final product derived from such activity to market. That fact alone does not render the facilities subject to SICRA regulation, since it would encompass any and all transportation facilities. There is simply no evidence that Congress and the Department intended to apply the "incidental facilities" definition of "surface coal mining operations" in such a broad fashion.

Therefore, we conclude that the Acting Director, OSM, properly held that the BMSLP Railroad and SMP's coal slurry pipeline are not "surface coal mining operations," within the meaning of section 701(28)(B) of SICRA, and are not subject to the permitting and other requirements of the Act.

To the extent Appellants have raised other arguments not specifically addressed herein, they have been considered and rejected.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decisions appealed from are affirmed.


John H. Kelly
Administrative Judge

I concur:


R.W. Hallen
Administrative Judge