



## United States Department of the Interior

### OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT Pittsburgh Field Division



4605 Morse Rd., Rm. 102  
Columbus, OH 43230

Three Parkway Center  
Pittsburgh, PA 15220  
412-937-2827

215 Lincoln Rd.  
New Cumberland, PA 17070

March 2, 2015

Sara E. Winner  
Fair Shake Environmental Legal Services  
3445 Butler St. First Floor  
Pittsburgh, PA 15201

Dear Ms. Winner:

On January 14, 2015, you submitted a citizen complaint on behalf of David and Linda Mirkovich. The complaint chronicles the loss of four springs on their property used to water horses in seven pastures and Emerald Coal Resources attempts to provide temporary and permanent replacement water supplies meeting the Pennsylvania regulatory requirements.

The essence of the Mirkovich's complaint is that Emerald Coal Resources has stated it will not provide a temporary winter water supply to the upper pasture, thereby replacing the water lost at spring 4 due to underground mining operations. For two years, the Mirkovich's had agreed to move their horses to a lower pasture in the winter, which is serviced by a public water replacement supply installed by Emerald Resources. However, by letter of October 22, 2014, the Mirkovich's notified the Department's Office of Chief Counsel that they needed a temporary winter water supply for watering troughs 1 and 2 in the winter of 2014/2015 so they could use the associated pasture. The January 14, 2015 complaint elaborates that the middle pastures are being over grazed as a result of moving the horses and that the replacement water supply for the middle three pastures is already inadequate. The complainant provided an e-mail from Alpha's land representative, dated December 2, 2014, in which Alpha declined to provide a temporary winter water supply to the upper field, citing the Mirkovich's failure to allow Alpha access to install a permanent supply (the third attempt); fencing issues in the upper field; and potential water supply freezing problems.

Based on the allegation in your complaint, the Office of Surface Mining Reclamation and Enforcement (OSMRE), Pittsburgh Field Division (PFD), issued a Ten-Day Notice (TDN) on January 22, 2015 to the Pennsylvania Department of Environmental Protection (PADEP). The TDN required PADEP to investigate and advise us if a violation of Pennsylvania law and regulations exists, and if so, what actions have been taken to correct the violation. In accordance with 30 CFR 842.11, we must review PADEP's response to the TDN and determine if PADEP has either shown "good cause" that no violation exists, or taken action to cause the violation to be corrected.

PADEP's response was received on February 2, 2015 and is enclosed. PADEP's response documents efforts made by Emerald Resources to install permanent water supplies to the pastures which adequately replaces the lost springs. It also states that Emerald Resources should be afforded the opportunity to implement its water supply replacement plan, as long as Departmental concerns raised in the August 11, 2014 letter are addressed.

Regarding the central issue of the complaint, provision of a temporary winter water supply to the upper pasture, PADEP provided the following information. The elevation of the pasture makes it difficult to provide sufficient water pressure from public water sources. Emerald Resources has not previously provided a temporary water supply to the upper field during the winter months because the Mirkovich's agreed to move their horses to a pasture near the barn, where two water supplies are available. Emerald Resources has asked the Mirkovich's to keep track of feed bills for the horses due to the loss of any pastures while permanent water supplies are installed.

We reviewed PADEP's response and determined that it does not address the Mirkovich's central complaint, the provision of temporary winter water to the upper pasture. Although the Mirkovich's previously agreed to move their horses out of the upper pasture during the winter, after two years, they no longer find this to be an acceptable solution. They make the case that concentration of the horses in the middle pastures has led to overgrazing, and that the water supply provided by Emerald Resources at that location is already inadequate for the horses. By letter of October 22, 2014, the Mirkovich's requested the Department order Emerald Resources to provide a temporary water supply to troughs 1 and 2 in the winter of 2014/2015.

Their request was not acted upon by the Department. Further, Alpha's land representative responded that they would not provide a temporary water supply, citing, among other reasons, the Mirkovich's failure to allow implementation of the most recent plan to provide a permanent water supply. We know of no provision in Pennsylvania's approved program which allows a company to discontinue provision of a temporary water supply while negotiations for a permanent water supply are under way with the property owner, and absent a final action on the case by the Department.

For these reasons, we determined that PADEP acted in an arbitrary and capricious manner and abused its discretion in administering the approved Pennsylvania regulatory program. In accordance with 30 CFR § 842.11(b)(1)(iii)(A), PADEP has five days from receipt of our letter of determination to file a written request for an informal review. If a request for informal review is not filed within the designated time period, we will schedule a Federal inspection of the permit to

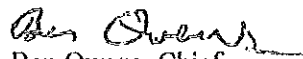
Sara E. Winner

3

determine if there is a violation of the approved Pennsylvania program and, if necessary, take action to cause the violation to be corrected.

Please contact me if you have any questions.

Sincerely,

  
Ben Owens, Chief  
Pittsburgh Field Division

