

NEWS RELEASE

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NORTH DAKOTA FILES LAWSUIT CHALLENGING NEW DEPARTMENT OF INTERIOR COAL MINING RULE

BISMARCK, ND - Attorney General Wayne Stenehjem filed a lawsuit today with the ND Public Service Commission against the U.S. Department of Interior Office of Surface Mining Reclamation and Enforcement (OSM) over OSM's so-called "Stream Protection Rule" under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The case was filed in the United States District Court for the District of Columbia.

"This is the epitome of a midnight regulation," Stenehjem said. "This case involves a last-ditch effort by the outgoing Administration to encroach on the clear authority granted to the State of North Dakota and the Public Service Commission." In its Complaint, North Dakota contends that the new OSM rule, which places numerous onerous restrictions on surface coal mining and reclamation activities, violates federal law and the United States Constitution.

"The North Dakota Public Service Commission has overseen coal mining and reclamation in the state for decades," said Public Service Commissioner Randy Christmann. "In the most recent evaluation of our program, the OSM said that North Dakota has an effective program with no issues in need of corrective action. But with this rule, the Obama administration would infringe on our authority and effectively stop much of the coal mining in North Dakota."

"We have worked for months to try to change this rule, which was clearly designed to address issues specific to other areas of the country," said Public Service Commission Chair Julie Fedorchak. "The agency ignored all of our input and went ahead with a one-size-fits-all rule that will be extremely destructive to North Dakota industry while addressing no identified problem in our state."

The new rule directly infringes on North Dakota's exclusive authority to regulate surface mining and reclamation activities within its borders and unlawfully expands the federal government's authority beyond the limits established by law. Congress and the courts have repeatedly affirmed that the States have primacy for developing, authorizing, issuing, and enforcing regulations for surface mining and reclamations operations. These new federal requirements would be very harmful to North Dakota's economy.

This rule is similar to the federal government's attempts to redefine the term 'waters of the United States' to seize jurisdiction over swaths of State lands and waters. "North Dakota led the fight against that effort by securing a nationwide stay of the rule, and we will fight against this rule as well. I hope the Congress and the new Administration will look closely at this rule and quickly exercise their authority to repeal it." Stenehjem said.

North Dakota is seeking to have the rule vacated and the DOI and OSM enjoined from enforcing it.

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