



# THE WAR ON COAL

EPA'S REGULATORY INITIATIVES IMPACTING THE COAL INDUSTRY

## **ACKNOWLEDGEMENTS**

We would like to thank the following people who helped put this publication together:

Roberta James  
David A. Moss

## **EPA's Regulatory Initiatives Impacting the Coal Industry**

Prepared for the Kentucky Coal Association by:

George L. Seay, Jr.  
Lesly A.R. Davis  
Courtney Ross Samford  
Wyatt, Tarrant & Combs, LLP  
250 West Main Street, Suite 1600  
Lexington, KY 40507





On behalf of the Kentucky Coal Association (KCA) and its member companies, we would like to thank Courtney Ross Samford, George L. Seay Jr., and Lesly A.R. Davis with the Law Firm of Wyatt, Tarrant, & Combs, LLP for this white paper entitled *EPA's Regulatory Initiatives Impacting the Coal Industry*.

At KCA, we believe it is necessary to explain how President Obama and his Administration are thwarting job creation through an overreaching Environmental Protection Agency (EPA). This white paper contains the Top 10 regulatory obstacles created under Administrator Lisa Jackson at the EPA in the President's first term.

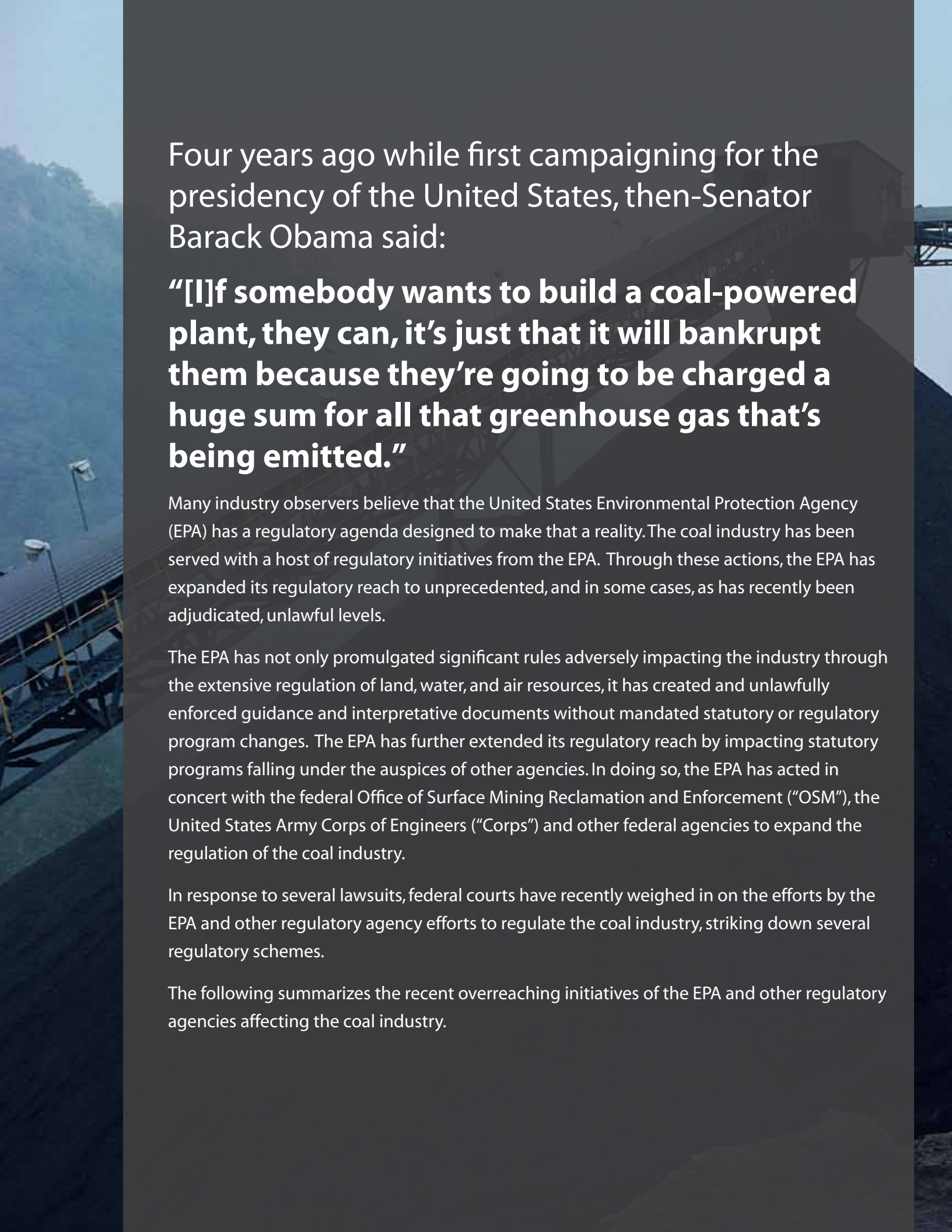
For more than sixty years, KCA remains committed to continuing its tradition of telling the story of Kentucky coal. The representation of our membership includes Eastern and Western Kentucky operations, as well as surface and underground production. This statewide membership creates a diverse but representative perspective on issues involving our coal industry. This diversity allows the Association to build a consensus approach in problem solving and addressing the complex challenges facing our industry today.

Please contact me at KCA with any questions or comments in regards to the compilation and distribution of this publication at 859/233-4743 or by email at [bbissett@kentuckycoal.com](mailto:bbissett@kentuckycoal.com).

Sincerely,

A handwritten signature in black ink that reads 'Bill Bissett'. The signature is written in a cursive, flowing style.

Bill Bissett, President  
Kentucky Coal Association



Four years ago while first campaigning for the presidency of the United States, then-Senator Barack Obama said:

**“[I]f somebody wants to build a coal-powered plant, they can, it’s just that it will bankrupt them because they’re going to be charged a huge sum for all that greenhouse gas that’s being emitted.”**

Many industry observers believe that the United States Environmental Protection Agency (EPA) has a regulatory agenda designed to make that a reality. The coal industry has been served with a host of regulatory initiatives from the EPA. Through these actions, the EPA has expanded its regulatory reach to unprecedented, and in some cases, as has recently been adjudicated, unlawful levels.

The EPA has not only promulgated significant rules adversely impacting the industry through the extensive regulation of land, water, and air resources, it has created and unlawfully enforced guidance and interpretative documents without mandated statutory or regulatory program changes. The EPA has further extended its regulatory reach by impacting statutory programs falling under the auspices of other agencies. In doing so, the EPA has acted in concert with the federal Office of Surface Mining Reclamation and Enforcement (“OSM”), the United States Army Corps of Engineers (“Corps”) and other federal agencies to expand the regulation of the coal industry.

In response to several lawsuits, federal courts have recently weighed in on the efforts by the EPA and other regulatory agency efforts to regulate the coal industry, striking down several regulatory schemes.

The following summarizes the recent overreaching initiatives of the EPA and other regulatory agencies affecting the coal industry.



## “ENHANCED COORDINATION” AND “DETAILED GUIDANCE”

In June 2009, the EPA, the Corps and the Department of Interior entered into a *Memorandum of Understanding Implementing the Interagency Action Plan on Appalachian Surface Coal Mining* (“MOU”), and a *Memorandum to the Field on Enhanced Coordination Procedures for Pending Permits* (“EC”). These documents purported to implement an interagency plan for the review and issuance of Clean Water Act (“CWA”) Section 404 “dredge and fill” permits. The Enhanced Coordination Process (“EC Process”) applied only to applications for Corps CWA Section 404 permits for

---

### **The court found that the EPA had no authority to enhance its role in permitting responsibilities properly assigned to the Corps under the CWA.**

---

surface coal mining activities in Appalachia (Ohio, Virginia, West Virginia, Pennsylvania, Kentucky and Tennessee). As part of the EC Process, the EPA became increasingly involved in CWA Section 404 activities. The EPA was given the authority, through the application of a Multi-Criteria Integrated Resource Assessment (“MCIR Assessment”), to specify which permit applications must be subject to the extensive EC Process. The EC Process was not subject to public notice or comment and resulted in significant delays in the issuance of dozens of CWA Section 404 permits.

Thereafter on April 1, 2010, the EPA released its “Interim Detailed Guidance” entitled, *Improving EPA Review of Appalachian Surface Coal Mining Operations Under the Clean Water Act, the National Environmental Policy Act, and the Environmental Justice Executive Order*. As with the EC Process, the Interim Detailed Guidance was aimed at Appalachian surface coal mining and was developed without advance notice or opportunity for public input, despite the fact that it was declared immediately effective. The Interim Detailed Guidance, applicable to CWA Section 402 permits (NPDES/water quality) and CWA Section 404 permits, imposed, among other requirements, a *de-facto* water quality standard for specific conductivity for streams impacted by surface coal mining. On July 21, 2011, the Interim Detailed Guidance was withdrawn and Final Detailed Guidance, which included the numerical conductivity benchmark, was issued in its place.

On July 20, 2010, the National Mining Association (“NMA”) filed a Complaint in the action styled *National Mining Association v. Jackson, et. al.*, Case No. 10-cv-01220 (D.D.C.) seeking declaratory and injunctive relief against multiple federal defendants, including the EPA and the Corps. In January 2011, the court denied NMA’s motion for a preliminary injunction, but it also denied the federal defendants’ motion to dismiss. After that ruling, four cases pending in district courts in West Virginia and Kentucky were transferred and consolidated with the NMA action. This included a challenge brought by the Kentucky Coal Association (“KCA”) against the EPA, and other defendants in the U.S. District Court for the Eastern



District of Kentucky challenging the EPA's Interim Guidance. The KCA contended that EPA's issuance of the Interim Guidance violated the Administrative Procedures Act and the Clean Water Act by ignoring public notice and comment rulemaking requirements and unlawfully usurping the state's role in establishing water quality standards under the CWA. After consolidation of the various actions and the filing of amendments to include challenges to Final Detailed Guidance, the court bifurcated the two separate challenges to the EC Process and the Detailed Guidance.

In a significant victory for the industry, in October 2011, the court granted the plaintiffs' first motion for partial summary judgment, finding that the EPA exceeded its statutory authority under the CWA. The court found that the EPA had no authority to enhance its role in permitting responsibilities properly assigned to the Corps under the CWA. In addition, the EC Process, including the MCIR Assessment, was found contrary to Section 404 of the CWA and deemed unlawfully issued in contravention of the Administrative Procedures Act.

Most recently, on July 31, 2012, the district court issued another victory when it again entered

summary judgment in favor of KCA, NMA and the other plaintiffs in their challenge to the detailed guidance. The court rejected the EPA's efforts to use guidance documents to force permit applicants and state regulators to accept conductivity benchmarks as water quality indicators. The court held that neither the CWA nor the Surface Mining Control and Reclamation Act ("SMCRA") grants the EPA authority to intrude into SMCRA's permitting scheme nor to otherwise impose its will without proper rulemaking. The district court also rejected the EPA's efforts to remove "reasonable potential analysis" from state regulator control while noting that the decision as to when a "reasonable potential analysis" must be made is solely a state permitting action.

Although appeals of these decisions have been filed, the court's decisions in the KCA/NMA litigation are groundbreaking. The decision has affirmed industry's longstanding belief that the EPA's efforts to significantly curtail issuance of CWA Section 402 and 404 permits in Appalachia is unlawful. As a result of the NMA decision, many believe that state regulators will soon issue CWA Section 402 discharge permits withheld as a result of objections to the permits by the EPA under its Detailed Guidance.



## SPRUCE NO. 1 – MINGO LOGAN COAL V. EPA

On March 23, 2012, Judge Amy Berman Jackson of the United States District Court for the District of Columbia ruled in the case *Mingo Logan Coal Company, Inc. v. U.S. Environmental Protection Agency*, \_\_\_ F.Supp.2d \_\_\_, 2012 WL 975880 (March 23, 2012 D.D.C.), that the EPA exceeded its authority under Section 404 of the CWA by retroactively revoking a permit that was previously issued to Mingo Logan Coal Company (“Mingo Logan”) by the Corps.

The Corps issued the CWA Section 404 permit to Mingo Logan on January 22, 2007. The permit authorized Mingo Logan to lawfully discharge fill material from its Spruce No. 1 mine. Despite the Corps’ issuance of the permit, the EPA published a final determination purporting to invalidate the permit on January 31, 2011. Prior to its “veto” of Mingo Logan’s permit, the EPA had only exercised its CWA Section 404 veto authority on twelve prior occasions, and in each case, the EPA acted before the Corps issued the permit. The EPA “veto” came after a ten year regulatory review and multi-million dollar investment by Mingo Logan.

Mingo Logan sued the EPA alleging that the agency lacked the authority to modify or revoke a CWA Section 404 permit, that the EPA’s decision to revoke the permit was unlawful, and that the permit was still operative. Judge Jackson agreed and found that the EPA is not authorized to invalidate an existing CWA Section 404 permit once issued by the Corps. Judge Jackson further opined that the “EPA’s view of its authority is inconsistent with clear provisions in the [CWA], which deem compliance with a permit to be compliance with the Act, and with the legislative history of Section 404.” Not only had the EPA exceeded its authority, but in the words of the court, resorted to “magical thinking” to justify its action. Accordingly, the court concluded that Mingo Logan’s permit “remains valid and in full force.” The EPA filed its Notice of Appeal on May 15, 2012.

**The Corps issued the CWA Section 404 permit to Mingo Logan on January 22, 2007. The permit authorized Mingo Logan to lawfully discharge fill material from its Spruce No. 1 mine.**



## SACKETT V. EPA

**“There is no reason to think the Clean Water Act was uniquely designed to enable the strong-arming of regulated parties into ‘voluntary compliance’ without the opportunity for judicial review.”**

In another significant victory for the coal industry and other impacted entities and individuals, a unanimous United States Supreme Court struck down another of the EPA's interpretations of the CWA on March 21, 2012. In *Sackett v. EPA*, 132 US 1367 (2012), the nation's highest court found the EPA's reading of the CWA as barring pre-enforcement review to be unreasonable.

The Sacketts owned an undeveloped lot near Idaho's Priest Lake. After filling a piece of their lot with rock and dirt, the EPA issued an administrative compliance order finding that the property contained jurisdictional wetlands. Accordingly, the EPA argued that the Sacketts violated the CWA and ordered them to restore their property. The EPA threatened that failure to comply would result in substantial civil penalties for violating the CWA and the compliance order. In response, the Sacketts requested a hearing to challenge the EPA's determination, but were rebuffed. The Sacketts then sued the EPA which argued that the CWA impliedly bars any review of agency orders until the EPA itself sues for enforcement. Both the district court and the Ninth Circuit found the EPA's reading of the statute reasonable and dismissed the suit for lack of jurisdiction. Unfazed, the Sacketts appealed

further, and the United States Supreme Court granted certiorari.

Justice Scalia wrote for the unanimous court and found that because the EPA's compliance order was a final agency action, and there was no “implied” bar on review of the EPA's orders before enforcement, judicial review of the EPA's order should take place. In declaring the EPA's interpretation of the CWA unreasonable and unfair, Justice Scalia reasoned that “there is no reason to think the Clean Water Act was uniquely designed to enable the strong-arming of regulated parties into ‘voluntary compliance’ without the opportunity for judicial review.” Consequently, the court remanded the Sacketts' case to be reviewed in a lower court.

Although there is some debate over the extent of review permissible under *Sackett*, there is no question that the holding in *Sackett* is a victory for more than just the coal industry. The *Sackett* decision puts those who wish to challenge EPA action in a much stronger position by giving them standing to judicially challenge jurisdictional findings and compliance orders. Some commentators believe that such review may ultimately result in a scaled backed issuance of compliance orders by the EPA, whether under the



# 4

## NATIONWIDE PERMITS



CWA or other environmental statutes, where such review is not expressly prohibited. At a minimum it is expected that the EPA will limit its issuance and use of compliance orders if challenges become overly time consuming or resource intensive.

Under the CWA, certain discharges into waters of the United States may be authorized under “general permits” issued by the Corps. These are referred to as “Nationwide Permits” (“NWP”). In certain cases, an individual permit may be required in lieu of a NWP. The Corps issues NWPs for different categories of activities involving discharges of dredged or fill materials. Surface coal mining activities have traditionally utilized the NWP 21 permit to authorize work in streams, wetlands or other waters of the United States.

In another example of the enhanced regulation of the coal industry, the Corps has fundamentally revised the use of the NWP 21. This is particularly problematic for the coal industry, which is reliant on the use of the NWP program to obtain general permits in a thorough, yet expedited, manner. In June 2010, the Corps suspended use of the NWP 21 in Appalachia. In doing so, the Corps indicated that the use of the NWP 21 in Appalachia may result in more than minimal adverse impacts, and such

activities must be evaluated in accordance with the individual permit program.

After reviewing various proposed options, the Corps reissued its final package of NWPs effective March 19, 2012. Although the NWP 21 for surface coal mining was reissued, the agency severely limited new authorizations for surface mining discharges. The NWP 21 was limited to impacts that do not cause the loss of greater than a half acre of non-tidal waters of the United States. This limit includes the loss of no more than 300 linear feet of stream bed, unless, in the case of intermittent and ephemeral stream beds, the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in minimal undivided and cumulative effects. The Corps also discontinued use of the NWP 21 in the construction of “valley fills,” a newly defined term. The Corps did enact a grandfather policy addressing existing mines covered by NWP 21 permits, but it allowed no expansion of surface coal mining activities in waters of the United States and required Corps “re-verification.” Although district engineers are permitted to waive the limitations for issuance of a new NWP 21, such waiver seems unlikely in view of the fact that it may not be granted absent consultation with the EPA.



## COAL COMBUSTION RESIDUALS/COAL ASH

Coal Combustion Residuals (“CCRs”), commonly known as “coal ash,” are byproducts of the combustion of coal. They include fly ash, bottom ash, slag and flue gas desulfurized gypsum. Most are produced at power plants and disposed of in liquid form at large surface impoundments or in solid form in landfills. Expressing concerns that metals in CCRs could adversely impact human health and pointing to recent structural

---

**... the EPA recently proposed the first ever national rules to govern management and disposal of coal ash under the nation’s primary law for regulating solid waste, the Resource Conservation and Recovery Act (RCRA).**

---

failures at CCR impoundments, the EPA recently proposed the first ever national rules to govern management and disposal of coal ash under the nation’s primary law for regulating solid waste, the Resource Conservation and Recovery Act (“RCRA”).

All solid wastes are subject to regulation under RCRA. RCRA Subtitle C applies to “hazardous” waste, while RCRA Subtitle D applies to non-hazardous solid waste. RCRA Subtitle C imposes a comprehensive regulatory scheme in which hazardous waste is managed from “cradle to grave” through a comprehensive program of federally enforceable requirements for waste management and disposal. Subtitle D allows the EPA to set performance standards which are narrower in scope and which would be enforced primarily by states.

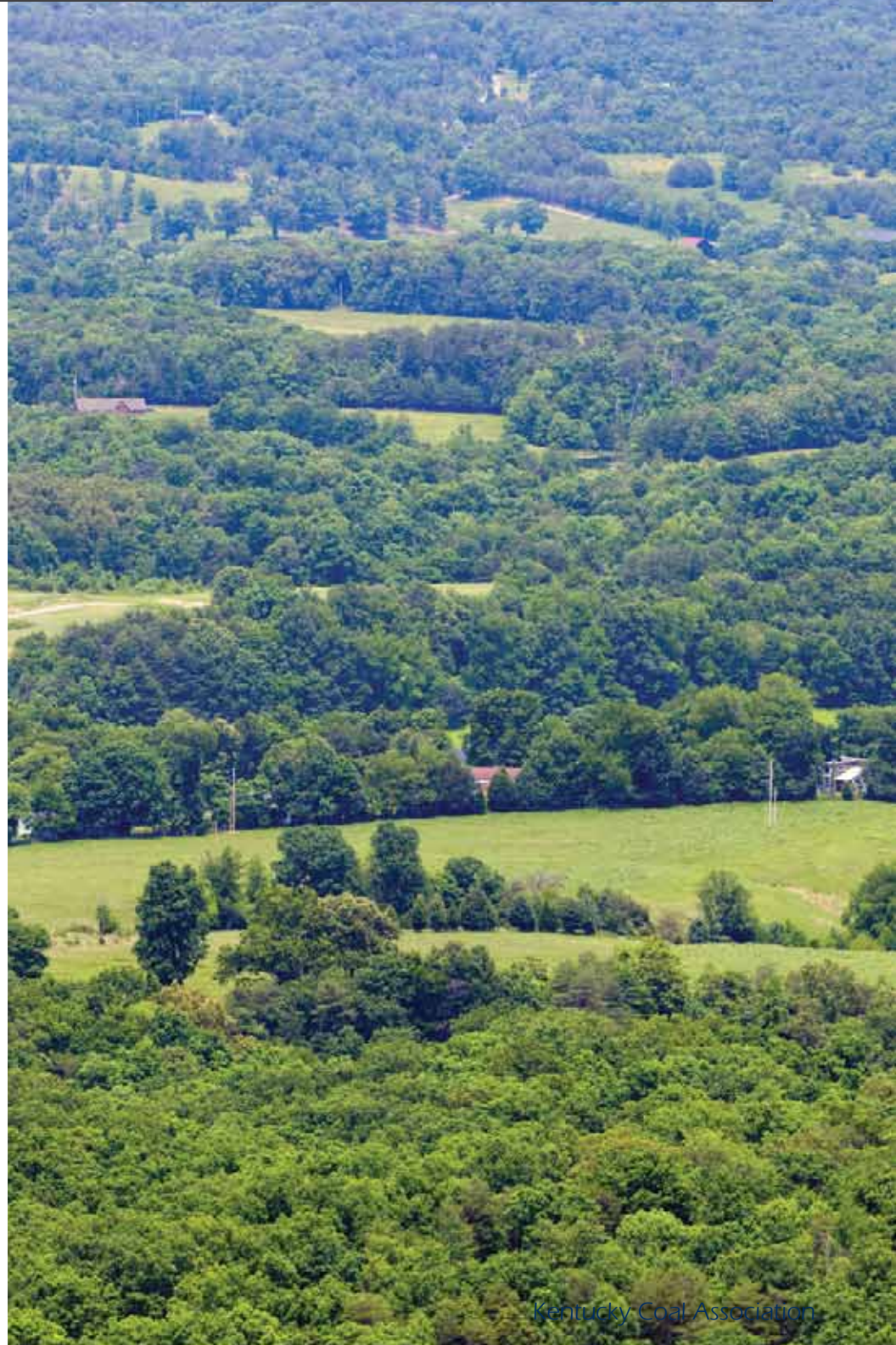
Congress initially recognized that the EPA’s Subtitle C regulations for hazardous waste could apply to coal ash, and it amended RCRA to exempt coal ash from regulation as a hazardous waste. Thereafter, the EPA was directed by Congress

to study coal ash to determine the proper regulatory scheme. Beginning in 1988, the EPA filed a series of reports that contained recommendations exempting coal ash and other residuals from RCRA Subtitle C. In May 2000, the EPA published a final determination finding that coal ash should not be regulated under Subtitle C.

In June 2010, the EPA proposed two alternative approaches to regulating CCR management. One regulates CCRs as a hazardous waste under RCRA Subtitle C, and the alternative regulates them as a solid waste under RCRA Subtitle D. The EPA solicited public comment on the two proposals, held multiple public hearings and received almost half a million comments on the proposals. Environmental groups, frustrated by perceived delay with regard to promulgation of a rule, filed suit on April 5, 2012 to compel the agency to take action. The environmental groups argued that the EPA failed to comply with its duty to review and revise regulations. The NMA has also sought to intervene on behalf of the mining industry. At the same time, the EPA has been sued by

coal ash recyclers arguing that the EPA's delay in finalizing its rule has created uncertainty with regard to beneficial use.

The EPA's final rule is expected some time in 2012, although many commentators believe that the EPA will not announce a decision until after the presidential election. Judging from the Obama administration's historic approach to regulating the coal industry and related industry activities, many believe that the EPA will ultimately regulate coal ash as a hazardous waste subject to RCRA Subtitle C. Whether coal ash is ultimately regulated as a solid or hazardous waste, there is no doubt that the final rule will be subject to judicial challenge by either environmental or industry groups, or both.





## MERCURY AND AIR TOXICS STANDARDS RULE

In December 2000, the EPA made a determination required to regulate hazardous air pollutant (“HAP”) emissions from fossil fuel fired electric generating units (“EGUs”) pursuant to Section 112 of the Clean Air Act (“CAA”). The determination added EGUs as a Section 112 source category and made them subject to the Section 112 requirement to utilize Maximum Achievable Control Technology (“MACT”) to control HAP emissions. During the Bush Administration, the EPA decided to de-list fossil fuel-fired EGUs as a source category and promulgate a mercury emissions cap and trade program under Section 111 of the Act. The EPA called this its Clean Air Mercury Rule (“CAMR”). On February 8, 2008, the D.C. Circuit Court of Appeals found that the EPA failed to follow CAA requirements for delisting EGUs from the Section 112 list of source categories. The court vacated the delisting decision and remanded CAMR back to the EPA to revise to conform with Section 112 requirements.

On March 16, 2011 the EPA proposed MACT standards for coal and oil-fired EGUs, and on February 16, 2012, the EPA finalized those standards in its controversial Mercury and Air Toxics Standards (“MATS”) rule. The MATS rule is designed to reduce emissions of HAPs from new and existing power plants, with mercury emissions being reduced by 90%. The MATS rule, which went into effect on April 16, 2012, is specifically designed to reduce emissions of heavy metals (including mercury, arsenic, chromium, and nickel), dioxins, furans and acid gases (including hydrochloric acid and hydrofluoric acid). It applies to coal and oil-fired EGUs that can generate 25 megawatts or more of electricity. The EPA

estimates that the rule will apply to approximately 1,100 existing coal-fired units and 300 oil-fired units at 600 power plants. Natural gas-fired EGUs are excluded from the rule. According to the EPA's conservative calculations, compliance with the MATS rule will cost at least \$9.6 billion per year.

Numerous interested parties petitioned the EPA to reconsider the rule. In particular, critics argued that the proposed limits cannot be accurately measured, and, even if they could be, the limits are not realistic or achievable, and that the rule provides insufficient time to achieve compliance. Based on this intense industry pressure, the EPA granted the petitions in a letter dated July 20, 2012. The EPA also stayed the monitoring requirements and emissions limits for all new power plants for three months.

---

**While the three-month delay is a minor victory for the industry, the EPA's July 20, 2012 letter indicates a determination to continue with similar regulations.**

---

While the three-month delay is a minor victory for the industry, the EPA's July 20, 2012 letter indicates a determination to continue with similar regulations. In its July 20, 2012 letter, the EPA explained its strategy as follows:



We anticipate that the focus of the reconsideration rulemaking will be a review of issues that are largely technical in nature. Our expectation is that under the reconsideration rule new sources will be required to install the latest and most effective pollution controls and will be able to monitor compliance with the new standards with proven monitoring methods. As a result, the final reconsideration rule will maintain the significant progress in protecting public health

and the environment that was achieved through the rule published in February, while ensuring that the standards for new sources are achievable and measurable.

Consequently, there is little doubt that the rulemaking process, which is expected to continue until March 2013, will result in a rule that is very similar to the current proposal.



## CROSS-STATE AIR POLLUTION RULE

The EPA finalized its Cross-State Air Pollution Rule (“CSAPR”) on July 6, 2011, which was promulgated to replace a Bush Administration rule called the Clean Air Interstate Rule (“CAIR”). CAIR and CSAPR were promulgated to implement a CAA provision obligating states to control emissions that prevent neighboring states from meeting ambient air quality standards. In 2008, the D.C. Circuit Court of Appeals in *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008) found that CAIR did not fulfill CAA requirements and remanded the rule to the EPA. Its replacement, CSAPR, requires twenty-seven “upwind states” in the eastern half of the United States, including Kentucky, to significantly reduce emissions of sulfur dioxide and nitrogen oxide from EGUs. It does this by creating not-to-exceed ozone season and annual emission budgets for the affected states.

Over forty plaintiffs, including fifteen states, challenged the CSAPR in the D.C. Circuit Court. Two days before CSAPR was scheduled to take effect, the D.C. Circuit Court stayed the rule until the litigation is resolved.

On August 21, 2012, the court vacated the CSAPR, holding that it exceeded the EPA’s statutory authority in “two independent respects.” First, the court found that the rule violated the CAA because it required “upwind” states to reduce their emissions by “more than their significant contributions to a downwind State’s nonattainment,” which is a greater imposition than the CAA requires. Second, the court held that by establishing Federal Implementation Plans to impose the CSAPR budgets, the EPA robbed states of “the initial opportunity to implement the required reductions with respect to the sources within their borders” and in doing so exceeded its CAA authority.

The EPA may ask the entire DC Court of Appeals or the US Supreme Court to review this decision, but in any case this decision likely will remain in place until after the 2012 presidential election.



## CARBON POLLUTION STANDARD FOR NEW POWER PLANTS

In 2007, the United States Supreme Court held the CAA gives the EPA authority to regulate greenhouse gas emissions if it determines that they endanger public health or welfare. In 2009, the EPA made the requisite endangerment determination, broadly proclaiming that greenhouse gas emissions threaten public health by contributing to global warming. This finding opened the door to the EPA regulating greenhouse gas emissions under multiple sections of the CAA, including Section 111. Section 111 authorizes emission standards for new stationary sources. On March 27, 2012, the EPA proposed its Carbon Pollution Standard for New Power Plants, to limit carbon dioxide emissions from new fossil fuel-fired EGUs. While greenhouse gas emissions from certain new or modified large stationary sources must be controlled using “Best Available Control Technology”; this is the first time the EPA, or any other regulatory agency, has attempted to establish a rule-based numeric limit on greenhouse gas emission from a stationary source. The rule will not apply to power plants that are currently operating or under construction. However, it imposes a limit on carbon dioxide emissions from new coal-fired units that cannot be met without using carbon capture and sequestration technology. It is clear that the EPA intends to utilize this rule to prevent the construction of any new power plants in the United States.

*Kentucky Coal Association*



## STREAM PROTECTION RULE

The EPA and Corps are not alone in their approach to the regulation of the coal industry. Since 2009, OSM has made significant changes both in its approach to the regulation of the coal industry and in its relationship with state regulatory agencies. The agency increased its oversight of state agencies, and it has re-examined the rules that govern surface coal mining.

OSM is currently in the process of promulgating the Stream Protection Rule ("SPR"), which is intended to replace the 2008 Bush administration Stream Buffer Zone Rule ("SBZ"). When courts refused to allow OSM to simply vacate the 2008 SBZ Rule, the agency entered into an agreement to create a new rule by Summer of 2012. Because the undertaking would have a significant effect, OSM was required by the National Environmental Policy Act ("NEPA") to develop a new Environmental Impact Statement ("EIS"), which is expected to be released in the near future. From all appearances, the new rule will be much broader and intensive in regulatory scope. The proposed changes are expected not only to impact surface coal mining in Appalachia, but they will also have nationwide impacts on coal mining.

While the SPR itself has not been unveiled, there are already estimates as to the negative economic effect it will have on surface coal mining. In fact, OSM severed its contractual relationship with the contractor hired to create the EIS after adverse economic impact statistics were leaked. Thereafter, OSM sought to modify the assumptions in order to reduce the projected impacts. The rule is expected to result in a drastic decrease in surface coal mining in Appalachia and potentially render certain United States coal unmineable, including some coal in the Appalachian region. The expected rule could result in the loss of thousands of Appalachian coal industry jobs, with massive spillover economic losses. Moreover, permitting will be much more complex, time consuming, and more expensive. A number of issues have been raised, including the technological and economic assumptions underlying the anticipated rule, the scope and breadth of the anticipated rule, and the formulation of OSM's "preferred alternatives." When it is finally unveiled, the SPR is sure to be challenged in the courts with allegations of procedural and substantive irregularities in violation of NEPA, the CWA, and SMCRA itself.



## PROPOSED REGULATORY ACTION

The last entry in this list is not a particular regulation or agency guidance. Instead, it briefly summarizes a variety of increased regulatory action that may impact the coal industry. For example, the EPA has indicated its intent to promulgate regulations concerning effluent limitation guidelines for steam electric power generation, standards for cooling water intake structures, the regulation of selenium in CWA Section 402 Permits and mandatory carbon capture and sequestration. In addition, the EPA has placed a greater emphasis on Environmental Justice and Natural Resource Damage Assessments. All of these actions may result in a financial burden on coal producers and users.



**KENTUCKY COAL ASSOCIATION**  
2800 PALUMBO DRIVE, SUITE 200  
LEXINGTON, KENTUCKY 40509  
PHONE: 859-233-4743

**[WWW.KENTUCKYCOAL.COM](http://WWW.KENTUCKYCOAL.COM)**