



# United States Department of the Interior



## OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

Appalachian Region  
Three Parkway Center  
Pittsburgh, Pennsylvania 15220

December 30, 2013

Mr. James G. Murphy  
National Wildlife Federation  
149 State Street  
Montpelier, VT 05602

Mr. Joe F. Childers  
Joe F. Childers & Associates  
201 West Short Street, Suite 300  
Lexington, Kentucky 40507

RE: West Virginia 733 Petition dated June 24, 2013.

Dear Messrs. Murphy and Childers:

The Office of Surface Mining Reclamation and Enforcement (OSM) has completed the verification process and reached an initial determination regarding your June 24, 2013, petition. Your petition requested action pursuant to 30 CFR Part 733 of the Federal regulations with respect to the West Virginia surface coal mining regulatory program (WV program). Specifically, the petition requested immediate substitution of Federal enforcement of the WV program or that OSM recommend that the Secretary of the Interior withdraw approval of all or part of the WV program, as set forth in 30 CFR Sections 733.12(f) and (g). However, prior to the initiation of the actions requested in the petition, the Federal regulations at 30 CFR Sections 733.12(a)(2)-(d) require OSM to perform a verification and evaluation process.

As discussed in OSM's analysis and determination document (enclosed), the verification process entails an initial examination to determine, among other things, the accuracy of the allegations, whether the allegations relate to an existing requirement within the approved program, and whether the weight of the evidence sufficiently supports the need to conduct an evaluation pursuant to 30 CFR Section 733.12(a)(2). The enclosed document provides OSM's analysis and determination for each allegation raised in the petition.

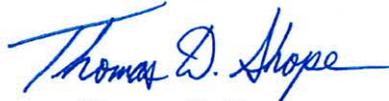
After a thorough review of the petition, information provided by the State regulatory authority, the West Virginia Department of Environmental Protection (WVDEP), and other information available to OSM, OSM has concluded that 14 of the 19 allegations set forth in the petition will not be further evaluated under the 30 CFR 733 procedures. However, OSM has determined that

the remaining five allegations will receive further evaluation pursuant to 30 CFR Section 733.12(a)(2) to determine whether there is reason to believe WVDEP is not effectively implementing, administering, maintaining, or enforcing the approved WV program. The five allegations which will receive evaluation are:

1. WVDEP Fails to Address Potential Flooding Impacts in the Permitting Process with Storm Water Runoff Analysis (SWROA);
2. WVDEP Fails to Issue SMCRA Violations Where National Pollutant Discharge Elimination System (NPDES) Violations Exist;
3. WVDEP Fails to Regulate Selenium Pollution;
4. WVDEP Fails to Properly Define Impacted Areas in Cumulative Hydrologic Impact Analysis (CHIA) Results in Harm to Watersheds; and
5. WVDEP Fails to Require Properly Protective Soil Removal and Reclamation Measures for Mining Sites.

OSM will keep you apprised of the evaluation status and OSM's conclusions regarding same. If you have any questions related to this matter, please contact Field Office Director Roger Calhoun, from our Charleston, West Virginia Field Office at (304) 347-7158.

Sincerely,

A handwritten signature in blue ink that reads "Thomas D. Shope". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Thomas D. Shope  
Regional Director

Enclosure: OSM Analysis and Determination of the June 2013 West Virginia 733 Petition

c: Charleston Field Office, OSM