

SMCRA State Evaluation Process

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733 “Takeover”



733 Process

- 30 CFR 733(a)(1) : Annually= Field Office or Division Director



- 30 CFR 733(a)(2): Interest Party Request Information Verification and Decision to further Evaluate= Regional Director



- 30 CFR 733(b)= Director Asserts State Failure.



Petition Verification (733.12(a)(2))

- Petitioner : Concise statement of facts establishing need for evaluation.
- Regional Director Verification:
 - Examine sufficiency of evidence and statement of Petitioner's facts.
 - Can consider agency information
 - Determines if an evaluation should be made

Petition Verification (733.12(a)(2))

- Verification and decision to evaluate to be done in a 60 days.
- Evaluation timeframe not specified.
- Evaluation Determination=State is or is not implementing administering or maintaining all or parts of its program.

On to the Director or not (30 CFR 733.12(a) to (b))

- Regional Director determines no cause to believe state is failing to administer- We're done.
- Regional Director determines may be reason to believe a state is failing to administer – Director becomes involved

“Failure” assertion by the Director

30CFR 733.12(b)

- The Director would send letter to a state advising of reason to believe there is a failure
 - Provide reasons and information
 - Specify time period for state remedial actions
 - Provides for informal conferences

All Efforts Fail- 30CFR 733 12(e) and (f)

- Director can substitute Federal enforcement for all or parts of the program.
- Secretary can withdrawal all or parts of the program
- AML Program authority is withdrawn with Regulatory Program.

2013 West Virginia 733

- On June 24, 2013, OSM received a 102-page petition authored by 18 citizen organizations (“Petitioners”).
- The petition requested that OSM review several aspects of West Virginia’s surface coal mining regulatory program under 30 C.F.R. Part 733 of the Federal regulations.
- OSM grouped the allegations into 19 distinct categories.

West Virginia 733 Cont.

Generally, the Petitioners' allegations regarded:

1. **Permitting** and **Bonding**
2. **Inspection** and **Enforcement**
3. **Water Quality** Issues
4. Contemporaneous **Reclamation**
5. **Soils** Removal and Reclamation
6. Compliance with **Endangered Species Act**

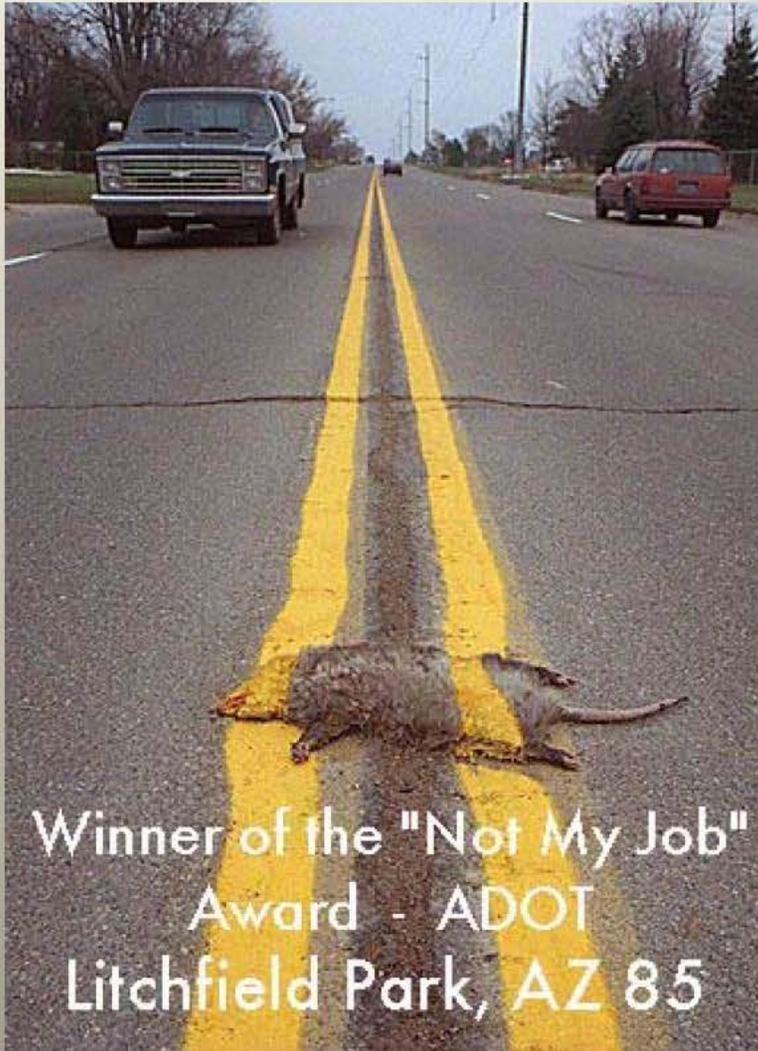
5 Allegations Under Evaluation

1. WVDEP's failure to address potential flooding impacts in the permitting process with **SWROAs**;
2. WVDEP fails to issue **SMCRA violations** where **NPDES violations exist**;
3. WVDEP's failure to regulate **selenium** pollution;
4. WVDEP's failure to properly **define impacted areas in CHIA** results in harm to watersheds; and
5. WVDEP's failure to require properly **protective soil removal and reclamation measures** for mining sites.

Public Transparency and State Participation

- State employees are on the evaluation teams.
- Petitioners were given input on the evaluation plans and sample selection process.
- Petitioners have access to our schedule and process tracking.

Questions



Winner of the "Not My Job"
Award - ADOT
Litchfield Park, AZ 85