AppalachianVoices

Appalachian Voices Opposes H.R. 3409, the "Coal Miner Employment and Domestic Energy Infrastructure Protection Act"

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H.R. 3409, the inaccurately named "Coal Miner Employment and Domestic Energy Infrastructure Protection Act," is all about protecting the coal industry's ability to continue mountaintop removal mining in Appalachia, although it would also derail efforts to protect streams from underground longwall mines. Mountaintop removal is a highly destructive form of coal mining that involves blasting the tops off of mountains to access thin seams of coal and then dumping the waste and debris into nearby valleys and streams. Not only has this practice obliterated 500 of the oldest and most biodiverse mountains on the continent, but it has buried more than 2,000 miles of streams and polluted the headwaters of the drinking water supply of millions of Americans.

H.R. 3409 aims to delay the Office of Surface Mining, Reclamation, and Enforcement (OSMRE) as they rewrite the Stream Protection Rule (SPR). It is important to note that OSMRE has not even proposed a draft rule, and that predictions about job losses are based on unrealistic assumptions and worst-case scenarios that only serve to obfuscate the important issues the rule is meant to address.

The bill also wrongly assumes that an SPR would reduce coal production and coal mining jobs. Coal miner employment in Appalachia has not suffered since EPA, OSMRE, and the U.S. Army Corps of Engineers initiated greater scrutiny of surface mining permits. It has in fact gone up. Mining companies extract no more and no less coal than the market dictates (See: Figure 1). In order to do that when mountaintop removal mining permits are harder to acquire, there has been an increase in underground mining. Underground mining uses 50% more workers, and, as a result, mining jobs in Appalachia have risen since the start of the recession by 10% (See: Figure 2). A strong SPR would continue this trend by discouraging surface mining pollution.

The bill would not only prevent OSMRE from writing a new SPR, but it would undermine the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Citizen rights are taken away with the elimination of OSMRE's ability to designate an area as unsuitable for mining in Section (4). What may be overlooked is that such designations are made in response to Lands Unsuitable for Mining Petitions led by either citizens or local municipalities to protect their homes and drinking water. The process for designating an area as unsuitable for mining begins with the filing of a petition by "[a]ny person having an interest which is or may be adversely affected" by such mining. Id. § 1272(c). In other words, **this section does not limit government; it strips away the rights of citizens to protect their communities**. It takes power from the people and hands it to the coal industry. This section is perhaps the most egregious and damaging aspect of the bill.

Analysis:

The Secretary of the Interior may not, before December 31, 2013, issue or approve any proposed or final regulation under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.) that would—

(1) adversely impact employment in coal mines in the United States;

Current efforts to limit pollution from surface mining have not hurt overall employment in coal mines in the United States, so there is no reason the continuation of these efforts in the form of a strong Stream Protection Rule would adversely impact employment in coal mines.

(2) cause a reduction in revenue received by the Federal Government or any State, tribal, or local government, by reducing through regulation the amount of coal in the United States that is available for mining;

While a Stream Protection Rule would not reduce the amount of coal available on the market, it would reduce the amount available for mining by creating a buffer around streams. It's not clear, however, that reducing the amount of coal available for mining would cause a reduction in revenue for government. Companies would continue to mine the desired tonnage of coal, pay the same fees on that tonnage, and still need leases for the land they mine.

(3) reduce the amount of coal available for domestic consumption or for export;

No regulation by OSMRE would reduce the amount of coal available on the market for domestic consumption or export, as the amount of coal produced is driven by demand and there is sufficient unused capacity at already-permitted and active U.S. mines to support a massive increase in coal demand in the unlikely event that such demand were to materialize (see Figure 1). Coal companies would likely argue that any reduction in access to coal by creating a buffer around streams would count as a reduction in the amount available for consumption, regardless of the market demands for that coal. If federal agencies and courts agreed, then this would prohibit OSMRE from doing anything that would stop a company from mining coal even if that mine site needlessly polluted streams.

(4) designate any area as unsuitable for surface coal mining and reclamation operations;

Such designations are made in response to Lands Unsuitable for Mining Petitions led by either citizens or local municipalities to protect their homes and drinking water. The process for designating an area as unsuitable for mining begins with the filing of a petition by "[a]ny person having an interest which is or may be adversely affected" by such mining. Id. § 1272(c). This section removes citizen rights while promoting mountaintop removal mining.

(5) expose the United States to liability for taking the value of privately owned coal through regulation.

The Supreme Court has many times affirmed the right of federal agencies to promulgate regulations that protect the public interest even if they restrict activities on private land. This section is predicated on a legal theory that has not held up to scrutiny by the Supreme Court and numerous federal courts. Thus, it's unclear what relevance it would have unless the Supreme Court overturns its traditional interpretation of broad federal power to protect citizens from activities on private lands that are harmful to the public interest.

Figure 1: Coal Mine Utilization

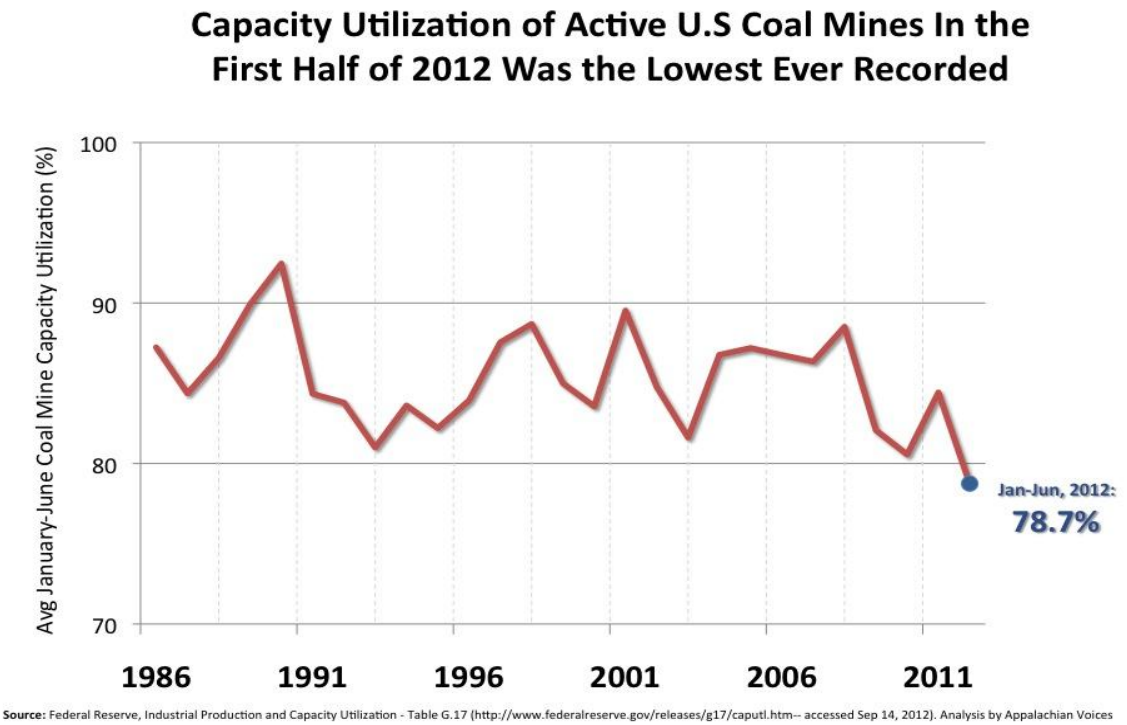

Figure 2: Appalachian Coal Mining Jobs