

WRTT Conference Call

January 18th, 2011

Tuesday 11:00 PM Mountain Time

Call: 1-877-612-4949 Passcode: 8870122

WRTT

TIPS, Technology Transfer, Training and General Information:

- Please check out the updated **TIPS** website for recent updates! These are located in the “What’s New?” section of the page. ***Note: A new version of the TIPS website will be unveiled in the coming weeks. Please check the site frequently.**
<http://www.tips.osmre.gov>
- Please check out the updated **NTTT** website for recent updates! These are located at: <http://www.techtransfer.osmre.gov>
- Check out the newly designed **OSMRE** website at: <http://www.osmre.gov>
- Check out the newly designed **OSMRE-WR** website at:
<http://www.wrcc.osmre.gov>
- Please review the new **WRTT** *SharePoint* site at:
<https://nttt.osmre.gov/TechTransfer/default.aspx>
- Upcoming events: <http://amd.osmre.gov/ttcalroot/TTCalendar.aspx>
- Note: We plan on having a meeting titled “*Challenges of Bond Release for Western U.S. Coal Mining*” and would like to invite all states/tribes to attend and/or present at this meeting. The new deadline for speakers / and or panel members is **February 1st, 2011**. If you are interested in presenting, please let us know **immediately!**
- Note: **Russ Kirkham, state of AK suggested we have a topic that may address an issue that we might solve as a group. We may address this topic quarterly, every six months, even yearly. Comments?**

Discussion Topic:

The proposed federal action referred to as the Stream Protection Rule (SPR) will define the term “material damage to the hydrologic balance outside the permit area.” This term is critically important because, under section 510(b)(3) of SMCRA, the regulatory authority may not approve a permit application unless the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area. This term includes streams downstream of the mining operation.

Recently, civil action has been brought against the Department of Interior for approving West Virginia’s deletion of the definition of ‘cumulative impact’ (see attached) and the addition of the definition of ‘material damage to the hydrologic balance outside the permit area’. The WV definition is as follows:

Material damage to the hydrologic balance outside the permit areas means any long term or permanent change in the hydrologic balance caused by surface mining operation(s) which has a significant adverse impact on the capability of the affected water resource(s) to support existing conditions and uses.

The definition speaks to adverse impacts to existing conditions and uses of water resources. As regulators in the west, how do we 'define' "material damage to the hydrologic balance outside the permit area", and, how do we determine what are "the existing conditions and use"? For example, when evaluating impacts to surface water quality during a cumulative hydrologic impact assessment (CHIA), are stream classifications, class of use and the assigned numeric criteria utilized? How do we handle baseline surface water quality data that exceeds class of use numeric criteria?

Montana began the discussion by stating that a much more narrow definition of material damage is already written into the Montana statute. OSM's PSD representative stated that we are headed towards a more narrow federal definition of material damage and that there are many more questions that need to be asked: What are adverse impacts to existing conditions and "uses" as defined in the definition. How do we define "uses"? What about conflicting uses? The Navajo nation stated that the Navajo EPA already had very strict water standards. Meetings were held to determine these standards, but, a rule was never finalized because of these meetings. North Dakota stated that a definition of uses covered both surface water and ground water. New Mexico stated that the current ruling for Salazar would, in the long run, work out in OSMRE's favor. Montana stated that the clean water act covered the uses of surface water. MT sets usage standards based on specific conductance (typically a range of SC) for groundwater, even though some of the uses at a given SC are marginal. It protects potential as well as actual uses in a given SC range. PSD stated that uses can most definitely be regionally defined. New Mexico said that occasional NPDES exceedences are not the same as material damage to the hydrologic balance. A change of water quality or quantity that would impair the resource would be material damage. These were among the findings in the WV case. Tech transfer stated that the Council of Environmental Quality (CEQ) selects the model to determine the water quality. Tech transfer also stated that OSM recently paid for ten years of water data obtained from the state of WV. Montana stated they didn't understand why WV thought that defining material damage justified dropping the term "cumulative impact". MT did think the term needed to be in the definition. Colorado disagreed and stated that it should. There are many factors that contribute towards a "cumulative impact". Colorado also stated that "material damage" is already defined for cases involving subsidence and alluvial valley floors. North Dakota noted that no one really stated how long the comment period was for this new rule?

WRTT Member Reports/Information

Alaska: Not present

Arizona (Navajo): Program development is continuing to move forward. Three new jobs have been advertised for the Title V program. Peabody's permit has been remanded back to OSMRE. BHP Billington's Navajo mine permit is also being remanded back to OSMRE. This will involve two major EIS's. Air quality issues involving the local power plants is an ongoing issue. It has been business as usual in Title IV.

Arizona (Hopi): Not present.

Colorado: There are three plants that are being converted from coal to gas. There has been three new permit applications submitted: New Horizon North, the Fruita load out, and, a large revision of a permit near Grand Junction. OSMRE is keeping a close eye on New Horizon North. There had been three TDN's issued by OSMRE as of late. Title IV has just finalized its list of project to work on in 2011.

Montana: The Otter Creek permit is inching along slowly. An EIS is needed on the leasing of the lands on this mine. In regards to a lawsuit put for by certain environmental groups, the judge made a ruling that the environmental groups (Northern Plains Resource Council, National Wildlife Federation, Sierra Club and Montana Environmental Information Center) have a reasonable claim (in their suit against Gov. Schweitzer, chair of the MT Land Board) that waiting until later (at permitting rather than at leasing—which has already taken place) to do an EIS could be too late. The ruling doesn't stop the project, but leaves uncertain the fate of Arch's \$86 million, 10-year lease. The project remains at the planning stage at this point. Baseline monitoring equipment is still being installed.

Montana (Crow): Not present.

New Mexico: Both permit renewals and bond release applications were being reviewed.

North Dakota: Thirty thousand acres of renewals. A new permit near Theodore Roosevelt national park was being reviewed, as is a 16,924 acre addition to an existing permit. An AML contractor had recently defaulted on a job, and, the state of ND was pursuing justice. In the mean time, they are getting bond money to reclaim the site.

Utah: The question of radiation levels on abandoned mine sites was being raised. Should people be working at these sites? Should bats be living there? Kennecott mining company wants to possibly lease some properties with existing AML sites on them, and brought up the issue of worker safety from exposure to lead and arsenic on dumps they have sampled on those properties.

Wyoming: Both the legislature and the governor have put Wyoming DEP on the hot spot. There are seven amendments going on currently. BLM is doing EIS's and WDEP are working on the CHIA's. There are seven more on the way this year and, seven more the following year. They want WDEP to hurry up and move the process along. *An underground coal gasification plant is being built and two more have been proposed. The question was asked "who would be regulating that"? Microbial recovery is being discussed.*

Casper Field Office: Business as usual.

Program Support Division/Albuquerque Area Office/Farmington Area Office: *The Chapter four has been written. The preamble has been written. Comments/questions are being taken on the RIA. *PSD...I need more information...I didn't take good notes here.....*

Denver Field Division/ Olympia Area Office: No report.

TIPS: The TIPS steering committee is taking place in Denver, CO May 24-26, 2011. If you have any TIPS concerns you'd like addressed at this meeting, contact your local TIPS steering committee member (located on the TIPS website).

Next Call: February 15, 2011 (subject to change)