

17 South High Street
Suite 410
Columbus, Ohio 43215



TEL 614 228 6336
FAX 614 228 6349

January 14, 2011

Via E-mail: armitage.thomas@epa.gov
Dr. Thomas Armitage, Designated Federal Officer
EPA Science Advisory Board (1400R)
1200 Pennsylvania Avenue, NW.
Washington, DC 20460

RE: SAB's Review of EPA's Draft Report: *Field-Based Aquatic Life Benchmark for Conductivity in Central Appalachian Streams* ("Conductivity Review")

SAB's Review of EPA's Draft Report: *The Effects of Mountaintop Mines and Valley Fills on Aquatic Ecosystems of the Central Appalachian Coalfields* ("MTM-VF Review")

General Comments of the Ohio Coal Association

Dear Mr. Armitage:

Please accept these initial comments on behalf of the Ohio Coal Association and our more than ninety members (collectively "Ohio Coal") related to the Science Advisory Board ("SAB") draft Conductivity Review and MTM-VF Review (collectively, the "SAB Reviews") and consider these comments when finalizing the SAB Reviews. Specifically, the SAB Reviews relate to two EPA draft technical documents: *The Effects of Mountaintop Mines and Valley Fills on Aquatic Ecosystems of the Central Appalachian Coalfields* ("MTM-VF Report") and *Field-Based Aquatic Life Benchmark for Conductivity in Central Appalachian Streams* ("Conductivity Report") (collectively, the "EPA Reports"). Our members represent every aspect of the Midwest coal mining business, including coal production, equipment manufacturing and supply, electric power generation, engineering, coal transportation, blasting and other similar enterprises that serve the coal mining industry and will be significantly impacted by the EPA Reports and EPA's use of the SAB Reviews to revise the EPA Reports.

Procedural Comments

On December 27, 2010, SAB issued a notice of public teleconferences related to the SAB Reviews, set for January 19, 2011, with written comments due January 14, 2011. On December 28, 2010, SAB posted the SAB Reviews for public comment. Given the SAB Reviews were released during the holiday season and contain analysis which is both technical and lengthy, Ohio Coal requests that SAB extend the comment period, at least

until after the scheduled public teleconferences, in order to allow for adequate time to review and comment on the SAB Reviews.

While SAB requests comments, SAB does not intend to respond to or address technical data or concerns raised that challenge or invalidate any findings. SAB's decision not to engage in debate about the shortcomings of the EPA Reports or the SAB Reviews undermines the legitimacy of the process or any of the conclusions reached. In conjunction with the short comment deadlines, SAB sends the message that comprehensive review and input is not welcome. Ohio Coal requests that SAB reconsider this decision and fully consider comments.

SAB Conductivity Review

While SAB acknowledges that the conductivity benchmark for Appalachian streams should not be broadly applied in Appalachia as well as other deficiencies with the EPA Reports such as data inadequacy, uncertainty, collection methodology and inconsistency, Ohio Coal continues to question EPA's cart-before-the-horse approach. SAB acknowledges that the underlying EPA Conductivity Report was developed "to provide scientific information to support a set of actions EPA is undertaking to clarify and strengthen environmental permitting requirements for Appalachian surface coal mining operations." SAB Conductivity Review at p.5. The deficiencies identified by numerous commenters, including those identified by SAB, should be particularly concerning and given additional review by SAB.

Although SAB identifies data, methodology and other fundamental problems with EPA's underlying conductivity report, its Conductivity Review largely blesses EPA's efforts. For example, although SAB does not believe EPA should extrapolate conductivity levels derived from discrete West Virginia and Kentucky data sets – which are likewise flawed or deficient in several respects – to Appalachia generally, SAB nonetheless believes EPA's conclusions are justified. Moreover, the Conductivity Review highlights the failure of EPA to adequately account for conductivity benchmark uncertainties like cause and effect, to provide sufficient supporting data for conductivity effect levels, and to provide sampling methodology sufficient to analyze data quality.

In addition, SAB acknowledges conductivity is merely a surrogate measure for major constituent ions, yet it notes that EPA did not quantify the percentage of conductivity generated by individual ions or compounds in order to assess dominant contributors to conductivity, it acknowledges that ionic chemistries may differ among data sets and geographic regions, it notes the presence of missing data and samples, and it acknowledges that ionic sources may differ geographically by stream. It is clear that the EPA's conductivity data and resulting benchmark, including SAB's reliance and adoption of EPA's overall conductivity conclusions, are flawed. Given SAB's numerous concerns and given SAB's various recommendations to EPA to, for example, further support its data, prepare independent data sets and provide additional analysis, Ohio Coal is puzzled how SAB can broadly accept EPA's Conductivity Report.

SAB MTM-VF Review

Throughout SAB's MTM-VF Review, SAB encourages EPA to use data from irrelevant or highly differential sources to support EPA's policy objective to link Appalachian ecosystem processes to "mountaintop mining" and valley fills. While acknowledging that EPA lacks supporting data, SAB nonetheless suggests EPA use inapplicable literature to support its policy objectives. SAB also recommends that EPA, in the absence of relevant data, analogize cumulative impact data from studies of non-MTM-VF pollutants to those minerals and elements that could be introduced to an ecosystem during a MTM-VF operation. SAB provides no rationale for why it is appropriate to use these different pollutants, other than to state that cumulative impacts of those pollutants have been widely studied. In making this substitution, SAB not only tacitly accepts EPA's decision to issue the EPA MTM-VF Report without adequate data supporting it, but actively encourages EPA to fill this noticeable gap with the use of inapplicable data.

While Ohio Coal appreciates the opportunity to comment, SAB should extend its comment period so that coal communities, especially those in Appalachia, can provide a full technical and scientific analysis of the SAB Reviews.

Sincerely,

Mike T.W. Carey
President, Ohio Coal Association

cc: Ohio Coal Association Board