



United States Department of the Interior

OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
Washington, D.C. 20240



MAR - 1 2011

The Honorable Doc Hastings
Chairman, Committee on Natural Resources
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your letters dated February 8, 2011, and February 10, 2011, both of which concern rule revisions that the Office of Surface Mining Reclamation and Enforcement (OSM) is undertaking on the Stream Protection Rule. I appreciate your interest, and the opportunity to respond to your concerns.

In both letters, you request a number of specific documents. The OSM is working to process your request for documents and information and will respond to you as soon as possible.

You also raise, however, a number of questions related to OSM's current rulemaking efforts. First, I assure you that there is no new Stream Protection Rule yet in place. At this stage, OSM has not completed a draft of the proposed rule. When it has completed the proposed rule, OSM will publish it for public comment before finalizing the rule. Likewise, OSM has not yet completed a draft of the Environmental Impact Statement (EIS) related to the rule changes. Once complete, the Draft EIS, too, will be available for public comment.

You ask why OSM is working to replace the Stream Buffer Zone Rule adopted in 2008. On December 12, 2008 (73 FR 75814-75885), OSM published a final Stream Buffer Zone Rule. This rule was challenged in District Court, and the Department of the Interior entered into a settlement agreement staying that litigation. That settlement agreement also established timeframes for development of revised regulations. While working to meet those timeframes, OSM has sought to conduct its regulatory process in an open and transparent manner, and to provide the public and interested states with the opportunity for early involvement. In November of 2009, OSM issued an advance notice of proposed rulemaking (74 FR 62664). Although not required by law, this step was undertaken to solicit early public opinion on issues that ought to be addressed in the regulation. The advance notice, which generated over 32,000 public comments, sought public input on ten options for revising the 2008 rule. Moreover, OSM conducted 15 stakeholder outreach sessions with a broad cross-section of stakeholders, including state and tribal regulatory authorities, industry, environmentalists, and the United Mine Workers of America, to obtain further input. This process, which was not part of the 2008 rulemaking, continued our practice of soliciting full public input and participation on the various options the bureau should consider and address.

In April of last year, OSM sought initial public input for the development of a Draft EIS. This process included nine public scoping meetings on options to be considered in the EIS. In June 2010, OSM shared with the states and the public information regarding possible alternatives that could be considered for the rule.

At this point in developing the Draft EIS, OSM is still in the information-gathering phase. The OSM is reviewing a preliminary, partial draft prepared by a contractor, as well as considering comments it has received from cooperating states. OSM shared the early, contractor-generated draft chapters of the Draft EIS with the cooperating states in a continuation of its effort to be more open and transparent in its rulemaking process. As you reference in your letter, these contractor drafts were recently made public. Per your request, attached please find the copies of the contractor's first draft of Chapters 1 through 4 of the Draft EIS that prematurely were made public last month. These draft documents are not official OSM documents and do not reflect either the official views of OSM or of the Department of the Interior.

The final Draft EIS will be based on reliable, accurate information, and OSM anticipates publishing the draft later this year. The published Draft EIS will contain a set of alternatives that will have been formally reviewed through a full EIS process, with public input and engagement.

Your letter of February 8, 2011, also asks a number of specific questions regarding the effect of the proposed rule. Because OSM is still in the process of determining the content of the proposed rule, as well as developing the information necessary to assist in the bureau's decision making, it is premature to address specific questions you pose in your February 8 letter, such as the effect of the rule on underground longwall mining. I very much appreciate the concerns you raise regarding potential impacts on jobs, workers and communities. Because the information upon which a proposed rule will be based is still being developed, OSM is not yet at a stage to be able to provide accurate estimates on job impacts. The numbers contained in the published contractor drafts are not accurate.

Please be assured that as OSM moves forward, OSM will be seeking to create jobs, to provide for the coal supply essential to the Nation's energy requirements, and to protect the streams and other environmental assets so critical to the health and economic well-being of communities. The OSM will also ensure that any final rule will comply with all applicable law, including Executive Orders. Regarding your question about the process for selecting the contractor for preparing the Draft EIS, OSM followed the competition requirements under Section 8(a) of the Small Business Act, 15 U.S.C. 637(a), as provided for in Section 6.204(a) of the Federal Acquisition Regulation.

Regarding the cost to OSM of preparing the 2008 Stream Buffer Zone Rule, the 2008 rule was developed over a period of approximately four years using staff and contractor resources at various times during those years. The process used by OSM during that time did not track the costs for that rule separately from other rulemaking activities being undertaken by OSM during that same period. Therefore, OSM is unable to determine the separate cost for developing the 2008 Stream Buffer Zone Rule.

You also ask how much money OSM will be spending on its rewrite of that rule, and the source of those funds. The funds for staff, as well as travel, associated with OSM's current Stream Protection Rulemaking effort come from annual discretionary funds appropriated to OSM. In addition to annual appropriations, by letter dated June 16, 2010, to the Congressional Appropriations Subcommittees on Interior, Environment and Related Agencies, the Secretary requested a reprogramming of \$7.0 million of OSM's FY 2010 regulation and technology appropriated funds to support the EIS associated with the Stream Protection Rule.

The reprogramming was approved by the House and Senate Subcommittees, and the majority of that funding was awarded to a contractor in FY 2010 to prepare the EIS. As of February 8, 2011, the total expenditures for developing the Stream Protection Rule and related documents, including salary and travel, are approximately \$4.4 million.

Concerning costs to the states to implement the 2008 rule, no actual implementation costs have been incurred to date, as no states have yet implemented the requirements of that rule. As OSM is still in the process of developing the requirements and analysis for its proposed Stream Protection Rule, it is unable as yet to provide estimates as to potential costs to states to implement it.

In closing, OSM is still in the early stages of the full rulemaking process. The public, the states, and stakeholders will continue to play a central role at every appropriate step. I greatly appreciate your interest in the analysis upon which this rule will be based. Although that analysis is still being developed, I am available to meet with you to discuss where OSM is in the process, and the basis for actions under consideration. I am also available to update you as OSM moves forward in the process. Please do not hesitate to let me know if you would like to discuss this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph G. Pizarchik". The signature is written in a cursive style with a large initial "J" and "P".

Joseph G. Pizarchik
Director

Enclosure