

§ 1270, which allows any person having an interest that is or may be adversely affected to bring a civil action against the United States or other governmental instrumentality or agency that is alleged to be in violation of SMCRA or any rule or regulation issued pursuant to SMCRA, and against the Secretary of the Interior or appropriate State regulatory authority where the Secretary of the Interior or appropriate State regulatory authority allegedly fails to perform an act or duty under SMCRA that is not discretionary.

2. Pennsylvania's federally-approved program for regulating coal mines includes a reclamation bonding program. SMCRA requires that the bonding program assure complete reclamation of the covered mines, including restoration of the land surface, repair of subsidence damage, and treatment of any mine drainage. As detailed below, Pennsylvania's bonding program fails to meet both this overarching standard and many subsidiary mandates. Plaintiffs commence this action in order to compel the Defendants to fulfill their duties to ensure that Pennsylvania's bonding program meets the requirements of the law.

JURISDICTION

3. This Court has subject matter jurisdiction under 30 U.S.C. § 1270(a) and 28 U.S.C. §§ 1331, 1361.

4. On June 3, 1999, the Plaintiffs gave notice to the Defendants of: a) the Defendants' violations of SMCRA, the

regulations promulgated pursuant to SMCRA, and related provisions of law; b) the Defendants' failures to perform nondiscretionary duties under SMCRA, the regulations promulgated pursuant to SMCRA, and related provisions of law; and c) the Plaintiffs' intent to file suit against the Defendants. Notice of Plaintiffs' intent to initiate this suit was provided to Defendants and all other required persons in accordance with 30 U.S.C. § 1270(b) and 30 C.F.R. § 700.13. Attached hereto as Exhibit A is a copy of Plaintiffs' June 3, 1999 "Notice of Intent to File Citizen Suit."

5. More than 60 days have passed since service of the notice described in the immediately preceding paragraph.

VENUE

6. Venue is proper in the Middle District of Pennsylvania under 30 U.S.C. § 1270(c) and 28 U.S.C. § 1391(e) because a substantial portion of the Defendants' violations of the law and failures to perform nondiscretionary duties giving rise to the claims asserted in this action have occurred in this District, some of the mining operations at issue in this action are located in this District, Defendant Seif resides in and has his principal office in this District, and the federal Office of Surface Mining, Reclamation and Enforcement maintains a Field Office in this District.

PARTIES

The Plaintiffs

7. Plaintiff Pennsylvania Federation of Sportsmen's Clubs, Inc. (the "Federation") is an organization with 108,000 members that is the Pennsylvania state affiliate of the National Wildlife Federation. The Federation seeks to provide a statewide, unified voice for the concerns of sportsmen and conservationists in Pennsylvania, to ensure that the rights and interests of those sportsmen and conservationists are protected, and to protect and enhance Pennsylvania's environment and natural resources.

8. Since its formation in 1932, the Federation has been a leading advocate of environmental protection in Pennsylvania. The Federation has worked successfully for the enactment of, among other Pennsylvania statutes, the original Clean Streams Law, the amendments to The Clean Streams Law that extended the Commonwealth of Pennsylvania's authority to control mine drainage pollution, and the Surface Mining Conservation and Reclamation Act. The Federation also sought to ensure that the reclamation bonds posted for coal mines in Pennsylvania are adequate and that Pennsylvania's coal mine bonding program satisfies the applicable legal requirements by participating as a Petitioner in the matter of Pennsylvania Federation of Sportsmen's Clubs, et al. v. Commonwealth of Pennsylvania, Department of Environmental Resources, et al., No. 1868 C.D. 1981 (Commonwealth Court of

Pennsylvania).

9. The insolvency of Pennsylvania's alternative bonding system, the inadequacy of the reclamation bonds posted for coal mines in Pennsylvania, the failure of Pennsylvania's coal mine bonding program to satisfy the applicable legal requirements, and the Defendants' violations of the law and failures to perform nondiscretionary duties that are described below have harmed and will continue to harm the Federation's interests as an organization because they undercut the Federation's longstanding efforts to protect and enhance Pennsylvania's environment and natural resources, undermine legislation that the Federation successfully worked to have enacted in Pennsylvania, frustrate the Federation's efforts to ensure that the reclamation bonds posted for coal mines in Pennsylvania are adequate and that the Commonwealth's coal mine bonding program satisfies the requirements of federal and state law, and run counter to the Federation's central purpose of protecting the rights and interests of sportsmen and sportswomen in Pennsylvania.

10. Members of the Federation use the streams, lakes, forests, and lands of Pennsylvania for economic, recreational, and aesthetic purposes. The insolvency of Pennsylvania's alternative bonding system, the inadequacy of the reclamation bonds posted for coal mines in Pennsylvania, the failure of Pennsylvania's coal mine bonding program to satisfy the

applicable legal requirements, and the Defendants' violations of the law and failures to perform nondiscretionary duties have harmed and will continue to harm the interests of the Federation's members because, among other reasons, they have resulted and will continue to result in untreated or inadequately treated discharges from coal mines in Pennsylvania, which in turn has caused and will continue to cause pollution to streams and other water bodies in Pennsylvania. This water pollution has caused and will continue to cause harm to the economic, recreational and aesthetic interests of the anglers, hunters, and other sportsmen and sportswomen who are members of the Federation.

11. The claims presented and relief sought in this action, and the interests of its members that the Federation seeks to protect in this action, are germane to the purposes and goals of the Federation.

12. The Sierra Club is a nonprofit corporation organized and existing under the laws of the State of California. The Sierra Club was established in 1892 and is a national nonprofit organization with over 500,000 members dedicated to: exploring, enjoying, and protecting the wild places of the earth; practicing and promoting the responsible use of the earth's ecosystems and resources; educating and enlisting humanity to protect and restore the quality of the natural and human environments; and

using all lawful means to carry out these objectives.

13. The Pennsylvania Chapter of the Sierra Club has over 19,600 members organized into eleven groups that cover the entire state. As part of its mission to protect and restore Pennsylvania's natural resources, the Pennsylvania Chapter and individual members of the Chapter have participated in legislative, administrative, and court proceedings involving the enactment and enforcement of laws and regulations relating to coal mining. With the support of the Pennsylvania Chapter, individual members have developed networks with other individuals and citizens groups concerned about the adverse impacts of mining and the proper enforcement of mining laws and regulations. The Pennsylvania Chapter and an individual member of the Pennsylvania Chapter sought to ensure that the reclamation bonds posted for coal mines in Pennsylvania are adequate and that Pennsylvania's coal mine bonding program satisfies the applicable legal requirements by participating as Petitioners in the matter of Pennsylvania Federation of Sportsmen's Clubs, et al. v. Commonwealth of Pennsylvania, Department of Environmental Resources, et al., No. 1868 C.D. 1981 (Commonwealth Court of Pennsylvania).

14. The insolvency of Pennsylvania's alternative bonding system, the inadequacy of the reclamation bonds posted for coal mines in Pennsylvania, the failure of Pennsylvania's coal mine

bonding program to satisfy the applicable legal requirements, and the Defendants' violations of the law and failures to perform nondiscretionary duties that are described below have harmed and will continue to harm the Pennsylvania Chapter Sierra Club's interests as an organization because they undercut the Pennsylvania Chapter's longstanding efforts to protect and restore Pennsylvania's natural resources, undermine the Chapter's efforts to promote the enactment and enforcement of laws and regulations controlling the adverse impacts of coal mining, frustrate the efforts of the Pennsylvania Chapter to ensure that the reclamation bonds posted for coal mines in Pennsylvania are adequate and that Pennsylvania's coal mine bonding program satisfies the requirements of federal and state law, and run counter to the Sierra Club's purposes of protecting the wild places of the earth and protecting and restoring the quality of the natural and human environments.

15. Members of the Pennsylvania Chapter Sierra Club use the streams, lakes, forests, and lands of Pennsylvania for recreational and aesthetic purposes. The members engage in outdoor activities in Pennsylvania that include hiking, canoeing, fishing, hunting, bird watching, skiing, and bicycling. A significant portion of the members of the Pennsylvania Chapter live and recreate in Pennsylvania's coalfields. Members of the Pennsylvania Chapter have monitored mining activities and have

observed the impacts of water pollution caused by discharges of mine drainage. The insolvency of Pennsylvania's alternative bonding system, the inadequacy of the reclamation bonds posted for coal mines in Pennsylvania, the failure of Pennsylvania's coal mine bonding program to satisfy the applicable legal requirements, and the Defendants' violations of the law and failures to perform nondiscretionary duties that are described below have harmed and will continue to harm the recreational and aesthetic interests of the Pennsylvania Chapter Sierra Club's members because, among other reasons, they have caused and will continue to cause untreated or inadequately treated discharges of mine drainage that are polluting and will continue to pollute the waterways of the Commonwealth.

16. Members of the Pennsylvania Chapter Sierra Club live, work, and recreate in areas where surface subsidence and associated harms have occurred or where there is an immediate and substantial risk of surface subsidence from active underground mining operations or underground mining operations that took place after August 3, 1977. The inadequacy of the reclamation bonds posted for coal mines in Pennsylvania, the failure of Pennsylvania's coal mine bonding program to satisfy the applicable legal requirements, and the Defendants' violations of the law and failures to perform nondiscretionary duties have harmed and will continue to harm the interests of the members of

the Pennsylvania Chapter Sierra Club because the "subsidence bonds" posted for Pennsylvania underground mines are insufficient to guarantee the restoration or repair of the surface impacts of subsidence.

17. The claims presented and the relief sought in this action, and the interests of its members that the Pennsylvania Chapter Sierra Club seeks to protect in this action, are germane to the purposes and goals of the Pennsylvania Chapter Sierra Club.

18. Plaintiff Pennsylvania Trout, Inc. was incorporated in Pennsylvania in 1976 as a non-profit organization and frequently uses the designation "PA Trout (A Council of Trout Unlimited)" or the shorthand designation "PA Trout." PA Trout has nearly 9,000 members in 56 local chapters in the Commonwealth of Pennsylvania. It is an organization that works to protect, enhance, and reestablish coldwater fisheries and their watersheds in Pennsylvania through conservation, restoration, and education. PA Trout seeks to restore and protect the vital elements of watersheds including water quality, aquatic habitats, and streamside buffers. The predecessor to PA Trout, the Pennsylvania Chapter of Trout Unlimited, sought to ensure that the reclamation bonds posted for coal mines in Pennsylvania are adequate and that Pennsylvania's coal mine bonding program satisfies the applicable legal requirements by participating as a

Petitioner in the matter of Pennsylvania Federation of Sportstmen's Clubs, et al. v. Commonwealth of Pennsylvania, Department of Environmental Resources, et al., No. 1868 C.D. 1981 (Commonwealth Court of Pennsylvania).

19. The insolvency of Pennsylvania's alternative bonding system, the inadequacy of the reclamation bonds posted for coal mines in Pennsylvania, the failure of Pennsylvania's coal mine bonding program to satisfy the applicable legal requirements, and the Defendants' violations of the law and failures to perform nondiscretionary duties that are described below have harmed and will continue to harm PA Trout's interests as an organization because they undercut PA Trout's efforts to protect, enhance, and reestablish Pennsylvania's coldwater fisheries and watersheds, frustrate PA Trout's efforts to ensure that the reclamation bonds posted for coal mines in Pennsylvania are adequate and that the coal mine bonding systems or mechanisms employed by Pennsylvania satisfy the requirements of federal and state law, and run counter to PA Trout's central purpose of protecting the rights and interests of Pennsylvanians who fish for trout and other coldwater fish species.

20. Members of PA Trout use the streams, lakes, forests, and lands of Pennsylvania for recreational and aesthetic purposes. The insolvency of Pennsylvania's alternative bonding system, the inadequacy of the reclamation bonds posted for coal

mines in Pennsylvania, the failure of Pennsylvania's coal mine bonding program to satisfy the applicable legal requirements, and the Defendants' violations of the law and failures to perform nondiscretionary duties have harmed and will continue to harm the interests of PA Trout's members because, among other reasons, they have resulted and will continue to result in untreated or inadequately treated discharges from coal mines in Pennsylvania, which in turn has caused and will continue to cause pollution to streams and other water bodies in Pennsylvania. This water pollution has caused and will continue to cause harm to the recreational and aesthetic interests of the members of PA Trout.

21. The claims presented and the relief sought in this action, and the interests of its members that PA Trout seeks to protect in this action, are germane to the purposes and goals of PA Trout.

22. Plaintiff Tri-State Citizens Mining Network (Tri-State), a registered non-profit organization in the Commonwealth of Pennsylvania, is a coalition of 13 organizations and more than 40 individual members in Pennsylvania, Ohio, and West Virginia. Thirty-five of the individual members and seven of the organization members of Tri-State reside in or are based in Pennsylvania. The mission of Tri-State is to inform and educate the public about the effects of mining on the environment and on the communities in the coalfields, and to seek protection of the

environment and justice for citizens who live in the coalfields by working to improve laws and regulations and the enforcement of existing laws and regulations.

23. The insolvency of Pennsylvania's alternative bonding system, the inadequacy of the reclamation bonds posted for coal mines in Pennsylvania, the failure of Pennsylvania's coal mine bonding program to satisfy the applicable legal requirements, and the Defendants' violations of the law and failures to perform nondiscretionary duties that are described below have harmed and will continue to harm the interests of Tri-State as an organization because they undercut Tri-State's efforts to improve government regulation of coal mining and government enforcement of laws and regulations governing coal mining, and run counter to Tri-State's purposes of protecting the environment, ensuring that coalfield citizens obtain justice, and protecting the rights and interests of those citizens.

24. Members of Tri-State and its constituent organizations live, work, and recreate in areas where surface subsidence and associated harms have occurred or where there is an immediate and substantial risk of surface subsidence from active underground mining operations or underground mining operations that took place after August 3, 1977. The inadequacy of the reclamation bonds posted for coal mines in Pennsylvania, the failure of Pennsylvania's coal mine bonding program to satisfy the

applicable legal requirements, and the Defendants' violations of the law and failures to perform nondiscretionary duties have harmed and will continue to harm the interests of the members of Tri-State and its constituent organizations because the "subsidence bonds" posted for Pennsylvania underground mines are insufficient to guarantee the restoration or repair of the surface impacts of subsidence.

25. Members of Tri-State and its constituent organizations use the streams, lakes, groundwater, forests, and lands of Pennsylvania for economic, domestic, recreational, and aesthetic purposes. The insolvency of Pennsylvania's alternative bonding system, the inadequacy of the reclamation bonds posted for coal mines in Pennsylvania, the failure of Pennsylvania's coal mine bonding program to satisfy the applicable legal requirements, and the Defendants' violations of the law and failures to perform nondiscretionary duties have harmed and will continue to harm the interests of the members of Tri-State and its constituent organizations because they have resulted and will continue to result in untreated or inadequately treated discharges from coal mines in Pennsylvania, which in turn has caused and will continue to cause pollution to groundwater, streams and other water bodies in Pennsylvania. This water pollution has caused and will continue to cause harm to the economic, recreational, personal, and aesthetic interests of the members of Tri-State and its

constituent organizations.

26. The claims presented and the relief sought in this action, and the interests of its members and the members of its constituent organizations that Tri-State seeks to protect in this action, are germane to the purposes and goals of Tri-State.

27. Plaintiff Mountain Watershed Association, Inc. (MWA) is a non-profit, tax-exempt, community-based Pennsylvania corporation that is dedicated to the preservation and remediation of the Indian Creek watershed in Fayette County, Pennsylvania, and to fostering economic development in the watershed through environmental cleanup and attracting sustainable new businesses. The major purposes of MWA are to bring about remediation of numerous sources of acid mine drainage resulting from over 125 years of mining in the Indian Creek watershed, to encourage sound environmental practices, to promote cooperative remediation efforts, and to develop community awareness and assist cooperative remediation efforts through informational outreach.

28. MWA has 660 members who live, work, and/or recreate in the Indian Creek watershed. MWA's members have raised over \$300,000 for environmental restoration projects and have worked with local, state, and federal officials, environmental and community groups, charitable foundations, and technicians to develop and fund watershed restoration projects. In consultation with federal and state agencies, MWA has developed a

comprehensive Indian Creek Water Quality Restoration Project, which seeks to restore the Indian Creek watershed, ensure the availability of a clean and healthy water supply for residents of the watershed, and improve wildlife habitat.

29. The insolvency of Pennsylvania's alternative bonding system, the inadequacy of the reclamation bonds posted for coal mines in Pennsylvania, the failure of Pennsylvania's coal mine bonding program to satisfy the applicable legal requirements, and the Defendants' violations of the law and failures to perform nondiscretionary duties that are described below have harmed and will continue to harm MWA's interests as an organization because they undercut MWA's efforts to improve the quality of Indian Creek and its tributaries through remediation of mine drainage, and run counter to the purposes of MWA's comprehensive Indian Creek Water Quality Restoration Project and to MWA's overall purpose of restoring the Indian Creek watershed.

30. Members of MWA use the waters of Indian Creek and its tributaries and neighboring lands for economic, recreational, and aesthetic purposes. The insolvency of Pennsylvania's alternative bonding system, the inadequacy of the reclamation bonds posted for coal mines in Pennsylvania, the failure of Pennsylvania's coal mine bonding program to satisfy the applicable legal requirements, and the Defendants' violations of the law and failures to perform nondiscretionary duties have harmed and will

continue to harm the interests of MWA's members because, among other reasons, they have resulted and will continue to result in untreated and inadequately treated discharges from coal mines in Pennsylvania, which in turn has caused and will continue to cause pollution to Indian Creek and its tributaries. This water pollution has caused and will continue to cause harm to the economic, recreational and aesthetic interests of MWA's members.

31. The claims presented and the relief sought in this action, and the interests of its members that MWA seeks to protect in this action, are germane to the purposes and goals of MWA.

32. The Plaintiff organizations together have more than 137,300 members who reside in the Commonwealth of Pennsylvania and who use the streams, lakes, groundwater, forests, and lands of Pennsylvania for various economic, recreational, domestic, scientific, aesthetic, and other pursuits. The organizations and their members enjoy, and work to protect, the natural, scenic, recreational, historic, and aesthetic values of the Pennsylvania environment.

33. The Plaintiff organizations and their members have a constitutional "right to . . . pure water and the preservation of the natural, scenic, historic, and esthetic values of the environment." Pa. Const., art. I, § 27.

34. The Plaintiff organizations and their members are "person[s] having an interest which is or may be adversely affected" by the Defendants' violations of the law and failures to perform nondiscretionary duties. 30 U.S.C. § 1270(a).

The Defendants

35. Defendant Bruce Babbitt is sued in his official capacity as the Secretary of the United States Department of the Interior.

36. Defendant Kathleen M. Karpan is sued in her official capacity as the Director of the Office of Surface Mining Reclamation and Enforcement (OSM). OSM is a bureau of the United States Department of the Interior with the responsibility, in cooperation with the states and Indian Tribes, to protect citizens and the environment during coal mining and reclamation, and to reclaim mines abandoned before August 3, 1977 (the effective date of the Surface Mining Control and Reclamation Act).

37. In their official capacities, Defendants Babbitt and Karpan are required to perform duties that include the following: assist the states in developing state programs for controlling surface coal mining operations and reclaiming abandoned mine lands that meet the requirements of SMRCA; review and approve or disapprove proposed state programs and program amendments;

administer and enforce programs for controlling surface coal mining operations; oversee state administration and enforcement of approved state regulatory programs; provide for federal enforcement of any part of an approved state program not being enforced by a state; and prepare, promulgate, and implement a federal program for a state where the provisions of a state program or a state's implementation or enforcement of an approved state program do not satisfy the requirements of SMCRA.

38. Pennsylvania has a state program for regulating coal mining activities and reclaiming abandoned mine lands in Pennsylvania that has been approved by the Secretary of the Interior under SMCRA (the "approved Pennsylvania program"). Defendants Babbitt and Karpan have the authority under 30 U.S.C. §§ 1254(b), 1271 and 30 C.F.R. § 900.12(b) to enforce the provisions of the approved Pennsylvania program. The approval of the approved Pennsylvania program and amendments thereto, the conditions placed on those approvals, and the regulatory program amendments required by the Director of OSM are codified at 30 C.F.R. Part 938. The approved Pennsylvania program is an "approved State program" and a "State program" as those terms are used in SMCRA and its implementing regulations.

39. Defendant James M. Seif is sued in his official capacity as the Secretary of the Pennsylvania Department of Environmental Protection (DEP). In his official capacity,

Defendant Seif is responsible for the implementation, administration, enforcement, and maintenance of the approved Pennsylvania program. Defendant Seif also is sued in his individual capacity because his ongoing violations of federal law "stri[p] [him] of his official or representative character and [subject him] in his person to the consequences of his individual conduct." Ex Parte Young, 209 U.S. 123, 160 (1908).

GENERAL ALLEGATIONS -- BACKGROUND

40. Mine drainage degrades more miles of streams in Pennsylvania than any other pollution source.

41. On April 1, 1998, Pennsylvania DEP submitted its most recent list of impaired waters to the U.S. Environmental Protection Agency pursuant to Section 303(d) of the federal Clean Water Act, 33 U.S.C. § 1313(d). At that time, DEP had completed the assessment of about one-seventh of Pennsylvania's approximately 83,000 miles of streams. Of the 4,300 miles of streams formally identified as impaired on Pennsylvania's April 1, 1998 Section 303(d) list, mine drainage was listed as the source of degradation for 2,250 miles.

42. The approved Pennsylvania program includes an "alternative bonding system" for surface coal mines in which site-specific reclamation bonds are supplemented by an additional pool of funds generated by the assessment of a "reclamation fee"

or "permit fee" at the time a surface coal mine is permitted. The funds generated by the reclamation fee are not restricted to a specific mine site and may be used in the reclamation of any surface coal mine that is part of the alternative bonding system.

43. An alternative bonding system "must assure that the regulatory authority will have available sufficient money to complete the reclamation plan for any area which may be in default at any time and . . . provide a substantial economic incentive for the permittee to comply with all reclamation provisions." 30 C.F.R. § 800.11(e)(1), (2).

44. Under OSM's interpretation of "SMCRA and the Federal regulations, an alternative bonding system must provide for complete abatement or treatment of water pollution from bond forfeiture sites." 60 Fed. Reg. 51900, 51902 (October 4, 1995).

45. Pennsylvania generally does not treat mine drainage emanating from sites for which it has forfeited the bonds posted by the mine operator. Pennsylvania's failure to treat mine drainage from bond forfeiture sites was reported in an OSM "Director's Briefing Paper" dated January 13, 1998.

46. Untreated post-mining discharges emanate from dozens of coal mines in Pennsylvania: a) that were permitted or re-permitted after the approved Pennsylvania program took effect on July 31, 1982; and b) for which the reclamation bonds have been forfeited by Pennsylvania DEP. These untreated discharges have caused and

continue to cause pollution of Pennsylvania streams.

47. Post-mining discharges that currently are being treated by mine operators emanate from more than 300 bonded surface and underground coal mines in Pennsylvania. If untreated, these discharges would put approximately five million pounds of acid into Pennsylvania waterways each day. Pennsylvania DEP and OSM anticipate that the operators of most of these mines will discontinue treatment of the discharges, and that Pennsylvania will forfeit the bonds and assume the liability for treatment of the discharges.

48. The amount of bond money currently held by Pennsylvania DEP for the more than 300 bonded coal mines with post-mining discharges is insufficient to provide long term treatment for the discharges emanating from those mines. No other institutional or financial mechanism currently exists that is sufficient to ensure that treatment of those discharges will continue.

49. Serious stream degradation will occur if treatment of the existing discharges from the more than 300 bonded Pennsylvania coal mines with post-mining discharges does not continue. The insufficiency of the bonds held by Pennsylvania DEP to ensure long-term treatment of those discharges presents an imminent and substantial threat to the environment.

50. Pennsylvania's alternative bonding system and its overall coal mine bonding program lack sufficient funds to ensure

the prompt and complete reclamation of the land surface on every permitted mine site. For one particular active surface mine in Pennsylvania, the estimated cost of reclaiming the surface of the land exceeds the amount of bond posted for the site by \$10 million or more. At this same mine, the operator currently pumps and treats mine drainage to prevent it from breaking out on the surface of the ground and washing out a section of a state highway. If Pennsylvania had to assume these reclamation and treatment obligations because the mine operator defaulted on them, the liabilities for this single mine would consume a substantial portion of the funds available in Pennsylvania's alternative bonding system.

CLAIMS FOR RELIEF

Violations and Failures to Perform Nondiscretionary Duties by Defendant Seif

51. The Pennsylvania Department of Environmental Protection is the "regulatory authority," "State regulatory authority," and "appropriate State regulatory authority" in Pennsylvania as those terms are used in SMCRA and its implementing regulations.

52. Under the federal regulations promulgated pursuant to SMCRA, which provide that "States with an approved State program shall implement, administer, enforce and maintain it in accordance with the [Surface Mining Control and Reclamation] Act, this chapter [Chapter VII of Title 30 of the Code of Federal

Regulations] and the provisions of the approved State program," 30 C.F.R. § 733.11 (emphasis added), Defendant Seif has a nondiscretionary duty to implement, administer, enforce, and maintain the approved Pennsylvania program in accordance with SMCRA, the federal implementing regulations, and provisions of the approved Pennsylvania program.

Count 1

**Failure to Perform Nondiscretionary Duty
to Maintain Adequate Bonding Program
(Defendant Seif)**

53. Plaintiffs reallege and fully incorporate herein the allegations of all of the foregoing paragraphs.

54. Defendant Seif has failed to perform his nondiscretionary duty under SMCRA, the federal implementing regulations, and the approved Pennsylvania program to maintain a reclamation bonding system that achieves the objectives and purposes of a bonding program under SMCRA, which include having sufficient funds available to assure the regulatory authority's prompt completion of the reclamation plan for each mine site that is in default at any time, and providing a substantial economic incentive for the operator to comply with all reclamation provisions rather than to default. 30 U.S.C. § 1259(a), (c); 30 C.F.R. § 800.11(e)(1), (2).

Count 2

**Failure to Perform Nondiscretionary Duties to
Establish, Review, and Revise Bonding Rate Guidelines
(Defendant Seif)**

55. Plaintiffs reallege and fully incorporate herein the allegations of all of the foregoing paragraphs.

56. Defendant Seif has failed to perform his nondiscretionary duty under SMCRA, the federal implementing regulations, and the approved Pennsylvania program to establish bonding amount rate guidelines based on the factors specified in the approved Pennsylvania program (including 25 Pa. Code §§ 86.145(c) & 86.149(b)).

57. Defendant Seif has failed to perform his nondiscretionary duty under SMCRA, the federal implementing regulations, and the approved Pennsylvania program (including 25 Pa. Code §§ 86.145(c) & 86.149(b)), to complete annually a review of Pennsylvania's bonding rate guidelines that includes, if necessary, revision of the guidelines to reflect the current cost of reclamation.

Count 3

**Failure to Perform Nondiscretionary Duty to Adjust Bond Amounts
to Account for Increased Reclamation Costs at Specific Mine Sites
(Defendant Seif)**

58. Plaintiffs reallege and fully incorporate herein the allegations of all of the foregoing paragraphs.

59. Defendant Seif has failed to perform his nondiscretionary duty under Section 509(e) of SMCRA, 30 U.S.C. § 1259(e), the federal implementing regulations (including 30 C.F.R. §§ 733.11 & 800.15(a)), and the approved Pennsylvania program to adjust the bond amount for a particular mine site upward when the cost of future reclamation increases, including, but not limited to, circumstances in which a post-mining discharge develops that the mine operator is responsible to treat.

Count 4

**Failure to Perform Nondiscretionary Duty to Determine
Adequate Bond Amounts By Failing to Use
Discharge Treatment Period of Sufficient Duration
(Defendant Seif)**

60. Plaintiffs reallege and fully incorporate herein the allegations of all of the foregoing paragraphs.

61. By using a treatment period of only 50 years in determining the adequacy of bonds on coal mine sites with discharges, Defendant Seif has failed to perform his nondiscretionary duties under SMCRA, the federal implementing regulations, and the approved Pennsylvania program (including 35 P.S. § 691.315(b) and 25 Pa. Code §§ 86.149(b)(5), 86.152, 86.172, 86.174).

Count 5

**Failure to Perform Nondiscretionary Duty to Require
Adequate Subsidence Bonds for Underground Mines
(Defendant Seif)**

62. Plaintiffs reallege and fully incorporate herein the allegations of all of the foregoing paragraphs.

63. By generally using a uniform component of only \$10,000 for repair and reclamation of the surface effects of subsidence when calculating bond amounts for underground coal mines, Defendant Seif has failed to perform his nondiscretionary duties under SMCRA, the federal implementing regulations, and the approved Pennsylvania program (including 52 P.S. §§ 1406.5(b), 1406.6(b) and 25 Pa. Code § 86.149(b)(5)).

64. Pennsylvania DEP has notified the operator of only one underground coal mine that a subsidence bond in an amount above the original \$10,000 bond must be filed by a date certain. DEP has not promulgated or proposed a regulation, other binding norm, or non-binding "Technical Guidance Document" under which operators of underground mines would be required to post subsidence bonds in amounts that are based on the applicable factors (including those identified in 52 P.S. §§ 1406.5(b), 1406.6(b) and 25 Pa. Code § 86.149(b)(5)), rather than the prevailing, across-the-board amount of \$10,000 per mine.

Count 6

**Failure to Perform Nondiscretionary Duty to Require Adequate
Bonds for Treatment of Discharges from Underground Mines
(Defendant Seif)**

65. Plaintiffs reallege and fully incorporate herein the allegations of all of the foregoing paragraphs.

66. By using the capital replacement cost method to determine the mine drainage treatment component when calculating bond amounts for underground coal mines, Defendant Seif has failed to perform his nondiscretionary duties under SMCRA, the federal implementing regulations, and the approved Pennsylvania program (including 25 Pa. Code § 86.149(b)(5)).

67. By failing to consider all costs of treating anticipated or potential discharges or break outs of mine drainage when calculating, adjusting, or releasing the amount of bonds for certain underground coal mines, Defendant Seif has failed to perform his nondiscretionary duties under SMCRA, the federal implementing regulations, and the approved Pennsylvania program (including 35 P.S. § 691.315(b) and 25 Pa. Code § 86.149(b)(5)).

Count 7

**Failure to Perform Nondiscretionary Duties to
Satisfy Conditions Placed on Approval of State Program
(Defendant Seif)**

68. Plaintiffs reallege and fully incorporate herein the allegations of all of the foregoing paragraphs.

69. Defendant Seif has failed to perform his nondiscretionary duty under SMCRA, the federal implementing regulations (including 30 C.F.R. §§ 733.11, 800.11(e), 938.16(h)) and the approved Pennsylvania program to submit to OSM, by the deadline promulgated by OSM, information demonstrating that revenue from the collection of Pennsylvania's reclamation fee is sufficient to assure that Pennsylvania's alternative coal mine bonding system can be operated to meet the requirements of SMCRA, the federal implementing regulations, and the approved Pennsylvania program. The condition codified at 30 C.F.R. § 938.16(h) that requires the submission of this demonstration remains in effect.

70. Defendant Seif has failed to perform his nondiscretionary duty under SMCRA, the federal implementing regulations (including 30 C.F.R. §§ 733.11 & 938.16(h)) and the approved Pennsylvania program by failing to submit to OSM, by the deadline promulgated by OSM, a clarification of the procedures for bonding the surface impacts of underground mines and the reclamation of underground mining permits where the operator has defaulted on the obligation to reclaim. The condition codified at 30 C.F.R. § 938.16(h) that requires the submission of this clarification of procedures remains in effect.

Count 8

**Failure to Perform Nondiscretionary Duty to
Submit Required State Program Amendment
(Defendant Seif)**

71. Plaintiffs reallege and fully incorporate herein the allegations of all of the foregoing paragraphs.

72. In letters dated October 1, 1991 and May 31, 1995, the Director of OSM notified the Secretary of Pennsylvania DEP of the need to amend the approved Pennsylvania program in order to provide additional or alternate financial guarantees for the long term treatment of mine drainage. These letters constituted notification of a "decision" or "determin[ation] that a State program amendment is required" within the meaning of 30 C.F.R. § 732(f)(1). By these letters, the Director of OSM further "notif[ied] the State regulatory authority in writing" that it was "not effectively implementing, administering, maintaining or enforcing [a] part of its approved State program" within the meaning of 30 C.F.R. § 732.12(b).

73. Defendant Seif has failed to perform his nondiscretionary duty under SMCRA and 30 C.F.R. § 732.17(f)(1) to submit to OSM, in response to the notifications from the Director of OSM that an amendment to the approved Pennsylvania program was required, either: a) a proposed program amendment; or b) a description of an amendment to be proposed that meets the

requirements of SMCRA and Chapter VII of the Title 30 regulations, along with a timetable for enactment which is consistent with established administrative or legislative procedures in the state. Defendant Seif had a nondiscretionary duty to make such a submission by approximately August 1, 1995.

Violations and Failures to Perform Nondiscretionary Duties by Defendants Babbitt and Karpan

Count 9

Failure to Perform Nondiscretionary Duties to Notify State Regulatory Authority of State's Failures to Implement, Administer, Maintain, and Enforce Approved State Program (Defendants Babbitt and Karpan)

74. Plaintiffs reallege and fully incorporate herein the allegations of all of the foregoing paragraphs.

75. With respect to each of the violations and failures by Defendant Seif to perform nondiscretionary duties alleged in Paragraphs 51 through 73, above, except those included in the notification letters described in Paragraph 72, above, Defendants Babbitt and Karpan have failed to perform their nondiscretionary duties under 30 C.F.R. § 732.12(b) to notify Pennsylvania DEP of its failures to implement, administer, maintain, and enforce the approved Pennsylvania program.

Count 10

**Failure to Perform Nondiscretionary Duties to
Enforce or Replace State Regulatory Program
(Defendants Babbitt and Karpan)**

76. Plaintiffs reallege and fully incorporate herein the allegations of all of the foregoing paragraphs.

77. Defendants Babbitt and Karpan have failed to perform their nondiscretionary duties under 30 C.F.R. § 732.17(f)(2) and 30 C.F.R. Part 733 to begin proceedings either to enforce the provisions of the approved Pennsylvania program relating to Pennsylvania's bonding program or to withdraw approval of the Pennsylvania program, in whole or in part, and implement a Federal program.

78. Defendants Babbitt and Karpan have failed to perform their nondiscretionary duties under Section 504(a)(3) of SMCRA, 30 U.S.C. § 1254(a)(3), to prepare, promulgate, and implement a Federal program where Pennsylvania has failed to implement, enforce, or maintain the alternative bonding system and other bonding provisions of its approved state program.

Count 11

**Agency Action Unlawfully Withheld or Unreasonably Delayed
(Defendants Babbitt and Karpan)**

79. Plaintiffs reallege and fully incorporate herein the allegations of all of the foregoing paragraphs.

80. Defendants Babbitt and Karpan have unlawfully withheld or unreasonably delayed agency action by failing to notify the Pennsylvania DEP of its failures to implement administer, maintain, and enforce the approved Pennsylvania program, and by failing to enforce the approved Pennsylvania program or to replace it with a federal program, as more fully described in Paragraphs 74 through 78, above.

81. Plaintiffs have suffered a legal wrong and are adversely affected and aggrieved because of the failures of Defendants Babbitt and Karpan to notify the Pennsylvania DEP of its failures to implement administer, maintain, and enforce the approved Pennsylvania program, and because of the failures of Defendants Babbitt and Karpan to enforce the approved Pennsylvania program or to replace it with a federal program, as more fully described in Paragraphs 74 through 78, above.

82. Plaintiffs are entitled to judicial review and to a decree compelling agency action under 5 U.S.C. §§ 702 & 706(1).

GENERAL ALLEGATIONS - VIOLATIONS AND REMEDIES

83. Each of the failures to act alleged in Paragraphs 51 through 82, above, constitutes "a failure of the Secretary or the appropriate State regulatory authority to perform [an] act or duty under this chapter which is not discretionary with the Secretary or with the appropriate State regulatory authority,"

30 U.S.C. § 1270(a)(2), and also constitutes a "violation of the provisions of this chapter or of any rule, regulation, order or permit issued pursuant thereto." 30 U.S.C. § 1270(a)(1).

84. The Defendants and the government agencies they direct have not collectively or individually fulfilled the nondiscretionary duties alleged herein or redressed the violations alleged herein.

85. The Defendants' violations of the law and failures to perform nondiscretionary duties have caused and will continue to cause the Plaintiffs injury for which the Plaintiffs have no adequate remedy at law.

86. Declaratory relief is appropriate under 28 U.S.C. § 2201.

87. Mandamus is appropriate under 28 U.S.C. § 1361 to compel Defendants Babbitt and Karpan to perform their duties under SMRCA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

(1) Declare that Defendants have failed and continue to fail to perform acts or duties that are not discretionary, in all of the ways enumerated in this Complaint, and that Defendants have violated and continue to violate SMCRA, the federal implementing regulations, and the approved Pennsylvania program in all of the

ways enumerated in this Complaint.

(2) Enjoin Defendant Seif to implement, administer, maintain, and enforce, immediately and fully, every provision of the approved Pennsylvania program concerning bonding of coal mines, in accordance with the Surface Mining Control and Reclamation Act, the federal implementing regulations, and the provisions of the approved Pennsylvania program.

(3) Enjoin Defendant Seif to submit to OSM, by a date certain, a state program amendment(s) that will ensure that Pennsylvania's coal mine bonding program achieves the objectives and purposes of a bonding program under SMCRA. At a minimum, this program amendment(s) shall ensure that sufficient funds are available to assure prompt completion of the reclamation plan for each mine site that is in default at any time, including the treatment of any discharges, and that a substantial economic incentive exists for the operator to comply with all reclamation provisions rather than to default.

(4) Enjoin Defendant Seif to fulfill the unsatisfied conditions on the approval of the Pennsylvania program that are codified at 30 C.F.R. § 938.16(h) by submitting to OSM, by a date(s) certain:

a) an actuarial study or equivalent accounting report demonstrating that Pennsylvania's alternative bonding system, as amended, achieves the objectives and purposes of

a bonding program under SMCRA; and

b) a clarification of the procedures for bonding the surface impacts of underground mines and the reclamation of underground mining permits (including treatment of mine drainage) where the operator has defaulted on the obligation to reclaim.

(5) Issue a writ of mandamus or injunction directing

Defendants Babbitt and Karpan:

a) to determine whether Defendant Seif has fulfilled his obligations to: i) implement, administer, maintain, and enforce, immediately and fully, every provision of the approved Pennsylvania program concerning bonding of coal mines; ii) submit to OSM, by the required date, a state program amendment(s) that will ensure that Pennsylvania's bonding program achieves the objectives and purposes of a bonding program under SMCRA; and iii) fulfill the unsatisfied conditions on the approval of the Pennsylvania program that are codified at 30 C.F.R. § 938.16(h) by making the required submissions to OSM in a timely manner; and

b) if Defendant Seif has failed to fulfill any of those obligations, to initiate immediately and to prosecute diligently proceedings to enforce the approved Pennsylvania program, and/or proceedings to promulgate, implement, and enforce a federal program.

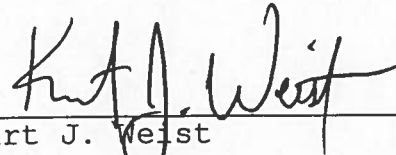
(6) Retain jurisdiction of this action to ensure compliance with its decree.

(7) Award Plaintiffs the costs of this action, including attorney's fees and expert witness fees.

(8) Grant such other relief as the Court deems just and proper.

Respectfully submitted,

FOR THE PLAINTIFFS:



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