


**PUBLIC SERVICE COMMISSION  
Reclamation Division**

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**Memorandum**

**TO:** Commissioners Kalk, Christmann and Fedorchak  
Darrell Nitschke  
Illona Jeffcoat-Sacco and Ryan Norrell

**FROM:** Jim Deutsch, Reclamation Division 

**DATE:** May 1, 2013

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

Last November we submitted the rule changes proposed in Case No. RC-12-166 to the Office of Surface Mining for approval as an amendment to our coal regulatory program. All changes to the reclamation law or rules need to be approved by OSM through the State Program Amendment process. The rule changes in this case were submitted to OSM as State Program Amendment No. XL (40).

Most of the rule changes in this case were required by OSM as the result of revised federal rules. These 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. Two other minor rule changes were also proposed in this rulemaking case.

During OSM's review of the program amendment, a problem was noted with one of the new rules and we were notified that it needed to be revised in order to be consistent with the federal Ownership and Control provisions. When drafting the proposed rule changes, I had inadvertently used language from an outdated version of the counterpart federal rules. Consequently, OSM required we change the language to be consistent with the current version before they will approve the program amendment. The appropriate change was made and the revised rule was then sent to the Attorney General for an updated legal opinion. A new legal opinion was received April 30<sup>th</sup> and we now need to submit the revised rule to OSM as a modification to State Program Amendment No. XL.

Attached is a motion for the May 8<sup>th</sup> Commission meeting to submit the revised rule changes to OSM as a modification to State Program Amendment No. XL.

Attachment