



26 March 2012

**BY CERTIFIED MAIL**

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Secretary  
Department of the Interior  
1849 C Street, N.W.  
Washington DC 20240

Dear Sirs:

On behalf of Dakota Resource Council, Dacotah Chapter of Sierra Club and their members, we write to provide you with notice that we intend to file a federal civil lawsuit to compel compliance with the Surface Mining Control and Reclamation Act (hereinafter "SMCRA"), 30 U.S.C. §§ 1201 *et seq.*, against the Director (hereinafter Director) of the Office of Surface Mining Reclamation and Enforcement (hereinafter OSM), the State of North Dakota (hereinafter North Dakota) and the North Dakota Public Service Commission (hereinafter NDPSC)(together Defendants). Our claims arise from Defendants' pattern and practice of failing to perform non-discretionary duties under SMCRA in relation to the federally approved North Dakota program that implements SMCRA, and Defendants' implementation of an improper interpretation of SMCRA conflict of interest provisions. This notice is being provided pursuant to 30 U.S.C. § 1270(b) and 30 C.F.R. § 700.13.

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### INTRODUCTION AND FACTUAL BACKGROUND

Section 503(a) of SMCRA permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this (Act);... (and) rules and regulations consistent with regulations issued by the Secretary pursuant to this (Act)." 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the North Dakota program on December 15, 1980. OSM retains oversight responsibilities over the North Dakota program.

The undersigned allege that OSM has allowed North Dakota to implement an improper interpretation of SMCRA conflict of interest provisions at 30 C.F.R. § 705.18, resulting in improper campaign contributions to Public Service Commissioners Cramer and Kalk.

The undersigned further allege that OSM has a pattern and practice of failing to review formally and either approve or disapprove changes to the state program implemented by North Dakota and NDPSC. The federal regulations implementing SMCRA provide explicit procedures for any amendments to the approved state program. 30 C.F.R. § 732.17. OSM has a non-discretionary duty to review and approve or disapprove "(s)tate programs for controlling surface coal mining operations and reclaiming abandoned mine lands." 30 U.S.C. § 1211(c)(1). By failing to perform this duty for certain coal mining policy memoranda published over decades by NDPSC, OSM has created a pattern and practice of giving effect to unapproved changes in the laws or regulations that make up the approved North Dakota program, described in detail herein.

Plaintiffs are conservation organizations and their members who intend to seek relief from the District Court to compel OSM (1) to prompt North Dakota to comply with 30 C.F.R. § 705.18 by clarifying what financial contributions to North Dakota Public Service Commissioners are barred under SMCRA and dictating any necessary changes to North Dakota's state program to ensure future compliance with federal standards; and/or to promulgate and impose a federal program for North Dakota pursuant to 30 U.S.C. § 1254(a)(3); and (2) to prompt North Dakota to comply with 30 C.F.R. § 732.17(g) by ceasing to give effect to each unapproved change in the statutes, regulations, or other laws that make up the ND program that has occurred since December 15, 1980, until the full OSM review and approval process is complete.

### VIOLATIONS ALLEGED

- 1. The Director has allowed North Dakota and NDPSC to implement, and North Dakota and NDPSC have implemented, state conflict of interest provisions inconsistent with SMCRA.*

NDPSC Commissioners Cramer and Kalk have improperly accepted thousands of dollars

in campaign contributions from parties with ownership stakes in coal companies or other financial interests in a strip mining application currently pending before NDPSC. OSM, North Dakota and NDPSC have failed to enforce SMCRA prohibitions against such financial contributions.

SMCRA provides that "(n)o employee of the State regulatory authority performing any function or duty under this Act ... shall have a direct or indirect financial interest in any underground or surface coal mining operation." 30 U.S.C. § 1267(g). The same section authorizes the Secretary of the Interior "to establish methods by which the provisions of this subsection will be monitored and enforced" by the Secretary and State regulatory authority. Those regulations are encoded at 30 C.F.R. § 705.

The regulations established under SMCRA's conflict of interest provision state:

(e)xcept as provided in paragraph (b) of this section, employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or any other thing of monetary value, from a coal company which: (1) Conducts or is seeking to conduct, operations or activities that are regulated by the State Regulatory Authority; or (2) Has interests that may be substantially affected by the performance or non-performance of the employee's official duty. 30 CFR § 705.18.

The exemptions are as follows:

The prohibitions ... do not apply in the context of obvious family or personal relationships, such as those between the parents, children, or spouse of the employee and the employee, when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors. An employee may accept: (1) Food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon, dinner, or other meeting where an employee may properly be in attendance; and (2) Unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars and other items of nominal value. 30 CFR § 705.18(b).

For purposes of the above-defined prohibitions, "employee" is defined in relevant part as:

(a) any person employed by the State Regulatory Authority who performs any function or duty under the Act, and (b) advisory board or commission members and consultants who perform any function or duty under the Act, if they perform decisionmaking functions for the State Regulatory Authority under the authority of State law or regulations. 30 CFR § 705.5.

These definitions and prohibitions plainly encompass the role of NDPSC commissioners. Recent events show that North Dakota and NDPSC are improperly interpreting the federal conflict of interest standard, and OSM has failed to enforce a proper interpretation.

In 2001, Great Northern Power Development (GNPD) began to acquire coal leases from landowners near the town of South Heart, in Stark County, North Dakota. The first public hearings on a proposed South Heart mine were held in 2003. On October 15, 2008, GNPD filed an application for a mining permit for the South Heart site with NDPSA.

NDPSA commissioners are publicly elected in a statewide ballot. Campaign finance disclosures made to the North Dakota Secretary of State's office by Commissioners Kevin Cramer and Brian Kalk show the following contributions by coal company owners and interested parties with direct financial stakes in the outcome of the South Heart mining permit application currently pending.

**Contributions to Cramer Campaign by South Heart Financially Interested Parties:**

Contributing Party	Nature of Interest	Contribution Amount	Date
Brian Bjella, <i>Bismarck, ND</i>	Counsel to GTL Energy	\$600	10/13/2010
Corbin Robertson <i>Houston, TX</i>	Managing partner, Quintana Capital Group, owner of Great Northern Power Development. South Heart Coal is a subsidiary of GNPD.	\$4800	9/7/2010
Robert French, <i>Wellington, CO</i>	GTL Energy CEO, developer of South Heart coal processing plant	\$250	8/25/2010
Corbin Robertson	See above	\$2500	8/6/2009
Barbara Robertson	Spouse of Corbin Robertson	\$2500	8/6/2009
Corbin Robertson	See above	\$500	8/14/2008

**Contributions to Kalk Campaign by South Heart Financially Interested Parties:**

Contributing Party	Nature of Interest	Contribution Amount	Date
Corbin Robertson	See above	\$500	5/1/2009
Corbin Robertson	See above	\$5000	8/24/2008

Acceptance by NDPSA Commissioners of these campaign contributions from coal

company owners and interested parties constitutes violations of SMCRA prohibitions on financial contributions to decision makers by such parties. OSM, North Dakota, and NDPSC have all failed to enforce applicable federal law in spite of appeals by the undersigned.

In June 2011, the undersigned wrote directly to Commissioners Cramer and Kalk to point out federal surface mining conflict of interest provisions and request that the commissioners recuse themselves from deliberations related to South Heart. Cramer and Kalk declined to take any action, so we the undersigned wrote to OSM in August 2011 to request review of the propriety of the commissioners' actions and their removal from any deliberations on South Heart. On September 9, 2011, OSM Deputy Ethics Counsel responded with notification that our request had been received. We received no further communication from the agency for several months. On December 6, 2011, we wrote to request a Solicitor's opinion as soon as possible on the legal question of whether or not Cramer and Kalk are subject to the SMCRA ban on financial contributions. Deputy Ethics Counsel for OSM then notified Attorney La Seur by phone that OSM would not respond to this request. We the undersigned are left with no recourse except to pursue judicial review of the agencies' actions.

2. *The Director has engaged in a pattern and practice of failing to review and approve amendments to North Dakota's state program, and North Dakota and NDPSC have improperly implemented unreviewed and unapproved changes to the state program.*

Since 1978, NDPSC has issued a long list (21 currently in force) of surface mining "policy memoranda" (see Exhibit A, *infra*), some updated multiple times. Some of these memos constitute substantive changes in the statutes, regulations, or other laws that make up the North Dakota program. OSM engaged in no formal review of these memoranda as required under SMCRA, nor issued any formal approval. In response to a March 6, 2012 Freedom of Information Act request to OSM for "all correspondence and documentation held by (OSM) related to review or evaluation of" the memos, the agency responded that it has no such documents (OSM Acknowledgment and Reply Letter attached as Exhibit B). There does not appear to be any written record of even a threshold evaluation of the significance of the changes implemented by the memos.

Federal law requires the Director to "determine whether a State program amendment is required and notify the State regulatory authority of the decision" within 30 days of the time when the Director is notified or becomes aware of any of the following conditions:

- (1) As a result of changes in the Act or regulations of this chapter, the approved State program no longer meets the requirements of the Act or this chapter; or
- (2) Conditions or events change the implementation, administration or enforcement of the State program; or
- (3) Conditions or events indicate that the approved State program no longer meets the requirements of the Act or (30 C.F.R. § 732). 30 C.F.R. § 732.17

This rule “applies to any alteration of an approved State program whether accomplished on the initiative of the State regulatory authority or the Director.” 30 C.F.R. § 732.17(a). The State regulatory authority is also implicated in this OSM duty, because it must:

promptly notify the Director, in writing, of any significant events or proposed changes which affect the implementation, administration or enforcement of the approved State program. At a minimum, notification shall be required for—

- (1) Changes in the provisions, scope or objectives of the State program;
- (2) Changes in the authority of the regulatory authority to implement, administer or enforce the approved program;
- (3) Changes in the State law and regulations from those contained in the approved State program;
- (4) Significant changes in staffing and resources of the regulatory authority and divisions or departments of other agencies with duties in the approved program;
- (5) Changes in agreements between the regulatory authority and other agencies which have duties in the approved program;
- (6) Significant changes in funding or budgeting relative to the approved program; and
- (7) Significant changes in the number or size of coal exploration or surface coal mining and reclamation operations in the State. 30 C.F.R. § 732.17(b).

The Director has at least two essential, non-discretionary and mandatory duties that have been neglected: (1) to examine each of NDPSC's mining policy memoranda at the time of its adoption or amendment and determine in writing whether or not the memo constitutes a change that triggers full review, and (2) when appropriate, to conduct that review to the point of approval or disapproval. The FOIA response makes clear that the Director is not performing these duties where the 21 NDPSC memos are concerned.

Because of North Dakota and NDPSC's failure to notify in writing, and OSM's failure to observe its non-discretionary duty to review and approve or deny changes in the statutes, regulations, or other laws that make up the North Dakota program, the public has been deprived of its right to comment on such changes, in violation of 30 C.F.R. § 732.17(g), which requires a minimum 30 day public comment period for each proposed amendment. The public has also been denied the opportunity to challenge a final agency decision approving or disapproving the memos.

Other unmet steps in the regulatory review process for amendments include:

- Solicitation of comments by the State Historic Preservation Officer and the Advisory Council on Historic Preservation if historic properties may be affected (30 C.F.R. § 732.17(g)(4));
- Solicitation and public disclosure of the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads

- of other Federal agencies concerned with or having special expertise relevant to the program amendment(s) as proposed (30 C.F.R. § 732.17(g)(11)(i)); and
- Written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of a State program amendment(s) which relate to air or water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.* ), and the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.* )(30 C.F.R. § 732.17(g)(11)(ii).

The Code of Federal Regulations includes the full list of approved amendments to North Dakota's SMCRA regulatory program.<sup>1</sup> This table of approved amendments demonstrates that North Dakota has submitted other policy documents and standards to OSM for formal review and approval, in addition to frequent relatively minor changes to state law and regulations, such as revegetation standards. Yet OSM, North Dakota, and NDPSC have without any written record or explanation allowed the 21 policy memos currently in force, and their many updates, to take on the force of law without the required review.

None of the memos has passed through federal procedures for review and approval of amended state programs. Policy Memorandum No. 20, uniquely among the 22 memoranda, directly references instructions from OSM that the state had sufficient latitude in its existing program to implement the policy stated. According to its recent FOIA response, OSM has no written record of this agency-to-agency consultation or the resulting instructions referenced in the memo. OSM issued no statement justifying or explaining this decision, and there was no opportunity for public comment on it or challenge to it. The undersigned disagree that North Dakota had or has sufficient latitude to give effect to Policy Memorandum 20 without formally obtaining OSM's approval for the measure.

This oversight failure by OSM is more than a procedural error. There are minimum federal environmental protection performance standards that must be adopted and implemented under regulatory programs for surface mining activities. 30 C.F.R. § 816.1. Several of the memos enact substantive changes to the state program that appear inconsistent with the federal minimum performance standards. For example:

1. Memo 5 allows for case by case exemptions to standards created for topsoil removal and separation from topsoil. Permanent program standards at 30 C.F.R. § 816.22 provide no exemptions.
2. Memo 6 categorically excludes roads maintained by public funds from activities covered by surface coal mining permits, while federal rules exclude roads maintained by public funds only where they actually have a significant public use. 30 C.F.R. § 761.5.

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<sup>1</sup> Attached as Exhibit C. This table is a reproduction of 30 C.F.R. § 934.15, "Approval of North Dakota regulatory program amendments."

3. Memo 15 seems to create special bond release provisions for coal combustion waste placement that are more lax than federal standards. Federal bond release provisions cover all sites. The only use of mine land for CCW disposal authorized by federal regulations is for a limited amount of CCW of prescribed types permitted to be placed in underground mines. 30 C.F.R. § 816.41(i)(2). This use of reclaimed land may also in some cases be inconsistent with the requirement that “all disturbed areas shall be restored in a timely manner to conditions that are capable of supporting - (1) The uses they were capable of supporting before any mining; or (2) Higher or better uses.” 30 C.F.R. § 816.133(a).

4. The consolidated bonding system authorized by Memo 18 does not exist in the federal program and may reduce or eliminate for long periods the permittee’s financial incentive to comply with all reclamation provisions, as indicated by the very slow pace of final bond release in North Dakota and the lack of any financial reduction of many bonds at the time of final release. This outcome is inconsistent with the federal program, which states: “OSM may approve, as part of a State or Federal program, an alternative bonding system, if it will achieve the following objectives and purposes of the bonding program: ... (2) The alternative must provide a substantial economic incentive for the permittee to comply with all reclamation provisions.” 30 C.F.R. § 800.11(e)(2).

5. Memo 20 allows case-by-case evaluation for starting the 10 year reclamation liability clock for water management structures, other support facilities, reclamation repair work and drainage improvement work of a limited size and scope, and small isolated mined areas that were not reclaimed in conjunction with the surrounding tract, while the federal program performance standards include no such flexibility, requiring simply that “(t)he period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices....” 30 C.F.R. § 816.116(c)(1).

In light of these substantive inconsistencies with the federal SMCRA program, with which state programs must align, OSM should have carried out a formal review and approval process for at least these five PSC memos, and North Dakota should not have implemented these changes without such review and approval by OSM.

#### **RELIEF**

We the undersigned have complained publicly and in writing to OSM and Commissioners Cramer and Kalk of conflict of interest violations. OSM, North Dakota and NDPSC have not taken the matter seriously. Cramer and Kalk in their professional capacity and NDPSC as an entity have not only refused to take action, Commissioner Cramer has mocked our concerns to the press as “Mickey Mouse”. Neither OSM, North Dakota, NDPSC, nor Cramer and Kalk have offered any legal justification for the commissioners’ actions. NDPSC has no ethics oversight body, a situation that appears unique among the 50 states. OSM refuses to take action. We are therefore without legal

recourse other than to obtain a compliance order from a court in this matter.

Where the NDPSC memos are concerned, SMCRA requires the Secretary of the Interior to "prepare ... promulgate and implement a Federal program for a State ... if such State ... fails to implement, enforce, or maintain its approved State program as provided for in this chapter." 30 U.S.C. § 1254(a)(3). We the undersigned allege that OSM has failed to require North Dakota to refrain from giving effect to changes in the statutes, regulations, or other laws that make up the North Dakota program unless and until OSM has completed its non-discretionary review duties and approved the changes. Unless and until OSM obtains North Dakota's agreement to cease and desist immediately from giving effect to any such change, the Secretary has a non-discretionary duty to prepare, promulgate and implement a Federal program in lieu of North Dakota's, until such time as North Dakota's program can be reviewed and approved according to proper SMCRA procedures. 30 U.S.C. § 1254(a). We intend to pursue a compliance order from the District Court in this matter as well.

#### NOTICE

The citizen suit provision of SMCRA allows Dakota Resource Council and Sierra Club to commence suit in a United States District Court against you for violations of the provisions of SMCRA or any rule, regulation, order or permit issued pursuant thereto, or where there is an alleged failure of the Secretary to perform any act or duty under SMCRA which is not discretionary with the Secretary. 30 U.S.C. § 1270(a).<sup>2</sup> The statute requires notice in writing of the violation to the Secretary, the State in which the violation occurs, and the alleged violator, sixty days before an action may be commenced. 30 U.S.C. § 1270(b). This letter constitutes such notice.

Sincerely yours,

Carrie La Seur  
Plains Justice  
P.O. Box 1398  
Billings, MT 59103  
Tel. 406-969-1040

*Counsel for the Undersigned*  
Dacotah Chapter of Sierra Club  
Dakota Resource Council

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<sup>2</sup> The statute also allows a suit without prior notification where the violation "constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff. 30 U.S.C. § 1270(b)(2). Dakota Resource Council and Sierra Club reserve the right to file such claims at any time.

**Exhibit A: NDPSC Policy Memoranda**

<b>Dates of Issue &amp; Revisions</b>	<b>No.</b>	<b>Subject</b>	<b>Statute Referenced</b>
3/8/1995	2	Mine Personnel Accompanying Commission Representatives During Inspections	NDCC 38-14.1-27(2)
3/8/1995 2/25/1988 8/10/1984 4/27/1978	3	Covering Toxic-Forming Materials with Nontoxic Material and Covering Combustible Materials with Noncombustible Material	NDAC 69-05.2-21-03, NDAC 69-05.2-15-04(4)(a)(1)&(2), NDAC 69-05.2-15-04(6)
3/8/1995	4	Payment of Charges for Analysis of Soil, Spoil and Water Samples Taken by PSC Representatives	None
3/8/1995 8/10/1984	5	Suitable Plant Growth Material Removal	NDAC 69-05.2-15-04(4)(a)(1)&(2)
3/8/1995 8/10/1984 5/4/1979	6	Activities Covered by Surface Coal Mining Permits	NDCC 38-14.1-02(33)
3/8/1995 8/10/1984 8/2/1979	7	Coordination of State Regulatory Program Surface Coal Mining Operation Communications with the PSC, State Dept. of Health, and State Water Commission	NDCC 38-14.1, NDAC 69-05.2-16, NDAC 89-04-01-01, NDAC 89-04-01-05, NDCC 61-32, NDCC 61-28, NDCC 23-20, NDCC 61-16.1-38, NDCC 61-04
3/8/1995 8/10/1984 10/15/1980	8	Applicability of the Ten-Year Revegetation Liability Period Pursuant to NDCC 38-14.1-24(18)	NDCC 38-14.1-11, NDAC 69-05.2-22-07(2), NDAC 69-05.2-12-09(2), NDAC 69-05.2-22
7/12/2006 12/19/2001 3/8/1995 11/10/1982 11/10/1982	9	Clarification of Bond Release Notice Requirements of NDCC 38-14.1-17	NDCC 38-14.1-17
2/17/1994 9/24/1991 8/10/1984 4/29/1983	10	Clarification of 1) standards and methods for proving reclamation success on cropland areas disturbed after July 1, 1975 and not used in support of mining after May 3, 1978, 2) management practices for all reclaimed cropland, and 3) breaking pre-	None

2/17/1994 9/24/1991 8/10/1984 4/29/1983	10	Clarification of 1) standards and methods for proving reclamation success on cropland areas disturbed after July 1, 1975 and not used in support of mining after May 3, 1978, 2) management practices for all reclaimed cropland, and 3) breaking pre-cropland grass-legume stands prior to final bond release	None
3/8/1995 8/10/1984 7/25/1983	11	Sedimentation Pond Design, Construction, Operation and Maintenance	NDAC 69-05.2-16, NDAC 69-05.2-13-04(8)
7/12/2006 12/19/2001 3/8/1995 2/12/1985	12	Impoundment Certifications and Impoundment Inspection Reports by a Registered Professional Engineer	NDAC 69-05.2-16, NDCC 38-14.1-24(8)(c)
3/8/1995 6/21/1985	14	Clarification of Annual Map Requirements, NDAC 69-05.2-13-02	NDAC 69-05.2-13-02, NDCC 38-14.1-17
1/13/1999 11/5/1985	15	Performance Bond Release for Disposal Operations Located on Mined Lands	NDAC 69-05.2-12
7/2006	16a	Reclamation Cost Estimating Guidelines for Establishing Performance Bond Amounts	NDAC 69-05.2-21
7/2009	16b	2009 Updates to Variable Costs	NDAC 69-05.2-21
3/8/1995 1/20/1987	17	Suitable Plant Growth Material Removal and Redistribution Under NDAC 69-05.2-15, as revised January 1, 1987	NDAC 69-05.2-15, NDAC 69-05.2-08-10
2/3/1987	18	Policy for Allowing a Performance Bond to Cover More than One Permit Area	None.
7/12/2006 7/30/1997 3/8/1995 5/18/1988 7/15/1987	19	Guidelines for Sedimentation Pond Removal and Pond Site Reclamation	NDAC 69-05.2-16
1/29/2009 6/9/2004 7/30/1997 7/21/1992 9/6/1989	20	Performance Bond Responsibility for Water Management and Other Support Facilities	NDAC 69-05.2
8/1/1995	21	Mine Waste Disposal	NDAC 69-05.2-19,

Notice of Intent  
March 26, 2012

**Exhibit B: OSM FOIA Acknowledgment and Response Letter, March 13, 2012**

Carrie La Seur Plains Justice P.O. Box 1398 Billings, Montana 59103  
Email: claseur@plainsjustice.org  
REF: OSM 2012-00034 North Dakota Public Service Commission Coal Mining Policy  
Memoranda 20

United States Department of the Interior  
OFFICE OF SURFACE MINING Reclamation and Enforcement Western Region Office  
1999 Broadway, Suite 3320 Denver, CO 80202-3050

March 13, 2012

Dear Ms. La Seur:

The Office of Surface Mining Reclamation and Enforcement (OSM) received your FOIA request dated March 2, 2012 on March 6, 2012 via e-mail and assigned it Request No. OSM 2012- 00034. Your request was for copies of (1) all correspondence and documentation held by the Office of Surface Mining Reclamation and Enforcement related to review or evaluation of the enclosed list of North Dakota Public Service Commission coal mining policy memoranda; (2) a complete mine inspection report form from OSM and, if one exists, an inspection report that OSM has previously done as part of its oversight in North Dakota; (3) any evaluations performed by OSM of the completeness of North Dakota's "complete" inspections, and any documents produced as a result of such evaluation(s).

A search of our records has resulted in the location of the enclosed three documents responsive to Item Two of your request; a complete mine inspection report form from OSM and two inspection reports that OSM has previously done as part of its oversight in North Dakota. Nothing has been withheld.

We have reviewed our files and have been unable to locate records responsive to your request for Items One and Three: correspondence and documentation held by OSM related to review or evaluation of the enclosed list of North Dakota Public Service Commission coal mining policy memoranda; and any evaluations performed by OSM of the completeness of North Dakota's "complete" inspections, and any documents produced as a result of such evaluations. Under 43 CFR 2.21(e), the Agency is not required to create or compile a record to respond to a FOIA request. The Act applies only to records in the possession and under the control of the agency and in existence at the time the bureau begins its search for responsive documents.

If you consider this response to be a denial of your request, under 43 CFR 2.28(2), you may file an appeal by writing to:

U.S. Department of the Interior Freedom of Information Act Appeals Officer MS-6556  
MIB 1849 C. St. N.W. Washington, DC 20240

Your appeal must be received within thirty working days (Saturdays, Sundays, and legal

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holidays excepted) from the date of this letter. The appeal should be marked "FREEDOM OF INFORMATION ACT APPEAL" both on the envelope and the face of the letter. Your appeal should be accompanied by a copy of your original request and this letter along with any information you have which leads you to believe the records do in fact exist, including where they might be found, if the location is known to you. The officials responsible for the partial denial of your request are (Your Name), Freedom of Information Act Officer, OSM, and (Attorney Name), Attorney-Advisor, Branch of Regulatory Programs, Division of Surface Mining.

Fees for providing these documents are less than \$30.00 plus two hours of search time and are not being charged in accordance with 43 CFR 2.16(b)(2). Not being charged fees or receiving a fee waiver in the past does not mean you are automatically entitled to a fee waiver in the future.

"The documents released today may be subject to one or more exemptions under FOIA. OSM's release of these documents may be discretionary. Release of these documents does not waive OSM's ability to claim an exemption to FOIA, where appropriate, for similar documents in the future."

This completes our response to your request within OSM. If you have any further questions regarding your request, contact me at 303-293-5002 or by e-mail at [jmeuret@osmre.gov](mailto:jmeuret@osmre.gov).

If you have any questions you may contact me at 303-293-5002.

Sincerely,  
Enclosures  
cc: OSM FOIA Officer WR, CFO  
Judith Meuret  
Judith Meuret FOIA Coordinator Western Region

**Exhibit C: Approved Amendments to North Dakota State Program**

Original amendment submission date	Date of final publication	Citation/description
July 30, 1982	February 9, 1983, November 9, 1983	NDCC Chapter 38-14.1; subsection 5 of §38-14.1-02, definitions of "extended mining plan," "performance bond;" 38-14.1-03; subsection 3 of §38-14.1-07, 13; subdivision "u" of subsection 1 of §38-14.1-14; subdivision "n" of subsection 2 of §38-14.1-14; §38-14.15; subsection 3 of §38-14.1-20; subsections 17, 18 of §38-14.1-24; subsection 4 of §38-14.1-30; §38-14.1-38; Chapter 38-12.1; subdivision b of §1 of §38-12.1-04; Chapter 38-18; subsection 3 of §38-18-05, definition of "mineral developer;" subsection 6 of §38-18-05, definition of "mineral owner;" subsection 10 of §38-18-05, definition of "surface owner;" subsection 3 of §38-18-06; §38-18-07; NDAC 69-05.2, Chapter 69-05.2-01, 05 through 19, 21, 22, 23, 26; NDCC §38.12.1-03.
February 2, 1984	July 19, 1984	NDAC §§38-14-1.02(33)(a), 04.1, .2, .3, 13(1)(b), 24(1)(1); §§69-05.2-05-03, 69-05.2-09-18, 69-05.2-13-12.1 through .6, 69-05.2-16-04.
February 27, 1984	January 3, 1985	NDAC §§69-05.2-01-02, definition of "blaster" and renumbering of §69-05.2-17-01; 69-05.2-31.
June 18, 1985	February 18, 1986	NDCC 38-14.1-04.2, .3, -7, -10, -14, -21, -30, -33; NDAC 69-05.2-04-01, -06-02, -08-03, -09-02, -08, -09, -10-03, -16-09.
May 30, 1986	October 21, 1986	NDAC 69-05.2-01-02 (11), (12), definitions "coal preparation," "coal preparation plant," "coal processing plant," 08-05(2)(c)(5), -09-19, -13-13, -15-01, -02, -03(2), -04, -16-04(1)(b), -09(22), -15-01, -21-03.
September 8, 1986	December 9, 1986	NDAC 69-05.2-12-20.
April 3, 1987	November 16, 1987	NDCC 38-14.1-16(2), (7), -17(7).
February 10, 1987	February 2, 1988	NDAC 69-05.2-12, -13-04, -23.
June 1, 1988	March 10, 1989	Amendment X, "Standards for Evaluation of Revegetation Success and Recommended Procedures for

		Pre-and Post- mining Vegetation Assessments”.
April 11, 1989	August 4, 1989	NDCC 38-14.1-37, -39.
November 1, 1988	January 19, 1990	NDAC 69-05.2, 2-01 through -31.
November 20, 1990	January 9, 1992	NDCC 28-32-02(3), (4); NDAC 69-05.2-01-02, -03(4), (5), (7), -04-01(5)(b), -05-06(1), (1d), -06-01, -02(3) through (6), -08-05(2), (2C), (2e), -09(3b), -15, -09-01(4), -06(1), (2), -09(1)(c)(7-8), (1)(e), (2)(c through e), (h), -17(1), (2), -19(1), -10-03, -05(3a, e), -11-03, -12-01(4), (10), -12(3), -18, -20, -13-08(2) through (6), -12(4), -13, -15-04(4)(a)(2)(c), -16-03, -07(2a), -09(9), (17), (18), (20), -12(1), -14(3), -20, -17-01(2), -05(1), -18-01, -12(f), -20-03(1b, d), (3), -22-07(4)(e) through (i), -23-01, -24-01-09, -25-03(2), (4), -26-05, (3), -28-03, (7), 16 through 18.
June 12, 1991, November 19, 1991	August 20, 1992	NDCC 38-12.1-03-2.b, -05-2.d; 38-14.1-02-33.a, -24.13.a, -30.3.c through g(1), (2); NDAC 43-02-01-18.1, -20; 69-05.2-01-01-3, -05-08, -08-01, -02; 69-05.2-08, -10.1a, -12; -09-04, -09, -10, -11, -14, -17, -10-02, -11-01.5, 02, -12-01, -05 through -08, -12-11, -12, -14, -16, -13-06, -08, -14-01, -15-02, -16-04, -06, -12, -22-07, -25-03, -04; 69-05.2-32, -32-01.1.b.
April 21, 1993	March 15, 1994, July 22, 1994	NDAC 69-05.2-06-02(3), -09-01(4), -10-03(1), (1)(a), (4), -13-02(4)(e), -08(3) through (6), -15-04(3), -16-09(13), (14), (16), -20-03(3), (4); NDCC 38-14.1-21(5), -24(13)(e), -37(2), (a) through (f), (3) through (6); 38-12.1-04(1)(a); 43-02-01-05, -20.3(c)(2); 43-02-01-05.
October 22, 1993	July 22, 1994	NDAC 69-05.2-17-02, -29-01(2), -02(1)(a), (b), -03(2), (5), -04, -05, -06(1)(a), -07(1), -08(1)(a) through (e), (2).
November 10, 1994	April 13, 1995	NDAC 69-05.2-04-07(3)(a), -05-09, -06-01(2), -02(6), -10-03(5), -11-01(1)(d), -03(5)(c), -06(1)(c), -12-09(2), -15-02(2a), -16-09(7), (20), -21-01(2), -28-03(6).
February 17, 1994	July 14, 1995	Policy document entitled “Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments”.
March 20, 1996	April 28, 1997	NDAC 69-05.2-09-02.8 -13-02, -15-04.4a(2)c, -19-04.2, 3, -22-07.3.c, 4.d, 4.i, -26-05.3.c; 69-05, 22-

		07.4.j, .k; changes to new names of U.S. Natural Resource Conservation Service and the North Dakota Department of Health.
May 2, 1997	August 25, 1997	NDCC 38-14.1-04.1, .2, .3.
April 12, 1995	September 16, 1998	Statute: NDCC 38-14.1-37(4); NDCC 38-12.1-08; Rule: NDAC 43-02-01.
April 9, 1998	January 8, 1999	Revegetation Success Policy Doc. II-C, Prime Farmlands standards. II-F, Woodlands cover standards. II-H, Wetlands standards. II-I, Recreational land use standards for tree and shrub stocking. III-D, Methods for sampling woodland cover.
August 29, 1997	March 16, 1999	Rules: NDAC 69-05.2-13-01; NDAC 69-05.2-22-07.4.1; NDAC 69-05.2-28-19.
March 31, 1999	July 20, 1999	NDCC 38-14.1-30.3.f.
September 2, 1998	November 8, 1999	NDAC 69-05.2.90 NDAC 69-05.2-01-03 NDAC 69-05.2-05-09 NDAC 69-05.2-09-09 NDAC 69-05.2-13-02 NDAC 69-05.2-13-08 NDAC 69-05.2-15-02 NDAC 69-05.2-15-04 NDAC 69-05.2-16-09 NDAC 69-05.2-19-04
June 20, 2000	March 2, 2001	NDAC 69-05.2-01-03; NDCC 28-32 NDAC 69-05.2-09.15.8 NDAC 69-05.2-10-03.6.c NDAC 69-05.2-12-09 NDAC 69-05.2-12-12.2
		NDAC 69-05.2-16-05
		NDAC 69-05.2-22-07.4.1
		NDAC 69-05.2-26-05.3
		NDAC 69-05.2-29-03
March 16, 2000	May 17, 2001	Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining

		Vegetation Assessments.
May 9, 2001	November 16, 2001	NDCC 38-14.1
November 21, 2002	July 7, 2003	<i>Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments:</i> <i>Section II-C, D, E, F, G, and H;</i> <i>Section III-C, D, and E</i>
Feb. 10, 2003	Dec. 4, 2003	NDAC 69-05.2-01-02(120) NDAC 69-05.2-04-01.1 through 01.7 NDAC 69-05.2-05-01 NDAC 69-05.2-09-01 NDAC 69-05.2-12-12 NDAC 69-05.2-16-04 NDAC 69-05.2-16-05(1)(b)(3) NDAC 69-05.2-16-09
April 23, 2003	January 20, 2004	NDAC 69-05.2-01-02.13 NDAC 69-05.2-12-01.11 NDAC 69-05.2-12-04.2 NDAC 69-05.2-17-07 NDAC 69-05.2-22-07
April 20, 2005	November 28, 2005	NDCC 38-14.1-17.1.a and 2005b.
May 24, 2006	December 20, 2006	NDAC 69-05.2-06-03 NDAC 69-05.2-10-01 NDAC 69-05.2-12-12 NDAC 69-05.2-16-09 NDAC 69-05.2-22-07 NDAC 69-05.2-24-01
March 12, 2008	September 12, 2008	NDAC 69-05.2-08-08 NDAC 69-05.2-10-03 NDAC 69-05.2-12-05.1
November 12, 2009	December 27, 2010	NDCC 38-14.1-24(18).
		NDAC 69-05.2-09-2.
		2NDAC 69-05.2-22-07.