

Congress of the United States

Washington, DC 20515

May 11, 2010

Ms. Lisa P. Jackson
Administrator, U.S. Environmental Protection Agency
USEPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 1101A
Washington, DC 20460

Dear Administrator Jackson:

We write to express our concerns over guidance recently issued by the Environmental Protection Agency (EPA) that will impose additional regulatory barriers to the issuance of coal mining permits in Central Appalachia. Given the far-reaching regulatory impact of this guidance, EPA ought to undertake a more prudent and transparent course of action through the formal rulemaking process. We believe these proposals should be subject to public comment, as well as outside peer review for any draft scientific data, prior to their implementation, so as to strike a better balance between environmental protections and responsible governance.

Under the Administrative Procedure Act, guidance is traditionally issued to clarify or further explain an agency's interpretation of a statute or regulation. The detailed guidance issued on April 1, 2010 on Improving EPA Review of Appalachian Surface Coal Mining Operations under the Clean Water Act, National Environmental Policy Act, and the Environmental Justice Executive Order makes substantive changes to three sections of the Clean Water Act, along with various provisions of the National Environmental Policy Act and the Surface Mining Control and Reclamation Act (SMCRA). Such sweeping regulatory action far exceeds the intent of Congress under these Acts, and it is procedurally inappropriate for policies of this magnitude to circumvent the normal rulemaking process. We contend that such substantive changes should not be implemented absent extensive public participation and outside peer review.

In issuance of this guidance, which is effective immediately, EPA has jeopardized the future of mining operations, the sustenance of local communities, and ultimately, access to a reliable domestic source of energy within Central Appalachia and the entire country. Permits issued under the Clean Water Act affect nearly 80,000 direct coal mining jobs in Appalachia, as well as the coal to supply affordable electricity to nearly 80 million homes and over 95% of our domestic manufacturers. With the country's economy still floundering and unemployment hovering near 10%, the potential economic impact of these policies validate our request that affected communities be given the opportunity to voice their concerns in the decision-making process.

Also of concern is EPA's decision to begin reviewing state-issued mining permits. Such a determination threatens the cooperative federalism system Congress created in both SMCRA and the Clean Water Act. Under that scheme, states with approved federal programs are given primary authority to interpret and implement environmental requirements at the local level, taking into account local conditions. The Clean Water Act also gives states the power to design state-specific conditions to federal permits under the Act. This approach recognizes that state regulators at the local level are better equipped to interpret water quality standards and apply them to site-specific permits because they have an in-depth knowledge of local watersheds, their conditions and their long-term plans for improvement.

States have demonstrated capable stewardship of their respective water quality programs, and we are troubled by federal efforts to undermine Congressional intent on primary state regulatory authority under SMCRA and the Clean Water Act. By creating a duplicative federal regulatory framework, state authority will be undercut and the value of creating state tailored programs will be lost. We encourage EPA to respect this authority and continue its statutory oversight role, so that ecological considerations are taken seriously at the same time as law-abiding and environmentally-sound permits may be issued in a timely manner to create jobs and promote affordable energy.

We have always believed that mining operations in Appalachia should evenly weigh the interests of environmental protection, economic development and energy supply, and we are therefore troubled that the EPA's unsolicited policy changes to the Clean Water Act are aimed only at the coal industry and more specifically, only the Appalachian coal industry. In noting the far-reaching effects of this guidance on the people who live and work in Central Appalachia, we ask that you withdraw the April 1, 2010, Guidance and process pending applications under existing rules and regulations while seeking comment from the public on the proposed changes through the formal rulemaking process. We appreciate your consideration of this request and look forward to hearing from you in a timely manner.

Sincerely,


HAROLD ROGERS
Member of Congress


RICK BOUCHER
Member of Congress


BILL SHUSTER
Member of Congress


SHELLEY MOORE CAPITO
Member of Congress


ROB BISHOP
Member of Congress


ZACK SPACE
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Glenn 'G.T.' Thompson

GLENN THOMPSON
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Ed Whitfield

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Marsha Blackburn

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