



West Virginia Coal Association

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**Statement of Chris R. Hamilton
Senior Vice-President
West Virginia Coal Association**

**House Committee on Oversight and Government Reform:
Subcommittee on Regulatory Affairs, Stimulus Oversight and Government
Spending-
*EPA's Appalachian Energy Permittorium: Job Killer Or Job Creator?'***

July 14, 2011

Good afternoon and thank you for the opportunity to address this Committee. I am Chris Hamilton with the West Virginia Coal Association. We appreciate the opportunity to participate in today's hearing. The West Virginia Coal Association is a trade association comprised of coal producing companies who collectively account for approximately 98 percent of West Virginia's annual coal production. Our membership also includes mine maintenance and specialty contractors, mine reclamation companies, equipment manufacturers, land companies and general service companies.

The state of West Virginia is the nation's leading underground coal producing state, averaging 155 million tons of annual coal production over the past decade, of which 100 million tons comes from underground mining operations. West Virginia's mining industry includes 305 underground mines and 232 surface mines employing over 27,000 miners. Arguably, the state of West Virginia and our

member companies are impacted more directly by the actions of EPA than any other state.

West Virginia is also part of a group of eastern coal states that produce coal east of the Mississippi River which account for approximately forty percent (40%) of the nation's production of coal and nearly 80 percent of the nation's coal workforce. This region of the country has seen its share of national production fall from a high of 623 million tons in 1990 to an estimated 339 million tons in 2011, a 46 percent reduction.

In addition to representing the 300 plus members of the West Virginia Coal Association at this hearing, I am also appearing on behalf of the West Virginia Business and Industry Council which represents almost 400,000 employees across 26 separate industry categories in the state of West Virginia from small business owners to farmers to chemical manufacturers to mining companies.

The Members of the Business and Industry Council are just as concerned about the federal Environmental Protection Agency's (EPA) activities with respect to mining in Appalachia as is the coal industry because its behavior sets a dangerous precedent that allows EPA to bypass the process established by Congress for regulating activities under the federal Clean Water Act (CWA). While EPA's focus at the moment is on coal mining, its actions, if left unchecked, could extend to any activity anywhere. If EPA can revoke a validly issued permit with a

remarkable record of compliance three years after it was issued as they have done in West Virginia, then what hope can there be for further investment to build new economic activity if EPA may show up some day and take that permit away?

Before I address EPA's action specifically, I would like to provide some additional background on West Virginia's coal industry. West Virginia's coal is the most valuable coal in the world. For electrical generation, West Virginia's coal offers a fuel source that is both high-btu and low in sulfur emissions.

For domestic and international steel makers, our coal is irreplaceable as a feedstock for the production of iron and steel. West Virginia coal is also used in variety of manufacturing processes that produce everything from plastics to medication to cosmetics. In short, West Virginia coal does everything from charging your iphone to forging the steel for our nation's infrastructure to making the plastic bottle for your soda. Our coal is shipped to 33 states and 23 countries and West Virginia energy fuels 40 percent of all electricity needs on the east coast.

The coal industry is also the broad shouldered atlas of West Virginia's economy supporting thousands of supporting jobs and businesses. The coal industry accounts for more than 12 percent of West Virginia's gross state product and represents \$3.2 billion in direct wages annually.

Finally, coal is the backbone of West Virginia's government structure... the taxes collected on coal production provide the majority of the funding for vital state and county social programs, funding everything from ambulance and fire service to public water infrastructure to financial assistance for the needy. In fact, together with the electrical utility industry, coal provides upwards of 60 percent of all business taxes collected in West Virginia.

All of the direct benefits provided by the coal industry and all that results from having a domestic source of energy that is so versatile in the economy has been placed in serious jeopardy by the actions of the current administration and it's EPA.

EPA has gone to great lengths to target coal mining across the nation but seems to have focused specifically on West Virginia and the Appalachian states of Kentucky, Virginia, Ohio and Pennsylvania. The agency's assault begins with the mine permitting process and continues up to the point where the coal is consumed. As we will explain in greater detail, EPA has virtually halted the orderly processing of mining related environmental permits and at the same time has cast a long, doubtful shadow on the continued use of coal by proposing sweeping revisions to Clean Air Act standards and entirely new regulatory programs for coal combustion residuals. Simply put, the federal government is

coming by land, air and sea to cripple the production and use of West Virginia coal.

The federal government's battering of the coal industry literally began the moment the current administration assumed office. On January 20, 2009 the Army Corps of Engineers received its first comment letter from EPA objecting to the issuance of a coal mining related permit. From that point on, EPA has never slowed down. In June of that year EPA joined other federal agencies and the White House Council on Environmental Quality in a MOU that announced sweeping revisions to the regulatory consideration of mining permits. In April 2010 EPA issued water quality guidance to usurp the powers of the state and impose limits for which no promulgated standards exist. All the while EPA's comment and objection letters continue to be delivered.

EPA has abused its role under the CWA to essentially bypass and nullify the authority and responsibilities of individual states to regulate activities within their borders. They have done so by way of "guidance" and "policy", disregarding the federal rulemaking process so carefully crafted by the Congress decades ago in the CWA. Providing perhaps the best evidence that its actions are designed to satisfy a political agenda, this guidance targets only a specific activity, coal mining, in a specific region, Appalachia. The CWA applies nationwide. To otherwise narrow its scope to political boundaries compromises its very integrity.

EPA has hijacked state water quality standards by interpreting them to mean something they never have. In our current situation, EPA has focused on certain parameters for which there are NO legally promulgated national or state water quality criteria, yet in almost every case, EPA pressures the states to insert these illegal standards in coal mining permits... an action that would cause the states to violate their own laws and regulations. EPA has also seized control of the Corps' permitting program, forcing that agency to adopt permit specific standards for EPA's pet parameters... this is a role that Congress never intended for the Corps... it was reserved to the individual states. In EPA's warped application of the CWA, it can bully one federal agency, the Corps, to implement a standard advocated by another federal agency, EPA, and all the while ignore the legally promulgated programs of the states.

EPA's interference knows no bounds. EPA will tell the Congress and the public that its actions target only large scale mountaintop mining operations... nothing is further from the truth. The federal agency is actively obstructing the issuance of permits for surface mines with no valley fills, underground mining operations and even road construction associated with coal mines.

Reduced to its essence, what you have is EPA avoiding the rulemaking process and the lawful boundaries of its authority under the CWA to impose the most stringent, impractical, if not impossible to meet standards against a selected industry in a handful of states.

This history and pattern of behavior is well established. The State of West Virginia, by official act of the West Virginia Legislature and through official correspondence between the Governor and our environmental regulatory agency, has notified EPA that its interpretation and application of state standards is incorrect. EPA remains unbridled in its actions, showing zero respect for the balance of power between states and the federal government that Congress carefully crafted in the CWA years ago. So egregious is EPA's behavior that state regulatory authorities, including West Virginia have sued their federal counterpart over its abuses of power in federal court.

Resolution of this issue cannot wait for judicial adjudication. Every day the permitting backlog at the Corps and EPA grows. Every day that EPA remains free to ignore the rule of law places other activities in other regions at risk. Every day that EPA interferes with the permitting process, the closer individual states come to surrendering and handing those duties back to the federal government.

So compromised is the mine permitting process under the CWA that it is near collapse.

The very few permits that have been “cleared” by EPA for issuance include the illegal limits we talked about earlier. Mining companies, approaching the point where closure of an operation was the only option available without a permit, were extorted by EPA to agree to the imposition of these thresholds. Here again, EPA has abused its power to bypass the legal process and nullify state programs to get what it wants.

The Congress needs to move quickly to reign in EPA, not only to preserve the viability of the coal industry, but to prevent this bureaucratic-driven, policy implemented power grab from infecting and afflicting other activities in other regions. Passage by this body of H.R. 2018 yesterday is a positive step towards restoring the balance of authority envisioned in the CWA. Quite frankly, it is the first glimmer of hope the besieged coal industry has seen since EPA began its anti-coal offensive in West Virginia.

The mining of coal is so significant to this country. Not only in economic terms, but it has brought the United States through two world wars, powered us through the industrial and information ages. Perhaps more significant today, given recent tragic events around the globe and the political unrest in areas from

which we import our oil, coal holds the key for our country to become energy independent, to secure our borders and to bolster our national defense.

In closing, thousands of men and women show up at a mine every day to provide our state, region and world with low cost, dependable industrial and household power. These dedicated coal miners are true masters of their profession, extracting a vital resource with great pride and sophistication, exercising great attention and detail to safety and environmental accomplishment. Clearly we have the most dedicated workforce found anywhere in the world. These men and women look to this Committee and the Congress not for a handout or subsidy, but for the ability to continue to work, live and raise their families in their native West Virginia.

Thank you very much for the opportunity to speak before this Committee.

**Chris R. Hamilton, Senior Vice-President,
West Virginia Coal Association**

Chris Hamilton currently serves as the "Senior Vice-President" for the West Virginia Coal Association.

Chris Hamilton has been with the Association for 30 years and has a total of 40 years experience in the coal mining industry. During his tenure with WVCA, he has held many positions centered around the Association's technical committees and government affairs. Today, he is generally responsible for legislative, regulatory, and technical matters affecting the coal industry.

He has had extensive safety and training experience within the industry. He operated his own company and worked as an underground miner and section foreman. He possesses mine foreman certifications from the states of West Virginia and Ohio.

He also has an undergraduate and a Masters degree in Business from West Virginia University and has completed graduate level courses in Economics and Environmental Science.

He presently serves under gubernatorial appointment as co-Chairman of the West Virginia Coal Forum -- a joint labor-management state entity designed to foster a working dialogue between working miners and coal operating personnel, and additionally serves as co-Chairman of the Mountaintop Mining Coalition.

He also serves on the West Virginia Board of Coal Mine Health and Safety and West Virginia Board of Miner Training Education & Certification.

Committee on Oversight and Government Reform
Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)(5)

Name:

Chris Hamilton

1. Please list any federal grants or contracts (including subgrants or subcontracts) you have received since October 1, 2008. Include the source and amount of each grant or contract.

NONE

2. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

WV COAL ASSOCIATION: SENIOR VICE PRESIDENT
WV BUSINESS AND INDUSTRY COUNCIL: MEMBER

3. Please list any federal grants or contracts (including subgrants or subcontracts) received since October 1, 2008, by the entity(ies) you listed above. Include the source and amount of each grant or contract.

NONE

I certify that the above information is true and correct.

Signature:

Chris Hamilton

Date:

July 12, 2011