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United States Senate
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510–6175

November 2, 2009

Joe Manchin III
Governor of West Virginia
1900 Kanawha Boulevard, E.
Charleston, WV 25305

Dear Governor Manchin,

In my role as Ranking Member of the United States Senate Committee on Environment and Public Works, which oversees the permitting process at the Environmental Protection Agency (EPA) and the Army Corps of Engineers, I am interested in learning more about the EPA's recent decision to initiate the formal process to revoke the Clean Water Act Section 404 permit for the Mingo Logan Coal's Spruce No. 1 mine. This individual permit was issued in 2007 after a ten-year process which included close collaboration with EPA, and which produced a detailed environmental impact statement. EPA's action raises a number of questions, not the least of which is the basic integrity and validity of the federal permitting process. I am concerned, for example, that the West Virginia Department of Environmental Protection believes EPA's approach is "unsupportable" and "undermines" efforts to "to develop consistent, predictable and fair permitting programs and procedures."

In view of these concerns, and the abiding interest in maintaining a stable, consistent, and predictable federal permitting process, I plan to gather all the facts about EPA's action. This necessarily includes seeking your perspective, as well as the views and insights of the relevant West Virginia officials, as to what transpired. In light of this, I would appreciate you responding to the following questions. I hope this will be the beginning of a productive dialogue about this action and the future of federal permitting decisions on coal mining in Appalachia.

1. When did EPA notify the state of West Virginia about its decision to revoke the Spruce No. 1 mine permit that was issued in 2007?
2. Has EPA supplied you with criteria or a rationale to support its action?
3. Did EPA express any of its concerns during either the two years after the permit was issued or at any time prior to EPA's indication of its intention to veto the permit?
4. Did EPA work with the West Virginia DEP to address any of its concerns prior to its indication to veto the permit?

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5. How many direct jobs will be lost because of EPA's action? How many indirect jobs will be lost because of EPA's action?
6. How many tons of coal will be affected by EPA's action? Please quantify the amount of electricity that could have been generated by this coal and the number of West Virginia households that could have been served by this electricity.
7. Since 2007, how many West Virginia 404 permits have been applied for and how many of those have been issued? And since 2007, how many West Virginia 404 permits are pending at either the EPA or the Corps?
8. How many of the West Virginia 404 permits, including those pending and issued could be vulnerable to the same type of action EPA has pursued with the Spruce No.1 permit?
9. My staff has informed me that EPA's recent action on the Spruce No.1 permit could possibly amount to a regulatory taking. Has your staff reached a similar conclusion?
10. Do you believe EPA implements its policies in a manner that balances environmental protection with the need to create jobs and support economic growth and investment? Is there a need for greater oversight of EPA's policies as they relate to coal mining in West Virginia? And what actions, if any, can be taken to ensure that coal mining in West Virginia receives fair, objective, and balanced treatment by EPA and the federal government?

Thank you for your time and consideration of my request.

Sincerely,



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