

DOC HASTINGS, WA
CHAIRMAN
DON YOUNG, AK
JOHN J. DUNCAN, JR., TN
LOUIE GOHMERT, TX
ROB BISHOP, UT
DOUG LAMBORN, CO
ROBERT J. WITTMAN, VA
PAUL C. BROUN, GA
JOHN FLEMING, LA
MIKE COFFMAN, CO
TOM McCLINTOCK, CA
GLENN THOMPSON, PA
JEFF DENHAM, CA
DAN BENISHEK, MI
DAVID RIVERA, FL
JEFF DUNCAN, SC
SCOTT R. TIPTON, CO
PAUL A. GOSAR, AZ
RAÚL R. LABRADOR, ID
KRISTI L. NOEM, SD
STEVE SOUTHERLAND II, FL
BILL FLORES, TX
ANDY HARRIS, MD
JEFFREY M. LANDRY, LA
JON RUNYAN, NJ
BILL JOHNSON, OH
MARK AMODEI, NV

TODD YOUNG
CHIEF OF STAFF

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

May 15, 2012

EDWARD J. MARKEY, MA
RANKING DEMOCRATIC MEMBER
DALE E. KILDEE, MI
PETER A. DeFAZIO, OR
ENI F.H. FALGOMAVAEGA, AS
FRANK PALLONE, JR., NJ
GRACE F. NAPOLITANO, CA
RUSH D. HOLT, NJ
RAÚL M. GRIJALVA, AZ
MADELEINE Z. BORDALLO, GU
JIM COSTA, CA
DAN BOREN, OK
GREGORIO KILILI CAMACHO SABLAN, CNMI
MARTIN HEINRICH, NM
BEN RAY LUJÁN, NM
JOHN P. SARBANES, MD
BETTY SUTTON, OH
NIKI TSONGAS, MA
PEDRO R. PIERLUISI, PR
JOHN GARAMENDI, CA
COLLEEN W. HANABUSA, HI
PAUL TONKO, NY

JEFFREY DUNCAN
DEMOCRATIC STAFF DIRECTOR

The Honorable Nancy Sutley
Chair
Council on Environmental Quality
722 Jackson Place NW
Washington, D.C. 20503

Dear Chair Sutley:

On February 3, 2012, a document request was sent to CEQ regarding the Council'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 CEQ'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 CEQ to fully respond by providing all requested documents and communications. To understand the extent of CEQ's failure to adequately respond, it is useful to review a timeline of its inaction.

While appreciative of the various letters and emails from CEQ staff regarding their desire to accommodate the Committee, given CEQ's "very limited" involvement as indicated in your March 22, 2012 letter, it is a bit concerning that since the initial request letter, no documents involving communications have been provided. After an initial conference call on the scope of the request on February 14, 2012, Committee counsel has repeatedly requested a conference call to discuss what category of documents have 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.

It was therefore with great frustration that your first letter of March 22, 2012 was received, given your response that "most of the responsive documents are likely in DOI's possession" and that CEQ is "pleased to work with [Committee] staff, as appropriate, to accommodate [the Committee's] interest in this subject matter, consistent with the progress in [the Committee's] discussions with DOI." The written instructions in the February 3, 2012 letter

to CEQ clearly stated that “In complying with this document request, you are required to produce all responsive documents, materials, or items that are in your possession, custody, or control. . . .” (Instruction 1) Additional instructions indicated that, “It shall not be a basis for refusal to produce documents that any other person or entity also possesses documents that are non-identical or identical copies of the same document.” (Instruction 5) These, along with the other instructions, were included to help CEQ determine what responsive documents they were required to produce.

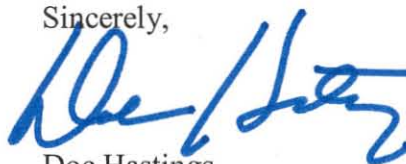
On April 24, 2012, a production was received from CEQ that included two similar drafts of an Advanced Notice of Proposed Rulemaking, one of which is publicly available, as well as a copy of a Federal Register Notice and a list of cooperating state agencies, also publicly available.

Again, while patience has been shown in seeking CEQ’s compliance, it is not acceptable to simply produce documents that are already publicly available while using DOI as a shield from complying with a request that CEQ directly received and has a responsibility to comply with.

It is concerning that, despite pledges of openness and transparency by President Obama and his Administration, it is necessary to write another letter requesting a responsive production. Therefore, through this second letter, it is requested that you cease delay tactics and promptly provide all documents, communications, and information related to the involvement of CEQ in the rewrite of the Rule as instructed in the February 3, 2012 letter to CEQ. All responsive documents are to be provided no later than May 24, 2012. After three months of delay, a continued failure to disclose these documents will prompt action to compel their production through 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,



Doc Hastings
Chairman