



## **Strategic and Critical Minerals**

**Pass Senator Lisa Murkowski's (R-AK) Energy Policy Modernization Act of 2015 (S.2012)  
so it can be conferenced with  
the National Strategic and Critical Minerals Production Act (H.R.1937)**

### **These bills seek to:**

- Allow for the responsible development of American mineral resources.
- Revitalize the United States' critical minerals supply chain by directing the USGS to establish a list of minerals critical to the U.S. economy and providing a comprehensive set of policies that will bolster critical mineral production, expand manufacturing, and promote recycling and alternatives - all while maintaining strong environmental protections.
- Address mine permitting delays by requiring more efficient development of domestic sources of the minerals and mineral materials of strategic and critical importance to the U.S. economy, national security, and manufacturing competitiveness.

### **Issue Highlights:**

America needs reliable, economically-feasible, sources of domestic minerals.

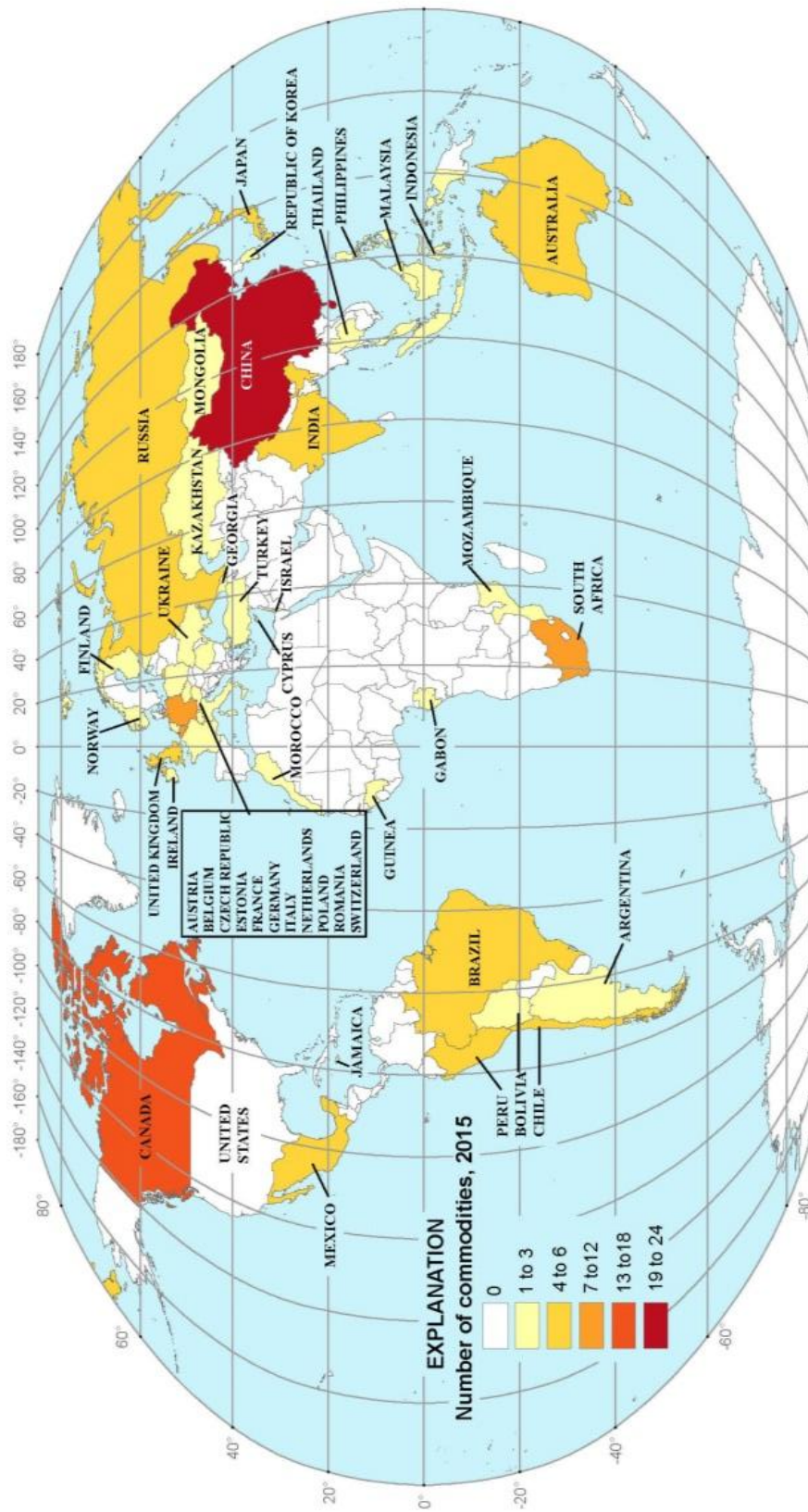
- The U.S. has become increasingly dependent on foreign sources of strategic and critical minerals; this vulnerability has serious national defense and economic consequences.
- According to the U.S. Geological Survey, the U.S. is more than 50% import-reliant for 41 critical and strategic minerals (the U.S. is roughly 50% import reliant on crude oil) and 100% import reliant for 17 critical and strategic minerals, despite having the third largest source of mineral wealth in the world.
- Many of our minerals are imported from countries with policies of resource nationalism. Anticompetitive market manipulation has direct consequences on U.S. jobs and manufacturing

Currently the United States lacks a coherent national policy to assure domestic availability of minerals essential for national economic well-being, national security, and global economic competitiveness.

- For national defense and national security requirements
- For the nation's energy infrastructure including pipelines, refining capacity, electrical power generation and transmission, and renewable energy production
- To support domestic manufacturing, agriculture, housing, telecommunications, healthcare, and transportation infrastructure
- For the nation's economic security and balance of trade

**WMC supports passage of S. 2012  
Creating high-paying jobs in both mining and manufacturing.**

**MAJOR IMPORT SOURCES OF NONFUEL MINERAL COMMODITIES FOR WHICH THE UNITED STATES WAS GREATER THAN 50% NET IMPORT RELIANT IN 2015**





## **Stop Duplicative, Costly, and Unnecessary EPA CERCLA §108(b) Financial Assurance Rulemaking**

The EPA CERCLA §108(b) rulemaking to require duplicative financial assurance is unnecessary, may preempt existing states' programs, and drive mining investment and jobs from the U.S., harming the Nation's economic and national security and increasing the U.S. reliance on foreign sources of critical and strategic minerals, jeopardizing the global competitiveness of the U.S.

As a result of a D.C. Circuit lawsuit, EPA is under a court order to issue a proposed rule for the hardrock mining industry by Dec. 1, 2016, and a final rule by Dec. 1, 2017.

- There is an existing comprehensive framework of laws, regulations and financial assurance requirements for all modern mining operations which has a proven track record at both federal and state levels.
- Throughout its rulemaking process, the EPA has not made the requisite finding that hardrock mines actually pose a risk of becoming future Superfund sites that would require expenditure of public funds for cleanup costs.
- Since 1990, BLM and USFS have approved more than 3,300 mining plans of operation; none of these mines have been placed on the CERCLA NPL.
- On September 16, 2015, before the Senate Committee on Environment and Public Works, EPA Administrator Gina McCarthy stated that this particular rulemaking will not address abandoned mine cleanup efforts such as those required at Gold King, Colorado.
- Western Governors' Association adopted Resolution 2014-07 opposing EPA's CERCLA 108(b) rulemaking. Importantly, EPA does not have a mandatory statutory duty to pursue these requirements.

**WMC supports the provisions included in the 2016 House and Senate Interior and Environment Appropriations bills that prohibit the EPA from finalizing and implementing any regulation that would establish new financial responsibility requirements.**

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# **DOI's Regulatory Initiatives for Coal Will Impede Energy Development, Destroy Jobs, and Severely Erode Federal & State Tax Revenue**

Recent Department of the Interior (DOI) coal initiatives continue the Administration's misguided agenda of issuing new rules to delay or stop energy development and mining despite severe harm that would be inflicted, and with little regard for validating or justifying new rules.

1) **Overview of Stream Protection Rule** – In July 2015, DOI's Office of Surface Mining, Reclamation and Enforcement (OSM) proposed a sweeping rewrite of its regulatory program under the Surface Mining Reclamation and Enforcement Act. The Congressional Budget Office expects that the rule would increase coal operating costs and reduce production. Analysis of the proposed rule (described below) confirms that. It shows severely reduced coal production, massive job loss, and significant erosion of federal and state tax revenues. This massive economic devastation would do little to improve the environment, as OSM's own annual reviews show adequate stream protection under existing regulations.

2) **Overview of Federal Coal Leasing Program Reforms**– Coal mined under federal leases is important to America's energy needs, accounting for about 40% of total U.S. coal production. In January 2016, DOI Secretarial Order 3388 imposed a federal coal leasing moratorium of at least 3 years while DOI performs a comprehensive review of the Federal Coal Leasing Program. The Bureau of Land Management (BLM) estimates that nearly 1.9 billion tons of coal reserves in 9 states will be placed off limits during the review. In addition to the moratorium, DOI plans other changes. The Office of Natural Resources Revenue (ONRR) plans to change the coal valuation structure, despite effective results from the existing valuation program (\$4.8 billion paid in taxes and royalties by coal producers over a 3-year period). The BLM plans to change the royalty rates for coal mined on federal lands, including possibly raising the royalty rate by 50% for surface mining, from 12.5% to 18.75%.

## ***DOI Office of Surface Mining Reclamation & Enforcement's Stream Protection Rule***

While OSM initially sought to address surface coal mining operations in Appalachia, that undertaking morphed into a comprehensive, nationally applicable stream protection rule affecting both surface and underground mines. The rule is lengthy, redundant and duplicative, overlapping with the jurisdictions of others including the Environmental Protection Agency, the U.S. Army Corps of Engineers, and state agencies. It was proposed in spite of serious objections to the rulemaking effort raised by some Governors, State cooperating agencies, the Interstate Mining Compact Commission (representing state coal mining regulators), and the Western Governors' Association. OSM's failure to properly inform and engage the states on the SPR has been widely criticized by stakeholders.

Regarding potential environmental improvement, there is little basis for OSM's claim that a new rule is needed to better protect streams impacted by mining operations. OSM's own Annual Evaluation Reviews of state programs routinely show effective performance and adequate stream protection.

An analysis of the SPR was completed by Ramboll Environ Corporation for National Mining Association in October 2015. While lacking in benefits to the natural environment, this proposed rule will take a huge toll on the *human environment*. Since 2011, 40,000 coal mining jobs have already been lost. **This rule puts an additional 40,038 to 77,520 coal mining jobs at risk. In total, it puts mining and mining-related jobs of 112,757 to 280,809 at risk – 30% to 75% of current employment levels!** This rule would also severely limit the ability to mine and develop a world class resource critical to U.S. energy, economic, and national security. The **United States has nearly 30% of all global coal reserves**, more than any other country. **The rule would needlessly limit recovery of a vast amount of those reserves, 27% to 64% of them. That equates to a value of \$14 to \$29 billion per year of coal not produced. Federal and state tax revenue potentially foregone due to this lost coal production is \$3.1 to \$6.4 billion annually.**

### ***DOI's Moratorium on New Federal Leases and Reform of the Federal Coal Leasing Program***

Changing the coal valuation structure and raising royalty rates are misguided initiatives. Recent investigations by the Government Accountability Office and the Inspector General at DOI have shown the programs to be effective. There was no evidence of royalty underpayment, and there were no recommendations to change royalty valuation methods. DOI is also considering other program reforms, including phasing out the leasing of federal coal completely. It also includes changes to address environmental concerns and climate impacts, but such reform is unnecessary. Leases already undergo multi-layered environmental reviews, and climate effects are already subject to review under the NEPA (National Environmental Policy Act) process.

The moratorium and programmatic review will **put at risk nearly 65,000 direct and indirect mining jobs and billions of tax revenue dollars in Alabama, Arkansas, Colorado, Kentucky, Montana, North Dakota, Oklahoma, Utah, and Wyoming.** And with coal already under extreme market and regulatory pressures, changing the coal valuation and royalty rate structure and terms to make it more onerous for coal mining companies will not generate increased tax revenue. It will reduce mining investment and coal production, and destroy more good coal jobs. It will lower tax revenues used to pay for infrastructure and local schools. Further, it will be inconsistent with DOI's mandate under the Mineral Leasing Act to provide for the maximum economic recovery from coal on federal lands.

In summary, the Stream Protection Rule and Federal Coal Leasing Program changes would keep coal in the ground and substantially impair the coal industry's ability to meet our nation's energy needs. They will add to a growing list of unworkable federal regulations for coal mining and use that are complex, ambiguous, over-reaching, counterproductive, and costly.

**WMC appreciates the passage of H.R. 1644, the Supporting Transparent Regulatory and Environmental Actions in Mining Act ("STREAM" Act), introduced by Representative Mooney. We urge the Senate's passage of S. 1458 introduced by Senator Coats.**

**WMC requests reduced funding for OSM's regulatory program, along with not funding the SPR rulemaking process.**

**WMC advocates for an amendment to must-pass legislation, or efforts through the appropriations process, to halt DOI's federal coal leasing moratorium and federal coal leasing program changes squarely aimed at keeping coal in the ground.**



## **EPA’s Carbon Regulations for the Power Sector – Costly, Contentious Mandates Void of Climate Benefits**

The Environmental Protection Agency’s (EPA) CO<sub>2</sub> emissions regulations for existing and new electric generating plants are an attempt to turn America away from affordable, reliable coal-fueled electricity. These regulations will impose huge costs and risks, inflicting enormous and unnecessary burdens on states, businesses, and families. They will destroy good jobs, impede economic growth, threaten the reliability of our nation’s world-class electricity grid, force higher electricity bills, and disproportionately affect low-income and fixed-income households. The global competitiveness of American businesses will be weakened, and U.S. development and export of coal technology solutions will fade. All of this regulatory-induced pain and dislocation will be inconsequential for the climate, as U.S. CO<sub>2</sub> emissions reductions will be overwhelmed by CO<sub>2</sub> increases from other countries.

### **“Clean Power Plan” Regulation for Existing Power Plants – Clean Air Act §111(d)**

**Electric Sector Impacts** - The rule’s strict CO<sub>2</sub> emissions targets for states would set America on a long term path of higher cost, inefficient, and intermittent renewable sources for electric generation. **EPA has projected the shutdown of 38,000 MW of coal capacity for compliance with the rule.** (1,000 MW powers 750,000 homes.) This is in addition to over 65,000 MW already closed for reasons including prior EPA regulations. With such drastic reductions in capacity, coal plants will be far less available to back up renewables or to buffer spiking natural gas prices. **The rule would also undermine about \$111 billion in investments through 2015 to upgrade coal plants to meet other EPA regulations, stranding many of these investments.** As for replacing the 38,000 MW of coal capacity with wind or solar, huge amounts of redundant generation would need to be built due their intermittent availability. According to the North American Electric Reliability Corporation, solar and wind are counted at about 25% and 20% capacity, respectively, for reliability planning purposes. Coal is counted at 90%. **Each MW of coal would require 3.5 MW of solar or 4.5 MW of wind to replace it – necessitating a total of between 133,000 and 171,000 MW to replace 38,000 MW of coal.**

**Economic and Consumer Impacts** – NERA Economic Consulting projects the **Clean Power Plan will cost at least \$29 billion per year.** Family energy costs have been rising, in large part due to the costs of other EPA regulations. At the same time, family incomes are declining. Low income families face hard choices, and the **double digit annual electricity rate increases anticipated** as a result of this rule will intensify the challenges they already experience:

- 24% have gone without food for at least a day
- 37% went without medical or dental care
- 34% did not fill a prescription or took less than a full dose

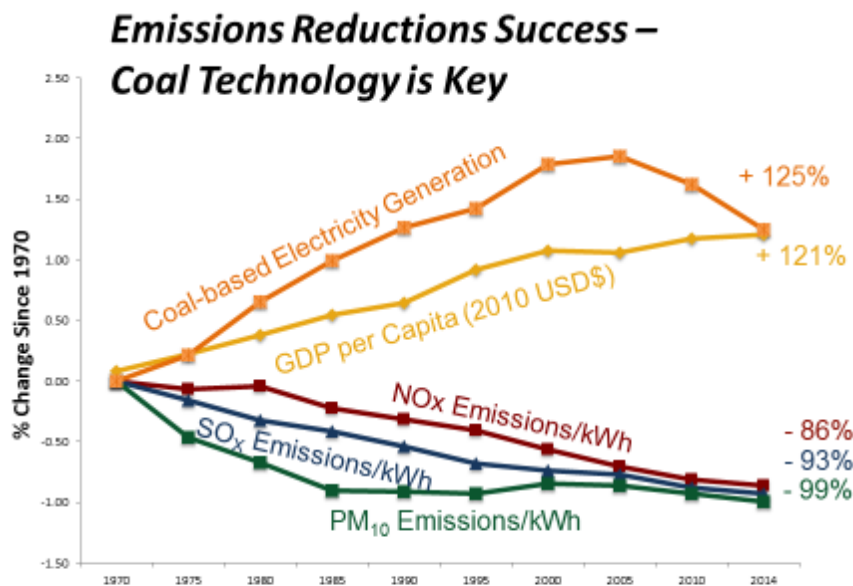
**Climate Impacts** – Per the American Coalition for Clean Coal Electricity’s analysis, **the emissions increase from other countries by 2025 will cancel out 30 years’ worth of emission reductions from the Clean Power Plan.**

**Legal Challenges** – EPA’s final “Clean Power Plan” resulted in lawsuits filed by 27 states in opposition. The states were joined by 32 national and state trade associations representing 80% of the U.S. economy. In February 2016, the **Supreme Court took the unprecedented action of issuing a stay of the Clean Power Plan.** The stay halts the rule and all deadlines in it until the D.C. Circuit Court of Appeals completes its proceedings on the case. That, and an expedited hearing schedule the D.C. Circuit has already committed to, demonstrate that the nation’s most senior legal authorities have serious concerns with the rule.

## GHG/Carbon Regulations for New, Modified, or Reconstructed Power Plants – Clean Air Act §111(b)

**Unworkable CO<sub>2</sub> Standard for New Coal Plants** – The rule’s CO<sub>2</sub> emissions standard for coal is 1,400 lbs./CO<sub>2</sub>/MWh, requiring the use of Carbon Capture and Storage (CCS) technology. The standard for natural gas is 1,100 lbs./CO<sub>2</sub>/MWh which is achievable with existing natural gas combined cycle technology. As set by EPA, these standards severely tilt the playing field away from new coal plants. The first commercial scale CCS application *in the world* – located in Canada – only began operations in the fall of 2014. EPA’s rule inhibits private investment for the continued development of CCS technologies in the U.S. to push them forward to maturity and cost-effectiveness.

**Detrimental to All Coal Technology Advancement** – The rule will cripple all coal technology. It will halt the construction of state-of-the-art, advanced coal power plants important to maintaining fuel diversity and reliability. Policy must change course to support the continued use of the energy resource more abundant in the U.S. than in any other country in the world—coal.



Approximately \$111 billion was invested through 2015 to achieve these emissions reductions.

Source: USDA 2015 & EIA 2015, American Coalition for Clean Coal Electricity

The U.S. must not cede its position as a world leader in coal technology development. Through investments to advance technology, coal can continue to provide cleaner power for America. **Since 1970, coal based electricity has increased by 125% while emissions have decreased by over 90%.** With balanced policies, new high-efficiency lower-emission coal plants can further reduce emissions by more than 30% compared to older plants they would replace.

**Coal Creates Permanent Jobs** – Coal power plants create more and better jobs than other sources of electricity generation – nine times more construction and permanent jobs on a “dollar invested” basis than a wind facility, per Department of Energy data and modeling.

**WMC endorses a truly “All of the Above” energy policy including the continued use of coal.**

**WMC supports eliminating funds for EPA to implement, enforce or to continue development of the policy framework to advance the Clean Power Plan.**

**WMC urges Congressional support for coal technology advancement, including expanding 45Q tax credits for Carbon Capture Utilization & Storage, to meet global economic & environmental objectives.**

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## GOOD SAMARITAN LEGISLATION

Protecting the public interest and ensuring more effective and efficient clean-up of legacy sites created in the distant past is possible but only if legislation embodies elements of; allowing mining companies to qualify as good Samaritans, implementing state or federal delegated programs after public comment, site-specific planning and review of projects, allowing both state and federal regulators discretion to adjust requirements, standards, and liabilities for specific projects and use of remedial actions such as reprocessing which may be the most efficient and least costly method of clean-up.

There are 3 House of Representatives Bills being developed which will provide a logistical process and funds for dealing with abandoned mine lands:

H.R. 3843, the “*Locatable Minerals Claim Location and Maintenance Fees Act*,” will allow for private sector actors, i.e. non-profit groups and industry groups, to remediate abandoned mine lands with limited liability protections. These private sector actors are well equipped with the expertise and tools to address abandoned mines. EPA will be required to create ‘Good Samaritan’ permits which provide limited liability protections for industry and non-profit groups equipped with the technical expertise to deal competently with abandoned mine lands.

H.R. 3844, the “*Energy and Minerals Reclamation Foundation Establishment Act*,” establishes a fund for use in facilitating cleanup of abandoned mine lands with the freedom to solicit contributions from the general public. The ability to solicit contributions from many sources will allow cleanup to be undertaken and enhance and improve the quality of the environment.

H.R. 3734, the “*Mining Schools Enhancement Act*,” investing in the next generation of mining expertise by increasing the funding for students of mining engineering and related sciences. The present deficiency of expertise is demonstrated within the EPA staff as out of 15, 326 employees there are no mining engineers. The business of permitting mines and addressing abandoned mines (such as Gold King) is far too complex and consequential to leave to inexperience. This bill will amend the Surface Mining Control and Reclamation Act requiring that funding be made available to accredited Mining Schools.

**WMC supports Good Sam legislation that creates meaningful, workable programs & dismisses citizen lawsuits which would block responsible cleanups. WMC urges support of all three bills as written.**

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