

Alaska Community Action on Toxics• Amigos Bravos• Center for Science and Public Participation• Coal River Mountain Watch• Conservation Northwest• Dakota Resource Council• Emerald Coastkeeper, Inc. • Coloradoans Against Resource Destruction • Conservation Congress• Copper Country Alliance• EARTHWORKS• Environment Colorado• Ethical Metalsmiths• Friends of the Boundary Waters Wilderness• Friends of the Land of Keweenaw• Grand Riverkeeper• Great Basin Resource Watch• Greater Yellowstone Coalition• High Country Citizens' Alliance• Honor the Earth• INFORM-Information Network for Responsible Mining• Kalmiopsis Audubon Society• Keweenaw Bay Indian Community• Kootenai Environmental Alliance• Lake Pend Oreille Waterkeeper• The Lands Council• Montana Environmental Information Center• Northern Alaska Environmental Center• Nunamta Aulukestai• Okanogan Highlands Alliance• Oregon Wild• Powder River Basin Resource Council• Prairie Hills Audubon Society• Rivers Without Borders• Rock Creek Alliance• Save Our Cabinets• Save the Scenic Santa Ritas• Save the Wild UP• Selkirk Conservation Alliance• Southeast Alaska Conservation Council• Spokane Riverkeeper• Waccamaw RIVERKEEPER• Water Legacy • Western Organization of Resource Councils • The Wilderness Society• Yellow Dog RIVERKEEPER• Yellow Dog Summer• Yellow Dog Watershed Preserve, Inc

Lisa Jackson, Administrator,
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

March 2, 2010

Nancy Sutley, Chair,
White House Council on Environmental Quality
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

The Honorable Jo-Ellen Darcy, Assistant Secretary
U.S. Army, Division of Civil Works
441 G. Street, NW
Washington, DC 20314-1000

Dear Administrator Jackson, Chair Sutley, and Assistant Secretary Darcy;

As organizations that represent communities and ecosystems throughout the country impacted by mining, we write to request that you protect communities, fish, and wildlife by adopting a policy to prevent mining waste from being dumped into the nation's waters and buried under the guise of being permitted as "fill" material. Specifically, we request that the Environmental Protection Agency (EPA), the Army Corps of Engineers (Corps), and the Council on Environmental Quality (CEQ) take immediate action to explicitly exclude all waste from the definition of "fill" material, thereby restoring the policy that was in place for the first three decades of the Clean

Water Act. Immediate action on this issue is needed to prevent further damage and threats to our nation's waterways.

Congress intended the 1972 Clean Water Act to end the use of lakes, rivers, streams, and wetlands as waste dumps. Before then, mining companies and other industries frequently dumped their waste in the nearest stream, lake, or river, often with catastrophic consequences for those water bodies, for fish and wildlife, and for human health. For thirty years, the Clean Water Act has helped keep America's lakes, rivers, and streams safe from mining pollution, preserving them for drinking, fishing, and swimming and protecting adjacent wildlife habitat, shorelines, forests, and grasslands.

Thirty years after the passage of the Clean Water Act, the Bush Administration created a dangerous loophole that has allowed mining corporations and other industries to call pollution "fill material" and bypass federal pollution standards. Congress intended "fill material" to be used in water bodies for certain constructive purposes, such as building bridges or roads that have unavoidable impacts on waterways. In addition to allowing coal companies to use Appalachian streams as dumping grounds for waste from mountaintop removal mines, the 2002 Bush administration changes now allow hardrock mining companies, the nation's largest toxic polluters, to once again dump untreated solid industrial (or suspended) wastes directly into America's streams and lakes, destroying them for good.

Last year the Supreme Court used the new definition of fill material to uphold a Bush-era decision to permit the discharge of toxic wastewater from a gold ore processing mill directly into Lower Slate Lake in Alaska, killing all the lake's fish and aquatic life. This decision was made despite the fact that the discharge violates EPA pollution standards for the mining industry, standards in effect since 1975. If a mining company can turn a freshwater lake into a lifeless waste dump by simply labeling the pollutant "fill material," other polluters with solids in their wastewater can potentially do the same to any water body in America.

The growth of the nation's economy and the simultaneous great improvement in water quality since enactment of the Clean Water Act in 1972 show that clean water is good for business and critically important to the health and quality of life of communities. We urge you to work together to close this major Clean Water Act loophole by reinstating the longstanding exclusion of waste from the definition of "fill material," and ending the dumping of solid industrial wastes, especially mining wastes, directly into our nation's lakes, rivers, streams, and wetlands. This is what the drafters of the Clean Water Act intended, and what the American people deserve.

Sincerely,

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