

Testimony of James A. Kiger
Environmental Manager,
Oxbow Mining, LLC. Elk Creek Mine
Field Hearing – Grand Junction, Colorado
September 19, 2011

Good Morning, Congressman Tipton and (recognize others who may be presiding over hearing). My name is Jim Kiger and I am the Environmental Manager at the Oxbow Mining, LLC, Elk Creek Mine located in Somerset Colorado. I am also a member of the Colorado Mining Association, (CMA) and represent their interests in today's discussion as well. The Elk Creek Mine produces approximately 5 million tons/year of high BTU, low sulfur, low mercury coal by underground, state-of-the art longwall mining technology. Our coal is used in electricity generation plants and industrial applications across the U.S. This coal meets the classification of "super compliance coal" under the 2005 Energy Policy Act because of its very low sulfur content. I appreciate the opportunity to be here today to express our concerns about the impact of excessive federal energy regulations and policies on limiting energy independence, killing jobs and increasing prices. In my 30+ years of working in the Colorado coal mining industry, at both surface and underground mines, I have never before seen such a concerted emphasis by numerous federal agencies to create additional head winds for the coal industry across such a broad spectrum of coal industry activities. Coal is an essential American industry that provides over 45% of America's electricity at reasonable prices and 85% of the U.S. fuel resource on a BTU basis thus creating economic opportunity for millions of American businesses and consumers. This is an essential industry that employs thousand of highly trained, safety focused workers, working together to reduce our dangerous reliance on foreign energy sources.

I The EPA, either alone or in conjunction with other federal agencies, have launched a series of regulatory actions directly affecting coal mines.

1. In 2011, underground coal mines are required to monitor GHG emissions from Ventilation Air Methane (VAM) and methane drainage boreholes. These methane drainage activities are critical and required by the Mine Safety and Health Administration (MSHA) to ventilate explosive methane from the mine atmosphere. Submittal of our GHG reports to EPA will begin in 2012.
2. In 2012, underground mines will be required to file for Title V Air Emission Permits with the EPA and State of Colorado because of GHG emissions. The future is uncertain and concerning regarding how methane and /or other GHG emissions will be regulated under a carbon regulatory scheme.
3. EPA is routinely pushing for tightening of water quality standards under the Clean Water Act. Examples are Arsenic values below the detection limit of most laboratories (0.02ug/l), (thousand times more restrictive than the drinking water standard), pursuing stringent stream conductivity and selenium values downstream of mining activity, pursuing a more onerous process water classification for routine surface storm water runoff from mining areas.
4. June 18, 2010 the Army Corps of Engineers proposed suspending Nationwide Permit 21 in the Appalachian Region. While the suspension is in effect, individuals who propose surface coal mining projects that involve discharges of dredged or fill material into waters of the United States will have to obtain Department of the Army authorization under the Clean Water Act, through the

individual permit process. The individual permit evaluation procedure provides increased public involvement in the permit evaluation of individual projects.

Colorado Coal Mines rely on Nationwide Permit 21 for surface mines and Nationwide Permit 50 for underground mines to avoid delays in permitting. We are concerned about the spillover of the issue to western coal mine areas.

5. OSM oversight agreements. For over 25 years, Colorado and OSMRE have had a coordinated program of topic specific oversight of the Colorado coal regulatory program focusing on on-the-ground compliance and performance under SMCRA. OSM is now proposing to make changes to oversight activities. One such example is conducting more independent inspections not coordinated with the State Regulatory Authority familiar with the on the ground operations.
6. OSM has proposed radical changes to the 10-day notice requirements where they can challenge State approved permits with their 10-day notice program.
7. OSM has proposed changes to Stream Buffer Zone rules that go beyond the intent of SMCRA which could affect the basic mining activities of fills, stream channel reconstruction, activities in ephemeral drainages, refuse piles, etc.

II The Environmental Protection Agency has expressed views that, to us, indicate its desire to discontinue the use of coal as a fuel for electricity generation. The regulatory agenda appears to be pursuing this goal.

8. Recently at a conference in Aspen, Colorado, EPA Administrator Lisa Jackson is reported as saying that natural gas is the fuel that will help transition away from coal in power plants. EPA's regulatory agenda supports that intent.

9. The Cross State Air Pollution Rule (CSAPR) requires 27 states to reduce coal fired power plant emissions. A recent August 26, 2011 report by PJM has indicated that 11,000 MW of coal capacity are at “high risk” for retirement and an additional 14,000 MW of coal capacity are at “some risk” of retirement due to the cost of retrofits to meet the requirements of the new regulations. This rule will dramatically increase the cost of electricity for families and businesses. The three North Fork Valley mines sell nearly 10 million tons/year of coal to such utilities as TVA who have indicated they will need to shut down coal plants to comply. This amount of lost sales tonnage is equivalent to two mines’ production and has a potential for the loss of 500+ miner jobs in the North Fork Valley.
10. EPA’s withdrawal of a 404 permit for the Spruce No. 1 mine in West Virginia makes it clear that even when a permit has been issued by EPA, there is no certainty that an operator’s investment in the facility will ever be recovered. This regulatory uncertainty is a huge disincentive to the coal industry and is an unsettling signal to other regulated industries that rely on EPA permits as well.
11. Uncertainty over EPA’s future actions extends to our customers as well. EPA has numerous proposals pending for new or more stringent regulation under the Clean Air Act. The multiple regulatory initiatives have been widely referred to as a “train wreck” because of their converging timeframes. Whether required under statute or an EPA settlement agreement, adoption of these rules do not allow adequate public scrutiny, economic analysis or opportunity for EPA modification. These regulations include the Cross State Air Pollution Rule (CSAPR) noted above, requirements for tighter ozone standards that could put

much of the country into a non-attainment status and the MACT rule covering hazardous air emissions from boilers. See Exhibit 1 and 2 at the end of this talk for additional details.

12. EPA has proposed the Coal Combustion Rule which could result in reclassification of coal combustion residuals (CCR or power plant ash) to treat them as hazardous waste under RCRA Subtitle C rather than non-hazardous waste under RCRA Subtitle D. EPA regulation of CCR as hazardous waste will unnecessarily burden and/ or discourage the effective use of the material in surface mine backfill presently regulated by OSMRE. Further, this reclassification will also discourage the use of CCR for many beneficial uses such as concrete and brick products, structural fill, agricultural products, wallboard, etc. We suggest that Congress pull EPA authority from regulating CCR as hazardous waste, encourage states to take the lead to maximize the beneficial uses of CCR and provide certainty to OSMRE to continue regulating CCR as backfill in coal surface mines.
13. EPA entered into a consent agreement with various state and environmental petitioners a year ago that bind the agency to proposing a final rule to establish performance standards for GHG emissions from electric utility steam generating units by September 30, 2011. These regulations will radically increase the cost to electric utilities that use coal as a base load fuel, and discourage them from continuing to rely on the Nation's most abundant and affordable energy resource.
14. Uncertainties related to the timing and implementation of these new regulations as well as the cost attached to them will (and have) resulted in electric utilities

abandoning their coal generating units. A prime example of this is the recent State Implementation Plan for regional haze which was submitted by the State of Colorado to EPA. That plan, in reaction to fears of widespread federal restrictions on all businesses and personal activities, calls for the closure of two metro area coal-fired power plants and the loss of contracts for up to four million tons of Colorado coal. Needless to say, if government regulations continue to discourage the use of coal then not only will job losses occur in the coal industry basic to the economy of Northwest Colorado and the North Fork Valley, but also will extend to the equipment dealers, support services, and retail jobs within those communities

15. The issues of Anthropogenic Climate Change continue to unravel in favor of the opinion of an increasing majority of Americans who are skeptical of the GHG alarmism. We strongly urge Congress to remove the EPA from the increasingly burdensome GHG regulation business to solve a nonexistent problem. We need to end the EPA's agenda to craft U.S. energy policy by regulation rather than having national energy policy set by Congress.

III The efficiency of Federal Land Management Agencies (BLM and USFS) have been adversely effected by policies or programs that slow coal mine Federal Coal Leasing and Permitting activities.

16. Despite the 2001 Clinton Roadless Rule being enjoined nationwide, once routine coal leasing modification and permitting activities located on Inventory Roadless Areas are subject to two delaying reviews by the Secretary of Agriculture. The

first review is required before NEPA is authorized to proceed and a second review is required after NEPA is completed.

17. BLM is understaffed to complete what used to be routine EA reviews of coal lease modifications, exploration licenses, etc. Project proponents now routinely have to hire third party contractors to complete BLM NEPA documents. The added expense and delays of hiring third party contractors to complete the preparation of once routine NEPA documents slows down the permitting processes. The NEPA process for minor energy projects needs to be streamlined with limits on appeals.
18. Nuisance lawsuits and appeals by the environmental community on every federal coal decision by federal agencies is having a negative gridlock effect on the effective conduct of federal coal programs. The issue of air emissions from coal mining, resulting as a secondary impact from EPA overreach on GHG issues, has effectively paralyzed the federal agencies decision making process.
19. Oxbow's East Elk Creek Lease LBA was submitted in September 2006 for a small adjacent coal lease of only 3.9 million tons, enough to longwall mine for only 1 year.
20. Oxbow's East Elk Creek Lease EA was pulled back three times to address GHG issues, where there are no existing federal and State GHG Regulations. The recent BLM decision to move forward with the lease sale for this very small lease is currently being appealed to the IBLA by WildEarth Guardians and Sierra Club.

21. Again we suggest that Congress needs to pull back EPA authority to regulate GHG's to reduce the ever increasing gridlock found in the spillover with other agency decision making processes.
22. Awarding appellants their cost of litigation under the *Equal Access to Justice Act* has created a system where federal coal decision making is grinding to a crawl. The system needs to be modified to return to the original intent of the law in order to reduce nuisance lawsuit by the larger Washington D.C. based plaintiff law firms and create a system where the "loser pays" to discourage frivolous lawsuits.

III. Mine Safety and Health Administration (MSHA)

23. Statistics show that the coal mining industry is not even in the top ten most hazardous industries in the United States. Since the passage of the *Miner Act of 2006*, through 2009 MSHA's punitive action against the coal mines have increased 32.07% in terms of citations and orders and 359% for the dollar amount assessed. With the tragic events of Upper Big Branch on April 5, 2010, Labor Secretary Solis and Assistant Labor Secretary Main are using this tragic event to promote additional MSHA power and regulations under the Robert C. Byrd Mine Safety Protection Act as necessary to perform their job. The coal mining industry is already highly regulated and the regulations in place have been proven over years to continuously improve the industry safety record. The first investigative reports on the April 5 tragic event criticized the fact that existing regulations that could have prevented and/or controlled the event were not being enforced. MSHA's increasing focus on penalties and fines verifies that reactive punitive

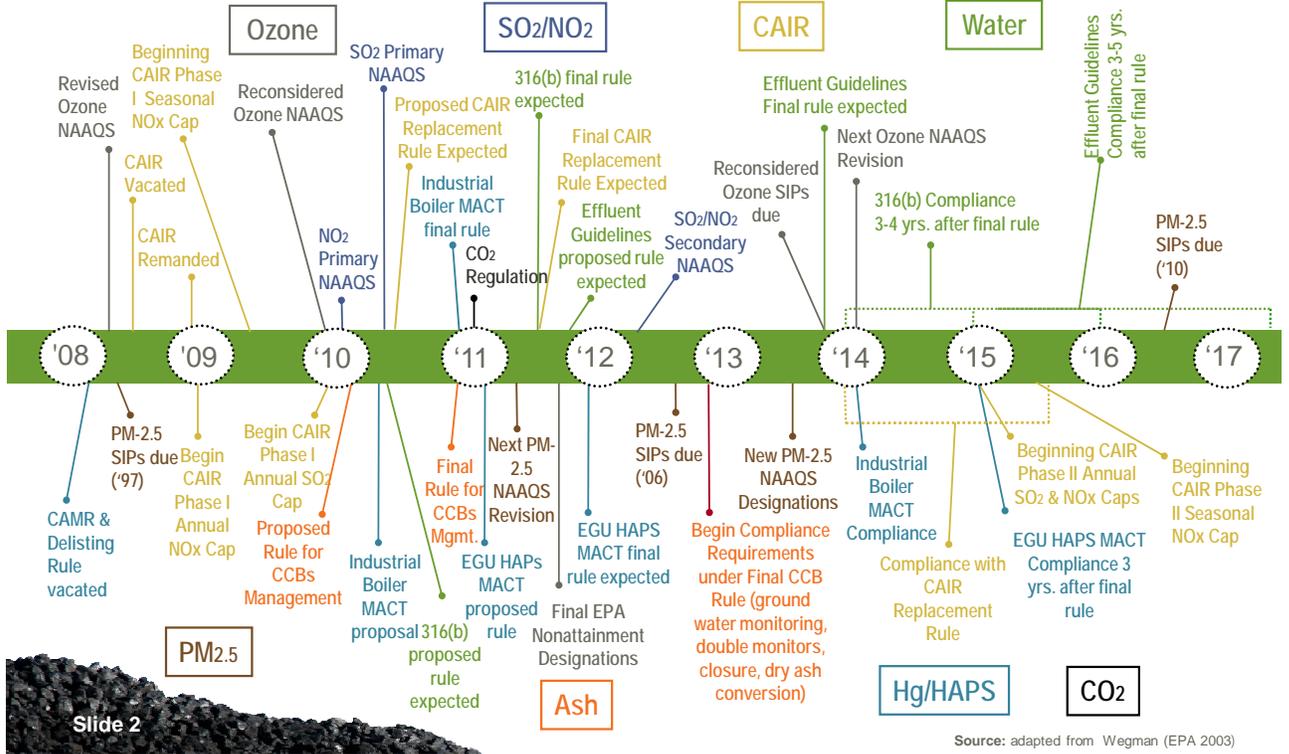
action is not the answer to increased coal mine safety. MSHA inspectors need more training and their focus should be on enforcing existing safety regulations. Successful safety programs should be integrated into mining operations jointly by a collaborative effort between MSHA and mine management. This effort should involve all miners in the safety process and be reinforced and supported by both MSHA and mine management to develop a “culture of safety”.

-
24. Finally, Oxbow has recently announced our intent to explore unleased federal coal reserves in the Oak Mesa project located in the North Fork Valley of Colorado. We are hopeful we can open a new mine in less than 10 years of exploration, permitting and leasing activities. The mine could employ approximately 450 miners for over 20 years, creating millions in value to Western Colorado and the nation. Meanwhile, our parent company, Oxbow Carbon has purchased an interest in a coal mine located in Columbia, South America. We are hopeful that we will not have to increasingly turn to foreign countries in our search for energy business opportunities because America has either closed its doors or made it too difficult for domestic energy development.

Thank you for the opportunity to testify today.

James A. Kiger
Environmental Manager
Oxbow Mining, LLC.
P.O. Box 535, 3737 State Highway 133,
Somerset, Co. 81434
970-929-5806
Jim.kiger@oxbow.com

Possible timeline for environmental regulatory requirements for the utility industry



Slide 2

Source: adapted from Wegman (EPA 2003)

Exhibit 1 – Utility Industry Regulatory Requirements.

Mercury emissions from coal-fueled EGU's

- 5,500 tons (all sources) in 1995
- 2005 – 52.9 tons from US EGU's
- 2010 – 29 tons from US EGU's

- CAMR – 2010 Phase I : 38 tons
- CAMR – 2018 Phase II : 15 tons



Exhibit 2 – Utility Mercury Rule