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CHIEF OF STAFF

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

February 3, 2012

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JEFFREY DUNCAN
DEMOCRATIC STAFF DIRECTOR

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

Dear Administrator Jackson:

The Committee on Natural Resources (“Committee”) is actively investigating issues surrounding the Department of the Interior’s Office of Surface Mining Reclamation and Enforcement (“OSM”) rewrite of the 2008 Stream Buffer Zone Rule (“Rule”).

The Committee is aware that the Environmental Protection Agency (“EPA”) has the regulatory authority to review the environmental impact of new regulations promulgated by any Federal agency under section 309 of the Clean Air Act (“CAA”).

In July of 2009, the EPA signed a Memorandum of Understanding with the Department of the Interior (“DOI”) and the U.S. Army Corps of Engineers (“USACE”) regarding implementation of an interagency action plan on Appalachian Surface Coal Mining involving mining techniques that require permits under Section 404 of the Clean Water Act (“CWA”) and the Surface Mining Control and Reclamation Act (“SMCRA”).

Through this letter, we are requesting your cooperation in providing the Committee with all documents, communications, and information related to the involvement of EPA in the rewrite of the Rule. Your response on behalf of the EPA is important for the Committee to carry out its oversight responsibilities. The Committee specifically requests that EPA produce the documents described below.

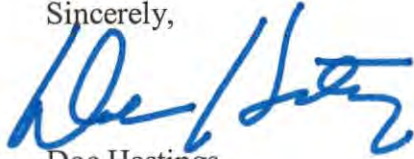
Your complete written response to all items should be received no later than **Thursday, February 16, 2012.**

Documents and Items to Be Produced

1. All documents and communication relating to concerns, discussions, comments, or questions regarding the EPA's review of the proposed Stream Protection Rule.
2. All documents and communication relating to the economic impact or potential job loss estimates related to the current rulemaking effort.
3. All documents and communications relating to the baseline parameters used in the economic analysis provided by the DOI or OSM including but not limited to:
 - a. The baseline and parameters that were the assumptions of the current effort.
 - b. The decision to expand the scoping opportunities for the re-write of the Rule.
 - c. The decision to use the 2008 coal production numbers, the 2010 coal production numbers, or an average of the three years combined in creating assumptions for the EIS or RIA.
 - d. Whether the proposed rule would cover only surface mining or surface and underground mining.
 - e. The implementation timeline of the Stream Protection Rule.
 - f. Assumptions that the 2008 Rule was in effect and being enforced across the United States.
4. All documents regarding the March 2010 settlement requiring OSM to make best efforts to sign a final action on the proposed rule no later than Friday, June 29, 2012; including drafts and any changes to the settlement with the litigants or ongoing discussions with the litigants about the Department's efforts to meet the terms of the settlement, and all documents related to attorney fees paid as a result of the settlement.
5. All communications regarding any settlement agreement with the litigants to the law suit which sought to prevent the implementation of the Rule.

An attachment to this letter provides additional information about responding to the Committee's request, including definitions and instructions for compliance. Please contact Machalagh Carr, Counsel for the Office of Oversight and Investigations, with any questions regarding this request, or to make arrangements for the production. Thank you for your prompt and personal attention to this matter.

Sincerely,



Doc Hastings
Chairman
Natural Resources Committee



Doug Lamborn
Subcommittee Chairman
Energy and Mineral Resources

Responding to Committee Document Requests

A. Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, recorded notes, letters, notices, confirmations, receipts, checks, envelopes, presentations, pamphlets, brochures, interoffice and intra office communications, electronic mails (e-mails), notations of any type of conversation, telephone call, voice mail, phone mail, meeting or other communication, diaries, analyses, summaries, messages, correspondence, circulars, opinions, work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and electronic, mechanical, and electric records or representations of any kind, and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, e-mail, discussions, releases, personal delivery, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this document request. The singular includes the plural. The masculine includes the feminine.
4. As used herein, “referring” or “relating” means and includes “constituting,” “pertaining,” “evidencing,” “reflecting,” “describing,” or “having anything to do with,” and in each instance, directly or indirectly. These terms mean, without limitation, any reference or relationship which either (a) provides information with respect to the subject of the inquiry, or (b) might lead to individuals who, or documents which, might possess or contain information with respect to the subject of the inquiry.

B. Instructions

1. 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, whether held by you or your past or present agents, employees, representatives, subsidiaries, affiliates, divisions, partnerships, and departments acting on your behalf. You are also required to produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. No records, documents, data or information called for by this request shall be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.

2. In the event that any entity, organization or individual denoted in this document request has been, or is also known by any other name than that herein denoted, the document request shall be read also to include them under that alternative identification.
3. Each document produced shall be produced in a form that renders that document capable of being printed or copied.
4. Documents produced in response to this document request shall be produced together with copies of file labels, dividers, envelopes, or identifying markers with which they were associated when this document request was served. Documents produced to this document request shall also identify to which paragraph from the document request such documents are responsive. Moreover, please include with your response, an index identifying each record and label (preferably by bates stamping) the documents. The Committee prefers, if possible, to receive all documents in electronic format.
5. 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.
6. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer back-up tape), state the form in which it is available and provide sufficient detail to allow the information to be copied to a readable format. If the information requested is stored in a computer, indicate whether you have an existing program that will print the records in a readable form.
7. If compliance with the document request cannot be made in full, compliance shall be made to the extent possible and shall include a written explanation of why full compliance is not possible.
8. In the event that a document is withheld, in whole or in part, based on a claim of privilege, provide the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter of the document; (d) the date, author and any recipients; and (e) the relationship of the author and recipients to each other. Claims of privileges are considered under Committee on Natural Resources Rule 4(h) and, similar to all common-law privileges, are recognized only at to the discretion of the Committee.
9. If any document responsive to this document request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.
10. If a date or other descriptive detail set forth in this document request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or

is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

11. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon location or discovery subsequent thereto.

12. Send all responsive documents and records to:

Committee on Natural Resources
U.S. House of Representatives
1324 Longworth House Office Building
Washington, DC 20515.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY RECEIVED
WASHINGTON, D.C. 20460 COMMITTEE ON RESOURCES
2012 MAR 12 PM 2:21

MAR 12 2012

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable Doc Hastings
Chairman
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your letter of February 3, 2012, to U.S. Environmental Protection Agency Administrator Lisa P. Jackson regarding the EPA's involvement in the Office of Surface Mining Reclamation and Enforcement's (OSM's) process to develop a stream protection rule pursuant to the Surface Mining Control and Reclamation Act (SMCRA).

Under the Clean Water Act (CWA), Section 309 of the Clean Air Act, and SMCRA Section 501, Congress has charged the EPA with responsibilities related to the regulation of surface coal mining. First, the EPA oversees state permitting programs under CWA Section 402 for discharges of pollutants to waters of the United States, including discharges from surface coal mining operations. Under CWA Section 404, the EPA reviews proposed discharges of dredged or fill material – including those proposed in connection with surface coal mining operations – and provides comments to the U.S. Army Corps of Engineers ("Corps") on whether these projects comply with the environmental standards established by the EPA pursuant to the CWA. In addition, under Section 309 of the Clean Air Act (CAA), Congress has given the EPA responsibility to review and comment on the environmental impact of proposed regulations published by other federal agencies, as well as federal proposals to which the National Environmental Policy Act's (NEPA) Environmental Impact Statement (EIS) requirement applies. Finally, SMCRA Section 501 requires the EPA's concurrence in any final regulation promulgated under SMCRA that "relate[s] to" air or water quality standards promulgated under the CAA or the CWA.

As your letter notes, the EPA signed a Memorandum of Understanding with the Department of the Army and the Department of the Interior (DOI) on June 11, 2009, in which the agencies agreed to take coordinated actions to help reduce the environmental impacts of Appalachian surface coal mining operations. As part of this agreement, OSM committed to take steps to improve the regulation of surface coal mining operations under SMCRA, while the EPA and the Corps committed to taking steps to improve their policies and procedures with respect to the

CWA. Since 2009, the EPA and its federal partners have worked closely with states, the mining industry, and other stakeholders to coordinate review of proposed surface coal mining projects pursuant to existing statutory and regulatory authorities to ensure that these projects comply with the law, protect water quality, and protect coalfield communities.

OSM's stream protection rulemaking process began in 2009 upon publication of an Advance Notice of Proposed Rulemaking. At OSM's invitation, the EPA provided limited technical assistance and comments to OSM on conceptual drafts of OSM's stream protection rule, draft rule text, preliminary chapters of OSM's Draft EIS, and associated materials, which were provided to the EPA between 2009 and early 2011. With respect to draft rule text, the EPA's review was focused on identifying areas in which SMCRA and CWA requirements can be made more consistent and more predictable, with the goal of reducing uncertainty in the permitting process. The EPA also recommended that OSM's rule should reflect the significant body of peer-reviewed science that has developed regarding the potential water quality, environmental, and public health impacts of surface coal mining operations. This science includes two studies developed by the EPA that were independently peer reviewed in 2010 by the EPA's Science Advisory Board. Finally, the EPA has shared with OSM some examples of its recent efforts to further avoid and minimize the environmental impacts of surface coal mining operations by reducing the number and size of valley fills, promoting Best Management Practices that reduce water quality impacts, and working collaboratively with states, other federal agencies, and the mining industry to enable environmentally responsible surface coal mining projects to proceed.

The EPA has also served as a cooperating agency in OSM's EIS development process with regard to the stream protection rulemaking. As part of this role, the EPA reviewed preliminary draft chapters of OSM's draft EIS, which were developed by OSM's prior contractor and circulated to the EPA and other cooperating federal and state agencies for review in 2010. In its comments, the EPA expressed concerns regarding the extent to which the draft chapters adequately described the environmental effects of the preferred alternative. The EPA will also review OSM's draft EIS pursuant to Section 309 of the CAA when it is complete.

We have enclosed copies of various scientific studies and other supporting materials that were referenced in EPA comments on draft OSM rule text or preliminary draft chapters of the EIS.

We understand that the Committee has been engaged in a longer term oversight and document request process directly with DOI with regard to the stream protection rulemaking process and associated development of a draft EIS. The documents requested in your letter of February 3 to the EPA appear to largely overlap with this ongoing process with DOI, and it appears that most of the responsive documents are likely in DOI's possession. We understand that the Committee and DOI are in ongoing discussions with regard to this inquiry and that DOI is working to accommodate your requests. The EPA is willing to work with your staff, as appropriate, to accommodate your interest in this subject matter, consistent with progress in your ongoing discussions with DOI.

Thank you again for your letter. Please contact me if you have further questions regarding this letter, or your staff may contact Tom Dickerson in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-3638.

Sincerely,



Arvin Ganesan
Associate Administrator

Enclosure

cc: The Honorable Edward Markey
Ranking Member
Committee on Natural Resources

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

March 22, 2012

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JEFFREY DUNCAN
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 their involvement in the rewrite of the 2008 Stream Buffer Zone Rule ("Rule") with a deadline for a response no later than February 16, 2012. As you are aware, the Committee on Natural Resources ("Committee") is actively investigating issues surrounding the Department of the Interior's ("DOI") Office of Surface Mining Reclamation and Enforcement's ("OSM") rewrite of the Rule. Committee counsel contacted EPA staff on February 15, 2012 regarding the production, and was told by EPA staff that it would take an additional 2-3 weeks to respond to the document request.

On February 26, 2012, Committee counsel emailed EPA staff and requested a conference call to discuss the time frame for production. On February 28, 2012, EPA staff indicated to Committee counsel that a response would be delivered in 3-5 business days.

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 the response to the document request would be received by March 12, 2012.

Unfortunately, it was with great frustration that your letter of March 12, 2012 was received, given that in addition to being over a month past the deadline of February 16, 2012, the only responsive documents were "various scientific studies and other supporting materials" that were all publicly available. Equally troubling was the portion of the response that indicated "most of the responsive documents are likely in DOI's possession." Moreover, it stated that "The EPA is

willing 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] ongoing discussions with DOI." However, the written instructions in the February 3, 2012 letter to EPA clearly state 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) Additionally, "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 the EPA in determining what responsive documents they would be required to produce. As such, the EPA is expected to produce all responsive documents.

On March 12, 2012, Committee counsel arranged a telephone conference with EPA staff to discuss the lack of responsive documents. On this call, EPA staff indicated that not only had they not fully read the document request, they indicated that no responsive documents to the request had even been collected. This is not an acceptable response to a legitimate Congressional oversight inquiry and does little to instill confidence that this document request has been given appropriate attention. We respectfully request that EPA fully read the Committee's request, collect all responsive documents, and promptly provide those documents to us.

There was a request from EPA staff to engage in a joint telephone conference with DOI. To be perfectly clear, this is not a joint document request with EPA and DOI. This oversight of EPA's role in the rewrite of this Rule is separate and distinct from other oversight that we may be undertaking and EPA's responsibility in this regard is to respond to the Congressional request, not to DOI.

In conclusion, it is concerning that, despite pledges of transparency by the President's Administration, it is necessary to write another letter requesting a responsive production. Therefore, through this second letter, we are requesting your cooperation in providing all documents, communications, and information related to the involvement of EPA in the rewrite of the Rule as instructed in the February 3, 2012 letter to EPA.

Although there is an agreement to discuss the Committee's request on March 27, 2012, after EPA staff has had a further opportunity to review the request, that agreement by no means changes the initial document request. Should EPA again decide to substantively ignore this document request and not produce the materials in a timely cooperative manner, then it will be appropriate to compel the production.

Given that this request is well over a month overdue, this Committee expects all responsive documents no later than April 4, 2012.

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Doc Hastings".

Doc Hastings
Chairman
Natural Resources Committee

A handwritten signature in blue ink, appearing to read "Doug Lamborn".

Doug Lamborn
Subcommittee Chairman
Energy and Mineral Resources

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

May 15, 2012

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JEFFREY DUNCAN
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

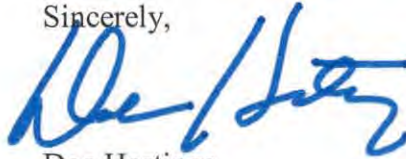
Given that this request is three months overdue, it is expected that these eight selected individuals' communications will be provided no later than Noon on May 21, 2012. It is expected that the remaining documents, including from all appropriate agency personnel, requested in the February 3, 2012 letter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

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TODD YOUNG
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U.S. House of Representatives
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February 3, 2012

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JEFFREY DUNCAN
DEMOCRATIC STAFF DIRECTOR

Honorable Cass Sunstein
Administrator, Office of Information and Regulatory Affairs
Office of Management and Budget
Executive Office Building
Washington, D.C. 20503

Dear Administrator Sunstein:

The Committee on Natural Resources (“Committee”) is actively investigating issues surrounding the Department of the Interior’s Office of Surface Mining Reclamation and Enforcement (“OSM”) rewrite of the 2008 Stream Buffer Zone Rule (“Rule”).

Pursuant to Executive Orders 12866 and 13563, the Office of Management and Budget (OMB) through the Office of Information and Regulatory Affairs (OIRA) is tasked with reviewing draft regulations including proposed rules such as the Rule previously referenced. The Committee understands that OIRA or other OMB staff provided input into the rewrite of the Rule.

Through this letter, we are requesting your cooperation in providing the Committee with all documents, communications, and information related to the involvement of OMB and OIRA in the rewrite of the Rule. Your response on behalf of OIRA and OMB is important for the Committee to carry out its oversight responsibilities. The Committee specifically requests that CEQ produce the documents described below.

Your complete written response to all items should be received no later than **Thursday, February 16, 2012.**

Documents and Items to Be Produced

1. All documents and communication relating to concerns, discussions, comments, or questions regarding the OMB or OIRA's review of the proposed Stream Protection Rule.
2. All documents and communication relating to the economic impact or potential job loss estimates related to the current rulemaking effort.
3. All documents and communications relating to the baseline parameters used in the economic analysis provided by the DOI or OSM including but not limited to:
 - a. The baseline and parameters that were the assumptions of the current effort.
 - b. The decision to expand the scoping opportunities for the re-write of the Rule.
 - c. The decision to use the 2008 coal production numbers, the 2010 coal production numbers, or an average of the three years combined in creating assumptions for the EIS or RIA.
 - d. Whether the proposed rule would cover only surface mining or surface and underground mining.
 - e. The implementation timeline of the Stream Protection Rule.
 - f. Assumptions that the 2008 Rule was in effect and being enforced across the United States.
4. All documents and communication relating to concerns, discussions, comments, or questions regarding any meetings OIRA or OMB had with nongovernment entities regarding the Rule.
5. All documents regarding the March 2010 settlement requiring OSM to make best efforts to sign a final action on the proposed rule no later than Friday, June 29, 2012; including drafts and any changes to the settlement with the litigants or ongoing discussions with the litigants about the Department's efforts to meet the terms of the settlement, and all documents related to attorney fees paid as a result of the settlement.
6. All communications, including drafts, regarding the entry of the Rule as a part of the Unified Agenda of Federal Regulatory and Deregulatory Actions.
7. All communications of James Laity, OLRA Desk Officer, regarding the Rule.
8. All communications of Emily Sharp, Program Examiner, regarding the Rule.

An attachment to this letter provides additional information about responding to the Committee's request, including definitions and instructions for compliance. Please contact Machalagh Carr, Counsel for the Office of Oversight and Investigations, with any questions regarding this request, or to make arrangements for the production. Thank you for your prompt and personal attention to this matter.

Sincerely,



Doc Hastings
Chairman
Natural Resources Committee



Doug Lamborn
Subcommittee Chairman
Energy and Mineral Resources

Responding to Committee Document Requests

A. Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, recorded notes, letters, notices, confirmations, receipts, checks, envelopes, presentations, pamphlets, brochures, interoffice and intra office communications, electronic mails (e-mails), notations of any type of conversation, telephone call, voice mail, phone mail, meeting or other communication, diaries, analyses, summaries, messages, correspondence, circulars, opinions, work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and electronic, mechanical, and electric records or representations of any kind, and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, e-mail, discussions, releases, personal delivery, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this document request. The singular includes the plural. The masculine includes the feminine.
4. As used herein, “referring” or “relating” means and includes “constituting,” “pertaining,” “evidencing,” “reflecting,” “describing,” or “having anything to do with,” and in each instance, directly or indirectly. These terms mean, without limitation, any reference or relationship which either (a) provides information with respect to the subject of the inquiry, or (b) might lead to individuals who, or documents which, might possess or contain information with respect to the subject of the inquiry.

B. Instructions

1. 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, whether held by you or your past or present agents, employees, representatives, subsidiaries, affiliates, divisions, partnerships, and departments acting on your behalf. You are also

required to produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. No records, documents, data or information called for by this request shall be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.

2. In the event that any entity, organization or individual denoted in this document request has been, or is also known by any other name than that herein denoted, the document request shall be read also to include them under that alternative identification.
3. Each document produced shall be produced in a form that renders that document capable of being printed or copied.
4. Documents produced in response to this document request shall be produced together with copies of file labels, dividers, envelopes, or identifying markers with which they were associated when this document request was served. Documents produced to this document request shall also identify to which paragraph from the document request such documents are responsive. Moreover, please include with your response, an index identifying each record and label (preferably by bates stamping) the documents. The Committee prefers, if possible, to receive all documents in electronic format.
5. 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.
6. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer back-up tape), state the form in which it is available and provide sufficient detail to allow the information to be copied to a readable format. If the information requested is stored in a computer, indicate whether you have an existing program that will print the records in a readable form.
7. If compliance with the document request cannot be made in full, compliance shall be made to the extent possible and shall include a written explanation of why full compliance is not possible.
8. In the event that a document is withheld, in whole or in part, based on a claim of privilege, provide the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter of the document; (d) the date, author and any recipients; and (e) the relationship of the author and recipients to each other. Claims of privileges are considered under Committee on

Natural Resources Rule 4(h) and, similar to all common-law privileges, are recognized only at to the discretion of the Committee.

9. If any document responsive to this document request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.
10. If a date or other descriptive detail set forth in this document request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
11. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon location or discovery subsequent thereto.
12. Send all responsive documents and records to:

Committee on Natural Resources
U.S. House of Representatives
1324 Longworth House Office Building
Washington, DC 20515.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

ADMINISTRATOR
OFFICE OF
INFORMATION AND
REGULATORY AFFAIRS

February 27, 2012

The Honorable Doc Hastings
Chairman
Natural Resources Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Doug Lamborn
Subcommittee Chairman
Energy and Mineral Resources, Natural Resources Committee
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Hastings and Chairman Lamborn:

Thank you for your letter of February 3, 2012 about the Department of the Interior's Stream Buffer Zone Rule. No regulatory action on this topic is under review at the Office of Information and Regulatory Affairs (OIRA) at the moment.

On November 20, 2009, OIRA concluded review of a pre-rule notice on the Stream Buffer Zone matter. As you are aware, such notices do not propose rules but merely ask for public comments in advance of any proposal, which may or may not occur. The Department of the Interior published the notice in the Federal Register; it is available at the following link:
<https://www.federalregister.gov/articles/2009/11/30/E9-28513/stream-buffer-zone-and-related-rules>.

OIRA has not yet received a Notice of Proposed Rulemaking (NPRM) on this matter. When a rule is in the pre-NPRM stage, as here, OIRA involvement is usually limited.

Thank you for your thoughtful attention to this issue.

Sincerely,

Cass R. Sunstein
Administrator
Office of Information
and Regulatory Affairs

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TODD YOUNG
CHIEF OF STAFF

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

March 21, 2012

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PAUL TONKO, NY

JEFFREY DUNCAN
DEMOCRATIC STAFF DIRECTOR

The Honorable Jeffrey Zients
Acting Director
Office of Management and Budget
Executive Office Building
Washington, D.C. 20503

Dear Acting Director Zients:

The Committee on Natural Resources ("Committee") is actively investigating issues surrounding the Department of the Interior's Office of Surface Mining Reclamation and Enforcement ("OSM") and their ongoing attempts at rewriting the 2008 Stream Buffer Zone Rule ("Rule").

On February 3, 2012, this Committee sent a document request to the Office of Information and Regulatory Affairs ("OIRA"). The letter asked for responsive documents from both OIRA *and* OMB. On February 27, 2012, the Committee received a letter from Administrator Cass Sunstein that indicated that OIRA had done a review of the newly proposed Stream Buffer Rule on November 20, 2009 and suggested reviewing the Federal Register for further information. This type of response to a Congressional inquiry is totally unacceptable. As such, our Committee staff followed up with an email on February 28, 2012 requesting again that responsive documents be provided to the Committee including those from the November 20, 2009 review. Without receiving any response, Committee staff again emailed on March 9, 2012 requesting a telephone conference to discuss the lack of production, what category of documents have been collected, what terms were used to search for them, whether any of those documents are being withheld and what privilege, if any, is being asserted. As of today's date there has been no response regarding the telephone conference or any document production.

Furthermore, it is concerning that, in an era of heightened transparency, this Committee is required to write another letter requesting a responsive production.

Therefore, through this second letter, we are requesting your cooperation in providing the Committee with all documents, communications, and information related to the involvement of OMB in the rewrite of the Rule. Your response on behalf of OMB is important for the

Committee to carry out its oversight responsibilities. The Committee specifically requests that OMB produce the documents described below.

Given that you have had this document request for well over a month, your complete written response to all items should be received by the Committee no later than **Tuesday, March 27, 2012**.

Documents and Items to Be Produced

1. All documents and communication relating to concerns, discussions, comments, or questions regarding the OMB's review of the proposed Stream Protection Rule.
2. All documents and communication relating to the economic impact or potential job loss estimates related to the current rulemaking effort.
3. All documents and communications relating to the baseline parameters used in the economic analysis provided by the DOI or OSM including but not limited to:
 - a. The baseline and parameters that were the assumptions of the current effort.
 - b. The decision to expand the scoping opportunities for the re-write of the Rule.
 - c. The decision to use the 2008 coal production numbers, the 2010 coal production numbers, or an average of the three years combined in creating assumptions for the EIS or RIA.
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 - e. The implementation timeline of the Stream Protection Rule.
 - f. Assumptions that the 2008 Rule was in effect and being enforced across the United States.
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7. All communications of James Laity, OLRA Desk Officer, regarding the Rule.
8. All communications of Emily Sharp, Program Examiner, regarding the Rule.

An attachment to this letter provides additional information about responding to the Committee's request, including definitions and instructions for compliance. Please 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. Thank you for your prompt and personal attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Doc Hastings".

Doc Hastings
Chairman
Natural Resources Committee

A handwritten signature in blue ink, appearing to read "Doug Lamborn".

Doug Lamborn
Subcommittee Chairman
Energy and Mineral Resources

Responding to Committee Document Requests

A. Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, recorded notes, letters, notices, confirmations, receipts, checks, envelopes, presentations, pamphlets, brochures, interoffice and intra office communications, electronic mails (e-mails), notations of any type of conversation, telephone call, voice mail, phone mail, meeting or other communication, diaries, analyses, summaries, messages, correspondence, circulars, opinions, work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and electronic, mechanical, and electric records or representations of any kind, and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, e-mail, discussions, releases, personal delivery, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this document request. The singular includes the plural. The masculine includes the feminine.
4. As used herein, “referring” or “relating” means and includes “constituting,” “pertaining,” “evidencing,” “reflecting,” “describing,” or “having anything to do with,” and in each instance, directly or indirectly. These terms mean, without limitation, any reference or relationship which either (a) provides information with respect to the subject of the inquiry, or (b) might lead to individuals who, or documents which, might possess or contain information with respect to the subject of the inquiry.

B. Instructions

1. 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, whether held by you or your past or present agents, employees, representatives, subsidiaries, affiliates, divisions, partnerships, and departments acting on your behalf. You are also required to produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. No records, documents, data or information called for by this request shall be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this document request has been, or is also known by any other name than that herein denoted, the document request shall be read also to include them under that alternative identification.
3. Each document produced shall be produced in a form that renders that document capable of being printed or copied.
4. Documents produced in response to this document request shall be produced together with copies of file labels, dividers, envelopes, or identifying markers with which they were associated when this document request was served. Documents produced to this document request shall also identify to which paragraph from the document request such documents are responsive. Moreover, please include with your response, an index identifying each record and label (preferably by bates stamping) the documents. The Committee prefers, if possible, to receive all documents in electronic format.
5. 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.
6. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer back-up tape), state the form in which it is available and provide sufficient detail to allow the information to be copied to a readable format. If the information requested is stored in a computer, indicate whether you have an existing program that will print the records in a readable form.

7. If compliance with the document request cannot be made in full, compliance shall be made to the extent possible and shall include a written explanation of why full compliance is not possible.
8. In the event that a document is withheld, in whole or in part, based on a claim of privilege, provide the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter of the document; (d) the date, author and any recipients; and (e) the relationship of the author and recipients to each other. Claims of privileges are considered under Committee on Natural Resources Rule 4(h) and, similar to all common-law privileges, are recognized only at to the discretion of the Committee.
9. If any document responsive to this document request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.
10. If a date or other descriptive detail set forth in this document request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
11. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon location or discovery subsequent thereto.
12. Send all responsive documents and records to:
Committee on Natural Resources
U.S. House of Representatives
1324 Longworth House Office Building
Washington, DC 20515.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

March 27, 2012

The Honorable Doc Hastings
Chairman
Natural Resources Committee
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Doug Lamborn
Subcommittee Chairman
Energy and Mineral Resources, Natural Resources Committee
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Hastings and Chairman Lamborn:

This is in further response to your letter of February 3, 2012, to Cass Sunstein, Administrator of the Office of Information and Regulatory Affairs (OIRA), and also to your letter of March 21, 2012, to Jeffrey D. Zients, Acting Director of the Office of Management and Budget (OMB), regarding the Department of the Interior's (DOI) Stream Buffer Zone matter.

The letters request certain documents in OMB's possession "regarding the OMB's review of the proposed Stream Protection Rule," including documents relating to the "economic impact or potential job loss estimates related to the current rulemaking effort," "the baseline parameters used in the economic analyses provided by the DOI," and other related documents. As we explained in our February 27 letter to the Committee and in our March 22 email to committee staff, no proposed rule or other regulatory action on DOI's Stream Protection Rule is currently under review at OIRA. Our February 27 letter explained that OIRA concluded review of a pre-rule notice (otherwise known as an Advance Notice of Proposed Rulemaking) on the Stream Buffer Zone matter on November 20, 2009, and that such notices do not propose or establish rules but instead ask for public comments in advance of any proposal, which may or may not occur, subject to deliberations within the executive branch. The assertion in your March 21 letter that "OIRA had done a review of the newly proposed Stream Buffer Rule on November 20, 2009" is thus not accurate. OIRA has not received any such proposed rule, much less conducted a review of such a proposal.

The suggestion in your March 21 letter that OMB has not been responsive to inquiries from committee staff is also not accurate. In particular, your letter fails to mention that OMB staff has been in contact with committee staff on a regular basis and that in addition to several telephone calls, this interaction included a response to committee staff by email on March 22. That email again made clear that no regulatory action on this topic is currently under review at OIRA and provided additional information regarding the Advance Notice of Proposed Rulemaking.

Following our February 27 letter, committee staff indicated in an email to OMB staff (see attached) that they were interested in documents regarding OIRA's review of the Advance Notice of Proposed Rulemaking, which concluded on November 20, 2009. In order to accommodate that request, please find enclosed a set of responsive documents in OMB's possession pertaining to the Advance Notice of Proposed Rulemaking. This material consists of a draft of the Advance Notice of Proposed Rulemaking as it was submitted to OIRA and the version on which OIRA concluded its review.

Since the time OIRA completed its work on the Advance Notice of Proposed Rulemaking in November 2009, OMB's involvement regarding the Stream Buffer Zone matter has been limited. As explained previously, OIRA has not received a draft proposed rule for review from DOI. We also understand that the Committee has been engaged in a document request process directly with DOI regarding this rulemaking and that most (if not all) of the documents OMB has reviewed regarding this rulemaking would be in the possession of DOI, which would have been the source of these documents. Accordingly, while we will be pleased to work with committee staff, as appropriate, to accommodate your interest in this subject matter, we also seek to respect the ongoing process involving the Committee and DOI.

If you have any further questions or wish to discuss any aspect of this response, please do not hesitate to have your staff contact us at (202) 395-4790.

Sincerely,



Kristen J. Sarri
Associate Director for Legislative Affairs

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

May 15, 2012

EDWARD J. MARKEY, MA
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PAUL TONKO, NY

JEFFREY DUNCAN
DEMOCRATIC STAFF DIRECTOR

TODD YOUNG
CHIEF OF STAFF

The Honorable Jeffrey Zients
Acting Director
Office of Management and Budget
Executive Office Building
Washington, D.C. 20503

Dear Acting Director Zients:

On February 3, 2012, a document request was sent to OMB and OIRA regarding OMB's involvement in the Department of the Interior's ("DOI") Office of Surface Mining Reclamation and Enforcement's ("OSM") rewrite of the 2008 Stream Buffer Zone Rule ("Rule") that included a deadline for a response of no later than February 16, 2012.

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

On March 9, 2012, Committee counsel emailed OMB 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. As of today's date, this request for a conference call has not been responded to.

On March 21, 2012, a second letter was sent to OMB expressing disappointment at the lack of response and again requesting responsive documents on this matter. On March 22, 2012, Committee counsel emailed OMB staff concerning this second letter, which resulted in OMB staff responding to Committee counsel's March 9, 2012 email, stating that no regulatory action was currently under review and "Most, if not all, of the documents that OIRA has reviewed regarding this rule would also be in possession of DOI, which would have been the source of these documents." However, the written instructions in the February 3, 2012 letter to OMB 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 OMB determine what responsive documents they were required to produce.

To be perfectly clear, this is not a joint document request with OMB and DOI. The oversight of OMB’s role in the rewrite of this Rule is separate and distinct from other oversight that we may be undertaking and OMB’s responsibility in this regard is to respond to the Congressional request.

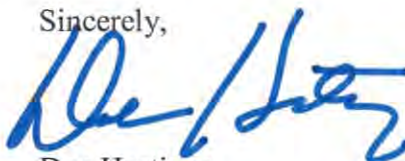
On March 27, 2012, a letter was received from Kristen Sarri, Associate Director of Legislative Affairs. The only responsive documents that accompanied the letter were two similar drafts of the Advanced Notice of Proposed Rulemaking, one of which is publicly available. This is not an acceptable response to a legitimate Congressional oversight inquiry.

Again, while patience has been shown in seeking OMB’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 OMB 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, it is requested that you cease delay tactics and promptly provide all documents, communications, and information related to the involvement of OMB in the rewrite of the Rule as instructed in the February 3, 2012 letter to OMB. 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

DOC HASTINGS, WA
CHAIRMAN
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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

February 3, 2012

EDWARD J. MARKEY, MA
RANKING DEMOCRATIC MEMBER
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PETER A. DEFazio, OR
ENI F.H. FALOMAVAEGA, 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 SABLÁN, 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

JEFFREY DUNCAN
DEMOCRATIC STAFF DIRECTOR

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

Dear Chair Sutley:

The Committee on Natural Resources (“Committee”) is actively investigating issues surrounding the Department of the Interior’s Office of Surface Mining Reclamation and Enforcement (“OSM”) rewrite of the 2008 Stream Buffer Zone Rule (“Rule”).

The Committee realizes that pursuant to the National Environmental Policy Act of 1969 (“NEPA”) and the Environmental Quality Improvement Act of 1970, the Council on Environmental Quality (“CEQ”) is tasked with advising the President on a number of environmental issues and is to oversee the process of Federal agencies implementing Environmental Impact Assessments. The Committee is aware that CEQ staff has provided input into the development of the proposed rewrite of the Rule and supporting environmental and economic analysis.

Through this letter, we are requesting your cooperation in providing the Committee with all documents, communications, and information related to the involvement of CEQ in the rewrite of the Rule. Your response on behalf of the CEQ is important for the Committee to carry out its oversight responsibilities. The Committee specifically requests that CEQ produce the documents described below.

Your complete written response to all items should be received no later than **Thursday, February 16, 2012.**

Documents and Items to Be Produced

1. All documents and communication relating to concerns, discussions, comments, or questions regarding the CEQ's review of the proposed Stream Protection Rule.
2. All documents and communication relating to the economic impact or potential job loss estimates related to the current rulemaking effort.
3. All documents and communications relating to the baseline parameters used in the economic analysis provided by the DOI or OSM including but not limited to:
 - a. The baseline and parameters that were the assumptions of the current effort.
 - b. The decision to expand the scoping opportunities for the re-write of the Rule.
 - c. The decision to use the 2008 coal production numbers, the 2010 coal production numbers, or an average of the three years combined in creating assumptions for the EIS or RIA.
 - d. Whether the proposed rule would cover only surface mining or surface and underground mining.
 - e. The implementation timeline of the Stream Protection Rule.
 - f. Assumptions that the 2008 Rule was in effect and being enforced across the United States.
4. All documents and communication relating to concerns, discussions, comments, or questions regarding any meetings CEQ had with nongovernment entities regarding the Rule.
5. All documents regarding the March 2010 settlement requiring OSM to make best efforts to sign a final action on the proposed rule no later than Friday, June 29, 2012; including drafts and any changes to the settlement with the litigants or ongoing discussions with the litigants about the Department's efforts to meet the terms of the settlement, and all documents related to attorney fees paid as a result of the settlement.
6. All communications of Ellen Athas, Senior Counsel, regarding the rewrite of the Rule.
7. Any communications of Lauren Leuck, (formerly with CEQ), regarding the rewrite of the Rule.

An attachment to this letter provides additional information about responding to the Committee's request, including definitions and instructions for compliance. Please contact Machalagh Carr, Counsel for the Office of Oversight and Investigations, with any questions regarding this request, or to make arrangements for the production. Thank you for your prompt and personal attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Doc Hastings".

Doc Hastings
Chairman
Natural Resources Committee

A handwritten signature in blue ink, appearing to read "Doug Lamborn".

Doug Lamborn
Subcommittee Chairman
Energy and Mineral Resources

Responding to Committee Document Requests

A. Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, recorded notes, letters, notices, confirmations, receipts, checks, envelopes, presentations, pamphlets, brochures, interoffice and intra office communications, electronic mails (e-mails), notations of any type of conversation, telephone call, voice mail, phone mail, meeting or other communication, diaries, analyses, summaries, messages, correspondence, circulars, opinions, work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and electronic, mechanical, and electric records or representations of any kind, and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, e-mail, discussions, releases, personal delivery, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this document request. The singular includes the plural. The masculine includes the feminine.
4. As used herein, “referring” or “relating” means and includes “constituting,” “pertaining,” “evidencing,” “reflecting,” “describing,” or “having anything to do with,” and in each instance, directly or indirectly. These terms mean, without limitation, any reference or relationship which either (a) provides information with respect to the subject of the inquiry, or (b) might lead to individuals who, or documents which, might possess or contain information with respect to the subject of the inquiry.

B. Instructions

1. 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, whether held by you or your past or present agents, employees, representatives, subsidiaries, affiliates, divisions, partnerships, and departments acting on your behalf. You are also required to produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. No records, documents, data or information called for by this request shall be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.

2. In the event that any entity, organization or individual denoted in this document request has been, or is also known by any other name than that herein denoted, the document request shall be read also to include them under that alternative identification.
3. Each document produced shall be produced in a form that renders that document capable of being printed or copied.
4. Documents produced in response to this document request shall be produced together with copies of file labels, dividers, envelopes, or identifying markers with which they were associated when this document request was served. Documents produced to this document request shall also identify to which paragraph from the document request such documents are responsive. Moreover, please include with your response, an index identifying each record and label (preferably by bates stamping) the documents. The Committee prefers, if possible, to receive all documents in electronic format.
5. 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.
6. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer back-up tape), state the form in which it is available and provide sufficient detail to allow the information to be copied to a readable format. If the information requested is stored in a computer, indicate whether you have an existing program that will print the records in a readable form.
7. If compliance with the document request cannot be made in full, compliance shall be made to the extent possible and shall include a written explanation of why full compliance is not possible.
8. In the event that a document is withheld, in whole or in part, based on a claim of privilege, provide the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter of the document; (d) the date, author and any recipients; and (e) the relationship of the author and recipients to each other. Claims of privileges are considered under Committee on Natural Resources Rule 4(h) and, similar to all common-law privileges, are recognized only at to the discretion of the Committee.
9. If any document responsive to this document request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.
10. If a date or other descriptive detail set forth in this document request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or

is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

11. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon location or discovery subsequent thereto.

12. Send all responsive documents and records to:

Committee on Natural Resources
U.S. House of Representatives
1324 Longworth House Office Building
Washington, DC 20515.



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

February 7, 2012

The Honorable Doc Hastings
Chairman
House Committee on Natural Resources
1324 Longworth House Office Building
Washington, D.C. 20515

The Honorable Doug Lamborn
Chairman
Subcommittee on Energy and Mineral Resources
1333 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Hastings and Lamborn:

The Council on Environmental Quality (CEQ) received your letter regarding the Department of Interior's Office of Surface Mining, Reclamation and Enforcement's Stream Buffer Zone Rule on February 3, 2012. CEQ staff will follow up with your staff regarding this request. If you or your staff would like to reach someone at CEQ regarding this letter or your inquiry, please contact Trent Bauserman, Associate Director for Legislative Affairs at 202-456-1574 and tbauserman@ceq.eop.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Guzy", with a long horizontal line extending to the right.

Gary Guzy
Deputy Director and General Counsel
Council on Environmental Quality

cc: Ranking Member Ed Markey



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

February 17, 2012

The Honorable Doc Hastings
Chairman, Natural Resources Committee
1324 Longworth HOB
Washington, DC 20515

The Honorable Doug Lamborn
Chairman, Energy and Mineral Resources Subcommittee
1333 Longworth HOB
Washington, DC 20515

Dear Chairmen Hastings and Lamborn:

Thank you again for your February 3, 2012 letter regarding any Council on Environmental Quality activities concerning the Department of the Interior's Office of Surface Mining Reclamation and Enforcement's 2008 Stream Buffer Zone Rule and efforts to update it.

We appreciate the clarification of your request provided by your Committee staff during our telephone conference on February 14, 2012. As we discussed with your staff, we are working within CEQ and with the White House Office of Administration to search CEQ's electronic and paper records in response to your request. We look forward to touching base with your staff by February 27, 2012, as we agreed, to discuss our progress in meeting your oversight needs. We will also provide, to the extent possible and as requested by your staff, information that becomes available on a "rolling basis."

Please do not hesitate to contact me should you wish to discuss any aspect of our efforts to respond to the Committee.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary S. Guzy".

Gary S. Guzy
Deputy Director and General Counsel
White House Council on Environmental Quality

cc: Representative Edward J. Markey



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

February 27, 2012

Mr. Tim Doyle
Senior Counsel & Director of Investigations
Office of Oversight & Investigations
Natural Resources Committee
United States House of Representatives
1203 Longworth House Office Building
Washington, D.C. 20515

Dear Tim:

I am writing with an update on our agency's efforts to respond to your inquiry concerning any Council on Environmental Quality information or review of updates to the Department of the Interior's Office of Surface Mining Reclamation and Enforcement's 2008 Stream Buffer Zone Rule.

Since receiving your request, we have been working with the White House Office of Administration to undertake a search for records in CEQ's electronic files that may be responsive to your inquiry. We are still awaiting the results of this search, so that we may begin to provide appropriate responses to the Committee's request. We will keep you apprised of the progress of these efforts and expect to be back in touch shortly.

In the meantime, please do not hesitate to contact me or Trent Bauserman, CEQ's Associate Director for Legislative Affairs, should you wish to discuss any aspect of the request. We appreciate your cooperation as we address your request.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary S. Guzy", is written over a long horizontal line.

Gary S. Guzy
Deputy Director and General Counsel
Council on Environmental Quality

cc: *Recca Rushing*

DOC HASTINGS, WA
CHAIRMAN
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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
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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,

A handwritten signature in blue ink, appearing to read "Doc Hastings", written over a light blue circular stamp.

Doc Hastings
Chairman

DOC HASTINGS, WA
CHAIRMAN
DON YOUNG, AK
JOHN J. DUNCAN, JR., TN
LOUIE GOHMERT, TX
ROB BISHOP, UT
DOUG LAMBORN, CO
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TODD YOUNG
CHIEF OF STAFF

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

February 3, 2012

EDWARD J. MARKEY, MA
RANKING DEMOCRATIC MEMBER
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JOHN GARAMENDI, CA
COLLEEN W. HANABUSA, HI

JEFFREY DUNCAN
DEMOCRATIC STAFF DIRECTOR

Honorable Jo-Ellen Darcy
Assistant Secretary of the Army (Civil Works)
Department of the Army
The Pentagon, Room 3E446
Washington, D.C. 20310

Dear Assistant Secretary Darcy:

The Committee on Natural Resources (“Committee”) is actively investigating issues surrounding the Department of the Interior’s Office of Surface Mining Reclamation and Enforcement (“OSM”) rewrite of the 2008 Stream Buffer Zone Rule (“Rule”).

In July of 2009, the U.S. Army Corps of Engineers (“USACE”) signed a Memorandum of Understanding with the Department of the Interior (“DOI”) and Environmental Protection Agency (“EPA”) regarding the implementation of an interagency action plan on Appalachian Surface Coal Mining involving mining techniques that require permits under Section 404 of the Clean Water Act (“CWA”) and the Surface Mining Control and Reclamation Action (“SMCRA”). More specifically, the Committee understands that the USACE has provided input into the development of the proposed Stream Protection Rule and supporting environmental analysis.

Through this letter, we are requesting your cooperation in providing the Committee with all documents, communications, and information related to the involvement of the USACE in the rewrite of the Rule. Your response on behalf of the USACE is important for the Committee to carry out its oversight responsibilities. The Committee specifically requests that USACE produce the documents described below.

Your complete written response to all items should be received no later than **Thursday, February 16, 2012.**

Documents and Items to Be Produced

1. All documents and communication relating to concerns, discussions, comments, or questions regarding the USACE's review of the proposed Stream Protection Rule.
2. All documents and communication relating to the economic impact or potential job loss estimates related to the current rulemaking effort.
3. All documents and communications relating to the baseline parameters used in the economic analysis provided by the DOI or OSM including but not limited to:
 - a. The baseline and parameters that were the assumptions of the current effort.
 - b. The decision to expand the scoping opportunities for the re-write of the Rule.
 - c. The decision to use the 2008 coal production numbers, the 2010 coal production numbers, or an average of the three years combined in creating assumptions for the EIS or RIA.
 - d. Whether the proposed rule would cover only surface mining or surface and underground mining.
 - e. The implementation timeline of the Stream Protection Rule.
 - f. Assumptions that the 2008 Rule was in effect and being enforced across the United States.
4. All documents and communication relating to concerns, discussions, comments, or questions regarding any meetings USACE had with nongovernment entities regarding the Rule.
5. All documents regarding the March 2010 settlement requiring OSM to make best efforts to sign a final action on the proposed rule no later than Friday, June 29, 2012; including drafts and any changes to the settlement with the litigants or ongoing discussions with the litigants about the Department's efforts to meet the terms of the settlement, and all documents related to attorney fees paid as a result of the settlement.
6. All communications of Desiree Hann, Program Manager Senior, regarding the rewrite of the Rule.
7. All communications of Lauren Leuck, Environmental Planner, regarding the rewrite of the Rule.

An attachment to this letter provides additional information about responding to the Committee's request, including definitions and instructions for compliance. Please contact Machalagh Carr, Counsel for the Office of Oversight and Investigations, with any questions regarding this request, or to make arrangements for the production. Thank you for your prompt and personal attention to this matter.

Sincerely,



Doc Hastings
Chairman
Natural Resources Committee



Doug Lamborn
Subcommittee Chairman
Energy and Mineral Resources

Responding to Committee Document Requests

A. Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, recorded notes, letters, notices, confirmations, receipts, checks, envelopes, presentations, pamphlets, brochures, interoffice and intra office communications, electronic mails (e-mails), notations of any type of conversation, telephone call, voice mail, phone mail, meeting or other communication, diaries, analyses, summaries, messages, correspondence, circulars, opinions, work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and electronic, mechanical, and electric records or representations of any kind, and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise.
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3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this document request. The singular includes the plural. The masculine includes the feminine.
4. As used herein, “referring” or “relating” means and includes “constituting,” “pertaining,” “evidencing,” “reflecting,” “describing,” or “having anything to do with,” and in each instance, directly or indirectly. These terms mean, without limitation, any reference or relationship which either (a) provides information with respect to the subject of the inquiry, or (b) might lead to individuals who, or documents which, might possess or contain information with respect to the subject of the inquiry.

B. Instructions

1. 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, whether held by you or your past or present agents, employees, representatives, subsidiaries, affiliates, divisions, partnerships, and departments acting on your behalf. You are also

required to produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. No records, documents, data or information called for by this request shall be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.

2. In the event that any entity, organization or individual denoted in this document request has been, or is also known by any other name than that herein denoted, the document request shall be read also to include them under that alternative identification.
3. Each document produced shall be produced in a form that renders that document capable of being printed or copied.
4. Documents produced in response to this document request shall be produced together with copies of file labels, dividers, envelopes, or identifying markers with which they were associated when this document request was served. Documents produced to this document request shall also identify to which paragraph from the document request such documents are responsive. Moreover, please include with your response, an index identifying each record and label (preferably by bates stamping) the documents. The Committee prefers, if possible, to receive all documents in electronic format.
5. 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.
6. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer back-up tape), state the form in which it is available and provide sufficient detail to allow the information to be copied to a readable format. If the information requested is stored in a computer, indicate whether you have an existing program that will print the records in a readable form.
7. If compliance with the document request cannot be made in full, compliance shall be made to the extent possible and shall include a written explanation of why full compliance is not possible.
8. In the event that a document is withheld, in whole or in part, based on a claim of privilege, provide the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter of the document; (d) the date, author and any recipients; and (e) the relationship of the author and recipients to each other. Claims of privileges are considered under Committee on

Natural Resources Rule 4(h) and, similar to all common-law privileges, are recognized only at to the discretion of the Committee.

9. If any document responsive to this document request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.
10. If a date or other descriptive detail set forth in this document request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
11. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon location or discovery subsequent thereto.
12. Send all responsive documents and records to:

Committee on Natural Resources
U.S. House of Representatives
1324 Longworth House Office Building
Washington, DC 20515.



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108

FEB 15 2012

Honorable Doc Hastings
Chairman, Natural Resources Committee
United States House of Representatives
2353 Rayburn House Office Building
Washington, D.C. 20515

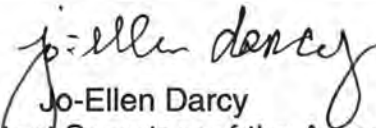
Dear Chairman:

Thank you for your letter dated February 3, 2012, co-signed by Representative Lamborn regarding the Department of the Interior's Office of Surface Mining Reclamation and Enforcement rewrite of their 2008 Stream Buffer Zone Rule.

I have asked the Army Corps of Engineers to research their electronic and paper records and assemble the information requested in your letter. This information will be reviewed by Counsel and, based on the Corps' time estimate, provided to you by February 28, 2012. I regret that I cannot provide the information to you by February 16 as requested. I intend to ensure that the research and coordination effort to accommodate your request is as thorough as practicable, and as complete as possible by law and regulation.

Thank you for your interest in the Civil Works program. I am sending an identical response to Representative Lamborn.

Very truly yours,


Jo-Ellen Darcy
Assistant Secretary of the Army
(Civil Works)



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
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COMMITTEE ON RESOURCES

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Honorable Doug Lamborn
Chairman, Subcommittee on Energy and Mineral Resources
United States House of Representatives
1324 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

I am responding to your letter dated February 3, 2012, co-signed by Chairman Hastings regarding the Committee on Natural Resources' investigation of issues surrounding the Department of Interior's Office of Surface Mining Reclamation and Enforcement (OSMRE) rewrite of the 2008 Stream Buffer Zone rule. You have asked for all documents, communications and information related to the involvement of the Army Corps of Engineers in the rewrite of the rule.

You requested seven specific categories of documents. Of these seven categories, the Corps has information that is responsive to numbers one and six in your letter. The Corps does not have any documents responsive to the five other categories that were requested.

The responsive documents are enclosed. Most of these documents contain pre-decisional, deliberative information such as opinions and recommendations of the regulators that may or may not reflect the official position of the Corps. The Corps understands that OSMRE deems two of the documents the Corps is providing as pre-decisional drafts, not intended for public distribution. Accordingly, I respectfully request that the documents provided in this transmittal not be released outside the Committee without first coordinating with the Corps and OSMRE.

Of these responsive documents, there are four documents the Corps believes may be released, if you deem necessary, because they are not deliberative drafts. These include:

- a. Letter from Corps to OSMRE dated 30 Dec 2009
- b. Letter from OASA(CW) to OSMRE dated 15 April 2010
- c. Letter from OASA(CW) to OSMRE dated 9 Sept 2010
- d. Letter from Corps to Polu Kai Services dated 24 Nov 2010

Thank you for your interest in the Army Civil Works program. I am sending an identical response to Chairman Hastings.

Very truly yours,

Jo-Ellen Darcy
Assistant Secretary of the Army
(Civil Works)