

GETTING TO KNOW JOE

OSM's New Director Answers Questions From Media

For the first time since joining OSM, Director Joe Pizarchik was interviewed by reporters from the coalfield areas the week of December 7, 2009. Their insightful questions will also provide the public — as well as OSM employees — a chance to get to know Joe a little better. What follows is a partial transcript of a few of the questions he answered. We'll add more as the sessions are transcribed.

Q: During the confirmation process, you weren't really able to answer some of the criticism you received from coalfield citizens' groups, and as you know, some of them opposed your nomination. I wondered if you wanted to generally respond to their opposition to you getting this job.

A: The process that I went through is a process that's laid out, a hearing process for the Senate to get input on the president's nomination of me to be the head of the agency. And in that process, it does provide for opportunities for the public to weigh in with their particular thoughts on it.

The Senate, I thought, did a very good job and a fair job of hearing and listening to those folks and asking questions both at the hearing and questions for the record afterward, regarding the comments that they had received from folks on that. I thought the process worked as it was intended with the Senators doing what they were supposed to do, listening to the public and making their evaluation as to whether to confirm me or not. Ultimately, it ended up with confirmation, as you know.

Those groups, I think, play a valuable role in that process and play a valuable role in what we do on a regular basis regarding our oversight and the states regulation of coal mining. I'm happy to have their input with it. They are stakeholders in the process who I think that should continue to feel free to comment on the process both on any rulemakings that we do or that the states may do, as well as to take the opportunity to talk to me or to come in and meet with me if they feel they would like to do so. I'm certainly interested in hearing from all the stakeholders from all the perspectives.

Q: During the confirmation hearing, in committee and in the Senate, you were asked a couple of questions about mountaintop removal coal mining. You essentially said you needed to get more information about mountaintop removal before you could speak on the issue. Do you think mountaintop removal is a damaging mining practice, and if so, what do you think OSM should do about it?

A: Mountaintop removal is a process that is specifically authorized in the Surface Mining Act by Congress. In addition to authorizing it, it does place certain conditions upon when it can be implemented, and, as a member of the executive branch of the government, our job is to execute the laws as enacted by Congress, and that is what I intend to do here.

Obviously, there is a lot of interest in the practice both in the areas where it occurs, as well as

folks from outside that area, with the various states and Federal agencies and stakeholders, and this is something that needs to be further evaluated to see if that practice, as it has been occurring, is in accordance with the limitations and guidelines provided by Congress.

I'm sure you saw Senator Byrd's letter to the editor last week, where he laid out his perspective on that, and I thought the Senator did a very good job laying out some of the issues, and how in coal mining, it's an industry that's consistently been subject to change. I don't know that anyone could have said what he said with any more authority out there.

He did an excellent job of that. He is correct; and I agree with his assessment that all of the stakeholders need to be involved in this. It needs to get to the point where folks from whatever side they are, from however far apart they may be, sit down and figure out how we're going to deal with that today.

That is something that we have already embarked upon with the activities that were announced with the enhanced oversight inspection, the stream protection measures that went out last month, as well as the advance notice of proposed rulemaking that was published on the 30th of November. We are very interested in hearing the input of all the stakeholders. How best should this practice be regulated? How should it be managed? How can we give effect to the provisions that Congress put into the law that best protects the environment?

Q: In the statement you refer to that Senator Byrd made, Senator Byrd said that most Americans oppose mountaintop removal, and that most members of Congress oppose mountaintop removal. Given that, do you think Congress needs to take another look at this specific authorization in SMCRA for mountaintop removal?

A: That's a decision for Congress to decide. There are a lot of very talented and smart people over there. They have a better pulse on the people and their constituents than I, and I would defer to their judgment on whether they should do that or not.

I think one of the things the senator pointed out is that the practice of mountaintop mining, as it's conducted today, may not be as acceptable to the public as it was 20 to 30 years ago. Certainly the practice has evolved from beyond what it was 20 to 30 years ago.

I think that's a recognition of what has transpired in the past for coal mining. The practices that were acceptable in the 1920's were not acceptable in the 1960's and 70's, both from a stream pollution standpoint and from a reclamation standpoint. The enactment of the Surface Mining Act was an indication that the country as a whole and Congress had decided that sites needed to be reclaimed and that there needed to be minimum standards followed across the country for that reclamation.

It appears that we may be in the same sort of time frame where the perspective of the country is changing when it comes to mountain top removal mining. How that ultimately manifests itself and where that ends up remains to be seen.

From our perspective in OSM and with our sister agencies in the Federal government and in the

states, we are re-examining this issue, and there are some things that we are soliciting the input of the stakeholders on how best to adjust our regulations for better protection of streams.

There are a couple of areas where we clearly laid out our options for consideration, but we would also like to hear from other folks as to any ideas they have.

Because in my perspective, it's clear that government is not the exclusive repository of good ideas. And, if we can get good ideas from whatever part of the regulated community, the environmental community, the states, any of the stakeholders, we want to have that opportunity to consider those things as to how to better fashion our regulations to give effect to both the Surface Mining Act and the Clean Water Act and to protect the environment as best we can.

Q: Let me, I want to ask about some of those specific issues you mention and specific initiatives. But first, I have one other general question about mountaintop removal. What about OSM's role here? Congress created a whole special agency just to regulate surface mining. And yet, what most coalfield residents see is that the agency they think they can count on to really give these mining permits and these industry practices a closer look isn't OSM, but EPA. Why do you think that is, and do you think it's the correct approach, and if not, what will you do to change that and put OSM in the driver's seat in how the Federal government is moving forward on this issue?

A: When it comes to coal mining, the primary authority and statute regulating and governing it is the Surface Mining Act, and the Office of Surface Mining Reclamation and Enforcement has the primary responsibility for that implementation of that statute in coordination with the states where the states have primary regulatory authority, in those states that have primary jurisdiction, or primacy.

From my perspective, the coal mining activity is really the core activity at issue here, and it has, in many instances, components that involve the Clean Water Act which have to be taken into consideration in the regulating of the activity. There certainly is room for improvement on coordination between all of the various regulatory authorities, primarily with OSM taking the lead, EPA has a role to play, the Army Corps has a role to play. The states clearly have a large role to play both on their SMCRA and in their water quality end. We need to do a better job working collectively together to coordinate our various statutory and regulatory responsibilities to best implement those laws and regulations for the best protection of the environment while meeting the country's energy needs.

Q: I guess what I'm trying to ask is clearly, that, when I talk to citizens who live near these mines, they don't feel that going to OSM does them any good, and they feel that the only agency in the Federal government that is really going to do anything to rein in these practices is EPA. Given the legislative history of SMCRA and the fact that it was formed specifically to help coalfield residents with those sorts of issues, why do you think that folks are instead turning to EPA?

A: I can't speculate on what their thoughts are on that.

I have asked my staff to begin to make some arrangements for me to get out into some of these areas where the practices are occurring. We're looking to try to get something scheduled in January, because I have not had the opportunity to talk firsthand with these folks, and I will be doing so. I want to hear from them what their perspectives are from the regulated community.

I'd like to be able to get into those areas and hear from those people directly who are experiencing this particular activity, whether it's occurring in areas where they grew up at or where they're currently living. I want to hear from both the folks who work in those mines as well as folks who have been experiencing the impacts from that type of mining. So, I need to, I'm going to do that, and perhaps I'm going to be in a better position to answer that question at that time.

There are genuine interests and legitimate concerns about that. I certainly can appreciate that how that having an area where maybe they grew up at or where their ancestors lived, they've got a lot of heritage there, having that environment being so drastically changed by this practice. I can appreciate them having a desire to see that practice not occur and not destroy what they've come to cherish and grow. That makes a lot of sense.

In trying to figure out how to deal with that, we still have that statutory provision that allows for that activity to occur.

Now, is it occurring in accordance with the standards? Should there be more limitations on it? Should there be more measures taken to protect streams? Should there be some areas that the practice cannot occur in? I think all of those are valid questions for which we are seeking input on how to strike that balance so where that practice would be appropriate to occur, and we can have input on that.

I believe maybe one thing that might be factored into that is, over the last couple of decades, the practice has evolved and there have been programs in the states where this occurs that have been approved through OSM where the state engages in a regulation of that activity and the practice of it and how it will occur. I think that some of the folks probably may not fully embrace those types of things, but OSM, in its oversight capacity, was trying to make sure the states were applying those laws and their program as it has been approved.

I believe that may lead to some of the perception they can't turn to OSM. Because when you look at what the statute provides for OSM, if the state is implementing its program in accordance with the way it was approved and in accordance with the law and the regulations, then the state isn't doing anything wrong under that law.

Now, it may be a practice that has an effect that the folks find unacceptable, then the way to deal with that is to go back, as we are trying to do with the ANPR, is to re-evaluate those circumstances and re-evaluate those approved programs and regulations.

There are some gaps in the regulations, for instance, that impede the states' and OSM's ability to some degree, for instance, on the definition of 'material damage.' The term is used in the

regulations, but it's not defined. We are certainly very interested in hearing from the people as to how that term ought to be defined.

We have some opportunities here to get input from the various stakeholders to structure a better rule that can perhaps help address those concerns so the public can once again have confidence in OSM, and that if they have an issue they can come to us and we can get that resolved.

Q: You mentioned the advance notice of proposed rulemaking concerning the buffer zone rule. You know, there's been an EIS (Ed. -Environmental Impact Statement) done on the buffer zone rule, there have been multiple public comment periods, all of the options you all have listed in the advance notice of proposed rulemaking were options that were considered as part of the Programmatic EIS. Given all that input and all that paper that's been generated about the buffer zone rule, why is it going to take until early 2011 just to publish a proposed rule?

A: That's a question that I asked about when I got here as well, because it seems like an inordinate amount of time.

Unfortunately, the way the processes that are in place that govern rulemaking for OSM work, it's going to require a Supplemental Environmental Impact Statement, and that document will take a certain amount time to prepare whether we go, whether we had gone directly to a proposed rulemaking or we go through the advance notice of proposed rulemaking process.

Because of the amount of time necessary to prepare that document, which is required for us to change regulations, the decision within the Department of the Interior was, 'Let's do the Advanced Notice of Proposed Rulemaking process to take advantage of the opportunity to get input from the public so that we can have a better product and more ideas to evaluate and consider when putting the proposed rulemaking together.'

Again, we're not the exclusive repository of good ideas, and had we gone forward directly to a proposed rulemaking, we would have been not availing ourselves of the opportunity to hear from others and other stakeholders on how best to do that.

So, what we're looking at doing is getting it done as quickly as we can within the statutory and regulatory requirements for rulemaking in order that we can get a rule, a new regulation in place that is both defensible from a procedural standpoint and is the best possible rule.

Q: Do you think that the buffer zone protections that were spelled out in the 1983 rule should be applied to the footprint of valley fills, or do you think it was intended that those protections not apply to valley fills?

A: That decision as to how to interpret that was made some decades ago. I cannot change that interpretation. As I understand the Administrative Procedure Act from the various court rulings, if there was some type of a change to be made, it has to go through the formal rulemaking process.

Regardless of how I would have interpreted that had I been around here twenty years ago, the fact is, we've got twenty years worth of history that I cannot undo with just a mere re-interpretation of the rule that's had all this history and litigation.

I think if you examine the facts and check out how other states do it, you will find that not every state has interpreted it to not apply to the footprint of the permit area. There have been some instances where a state has taken a different interpretation than has generally been taken around most the country and that has not been objected to by OSM, and I believe that has resulted in a different approach.

Q: How do you define the term 'Approximate Original Contour,' and do you have any plans to write, as Congressman Rahall has suggested, a nationwide rulemaking to define that term?

A: That particular term, I think, is something that needs to be addressed. We would like to hear ideas from the various stakeholders on how that term ought to be defined.

I believe if we get some good information on that, our intent is to define that term in the rulemaking that we intend to put together. So we would like input from folks on how to define approximate original contour. We're going to propose a definition for that particular term, get comments on that proposed definition, and then finalize it.

That, I believe, is another area, along with the definition of 'material damage,' where we can help address some of the uncertainty and ambiguities here — to provide more guidance to the states, to the regulated community, to the citizens, to the environmentalists, to —I guess — to more uniformly apply the regulations.