



January 12, 2011

Chair Nancy Helen Sutley
Council on Environmental Quality
730 Jackson Place, N.W.
Washington, D.C. 20503

Dear Chair Sutley:

We are writing to ask you to oppose the U.S. Environmental Protection Agency's (EPA) unprecedented threat to veto a properly issued, valid Clean Water Act (CWA) Section 404 permit for Mingo Logan's Spruce No. 1 surface mine. If EPA is allowed to revoke this permit, every similarly valid Section 404 permit held by any entity — businesses, public works agencies and individual citizens — will be in increased regulatory limbo and potentially subject to the same unilateral, after-the-fact revocation. The implications could be staggering, reaching all areas of the U.S. economy including but not limited to the agriculture, home building, mining, transportation and energy sectors.

The CWA Section 404 regulatory program annually authorizes approximately \$220 billion in economic activity. EPA's threatened revocation of the Spruce permit will chill investment and job creation by creating an uncertain regulatory environment in which businesses and citizens will no longer be able to rely on valid Section 404 permits.

That EPA could revoke the Spruce permit, given the circumstances of its issuance, only heightens the uncertainties that will beset all permit holders if EPA carries out its threat to veto the Spruce permit. The Spruce permit was issued under the Clean Water Act (CWA) in 2007 after an extensive 10-year review, including the preparation of a multi-million dollar Environmental Impact Statement. EPA fully participated in the comprehensive permitting process and chose not to elevate or veto the permit prior to its issuance. Mingo Logan has abided by every requirement of the permit; EPA has never claimed otherwise. Nevertheless, nearly three years after the permit was issued and work had commenced, EPA asked the Corps to use its permit oversight authority to suspend or revoke the permit. But the Corps, after careful review, found no grounds to revoke or modify the permit.

Since the CWA was enacted in 1972, EPA has never revoked a previously issued, valid CWA Section 404 permit. The plain language of Section 404(c) does not authorize EPA to take any action once a permit has been issued. EPA's threatened

action has no legal foundation, is not warranted on the facts and will chill investments and job creation across America.

The undersigned entities will bear the consequences of the precedent setting action of an after-the-fact veto. Accordingly, we would like to meet with you promptly so that you have a full understanding of the economic, policy and legal effects that will surely follow if EPA is allowed to destroy the legal protections of a valid 404 permit. We will call your office to schedule a meeting as soon as possible. Thank you for your prompt attention to this matter.

Sincerely,
Members of Water Advocacy Coalition

American Farm Bureau Federation
American Road and Transportation Builders Association
Ball Clay Producers Association
Edison Electric Institute
The Fertilizer Institute
Foundation for Environmental and Economic Progress
Industrial Minerals Association – North America
International Council of Shopping Centers
International Diatomite Producers Association
National Association of Home Builders
National Association of Manufacturers
National Cattlemen's Beef Association
National Council of Farmer Cooperatives
National Industrial Sand Association
National Mining Association
National Multi-Housing Council
National Realtors Association
National Stone Sand and Gravel Association
Public Lands Council
Southern Crop Production Association
Western Business Roundtable
United Egg Producers

CC: The Honorable Lisa P. Jackson, Administrator, United States Environmental Protection Agency
The Honorable Jo-Ellen Darcy, Assistant Secretary of the Army for Civil Works
The Honorable Jacob J. Lew, Director, Office of Management and Budget
The Honorable Cass R. Sunstein, Administrator, Office of Information and Regulatory Affairs, OMB