



Department of Environmental Quality

To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.



Matthew H. Mead, Governor

Todd Parfitt, Director

August 7, 2014

Mr. Joseph Pizarchik
Director of the Office of Surface Mining Reclamation and Enforcement
Administrative Record, Room 252 SIB OSM-2014-0003
1951 Constitution Avenue, NW
Washington, DC 20240

RE: OSM-2014-0003 WildEarth Guardians' April 14, 2014 petition for Rulemaking to Address the Visible Nitrogen Oxide Emissions from Surface Coal Mine Blasting

Dear Director Pizarchik:

Thank you for the opportunity to comment on the Wild Earth Guardians' Petition for Rulemaking on the nitrogen oxide (NOx) emissions from surface coal mine blasting.

As a threshold matter, the State of Wyoming encourages you to deny the petition because it asks the Office of Surface Mining Reclamation and Enforcement (OSM) to promulgate rules that exceed the Agency's statutory authority. WildEarth claims in its petition that the Surface Mining Coal Reclamation Act (SMCRA) "obligates OSM to explicitly regulate air quality in **certain situations**[" WildEarth Pet. at 6 (emphasis added). However, visible nitrogen oxides emissions from coal mining operations, which WildEarth has petitioned OSM to regulate, are not one of those "certain situations."

In fact, WildEarth's petition makes this point clear by quoting 30 U.S.C. 1265(b)(4). That section of SMCRA authorizes OSM to establish standards of mine performance "to effectively control erosion and attendant air and water pollution." Under this section of SMCRA, "**the Secretary's authority to control air pollution is limited to erosion caused pollution.**" *In re: Permanent Surface Mining Regulation Litigation*, No. 79-1144, 1980 U.S. Dist. LEXIS 17660, at *43 (D.D.C. May 16, 1980) (emphasis added). WildEarth, however, has not established that the activity it desires to be regulated has any rational connection to erosion.¹ As a result, WildEarth's petition asks OSM to exceed its limited statutory authority to regulate air pollution. OSM should, therefore, deny the petition.

WildEarth also asserts that OSM should grant the petition to close an alleged "regulatory gap." WildEarth Pet. at 2, 15. But, no such gap exists. Contrary to WildEarth's assertions, the State has invested significant time and resources to work with mine operators and blasting companies to adequately protect the miners and the general public from the blasting fumes that are the result of a small portion of the shots that are detonated in the State of

¹ In fact, WildEarth's petition mentions the word "erosion" only twice: first, in quoting Section 1265(b)(4) of SMCRA; and, second, by noting that OSM has previously regulated air pollution related to erosion. See WildEarth Pet. at 6.



Wyoming. There are hundreds of coal mine blasts in Wyoming on a daily basis and less than one shot per day produces visible NOx emissions. The cast blasts in the Powder River Basin are the shots that tend to produce visible NOx fumes but NOx is rarely noticed on any other shots in the state. Wild Earth Guardians' petition gives no credit to the numerous State and Federal regulations that are in place to protect workers and the public from the adverse effects of blasting. The petition also fails to account for the regulatory and operational controls currently in place that have been proven to protect the public and miner workers from NOx fumes. Therefore, the State asks you to exercise your discretion under 30 U.S.C. §1211(g) (4) to deny Wild Earth Guardians' petition.

Federal agencies and the State currently regulate blasting and its effects on miners and the public. OSM and DEQ regulations require;

- Blasting shall be conducted to prevent injury to person, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of ground or surface waters outside the permit area. 30 CFR §816.67(a) and WY DEQ/LQD Surface Coal Rules and Regulations, Chapter 6, Section 4.(a)(i).
- All blasting shall be conducted between sunrise and sunset, unless nighttime blasting is approved by the regulatory authority based upon a showing by the operator that the public will be protected from adverse noise and other impacts. The regulatory authority may specify more restrictive time periods for blasting. 30 CFR § 816.64(a)(2) and WY DEQ/LQD Surface Coal Rules and Regulations, Chapter 6, Section 4.(a)(ii). Daylight hours are the only times Wyoming allows blasting.
- Unscheduled blasts may be conducted only where public or operator health and safety so require and for emergency blasting actions. 30 CFR § 816.64(a)(3) and WY DEQ/LQD Surface Coal Rules and Regulations, Chapter 6, Section 4.(a)(iii).
- The permittee shall comply with all applicable local, State, and Federal laws and regulations and the requirements of this section in the storage, handling, preparation, and use of explosives. 30 CFR § 715.19(a)(1) and WY DEQ/LQD Surface Coal Rules and Regulations, Chapter 6, Section 1.(a).
- All blasting operations shall be conducted by experienced, trained, and competent persons who understand the hazards involved. Persons working with explosive materials shall – have demonstrated a knowledge of, a willingness to comply with, safety and security requirements; be capable of using mature judgment in all situations; be in good physical condition and not addicted to intoxicants, narcotics, or other similar types of drugs; possess current knowledge of local, State and Federal laws and regulations applicable to his work; and have obtained a certificate of completion of training and qualification as required by State law or the regulatory authority. 30 CFR § 715.19(a)(3)(i-v) and WY DEQ/LQD Surface Coal Rules and Regulations, Chapter 6, Section 1.(c)(i-ii).
- Access within the blasting area shall be controlled to prevent presence of livestock or unauthorized persons during and until an authorized representative of the operator has reasonably determined that – (1) No unusual hazards, such as imminent slides or undetonated charges, exist; and (2) Access to and travel within the blasting area can be safely resumed. 30 CFR § 816.66 (c) and WY DEQ/LQD Surface Coal Rules and Regulations, Chapter 6, Section 4.(a)(v).

- The blasting schedule is published in a local newspaper and distributed to local governments and public utilities and to each resident within ½ mile of the blasting area at least one each year. 30 CFR § 816.64 (a-c) and WY DEQ/LQD Surface Coal Rules and Regulations, Chapter 6, Section 3. (a)(i-v)
- The regulatory authority shall establish procedures which require that – persons seeking to become blasters receive training to cover all aspects of blasting, including the State and Federal Regulations and how to control the adverse effects; they must prove their competency and blasting experience; they must verify they are a responsible person and not a convicted felon; and they must pass the written exam. Once all those things have been done then they can become a certified blaster. Continuing education is also required to maintain their certification. 30 CFR § 850.13 (a & b) and WY DEQ/LQD Surface Coal Rules and Regulations, Chapter 6, Section 6.(a-i).

In addition to the OSM Regulations and similar State of Wyoming DEQ/LQD Rules and Regulations governing surface coal mining the Federal Mine Safety and Health Administration (MSHA) also has regulations controlling surface blasting operations at coal mines. These include the following:

- 30 CFR § 77.1303 (h) - Ample warning shall be given before blasts are fired. All persons shall be cleared and removed from the blasting area unless suitable blasting shelters are provided to protect men endangered by concussion or flyrock from blasting.
- 30 CFR § 77.1303 (a) – Persons who use or handle explosives or detonators shall be experienced men who understand the hazards involved; trainees shall do such work only under the supervision of and in the immediate presence of experienced men.
- 30 CFR § 77.1303 (b) – Blasting operations shall be under the direct control of authorized persons.
- 30 CFR § 57.6306 (f) – Before firing a blast - ample warning shall be given to allow all persons to be evacuated; clear exits routes shall be provided for persons firing the round; and all access routes to the blast area shall be guarded or barricaded to prevent the passage of persons or vehicles.
- 30 CFR § 57.6306 (g) – Work shall not resume in the blast area until a post-blast examination addressing potential blast-related hazards has been conducted by a person with the ability and experience to perform the examination.

The Wyoming Department of Environmental Quality has directed mines to establish operational controls for keeping any blasting fumes from impacting people off the mine permits and these methods are included in each mine's permit. These operational controls include checking for temperature inversions several times leading up to the planned shot time; checking the wind speed and direction to make sure any fumes aren't carried toward people living near the mine; not shooting in the morning when temperature inversions are more prevalent; not shooting on days when it is overcast, raining or snowing or the ceiling is low; and having mine personnel follow any fumes to document the location of the clouds and to warn any people down wind that could possibly come in contact with the fumes. The operational controls also include a 24 hour pre-blast warning for cast shots to anyone living near the mine.

Mining companies in the Powder River Basin of Wyoming, which is the area where the production of nitrogen oxide from large surface mine blasts is more common, have posted warning signs on public roads that blasting occurs in the area and nitrogen oxide fumes are possible and should be avoided.

Federal and State regulations and the mine permit conditions protect the public from nitrogen oxide fumes created by blasting at surface coal mines. They also assure regulatory agencies and the public that blasting operations are being performed by competent and highly qualified individuals committed to the safety of the work force and general public.

Thank you for your consideration of these comments and the denial of this petition for rulemaking.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd Parfitt", written over a horizontal line.

Todd Parfitt
Director