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U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

May 15, 2012

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DEMOCRATIC STAFF DIRECTOR

The Honorable Lisa P. Jackson
Administrator
Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, D.C. 20460

Dear Administrator Jackson:

On February 3, 2012, a document request was sent to EPA regarding the agency's involvement in the rewrite of the 2008 Stream Buffer Zone Rule ("Rule") that included a deadline for a response of no later than February 16, 2012. This request is part of an active investigation into issues surrounding the Department of the Interior's ("DOI") Office of Surface Mining Reclamation and Enforcement's ("OSM") rewrite of the Rule.

To date, considerable patience has been demonstrated in seeking EPA's compliance with this request. However, the agency's actions have been consistently underwhelming and after three months of delays and excuses, it is time for EPA to fully respond by providing all requested documents and communications. To understand the extent of EPA's failure to adequately respond, it is useful to review a timeline of its inaction.

Initially, Committee counsel contacted EPA staff on February 15, 2012 regarding the production, and was told it would take an additional two to three weeks to respond to the document request. Then on March 9, 2012, Committee counsel again emailed EPA staff requesting a conference call to discuss what category of documents had been collected, what terms were used to search for them, whether any of those documents were being withheld and what privilege, if any, was being asserted, and most importantly when the initial production of responsive documents could be expected. The following day Committee counsel received a response from EPA staff that a response to the document request would be received by March 12, 2012.

On March 12, 2012, EPA provided "various scientific studies and other supporting materials" that were all publicly available. A few days later on a March 15, 2012 conference call, when questioned on the specific categories of documents requested, EPA staff indicated that

not only had they not fully read the original document request, they also indicated that no other responsive documents had even been collected.

In response to the lack of production of responsive documents and the seemingly substantive disregard for the initial document request, a second request was sent on March 22, 2012 setting an April 4, 2012 deadline for the production of responsive documents. On a March 27, 2012 conference call, EPA staff indicated they would not meet the April 4, 2012 deadline because they needed an additional two weeks to collect the documents. During a conference call with Committee staff on April 12, 2012, EPA staff indicated that although they had collected thousands of documents from between 25-40 custodians, it would take at least an additional four weeks to begin any kind of production. Those four weeks have now passed without EPA providing the promised documents.

As previously indicated, EPA's response to this legitimate Congressional oversight inquiry has been unacceptable to date and does little to instill confidence that this document request has been given appropriate attention. This is especially troubling given the President's stated commitment to create "*an unprecedented level of openness in Government.*" See Memorandum for the Heads of Executive Departments and Agencies regarding Transparency and Open Government, Jan. 21, 2009. (Emphasis added.)

In mid-April, Committee counsel offered to initially limit the number of custodians of documents that EPA was searching to those most involved in the project, but was told by EPA staff that reducing the number of custodians would not reduce the number of responsive documents nor expedite the projected timeline for production. While EPA may believe that searching the communications and documents of eight personnel takes the same time as 25-40 personnel, it is requested that EPA first focus its search and production to relevant communications from the following individuals to help expedite the process:

1. Elaine Suriano
2. Matt Klassen
3. Tim Landers
4. Bob Sussman
5. Karen Wendelowski
6. Shawn M. Garvin
7. Gregory Peck
8. Kevin Minoli

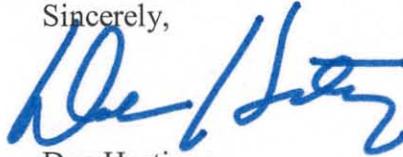
Given that this request is three months overdue, it is expected that these eight selected individuals' communications will be provided no later than Noon on May 21, 2012. It is expected that the remaining documents, including from all appropriate agency personnel, requested in the February 3, 2012 letter will be made available no later than Noon on May 25, 2012.

As stated at the outset of this letter, despite the considerable patience and willingness to work with EPA that has been demonstrated since February, should EPA again decide to

substantively ignore this document request and not produce the materials in a timely and cooperative manner, it will be appropriate and, apparently necessary, to move to compel production of the documents by issuance of a subpoena.

Please have your staff contact Tim Doyle, Senior Counsel and Director of Investigations for the Office of Oversight and Investigations, with any questions regarding this request, or to make arrangements for the production.

Sincerely,

A handwritten signature in blue ink, appearing to read "Doc Hastings", written in a cursive style.

Doc Hastings
Chairman