

United States Senate

WASHINGTON, DC 20510-4802

September 10, 2009

The Honorable Lisa Jackson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001


Dear Administrator Jackson,

I am writing to express my grave concern about recent Environmental Protection Agency (EPA) actions seeking changes to a rigorously reviewed and lawfully issued permit at the Spruce Number 1 Mine in Logan County, West Virginia. Such an action not only affects this specific permit, but would also needlessly create great uncertainty surrounding other currently operational permits.

In a September 3, 2009 letter, EPA's Region III Office requested that the U.S. Army Corps of Engineers (Corps) "suspend, revoke or modify" the previously approved surface mining permit at the Spruce Number 1 Mine. The Corps reviewed this permit for nearly a decade before it was approved in January 2007. A complete Environmental Impact Statement (EIS), the only EIS ever completed for a surface mining operation, was conducted and the EPA fully engaged in commenting and revising the permit application during the review process. In fact, to satisfy the environmental concerns raised by the EPA at the time, the permit was substantially scaled back. As approved, the final permit reduced the acreage of the permit by 835 acres or 27 percent and excess spoil by 150 million cubic yards, a 57 percent decrease. These dramatic reductions in environmental impact were noted specifically by the EPA before the final permit was issued. All parties involved, including the EPA and the Corps, highlighted this process as a model for future efforts.

I strongly support careful environmental review of all mining permits, but just as strongly believe it is more than inappropriate to revoke a permit that was rigorously reviewed, lawfully issued, and has been active for two years. When businesses make good faith efforts and fully comply with all applicable laws and regulations, they must have the confidence that the commitments made by the government will be honored. To revisit these issues long after the fact calls into question EPA's commitment to negotiations and agreements.

As you know, there was a multiagency Memorandum of Understanding (MOU) entered into in June 2009 that presented an orderly way for the EPA, the Corps, and the Department of the Interior to work through the backlog of pending surface mining permits, while allowing for increased input from the EPA. When announced, the Administration assured Members of Congress, the public and mining companies that the MOU would provide improved certainty and transparency to permit applicants.

The Spruce Mine Permit is plainly not a pending application to be considered as part of this MOU. And in my view, any suggestion that the Corps should reopen a permit more than two years after it was lawfully issued wholly violates the spirit of the MOU. The fact that the Spruce Mine Permit is the subject of litigation by private parties in no way alters the status or validity of the government's permit, in this or any other permitting matter. Moreover, the EPA's letter creates unacceptable uncertainty for the Mingo Logan Coal Company and other mining companies, a result completely contrary to the Administration's stated goals for the MOU.

I am a long time supporter of surface mining operations when done in accordance with the law. Surface mining is vital to the economy of southern West Virginia and our nation's electricity needs and it certainly can be carried out in a way that addresses environmental impacts. We must not lose sight of the fact that coal meets half of our nation's electricity needs and powers millions of American homes and businesses and will for decades into the future. For generations, coal has given the American people the highest standard of living in the world and today much of it comes from rigorously reviewed and safely-run operations in West Virginia. Calling previously approved permits into question needlessly threatens not only the economic stability of many West Virginia communities, but also our nation's energy security.

I strongly encourage you to retract Region III's September 3, 2009 letter to the Corps and ask you to remove any further impediments to this mining operation.

Sincerely,



John D. Rockefeller IV

CC: The Honorable Barack Obama, President of the United States of America
The Honorable Jo-Ellen Darcy, Assistant Secretary of the Army for Civil Works
The Honorable Nancy Sutley, Chair, White House Council on Environmental Quality

*Obviously, I feel more than
strongly about this matter. It
needs to be corrected.*

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