

**PUBLIC SERVICE COMMISSION**  
**Reclamation Division**  
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**Memorandum**

**TO:** Commissioners Kalk, Cramer and Fetch  
Darrell Nitschke  
Illona Jeffcoat, Sacco

**FROM:** Jim Deutsch, Reclamation Division

**DATE:** November 1, 2012

**SUBJECT:** Submittal of the rule changes in Case No. RC-12-166 to OSM as State Program Amendment No. XL

On October 26<sup>th</sup> we received a favorable legal opinion from the Attorney General on the rule changes proposed in Case No. RC-12-166. Before the Commission can adopt these changes, we also need to receive the Office of Surface Mining's approval of the rule changes through the State Program Amendment process. The necessary documents have been prepared for the amendment and I recommend the rule changes be submitted to OSM as State Program Amendment No. XL (40).

All but two of the proposed rule changes were required by OSM as the result of new or revised federal rules. The required changes relate to our use of OSM's Applicant Violator System (AVS) prior to the approval of permits, renewals and certain revisions. The AVS is a national database with a listing of mining companies and affiliates that have unabated violations or unpaid civil penalties. Any mining company that is linked to an entity in this database may be ineligible to receive a new mining permit, renewal, or revision that proposes to permit or mine additional lands. The proposed rules also contain procedures for companies to use if they want to challenge information or links in the AVS.

Two other rule changes are also part of the package. One adds a new subsection to an existing rule with general requirements on the format of electronic applications. The other change will make a minor correction to a provision that should have been changed some time ago when another rule was amended to no longer require renewal of a permit once lands in that permit are no longer being mined or used in support of mining.

The program amendment will include a transmittal letter to OSM, narrative describing the changes, the proposed rule changes, side-by-side comparison of the state rules to the counterpart federal rules, and a copy of the Attorney General's opinion. Attached is a motion for the November 9<sup>th</sup> Commission meeting to submit the program amendment to OSM. Also attached is the transmittal letter to OSM that needs to be signed by the Commissioners.

**Attachments**

Caselib/120166/Comm Memo Submit OSM

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