

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

NATIONAL PARKS CONSERVATION ASSOCIATION,	)	
	)	
Plaintiff,	)	Case No. 1:09-cv-00115HHK
v.	)	(Judge Henry H. Kennedy)
	)	
KEN SALAZAR, Secretary of the United States Department of the Interior,	)	
GLEND A OWENS, Acting Director of the Office of Surface Mining Reclamation and Enforcement, and LISA P. JACKSON, Administrator of the United States Environmental Protection Agency,	)	
	)	
Defendants.	)	
	)	
NATIONAL MINING ASSOCIATION,	)	
	)	
Intervenor-Defendant.	)	
_____	)	

**DECLARATION OF GLENDA H. OWENS**

I, Glenda H. Owens, do declare and attest as follows:

1. I am currently the Acting Director and the Deputy Director of the Office of Surface Mining Reclamation and Enforcement (OSM). I have been the Acting Director since January 2009 and the Deputy Director since January 2001. OSM is the office within the Department of the Interior that administers the Surface Mining Control and Reclamation Act of 1977 (SMCRA), including promulgation of regulations implementing SMCRA.

2. On December 12, 2008, OSM published the final rule that is being challenged in this litigation. The rule, entitled “Excess Spoil, Coal Mine Waste, and Buffers for Perennial and Intermittent Streams,” 73 Fed. Reg. 75,814 (Dec. 12, 2008) (“SBZ rule”), addresses, *inter alia*, placement of excess spoil from mining operations (30 C.F.R. §§ 780.35, 784.19, 816.71 and

817.71), disposal of coal mine waste (30 C.F.R. §§ 780.25 and 784.16), stream buffer zones (30 C.F.R. §§ 780.28, 784.28, 816.57, and 817.57), and stream-channel diversions (30 C.F.R. §§ 816.43 and 817.43).

3. On April 27, 2009, the government filed a motion for voluntary remand and vacatur, in effect seeking to repeal the challenged SBZ rule. The basis of the motion was the Secretary of the Interior's determination that OSM erred in failing to initiate consultation with the Department of the Interior's Fish and Wildlife Service under the Endangered Species Act to evaluate the possible effects of the SBZ rule on threatened and endangered species. On August 12, 2009, this Court issued an order denying the government's motion. In that order, the Court ruled that the government must comply with the statutory procedures under the Administrative Procedure Act (APA), including public notice and comment, before enacting, amending, or repealing an agency rule.

4. On June 11, 2009, while the motion to remand and vacate was pending before this Court, the Department of the Interior entered into a Memorandum of Understanding (MOU) with the U.S. Department of the Army and the U.S. Environmental Protection Agency to implement the Interagency Action Plan (IAP) on Appalachian Surface Coal Mining. The IAP is "designed to significantly reduce the harmful environmental consequences of Appalachian surface coal mining operations, while ensuring that future mining remains consistent with federal law." As part of this interagency effort, the signatory agencies, among other things, committed to engage in a process for "gathering public input, assessing the effectiveness of current policy, and developing regulatory actions." The agencies also agreed to "ensure robust public involvement in the development of any proposed actions or regulatory reforms."

5. Among the actions contemplated in the IAP, OSM agreed to consider revisions to the SBZ rule challenged in this case.

6. In order to honor its IAP commitments, and consistent with the Court's ruling regarding the proper method for enacting, amending, or repealing an agency rule, OSM intends to initiate an APA rulemaking process that would address stream buffer zones and related issues. OSM will take all reasonable steps to publish an "Advance Notice of Proposed Rulemaking" (ANPR) in the *Federal Register* by mid-November 2009. The ANPR will state OSM's intention to propose revisions to some or all of the regulations challenged in this case.

7. OSM has prepared a review draft of the ANPR, which has undergone substantial internal review. OSM also shared the ANPR with our MOU/IAP partners (*i.e.*, the U.S. Department of the Army's Corps of Engineers and the U.S. Environmental Protection Agency) and the President's Council on Environmental Quality in order to solicit their views and comments.

8. The ANPR's public comment period will close 30 days after publication.

9. Although a precise date cannot be guaranteed, OSM is committed to proceeding as expeditiously as possible with the rulemaking process, consistent with the applicable law. I am optimistic that a proposed rule can be published in the *Federal Register* by early 2011.

10. Without knowing the nature and volume of any public comments on the anticipated proposed rule and the effect of any intervening events, it would be premature at this point to speculate on a timeline for completion of any final rule. However, OSM expects to proceed to a final rule as expeditiously as possible. Before publication of any final rule, OSM will complete



consultation with the Fish and Wildlife Service under section 7 of the Endangered Species Act (16 U.S.C. § 1536 ).

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 30, 2009.

  
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GLENDA H. OWENS