UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY - 6 2009

OFFICE OF
WATER

The Honorable James M. Inhofe
United States Senate
Washington, DC 20510

Dear Senator Inhofe:

Thank you for your April 20, 2009, letter to U.S. Environmental Protection Agency (EPA) Administrator Lisa P. Jackson, expressing concerns regarding review of pending mountaintop mining permits and the economic importance of mountaintop mining activities. Administrator Jackson asked that I respond to the important questions posed in your letter

EPA has raised detailed concerns with potential environmental risks associated with surface coal mining, particularly to water quality in streams and rivers below surface coal mines. Scientific studies have highlighted the water quality impacts associated with surface coal mining activities. EPA is prioritizing its evaluation to those mining proposals undergoing Clean Water Act evaluation which raise the greatest potential for environmental harm. Our goal is to work in a timely manner with the Army Corps of Engineers, the States and the mining community on those few permits with which we have the most serious environmental concerns, to effectively reduce the potential for adverse environmental effects.

EPA is not raising concern with the majority of pending permits, and the Corps is expected to continue to issue permits for surface coal mining operations that do not raise environmental problems. We also expect that mining companies will continue to submit new permit applications for evaluation under the Clean Water Act. For these new proposals, EPA will follow existing regulatory procedure and provide comments to the Army Corps of Engineers as a part of the public notice and comment process.

I want to assure you that EPA understands the importance of surface coal mining to the economic welfare of the communities and citizens of the Appalachian region and pledge to work with the Committee, our state and federal partners, and the mining industry to identify improvements to mining operations that reduce environmental impacts. In doing so, our goal will be to ensure consistency with the requirements of the Clean Water Act and the Surface Mining Coal and Reclamation Act, and allow environmentally responsible coal mining to proceed.

I hope you will find the enclosed detailed responses address your concerns. If you have any additional questions, please feel free to contact me or your staff may call Denis Borum of EPA's Office of Congressional and Intergovernmental Relations at 564-4836.

Sincerely,

Michael H. Shapiro
Acting Assistant Administrator

Enclosure

Surface Coal Mining

Questions and Answers
Senator James M. Inhofe

1. Please list the entire scope of mountaintop mining permits that EPA is currently reviewing. Please also list the time that the permit has been pending or backlogged and the rationale for the review. Please also indicate on the list the permits that have previously been reviewed.

Because of active litigation in the 4th Circuit challenging the issuance of these Corps permits for coal mining, the Corps has been issuing far fewer permits for surface coal operations since the litigation began in 2007. As a result, there is a significant backlog of permits under review by the Corps, some of which have been pending for years while others for only months, and are in differing stages of evaluation.

EPA has identified only a small subset, 6 of 54 actions pending authorization in the next several months, with which the Agency has concern. EPA is not raising concern with the majority of pending permits. These represent mines with significantly fewer environmental impacts. The Corps is expected to continue to issue permits for surface coal mining operations that do not raise environmental problems.

We also expect that mining companies will continue to submit new permit applications under the CWA. For these new proposals, EPA is following existing regulatory procedure to provide comments to the Corps of Engineers as a part of the public notice and comment process. As provided in greater detail below, EPA has identified a set of environmental criteria under which we have, and will continue to, review and evaluate, pending permit actions for surface coal mine operations

2. It has taken EPA a month and a half to review and comment on 54 permits that were previously reviewed. How much time will it take EPA to reexamine the remaining backlog of permits?

EPA is prioritizing its evaluation to those current mining proposals which raise the greatest potential for environmental harm. In doing so, EPA is working with the Corps to identify an efficient and effective process for working through the backlog of proposals. Our goal is to work in a timely manner with the Corps, the State and the mining community on those few permits with which we have concerns, to effectively reduce the potential for adverse environmental effects.

3. Which of the permits are individual permits and which are NWP 21? Do you anticipate that your review of individual permits will take more time than reviewing NWP 21 permits? Can this be expedited?

As you have identified, there is a significant backlog of permits resulting from the 4th Circuit litigation that are under review by the Corps. EPA expects to be actively involved in the review of these permits. As indicated above, EPA is prioritizing its evaluation to those current mining proposals which raise the greatest potential for environmental harm. Under section 404(e) of the Act, the issuance of a nationwide permit may not have more than individual minimal or cumulative impact. So long as EPA believes that threshold is met according to the information provided to us under the pre-construction notification, we will continue to focus our review on individual permits, those believed to raise the greatest potential for environmental harm. Our goal is to work in a timely manner with the Corps, the State and the mining community on those few permits with which we have concerns, to effectively reduce the potential for adverse environmental effects.

In addition, the district court for the Southern District of West Virginia issued an order on March 31 vacating and remanding the Corps' primary nationwide permit for authorizing discharges associated with surface coal mining (NWP21). The judge enjoined the Corps from issuing authorizations pursuant to NWP 21 (2007) in the Southern District of West Virginia until the Corps prepares a revised EA or an EIS and also determines that NWP 21 (2007) will not have adverse cumulative impacts as required by CWA §404(e). The judge also enjoined the Corps and the Intervenors (a number of mining associations and individual coal companies) from all activities authorized under NWP 21 (2007).

4. In terms of full disclosure, please list all industry groups, mining companies, non profit groups, associations, advocacy groups, and local stakeholders that you or your staff have met with or are scheduled to meet with at EPA from January 23, 2009 through April 17, 2009 regarding mountaintop mining.

EPA has met with a variety of stakeholders and government officials on all sides of this issue. Meetings have been held with the Governor of West Virginia, the West Virginia Department of Environmental Protection, representatives of the environmental community, including: Sierra Club, Natural Resources Defense Council, Public Justice, Southern Appalachian Mountain Stewards, Coal River Mountain Watch, Ohio Valley Environmental Coalition, Appalachian Voices, Save Our Cumberland Mountains, Kentuckians for the Commonwealth, and Heartwood, the National Mining Association, and representatives of the mining community including: Massey Energy, Patriot Coal, Colony Bay Coal, Central Appalachia Mining, International Coal Group, CONSOL, and Alpha National Resources. EPA believes these meetings are valuable and welcomes the opportunity to meet with stakeholders at any time.

5. Please list the issues—scientific, legal, and technical—behind EPA's decision to reexamine these permits. Were these issues different from those covered in previous reviews?

EPA has identified a set of environmental criteria under which we have, and will continue to, review and evaluate, pending permit actions for surface coal mine operations. Based on these criteria, EPA has, and will continue to, focus our comments to mine proposals in the following areas:

- Length of stream impacts, in particular impacts to perennial streams and critical headwater streams
- Number of valley fills
- Geographic location of the proposed action, and assessment of impacts based on watershed level information, considering factors such as percentage of area mined, percentage of forested area, interior forest, percentage of urban area, and stream density/quality, index of biotic integrity (IBI), threatened and endangered (T&E) species
- Cumulative effects, particularly in consideration of the number of proposed new mines proposed for given watershed
- Existing water quality and potential for water quality impacts downstream of fill, in particular selenium and conductivity as specific constituents of concern; and the potential impacts to biotic integrity and T&E species in high quality and state outstanding resources waters
- Adequacy of alternative analysis; and
- Adequacy of mitigation

Where EPA believes that an activity, as proposed and noticed by the Corps of Engineers, may result in an adverse impact to the aquatic environment, based upon the above criteria, EPA will exercise its responsibility to ensure compliance with the regulations under the Act.

6. Did you discuss this review process at any time with Carol Browner and/or other White House officials? If so, what role has she and other White House officials had in this review process?

As part of this action, EPA is following its long-standing practice of coordinating these reviews with the Army Corps of Engineers and is consulting the Council on Environmental Quality as necessary.

7. The Buffalo Mountain Section 404 permit covers a project that is estimated to produce 50 direct jobs and 250 indirect jobs with about $94.3 million in tax revenue for the state of West Virginia and the United States Treasury. The Highland Permit covers a project with 203 existing jobs. The Republic No.l Permit covers another project that would create 270 jobs. If EPA continues to delay issuance of these permits, these jobs will be lost. Is EPA taking these economic considerations into account in its review?

EPA shares your concerns about the welfare of the people of the Appalachian region and its citizens. EPA has expressed concerns with the environmental risks associated with surface coal mines. These risks have raised issues regarding not only the health of the streams in this region, but the welfare of its people as well. EPA's objective is to ensure that activities which will discharge a pollutant into a water of the United States are fully evaluated in accordance with the regulations under sections 404 and 402 of the Clean Water Act to afford the citizens of these affected areas full protection of the streams used for swimming, fishing, and public drinking water, and can result in contamination of groundwater also used for drinking water. EPA also understands the importance of surface coal mining to the economic welfare of the communities and citizens of the Appalachian region. We can address both of our concerns by working closely with all of the involved agencies, interested officials and the mining community to effectively respond to the environmental problems while ensuring that coal extraction is allowed to proceed.

8. Please provide me with the specific steps EPA plans to take in the coming months to process these permits.

EPA believes that meetings directly with the individual mining companies are valuable and welcomes the opportunity to meet with our state partners and coal mine applicants at any time. As indicated above, we are working with the Corps to identify an efficient and effective process for working through the backlog of proposals. Our goal continues to be to work in a timely manner with the Corps, the State and the mining community on those few permits with which we have concerns, to effectively reduce the potential for adverse environmental effects. In addition, EPA has suggested identifying an opportunity to discuss EPA's concerns more broadly and consider measures our state partners and the coal industry could evaluate when drafting a mining plan in an effort to lend greater predictability to the process. To begin discussion with the WVDEP and the mining industry, EPA has proffered some suggested measures which we believe could yield significant improvements in environmental protection. These are not meant to be exhaustive and may not be appropriate in all circumstances, but have been offered as a means to initiate this dialogue. EPA welcomes discussion on these opportunities, many of which relate directly to authorities under the CWA, and how best to incorporate these considerations earlier in the mine development process under SMCRA in an effort to strengthen environmental protections and lend greater predictability and transparency into the process.