

Statement of Senator Art Kirkendoll

West Virginia State Senate

HOUSE NATURAL RESOURCES COMMITTEE:

SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

“Obama Administration’s Actions against the Spruce Coal Mine:

Cancelled Permits, Lawsuits and Lost Jobs”

June 1, 2012

Good morning and thank you for the opportunity to address this Committee. My name is Art Kirkendoll and for the past 30 years I've had the distinct pleasure of serving the people of Logan County, West Virginia first as a county commissioner and now as state senator. I am also here on behalf of 63,000 men and women that show up every day at a working mine in West Virginia as well as the Legislative and Executive branches of state government. Logan County has been called the ‘heart of the coalfields’ and it is that. Coal and Logan County are almost synonymous. I honestly don’t know how you could separate the two.

I’ve had the responsibility and pleasure of administering a county budget based on coal tax revenues for schools and important government services for the seniors and less fortunate. I’ve also had the daunting task of preparing that same budget when coal revenue disappeared due to arbitrary judicial and administrative actions that affected the continued viability of a coal mining operation in my county such as EPA’s post-issuance veto of the Spruce permit.

As a lifelong resident and a public servant, I am uniquely aware of the importance of coal to our community, and I am well aware that coal mining depends on a stable and predictable regulatory environment.

EPA's revocation of a legal, valid permit three years after it was issued by the Corps of Engineers shatters the trust that must underlie the relationship between citizens, businesses and their government.

Not only has the EPA's actions shattered that essential relationship between the people and their government, but in their politically motivated zeal to invalidate an existing, legal permit, the agency trampled on the relationship of the states to their federal government, destroying the very spirit of the Federal Clean Water Act so much so that a federal judge was inspired to characterize EPA's actions as "magical thinking."

Ladies and gentlemen, it is important that you understand this issue isn't just about a single mine permit – nor is it about a single community. Some of you may believe this is just a "regulatory matter" but it is not. It is about real people and the impact these decisions by EPA and others like them are having on families and their communities in Logan County... my home ... my state and across this nation. So concerning are EPA's actions to the citizens of West Virginia that the West Virginia Legislature has twice adopted resolutions condemning EPA's behavior with respect to the Spruce mine permit. By disregarding 13 years of environmental analysis that went into the Spruce mine permit with the stroke of its veto pen, EPA has essentially chilled the permitting process not only for mining operations but any development that needs Clean Water Act authorization from the Corps of Engineers.

Each year, more than 13 million tons of coal is mined in our county. There are a bit more than 1,500 coal miners working in the county, and using the standard economic multiplier, that means the industry provides employment for about 5,000 Logan County residents. Consider that for a moment – 5,000 out of a total population of a little more than 35,000. To put that into a bit better perspective, most of those coal miners and service industry employees are married and are in their prime family years – so it is safe to say that those 5,000 people represent 5,000 families – about 20,000 people out of 35,000 –something like 70 percent.

Now, the average West Virginia coal miner makes about \$70,000 a year, which means that the coal industry pays out about \$105 million in wages

each year in our county alone. The average salary of our coal miners is almost twice that of the average per capita income across the state. In fact, mining jobs are some of the best jobs people can have in our state.

Historically coal and the coal-related industries have provided higher paying jobs resulting in a higher standard of living and greater access to a better education. Consider the impact on Logan County School System and our families.

- The property tax on coal and coal-related industries in Logan County generates approximately \$7.5 million in excess levy tax revenue for Logan County Schools.
- This revenue provide over a million dollars for textbooks, academic travel for students, and school libraries;
- \$260,000 for bands, groups, student accident insurance policies and mini grants;
- \$300,000 for technology equipment, wiring and supplies; over a million in construction, security, and repairs;
- \$360,000 of playgrounds, public libraries, county health departments;
- \$4,981,000 in service and professional salaries.

Not only do the coal industries pay these taxes, employees of these industries work and live in our communities, and they support our schools with their personal property taxes as well. What cannot be overlooked when we discuss the financial impact of levy tax revenue is the personal dimension to this discussion for our school system, the emotional devastation that occurs when coal and the families who are dependent on coal no longer have a viable income.

We understand the importance of the coal industry to our county – just in terms of the economic impact alone – but it goes far beyond that.

I can remember back in 1981 when we began to take a longer view of what our county needed, thank goodness we had coal companies that provided the taxes and revenue and jobs that enabled us to do that.

When I first started, 15 percent of the people in Logan County had potable water. As we speak today, 99 percent have it. We recently started our second phase, our main sewers in southern West Virginia, and Logan County.

We're making great strides but we remain way behind the rest of the nation, I am asking that you don't allow the EPA to destroy the industry that provides us the revenue to get to that next level.

I often hear the opponents of coal talk about the land that is left once mining is finished. They claim we don't do anything with it.

Well, I don't know what they do in the rest of the country, but in Logan one of our biggest problems is a lack of readily developable land. The development and diversification of our economy is severely limited by the lack of flat, readily developable land. Our people try to make a living, build homes and businesses on the only flat land available – the valley floors – but the problem is that these valley floors are also often 20-year flood plains. Who would make a significant investment on a 20-year flood plain? Who would build a home or business?

Coal mining – particularly surface mining such as proposed at Spruce – can provide us jobs today and possibilities for tomorrow. It can do so even as it dramatically reduces the cost of site preparation for major projects – something that is one of the most important limiting factors.

Today, we have an airport, an industrial park, a regional jail, a wood products plant, a conference and recreation center among other things in Logan County, **because** we took this land and did the right thing with it after the extraction of coal.

As I stated earlier, this is about more than a single permit or a single mining operation but it is important to understand the impact that even a single mine has on a community and county like Logan County. Unfortunately, we've been here before - in 1999 a federal Judge halted mining at the Dal-Tex site where the Spruce permit is located. The mine closed, jobs were lost and communities and families were ripped apart. That decision, which was reversed on appeal, set in motion the 13-year permitting process that

led to the issuance of the Spruce mine permit in 2007. When the permit was finally issued, the company mobilized investment to initiate coal production, restoring life and economic vitality to these previously-decimated areas. All of that promise and potential is now threatened by an EPA that is willing to reach beyond its statutory authority to target an industry and a region without regard for impacts to real people.

This EPA claims its dedication to the concept of environmental justice, that no single community or group should unequally bear the burden of public policy decision with respect to environmental protection. In the case of the Spruce permit and coal mining in West Virginia and Appalachia, EPA has warped this concept of environmental justice to one of ***environmental injustice***- where jobs, lives and communities are targeted and ultimately destroyed in the blind pursuit of a purely political agenda. In EPA's distorted world of ***environmental injustice***, unelected bureaucrats in office buildings in Philadelphia and Washington substitute their judgment for the will of the elected West Virginia Legislature and the Congress.

I come to you today seeking nothing more than true justice for my county and my state. As two federal Judges have recently observed, EPA is an agency that begs for Congressional intervention. As Judge Amy Berman Jackson observed, EPA's actions on the Spruce permit represent "stunning power" for an agency to assume when there is no mention of it in the authorizing statute. The House has taken appropriate measures to restore balance and rationality to EPA and force them to respect the lines of federal and state responsibility with the passage of H.R. 2018, the Clean Water Cooperative Federalism Act. This same body should immediately begin consideration of H.R. 457, which will forever prevent EPA from revoking an issued and operating permit.

As I said, I am asking for nothing more than justice ... and for fairness. I am asking you, our elected representatives, to stand beside the working coal miners of my state and, indeed, this nation. They have given so much and by their hard work, we have built an economy that is the envy of the world.

Please don't turn your backs on the proud, hard-working, devoted West Virginia coal miner and outsource their jobs as we have so many others.

God forbid that ever happens. I never thought that in 2012, as State Senator, I would spend 80 percent of my time focusing on the uncertainty of whether people know on Monday if they have a job next week. That's not America.

Thank you for your time...