



ENERGY AND ENVIRONMENT CABINET DEPARTMENT FOR NATURAL RESOURCES

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May 13, 2015

The Honorable Joseph G. Pizarchik
Director
Office of Surface Mining
1951 Constitution Avenue, N.W.
Washington, DC 20240

RE: Termination of MOU as a Cooperating State Agency

Dear Director Pizarchik:

This letter serves as the required thirty (30) day notice informing the Office of Surface Mining Reclamation and Enforcement (OSMRE) that Kentucky is terminating its cooperating agency status pursuant to the Memoranda of Understanding with your agency signed on August 24, 2011. The MOU with OSMRE engaged Kentucky as a cooperating agency under the National Environmental Policy Act (NEPA) for the development of a draft environmental impact statement (EIS) which is to accompany a proposed rule on stream protection. OSMRE has stated the rule is likely to be published sometime this year.

The MOU states that "OSM will provide the cooperator with copies of key or relevant documents underlying the EIS that OSM identifies as pertinent to the Cooperator's jurisdictional responsibility or special expertise, including technical reports, data, information, analyses, comments received, and working drafts relative to the environmental reviews, draft and final EIS". However, OSMRE has had little to no interaction with Kentucky, or other cooperating agency states, concerning the draft EIS since January 31, 2011. Over the past four years the only information we have received from OSMRE was an updated estimate of the anticipated release date for the proposed rule and draft EIS twice per year at Interstate Mining Compact Commission meetings. Those "updates" did not include documents, reports, information, or data for us to review or analyze.

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Based on your briefing to the cooperating state agencies on April 27, 2015 in Baltimore, we learned OSMRE has revised the draft EIS by adding a number of additional alternatives, and the draft EIS has been significantly changed in other respects since the last time we reviewed it in 2011. However, Kentucky and the other cooperating agency states have not been afforded the opportunity to provide review and meaningful input concerning the new alternatives or any of the significant changes. In fact, you informed us that the cooperating agency states would not be offered any future opportunities to review the draft EIS and that we would see it when it is published for public comment. And although you stated that your agency may contact the cooperating agency states "if needed" after the public comment period closes, it is very difficult to envision that happening given the absence of outreach from OSMRE over the past four years.

Kentucky believes OSMRE's continued refusal to share the revised draft chapters of the EIS with us has undermined our status as a cooperating agency and severely curtailed the meaningfulness of our participation. We have therefore concluded that it is no longer in the best interest of the Commonwealth of Kentucky to continue as a cooperating agency. We request that you remove any references to our participation as a cooperating agency from the proposed EIS, and that our state seal not appear on the cover of the draft EIS prior to publication in the *Federal Register*.

Sincerely,



Steve Hohmann
Commissioner