

Congress of the United States

Washington, DC 20515

June 10, 2015

The Honorable Sally Jewell
Secretary
U.S. Department of the Interior
1849 C Street NW
Washington, D.C. 20240

Dear Madam Secretary:

The Committee on Homeland Security and Governmental Affairs' Subcommittee on Regulatory Affairs and Federal Management (RAFM), and the Committee on Oversight and Government Reform (OGR), are conducting an investigation of possible mismanagement at the Office of Surface Mining Reclamation and Enforcement (OSM). Pursuant to this investigation, we are writing to request documents that will assist the committees in reviewing actions taken by OSM Director Joseph Pizarchik and OSM employees which may not conform to federal law.

In 1977, the Surface Mining Control and Reclamation Act (SMCRA) created OSM and established a comprehensive environmental program for regulating surface coal mining and reclamation activities.¹ Among its expressly delineated purposes was to assure that future adequate procedures would be implemented to "reclaim surface areas as contemporaneously as possible" with surface coal mining operations.² The law also sought to "assist the states in developing and implementing a program to achieve the purposes of the Act."³ Mindful that there are significant differences between the climate, terrain, topography and geology of the various states, Congress was clear that federal minimum standards could be established but "the primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface mining and reclamation operations . . . should rest with the states."⁴

A plain reading of SMCRA reveals that once a regulatory program is developed and approved in a particular state, that state is granted "primary governmental responsibility" for regulating surface coal mining and reclamation operations. The law sets forth that a state granted "primacy" has "exclusive jurisdiction over the regulation of surface coal mining" within its borders.⁵ Over the years federal courts have had occasion to review and interpret SMCRA. Their decisions widely reflect the understanding that once primacy is granted, a state has exclusive jurisdiction for surface coal mining regulation on its soil.⁶

¹ 30 U.S.C. § 1201-1328; 91 stat. 445.

² 30 U.S.C. § 1201-1202.

³ 30 U.S.C. § 1202(g).

⁴ 30 U.S.C. § 1201(f).

⁵ 30 U.S.C. § 1253(a).

⁶ See *Penn. Fed'n of Sportsmen's Clubs v. Hess*, 297 F.3d 310 (3d Cir. 2002); *Bragg v. W. Va. Coal Ass'n*, 248 F.3d 275, 295 (4th Cir. 2001), *cert. denied*, 122 S. Ct. 920 (Jan. 22, 2002); *Penn. Coal Ass'n v. Babbitt*, 63 F.3d 231,234 (3d Cir. 1995) (noting SMCRA's "mechanism" for according states "exclusive jurisdiction over regulation"); *Coteau Properties Co. v. Dep't of Interior*, 53 F.3d 1466, 1472-73 (8th Cir. 1995) ("Primacy status gives the state "exclusive jurisdiction. . . .", § 1253(a), and state, not federal, regulations govern once a state program is approved by OSM."); *Nat'l Wildlife Fed. v.*

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Following SMCRA's passage in 1977, there were initial issues with a small number of mining operators⁷ and in subsequent decades the courts sorted out litigation concerning proper implementation and oversight. The controversies over SMCRA, however, had largely cooled off and crystallized into settled law by the early 2000s.

On July 6, 2009, President Obama announced his nomination of Pennsylvania Director of the Bureau of Mining and Reclamation, Department of Environmental Protection, Joseph Pizarchik to become Director of OSM. At his nomination hearing, Mr. Pizarchik testified:

“. . . I make myself available to the citizen groups, to the environmentalists, and to the regulated community to hear their perspectives. Where the requests have a valid basis in the law and in the sciences, we will act upon them. But as a member of the executive branch, *I carry out the laws as they have been enacted*, and I do not go off and do things for one particular interest group or another.”⁸

Following the hearing, several pertinent additional questions were presented by Senators to Mr. Pizarchik and he answered them, under a continuing oath, as follows:

“RESPONSES OF JOSEPH G. PIZARCHIK TO QUESTIONS
FROM SENATOR MURKOWSKI

STATE ROLE IN INTERAGENCY ACTION PLAN ON
SURFACE MINING

Question 2. . . . How do you envision these directives aligning with the exclusive jurisdiction vested in the states under the Surface Mining Control and Reclamation Act for the regulation of coal mining operations? Do you believe that there should be an official role for the states in the process of developing any recommendations or reaching any decisions in the context of this interagency action plan?

Answer. *The Surface Mining Control and Reclamation Act, which incorporated the concept of state primacy, envisions OSM and the states working together cooperatively. I believe that it is critical to*

Lujan, 928 F.2d 453, 464 n.1 (D.C. Cir. 1991); *Haydo v. Amerikohl Mining, Inc.*, 830 F.2d 494, 497 (3d Cir. 1987) (“because Pennsylvania’s regulatory plan has been approved by the Secretary, jurisdiction over the alleged violations of the state statute and regulations lies exclusively in the courts of Pennsylvania”); *Laurel Pipe Line Co. v. Bethlehem Mines Corp.*, 624 F. Supp. 538, 540 (W.D. Pa. 1986).

⁷ U.S. DEPARTMENT OF INTERIOR, Office of Surface Mining, *Surface Coal Mining Reclamation: 25 years of Progress, 1977-2002*, 5 (2003).

⁸ *Hearing Before the S. Committee on Energy and Natural Resources*, 111th Cong. 18 (2009) (testimony of Joseph G. Pizarchik, nominee) (emphasis added).

the success of the interagency action plan for state regulatory authorities to participate in developing any recommendations. . ."⁹

“ . . . COOPERATIVE FEDERALISM APPROACH TAKEN BY SMCRA

Question 4. Coming from a State program, you have clearly developed an understanding of the meaning and importance of state primacy, which allows states to have exclusive regulatory jurisdiction within their respective borders.

If you are confirmed as OSM Director, will you pledge to respect the longstanding principle of state primacy established in SMCRA?

What specific role do you see the states playing under the Act and how do you envision federal oversight in light of this role?

Answer. I recognize and fully support the importance of state primacy. The states have the primary responsibility for implementing SMCRA's requirements, and OSM must ensure that the states' implementation is appropriate. As I noted at my confirmation hearing, this can and should be done cooperatively. If confirmed, I will seek to ensure that it is.¹⁰

OPPORTUNITY FOR PUBLIC COMMENT ON RULEMAKINGS

Question 5. The Administrative Procedure Act establishes a process for federal agencies to follow regarding changes to their rules and allowing for public notice and comment on those decisions. When taking major policy actions, will you commit to do so in a transparent and open manner that allows public participation through the Administrative Procedures Act process?

Answer. . . . If confirmed, I commit to ensuring that OSM's rulemaking process fully complies with the public participation provisions of the Administrative Procedure Act."¹¹

⁹ *Id.* at 27-28 (emphasis added).

¹⁰ *Id.* at 28 (emphasis added).

¹¹ *Id.* (emphasis added).

“RESPONSES OF JOSEPH G. PIZARCHIK TO QUESTIONS
FROM SENATOR SANDERS

Question 26. . . . How do you respond, and are you willing to commit that in your role as Director of the Office of Surface Mining Reclamation and Enforcement you will be a strong supporter of federal laws requiring transparency and public accountability in decision-making, such as the National Environmental Policy Act and the Freedom of Information Act?

Answer. . . . *If confirmed as Director of the Office of Surface Mining Reclamation and Enforcement, I will comply with the federal laws requiring transparency and public participation and be a strong supporter of transparency in government decisionmaking [sic].”*¹²

On November 6, 2009, Mr. Pizarchik was confirmed as Director of OSM and the next year OSM began to take actions that appear to directly contravene the assurances set forth above.

In 2010, OSM conducted a National Priority review of Approximate Original Contour (AOC) that resulted in separate oversight reports for several states. These reports fail to reflect a singular federal minimum standard concerning AOC and leave the impression that OSM is purposefully applying differing federal requirements to different states. The report for Texas states that OSM's understanding of AOC has changed over time, and that the final pit impoundments and reclamation that had been approved for the Texas Sandow mine do “not constitute AOC.” The report for Oklahoma concluded the state's approval of final pit impoundments has created AOC violations. On the other hand, the reports for Illinois and Indiana never mention impoundments, despite the fact that leaving final pit impoundments is a common practice in both states.¹³

Notwithstanding the Director's own confirmation hearing testimony regarding the Administrative Procedure Act (APA),¹⁴ on November 15, 2010, OSM issued a memorandum to Regional Directors titled, “Application of the Ten-Day Notice Process and Federal Enforcement to Permitting Issues Under Approved Regulatory Programs” overturning a final Departmental decision (which appropriately supplied citations to controlling, precedential authority) dated October 21, 2005. The 2010 memorandum makes reference to “legal precedent” but supplies

¹²*Id.* at 39-40 (emphasis added).

¹³ Subsequent OSM actions in Oklahoma demonstrate that, in order to achieve AOC in Oklahoma, OSM requires that no box cut spoil be left outside the mined out area unless the final pit has been completely filled, with no final pit impoundments allowed.

¹⁴ 5 U.S.C. §§ 551-59, 701-06, 1305, 3105, 3344, 5372, 7521.

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none.¹⁵ This arbitrary change to a final agency decision seems to be an abuse of discretion and contrary to law in the APA.¹⁶

Another example of questionable OSM action under SMCRA and the APA occurred on January 31, 2011, when Director Pizarchik issued Directive INE-35. This unilateral directive is not supported by pertinent case law and is in direct conflict with the basis, purpose, and interpretation of the Secretary's 2005 Departmental final decision. INE-35 instructs OSM staff to use the oversight inspection and enforcement process to take action against mine operators contrary to the rulemaking published in the Federal Register on December 3, 2007, that removed 30 CFR 843.21. Directive INE-35 penalizes operators for perceived errors by state regulatory authorities in the permitting process. It also runs roughshod over the long understood SMCRA principle that primacy states are responsible for the permitting process as there is no language in INE-35 indicating that a state authority's evaluation should be accorded deference. Thus OSM, through this directive, creates for itself a new authority to review and veto state permitting decisions in direct violation of SMCRA and the APA.¹⁷

On February 13, 2015, Director Pizarchik revoked a 28-year-old OSM guideline, Directive INE-26. The 1987 directive provided policy guidance and procedures for determining whether backfilling and grading met the requirements of AOC, and provided that OSM should give "considerable deference" to reclamation approved by the state authority, even though an OSM inspector may have a different opinion. The guideline importantly carried forward Congress' state primacy intent under SMCRA stating, "AOC determinations must necessarily retain a certain amount of subjectivity and often rely principally on the judgment of the regulatory authority, which has been given the primary responsibility for such decisions under the Act."¹⁸ Without providing notice, a hearing, or a rationale basis, Director Pizarchik has summarily rescinded INE-26. In dismissive defiance of congressional intent and authority, the current version of INE-26 supplies the Director's unsupported explanation for the abrogation as: "Review of Directive INE-26 concludes that the provisions contained in the Directive are obsolete and no longer appropriate."¹⁹

These questionable actions taken at Mr. Pizarchik's direction are troublesome to the committees: it seems as if the Director is at best testing the limits of statutory authority or at worst willfully exceeding them. Like INE-26, it appears that he now believes the concept of state primacy as codified by Congress in SMCRA is "obsolete and no longer appropriate" and he is free to ignore the findings and recommendations of state authorities in order to direct OSM's regulatory actions as he sees fit.

Since May 6, 2014, Members of Congress have exchanged several letters with Director Pizarchik regarding the departmental actions that began in 2010 which seem to break the specific pledges he made to Congress and appear to be without legal basis or justification. The letters from Members of Congress ask legitimate oversight questions regarding several of OSM's measures which run contrary to SMCRA and the APA. Inquiry was also made into OSM's

¹⁵ U.S. DEPARTMENT OF INTERIOR, Memorandum to Office of Surface Mining Regional Directors, 1 (2010).

¹⁶ 5 U.S.C. § 706(2)(A); 5 U.S.C. § 706(2)(C).

¹⁷ *Supra* n.6; 5 U.S.C. § 706(2)(C).

¹⁸ INE-26 at p. 1 (May 26, 1987).

¹⁹ INE-26 at p. 1 (Feb. 13, 2015).

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revocation and implementation of guidelines and regulations and their inconsistent application of AOC standards across the country.²⁰

In July 2014, Director Pizarchik sent a reply letter which ignored or otherwise refused to respond to the original 19 questions posed to him regarding the May 6, 2014 letter, citing ongoing administrative proceedings before the Department of Interior's Office of Hearings and Appeals and unspecified concerns regarding "due process and separation of powers."²¹ On September 10, 2014, Members of the Oklahoma Congressional Delegation sent a response letter to OSM requesting greater detail for the refusal to answer questions, pressed OSM for answers for their inconsistent application of AOC standards to the Oklahoma Department of Mines (ODM) and OSM's unjustifiable requirement that ODM enter into a confidentiality agreement before negotiating to resolve the AOC issues between the authorities.²² In February 2015, Director Pizarchik responded to Senator Inhofe in a letter which confirmed that the requested confidentiality agreement for AOC negotiations between OSM and ODM had been dropped but failed to address the balance of the unanswered questions.²³

In order that the committees may better understand the management of OSM under Director Pizarchik please provide the following unredacted documents and information as soon as possible, but no later than noon on July 1, 2015:

1. All documents and communications referring or relating to the planning, consideration, legal analysis, authority and issuance of the November 15, 2010, OSM memorandum to Regional Directors titled, "Application of the Ten-Day Notice Process and Federal Enforcement to Permitting Issues Under Approved Regulatory Programs," from November 1, 2009 to the present.
2. All documents and communications referring or relating to the planning, consideration, legal analysis, authority and issuance of INE-35, from November 1, 2009 to the present.
3. All documents and communications referring or relating to the planning, consideration, legal analysis and authority for rescinding INE-26, from November 1, 2009 to the present.
4. All documents and communications referring or relating to the evolution of OSM's understanding of AOC from November 1, 2009 to the present.
5. All documents and communications referring or relating to the legal analysis, authority and rationale for the correcting of AOC issues in Oklahoma retroactively.
6. All documents and communications referring or relating to the legal analysis, authority and rationale for issuing AOC violations concerning final pit impoundments in Texas and Oklahoma, but not in Indiana and Illinois.

²⁰ Letter from Oklahoma Delegation to Dir. Pizarchik (May 6, 2014).

²¹ Letter from Director Pizarchik, to Sen. Inhofe (July 11, 2014).

²² Letter from Oklahoma Delegation to Dir. Pizarchik (Sept. 10, 2014).

²³ Letter from Director Pizarchik to Sen. Inhofe (Feb. 4, 2015).

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7. All documents and communications referring or relating to the legal analysis, authority and rationale for no longer applying the 1997 OSM report interpretation of AOC to Oklahoma.
8. A copy of all drafts and the final report prepared for the Washington Federal Program under the National Priority review of AOC.
9. A copy of all drafts and the final the National Priority Review AOC reports prepared by OSM for the Tennessee Federal Program and the Indian Lands Program.
10. All documents and communications pertaining to the rationale for the different interpretations of AOC in Washington, on Indian lands and with those being imposed by OSM in Oklahoma.
11. All documents and communications referring or relating to OSM's legal authority to require new backfilling and grading plans to be submitted directly to OSM by a mine operator in a primacy state.
12. All documents and communications referring or relating to OSM's legal authority to make a determination of whether a backfilling and grading plan complies with AOC, independent of the state regulatory authority that has established primacy.
13. All documents and communications which establish that OSM's decision to force its own interpretation of AOC in Oklahoma conforms to SMCRA, the Secretary's rules, and OSM's current application of AOC in Washington, Illinois and Indiana.
14. All documents and communications referring or relating to the planning, consideration and proposal of the 2014 "Contract of Inadmissibility and Confidentiality" between OSM and ODM.
15. A copy of all drafts and the final proposed 2014 "Contract of Inadmissibility and Confidentiality" between OSM and ODM.
16. All documents and communications referring or relating to the Office of Inspector General's (OIG) investigations of ODM.

The Subcommittee on Regulatory Affairs and Federal Management oversees the management, efficiency, effectiveness, and economy of all federal government agencies, departments, and programs. The Subcommittee has broad oversight authority as set forth in Senate Rule XXVI. The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. An attachment to this letter provides additional information about responding to these requests.

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Unless otherwise specified, the time period covered by this request is from November 1, 2009 to the present. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Subcommittee. Please deliver your responses to the RAFM Majority Staff in Room 601 of the Hart Senate Office Building and the RAFM Minority Staff in Room 605 of the Hart Senate Office Building. The Subcommittee prefers to receive all documents in electronic format.

Thank you for your timely attention to this matter. Please contact John Cuaderes of the RAFM staff at (202) 224-6704 or William McGrath of the OGR staff at (202) 225-5074 with any questions regarding this matter.

Sincerely,



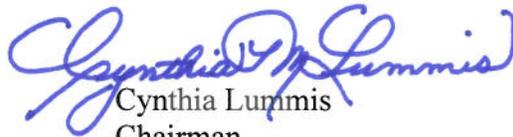
James M. Inhofe
Chairman
Senate Environment and
Public Works Committee



Jason Chaffetz
Chairman
House Oversight and
Government Reform Committee



James Lankford
Chairman
Senate Homeland Security and
Governmental Affairs
Subcommittee on Regulatory
Affairs and Federal Management



Cynthia Lummis
Chairman
House Oversight and
Government Reform Committee
Subcommittee on the Interior

Enclosure

cc: The Honorable Barbara Boxer, Ranking Minority Member
Senate Environment and Public Works Committee

The Honorable Elijah Cummings, Ranking Minority Member
House Oversight and Government Reform Committee

The Honorable Heidi Heitkamp, Ranking Minority Member
Senate Homeland Security and Governmental Affairs, Subcommittee on Regulatory
Affairs and Federal Management

The Honorable Brenda Lawrence, Ranking Minority Member
House Oversight and Government Reform Committee, Subcommittee on the Interior

Responding to RAFM Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Subcommittee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Subcommittee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - (d) All electronic documents produced to the Subcommittee should include the following fields of metadata specific to each document; BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

6. Documents produced to the Subcommittee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Subcommittee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Subcommittee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from November 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Subcommittee, production sets shall be delivered to the Majority Staff in Room 601 of the Hart Senate Office Building and the Minority Staff in Room 605 of the Hart Senate Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Subcommittee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be

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construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.

6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.

7. The term "employee" means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.