

Summary of Written Testimony

By

John M. Stilley – President/Amerikohl Mining, Inc.

before the House Committee on Oversight and Government Reform
Subcommittee on Regulatory Affairs, Stimulus Oversight and Government
Spending

EPA's Appalachian Energy Permitted: Job Killer or Job Creator?

July 14, 2011

Good afternoon.

Mr. Chairman, members of the Regulatory Affairs, Stimulus Oversight and Government Spending Subcommittee, my name is John Stilley and I am President of Amerikohl Mining, Inc. which is headquartered in Butler, Pennsylvania. I am also President of Patriot Exploration Corp. and Amerikohl Aggregates, Inc.

Amerikohl mines coal by the surface mining method in 10 Pennsylvania counties. Last year we produced 1 million tons of coal and employed 110 workers. Since 1978, we have completed mining of 324 separate mine sites and have successfully reclaimed the land to productive post-mining uses. Approximately 1/3 of these sites consisted of areas which had been mined in the 1940's and 1950's when no reclamation was done. Amerikohl's re-mining efforts on these sites provided for hundred's of acres to be reclaimed and miles of streams to be rehabilitated all at no cost to the taxpayer or the public.

We are also in the stone and gas businesses. Last year we produced 750,000 tons of stone and aggregates used to build and rehabilitate PA infrastructure and operate 212 gas wells in the Upper Devonian formation all in Pennsylvania.

I am also here today on behalf of the Pennsylvania Coal Association.

Pennsylvania is the nation's fourth leading coal producing state, mining about 67 million tons in 2009.

In addition, the coal industry is a major contributor to Pennsylvania's economy. Its annual economic benefit to the Commonwealth exceeds \$7 billion and it is responsible for the creation of 41,500 direct and indirect jobs with a payroll totaling over \$2.2 billion. Taxes on these wages alone netted more than \$700 million to the coffers of federal, state and local governments.

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

I appreciate being asked to testify today on EPA's overreach into the states' permitting programs and how this abuse of power is costing production and jobs in the Appalachian coal fields.

Frankly, EPA's heightened scrutiny and overzealous regulation of coal mining in the past two years threaten the future economic viability of our industry.

These policies attack both the mineral extraction process through protracted federal review of mining permits heretofore reserved to the states, and the end use process through establishing unreasonable and unjustifiable emission reduction standards for greenhouse gases, mercury, coal waste and a plethora of other alleged pollutants.

The cumulative effect of this assault is an economic train wreck.

To illustrate how EPA's actions are jeopardizing economic resurgence and the continued use of coal as an energy source, my testimony will focus on EPA's repeated intervention in an approved state delegated permitting program – National Pollutant Discharge Elimination System (NPDES) – and the chaos it has created.

NPDES Issue

Under Section 402 of the federal Clean Water Act, NPDES permits for discharges of non-dredged and non-fill material are issued by the states once EPA approves their permitting programs.

Pennsylvania's permitting program was approved by EPA and, through a 1991 Memorandum of Agreement executed between the Commonwealth and EPA, the Pennsylvania DEP was identified as the lead agency with exclusive authority for administering and granting NPDES permits for mining related activities in Pennsylvania. As part of this agreement, EPA waived its authority to conduct permit reviews of pending NPDES permit applications.

Pennsylvania's NPDES permitting process, which worked well for nearly two decades and was even recognized on many occasions for its excellence by EPA, was dramatically and unilaterally altered by EPA in September of 2010.

At that time EPA, without any accompanying federal statutory or regulatory changes, informed DEP that it was limiting the permit review waiver specified in the Memorandum of Agreement and would be conducting its own independent permit reviews for mining permits with discharges to the Monongahela River or to any impaired watershed with a designated Total Maximum Daily Load. The federal agency directed DEP to forward all such permit applications to its regional field office.

To date, EPA's Region III field office in Philadelphia has received 104 NPDES permit applications from DEP for review and comment. In addition, DEP continues to forward additional draft permit applications to EPA each month for review.

Negative Impact on Permits

Since EPA's Region III field office is not sufficiently staffed to perform NPDES permit reviews in a timely manner, this change has led to indefinite delays in the permitting process.

Obtaining an NPDES permit for any discharge is a prerequisite to mining, so these delays and permit backlogs are tantamount to a de facto prohibition of mining.

Also, while EPA's comments and objections resulting from its permit reviews vary, a number of its objections to the permits are based on what the federal agency perceives are inconsistencies between the applications and an "interim final" guidance that it developed to provide a framework for regional reviews of "surface mining projects" based on conductivity levels it associated with adverse impacts to water quality.

The guidance is based on flawed studies that cannot be used to develop a predictive cause and effect relationship between EPA's established benchmark threshold for conductivity levels (i.e. 500 microsiemens/cm) and healthy streams in Pennsylvania.

Indeed EPA's own Science Advisory Board, after reviewing the interim guidance, recommended that the benchmark values not be applied outside the geographic bounds of data, i.e., West Virginia and Kentucky, without further validating the similarity of the ionic mixture, background conductivity levels, and macro invertebrate assemblages within and outside the study.

Finally, by using this guidance to screen and review permit applications and treating its provisions as binding, EPA has implemented a substantive change in the permitting process. As such, EPA is circumventing the clear federal requirements of the Administrative Procedure Act for public notice and comment by substituting the issuance of agency guidance for formal rulemaking.

It should be noted that Pennsylvania DEP Secretary Michael Krancer sent a letter to EPA on May 27, expressing the Department's "dismay" over EPA's policy shift in this area and maintaining that EPA's involvement, "...has resulted in unnecessary increases in permit review timeframes with no environmental benefit."

In addition, the Pennsylvania House of Representatives, in a bipartisan vote, approved and sent to EPA House Resolution 87 which condemns the federal agency's behavior in this regard.

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

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

In addition, most of Pennsylvania's easily accessible surface coal reserves have already been mined and a high percentage of our remaining reserves are off-limit because of unilateral and unjustifiable regulatory actions like stream redesignations, unsuitable for mining petitions, endangered species protections that more often are precipitated at the federal level.

When all factors are considered, surface operators have very little viable options left on where to mine. EPA's permitting actions further reduce these options and unless we get a more certain and predictable process, our remaining reserves will be sterilized, mining derived income and jobs will be lost and we will all lose the benefits of cheap and reliable coal based electricity.

To survive, we need to see a return to reason and common sense in federal environmental policies. One way to accomplish this is through enactment of HB2018, which is pending before the U.S. House. HR2018 amends the Clean Water Act (CWA) to restore the long-standing balance between federal and state governments in regulating waterways and preserves the system of cooperative federalism established under the CWA in which the states are designated with primary responsibilities to regulate discharges.

This concludes my testimony. I would be happy to try and answer any questions.

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PROFILE

John M. Stilley currently owns and operates Amerikohl Mining, Inc., Amerikohl Aggregates, Inc., Patriot Exploration Corp., and Amerikohl Transport, Inc. Through his leadership and entrepreneurial ability, these companies have grown significantly over the years. Amerikohl employs between 100-120 men and women and is headquartered in Butler, Pennsylvania with a division office in Stahlstown, Pennsylvania.

EXPERIENCE

Amerikohl Mining, Inc.

Founded in 1978, Amerikohl Mining, Inc. is one of the top surface mining coal producers in Pennsylvania, producing nearly 1,000,000 tons of coal annually. Our principal business is the mining and preparation of steam coal sold primarily to electric utilities with the annual sales of approximately \$85-\$100 million.

Amerikohl Aggregates, Inc.

Founded in 2000, Amerikohl Aggregates, Inc. produces in excess of 600,000 tons per year of premium State Approved Limestone products from our Jim Mountain Quarry. Our Limestone is utilized in the construction of roads, bridges, gas drilling platforms, sewer lines, and many other local infrastructure projects. Our Limestone is also used as alkaline addition at coal mines and local farms.

Patriot Exploration Corp.

Founded in 2001, Patriot Exploration Corp. develops and produces affordable natural gas and oil from numerous upper Devonian gas and oil well locations in Pennsylvania. To date, we are producing clean and affordable natural gas from over 200 gas wells. In 2011, we are developing our Marcellus and Utica shale gas reserves.

Amerikohl Transport, Inc.

Founded in 2004, Amerikohl Transport, Inc.'s triaxles haul coal and aggregate to various utilities and jobsites, respectively, throughout Western Pennsylvania, Ohio, and West Virginia.

EDUCATION

1972 BS in Mineral Economics, Penn State University
1975 Masters of Engineering, Penn State University

CIVIL AND PROFESSIONAL ASSOCIATIONS

PA Coal Association-Board Member/ Twice Chairman
United Way of Butler and Lawrence Counties
Former Board Member-Butler County Community College
Penn State Alumni Association
National Wildlife Society
PA Conservancy
Board of Directors-Nextier Bank
Member of Society of Engineers

CIVIC ACCOMPLISHMENTS - AWARDS & PHILANTHROPY

Addressed the PA House of Representatives on the re-mining incentives in PA.

Recipient of the 1995 Three Rivers Environmental Award in the business section.

Received in excess of 80 reclamation awards for outstanding surface mine reclamation work. Awards are given to those companies who display an ability to go above and beyond state requirements.

In 1994, 1995, and 1996, Amerikohl reached landmark co-operative agreements between the DEP, independent sureties, and certain insolvent coal operators, whereby at no cost to the state, Amerikohl reclaimed some 150 sites encompassing 20,000 acres. These agreements are a prototype plan for other abandoned mines nationwide.

Amerikohl's philanthropy consists of \$200,000 - \$400,000 annually to numerous charitable organizations and tuition assistance for company employees and their families.

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

Name: John M. Stilley

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.

Amerikohl Mining, Inc. (President)

Patriot Exploration Corp. (President)

Pennsylvania Coal Association (Board 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:

Date: 7/11/11

