



FACT SHEET AND BACKGROUND INFORMATION

WASHINGTON, D.C.
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Office of Surface Mining Reclamation and Enforcement Statement and Background on the Loss of Some Public Comments on the 2008 Stream Buffer Zone Rule

(Washington, D.C.) – This statement is provided for on-the-record attribution to Chris Holmes, OSM Public Affairs, Washington, D.C.

“When OSM discovered and verified the inadvertent loss of some public comments that were part of a mass mailing, it moved quickly to advise both the court and the group that submitted the comments in 2007. OSM retained a sample of the comments and a record of the number of comments received. The sample adequately represented the group’s position, and OSM addressed the comments’ substance in promulgating the 2008 Stream Buffer Zone Rule. The addition of substantially identical comments would not have influenced the rule’s content. However, OSM takes seriously the need to retain all public comments, especially those under a litigation hold, and OSM Director Joe Pizarchik has ordered the immediate development of new controls under which public comments submitted in the future will be safeguarded.”

Background Information:

- In 2007, the group Earthjustice submitted two or three boxes containing approximately 18,000 substantially identical comments. The comments were provided after they had been professionally photocopied. The boxes were stored at OSM headquarters.
- OSM staff charged with maintaining the rule’s Administrative Record examined the submission and selected a representative sample that reasonably represented the comments. This sample was retained apart from the boxed comments.
- When the office used to store the comments became overcrowded, the boxes were moved to an adjacent office. More than five years later, OSM directed that the adjacent room be cleaned out. Sometime in 2012, the boxes of duplicate comments were inadvertently discarded.
- The comments were subject to retention under a 2007 litigation hold, which compels agencies to keep all pertinent documents until the litigation hold is revoked.
- OSM Director Pizarchik is taking steps to ensure that the bureau properly maintains public records in the future. This direction — as well as a Court Notice filed today on the lost comments — is available at www.osmre.gov.

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