HAROLD ROGERS
5TH DISTRICT, KENTUCKY

COMMITTEE ON APPROPRIATIONS
CHAIRMAN

PLEASE RESPOND TO:

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Congress of the United States
House of Representatives
Washington, DC 20515–1705

March 17, 2015

The Honorable Sally Jewell
Secretary
U.S. Department of the Interior
1849 C Street Northwest
Washington, D.C. 20240-0001

Dear Secretary Jewell:

We write to express our deep concern with the Office of Surface Mining Reclamation and Enforcement's (OSM) continued efforts to develop a sweeping and unnecessary revised stream buffer zone rule.

On February 25, 2015, you testified before the House Committee on Appropriations, Subcommittee on Interior, Environment and Related Agencies. During this hearing, you stated that, despite your intent to move forward with a proposed rule in the near future, no study or analysis is available to assess the potential impacts of that proposal on either the environment or on surface mining activity in Appalachia. We believe that relying on the notice and comment procedure to test the viability of a massive proposed rule is inappropriate, particularly when OSM and the Department of the Interior have failed to identify the problem that this proposal purports to fix.

Issues surrounding the development of this proposed rule change have been long-standing and systemic. Beginning in 2011, OSM's mismanagement in preparing an Environmental Impact Statement (EIS) for the proposed rule resulted in the dismissal of third-party contractors who refused to falsify job loss numbers at the agency's command. At issue between OSM and its contractors was whether to use the 1983 rule or the 2008 rule as the baseline for projected job loss impacts. At the time, the 2008 rule had recently been promulgated but was not yet implemented in coal mining states. Utilizing the 2008 rule as a baseline would have resulted in lower projected job loss numbers. Environ International eventually completed an analysis of OSM's proposal using the 1983 baseline and found that a new rule would eliminate an additional 79,000 coal mining jobs. This is a truly staggering figure, especially considering that the industry has already experienced the loss of some 9,000 jobs since 2009. The majority of these jobs are in the Appalachian coalfields that we represent.

On December 22, 2014, OSM reinstated the 1983 stream buffer zone regulations following a federal court decision vacating OSM's 2008 rule. As a result, the economic impact will have to

be once again reevaluated under any new rulemaking. We are dismayed that this massive regulatory rewrite has occurred largely in secret, without any meaningful communication with state regulators who will ultimately be responsible for adopting and implementing these new federal standards. We understand that OSM recently received a letter from 11 primacy states revealing that OSM has offered no communication with the states since 2011, and very minimal consultation prior to that.

The states have expressed serious concerns regarding the economic consequences of this massive rewrite of the Surface Mining Control and Reclamation Act (SMCRA) regulatory program. States will be required to develop counterpart laws and regulations, adapted for local considerations, at a tremendous cost of time and financial expense. The states are also at substantial risk of suffering significant job losses. In fact, this rule threatens as many as 270,000 jobs across 22 states. Even OSM's own preliminary analysis of its preferred alternative regulation shows the loss of thousands of coal mining jobs.

With OSM's preferred 1983 regulations now in place, the expenditure of millions in taxpayer dollars to develop another rule is both unnecessary and counterproductive. There is simply no need to do away with this existing framework in exchange for a rule that your Department has not properly analyzed.

In the Appropriations hearing, you indicated a "jobs impact" analysis had been conducted by region and your willingness to provide its findings to the Committee prior to publication of the draft environmental impact statement and proposed rule in the Federal Register. We ask you to please provide all documentation relating to this analysis, as well as the estimated cost incurred to date to prepare the analysis, particularly the cost of completing the new economic assessment, and any other materials examining the new rule to the House Appropriations Committee by March 31, 2015.

Thank you for your attention to this matter.

Sincerely,

Chairman Hal Rogers

Representative Evan Jenkins

Howarth, Robert <robert_howarth@ios.doi.gov>

Fwd: Rogers_Jenkins Letter to Sec. Jewell regarding OSM Stream Buffer Zone Rulemaking

1 message

Giles, Ayesha <ayesha_r_giles@ios.doi.gov> Tue, Mar 17, 2015 at 1:46 PM
To: Robert Howarth <robert_howarth@ios.doi.gov>

——— Forwarded message ———
From: **Nichols, Ashley** <Ashley.Nichols@mail.house.gov>
Date: Tue, Mar 17, 2015 at 1:25 PM
Subject: Rogers_Jenkins Letter to Sec. Jewell regarding OSM Stream Buffer Zone Rulemaking
To: "ayesha_r_giles@ios.doi.gov" <ayesha_r_giles@ios.doi.gov>
Cc: "Barnard, Brian" <Brian.Barnard@mail.house.gov>

Hello,

Thank you for talking with me a moment ago about the letter from Congressman Hal Rogers and Congressman Evan Jenkins to Secretary Jewell. This letter is a follow up to her recent testimony before the House Interior Appropriations subcommittee and requests that the Department produce certain information. Thank you for your kind attention to this matter. Please let me know if you think additional copies need to be sent to other offices.

Best,

Ashley

Ashley Nichols

Legislative Assistant

Congressman Hal Rogers (KY05)

2406 Rayburn HOB

Washington, DC 20510

(202) 225-4601

Rogers-Jenkins Letter to Sec. Jewell re SBZ.pdf
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THE SECRETARY OF THE INTERIOR
WASHINGTON

MAY 04 2015

The Honorable Evan Jenkins
U.S. House of Representatives
Washington, DC 20515

Dear Representative Jenkins:

Thank you for your letter dated March 17, 2015, regarding my February 25, 2015 testimony before the House Committee on Appropriations, Subcommittee on Interior, Environment and Related Agencies.

Work on the stream protection rule is based on recent scientific studies documenting the continuing environmental impacts from mining, the need to modernize 30-year-old regulations, the need to better protect the quantity and quality of water resources that current and future residents of the coal fields will rely upon for decades, and the need to enhance regulatory certainty for the mining industry, while addressing recent court decisions.

The Draft Environmental Impact Statement (DEIS) under development will analyze numerous alternatives. In order to ensure that the proposed regulatory revisions reflect the best science and management practices, a Regulatory Impact Analysis (RIA) is being prepared that calculates both the economic costs and environmental benefits of the proposed rule.

Engagement with the state cooperating agencies to develop the proposed rule occurred early in the development of the DEIS, providing meaningful input as the draft rule was developed. State cooperators met with representatives of the Office of Surface Mining Reclamation and Enforcement on April 27, 2015, to discuss issues the cooperators raised in the early drafts and to further engage with the state cooperating agencies.

Regarding the Environ International study you mention in your letter, I note that the Department of the Interior has not yet proposed a draft rule for public review and comment, so any such studies would have been based upon incomplete information and speculation. The draft rule is continuing to be refined and economic impacts, including accurate job impacts, will be available when the rule is released for public comment.

With respect to your interest in the current job impact analysis, it would be premature at this time to release the analysis that that the contractor has completed in the draft RIA. However, we anticipate that the proposed rule and the RIA will be available for public comment early this summer. If, upon reviewing the proposed rule and RIA, you have further questions or concerns, please do not hesitate to contact me.

We have been developing the proposed rule with the interests of all residents of coal country in mind, from those directly and indirectly employed by the industry to those living with the impacts of mining on a daily basis. We believe this proposed rule will improve, preserve and restore, as appropriate, thousands of stream miles with resulting benefits to public health.

A similar letter is being sent to Representative Harold Rogers.

Sincerely,

Sally Jewell