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July 26, 2010

Office of Surface Mining Reclamation and Enforcement
Administrative Record
Room 252-S1B
1951 Constitution Avenue, NW
Washington, DC 20240

Dear Sir or Madam:

On April 30, 2010, and again on June 18, 2010, the Office of Surface Mining Reclamation and Enforcement (OSM) published Notices of Intent with respect to development of a new Stream Protection Rule to better protect streams affected by surface mining. I am concerned with the adverse implications for coal mine employment of the changes proposed in the notices, as well as with the redundant and duplicative nature of the proposed changes, and I am writing to urge OSM to abandon this effort to institute a new Stream Protection Rule. Rather, I support the permitting of surface mining activities using existing, established guidelines under the Clean Water Act (CWA) and the Surface Mining Control and Reclamation Act (SMCRA).

The Notices issued by OSM stem from a June 11, 2009 Memorandum of Understanding (MoU) among the U.S. Environmental Protection Agency (EPA), the U.S. Department of the Army and the U.S. Department of the Interior, Office of Surface Mining. The purpose of this interagency MoU was to institute short and long term measures to reduce potentially harmful effects of surface mining and to provide a coordinated, streamlined process for surface mine permitting in order to achieve efficiency and clarity in the issuance of surface mine permits.

The June, 2009 MoU was the first in a series of actions to be taken by the Corps, EPA and OSM with respect to surface coal mine permitting. A confusing and often redundant array of further activity by federal permitting agencies followed.

- On November 30, 2009, OSM published an Advanced Notice of Proposed Rulemaking with respect to development of a comprehensive stream protection rule.
- On April 1, 2010, EPA issued a Memorandum titled "Improving EPA Review of Appalachian Surface Coal Mining Under the CWA."

- On April 2, 2010, the Army Corps of Engineers initiated a rulemaking with respect to the effects of proposed surface coal mining "valley fills" on the aquatic environment.
- On April 30, 2010, OSM issued its Notice of Intent to initiate development of a new Stream Protection Rule
- On June 18, 2010, OSM issued its Revised Notice of Intent listing a range of proposed alternatives to prevent downstream impacts.

These most recent actions by OSM are but the latest in a series of Notices, Memoranda, Guidances and proposed Rulemakings setting forth new or proposed changes with respect to Surface Coal Mine permitting in Central Appalachia.

OSM's April 18 Notice of Intent provides specific examples of unnecessary, overlapping areas of interest and oversight as proposed by the federal agencies. The Notice identifies eight "elements of proposed action" for consideration. Many of these elements and the alternatives listed for each have been considered the purview of the Army Corps of Engineers or the EPA under the CWA or of the State Agency under the Surface Mining Control and Reclamation Act (SMCRA). For example, elements for consideration such as "Additional Requirements for Collection of Baseline Data," "Definition of Material Damage to Hydrologic Balance" and "Additional Monitoring Requirements and Corrective Action Thresholds" touch on water quality standards that have been the responsibility of the States with delegated programs under the CWA. Other elements such as "Landforming and Fill Optimization," "Approximate Original Contour Exceptions" and "Reforestation" have also been considered the responsibility of the State Agency with primacy under SMCRA.

Each of the federal initiatives listed above has as a stated purpose the intent to provide clarity to the mining industry and to the public regarding the review of proposed surface mining operations and the facilitation of effective and timely coordination among the federal permitting agencies. However, the cumulative effect of these initiatives has been the opposite. I am advised that the uncertainty created within the mining industry, as well as within the state and federal permitting agencies, by the often overlapping layers of notices, rulemakings, guidances and memoranda has brought the surface mine permitting process in Virginia and the rest of the Central Appalachian region to a virtual halt.

In fact, the lack of clarity that has resulted from an onslaught of proposed regulatory changes by multiple agencies has impeded the surface mining permit process in Virginia significantly. There are currently twenty-two surface mine permit applications in Virginia pending approval by the Corps under Section 404 of the Clean Water Act. For these projects, eight SMCRA permits have been issued by the state agency, and the applicants are still awaiting a decision on the Section 404 permits by the Corps. I am advised that there is no movement on the issuance of these Section 404 permits.

I am also greatly concerned with the potential effect on coal mine employment, not just in Central Appalachia, but throughout the country, of the sweeping changes proposed in the Notice. For example, I am advised that OSM's mine "sequencing" proposal for mining through streams is impractical to implement and will result in the loss of a significant number of mining jobs. Likewise, OSM's proposed alternative to prohibit the disturbance of any streams (including filling "ephemeral" streams) with a biologic community could eliminate access to as much as 90% of coal reserves in Appalachia, eliminating as well the jobs to be created through that mining activity. And the proposed one-size-fits all approach to water quality, geology, vegetation and other standards fails to recognize the need for states to issue differing rules based on local conditions, a principle established by Congress in the Surface Mining Control and Reclamation Act.

OSM has provided no justification for implementing these and other sweeping changes to the Stream Buffer Zone Rule, a rule that has recently been updated through a seven year process that included public hearings, receipt of more than 40,000 comments and an environmental impact statement. Before proceeding further, OSM should perform detailed economic analyses of the effects of these proposals on coalfield communities and on state and local governments, including direct and indirect job losses in the coal mining industry. Further, OSM should demonstrate how and to what extent the requirements and policies under the existing Stream Buffer Zone rule are inadequate prior to development of new standards.

In light of the potential harmful effect on coal mining employment and the economies of coal producing regions and the duplicative, redundant nature of the actions proposed by OSM with respect to development of a new Stream Protection Rule, I urge that the proposed new Rule be deemed unnecessary and that OSM withdraw the April and June, 2010 Notices of Intent.

Thanking you for your attention to these comments, I am

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Boucher", with a stylized flourish at the end.

Rick Boucher
Member of Congress

RB/bc

- C: Carol Browner, Assistant to the President for Energy and Climate
Lisa Jackson, Administrator, U.S. Environmental Protection Agency
Joseph Pizarchik, Director, Office of Surface Mining, Reclamation and Enforcement
Mr. Terrence C. "Rock" Salt, Acting Assistant Secretary of the Army, Civil Works