



NEWS RELEASE
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Public Service Commission Urges Federal Office of Surface Mining to Engage State Participation Before Finalizing the Stream Protection Rule

BISMARCK, ND – The North Dakota Public Service Commission today urged Janice Schneider, Assistant Secretary for Land and Minerals Management with the U.S. Department of the Interior, that the Office of Surface Mining’s (OSM) proposed Stream Protection Rule is unworkable for North Dakota, would be devastating to the state’s mining industry and scolded the agency for failing to seek and incorporate expertise from North Dakota mining officials during the more than five-year process of developing the rule. Assistant Secretary Schneider was in North Dakota today touring the Freedom Mine north of Bismarck at the request of U.S. Senator John Hoeven to see firsthand how North Dakota mines work.

“Today I showed Assistant Secretary Schneider reclaimed land, areas that have not been mined and areas that are currently being mined,” said Commissioner Randy Christmann, who holds the coal mining and reclamation portfolio. “Along with the tours, information was shared from the mining experts that show this rule is actually going to have negative environmental consequences, not positive, and will come at a great cost to North Dakota taxpayers, mineral owners and ratepayers.”

The PSC’s Reclamation Division is charged with administering the state’s program regulating coal mining and associated reclamation in agreement with the OSM. During conversations with Assistant Secretary Schneider, the Commissioners pointed out that state regulators, who have been successfully implementing the federal Surface Mining Control and Reclamation Act (SMCRA) for more than 30 years, were not given the opportunity to have meaningful input into the development of these proposed rules.

“Our staff, who have many decades of award-winning reclamation experience, have concluded this proposed rule will have a more dramatic effect on coal mining in North Dakota than did the surface coal mining regulations in their entirety when first enacted,” Commissioner Julie Fedorchak said. “This is a foolish proposal that shows very little effort on the administration’s part to recognize the vast differences in geology and mining practices in each state and develop regulations to properly address them. I appreciate Assistant Secretary Schneider coming here to see first-hand the real conditions and reclamation practices in our state and to direct her staff to fix this proposed rule accordingly.”

Concerns outlined to Assistant Secretary Schneider include the following:

- In the past when significant rule changes were made, state regulatory authorities were invited to review and comment and state/OSM meetings were held to discuss

concerns the states had. None of this occurred during the more than five years that OSM spent working on the proposed stream protection rule.

- North Dakota has never had any significant issues or controversy regarding mining activities near streams. Adverse impacts to streams and related resources in North Dakota have never been identified during annual OSM reviews.
- PSC staff in reviewing the proposed rules has not found a single reference document that specifically pertains to surface coal mining in North Dakota. Nationwide standards impact surface mining operations in North Dakota much differently than mountaintop removal and steep slope mining operations in the Appalachian region of the United States.
- The proposed rules require that native species be planted on all reclaimed lands except for prime farmland. This new requirement fails to recognize that well over 50 percent of the mined lands in North Dakota are reclaimed to non-prime farmland; only about 10 percent is considered prime farmland. Returning pre-mine croplands that are mined to cropland is very important to landowners and farmers in North Dakota. Meeting North Dakota requirements to restore productivity on all cropland and other agricultural uses must be done using the commonly grown crops in the region.
- The surface and ground water monitoring requirements require the collection of water samples monthly, no exceptions. The proposed rule once again does not take into account the different regions of the country and the fact that nearly all streams freeze over during the winter in North Dakota and other northern states and snow depths can make groundwater monitoring wells inaccessible for sampling.
- The proposed rule requires the state to coordinate with and obtain concurrence from the U.S. Fish and Wildlife Service on matters involving threatened and endangered species and other important habitat. This is not mandated by SMCRA.
- Language included in SMCRA states “because of diversity in terrain, climate, biologic, chemical and other physical conditions in areas subject to mining operations, the primary governmental responsibility for developing, authorizing, issuing and enforcing regulations for surface mining and reclamation operations to this Act should rest with the states.” The stream protection rule in many instances proposed to take authority away from the states and is in clear conflict with the intent expressed by Congress in this statement.

The North Dakota Public Service Commission is a constitutionally created state agency with authority to permit, site and regulate certain business activities in the state including electric and gas utilities, telecommunications companies, power plants, electric transmission lines, pipelines, railroads, grain elevators, auctioneers, commercial weighing devices, pipeline safety and coal mine reclamation. For more information, contact the Public Service Commission at (701) 328-2400 or www.psc.nd.gov.

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