



COMMONWEALTH OF KENTUCKY
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September 27, 2011

The Honorable Barack H. Obama
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, D. C. 20502-0001

Dear Mr. President:

Thank you for taking time to visit Ohio to discuss the importance of creating jobs and improving the nation's aging infrastructure. Kentucky faces significant infrastructure issues – from the "functionally obsolete" Brent Spence Bridge you saw last week - to the Ohio River Bridges Project, which plans to add two new spans in Louisville but has been delayed in part because of unavailable federal funding - to our most immediate infrastructure issue, the recent closure of the Sherman Minton Bridge between Louisville, our most populated city, and Southern Indiana. I appreciate Secretary Ray LaHood joining me last Friday in Louisville to give your administration a firsthand look at how critical this passage is to commerce and economic activity in a large region of the nation. As you well know, infrastructure issues have a significant impact on our ability to get our economic engine moving again. I also appreciate the follow-up call with Senior Advisor Valerie Jarrett.

You and I share the same goal – to save and create jobs in every community of Kentucky and the nation. In Kentucky, there is a key step you can take toward that goal – implement fair and reasonable policies for the coal permitting process. Kentucky has experienced tremendous frustration over the uncertainty and overreaching policies of the Environmental Protection Agency (EPA) surrounding the Clean Water Act (CWA).

Kentucky's Energy and Environment Cabinet worked proactively with EPA Region IV for approximately two years on revising our CWA 402 permits for coal mining operations, and in particular during an eight-month period ending in May of 2011, in an effort to resolve proposed permit objections. In so doing, several dozen pending permit applications had been temporarily placed on hold while these discussions had cooperatively been occurring between Kentucky and the EPA staff in Atlanta. Kentucky had proposed numerous changes to its individual CWA 402 permits to the full satisfaction of all of Region IV's concerns. In particular, Kentucky had developed a biological approach to protect and maintain existing water quality. We based many months of negotiations on a prior agreement with EPA headquarters, made through direct conversations I had with Administrator Lisa Jackson, that if Kentucky and Region IV arrived at a mutually acceptable solution, EPA would give its approval. We were extremely disappointed when, after months of negotiation and representations by EPA Region IV that a settlement had been reached, EPA notified the Cabinet that EPA headquarters would not approve the settlement.

On July 1, 2011, after months of working with EPA, the Cabinet issued public notice on 55 proposed CWA 402 draft permits for EPA review. EPA Region IV requested a 90-day period to review those permits, which closes this week, the end of September, 2011. The Cabinet has already received one additional EPA Region IV objection on September 19, 2011, and has been verbally informed that multiple additional EPA objections will be forthcoming by the end of September. Between January of 2000 and the present, nearly 50 percent of the entire universe of EPA permit objections under the CWA 402 program nationwide will have occurred since early 2009, and the vast majority of those EPA objections are for surface coal mining operations in Appalachia. It should be noted that since early January of 2009, there have been no changes made to the federal NPDES regulations or to water quality standards in Kentucky. Rather, EPA has issued new guidance and enforced this guidance as de facto regulation in clear violation of the Administrative Procedures Act, despite the guidance's repeated assertion that it is not legally binding and lacks the force of law. Unfortunately, EPA's statements and the reality of EPA's actions are in clear contradiction. In addition, the U.S. District Court for the District of Columbia recently stated that EPA's guidance has "encroached upon the role carved out for the states under the Clean Water Act by setting region-wide conductivity standards."

In fact, prior to EPA's interim guidance for conductivity in Appalachian surface coal mining, we had worked with mining engineers, biologists, hydrologists, and industry and environmental representatives, and created a protocol designed to minimize the environmental footprint of surface mining operations. This protocol addressed many of the issues and concerns that EPA and the U.S. Office of Surface Mining have expressed in their guidance documents and proposed stream protection rules. Projects that would have occurred following this new protocol would have exceeded the permit specifications for water quality and other parameters that the EPA had been approving immediately prior to its issuance of the guidance in April of 2010.

Coal is not just a Kentucky resource, it's a national resource; it has been and will continue to be vital for our nation's prosperity and security. It provides almost 50 percent of the nation's electricity, and it's imperative that we recognize openly and honestly that we will not be stepping away from coal today, tomorrow or even in the next several decades. However, current national policies and regulations, especially those coming from the Environmental Protection Agency (EPA), do not support this reality.

In Kentucky, we recognize that coal resources must be cleaner and more sustainable, and we are focused on both these efforts, from a generation perspective (including providing funding for carbon capture and storage research) and as well as from an extraction perspective. However, we must have a reasoned and pragmatic approach to the regulation of the coal industry from the EPA, or all industries that rely on affordable energy, not just the coal industry, will suffer.

The EPA's actions and the actions of other federal agencies with oversight of coal mining are having a direct, negative impact on jobs. The impact on jobs in Appalachian communities is especially troubling. In many of Kentucky's Appalachian counties, coal mining accounts for more than 25 percent of total county wages. Nationally, coal mining salaries are 59 percent higher than the combined average of all private sector jobs. In eastern Kentucky, we have had more than 75 permits that have been unduly delayed because of EPA's actions on water quality permits for coal mining operations. These permits represent coal mining production that would provide an estimated 25,000 miner-years of jobs. And these job numbers do not include the additional direct mine industry employment that would be needed to support these jobs, nor do the numbers include the indirect employment of three jobs for every mining job in the Commonwealth.

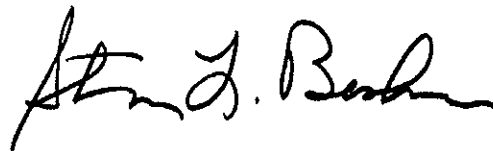
In Martin County, Kentucky, where mining represents more than 10 percent of direct employment, Booth Energy has experienced a two-year permit delay, which has impeded the hiring of **nearly 50 new employees and \$8 million of new capital investment**. In Ohio County, Armstrong Coal experienced a nearly two-year permit delay, stranding \$85 million of capital assets. Furthermore, **160 high-paying jobs were affected**, and there was a **\$25 million loss to the local economy**.

Furthermore, the EPA's actions against Kentucky have a nationwide impact. Kentucky might not be large in terms of its population, but it is extremely important to the nation as a manufacturing state. We are the third largest in automobile manufacturing, and we produce 30 percent of the nation's stainless steel and 40 percent of the nation's aluminum. We do this in a state that has only one and a third percent of the nation's population. The entire nation benefits from Kentucky's ability to produce the automobiles and industrial materials that are key components of our nation's economy.

Simply put, the actions by the EPA are obstructing a substantial opportunity to create and maintain high-paying jobs, and have the potential to devastate job creation and affordable energy across the nation. We continue to make progress improving our air, land and water resources, but we cannot do it through an arbitrary regulatory agenda while Kentucky and the nation struggle to pull out of a national economic recession and create jobs.

I know you share with me our great need for creating jobs, and I want to work with you to strengthen our nation's economy and develop employment opportunities for our citizens. Kentucky's coal industry helps fuel the economy of the entire nation. Let's work together to find a reasonable way to protect the environment and support an industry that drives the economic engine we all need to be successful.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven L. Beshear". The signature is fluid and cursive, with the first name "Steven" and last name "Beshear" clearly legible.

Steven L. Beshear