

United States Senate
WASHINGTON, DC 20510

AL-09-001-3729

September 11, 2009


Ms. Lisa Jackson
Administrator
Environmental Protection Agency
USEPA Ariel Rios Building (AR)
1200 Pennsylvania Avenue N.W.
Washington, D.C. 20004


Dear Administrator Jackson:

We are writing to request further legal analysis of a revised discussion draft of the Appalachia Restoration Act (formerly S. 696). We introduced S. 696 with the sole purpose to stop the destructive practice of mountaintop removal coal mining. We thank you for the analysis you provided in response to our initial June 3, 2009 letter in which you informed us that the legislation, as drafted, would impact surface mining techniques beyond the mountaintop removal practices we intended to reach. While the intent of the legislation is to ban Mountaintop Removal mining, with your assistance, it was determined that the scope of the initial draft would impact multiple techniques of surface mining. We have revised the legislation in response to your helpful comments and would appreciate further input on the following question: Would this legislation, as revised, apply only to mountaintop removal coal mining with no effect on surface mining?

We look forward to working with you and your agency in addressing the environmental damage caused by mountaintop removal coal mining. Please find attached a copy of the revised draft legislation. We would greatly appreciate any further input and guidance on how to make this legislation most effective for your agency to implement. Thank you for your consideration.

Sincerely,


Benjamin L. Cardin
United States Senator


Lamar Alexander
United States Senator

111TH CONGRESS
1ST SESSION

S. _____

To amend the Federal Water Pollution Control Act to include definitions of fill material and mountaintop removal mining.

IN THE SENATE OF THE UNITED STATES

Mr. CARDIN (for himself and Mr. ALEXANDER) introduced the following bill, which was read twice and referred to the Committee on

A BILL

To amend the Federal Water Pollution Control Act to include definitions of fill material and mountaintop removal mining.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Appalachia Restoration
5 Act".

6 **SEC. 2. DEFINITIONS.**

7 Section 502 of the Federal Water Pollution Control
8 Act (33 U.S.C. 1362) is amended by adding at the end
9 the following:

1 “(26) MOUNTAINTOP REMOVAL MINING.—The
2 term ‘mountaintop removal mining’ means any sur-
3 face mining activity that involves—

4 “(A) the removal of the upper portion of a
5 mountain, ridge, or hill in order to expose 1 or
6 more coal seams; and

7 “(B) the disposal of the excess spoil in
8 heads of hollows, valleys, or streams.

9 “(27) FILL MATERIAL.—The term ‘fill material’
10 does not include—

11 “(A) the disposal of excess spoil material
12 (as described in section 515(b)(22) of the Sur-
13 face Mining Control and Reclamation Act of
14 1977 (30 U.S.C. 1265(b)(22))) generated
15 through mountaintop removal mining in waters
16 of the United States; or

17 “(B) trash or garbage.”.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 22 2009

OFFICE OF
WATER

The Honorable Lamar Alexander
United States Senate
Washington, D.C. 20510

Dear Senator Alexander:

Thank you for your September 11, 2009, letter to U.S. Environmental Protection Agency (EPA) Administrator Lisa P. Jackson requesting technical assistance on the revised discussion draft of the Appalachian Restoration Act (formerly S. 696). We are pleased to provide technical assistance on the current draft of your legislation. I would emphasize, however, that our comments do not represent a formal position on S. 696. As the senior policy manager of EPA's national water program, the Administrator has asked me to respond to your letter.

Your letter states that the intent of the legislation is to ban the practice of Mountaintop Removal coal mining under the Clean Water Act (CWA) without impacting other forms of surface coal mining. The central question being posed is would this legislation, as revised, apply only to Mountaintop Removal coal mining with no effect on other surface coal mining practices? The draft legislation proposes to define Mountaintop Removal mining and to prevent the regulation of excess spoil generated from Mountaintop Removal mining under the CWA Section 404 permit program.

We agree that this approach is an effective way to preclude authorization of Mountaintop Removal mining related discharges to waters of the United States and to distinguish such discharges from those associated with other forms of surface coal mining. We would emphasize, however, that Mountaintop Removal is not a single form of mining but represents a category of similar mining practices with different names including area mining and point removal mining. This category of mining is often conducted with other mining practices (e.g., auger, contour, high wall) at a single mine site. The approach proposed by your legislation, as we interpret it, would preclude CWA authorization of Mountaintop Removal (in all its forms) related discharges while allowing discharges from other types of mining practices, even at a single mining operation.

We have several thoughts about potential revisions to proposed language in the draft legislation that could help to clarify its application and provide for more consistent interpretation. The changes suggested below would revise the definition of Mountaintop Removal mining to be consistent with current regulation and mining practice and clarifies the applicability of the legislation to discharges covered by the CWA, i.e., discharges to the waters of the United States, including wetlands. Our technical assistance on the language of the bill is provided below:

(26) MOUNTAINTOP REMOVAL MINING. The term 'mountaintop removal mining' means any surface mining activity that involves ----

(A) the removal of an entire coal seam from outcrop to outcrop or seams running through the upper fraction of a mountain, ridge, or hill by removing substantially all of the overburden off the mine bench.

(27) FILL MATERIAL. The term 'fill material' does not include:

(A) mining overburden generated from mountaintop removal mining;

(B) trash or garbage.

Thank you again for the opportunity to provide EPA technical assistance regarding your draft legislation and the CWA regulation of discharges of coal mining overburden in waters of the United States. I appreciate your leadership on this important issue. If you have any additional questions, please contact me or your staff may call Denis Borum in EPA's Office of Congressional and Intergovernmental Relations at 202-564-4836.

Sincerely,



Peter S. Silva
Assistant Administrator

cc: Bob Sussman
Arvin Ganesan