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# United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

BETTINA POIRIER, STAFF DIRECTOR  
RUTH VAN MARK, MINORITY STAFF DIRECTOR

October 4, 2010

The Honorable Lisa P. Jackson  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Dear Administrator Jackson:

I am writing you over continuing concerns about the Mingo Logan Coal Company Spruce No. 1 Mine permit (aka the Spruce permit). From what I understand, the final decision on whether to grant the permit was delayed after Region 3 granted itself a 30-day extension on August 24, 2010. That deadline having been passed, I am keenly interested in whether a decision on the fate of the permit by Region 3 is imminent. According to a report by the Associated Press, "The EPA's Region 3 administrator was to send a recommendation about Arch Coal's Spruce No. 1 mine to headquarters in Washington, D.C., Friday, but an agency spokeswoman won't say what it is. She says it's part of the internal review process."

By now, I know you are aware of my concerns about this permit. I believe the Clean Water Act does not authorize EPA to revoke a permit once it has been issued. The Spruce permit was issued in 2007 after an unprecedented 10 year review, which included an environmental impact statement. This is a troubling precedent that would have a chilling effect on development in the area. This industry, as with every other industry, depends on regulatory certainty within the permitting process in order to conduct business. In other words, a permit must be valid when it is issued. Otherwise, mining companies will not know whether they are complying with applicable regulations, which would discourage them from operating. Another concern stems from the apparent lack of transparency in the final stage of the Spruce permit review. With your help, I hope to understand how Region 3 was able to grant itself a 30-day extension for review on August 24, 2010. Further, I hope you can bring greater clarity as to when a final decision will be rendered on this permit. I had hoped that a decision would be announced on or around September 24<sup>th</sup>, but now I wonder whether that decision has, along with other significant policy issues at the agency, been pushed to the end of the year or beyond.

In order to help bring clarity to this situation, please provide me with answers to the following questions:

1. Has EPA received Region 3's recommendation on the Spruce permit?
2. When did EPA receive Region 3's recommendation on the Spruce Permit?
3. If EPA has received Region 3's recommendation, then why has that not been made public?
4. What were the policy and legal justifications for Region 3's extension?
5. Will EPA's decision be announced before or after November 2, 2010?

Due to the time sensitive nature of this request, please provide a response no later than Tuesday, October 12<sup>th</sup>. If you have questions about the request, please contact Matt Hite at 202-224-6328.

Sincerely,

A handwritten signature in blue ink, appearing to read "James M. Inhofe", written over a horizontal line.

James M. Inhofe  
Ranking Member  
Senate Committee on Environment and Public Works