



United States Department of the Interior

OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
Pittsburgh Field Office



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December 20, 2019

Margrethe Kearney
Environmental Law & Policy Center
35 E. Wacker Drive, Ste. 1600
Chicago, IL 60601

Dear Ms. Kearney,

Thank you for your letter dated October 25, 2019, written on behalf of the Environmental Law & Policy Center (ELPC). You submitted a request pursuant to 30 C.F.R. § 733.12 (a)(2), to the Office of Surface Mining Reclamation and Enforcement (OSMRE) to evaluate Ohio's alternative bonding system, and the Reclamation Forfeiture Fund, which ELPC contends violates the requirements of the Surface Mining Control and Reclamation Act (SMCRA).

The OSMRE issued a letter to the Ohio Department of Natural Resources (ODNR), on May 4, 2005, (Admin Record OH-2185-00, enclosed) under 30 CFR § 733.12(b) (733 notice). This 733 notice advised ODNR that OSMRE had reason to believe that Ohio was not effectively implementing, administering, maintaining, or enforcing the part of its conditionally approved coal mining regulatory program regarding its alternative bonding system (ABS). Specifically, we notified ODNR that we did not believe its ABS met the standards of 30 CFR § 800.11(e)(1), which requires that an ABS "assure that the regulatory authority will have available sufficient money to complete the reclamation plan for any area which may be in default at any time."

Since then, we have been actively engaged with ODNR in developing and reviewing amendments to Ohio's coal mining regulatory program to resolve the 733 notice and the underlying program approval condition. These conditions require addressing how the ABS will assure timely reclamation at the site of all operations for which bond has been forfeited (30 CFR § 935.11(h) (1)). ODNR submitted a program amendment in November of 2005 to address the 733 notice and program condition. ODNR followed that submission with a March 2007 submission of a replacement program amendment to address the 733 notice and the program condition. Subsequent to the March 2007 submission, and at the request of ODNR, OSMRE withdrew the proposed rulemaking notice for the November 2005 submission (72 FR 21176 (April 30, 2007)). The current program amendment, which restructures the Reclamation Forfeiture Fund, is a complex revision to Ohio's conditionally approved coal mining regulatory program. Due to additional necessary legislative actions by Ohio, and revisions requested by OSMRE, this program

amendment remains under review, and therefore the 733 notice remains open and active.

We note that during this process, ODNR eliminated its backlog of un-reclaimed bond forfeited permits, which was a factor in OSMRE sending the 733 notice. Currently, Ohio has sufficient funds to reclaim all current bond forfeitures. In addition to determining the timely reclamation of forfeitures, OSMRE is also evaluating the solvency of the Forfeiture Fund and its effectiveness in assuring that Ohio has sufficient funds to complete the reclamation for any areas that may be in default at any time.

We are aware of the Murray Energy Corporation (MEC) Chapter 11 bankruptcy filing in the Southern District of Ohio. We note that the MEC Ohio permits are not currently associated with any violations in OSMRE's Applicant Violator System, and do not have any current unabated notice of violations issued by the Division of Mineral Resources Management (DMRM). DMRM has advised us that reclamation of the MEC Ohio permits is contemporaneous with its mining plans. We are actively working with the U.S. Department of Justice and Ohio to take appropriate measures within the bankruptcy proceedings to protect and enforce MEC's obligations under SMCRA.

Regarding the five million dollars removed from the Forfeiture Fund in 2017, we note that two million dollars was restored to the fund in this state budget year, and another two million dollars is scheduled to be restored in the next state budget year. OSMRE does not condone the removal of funds from the Forfeiture Fund, and so notified DMRM by letter of August 8, 2017 (Administrative Record number OH-2185-77).

We have reviewed the substance of your request in light of actions we are currently taking under the existing 733 notice. We find that the issues raised in your letter are not new and are being addressed through our review of Ohio regulatory program amendments, submitted in response to the 733 notice and regulatory program approval condition 30 CFR § 935.11(h)(1). There is no need to have two 733 notices regarding the same issue. We will notify you when we reach a final decision on the program amendment.

Sincerely,



Ben Owens
Director,
Pittsburgh Field Office

Enclosure

cc: Howard Learner, Mary Rock, David Crow, Mary Mertz