

United States Senate

WASHINGTON, DC 20510

November 3, 2010

The Honorable Joseph Pizarchik
Director
Office of Surface Mining, Reclamation and Enforcement
South Interior Building, Room 233
1951 Constitution Avenue, NW
Washington, D.C. 20240

Dear Director Pizarchik:

We write to express our concern about the process the Office of Surface Mining Reclamation and Enforcement (OSM) is using to develop a new Stream Protection Rule. This proposed rule represents the most sweeping regulatory change to surface mining regulations under the Surface Mining Control and Reclamation Act (SMCRA) in the last 30 years. We have concerns that OSM is unnecessarily short-circuiting the rulemaking process, particularly when compared to the process used for developing the 2008 Stream Buffer Zone (SBZ) rule.

The 2008 SBZ rule represented the culmination of a five-year process. While developing the rule, OSM received over 43,000 public comments on the proposal and hosted more than 700 attendees at 4 public hearings. In contrast to the 2008 rulemaking process, OSM now appears to be paying lip-service to the Administrative Procedures Act and public input. In August 2009, a federal judge rebuked your agency, reminding OSM that changes in rules must follow the procedures in the Administrative Procedure Act, including notice and comment.

Last December, members of the Senate asked your agency for an extension on the public comment period for your advanced notice of proposed rulemaking because of the tremendous impact this rulemaking will have on mining throughout the United States and because the minimally required 30-day comment period occurred during the holiday season. Unfortunately, you denied this request for additional, meaningful public participation. This denial further suggests that OSM has not undergone the same due process warranted by the magnitude of this proposal as they did in 2008.

In soliciting public comments on the environmental impact statement (EIS), OSM moved at such a rapid pace that it failed to provide the public with an adequate explanation of the alternatives being considered by the agency. The agency did not provide for scoping meetings as required under the National Environmental Policy Act (NEPA). Rather than conducting public hearings as had been done during the 2008 SBZ rule, your agency scheduled "open house" meetings where public statements were not permitted. Members of the community were denied the opportunity to openly express their concerns with the rule through public speaking. Conducting meetings in this manner is not only contrary to the spirit of NEPA, but also contradicts the Administration's pledge of transparency and openness in government.

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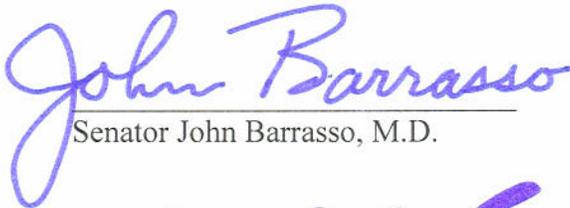
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OSM's proposed regulatory actions could significantly delay coal mining operations and put jobs, small businesses, and domestic energy production in jeopardy. Given the magnitude of these proposed changes as well as its nationwide application, we believe more time is needed to provide a meaningful opportunity for voicing local, state, and regional concerns. Accordingly, we would appreciate a prompt response to the following questions:

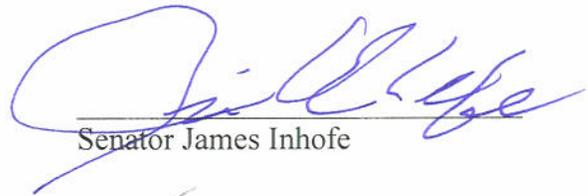
- 1) Why is OSM forcing this rulemaking to be conducted with such haste and with minimal process for public participation?
- 2) Why is this Administration providing less time for public comments and limiting public participation in hearings than was provided during the 2008 SBZ?

Thank you in advance for your expedited consideration of our request. We look forward to hearing from you.

Sincerely,



Senator John Barrasso, M.D.



Senator James Inhofe



Senator Michael B. Enzi



Senator Jim Bunning