

Testimony of Mr. Tom Mackell
President, East Fairfield Coal Company
Before the
House Committee on Oversight and Government Reform
Subcommittee on Regulatory Affairs, Stimulus Oversight & Government Spending
Hearing Entitled: *EPA's Appalachian Energy Permittorium: Job Killer or Job Creator?*
July 14, 2011

Chairman Jordan, Ranking Member Kucinich, Members of the Committee, good morning.

Thank you for inviting me to testify at this important hearing regarding the numerous new regulations that the U.S. EPA and other federal agencies are having on Appalachian jobs. My name is Tom Mackall, and I am President of East Fairfield Coal Company.

We currently have operations in both Ohio and Pennsylvania, and employ over 160 hardworking Americans. We primarily have underground mining operations that mine clay, coal, and limestone. Mr. Chairman, I'm here today to share with the committee the very real impacts of government overreach and how the current Administration's practices have impacted our region. Our company is a small business, and I'm proud to say that my father worked for the company when it was started in 1934. I have been with East Fairfield Coal Company for 40 years, and my son works there today. My fear is that, given the slew of new regulations from the U.S. EPA and other agencies, our company, and the jobs we provide, will not be able to survive. Workers at businesses we supply will also see their jobs be destroyed if we don't stop the regulatory wave that's crushing the American economy.

In my lifetime, I've seen the number of coal companies in my home county go from nearly 30 to almost completely disappearing. While we have been under attack for the last generation by activist environmental groups and government bureaucrats, their efforts have been accelerated by the Obama Administration. They have declared a War on Coal, and specifically on Appalachian coal and related jobs.

The question that you pose in today's hearing topic is both pertinent and easily answered. "Is EPA's Appalachian Permittorium a Job Killer or Job Creator?" It is absolutely a job killer and its killing jobs across Appalachia in particular Ohio and Pennsylvania. But it's not just the EPA; it's the entire Administration.

For purposes of my testimony in front of this Committee, I wanted to highlight three areas where the current Administration has hurt Appalachian jobs and job-creators. The agencies have done this damage in the following ways:

- Permitting Delays
- Inconsistent Enforcement
- New Regulations

It is these three weapons that are openly and blatantly putting Ohioans, Pennsylvanians, and others throughout Appalachia out of work.

First, the extremely burdensome and flawed system of the permit approval process has been complicated in a purposeful manner by the Administration. We have a terrible time getting permits through the process in any sensible time frame. In fact, we have seen the Administration insert EPA into the permitting process through the use of what they call "guidance" documents. These really serve the purpose of usurping the power of the Army Corps of Engineers as well as state regulators.

It is my firm belief that these decisions are calculated, and serve as a means to essentially create new regulations on permitting requirements without any formal notice or comment period, or stakeholder input of any sort.

For example, we have been struggling with obtaining a refuse permit at our Brush Creek Mine for nearly three years. Prior deadlines that were rarely met by government regulators are now only being extended. Mr. Chairman, a small company like ours cannot afford to keep people employed if we are unable to have some sort of logical permitting process. That's because the required background studies take nearly a year by themselves and in the case of this refuse permit have cost us over \$300,000. In this case, three years later, we are no closer to having the permit issue resolved.

The result means we are frankly unable to grow the company. Without this permit for where to place mine refuse, we are a prisoner to the perception that we have no place to deposit new mine fill. In turn, without this permit, we are unable to obtain permits to begin new mining operations that could employ many new workers. This example clearly shows that the Government Agencies are leading an effort to violate the traditional state primacy in these permitting matters, and in doing so is destroying the coal and related service jobs in Appalachia.

The second major weapon being used by the current Administration is inconsistent enforcement. The Department of Labor's Mine Safety and Health Administration (MSHA) and their actions are particularly troubling. MSHA has proposed a Respirable Dust Standard that is unachievable

in underground mine settings, and continues to be unable to produce the relevant data that they claim creates the causation basis for their rule.

Day to day, our company sees the impacts of how MSHA is being used as a tool to stop coal mining. Our mines are completely at the whim of inspectors. I will state to all of the members of this Committee that there are certainly some very good inspectors within MSHA's ranks. But the problem is that MSHA is being used as a tool to push for massive fines and charges that suddenly emerge on some days but the exact conditions were fine on another day. Sadly, it is my belief that the Administration is using MSHA in this manner which compromises their own inspectors and does nothing for mine safety.

Their work is becoming more about costly legal issues without any checks and balances, and less about the critical goal we all share—and that's the safety of our miners.

The third means by which the Obama Administration is waging a War on Coal is through new EPA regulations. Just last week, they unveiled the final Clean Air Transport Rule. This new rule, if not stopped, will cost our customers billions of dollars, and particularly hurts Ohio's coal operations. When combined with another part of what I call the EPA Train Wreck, the impacts to the economy are staggering. Recent modeling has shown that the Transport Rule and the EPA's Utility MACT proposal will result in the loss of 1.44 million American jobs, along with costs of \$184 billion to power providers. We all know those costs get passed right down to consumers to pay.

In Ohio alone it's going to mean the loss of 53,000 jobs in a state that has shed hundreds of thousands of jobs in the last decade. We'll also face a 13% increase in our electricity bills just from the Clean Air Transport Rule.

The effects of rules like these are tangible. Right now, the Cleveland Medical Center uses coal-fired boilers to run their facility that helps to provide critical health care to so many in our region. Pressures from Obama's EPA regulations combined with the Sierra Club going after them are likely to force them to switch to more costly energy sources just to keep the lights on.

Mr. Chairman, I offer these examples because they are very real, and are truly hurting Appalachians. For generations, our reasonable energy costs, powered in large part by coal, led to Ohio being a great industrial state. Now, with the Administration's policies, we are seeing this change, and our competitiveness decline.

We formerly supplied a number of small companies, now they are going away. Since the recession started, three major companies we supplied have closed. Each of them provided important jobs and products for the economy, but were all heavily regulated by the EPA. Two of those companies were cement manufacturers. The cement is now being imported from Peru.

In an important but terrible twist the Peruvian cement is being imported through a port in New York that expanded using funds from the stimulus. Our taxpayer dollars are being used to compliment harmful government regulations—and to the benefit of our foreign competitors. Let me be clear, this administration's regulatory agencies are destroying jobs in Appalachia while at the same time the stimulus funding has made it easier to import competing goods from other countries.

Simply put, Mr. Chairman, the three items I have highlighted—permitting problems, inconsistent enforcement, and new regulations—are destroying what formerly made Ohio and Appalachia so strong.

It is my hope this Committee will tackle these three areas, and do so by bringing in the agency heads that are waging a war on coal across a number of agencies. The EPA, Department of Interior, Department of Labor, and others should have to answer for their coordinated efforts. Mr. Chairman, there is a coordinated effort across these Agencies and Departments and I hope you expose this effort by demanding answers from these agencies. make the EPA justify their regulatory decisions with real cost data, make MSHA show you their health data, which they haven't made public, make the Department of the Interior's Office of Surface Mining explain the real job loss numbers behind their Stream Protection Proposal that they tried hiding from the public by firing their outside contractor.

We can still save Appalachian jobs, and my company seeks to create many more new ones.

I thank you for the opportunity to testify, Mr. Chairman, and stand ready to answer any questions the Committee may have about the Administration's purposeful attack on coal.

Tom Mackall-

Tom Mackall has been with East Fairfield Coal Company since 1965. A company his father had been with since its inception in 1934. Mr. Mackall began working part time at East Fairfield Coal Company to help pay for college. Upon graduation from Mount Union in 1971, he began working at the mine full time while serving as an Army Reservist for 6 years. Mr. Mackall is now the owner of both East Fairfield Coal Company and Sterling Mining Company, mining both coal and industrial minerals. In his position, Mr. Mackall serves as an advocate for Ohio's coal mining industry. He works closely with Ohio Coal Association and the National Mining Association on developing common sense initiatives for coal mining. Mr. Mackall resides in Lake Milton, Ohio with his wife Denise. They have two children, one of which is also in the family business, and two grandchildren

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

Name: Tom Mackall

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.

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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:

W Tom Mackall

Date:

7-12-11