State of West Virginia
Earl Ray Tomblin
Governor

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May 31, 2012

The Honorable John D. Rockefeller, IV
531 Hart Senate Office Building
Washington, DC 20510

The Honorable Joe Manchin III
311 Hart Senate Office Building
Washington, DC 20510

Dear Senators:

As Governor of our great State, I am deeply concerned about the action of the United States Environmental Protection Agency ("EPA") in a multitude of actions, policies, and rules that have coalesced to create an unprecedented attack on West Virginia's coal industry. For example, the EPA has vetoed a permit that has long since been approved. It is delaying the issuance of permits administratively, and the EPA is passing costly rules that go beyond its authority that are not based on science but on a philosophical determination to end coal mining. This attack will have disastrous consequences on West Virginia's economy, our citizens, and our way of life. Even though courts are beginning to reign in the EPA, it continues on this ill-conceived path to end the development of our nation's most reliable, cost-effective source of energy – coal.

As a nation, we must reduce our dependence on foreign sources of energy. We must also ensure that our country continues to have an affordable energy portfolio that can support our ever-growing power needs. If given a chance, we will play a significant role in meeting the energy needs of our region and the country. I fear that the EPA is well on its way to denying us that chance.

I know firsthand that both of you fight hard every day for West Virginians. I truly appreciate all that you do for West Virginia and, on behalf of all West Virginians, I thank you for your continued defense of our coal industry and our coal miners. We need your continued support.

As Governor of our great State, I have been and continue to be deeply concerned about the action of the EPA in the adoption of its utility Mercury and Air Toxics Standards (MATS) rule.

When it became obvious last fall that the proposed rule had serious defects and had drawn more than 900,000 comments, the State of West Virginia joined a group of 25 states in a bipartisan effort to seek additional time for EPA to resolve these defects before finalizing the rule.

When EPA elected to finalize the rule without taking time to correct these defects, the State of West Virginia took action in April to file a judicial challenge to the rule.

In furtherance of the State's judicial challenge of the rule, we advised the court on May 25, 2012, of four specific defects that we believe compel that the rule to be rejected. These defects include:

1. EPA's failure to adequately consider the impact on the reliability of the electricity supply;

2. EPA's failure to adequately consider cost and economic impact;

3. EPA's failure to adequately consider power plant emissions "after imposition of the requirements" of the Clean Air Act; and

4. EPA's failure to set emission limits for new power plants that reflect limits "achieved in practice by the best controlled similar source" as required by the Clean Air Act.

It has now been brought to my attention that S.J. Res. 37 is pending before the United States Senate calling for the disapproval of the MATS rule under the authority of the Congressional Review Act. It is my earnest hope that you will support the passage of this resolution with your own vote and by encouraging your colleagues to do so as well.

As indicated by the State's consistent action, we believe the MATS rule is fatally flawed. This is because it fails to achieve any significant reduction in mercury (since by EPA's own admission, power plant emissions "are a small fraction of the total mercury emitted globally"), while imposing enormous costs on our citizens which are likely to impede our significant economic development efforts.

Of equal significance to a state like ours is the fact that the rule contains a set of new source emission limits that are so restrictive that they cannot be achieved by new coal fired generators. This defect alone justified EPA being directed to further address the rule.

If allowed to be implemented, the MATS rule will have serious adverse impact on our State with little or no justification. I strongly urge your support for the passage of S.J. Res. 37 and for such other efforts as can be undertaken to address the defects of the rule.

Under my direction, the State of West Virginia has utilized all tools available to it to challenge the EPA's unlawful actions. Again, each of you has also demonstrated an abiding commitment to fight for West Virginia, and I can't thank you enough for your support. At this critical juncture for our state's future and for the future of our coal industry, I ask you to again stand with me and present a unified front rebuking the damaging policies of the EPA. Working together, from Charleston to Washington, and from all points in between, we can ensure that West Virginia coal continues to power our nation.

Sincerely,

Earl Ray Tomblin
Governor