



## United States Department of the Interior

OFFICE OF SURFACE MINING  
Reclamation and Enforcement  
Casper Field Office  
P.O. Box 11018  
Casper, WY 82602

RECEIVED

OCT 14 2008

31099  
PUBLIC SERVICE COMMISSION

October 9, 2008

Carrie La Seur, Ph.D., J.D.  
Plains Justice  
100 First Street SW  
Cedar Rapids, Iowa 52404

Dear Ms. La Seur:

This is in response to your letter dated October 3, 2008, and submitted on behalf of the Dakota Resource Council (DRC), alleging inadequate state enforcement of the North Dakota Coal Program under Surface Mining Control and Reclamation Act ("SMCRA").

Your letter alleges that:

- 1) The North Dakota Public Service Commission (NDPSC) has declined to exercise jurisdiction over a proposed coal processing facility at a mine site near South Heart, North Dakota;
- 2) The NDPSC failed to provide public notice or a hearing process in support of its finding that the facility is not a "surface coal mining operation," thereby effectively leaving the public without a voice or recourse;
- 3) The NDPSC ignored North Dakota law and Federal law in this case that provide plain definitions of coal preparation plants regulated under SMCRA;
- 4) The NDPSC's jurisdictional determination is unlawful and contrary to the requirements of SMCRA; and
- 5) By refusing to act as the regulatory authority, North Dakota has failed to enforce its state program.

As a result, you requested that:

- 1) The Office of Surface Mining Reclamation and Enforcement (OSMRE) take immediate action to halt imminent construction of a proposed coal processing facility at a mine site near South Heart, North Dakota;
- 2) OSMRE enforce the requirements of SMCRA and immediately notify NDPSC and the project proponents in writing that no ground-disturbing activities should be taken at the site unless and until OSMRE has ruled on the jurisdictional question and the permitting requirements of SMCRA have been achieved; and

3) OSMRE, after public notice and notice to the State of North Dakota, hold a hearing in the State to evaluate the State's capability and intent to enforce State programs and/or whether OSMRE is now the *de facto* permitting agency for the proposed coal processing facility.

You conclude by requesting that, in the interim, the Secretary and OSMRE enforce SMCRA until such time as North Dakota has adequately demonstrated its capability and intent to enforce its State program.

The following information explains OSMRE's role and jurisdiction in this matter.

The primary agency for regulation of surface coal mining and reclamation operations in North Dakota is the NDPSC Reclamation Division. OSMRE's Casper Field Office (CFO) is responsible for monitoring and evaluating the administration of the North Dakota program. The Federal regulations allow for any interested person to request an evaluation of the administration of a state program by OSMRE upon providing a concise statement of facts which that person believes establishes the need for evaluation. The DRC has done this.

However, we cannot intervene and take action against a state program unless and until the underlying reasons for requesting such an evaluation are substantiated. To that end, our first obligation in response to the allegations specified in your letter is to evaluate the basis for the NDPSC Reclamation Division's jurisdictional decision not to require a surface coal mining permit for the proposed coal beneficiation facility. That evaluation has been initiated and we have been in contact with the State who provided us with a record of their decision for our consideration. Once our evaluation of the basis for the State's jurisdictional decision is completed, you will be advised of our decision regarding the investigation of your complaint.

Lastly, and as part of our communication with the NDPSC on this matter, they have conveyed to us that the Commission's procedural rules contemplate the filing of letter requests, applications, petitions, and complaints at any time to request Commission action, either formally or informally. Since the DRC has not yet requested a Commission determination on jurisdiction or filed a formal appeal petition for the same, we encourage you to do so. North Dakota has also indicated to us that they would welcome an inquiry by OSMRE of any final decision by the Commission regarding jurisdiction, and we are certainly willing to be involved at that time if necessary.

We will keep you informed as our evaluation progresses. If you have any further questions regarding this matter, please do not hesitate to contact me directly at (307) 261-6550.

Sincerely,



Jeffrey W. Fleischman, Director  
Casper Field Office

✓ cc: James Deutsch, Director Reclamation Division, NDPSC