

Testimony  
John M. Stilley – President, Amerikohl Mining, Inc.  
before the U.S. House Natural Resources Committee  
Impacts of a Federal Endangered Listing of the Northern Long Eared Bat  
September 8, 2014  
Harrisburg, PA

Good morning.

Mr. Chairman, members of the House Natural Resources Committee, my name is John Stilley and I am the President of Amerikohl Mining, Inc. which is headquartered in Butler, Pennsylvania. I am also President of Patriot Exploration Corp. and Amerikohl Aggregates, Inc.

Amerikohl mines coal by the surface mining method in 13 Pennsylvania counties. Last year we produced approximately one (1) million tons of coal and employed 120 workers. Since 1978, we have completed mining of over 300 separate mine sites and have successfully reclaimed the land to productive post-mining uses including parks, residential communities, working farms, and forestland. Approximately 1/3 of these sites consisted of areas which had been mined in the 1940's and 1950's when no reclamation was required to be done. Amerikohl has won over 65 awards for outstanding reclamation work, has reclaimed over 15,000 acres of abandoned mine lands and restored miles of streams at no cost to taxpayers.

We are also in the stone and natural gas businesses. This year we will produce 1.25 million tons of stone and aggregates used to build and rehabilitate Pennsylvania's infrastructure. Additionally we currently operate over 200 wells, producing gas and oil, from the Upper Devonian formation and participate in the drilling and production from 28 Marcellus dry gas wells which are all in Pennsylvania.

I am also here today on behalf of the Pennsylvania Coal Alliance (PCA), a state trade association representing the interests of the state's bituminous coal mining industry.

Pennsylvania is the nation's fourth leading coal producing state, with about 67 million tons of both anthracite and bituminous coal mined in 2013.

The coal industry is a major contributor to Pennsylvania's economy. Its annual economic benefit to the Commonwealth exceeds \$4 billion and it is responsible for the creation of almost 40,000 direct and indirect jobs.

Most of the coal produced in Pennsylvania is used to generate affordable and reliable electricity.

I appreciate being asked to testify today on the potential impacts for mining if the Northern Long Eared Bat (NLE) is listed as an endangered species.

Because of time constraints, I have attached, for the record, specific comments submitted by the PCA to the U.S. Fish and Wildlife Service (FWS) on this matter. These comments are detailed, Pennsylvania-specific and highly relevant to this proceeding.

My testimony will highlight our major concerns with such action and, if time permits, I would like to address the committee on an important overarching issue that is a critical impediment to the future viability of coal mining.

**Range** – The NLE Bat has a much larger range and a greater presence in Pennsylvania than the Indiana Bat. (As a frame of reference, the total amount of protected Indiana Bat habitat in Pennsylvania today totals over three million acres). A listing would therefore, severely restrict any permitted earth moving activity proposed within a broad geographic area, particularly among the mineral extraction industry. The result would be permit delays and increased business costs without any assurance of commensurate environmental benefits.

**Disease Not Habitat Issue** – The NLE Bat has been hard-hit by White-Nose Syndrome (WNS), especially in the United States. Indeed, the FWS repeatedly recognizes that the WNS, not any human activity, alone is responsible for the major impacts to the NLE Bat that have been reported.

Any species protection requirements (e.g. tree clearing restrictions) that would accompany a federal listing will not address the WNS impact on NLE Bats. It would be senseless to impose significant costs on a multitude of industries whose activities would not affect the bat’s population with restrictions that would not in any measurable manner preserve the species.

**Sufficiency and Accuracy of Data** – Even the FWS recognizes that there has been “...substantial disagreement regarding the best available science...” as it relates to the NLE Bats current and predicted population trends and threats. Given the significant permit-related implications of a proposed listing, unless science is available to justify the action and unless reasonable expectations exist to demonstrate that such action would produce the intended benefit, the FWS should not proceed with a designation. On this particular issue, both parameters – science and expectations - are noticeably lacking.

### **Cost Implications**

#### Increased Costs Associated With Bat Mist Netting

In 2014, the USFWS issued a 2014 Indiana Bat Summer Survey Guidance Overview which provided the protocol for conducting bat surveys in Pennsylvania, which is within the Northeast Region (Region 5). While the initial intent was to reissue range-wide survey guidelines, the Northeast Region imposed a much higher level of survey effort (mist netting and acoustic) than other FWS regions. For “non-linear” projects, which are most common for the mining industry, the following increases in effort and costs have been observed over the past several years.

<b>Year</b>	<b>Required Survey Effort/Site</b>	<b>Increase in Effort</b>	<b>Approximate Cost/Site</b>
2014	<b>42 net nights</b> /123 acres of suitable habitat	10.5x	\$55,000
2013	<b>24 net nights</b> /123 acres of suitable habitat	6x	\$30,000

2012	4 net nights/123 acres of suitable habitat	-	\$5,000
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As you can see, the level of bat survey effort has increased more than 10 fold over the past 3 years.

Example: If a mining company has a 500 acre forested site, it would cost roughly \$275,000 to conduct a bat survey in Pennsylvania and the northeast region.

Telemetry Costs

If the proposed listing of the NLE Bat proceeds, any NLE bat captures will require radio telemetry work in order to locate roosting trees for individual bats. For each NLE Bat (and Indiana Bat) captured during a mist net survey, it costs approximately \$7,000 to track and monitor each individual bat.

During the 2014 mist netting season (May 15 to August 15), a mid-size environmental consulting firm in Pennsylvania captured 55 NLE Bats in PA, OH, and WV. This equates to an additional \$385,000 of costs that the industry will shoulder without any assurances of species protection.

Miscellaneous Cost Considerations

Additional costs associated with preparation of Habitat Conservation Plans (HCP's), tree clearing restrictions, and long term avoidance measures are also significant and need to be considered when discussing the economic impacts associated with the proposed listing of the NLE Bat.

**Permitting Impacts** – In addition to costs, unjustifiable and unpredictable federal action can wreak havoc on our ability to obtain permits, a prerequisite to actual mining.

Due to the nature of the operation, permit delays are most troublesome for surface mine operators.

Since surface mine projects in Pennsylvania are significantly smaller in terms of reserves and production than underground mine operations and are completed in shorter time frames, permits for surface mining are required on a more frequent basis. As such, indeterminate permit delays acutely affect this type of mining method more than other type of mining.

For example, Amerikohl generally operates between eight to ten mining sites on an ongoing basis in a given year. On average, it takes us about nine months to complete a job. Consequently, we are continually applying for permits to mine. Delays on permit issuance challenge the company's ability to maintain continuity of operations, meet our contractual supply obligations and keep our men and women working full time.

In addition, most of Pennsylvania's easily accessible surface coal reserves have already been mined and a high percentage of our remaining reserves are off-limit because of unilateral and unjustifiable regulatory actions, like this proposed listing, that more often than not are precipitated at the federal level.

When all factors are considered, surface operators have very little viable options left on where to mine. Permitting restrictions further reduce these options and unless we get a more timely and predictable

process, our remaining reserves will be sterilized, mining derived income and jobs will be lost and we all lose the benefits of cheap and reliable coal based electricity.

**Implementation** - Although the FWS announced on June 30<sup>th</sup> a six-month extension on any final decision regarding a listing, the Service's State College Regional Office is treating permit reviews as though the listing has already been made.

In response to a permit application for a limestone quarry that I am in the process of attempting to secure, I was instructed via letter by the field office that the site is located within the range of the NLE bat. Although the species is not listed, the letter cautioned us to address this issue in the permit or face project delays if a listing is finalized.

So, despite the FWS' acknowledgement about the scientific uncertainty associated with the available data for making a determination, despite its announcement to defer a decision until April 2, 2015, to clarify and "fully analyze" the data, and without any justifiable certainty that a proposed activity will indeed threaten the continued existence of NLE bats, the Pennsylvania field office is instructing permit applicants to implement protective measures for a non-listed species to avoid permit delays.

This brings me to my final, overarching comment – the regulatory process is in turmoil, devoid of science and commonsense; defined by standards that are constantly changing pursuant to regulatory whim, not statutory or regulatory mandates; and driven by a select few who believe they know what is in the public's best interest.

**Overarching Concern** – It would be easy to simply refer to this situation as the result of a deliberate and targeted assault on the coal industry. Clearly, the Obama Administration's intent is to end mining and transform America's usage away from coal.

The Administration's actions are certainly a challenge to the future viability of the industry and its workforce, as well as the price and reliability of electric generation. But the impacts of these actions are more profound than a war on coal.

Perhaps, most insidious is the manner in which these requirements are being applied – by policy, not by legislation or regulation. Under the Obama Administration, federal agencies have steadily usurped permitting and enforcement authority heretofore reserved to states by establishing through policies restrictions on both the mining and use of coal that are harsh, misguided and not supported by science. As a result, mining permits are delayed or denied, jobs are lost, and coal reserves are unnecessarily sterilized.

This federal overreach tramples on public accountability and transparency while eroding our system of checks and balances that is the core of a true democracy.

My most important recommendation that I can make to this Committee today is to restore reason and balance to the process, let science trump whim and hold these federal bureaucrats accountable to public law.

Thank you.