

**Office of Surface Mining
Reclamation and Enforcement**

Pittsburgh Field Division



Evaluation Report

LANDS UNSUITABLE

Maryland Abandoned Mine Lands Program

Evaluation Year 2004

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OBJECTIVE

The purpose of this study was to review the implementation of the Maryland Department of Environment (MDE) regulations relating to lands unsuitable petitions, to assure proper processes and procedures are in place to address petitions, and to affirm that petitions are handled in accordance with the approved Maryland program

SUMMARY

Maryland has had no petitions for designation of lands unsuitable, or reversing a designation of lands unsuitable since 1987. There have only been two petitions filed since 1982, and neither resulted in a designation of lands unsuitable for mining.

Maryland does not presently have an up-to-date centralized database and inventory as required in the approved plan. This has not been an issue to date since there has been so little activity in the lands unsuitable program. However, the regulations are designed to assure that prompt and informed action may be taken on any petitions that may be filed, so it is necessary that such a database is available for use in the program. Maryland has demonstrated a willingness to cooperate in updating and developing the required database information, as well as the forms and procedures needed to meet program requirements.

BACKGROUND

Office of Surface Mining (OSM) Directive REG. 8 stipulates that OSM conduct an annual oversight evaluation of one of six activities from an area of the State program that involves customer service. Lands Unsuitable petitions is one of the listed activities, and the only remaining activity for which OSM has not conducted a study in the last six evaluation years.

In accordance with the Code of Maryland Regulations (COMAR) section 26.20.11, any person having an interest which may be adversely affected has the right to petition the Bureau to have an area designated as unsuitable for surface coal mining operations, or have an existing designation terminated. COMAR also requires that the Bureau develop and maintain a data base and inventory system to assist in evaluation of lands unsuitable petitions.

Maryland has received two petitions since inception of the regulatory program in 1982.¹ Neither petition resulted in a declaration of lands unsuitable. One petition was filed on June 9, 1982, by 52 citizens of the town of Shallmar requesting a declaration that mining in the upper watershed would render a local stream

¹ Source; OSM annual reports on Maryland for the period 1983 - present

(Short Run) unfit as a water supply for the distribution system serving the unincorporated town. The Bureau of Mines (BOM) denied the petition in December, 1982 on the grounds of insufficient evidence. The other petition was filed in 1987 alleging that the stream channel and floodplain of Steyer Run in Garrett County was unsuitable for mining. BOM notified the petitioner that the petition was incomplete.

The 1987 OSM annual report for Maryland indicated that Maryland had established a lands unsuitable data base and was preparing to develop a comprehensive archaeological resource management system, and a wetlands inventory, in concert with the Maryland National Heritage Program.

SCOPE/METHODOLOGY

A file review of OSM annual reports was conducted to determine the number and disposition of any petitions filed within the last seven years. Maryland personnel were also interviewed to review processes and procedures and confirm compliance with COMAR 26.20.11.

FINDINGS

Processes – Maryland BOM has adopted formal procedures in COMAR title 26, chapter 11, for receiving, advertising, processing, and making determinations on lands unsuitable petitions. The flow chart in exhibit #1 graphically illustrates these procedures. Since no petitions have been received in over 17 years, no reviews were made on past files to determine whether the formal procedures are being followed.

COMAR 26.20.11.03B. requires that Maryland determine what information must be provided by a petitioner for designation of lands unsuitable and COMAR 26.20.11.10B. requires that Maryland provide information to the public on the petition procedures. Maryland does not have a form which specifies the information to be provided, or otherwise have processes for making the information available to the public. OSM provided Maryland personnel with forms used by other States to use as a template in developing their own.

Data Base and Inventory – COMAR 26.20.11.09 requires BOM to develop a data base and inventory system which includes information sufficient to assist in determining whether operations are:

- a. technologically and economically feasible
- b. compatible with existing State or local land use plans or programs
- c. could result in significant damage to important historic, cultural, scientific, or esthetic values or natural systems
- d. could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products

- e. could substantially endanger life and property, including areas subject to frequent flooding and areas of unsuitable geology

The database is also required to be maintained by adding information on potential coal resources, demand for the resources, the environment, economy, and supply of coal. Maryland does not presently have an up-to-date centralized database and inventory as required in the regulations. Maryland does have various reference sources which may be used to address certain aspects of the requirements for the database. Certain historic features are available in a document Maryland developed with assistance from the Maryland Heritage program. Also, information on land use is available from soil survey books Maryland has available.

RECOMMENDATIONS

1. Recommend Maryland develop petition forms for use in the designation process to address requirements of COMAR 26.20.11.03B. and 26.20.11.10B, as well as forms as necessary for advertisement, publication, review, and determination of petitions.
2. Recommend Maryland develop a system to consolidate and reference on-hand material and obtain additional reference material as needed to establish a database containing information required by COMAR 26.20.11.09.
3. Recommend Maryland develop a plan for updating reference materials to provide current site-specific information necessary to make the determinations required by COMAR 26.20.11.08.

EXHIBITS

Exhibit 1 – Lands Unsuitable Process Flow Chart

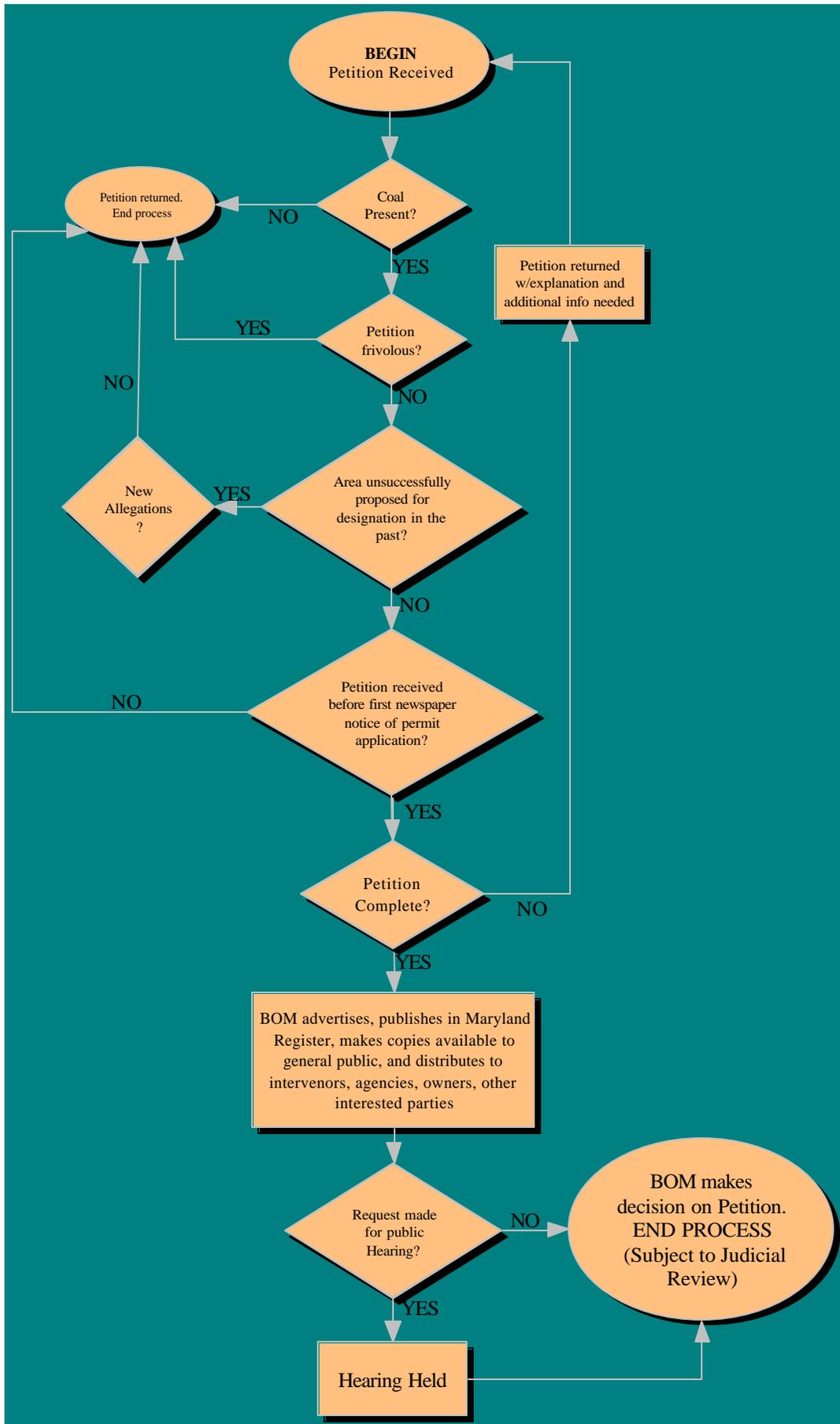


Exhibit 2 – Lands Unsuitable Interview Form

06/09/04

1. OSM records indicate that there have been two lands unsuitable petitions since program inception (1983 and 1987). Have there been any others?
2. COMAR 26.20.11.09 requires BOM to develop a data base and inventory system which includes information sufficient to assist in determining whether operations are:
 - a. technologically and economically feasible
 - b. compatible with existing State or local land use plans or programs
 - c. could result in significant damage to important historic, cultural, scientific, or esthetic values or natural systems
 - d. could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products
 - e. could substantially endanger life and property, including areas subject to frequent flooding and areas of unsuitable geology

The database is also required to be maintained by adding information on potential coal resources, demand for the resources, the environment, economy, and supply of coal.

Does Maryland have such a database? If so, how is it set up and maintained?

3. COMAR 26.20.11.10A. requires that the inventory and database be made available to the public for inspection. How is this accomplished?
4. COMAR 26.20.11.10B. requires that public be provided information on petition procedures. How is this accomplished?
5. COMAR 26.20.11.03(B) describes the information which must be included in a petition. Has BOM developed any forms including this information, or how is it otherwise made available to the public?