

Testimony of Chris R. Hamilton, Senior Vice President, West Virginia Coal Association and Chairman, West Virginia Business and Industry Council before the Subcommittee on Energy and Mineral Resources of the Natural Resources Committee oversight hearing: “EPA v. American Mining Jobs: The Obama Administration’s Regulatory Assault on the Economy”. US House of Representatives -- Washington D.C. -- October 10, 2013

Good afternoon! I appreciate the opportunity to participate in your meeting and discuss the actions or inactions of this Administration on West Virginia’s economy.

I’m Chris Hamilton, Senior Vice-President of the West Virginia Coal Association. More information on my background and experience in coal is included in my prepared remarks before you.

West Virginia just celebrated its 150th birthday and we've been mining for all of those 150 yrs. We are without question one of the state's leading industries, if not the leading industry. We have always provided good paying jobs, infused millions of dollars into local and state wide economies and have provided the region, state, country & world with low-cost, reliable power on a 24/7 basis.

That's what we do, as a state we manufacture and export energy and power throughout the eastern part of our country and throughout the world and it enables everyone else to enjoy the freedoms and liberties along with the world’s greatest quality of life.

West Virginia is the second leading coal producing state, the country’s leading underground coal producing state and the US leader in coal exports, accounting for 50% of the US total. We have consistently averaged between 150 – 160 million tons of annual coal production over the past several decades – this is until this Administration took office.

We ship coal to practically every state east of the Mississippi river and some 38-39 foreign destinations.

Coal mining is a \$30 billion industry in West Virginia with coal and electric utilities accounting for over 60% of all business taxes. Over the years, we've enjoyed a great workforce, great access and coal quality, close proximity to ports, and generally, a good infrastructure. We have the best miners and coal quality found anywhere in the world.

Our industry was rolling along just fine experiencing the typical cyclic nature of our business with economic woes and mild weather patterns affecting demand and market conditions. In January 2009, all that changed when we began to experience an all-out assault on our industry from the Obama Administration and our federal government.

Literally, the day after President Obama took office, mining companies in West Virginia began to receive objection letter after objection letter from USEPA, raising objections to new permits and even already-active operations that were previously approved and cleared by EPA, the US Army Corps of Engineers and WVDEP.

Then came the Administration's CEQ and its multi-agency mine permit review process known as the (enhanced coordinated permit review process) and imposition of new permit demands effectively slowing the mine permit process to a crawl, which soon afterward became known as the Administration's "permitorium"-- the highjacking of state's rights over the administration of water quality standards.

A barrage of ill-conceived administrative actions, litigation and regulatory actions e.g. Spruce mine veto, stream buffer zone proposal from EPA and its sister agencies OSM and MSHA, coupled with EPA's "train wreck" advanced the "War on Coal".

Fast forward to today, fifty-seven months later, the war on coal has taken its toll and things are very bleak (statewide austerity). Currently, West Virginia has (101) fewer mines operating today than this time 2008 – approximately one third of our coal mines operating in 2008 are now closed. All mining operations are impacted and every mine has been slowed or has cut back.

In West Virginia alone, there are over 3500 miners laid off or furloughed and another 12-15,000 mining dependent jobs have been lost. Across the Appalachian region the damage is even worse, with approximately 10,000 direct mining jobs lost and another 40,000 indirect jobs. At \$75,000 per person, the net effect is the removal of \$719 million from our state's economy and a \$2.05 billion loss from our region. These are real dollars that have been lost, impacting every family and business in our area.

The hardship on individuals and West Virginia families is hard to imagine. High stress, not being able to make ends meet, basic life needs not being met, are all too commonplace leaving a large number of West Virginians without hope and vulnerable to the perils of today as hopes of gainful employment vanish and life without a paycheck preconditions all else. As mining jobs have been stripped away, we have seen a significant rise in drug and alcohol abuse, theft and other forms of crime and social decay.

Small communities throughout our state have been threatened and county and municipal budgets and resulting government services dwindle.

Since 2008, West Virginia has lost 25% of production as coal prices and productivity continues to fall. West Virginia has lost millions of dollars in severance collections which serves to fund education, county budgets and important programs for seniors and the less fortunate.

To make matters worse nearly 300 coal-fired power units nationwide have closed or will be retired this year. Other plants have switched to natural gas. A total of eighteen (18) coal-fired units in West Virginia have announced their plans to close.

It is estimated that each unit accounts for approximately 100 full-time positions, thus the total number of jobs impacted in West Virginia by these closures is approximately 1800 additional jobs.

By utilizing every resource available to him, every federal agency, President Obama has done everything in his power to obstruct West Virginia coal production and our industry from maintaining its viability in domestic and world markets. To date, and by all the negative administrative and policy acts, his mantra has been akin to “death by 1000 cuts”. The President’s plan on climate and EPA’s NSPS is a knock-out punch for our industry.

Our only savior at the moment appears to be the export market. As domestic usage continues to trend downward, international demand grows exponentially. With West Virginia currently accounting for a large share of US exports, we stand to gain and become a world marketer of coal.

Fortunately for us, world coal usage is on the rise as developing countries expand their economies and infrastructure. Exports have doubled over the past five (5) years and coal is quickly becoming the world's fuel of choice for power generation. In fact, coal is scheduled to surpass oil over the next 2-3 years.

Other nations see coal the way America used to view this resource, as an abundant, low-cost and reliable fuel. America became a manufacturing superpower thanks to coal, and it can’t be a coincidence that our global domination waned when we stopped fostering coal industry development.

Although the current export market appears strong today, predictions of our continued presence and strength vary. As with domestic energy, we face strong competition for seaborne coal from foreign producers who do not have the same level of protections for the environment or for human rights.

Actions of this president have even placed global opportunities at risk by calling on the World Bank and international financial institutions to stop funding the construction of coal-fired power plants and the construction of new port facilities which could handle greater coal volumes, are endangered by the EPA.

In closing, I simply observe – the president speaks a lot about economic justice and hope and promise – I would simply ask: where is the justice for West Virginia and Appalachia? Where is the hope or justice for our coal mining families?

There are few options available for many of our miners and by his actions, this president is effectively condemning them to lives of poverty and despair. Again, I ask where is the justice?

Thank You

INTRODUCTIONS TO ASSOCIATION & COUNCIL

The **West Virginia Coal Association** is a trade association that was formed in 1915 to represent the coal industry and those businesses engaged in the mining of coal by whatever means or method in the State of West Virginia and those other businesses which are ancillary or related thereto in a supporting way or which provide goods and services to the coal industry.

At the present time the Association represents approximately 90% of the mining industry in the State of West Virginia and has an associate membership of approximately 250 companies, representing the equipment companies, suppliers to the industry, land companies, law firms, etc.

The **West Virginia Business & Industry Council** was formed to promote the common interests of its members and of business and industry in West Virginia. To consider and deal by all lawful means with common problems of its members and of business and industry in West Virginia and to secure cooperative action in advancing common purposes of the members of the Council; including the promotion of the enactment, repeal or defeat of legislation and regulations of interest to business and industry.

The Council currently consists of 50 business related trade associations and businesses representing more than 250,000 employees across 26 industry categories.

**Chris R. Hamilton, Senior Vice-President,
West Virginia Coal Association**

Chris Hamilton, a native of Wheeling WV, currently serves as the "Senior Vice-President" for the West Virginia Coal Association. Chris is also the current chairman of the West Virginia Business and Industry Council.

Chris Hamilton has been with the Association for 30 years and has a total of 40 years experience in the coal mining industry. During his tenure with WVCA, he has held many positions centered around the Association's technical committees and government affairs. Today, he is generally responsible for legislative, regulatory, and technical matters affecting the coal industry.

Chris came to the Association from state government as the former Deputy Director for the West Virginia Department of Mines. He previously worked as an underground miner, fire-boss and section foreman. He possesses mine foreman certifications from the states of West Virginia and Ohio and worked for the Valley Camp Coal Company, North American Coal and the Y&O Coal Co.

He has an undergraduate degree in business and an MBA from West Virginia University and has completed graduate level courses at Marshall University in Economics and Environmental Science.

He presently serves under gubernatorial appointment as co-Chairman of the West Virginia Coal Forum -- a joint labor-management state entity designed to foster a working dialogue between working miners and coal operating personnel, and as co-Chairman of the Mountaintop Mining Coalition.

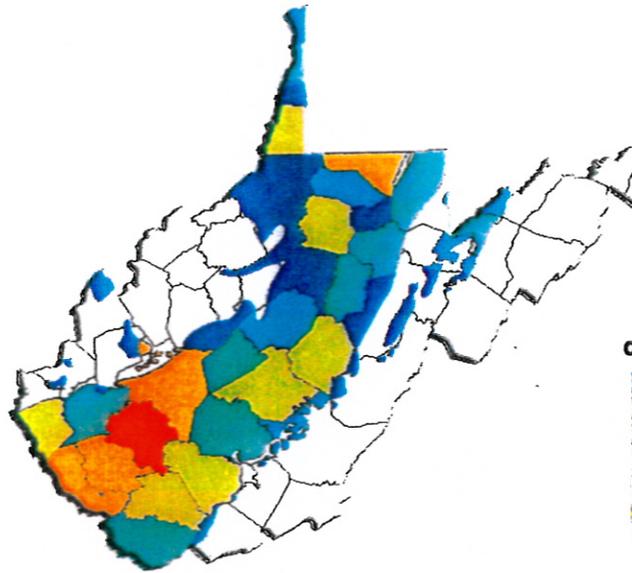
Additionally, Chris serves on the West Virginia Board of Coal Mine Health and Safety; West Virginia Board of Miner Training Education & Certification; and the West Virginia Mine Safety and Technical Review Committee.

West Virginia Coal Facts at a Glance



Testimony of Chris R. Hamilton
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 Natural Resources Committee
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 October 10, 2013

Attachment "A"



Coal Production (Short tons)



Total Production	129,107,370	Estimated Average Annual Coal Wage	\$68,500
Underground.....	89,210,479	Estimated Production Value 2012	\$7,746,422,200*
Surface.....	39,896,891	Coal Severance Tax	\$490,000,000
Coal Companies Operating in WV	320	Leading Coal Producing County	
Number of Mines.....	538	Total Tonnage - Marshall	17,154,805
Underground.....	292	Underground - Marshall	17,084,842
Surface.....	246	Surface - Boone	7,210,187
Record Production Year - 1997	181,914,000	Highest Employment by County - Boone	3,495
Recoverable Coal Reserves	51,193,265,265	County With Most Coal Reserves - Boone	3,589,414,636
West Virginia Coal Employment	26,619	Largest Underground Mine	
Underground.....	16,868	McElroy Mine (CONSOL)	9,400,486
Surface	5,501	Largest Surface Mine	
Coal Handling Facilities	2,150	Holden 22 Surface (Arch Coal)	3,064,762
Contractors (est.)	2,100	Largest Mine Employment	
Transportation (tons)		McElroy Mine, McElroy Coal Co.	991
Rail	55,626,201	Largest Producing Mining Method	
River.....	12,975,761	Underground	89,210,479
Truck	30,296,788	Largest Producing Coal Seam	
		Pittsburgh	40,096,020

Sources: Energy Information Agency Data and West Virginia Office of Miners' Health and Safety (expressed in short tons) All values expressed in tons except for dollar figures and employment. Discrepancies in the data are due to different reporting standards from the sources (e.g. number of mines).

U. S. Coal Facts at a Glance

Total Production - 2012	1,016,399,000	Employment - 2012	91,611
Underground	345,606,000	Underground	54,395
Surface	748,372,000	Surface	37,087
East	293,111,000	Recoverable Reserves - 2012	485,769,101,000
West	542,673,000	Leading Coal Producers - 2012 (millions of tons)	
Interior	179,343,000	Peabody Energy Corp.....	202.2
Refuse Recovery (included in total)	1,272,000	Arch Coal, Inc.	160.2
Number of Mines - 2012	1,797	Alpha Natural Resources	116.4
Underground	735	Cloud Peak Energy	95.6
Surface.....	1,033	CON SOL Energy	62.1

Source: U.S. Energy Information Administration, Quarterly Coal Report. October-December 2011 (April 2012), preliminary 2011 data. Production does not include refuse recovery.



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Attachment "B"

The State of Coal 2012

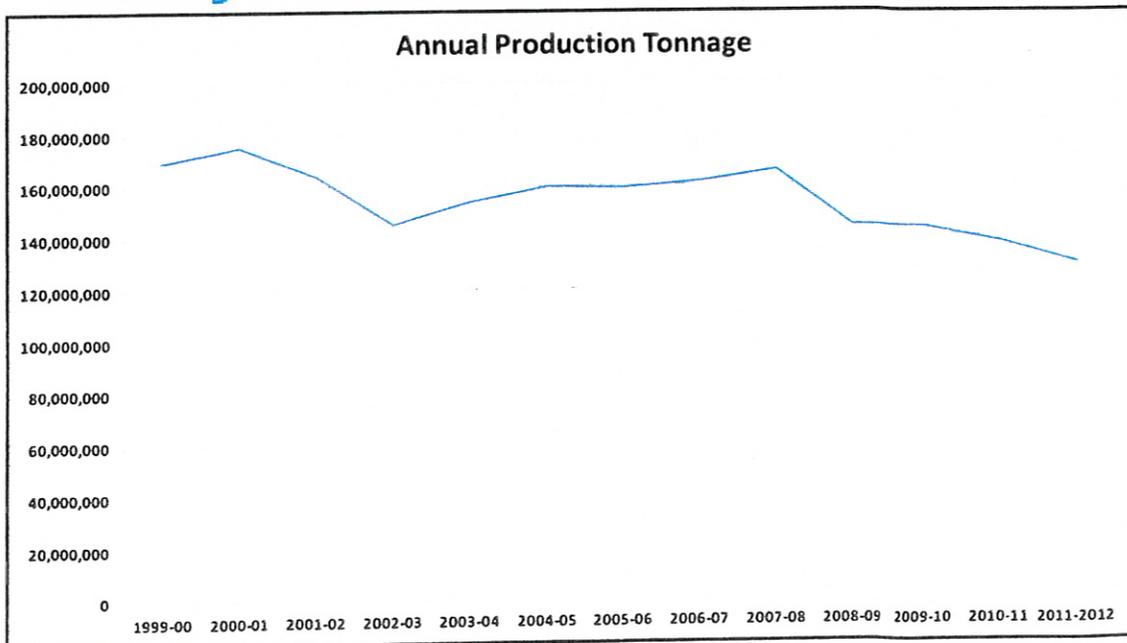
Total Production (2012)	129,107,370
(2013 to date)	53,783,186
Underground	89,210,479
Surface	39,896,891
Coal Companies Operating in WV	231
Number of Mines	177
Underground	126
Surface	51
West Virginia Coal Employment	22,351 (UG+SU)
(2013 to date)	19,261
Underground	16,868
Surface	5,483
Coal Handling Facilities	2,150
Contractors	2,100
Total Coal Employment	26,601
Estimated Average Annual Coal Wage	\$68,500
Estimated Production Value 2012	\$7,746,422,200
Estimated Coal Severance Tax Paid	@ \$500 Million




Presented by Chris R. Hamilton, Senior Vice President
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Trends: The Forecast Appears Bleak West Virginia Coal Production





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Attachment "C"

Federal Involvement in Mine Permitting in Appalachia

Beginning in 2009, the federal Environmental Protection Agency (EPA) began obstructing the issuance of regulatory permits required to initiate and maintain coal production in West Virginia and Appalachia. Initially, the instruments of impediment were federal regulatory permits processed and issued by the U.S. Army Corps of Engineers (Corps) pursuant to Section 404 of the federal Clean Water Act (CWA). EPA then moved to interfere with state-implemented programs such as the issuance of CWA Section 402 National Pollutant Discharge Elimination System (NPDES) permits.

In June 2009, the White House Council on Environmental Quality (CEQ) issued a Memorandum of Understanding (MOU) between the Corps, EPA and the Office of Surface Mining (OSM) that drastically altered the federal permitting process for coal mining operations in Appalachia. Part of this MOU was an "Enhanced Coordinated Process" (ECP) where EPA assumed the lead role in the review and approval of CWA Section 404 permits by the Corps. Additionally, the ECP initiative inserted EPA in the review and approval of permits issued by individual states under their OSM-delegated Surface Coal Mining & Reclamation Act (SMCRA) programs. By creating this new, extra regulatory process, EPA was allowed to revisit permitted decisions made by the Corps and state SMCRA authorities before the Obama Administration took office. Permitting actions that were assumed to be near completion were suddenly interrupted and delayed. The ECP process was challenged by state regulators and was voided as illegal rulemaking by the U.S. District Court for the District of Columbia on October 6, 2011. EPA has appealed the favorable court ruling and the permitting process remains frustrated. Several of the mining permits subject to the ECP remain pending because of EPA obstruction.

EPA's interference in the mining permitting process was not restricted to its use of the ECP and the Corps' permitting program. EPA has also obstructed the issuance of NPDES permits issued by the state. EPA's interference in this program usually involves allegations relative to the appropriate implementation and interpretation of state water quality standards. The balance of authority between the federal government and individual states regarding the appropriate administration of the various components of the CWA is well established through the legislative history of the CWA and various court decisions.

In the Section 402 NPDES permitting programs that are administered by individual states, EPA demanded the implementation of ad-hoc water quality standards through policy for a particular region (the Appalachian coal basin) for a particular activity (coal extraction). In April 2010 EPA issued a "Guidance Document" that advocates for the imposition of standards and thresholds for certain parameters associated with coal mining operations. EPA's guidance bypasses the legal, established process by which the federal government can adopt new water quality standards to address environmental parameters of concern. Additionally, EPA was essentially pressuring state regulatory authorities to violate state laws governing the promulgation of new water quality standards.

EPA's behavior was so egregious that several individual states (including West Virginia) challenged EPA's actions in federal Court as violations of the guiding principles of federalism and rulemaking per the CWA and the Administrative Procedures Act. On July 31, 2012, the U.S. District Court for the District of Columbia found that EPA's guidance document was illegal rulemaking and a violation of the CWA's principles of federal and state authority. EPA has appealed that decision.

Although EPA's actions have been challenged in court, the effect of their interference on the permitting process was immediate and lingering. As the attached charts illustrate, once EPA began inappropriately meddling in the permit processes of the Corps and the individual states, mine permitting was virtually halted. While there has been some marginal improvement in the NPDES permitting program in West Virginia, the substantial backlog that began with EPA's intrusion continues to linger and frustrate the permitting process. Since CWA permits are needed not only for new mines but to continue operations at existing facilities, EPA's illegal intrusion confused the permitting process and has added substantial uncertainty to the regulatory environment in Appalachia. EPA has essentially added a "regulatory premium" to the cost of coal production in West Virginia specifically and the Appalachian coal basin in general that has impacted the ability of coal produced in this region to economically compete in domestic and international utility and steel markets.

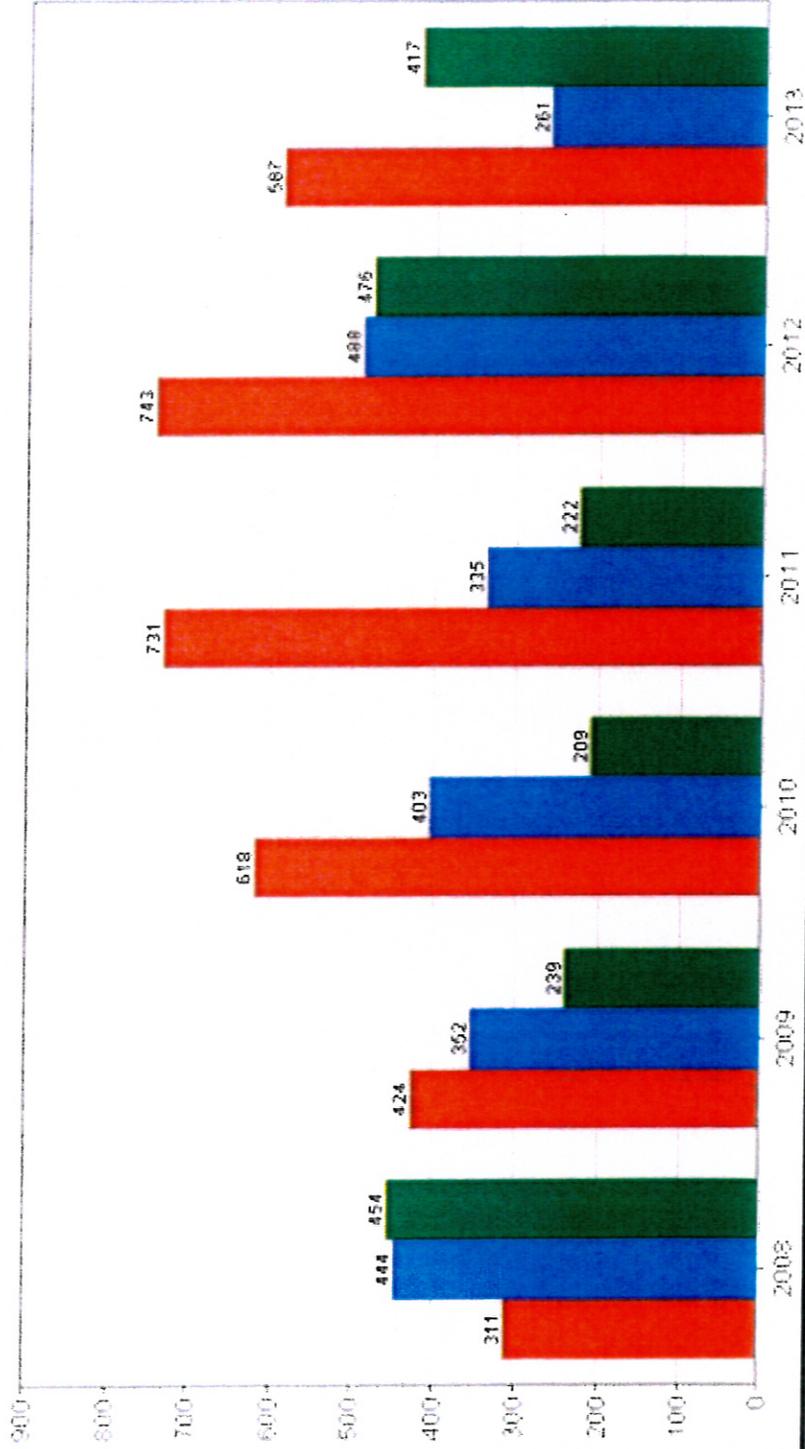
West Virginia NPDES Permitting Activity

Submitted, Pending and Issued

As of July 28, 2013

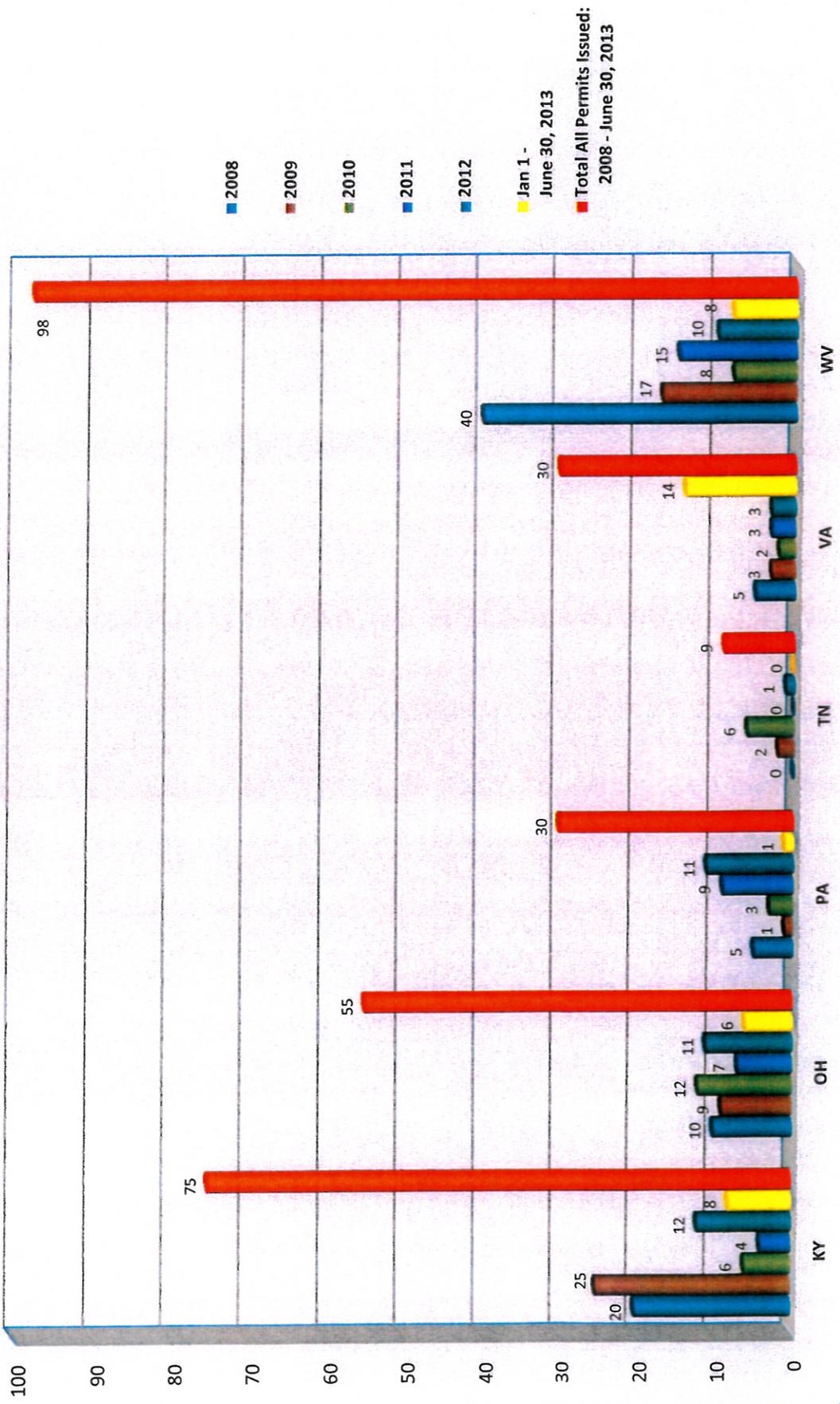
New Permits, Major Modifications and Reissuances

■ Pending ■ Received ■ Final Actions



Section 404 Clean Water Act Mining-Related Permits Issued in Appalachia 1 January 2008 – 30 June 2013

State & Year



Revisions to the Federal Stream Buffer Zone Rule

Within days of its inauguration, the Obama Administration announced plans to dramatically revise the federal regulations governing coal mining activities in and around streams. The proposed revisions would severely restrict underground and surface coal mining production, particularly in Appalachia but potentially across the nation. The revisions announced by the administration would reverse a previous, five year rulemaking exercise completed in 2008 that included two public comment periods and the preparation of an Environmental Impact Statement (EIS). While OSM tried to concoct a rational basis for its decision to reverse the previous rulemaking, it was made clear by their own admissions the revisions were motivated to achieve a political end regarding coal production: "...we had already decided to change the rule following the change of administrations on January 20, 2009."¹ Leaked copies of internal agency documents have revealed the severe coal production and economic impacts that could result from the revisions.

For example, a leaked copy of the draft EIS on the proposed changes from January 2011 shows that OSM's preferred alternative for the revised rule would result in a net loss in total coal mining employment positions nationwide, and that while the consequences would be most severe in Appalachia, according to draft documents from the Department, all coal producing regions show a decline in employment positions in the coal mining industry. The agency's own estimates indicate a total employment impact of direct mining jobs and support positions between 55,000 and 80,000 jobs lost.

As draconian as the "official" production estimates are, they likely understate the true impact of the revisions as OSM, deliberately underestimated the impact of the rule changes on underground mining operations. In fact, despite the agency's stated goal of restricting large-scale surface mining, underground mining may be more impacted with some estimates predicting a potential loss of 90 percent of Appalachia's underground coal production.

Criticism of the revisions and their understated impacts, particularly with respect to underground mining, is not limited to the coal industry. Individual state mining regulatory authorities, who were initially allowed to participate in the preparation of the EIS, have been consistent in their comments on the rule, properly characterizing it as "junk". OSM responded to these concerns by locking the states out of the preparation of the rule, a first for OSM under SMCRA.

Adding insult to injury, when OSM was confronted with the information from its EIS, it concealed information and refused to respond to congressional inquiries as to the scope of the rule and its anticipated impacts.

¹ 75 Fed. Reg. 34667, June 18, 2010.

Spruce No. 1 Mine Permit

On January 13, 2011 the federal Environmental Protection Agency (EPA) announced that it would revoke (veto) the Clean Water Act (CWA) Section 404 permit issued by the U.S. Army Corps of Engineers to Mingo-Logan Coal Company for its Spruce No. 1 Mine in West Virginia.

The Spruce No. 1 Mine CWA Section 404 permit was issued by the Huntington District of the Corps on January 22, 2007 following a six year permitting process that involved the preparation of a permit-specific Environmental Impact Statement (EIS) on the proposed mining project by the Corps that was published as a final document in December 2006. EPA actively participated in the preparation of the EIS and agreed with the Corps' decision in 2007 to issue the permit to Mingo-Logan. As a result of the EIS process and the other independent permitting actions taken by state authorities such as the issuance of the Surface Mining Control & Reclamation Act, CWA Section 402 NPDES and CWA Section 401 water quality certification permits, the Spruce Mine is arguably one of the most scrutinized and studied development projects in the world.

EPA has openly admitted that it has never undertaken CWA veto process for an issued and operating permit. From a regulatory stability standpoint the action is extremely disturbing since it effectively casts doubt on the permanence of any CWA Section 404 permit authorization legally obtained from the Corps.

Prior to initiating the revocation process, EPA first asked the Corps to voluntarily suspend the permit for the Spruce No. 1 Mine. EPA claimed in its letter to the Corps that "new information" concerning the project's possible impacts warranted reconsideration of the Corps' decision to issue the permit. EPA's request to the Corps included claims of potential violations of state-implemented environmental requirements.

The state environmental agency, the West Virginia Department of Environmental Protection (WV DEP) addressed EPA's claims concerning the Spruce permit in a letter to the Huntington District, concluding that the Spruce No.1 Mine was satisfying all terms and conditions of its CWA Section 402 NPDES permit and that, despite EPA's claim of "new information", no basis existed for the agency to reconsider its previous decision under CWA Section 401 that activation of the Spruce No.1 Mine Section 404 permit would not cause or contribute to violations of state water quality standards.

On September 30, 2009 the Huntington District of the Corps issued a letter to EPA declining to revoke and/or modify the previously-issued permit for the Spruce No.1 Mine. The 23-page letter addressed each one of EPA's concerns, relying heavily on the conclusions of the WV DEP regarding potential water quality issues.

After the Corps refused to voluntarily remand the permit, the applicant and the agencies met several times in attempt to resolve EPA's concerns. The parties were unable to reach an agreement, with EPA only willing to accept an alternative mine design that was unworkable from an engineering, land stability and economic standpoint. EPA then proceeded to formally revoke the permit.

Mingo-Logan has challenged EPA's revocation action and the case is pending in the D.C. District Court of Appeals.

Since EPA has revoked the permit for Spruce, Mingo-Logan has halted further development of the mining project, preventing the expansion of employment and coal production and "stranding" significant investment made by the company after the permit was issued in 2007.



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U.S. House of Representatives
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October 10, 2013

Attachment "D"



Coal Unit Shutdowns

As of September 27, 2013

- ❖ In 2012, the U.S. coal fleet was comprised of over 1,300 electric generating units (“coal units”) at 589 power plants that represented a total electric generating capacity of more than 300,000 megawatts (MW).¹
- ❖ A large number of coal units are being shut down because of EPA policies, although other factors such as natural gas prices may also play a role.² Additional coal units also are shutting down, but those have not been attributed directly to EPA policies.
- ❖ **Table 1** lists 33 states with coal unit closures that have been attributed, at least in part, to EPA policies. These closures total 300 units and represent over 44,000 MW of electric generating capacity.
- ❖ **Table 2** lists all announced coal shutdowns, regardless of cause, through 2025. (This table includes the units in Table 1 plus additional closures that have not been attributed to EPA policies.) Table 2 shows that 377 units, totaling nearly 55,000 MW, are slated for closure. These shutdowns are located in 38 states and represent approximately 17 percent of the U.S. coal fleet.
- ❖ Shutdowns in both tables are based primarily on public announcements by the owners of the units. We also rely on other information sources that are highly reliable.

¹ EIA, “Electric Power Annual 2011,” January 2013 and “Electric Power Monthly,” February 2013. This paper uses net summer generating capacity for coal units.

² “EPA policies” include EPA regulations and settlement agreements resulting from EPA’s New Source Review enforcement activities. Other factors contributing to the shutdowns in Table 1 include low natural gas prices. However, NERA analysis for ACCCE indicates that EPA regulations are the dominant reason for the majority of coal unit shutdowns.

Table 1 - Coal Units Closing Because of EPA Policies³

STATE	MW CLOSING	UNITS CLOSING
1. Ohio	7,041	41
2. Pennsylvania	5,166	26
3. Georgia	3,094	14
4. Indiana	2,973	21
5. West Virginia	2,737	18
6. Virginia	2,349	16
7. North Carolina	2,198	17
8. Kentucky	1,981	9
9. South Carolina	1,759	14
10. Alabama	1,686	10
11. Tennessee	1,558	12
12. Texas	1,399	3
13. Illinois	1,395	9
14. New Mexico	1,375	5
15. Colorado	1,172	11
16. Florida	961	4
17. Wisconsin	943	12
18. Oregon	585	1
19. Louisiana	575	1
20. Minnesota	569	9
21. New York	475	3
22. Oklahoma	460	1
23. Iowa	401	18
24. Massachusetts	308	3
25. New Jersey	268	2
26. Utah	172	2
27. Michigan	162	4
28. Montana	154	1
29. Maryland	115	2
30. Missouri	105	4
31. Kansas	92	2
32. Wyoming	45	4
33. South Dakota	22	1
	44,295 MW	300 Units

³ Most of the coal units listed in the table are closing; a few are converting to either biomass or natural gas.

Table 2 - All Coal Units That Are Closing

STATE	MW CLOSING	UNITS CLOSING
1. Ohio	7,041	41
2. Pennsylvania	5,209	27
3. Georgia	3,597	16
4. Indiana	3,413	26
5. Nevada	2,916	9
6. Virginia	2,831	21
7. North Carolina	2,785	26
8. West Virginia	2,737	18
9. Utah	2,072	7
10. Kentucky	1,981	9
11. South Carolina	1,838	21
12. Illinois	1,694	11
13. Alabama	1,686	10
14. Tennessee	1,558	12
15. Texas	1,399	3
16. Washington	1,376	2
17. New Mexico	1,375	5
18. Wisconsin	1,181	19
19. Colorado	1,172	11
20. Iowa	1,099	24
21. Florida	961	4
22. Minnesota	707	11
23. Oregon	585	1
24. Louisiana	575	1
25. New York	475	3
26. Oklahoma	460	1
27. Massachusetts	421	5
28. Delaware	360	4
29. New Jersey	291	3
30. Connecticut	181	1
31. Michigan	162	4
32. Montana	154	1
33. Missouri	140	7
34. Maryland	125	4
35. California	96	2
36. Kansas	92	2
37. Wyoming	45	4
38. South Dakota	22	1
	54,812 MW	377 Units