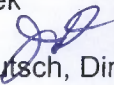


PUBLIC SERVICE COMMISSION

Abandoned Mine Lands Division

Memorandum

TO: Commissioners Wefald, Cramer and Clark
Illona Jeffcoat-Sacco
Bill Binek

From:  Jim Deutsch, Director - AML Division

Date: April 30, 2008

Subject: Lien waiver for reclamation work that will be performed at the Columbus Phase 9 AML project in Burke County

Earlier this year we requested an opinion from OSM on waiving the lien provisions for AML projects that are intended to eliminate hazardous conditions at abandoned surface and underground coal mines. NDCC 38-14.2-14(1)(b) of our AML reclamation law allows the Commission to waive a lien if the reclamation work performed on private land primarily benefits health, safety, or environmental values of the greater community in which the land is located. Unless a review of the title history for an AML site shows that the current surface owner also owned the land when the mining occurred or was otherwise involved in that mining activity, we informed OSM that we would recommend the Commission waive any possible liens before any AML reclamation work begins. OSM sent us a response (see attached letter) concurring with the waiver of liens in these situations.

The current owners acquired the land that will be affected by the Columbus Phase 9 project in 1973 and they did not participate in the mining or own the land when it was mined more than 50 years ago. Therefore, I recommend the Commission waive any liens on the property that will be affected by this year's project.

Attached is a motion for the May 7th Commission meeting to waive any liens on the property that will be affected by reclamation work at the Columbus Phase 9 AML project.

Attachments

caselib\080010\memo_lien_waiver.doc

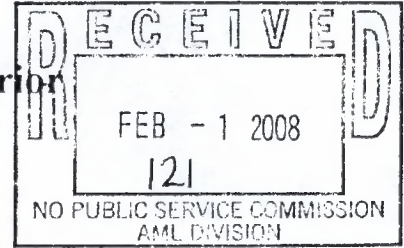


IN REPLY REFER TO:

United States Department of the Interior

OFFICE OF SURFACE MINING

Reclamation and Enforcement
Casper Field Office
150 East "B" Street, Rm 1018
Casper, Wyoming 82601



January 23, 2008

Mr. James R. Deutsch, Director
Abandoned Mine Lands Division
North Dakota Public Service Commission
600 E. Boulevard Ave. Dept. 408
Bismarck, North Dakota 58505-0480

Dear Mr. Deutsch:

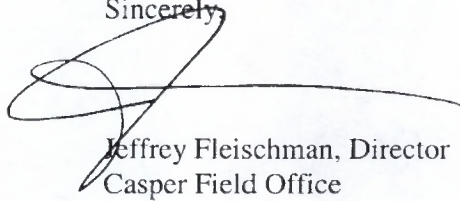
Thank you for your letter dated January 17, 2008, received via e-mail, regarding lien waivers and appraisal requirements associated with abandoned mine land (AML) project sites. We agree with your assessment that the lien and appraisal requirements in the Surface Mining Control and Reclamation Act (SMCRA) are no longer applicable to most AML projects as a result of the 2006 Amendments to Title IV of SMCRA. The Tax Relief and Health Care Act of 2006, Pub. L. No. 109-432, enacted on December 20, 2006, included the SMCRA Amendments of 2006, which made significant changes in the AML program. The amendment to Section 408(a) of SMCRA eliminated the requirement that the beneficiary of an AML reclamation project on privately owned land, owned the surface before May 2, 1977, to qualify for the automatic lien waiver. With this elimination, the provisions in 408(a) for filing a lien only apply if the beneficiary (current surface owner) actually consented to, participated in, or exercised control over the mining operation which necessitated the reclamation.

Although North Dakota's AML law has not been amended to reflect the aforementioned amendment to Section 408(a) of SMCRA, North Dakota's current law also allows the Commission to waive a lien if the reclamation work performed on private land primarily benefits health, safety, or environmental values of the greater community or area in which the land is located. This constitutes reclamation associated with priority 1, 2 and 3 AML sites which is the extent of all problem areas in North Dakota currently listed in OSM's Abandoned Mine Land Inventory System (AMLIS). In essence, North Dakota's current law allows the Commission to waive any lien on private lands associated with priority 1, 2 or 3 coal AML project sites in North Dakota, as long as the reclamation work performed on private land primarily benefits health, safety, or environmental values of the greater community or area in which the land is located. You indicate in you letter that all of the AML work planned by the Commission over the next several years will eliminate hazardous conditions at abandoned surface and underground coal mines. We concur with the proposal you plan to recommend to the Commission of waiving any possible liens before any AML reclamation work begins, unless a review of the title history for an AML site reveals that the current surface owner also owned the land when the mining occurred, or was otherwise

involved in that mining activity. This lien waiver proposal should result in significant cost savings to the Commission, allowing AML monies to be more fully utilized for reclamation rather than for conducting unnecessary pre- and post-reclamation appraisals.

If you have any questions, please call Alan Boehms, AML Program Specialist, at (307) 261-6546.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey Fleischman", with a long horizontal line extending to the right.

Jeffrey Fleischman, Director
Casper Field Office