

ISSUE BRIEF

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War on Coal: A House Bill to Stop the Regulatory Assault

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Coal's share of electricity generation in the United States has been shrinking, partly as a result of low natural gas prices. However, an undeniable reason for coal's demise is the regulatory assault on the industry by the Obama Administration. Alpha Natural Resources recently announced that it would close eight coal mines and eliminate 1,200 jobs in part because of what the company's CEO called "a regulatory environment that's aggressively aimed at constraining the use of coal."¹

Proposed and newly implemented administrative regulations affecting coal will drive up energy costs for American consumers and business owners, destroying jobs and cutting deeper into people's pocketbooks. All of this is being done by unelected bureaucrats in Washington who are protected from

being held accountable by those who are harmed by their policies.

H.R. 3409, the Stop the War on Coal Act, would restrict the federal government's regulatory overreach and reaffirm the states' role in regulating coal activities.

Preventing Regulatory Overreach. H.R. 3409 would prevent the Department of the Interior (DOI) from implementing rules under the Surface Mining and Reclamation Act that would adversely affect coal employment or the amount of coal available for domestic consumption or export, designate areas as unsuitable for surface coal mining and reclamation operations, or expose the U.S. to liability for taking privately owned coal through regulatory dictate.

This would prohibit the DOI's recent revision of the Stream Buffer Zone Rule that vaguely defines permit requirements, monitoring, and stream classifications, which it applies to both surface and underground mining and would destroy jobs and remove the state's regulatory flexibility.

H.R. 3409 would also repeal the Environmental Protection Agency's (EPA) endangerment finding that carbon dioxide is a pollutant and prevent the EPA from regulating

carbon dioxide and other greenhouse gas emissions under the Clean Air Act. The EPA's unilateral attempt to regulate greenhouse gases would drive up energy costs and prevent the construction of new coal-generated power plants while having no noticeable impact in reducing global temperatures. Congress should take it a step further by preventing the EPA and any other federal regulators from using any environmental act (for instance, the Endangered Species Act, Clean Water Act, and National Environmental Policy Act) to impose regulations based on reducing greenhouse gas emissions.

Holding Unelected Officials Accountable. Title III of H.R. 3409 would instruct the President to create an interagency committee to examine the full impact of several major environmental regulations on agriculture, consumers, small businesses, state and local governments, labor markets, public health, and low-income communities. The temporary committee would examine nine major environmental rules to shed light on the true costs and benefits of these rules, including costly new mercury, coal ash, and cross-state air pollution rules.

While this idea certainly has merit, agency economic analyses too

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often succumb to political pressures. For example, in 2009, the EPA said that cap-and-trade legislation would cost only a postage stamp per day—despite reports by liberal, conservative, and independent organizations that it would destroy millions of jobs and trillions of dollars in economic activity.²

A more effective method of instituting accountability would be to require congressional approval before any major regulation takes effect. This would allow elected officials to weigh in on important, economy-changing regulations and encourage open debate on the costs and benefits of proposed rules.

Restoring the States' Authority. H.R. 3409 would reaffirm the state's role in regulating coal ash and working with the federal government to approve Clean Water Act permits. The legislation would forbid the EPA from classifying coal ash as a hazardous waste.

Coal ash is commonly recycled to make cement, drywall, asphalt, and bricks. Businesses process coal ash to make plastics lighter and stronger and as filler in wood products. Coal ash was even used to make the concrete in the EPA's headquarters building. Businesses reuse almost half of the coal ash produced annually in electricity generation. H.R. 3409 would allow states to create their own regulatory permit programs for coal ash disposal and management.

Further, the legislation would prevent the EPA from revoking Clean

Water Act Section 404 permits and allow the Army Corps of Engineers to work with state regulators to issue these permits. In January 2011, in an unprecedented move, the EPA revoked a water permit issued by the Army Corps of Engineers in 2007 for a West Virginia mine. Despite important court victories that allowed those miners to get back to work, environmental groups are urging the EPA to appeal and to continue to usurp the authority of the Army Corps of Engineers and states in issuing water quality permits, thereby creating further uncertainty in the mining industry. H.R. 3409 would prevent such overreach.

Additional Steps to Take. While the legislation goes a long way to protect the coal industry from unnecessarily burdensome regulations, there is even more that federal regulators are doing to shut down coal mining operations, particularly the Mine Safety and Health Administration (MSHA).

Mine worker safety is critically important. U.S. mining is constantly improving mining safety and has implemented CORESafety, a new safety and health management system that commits the industry to eliminating fatalities and reducing the mining injury rate by 50 percent within five years.

However, MSHA is imposing unneeded rules that are being implemented in unworkable time frames and creating one-size-fits-all regulations that ignore regional differences

in mining operations or remove responsibility from miners. Congress should require MSHA to restructure proposed safety worker laws to allow for more workable time frames and withdraw those laws that harm workers more than they help them.³

Congress should also repeal New Source Review, a bureaucratic mess that prevents plants from operating at optimal efficiency. This would not only improve plant efficiency and reduce emissions but also increase power generation to meet U.S. energy needs. Repeal would create incentives for utilities to install technology upgrades to improve plant efficiency and make other environmental improvements and increase electricity supply with new coal, natural gas, or nuclear power plants.

Congress Fights Back in the War on Coal. The Obama Administration is using a number of regulatory avenues to reduce coal's portion of American energy production by creating an environment in which coal production's decline is inevitable. Overall, H.R. 3409 goes a long way toward reversing the regulatory avalanche that threatens to needlessly shrink the percentage of coal use and increase energy costs for businesses and consumers.

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1. Vicki Smith, "Alpha Closing 8 Mines, Cutting 1,200 jobs in All," Associated Press, September 18, 2012, http://hosted.ap.org/dynamic/stories/U/US_ALPHA_LAYOFFS_VAOL-?SITE=VADAR&SECTION=HOME&TEMPLATE=DEFAULT (accessed September 18, 2012).
2. See Nicolas D. Loris, "Cap and Trade: A Comparison of Cost Estimates," Heritage Foundation *WebMemo* No. 2550, July 20, 2009, <http://www.heritage.org/research/reports/2009/07/cap-and-trade-a-comparison-of-cost-estimates>.
3. For specific MSHA regulations to reform, see Nicolas D. Loris, "The Assault on Coal and the American Consumer," Heritage Foundation *Backgrounder* No. 2709, July 23, 2012, <http://www.heritage.org/research/reports/2012/07/the-assault-on-coal-and-american-consumers>.