



## United States Department of the Interior



OFFICE OF SURFACE MINING  
Reclamation and Enforcement  
Western Region Office  
1999 Broadway, Suite 3320  
Denver, CO 80202-3050

September 8, 2017

EXHIBIT I

*Via Certified Mail/Return Receipt Requested*

Shannon Anderson  
Powder River Basin Resource Council  
934 N. Main Street  
Sheridan, Wyoming 82801

Dear Ms. Anderson,

The Office of Surface Mining Reclamation and Enforcement (OSMRE) has reviewed your letter dated March 8, 2017, and received on March 13, 2017, requesting an evaluation of the Wyoming coal regulatory program (the Wyoming program) under 30 C.F.R. § 733.12 (733 request). For the reasons discussed below, OSMRE finds that the information presented by Powder River Basin Resource Council (PRBRC) does not warrant a State program evaluation under 30 C.F.R. Part 733.

The basis for PRBRC's 733 request is the Wyoming Department of Environmental Quality (WYDEQ) Director's decision to deny PRBRC's request for an informal conference to hear objections related to the pending coal mining permit application of Brook Mining Co., LLC and instead refer the matter for contested case review before the Environmental Quality Council (EQC). In January of 2017, PRBRC and several other commenters had requested WYDEQ to conduct informal conference on the permit application.

Under 30 C.F.R. § 733.12(a)(2), a 733 request shall set forth a concise statement of facts which the interested person believes establishes the need for a State program evaluation. PRBRC asserts that WYDEQ's denial and decision to refer the matter to be heard by EQC is inconsistent with, and violates, SMCRA, at 30 U.S.C. § 1263(b). PRBRC claims that WYDEQ's interpretation that it has the discretion to hold informal conferences under Wyo. Stat. Ann. § 35-11-406(k) restricts public participation opportunities. PRBRC argues that this use of the Wyoming law "illustrates how Wyoming's approved state program does not effectively implement, maintain, administer, or enforce the mandatory informal conference requirement." PRBRC 733 request at 4. The specific actions requested by PRBRC include (1) rendering a determination under 30 C.F.R. § 733.12(b) that WYDEQ's reading of its state statute does not effectively implement, administer, maintain, or enforce SMCRA's informal conference requirements; (2) requiring WYDEQ to revise its statutory language; (3) substituting Federal enforcement for this portion of the Wyoming program, with OSMRE holding an informal conference; and/or (4) withdrawing approval of this portion of the Wyoming program.

The Federal regulations at 30 C.F.R. § 733.11 require states with an approved program to “implement, administer, enforce and maintain it in accordance with the Act, this chapter and the provisions of the approved State program.” OSMRE conditionally approved the Wyoming program on November 26, 1980. On that date, the Wyo. Stat. Ann. § 35-11-406(k) language referenced in PRBRC’s 733 request was incorporated into the Wyoming program. This language states that WYDEQ will hold an informal conference “if the director determines that an attempt to informally resolve the disputes is preferable to a contested case proceeding.” Wyo. Stat. Ann. § 35-11-406(k). The 1980 approval of the Wyoming program encompassed Wyoming’s statutory procedure relating to both informal conference and contested case reviews of comments regarding pending permit applications.

While Congress expressed a desire that requested conferences be informal, there is legislative history on the implementation of SMCRA § 513(b), 30 U.S.C. § 1263(b), that Congress left the manner of conduct of the conference to the discretion of the regulatory authority.<sup>1</sup> Wyoming’s statute provides two avenues for review when written objections are submitted, with regulatory discretion on how to proceed in light of the nature and positions contained in the comments. Thus, the Wyoming provision provides opportunities for public participation to address comments and concerns regarding pending permit applications, in the manner that will most expeditiously and practically address the nature of the comments raised.<sup>2</sup> OSMRE approved this provision in 1980. Consequently, OSMRE does not have reason to believe WYDEQ is failing to implement, administer, maintain, or enforce this portion of its approved State program. Therefore, OSMRE has determined that PRBRC’s 733 request does not warrant further review under 30 C.F.R. § 733.12(a)(2) and is denying PRBRC’s 733 request.

If you have any questions regarding this letter, please feel free to contact me.

Sincerely,



David Berry  
Regional Director

C: Todd Parfitt, Wyoming Department of Environmental Quality, Director  
Alan Edwards, Wyoming Department of Environmental Quality  
Jeffrey Fleischman, Denver Field Division, Chief  
Office of the Solicitor, Rocky Mountain Region

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<sup>1</sup> See H.R. Rpt. 95-218 at 28, 66 (Apr. 22, 1977); H.R. Rpt. 95-493 at 106 (July 12, 1977); and 44 Fed. Reg. 14902, 15099 (Mar. 13, 1979).

<sup>2</sup> Indeed, the EQC recently reviewed the comments and concerns raised on the pending Brook Mine application, and on August 1, 2017.