



U.S. Office of Surface Mining

News Release



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**OSM returns "lands unsuitable for mining" petition as incomplete,
lacking merit; petitioners may re-submit.**

(Knoxville, TN) -- The US Office of Surface Mining has returned as incomplete and lacking serious merit a petition seeking a "lands unsuitable for mining" designation for a large area of Eastern Tennessee.

OSM determined that the petition doesn't meet the minimum legal requirements to go forward. The petition makes broad allegations covering a large tract of land, doesn't offer factual support for its allegations, doesn't address all lands within the area and doesn't take current mining regulations into consideration, all of which are minimum requirements set by federal law for such a petition to be deemed complete.

The petitioners may revise their petition and re-submit it if they wish. It's not unusual for Lands Unsuitable for Mining (LUM) petitions to be returned at least once before being determined complete. However, successful LUM petitions usually cover much smaller areas, make more specific allegations and present detailed supporting evidence.

On November 10, 2005, OSM's Knoxville Field Office received a "lands unsuitable for coal mining" petition from the National Parks Conservation Association and the Warioto Chapter of the National Audubon Society requesting that certain lands in Tennessee, including the New River watershed, be designated as unsuitable for surface coal mining operations.

The petition area comprises 283,834 acres (443.5 square miles), including portions of four counties in northeastern Tennessee: Anderson, Campbell, Scott, and Morgan.

In enacting the Surface Mining, Control and Reclamation Act (SMCRA) in 1977, Congress prohibited surface coal mining in several types of areas listed in Section 522 of the Act. It also provided the petition process as a special tool to be used to prohibit mining in sensitive areas not already protected where the petitioners can demonstrate that mining and reclamation under SMCRA requirements is not feasible. Federal regulators are given less than a year to make a determination on the petition based on the supporting evidence provided. Thus, the first step in the process is determining whether the petition is complete and provides evidence that establishes the validity of the allegations.

Federal regulations (30 CFR Section 764.13) require that "(1) At a minimum, a complete petition for designation shall include...(v) Allegations of fact and supporting evidence, covering all lands in the petition area, which tend to establish that the area is unsuitable for all or certain types of surface coal mining operations ...assuming that contemporary mining practices required under applicable regulatory programs would be followed if the area were to be mined." Each of the allegations of fact should be specific as to the type of mining operation that is deemed unsuitable by the petitioner and the portion(s) of the petitioned area and petitioner's interests to which the allegation applies. The petition must be supported by evidence that establishes the validity of the allegations for the particular type of mining operation for each portion of the petitioned areas.

OSM determined that the petition is incomplete and lacks merit. Some of the reasons included:

1) the petition relies on outdated data; it assumes that future mining permits would allow the kind of environmental impacts that occurred before enactment of the Surface Mining Act more than 25 years ago. For example, the petition supports allegations with an unpublished study dated 1979 and based on data collected in 1977 and 1978, before the enactment of a regulatory program in Tennessee. This fails to meet the requirement to assume "that contemporary mining practices required under applicable regulatory programs would be followed if the area were to be mined."

2) the petition is overly broad in scope; it doesn't present the required factual allegations and supporting evidence for the designated area. OSM's review concludes: "...the large size of the selected area means that it is unlikely that the evidence presented can relate to criteria for designation throughout the entire petition area...the petitioners have failed to identify the area to which each allegation applies within the larger area or provide adequate evidence to support the allegation for the entire area." Further, petitioners didn't provide evidence that supported the specific allegations for the entire 444 square mile region or discrete and specific areas within the petition area.

3) the petition did not include evidence of impacts that were not preventable under SMCRA. OSM's analysis determined that several of the petitioner's allegations were "without merit" because they were not supported by data or relied on outdated information and anecdotal assertions to put forward unsupported conclusions.

For example, the petitioners allege that "conducting mining operations on such steep terrain poses a significant risk of landslides, threatening public safety and severe environmental degradation of the receiving waters. Importantly, compliance with reclamation requirements does not alleviate this threat." The petitioners cite the High Point Mountain landslide that occurred in February 2005 in the Sundquist Wildlife Management Area (WMA) in Scott County, asserting that the slide occurred on a reclaimed surface mine that had been granted SMCRA bond release in 1993 in accordance with the Tennessee Federal Program. The petitioners also state that they have personally observed "a number of slides in the Fork Mountain area of the Sundquist (West). The petitioners also indicate that current mining operations at the Zeb Mountain Mine, operated by National Coal Corporation, located near the Royal Blue WMA have

had problems associated with slides related to a coal haul road. The petitioners conclude that "most of the landslides referenced above, including the High Point Mountain slide, appear to have occurred at mining operations that are either undergoing contemporaneous reclamation or have already been reclaimed under the backfilling and grading performance standards of SMCRA. Thus reclamation that protects public safety and water quality is not feasible on these steep slopes".

The steep slopes within the petition area are not unique from other areas throughout Appalachia that have been mined and successfully reclaimed. The Highpoint landslide area was initially permitted, mined, backfilled and re-graded under the State's interim and permanent regulatory program and subsequently re-permitted after implementation of the Tennessee Federal Program in 1984, however the site was not mined under the Tennessee Federal Program. Other examples cited by the petitioners were either pre-SMCRA or not yet reclaimed. In any event, a small number of landslides in steep slope areas do not support the allegation that steep slope reclamation is not technologically and economically feasible. Thousands of mines have been successfully reclaimed in steep slope areas throughout Appalachia during the 28 years since the enactment of SMCRA.

A copy of OSM's response is available by mail, email or fax by contacting Mike Gauldin at mgauldin@osmre.gov or (202) 208-3565.

Federal Regulations governing Lands Unsuitable for Mining Petitions
30 CFR §764.13 - Petitions

(a) Right to petition. Any person having an interest which is or may be adversely affected has the right to petition the regulatory authority to have an area designated as unsuitable for surface coal mining operations, or to have an existing designation terminated. For the purpose of this Action, a person having an interest which is or may be adversely affected must demonstrate how he or she meets an "injury in fact" test by describing the injury to his or her specific affected interests and demonstrate how he or she is among the injured.

(b) Designation. The regulatory authority shall determine what information must be provided by the petitioner to have an area designated as unsuitable for surface coal mining operations.

(1) At a minimum, a complete petition for designation shall include—

(i) The petitioner's name, address, telephone number, and notarized signature;

(ii) Identification of the petitioned areas, including its location and size, and a U.S. Geological Survey topographic map outlining the perimeter of the petitioned area;

(iii) An identification of the petitioner's interest which is or may be adversely affected by surface coal mining operations, including a statement demonstrating how the petitioner satisfies the requirements of paragraph (a) of this section;

(iv) A description of how mining of the area has affected or may adversely affect people, land, air, water, or other resources, including the petitioner's interests; and

(v) Allegations of fact and supporting evidence, covering all lands in the petition area, which tend to establish that the area is unsuitable for all or certain types of surface coal

mining operations, pursuant to specific criteria of sections 522(a) (2) and (3) of the Act, assuming that contemporary mining practices required under applicable regulatory programs would be followed if the area were to be mined. Each of the allegations of fact should be specific as to the mining operation, if known, and the portion(s) of the petitioned area and petitioner's interests to which the allegation applies and be supported by evidence that tends to establish the validity of the allegations for the mining operation or portion of the petitioned areas.

(2) The regulatory authority may request that the petitioner provide other supplementary information which is readily available.

Full text of 30 CFR 700 is available on [the GPO Access website](#).

Text from the Act:

DESIGNATING AREAS UNSUITABLE FOR SURFACE COAL MINING
[30 U.S.C. 1272]

SEC. 522. (a)(1) To be eligible to assume primary regulatory authority pursuant to section 503, each State shall establish a planning process enabling objective decisions based upon competent and scientifically sound data and information as to which, if any, land areas of a State are unsuitable for all or certain types of surface coal mining operations pursuant to the standards set forth in paragraphs (2) and (3) of this subsection but such designation shall not prevent the mineral exploration pursuant to the Act of any area so designated.

(2) Upon petition pursuant to subsection (c) of this section, the State regulatory authority shall designate an area as unsuitable for all or certain types of surface coal mining operations if the State regulatory authority determines that reclamation pursuant to the requirements of this Act is not technologically and economically feasible.

(3) Upon petition pursuant to subsection (c) of this section, a surface area may be designated unsuitable for certain types of surface coal mining operations if such operations will -

(A) be incompatible with existing State or local land use plans or programs; or

(B) affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems; or

(C) affect renewable resource lands in which such operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products, and such lands to include aquifers and aquifer recharge areas; or

(D) affect natural hazard lands in which such operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

(4) To comply with this section, a State must demonstrate it has developed or is developing a process which includes -

(A) a State agency responsible for surface coal mining lands review;

(B) a data base and an inventory system which will permit proper evaluation of the capacity of different land areas of the State to support and permit reclamation of surface coal mining operations;

(C) a method or methods for implementing land use planning decisions concerning

surface coal mining operations; and

(D) proper notice, opportunities for public participation, including a public hearing prior to making any designation or redesignation, pursuant to this section.

(5) Determinations of the unsuitability of land for surface coal mining, as provided for in this section, shall be integrated as closely as possible with present and future land use planning and regulation processes at the Federal, State, and local levels.

(6) The requirements of this section shall not apply to lands on which surface coal mining operations are being conducted on the date of enactment of this Act or under a permit issued pursuant to this Act, or where substantial legal and financial commitments in such operation were in existence prior to January 4, 1977.

(b) The Secretary shall conduct a review of the Federal lands to determine, pursuant to the standards set forth in paragraphs (2) and (3) of subsection (a) of this section, whether there are areas on Federal lands which are unsuitable for all or certain types of surface coal mining operations: Provided, however, That the Secretary may permit surface coal mining on Federal lands prior to the completion of this review. When the Secretary determines an area on Federal lands to be unsuitable for all or certain types of surface coal mining operations, he shall withdraw such area or condition any mineral leasing or mineral entries in a manner so as to limit surface coal mining operations on such area. Where a Federal program has been implemented in a State pursuant to section 504, the Secretary shall implement a process for designation of areas unsuitable for surface coal mining for non-Federal lands within such State and such process shall incorporate the standards and procedures of this section. Prior to designating Federal lands unsuitable for such mining, the Secretary shall consult with the appropriate State and local agencies.

(c) Any person having an interest which is or may be adversely affected shall have the right to petition the regulatory authority to have an area designated as unsuitable for surface coal mining operations, or to have such a designation terminated. Such a petition shall contain allegations of facts with supporting evidence which would tend to establish the allegations. Within ten months after receipt of the petition the regulatory authority shall hold a public hearing in the locality of the affected area, after appropriate notice and publication of the date, time, and location of such hearing. After a person having an interest which is or may be adversely affected has filed a petition and before the hearing, as required by this subsection, any person may intervene by filing allegations of facts with supporting evidence which would tend to establish the allegations. Within sixty days after such hearing, the regulatory authority shall issue and furnish to the petitioner and any other party to the hearing, a written decision regarding the petition, and the reasons therefore. In the event that all the petitioners stipulate agreement prior to the requested hearing, and withdraw their request, such hearing need not be held.

(d) Prior to designating any land areas as unsuitable for surface coal mining operations, the regulatory authority shall prepare a detailed statement on (i) the potential coal resources of the area, (ii) the demand for coal resources, and (iii) the impact of such designation on the environment, the economy, and the supply of coal.

(e) After the enactment of this Act and subject to valid existing rights no surface coal mining operations except those which exist on the date of enactment of this Act shall be permitted -

(1) on any lands within the boundaries of units of the National Park System, the National Wildlife Refuge Systems, the National System of Trails, the National Wilderness

Preservation System, the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act and National Recreation Areas designated by Act of Congress;

(2) on any Federal lands within the boundaries of any national forest: Provided, however, That surface coal mining operations may be permitted on such lands if the Secretary finds that there are no significant recreational, timber, economic, or other values which may be incompatible with such surface mining operations and -

(A) surface operations and impacts are incident to an underground coal mine; or

(B) where the Secretary of Agriculture determines, with respect to lands which do not have significant forest cover within those national forests west of the 100th meridian, that surface mining is in compliance with the Multiple-Use Sustained-Yield Act of 1960, the Federal Coal Leasing Amendments Act of 1975, the National Forest Management Act of 1976, and the provisions of this Act: And provided further, That no surface coal mining operations may be permitted within the boundaries of the Custer National Forest;

(3) which will adversely affect any publicly owned park or places included in the National Register of Historic Sites unless approved jointly by the regulatory authority and the Federal, State, or local agency with jurisdiction over the park or the historic site;

(4) within one hundred feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way line and except that the regulatory authority may permit such roads to be relocated or the area affected to lie within one hundred feet of such road, if after public notice and opportunity for public hearing in the locality a written finding is made that the interests of the public and the landowners affected thereby will be protected; or

(5) within three hundred feet from any occupied dwelling, unless waived by the owner thereof, nor within three hundred feet of any public building, school, church, community, or institutional building, public park, or within one hundred feet of a cemetery.