



Mark Gruman
Legal Counsel
North Dakota Public Service Commission
State Capitol
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0480

RECEIVED

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PUBLIC SERVICE COMMISSION

June 12, 2012

Re: Dakota Resource Council v. North Dakota Public Service Commission, Civil
Action 1:12-cv-064

Dear Mr. Gruman:

Please find enclosed notice of the above-captioned matter filed May 30, 2012 in U.S. District Court for the District of North Dakota by Dakota Resource Council, naming as Defendant North Dakota Public Service Commission, for violations of the Surface Mining Control and Reclamation Act. A request to waive service of a summons and two copies of a waiver of summons with a prepaid envelope are also enclosed.

Sincerely yours,

Carrie La Seur
Counsel to Dakota Resource Council

PO Box 1398
Billings, MT 59103

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Billings, MT 59101

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4

RC-12-677 Filed: 6/15/2012 Pages: 16
Summons in a Civil Action, Complaint to Compel
Compliance

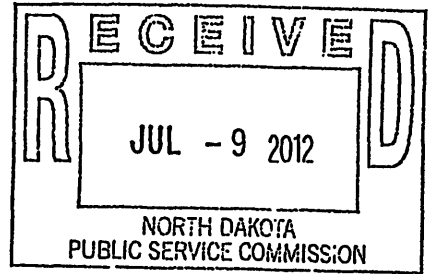
Plains Justice

UNITED STATES DISTRICT COURT

for the

District of North Dakota

Dakota Resource Council



Plaintiff

v.

North Dakota Public Service Commission

Civil Action No. 1:12-cv-064

Defendant

SUMMONS IN A CIVIL ACTION

To: Above Named Defendant(s)

North Dakota Public Service Commission

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Carrie LaSeur
Plains Justice
PO Box 1398
Billings, MT 59103

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: May 30, 2012



ROBERT ANSLEY, CLERK OF COURT

/s/ Renee Svihl, Deputy Clerk

Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA
SOUTHWEST DIVISION

DAKOTA RESOURCE COUNCIL)

Plaintiff,)

v.)

NORTH DAKOTA PUBLIC SERVICE)
COMMISSION)

Defendant.)

Case No. _____

COMPLAINT TO COMPEL
COMPLIANCE

I. INTRODUCTION

1.

NATURE OF THE CASE

This is a citizens' suit under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. §§ 1201-1328, for declaratory relief, a compliance order, and an award of costs and fees. Plaintiffs seek an order declaring Defendant in violation of SMCRA, compelling Defendant to refrain from giving further effect to certain policy memoranda unless and until Defendant obtains lawful approval of each memorandum from the Director of the Office of Surface Mining Reclamation and Enforcement ("OSM") of the United States Department of the Interior; compelling Defendant to comply with 30 C.F.R. § 732.17(g) with respect to each future change in laws that make up the North Dakota state regulatory program for implementing

SMCRA, and awarding costs and fees to Plaintiff from Defendant.

2.

PLAINTIFFS

Dakota Resource Council (DRC) is a North Dakota non-profit organization formed in 1978. DRC's principle place of business is 103½ S. Third Street, Suite 8, Bismarck, ND 58504. DRC has over 380 members across North Dakota.

DRC brings this action on behalf of certain of its members who live, work, and recreate in areas that are directly affected by surface coal mining and reclamation operations in North Dakota. DRC members recreate and work in areas whose attractiveness and utility are or would be diminished by surface coal mining and reclamation operations. Certain of Plaintiff's individual members own, live on, or ranch lands adjacent to or within sight of active or proposed surface coal mining and reclamation operations. Their peaceful enjoyment of their homes, the viability of their farming, ranching, and outfitting livelihoods, and their personal safety on local roads are or imminently would be threatened by surface coal mining and reclamation operations, including but not limited to blasting, digging, and hauling.

Plaintiff has standing to commence and prosecute this action because the interests of certain of Plaintiff's members are or may be adversely affected by Defendant's unlawful implementation of changes to the North Dakota regulatory program. Plaintiff's members depend on strict enforcement of SMCRA and the North Dakota regulatory program as approved by OSM to protect their affected interests. Plaintiff's members rely upon Plaintiff to bring litigation on their behalf to ensure that North Dakota regulators strictly comply with SMCRA in regulating surface coal mining operations in North Dakota.

3.

DEFENDANT

Defendant North Dakota Public Service Commission (“NDPSC”) is the state regulatory authority for North Dakota within the meaning of 30 U.S.C. § 1291(26), as the result of approval of North Dakota’s state regulatory program by the Secretary of the Interior pursuant to 30 U.S.C. § 1253. *See* 30 C.F.R. Part 934. NDPSC’s principal place of business is 600 East Boulevard, Department 408, Bismarck, ND 58505-0480. Mark Gruman is legal counsel for NDPSC.

II.

JURISDICTION AND VENUE

4.

This Court has subject matter jurisdiction over the claims set forth in this complaint pursuant to 30 U.S.C. § 1270(a). Alternatively, this court has jurisdiction of this action pursuant to 28 U.S.C. § 1331 and § 2201 (declaratory judgment) and 30 U.S.C. § 1270(a)(2). The relief requested by Plaintiffs is authorized by statute in 28 U.S.C. §§ 2201 and 2202, and 30 U.S.C. § 1270(a)(2).

5.

Venue is proper in this Court pursuant to 30 U.S.C. § 1270(c), 28 U.S.C. § 1391, and LR 3.1(a). NDPSC conducts its business primarily from the North Dakota State Capitol in this district. Plaintiff has its office in this district. The events or omissions giving rise to the claims occurred in this district, where a significant portion of the surface coal mining and reclamation operations affected by the non-discretionary duties at issue are or would be located.

6.

Pursuant to 30 U.S.C. § 1270(b)(2), on March 26, 2012, Plaintiffs gave notice in writing to NDPSC of their intent to commence and prosecute this action. More than 60 days have since elapsed.

III.

STATUTORY AND REGULATORY FRAMEWORK

7.

The purpose of the Surface Mining Control and Reclamation Act (SMCRA) includes “to establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations”, “assure that the rights of surface landowners and other persons with a legal interest in the land or appurtenances thereto are fully protected from such operations”, and “wherever necessary, exercise the full reach of Federal constitutional powers to insure the protection of the public interest through effective control of surface coal mining operations.” 30 U.S.C. § 1202(a), (b), and (m).

8.

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)(emphasis added).

9.

Following initial approval of each state regulatory program, federal law requires the Director of OSM 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 SMCRA or its implementing federal regulations. 30 C.F.R. § 732.17(e).

10.

The federal regulations implementing SMCRA provide explicit procedures for any amendments to the approved state program. 30 C.F.R. § 732.17(e)-(h). Each state regulatory authority has a mandatory, non-discretionary duty to refrain from giving effect to any change to an approved state regulatory program unless and until the Director of OSM lawfully approves the change. 30 C.F.R. § 732.17(g).

IV.

FACTUAL BACKGROUND

11.

Following initial approval of North Dakota's state regulatory program on December 15, 1980, NDPSC has issued numerous surface mining "policy memoranda" (see Exhibit), some updated multiple times, governing various surface mining activities.

12.

Based on information and belief after reasonable inquiry, NDPSC has not submitted any of these memoranda to OSM for its evaluation and approval, nor has OSM lawfully approved any of these memoranda as an independent agency action, pursuant to the procedures that SMCRA requires.

13.

Some of the memoranda, including but not limited to memos 5, 6, 15, 18 and 20, contain substantive inconsistencies with the federal environmental protection performance standards that must be adopted and implemented under state regulatory programs for surface coal mining and

reclamation operations. See 30 C.F.R. Parts 816-828.

14.

NDPSC is engaged in a pattern and practice of giving effect to each of these unapproved changes in the laws or regulations that make up the approved North Dakota program, in violation of 30 U.S.C. § 1254(a)(3) and 30 C.F.R. § 732.17(g).

V.

CAUSE OF ACTION: VIOLATION OF 30 C.F.R. § 732.17(g)

15.

For its cause of action, Plaintiff realleges each and every prior allegation of this complaint.

16.

Plaintiff has served proper notice of this Complaint on the relevant agencies and parties as required by 30 U.S.C. § 1270(b) and 30 C.F.R. § 700.13.

17.

NDPSC has engaged in a pattern and practice of violation of mandatory, non-discretionary duties to submit state program amendments to a review process culminating in either formal approval or denial by OSM prior to implementation, as required by 30 U.S.C. § 1253(h) and 30 C.F.R. § 732.17(g) and (h).

18.

Certain of Plaintiff's members who work, reside and recreate near regulated strip mines are aggrieved by these violations because the North Dakota state regulatory program as implemented is now inconsistent with certain federal permanent performance standards for state programs as a result of these violations, including weaker standards for reclamation and waste disposal practices than required under the federal program, which have resulted and will continue

to result over time in diminished land values and quality of life.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

A) Provide declaratory relief stating that NDPSC has violated and continues to violate the Surface Mining Control and Reclamation Act and its implementing federal regulations as described above;

B) Enter an order compelling NDPSC to refrain from giving further effect to unapproved amendments to the North Dakota program, including but not limited to the specific amendments identified above;

C) Award Plaintiff its costs and expenses, including reasonable attorney fees, pursuant to 30 U.S.C. § 1270(d);

D) Retain jurisdiction over this action to ensure compliance with the Court's decree;
and

E) Grant all other relief the Court deems just and proper.

Dated this 30th day of May, 2012.

PLAINS JUSTICE
P.O. Box 1398
Billings, MT 59103
Tel. 406-969-1040
Fax: 866-484-2373

/s/ Carrie La Seur
Carrie L. La Seur
Email: claseur@plainsjustice.org

Attorney for Plaintiffs

Exhibit: NDPSC Surface Mining Policy Memoranda

Dates of Issue & Revisions	No.	Subject
3/8/1995	2	Mine Personnel Accompanying Commission Representatives During Inspections
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
3/8/1995	4	Payment of Charges for Analysis of Soil, Spoil and Water Samples Taken by PSC Representatives
3/8/1995 8/10/1984 3/8/1995	5	Suitable Plant Growth Material Removal
3/8/1995 8/10/1984 5/4/1979	6	Activities Covered by Surface Coal Mining Permits
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
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)
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
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
3/8/1995 8/10/1984 7/25/1983	11	Sedimentation Pond Design, Construction, Operation and Maintenance

Exhibit: NDPSC Surface Mining Policy Memoranda (Continued)

7/12/2006 12/19/2001 3/8/1995 2/12/1985	12	Impoundment Certifications and Impoundment Inspection Reports by a Registered Professional Engineer
3/8/1995 6/21/1985	14	Clarification of Annual Map Requirements, NDAC 69-05.2-13-02
1/13/1999 11/5/1985	15	Performance Bond Release for Disposal Operations Located on Mined Lands
7/2006	16a	Reclamation Cost Estimating Guidelines for Establishing Performance Bond Amounts
7/2009	16b	2009 Updates to Variable Costs
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
2/3/1987	18	Policy for Allowing a Performance Bond to Cover More than One Permit Area
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
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
8/1/1995	21	Mine Waste Disposal
6/9/2004	22	Re-permitting Reclaimed Lands that Have Received Final Bond Release
7/12/2006	23	Mine-related Roads Subject to Design and Performance Standards and Road Certification Requirements

UNITED STATES DISTRICT COURT
for the
District of North Dakota

DAKOTA RESOURCE COUNCIL
Plaintiff
v.
NORTH DAKOTA PUBLIC SERVICE COMMISSION
Defendant

Civil Action No. 1:12-cv-064

NOTICE OF A LAWSUIT AND REQUEST TO WAIVE SERVICE OF A SUMMONS

To: Mark Gruman, Legal Counsel, NDPSC
(Name of the defendant or - if the defendant is a corporation, partnership, or association - an officer or agent authorized to receive service)

Why are you getting this?

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must return the signed waiver within 30 days (give at least 30 days, or at least 60 days if the defendant is outside any judicial district of the United States) from the date shown below, which is the date this notice was sent. Two copies of the waiver form are enclosed, along with a stamped, self-addressed envelope or other prepaid means for returning one copy. You may keep the other copy.

What happens next?

If you return the signed waiver, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 60 days from the date this notice is sent (see the date below) to answer the complaint (or 90 days if this notice is sent to you outside any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

Date: June 12, 2012

Signature of the attorney or unrepresented party

Carrie La Seur
Printed name

PO Box 1398
Billings, MT 59103
Address

claseur@plainsjustice.org
E-mail address

406-969-1040
Telephone number

UNITED STATES DISTRICT COURT

for the

District of North Dakota

DAKOTA RESOURCE COUNCIL

Plaintiff

v.

NORTH DAKOTA PUBLIC SERVICE COMMISSION

Defendant

Civil Action No. 1:12-cv-064

WAIVER OF THE SERVICE OF SUMMONS

To: CARRIE LA SEUR

(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from JUNE 12, 2012, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: _____

Signature of the attorney or unrepresented party

Printed name of party waiving service of summons

Printed name

Address

E-mail address

Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

UNITED STATES DISTRICT COURT

for the

District of North Dakota

DAKOTA RESOURCE COUNCIL

Plaintiff

v.

NORTH DAKOTA PUBLIC SERVICE COMMISSION

Defendant

Civil Action No. 1:12-cv-064

WAIVER OF THE SERVICE OF SUMMONS

To: CARRIE LA SEUR

(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

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Date: _____

Signature of the attorney or unrepresented party

Printed name of party waiving service of summons

Printed name

Address

E-mail address

Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

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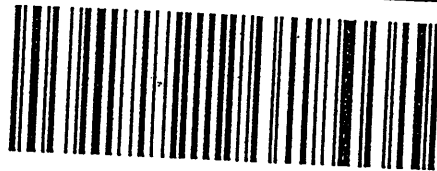
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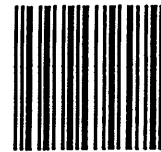


LA SEUR
 P.O. Box 1398
 Billings, MT 59103

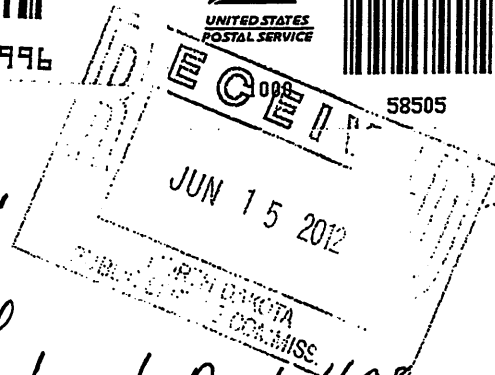
CERTIFIED MAIL



7012 1010 0001 6533 0996



58505



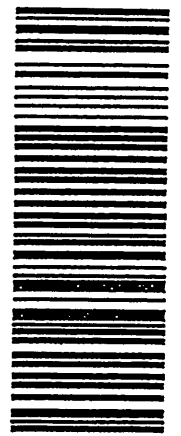
*Mark Gruman
 Legal Counsel
 ND PSC
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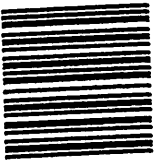
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Darrell NITSCHLEY
Executive Secretary

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