



## **CEQ Guidance Requiring Federal Agencies to Mitigate Global Greenhouse Gases under the National Environmental Policy Act**

### Issue Details:

The Council on Environmental Quality (CEQ) drafted guidance for Federal agencies to assess and mitigate greenhouse gas emissions generated outside the US under the National Environmental Policy Act (NEPA). There are several concerns about this approach:

- Current NEPA regulatory review process is extensive and proper to protect the environment and not practical to address global greenhouse gas emissions.
- Enactment of this policy will have detrimental impacts on increased trade across virtually all exports, including the export of automobiles, airplanes, heavy equipment and natural resources, such as coal, and would do nothing more than cede U.S. job and economic growth to other nations.
- The proposed policy would curtail U.S. exports while other nations are exempt from compliance.

Coal is the world's primary fuel for electricity and has been the world's fastest-growing fuel the past decade. It is also the only fuel with the low cost and large scale to meet significant and growing global energy needs. Approximately half the world's population lacks proper energy access. Greater use of coal will continue to fuel energy access in emerging economies that are industrializing and urbanizing at a rapid pace. International energy research firm Wood Mackenzie estimates that coal could overtake oil as the world's largest energy source as early as this year.

- 1.3 billion people in the world live without electricity
- 2.6 billion people live without clean cooking facilities. (source: International Energy Agency)
- Poverty has a detrimental effect on women, children and the environment.

This action by CEQ is not consistent with initiatives produced by the Obama Administration:

- Executive Order No. 13534 "A National Export Initiative" (2008) to ensure "that American businesses can actively participate in international markets by increasing their exports of goods, services, and products ... to create good high-paying jobs."
- Executive Order No. 13563 "Identifying and Reducing Regulatory Burdens" (2012) to require agencies to tailor "its regulations to impose the least burden on society."
- Presidential Memorandum "Speeding Infrastructure Development through More Efficient and Effective Permitting and Environmental Review" (2011) to ensure the US can compete effectively in the global market place.

### WMC's Position:

Women's Mining Coalition opposes the CEQ's guidance requiring Federal agencies to assess and mitigate GHG through the expansion of NEPA. Annual world coal demand is expected to grow approximately 1.4 billion tonnes in 5 years to fuel 450 gigawatts of new coal generation. Asia and Europe will burn coal regardless of U.S. policy, costing U.S. jobs and taxes if those exports are restricted or delayed.

**The members of Women's Mining Coalition  
ask that you oppose the expanded NEPA regulation  
that will reduce U.S. exports, jobs, and economic benefits,  
while other nations are not held to the same standard.**



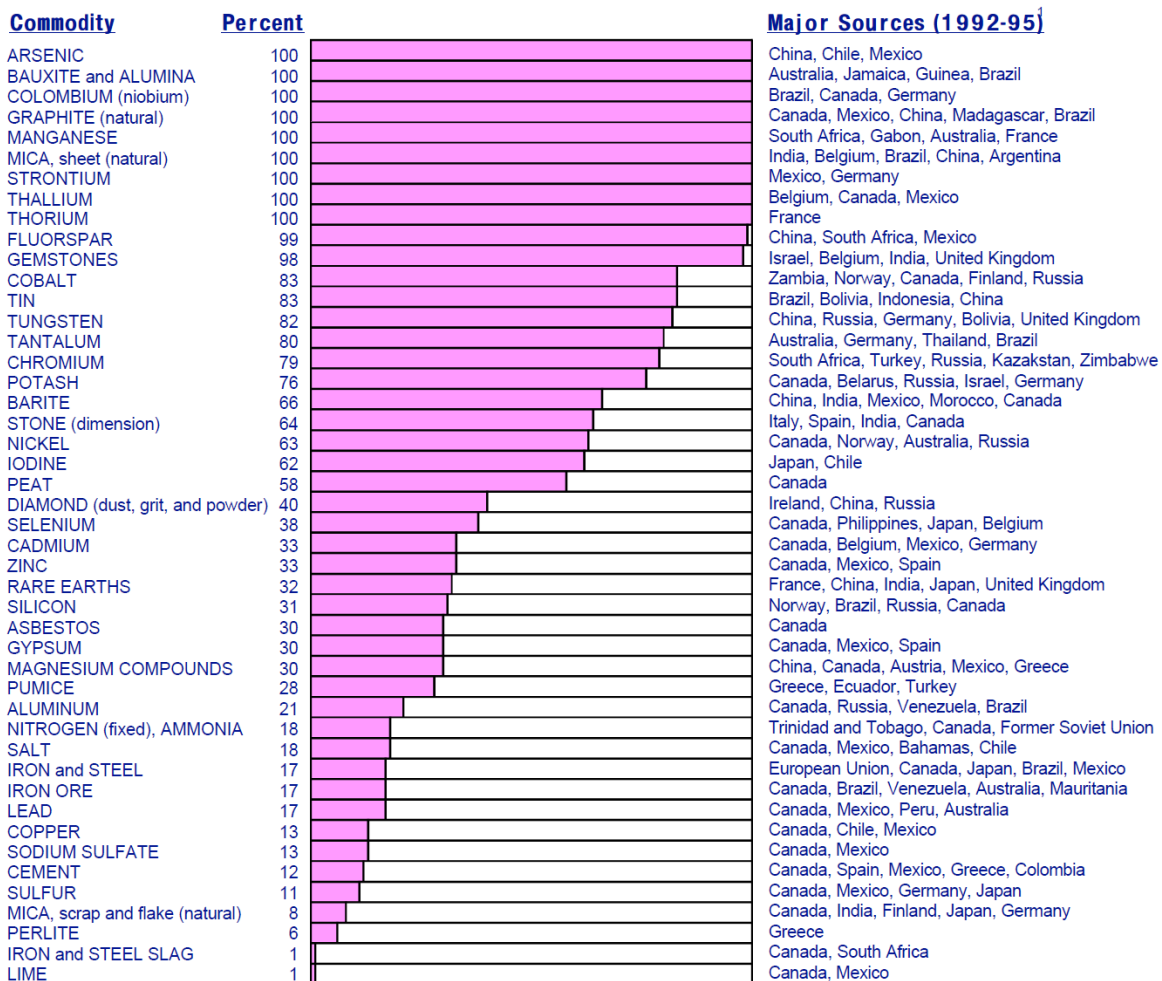
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The US has become increasingly reliant on foreign sources for the minerals that we consume in our daily lives.

- By 2012, the U.S. had become import-reliant on 61 minerals (up from 46 in 1996),
- By 2012, the U.S. had become 100% reliant on 17 minerals ( up from 9 in 1996).
- The U.S. is greater than 50% reliant on 41 non-fuel minerals, illustrating a greater foreign import reliance than is the case with crude oil. This represents an approximate doubling since 1996.

Lack of strong domestic minerals policy, coupled with increasingly protracted permitting processes has led to ever increasing reliance on foreign sources for the minerals we need daily to sustain and advance our economy. WMC encourages the development of strong domestic mineral policies that translate to jobs creation, increasing investment in the US, and a decrease in foreign reliance (a significant national security concern).

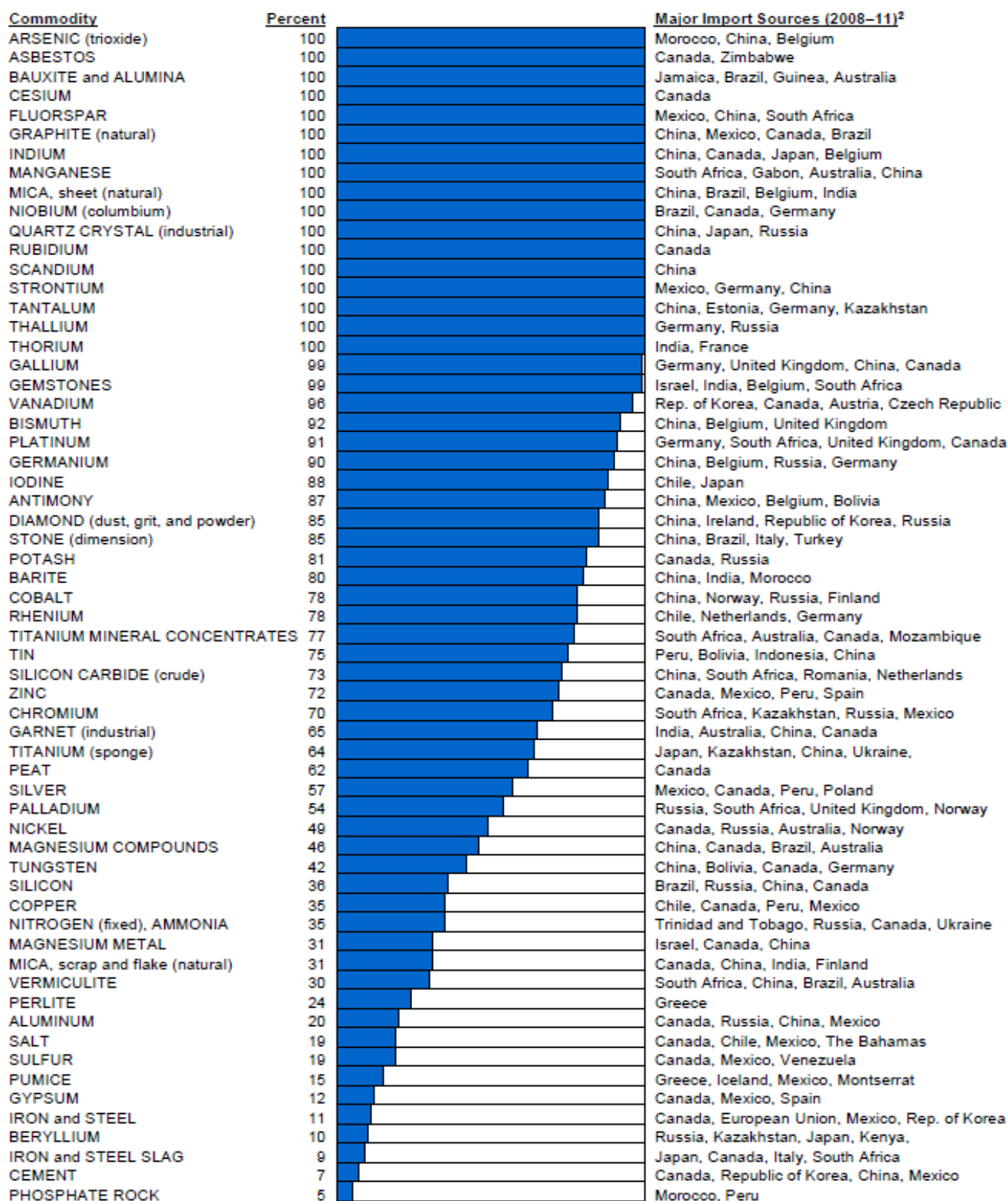
### 1996 Net Import Reliant – Selected Non-Fuel Mineral Materials



<sup>1</sup> In descending order of importance

1996 information can be accessed at: <http://minerals.usgs.gov/minerals/pubs/mcs/1997/mcsgen97.pdf>.

## 2012 U.S. NET IMPORT RELIANCE<sup>1</sup>



<sup>1</sup>Not all mineral commodities covered in this publication are listed here. Those not shown include mineral commodities for which the United States is a net exporter (for example, molybdenum) or less than 5% import reliant (for example, talc). For some mineral commodities (for example, rare earths), not enough information is available to calculate the exact percentage of import reliance; for others (for example, lithium), exact percentages may have been rounded to avoid disclosing company proprietary data.

<sup>2</sup>In descending order of import share.

The 2012 information can be accessed at: <http://minerals.usgs.gov/minerals/pubs/mcs/2013/mcs2013.pdf>.



## **National Strategic and Critical Minerals Production Act of 2013 (H.R. 761)**

### Issue Details:

The United States needs to define a national policy to assure domestic availability of minerals essential for our nation's economic well-being, security, and global economic competitiveness.

H.R. 761 defines strategic and critical minerals as those that are necessary:

- For national defense and 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; and
- For the nation's economic security and balance of trade.

The bill outlines the responsibilities of the lead agency issuing the mineral exploration or mining permit. That agency shall appoint a project lead who shall:

- Coordinate and consult with other agencies, project proponents, and contractors to ensure that agencies minimize delays;
- Set and adhere to timelines and schedules for completion of reviews; and
- Set clear permitting goals and track progress against those goals.

The bill requires agencies to reduce permitting delays by:

- Limiting the time period for permit review processes to 30 months unless signatories to the permitting timeline agree to an extension;
- Address the bureaucratic delays associated with agency review of NEPA notices by delegating the activity to state offices and limiting reviews to 30 days; and
- Reduce delays posed by litigation over permitting decisions by requiring challenges to be filed within 60 days of the final agency action.

### WMC's Position:

Women's Mining Coalition supports the National Strategic and Critical Minerals Production Act of 2013 (H.R. 761) and believes that this bill will provide high paying, long term employment for many Americans, while also providing world-respected environmental management practices and implementation.

**The members of Women's Mining Coalition  
ask that you join us in supporting H.R. 761.**

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## Office of Surface Mining Stream Buffer Zone Rule

### Background

The Department of the Interior's Office of Surface Mining, Reclamation and Enforcement (OSM) is planning significant and sweeping changes to the existing stream buffer zone (SBZ) rule that will substantially impair the domestic coal mining's ability to meet our nation's energy needs. The agency has provided no justification for a new rule.

The SBZ rule was finalized in 2008 and governs how and whether mining activities are permitted near perennial and intermittent streams. The rule clarified the agency's longstanding regulatory interpretation of a prior rule and added significant environmental protections. In early 2009, before the rule went into effect, OSM unsuccessfully attempted to vacate the rule and, instead, launched a new rulemaking process, with nationwide implications, that includes sweeping changes to coal mining regulatory programs. - including prohibitions that would prevent the issuance of permits to conduct full extraction underground coal mining.

### Economic Impact

In 2012 ENVIRON International Corporation completed an analysis on behalf of the National Mining Association on the anticipated economic impacts associated with the proposed rewrite of the stream buffer zone rule. Their analysis contains the following findings:

- **Total number of jobs at risk of loss, including mining and linked sector employment is between 133,441 and 273,227 (29% to 59% of current employment levels), with the Appalachian region alone losing as many as 220,003 jobs.**
- **Direct mining jobs at risk of loss are predicted to be between 55,120 and 79,870, with the majority of these job losses being in the Appalachian region.**
- **The overall decrease in recovery of demonstrated coal reserves is between 30.4% and 41.5%; both surface and underground mines will be significantly impacted.**
- **The annual value of coal lost to production restrictions is \$14 billion to \$20 billion.**
- **Total annual federal and state tax revenue potentially foregone because of lost production is estimated at \$4 billion to \$5 billion. The new rule is not limited to surface mining operations but applies more broadly to include both surface and underground mining related activities.**

## House Natural Resources Subcommittee on Energy and Minerals Resources Testimony

Two of OSM's original subcontractors that worked on the draft environmental impact statement provided shocking testimony before the House Natural Resources Subcommittee on Energy and Mineral Resources reporting that OSM "suggested" the contractors change the assumptions used to develop the economic analysis for the purpose of lowering the lost jobs impacts. The subcontractors also testified that they refused to use a "fabricated" baseline scenario to soften the coal production loss numbers and were terminated by OSM shortly thereafter.

The committee continues to await responses from the Administration for subpoenas issued as part of their more than year-long investigation into the rewrite of stream protection rule. However, tape recorded meetings obtained from the agency's contractors demonstrates that OSM's own staff believed that the meager environmental benefits of the rule were dwarfed by the enormous cost imposed by the rule:

- **"...we've already spent \$5 million on the EIS contract...and 160 pages of rule changes, 500 pages of preamble and we're [only] saving 15 miles of stream? Come on...Two hundred million dollars a year of cost to implement this rule, for 15 miles of stream?"**
- **"It'll never sell to the public, Congress, to anybody, that if we have this huge rule, that we're only going to save, say, 15 miles of stream...That is going to be a headline story."**

Two OSM officials discussing their own rulemaking; *Transcript of OSM meeting with EIS contractors* (Feb. 1, 2011).

### Ongoing Concerns and Objections

In addition, OSM's activities have been universally criticized by stakeholders throughout the United States. Serious objections to this rulemaking effort have been raised by three State governors, eight State cooperating agencies, by the Interstate Mining Compact Commission (representing state coal mining regulators), and by the Western Governors' Association.

- **Despite all of the controversy and predictions of tens of thousands of potential job losses, instead of withdrawing this proposal, OSM is trying to rewrite its environmental impact statement to support the rule.**

When our nation needs more regulatory certainty to foster investment and job creation, OSM's unprecedented regulatory package will increase unemployment, lower personal income, devastate coal production, raise electricity rates and cost states vital revenues needed to close their budget deficits.



## Greater Sage Grouse Conservation Measures

The sage-grouse conservation measures being proposed by the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS) have the potential to halt exploration and development of mineral deposits in the western U.S. by severely limiting Mining Law use and occupancy rights. Further restricting access to important mineral deposits will result in thousands of lost jobs and an increased reliance on foreign sources of critical and strategic minerals and metals.

### Issue Details:

The BLM and the USFS plan to publish draft EIS's by region between now and the end of September, 2013 to guide the implementation of greater sage-grouse conservation measures in land use plan amendments in ten western states. Greater sage-grouse currently use as much as 47 million acres of land managed by the BLM, and about nine million acres of land managed by the USFS.

BLM issued two Instruction Memoranda (IMs) based upon initiatives already underway, such as *A Report on National Greater Sage-Grouse Conservation Measures*, released on December 21, 2011, from the Sage-Grouse National Technical Team (NTT Report). BLM's news release announcing the two IMs states:

The two IMs focus on actions proposed to take place in Preliminary Priority Habitat, which has the highest conservation value for maintaining the species and its habitat...Under the alternative set out in the Planning Direction IM, human-caused disturbance in priority habitat would be limited to less than 2.5% of the species' total habitat, regardless of surface ownership. **In priority habitat areas where more than 2.5% of the surface area has already been disturbed, the BLM would not authorize any further disturbance.** *(emphasis added)*

The NTT report does not give adequate recognition of local and regional conditions (in parts of the range the number one threat is wildfire), habitat characteristics, threats and solutions; provides prescriptive restrictions (land use withdrawals) based on cumulative surface disturbance in priority habitat areas; ignores BLM's multiple-use mandate; and focuses on the regulated community (permittees).

The two IMs and NTT Report already have been used to delay the China Mountain Wind Project on the Idaho/Nevada border, reduce oil & gas lease sales in Colorado and Nevada, and restrict grazing allotments in Idaho.

### WMC's Position:

BLM/USFS implementation of land withdrawals in identified greater sage grouse priority habitat areas ignores the multiple use mandate for federal lands under FLPMA. BLM should instead implement the regulatory mechanisms available in Manual 6840, Special Status Species Management, as well as utilize private conservation measures with assurances. Congress should assert its legislative authority over this issue.

We ask that you support Representative Doc Hastings' request to Secretary Salazar and USFWS Director Daniel Ashe for documents with respect to the 2011 NTT Report in order for the Natural Resources Committee to address the sage grouse listing issue.

We request an oversight hearing to determine (a) if the NTT Report does in fact represent Best Available Science; (b) why BLM has jettisoned Manual 6840 in favor of new conservation measures in the NTT Report; and (c) that BLM complete a gap analysis of the 6840 Manual to see what if anything is lacking in it before proceeding with the EIS documents.



## Redefining “Fill Material”

### Current Law

The definition of “fill material” for purposes of Clean Water Act (CWA) Section 404 used jointly by the U.S. Environmental Protection Agency (EPA) and U.S. Corps of Engineers (Corps) includes materials that, when placed into waters of the United States, have the effect of replacing or changing the bottom elevation of any portion of such designated waters. The current regulations expressly include:

- Rock, sand, soil, clay
- Plastics, construction debris, wood chips
- Overburden from mining or other excavation activities

Discharge of these materials is regulated pursuant to Section 404 of the CWA. The Corp of Engineers must undergo an analysis in accordance with guidelines found in Section 404(b)(1) to determine if a discharge of such materials is environmentally safe.

### WMC Position

The current regulatory definition of “fill material” is consistent with EPA and Corp of Engineers longstanding practice through the regulations of Section 404 of the CWA. WMA requests that members of Congress:

- Reject proposals to amend Section 502 of the CWA by adding a new narrow definition of the term “fill material” to preclude “any pollutant discharged into the water primarily to dispose of waste”.
- Section 404 permits are necessary for placement of the excess rock and soil that is generated by construction and development projects.
- Any attempt to re-define “fill material” could have a significant negative impact on the ability of all earth-moving industries, road and highway construction, and private and commercial enterprises to obtain CWA Section 404 permits.
- Altering CWA 404 regulations could result in the loss of up to 375,000 mining jobs and jeopardize over 1,000,000 jobs that are dependent on the economic output generated by mining operations.





## **Women's Mining Coalition encourages members of Congress to recognize the Strength of America's Mineral Endowment**

The U.S. is blessed with a great mineral endowment and needs to provide public policies which will recognize this potential allowing for its development. Presently, despite this endowment, the U.S. is not performing to its potential; we import many more minerals than we need to.

### Mineral Facts:

- The technologies that define innovation today all depend on a growing number of minerals; the number of minerals required for computer chips and high-speed capacity has increased from 12 to 60 different minerals or their constituent elements.
- Two million American jobs are supported by the mining of minerals with over 600,000 people directly employed and an additional 1.4 million employed to support mining. (Source: The Economic Contributions of Mining in 2010, NMA)
- Those employed by the mining industry receive some of the highest paying wages in the private sector with average wages of \$71,050 per year. BLS QCEW 2011 data show that mining wages are almost double the average for all industries.
- Close to \$700 billion worth of processed mineral materials are used by other economic sectors in the U.S. - construction, manufacturing, and agriculture - thus adding more than \$2.2 trillion to the U.S. economy. (Source: USGS Mineral Commodity Summaries 2013, page 5)

Minerals provide the foundation for the American way of life. From established manufacturing to advanced and innovative technologies, minerals are used in all sectors of our economy: medical, defense, construction, manufacturing, communications, and green energy, among others.

**Minerals/metals used in Jet Fighter engine (import reliance):**

**Titanium - 69%**  
**Nickel - 47%**  
**Chromium - 60%**  
**Cobalt - 75%**  
**Aluminum - 100%**  
**Niobium - 100%**  
**Tantalum - 100%**



**Minerals/Metals used in wind turbines (import reliance):**

**Steel - 8%**  
**Concrete - 12%**  
**Copper - 32%**  
**Lithium - 50%**  
**Titanium - 54%**  
**Silver - 60%**  
**Zinc - 73%**  
**Cobalt - 81%**  
**Platinum - 91%**  
**Aluminum - 100%**  
**Rare earth elements - 100%**  
**Nickel - 100%**

Our ability to put our minerals to work is hindered by an inefficient regulatory structure which limits investment in, and expansion of mining projects. We need to address the length, complexity and uncertainty of the permitting process which limits our tapping our potential. Establishing a 21<sup>st</sup> century permitting process which doesn't change the environmental policies now in place will allow the U.S. to become competitive with countries such as Canada and Australia.

**Women's Mining Coalition supports the passage of HR 761 which will establish a more efficient method of permitting by;**

- **Providing timely and thorough permit reviews;**
- **Incorporating best practices for coordination among federal and state agencies;**
- **Clarifying responsibilities and avoiding duplication;**
- **Setting binding timeframes.**

**WMC asks for your support for HR 761.**

**Women's Mining Coalition**  
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## EPA'S SMALL REMOTE INCINERATOR REGULATIONS

On February 7, 2013 EPA published its final rule on Commercial and Industrial Solid Waste Incineration Units (2013 CISWI Rule) pursuant to Section 129(a)(2) of the Clean Air Act ("CAA"). Among other actions, the 2013 CISWI Rule made minor modifications to the previously published final CISWI rule from March of 2011 (the "March 2011 CISWI Rule"), including some minor changes to the emission limits for the small, remote incinerators ("SRI") subcategory. The 2013 CISWI Rule also denied a request from Alaska's oil & gas and mining industries for reconsideration. As a result of the final rule, many SRIs, used for the disposal of camp waste in Alaska's oil & gas and mining sites, must retrofit to comply with new EPA air emissions limits or force shut down.

- **There is no new or combination of existing technology known to demonstrate compliance:**
  - No new incinerator unit can meet the standards for new units. Since notice of the final reconsidered rule, Industry has been in communication with manufacturers and technology vendors; None are confident that they can produce an SRI to meet the new unit limits. As a result, the new unit standards create a disincentive for these companies to replace old existing incinerators.
  - There is no combination of known technologies to meet existing unit limits. The final reconsidered rule's existing unit limits require a new combination of technologies that have never been demonstrated in practice in the Arctic.
  - The SO<sub>2</sub> limits for new units are impracticable to meet, even with low sulfur diesel. The source test data used to set EPA's emission limits under the rule did not account for variability in waste stream and burn cycles.
- **Environmental & Safety Impacts of the Rule:**
  - Even an incremental shutdown of incinerators will result in the accumulation of waste attractive to surrounding wildlife. The use of incinerators to manage food waste has proven to be a valuable tool for preventing human/wildlife interactions in Alaska.
  - The accumulation of waste is directly contradictory to state and federal regulations which require the incineration of waste to prevent circumstances under which wildlife disturbance and human interaction is possible. This rulemaking will result in additional storage of putrescible wastes, a known polar bear attractant, which is currently prohibited on the North Slope. The likely result will be increased bear-human interactions, including deterrence activities, and possibly including lethal take in defense of life.
  - The alternative to incineration is the transport of waste by helicopter or plane. Alaska lacks the infrastructure to accommodate the transport of waste from the Arctic and remote areas of Alaska to the nearest landfill. Limited landfill space and management is also a concern. In most cases waste must be transported by air. In many cases the nearest landfill is hundreds of miles away. The resulting trips increase air emissions. Wildlife are attracted to waste accumulating in landfills.

Alaska's oil & gas and mining industries are reaching out to EPA on this issue and have petitioned for reconsideration of the 2013 CISWI Rule requesting EPA revisit the air emission limits for the SRI category.

**Women's Mining Coalition urges Congress to support this petition and encourage the EPA's reconsideration of the 2013 CISWI Rule.**



## Stop EPA CERCLA §108(b) Financial Assurance Rulemaking

### WMC's Position:

Use the Appropriations process to de-fund the CERCLA §108(b) rulemaking process.

This is a high priority for WMC and its members.

### Issue Details:

Section 108(b) of CERCLA required EPA **to identify**, no later than Dec. 11, 1983, classes of facilities that would be subject to financial assurance requirements. In 2008, Earthjustice challenged EPA's failure to implement Section 108(b). Agreeing in part, a district court ordered EPA to identify and publish notice of identified classes. In response, EPA issued a notice that identified the hardrock mining industry as the agency's first sector for new financial assurance requirements. EPA also issued a second notice identifying three additional industries for a separate rulemaking: (1) the chemical manufacturing industry; (2) the petroleum and coal products manufacturing industry; and (3) the electric power generation, transmission and distribution industry.

### What EPA Was NOT Asked to Do:

Importantly, EPA does not have a mandatory statutory duty to pursue these requirements. The vast majority of the industries targeted by EPA, including the hardrock mining industry, are already subject to various financial assurance requirements under federal and/or state laws. Just as important, all these industries operate under a comprehensive framework of state and federal environmental laws and regulations that prevent releases or control them at levels that are protective of the environment and human health. New requirements are simply not warranted.

EPA's "one size fits all" suggested policies are not complementing but instead are over-reaching with regard to existing state and federal regulations and policies.

### What the EPA Can and Should Do:

The EPA has every opportunity to participate in the comprehensive framework described above. Moving forward with over-reaching, burdensome, duplicative and preemptive financial assurance requirements simply is not warranted. Usurping state regulatory processes and comprehensive federal regulations is not warranted. What is warranted is for EPA to take part in the established and comprehensive processes. This is where EPA's participation can add value.

### Background:

The Western Governors' Association addressed these concerns in the context of existing, effective state bonding programs for the hardrock mining industry when it opposed EPA's proposed rulemaking in a December 2011 Policy Resolution that was sent to the EPA administrator. Specifically, WGA recognized that "member states have a proven track record in regulating mine reclamation in the modern era, having developed appropriate statutory and regulatory controls, and are dedicating resources and staff to ensure responsible industry oversight." WGA emphasized that "a new federal bonding program would not only duplicate, but in fact supplant the states' existing and proven regulatory programs."

U.S. mines operate within a comprehensive framework of state and federal laws and regulations, including requirements that all mine sites must be reclaimed. Specific financial assurances (bonds) to complete reclamation must be in place before mining begins. States regularly update the permits and associated reclamation plans and bonds, thereby negating EPA's suggestion of gaps.



**The Women's Mining Coalition urges the U.S. Environmental Protection Agency (EPA) to consider the costs and consequences of proposed regulations which will impose a regressive energy tax on America's working class along with those on fixed incomes and place the reliability of our nation's electric power in jeopardy.**

### **Greenhouse Gas (GHG) Regulations for New Power Plants**

EPA has proposed to regulate GHG from new power plants, and expects to finalize this rule in 2013. If adopted, this rule will:

- Effectively ban the construction of state-of-the-art, cost effective advanced coal power plants to supplement or replace older, less efficient plants.
- Require coal plants to meet a "natural gas standard" by mandating the use of carbon capture and storage technology that doesn't yet exist
- Force our nation's electricity generators to abandon coal, our largest and most affordable energy resource

### **Costs and Consequences of EPA's Regulations**

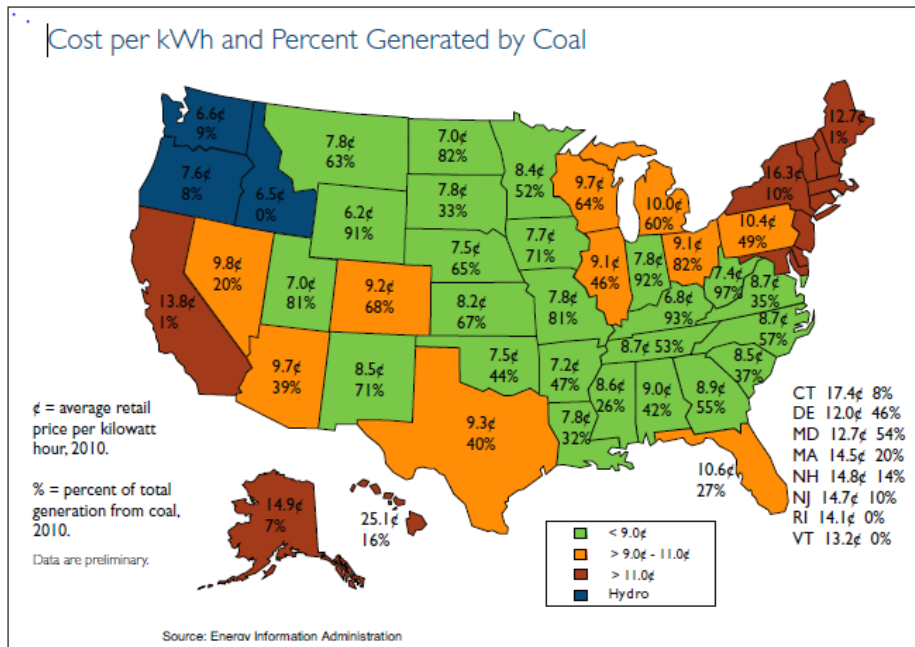
Private and government estimates project that EPA's combined regulations will force the closure of 60 to 81 gigawatts (GW) of coal based electricity generation (1 GW powers 750,000 homes). This means that nearly 25% of the entire U.S. coal fleet will be shuttered. Impacts include:

- Lost coal production and transportation jobs
- Layoffs at generation facilities
- Sharply reduced tax bases in communities where coal is produced and used for generation
  - One analysis (United Mine Workers of America) indicate as many as 250,000 jobs will be lost as a result of EPA's combined air emissions regulatory agenda

### **Family Budgets at Risk**

A recent analysis finds that more than half of American households devote more than 20 percent of their family budget to energy costs - - more than double from ten years ago.

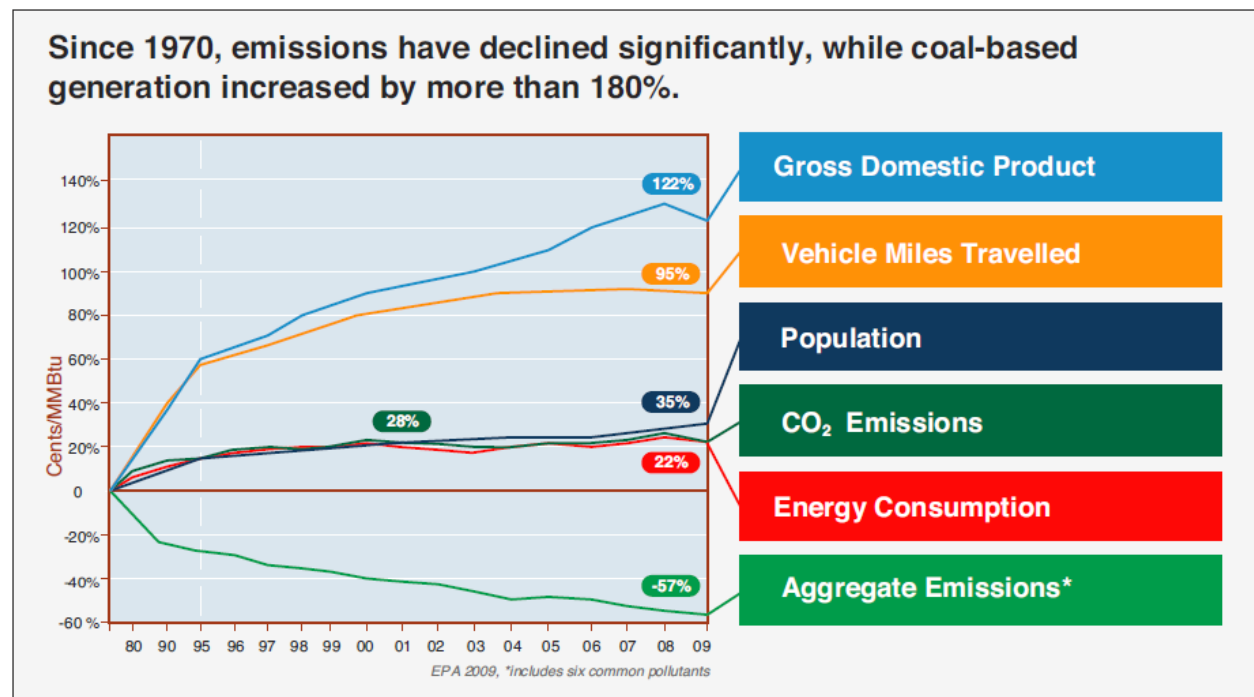
- Higher energy costs amount to a regressive tax on lower income families and those on fixed incomes
  - Energy bills for families earning less than \$10,000 have risen to 78 percent of their after tax income
  - Energy price increases since 2000 are due in large part to increased capital, operating and maintenance costs associated with meeting clean air and other environmental standards



### New EPA rules Ignore Enormous Environmental Progress

Tremendous progress has been made over the past 30 years to reduce air emissions from coal-based generation in spite of the fact that electricity demand has increased by 85% and coal use had increased by 75%.

- Sulfur dioxide (SO<sub>2</sub>) emissions have fallen by 56%
- Nitrogen oxide (NO<sub>x</sub>) emissions have decreased by 77%
- Nearly half of U.S. mercury emissions have been eliminated





## **Proposed Dust Rule**

On October 19, 2010, the Mine Safety and Health Administration (MSHA) published a proposed rule for “Lowering Miners’ Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors” (Proposed Dust Rule). The Rule would:

- Lower the existing limits for respirable coal mine dust from 2.0 milligrams per cubic meter ( $\text{mg}/\text{m}^3$ ) to 1.0 ( $\text{mg}/\text{m}^3$ ); and
- Require the use of unreliable sampling data from a single working shift to determine compliance with the standard.
  - Current rules use a more reliable sampling program by averaging 5 production samples

### **Concerns with the Proposed Rule**

MSHA contends the Proposed Dust Rule is designed to reduce the incidence of coal workers pneumoconiosis (CWP) by reducing the exposure of miners to respirable coal dust. The proposed rule is based on the discovery of cases of “rapidly progressing CWP” in a 3-state region in Central Appalachia. Associated facts indicate:

- Since 1980, average coal dust exposures and the incidence of CWP have declined under the existing standards.
- Data does not demonstrate a causal connection between coal dust exposure levels and incidence of disease

### **WMC Position**

The coal industry is fully committed to improving the health and safety of miners.

- In this instance, a one-size-fits-all, costly rule on the entire underground coal industry lacks clearly demonstrated health benefit
- MSHA should work with the industry to address exposure to elevated levels of silica in the affected area in a focused manner
- MSHA should be required to demonstrate that its proposed regulations would actually reduce the incidence of disease.
- Technologies and sampling requirements should serve as a real solution to demonstrated problems.



## **Women's Mining Coalition Asks Congress To Resolve Regulatory Uncertainty Harming Coal Ash Recycling**

In June 2010, the U.S. Environmental Protection Agency announced two potential approaches for coal ash disposal regulation that had been under development since January 2009. One approach is under the Resource Conservation and Recovery Act's Subtitle D, in which the federal government establishes standards that are enforced by the states. The other potential approach is under RCRA's Subtitle C, which pertains to hazardous waste and is under the federal government's direct enforcement authority. **EPA's rulemaking effort is now stalled with no end in sight, and the regulatory uncertainty is harming coal ash recycling.**

**A "hazardous waste" designation is not justified and is opposed by a wide variety of interests.** EPA is proposing to designate ash as "hazardous waste" when it is on a utility's property, but not when it is dispersed for use at thousands of sites around the community. Coal ash users, standard-setting organizations, numerous state and federal agencies, and others have indicated that the hazardous designation would lead to significant decreases in the use of coal ash.

- Coal ash does not qualify as a hazardous waste based on its toxicity characteristics.
- EPA admits that disposal engineering standards would be almost identical under its "hazardous" and "non-hazardous" proposals.
- Environmental benefits of coal ash recycling are worth protecting: reduced landfill utilization, increased product durability, and almost 15 million tons per year in greenhouse gas emissions reductions by replacing cement in concrete.

**Coal ash recycling is already being harmed.** The ongoing regulatory uncertainty and a drumbeat of misleading publicity about the toxicity of coal ash are combining to cause decreases in the beneficial use of the material. Throughout the 1990s, the recycling rate was around 20%. In 2000, when the recycling rate was 29.7%, the EPA issued its Final Regulatory Determination that regulation of ash as a "hazardous waste" was not warranted. Over the next eight years, EPA began actively promoting the beneficial use of coal ash, and the recycling rate soared to 44.5% in spite of steadily increasing volumes of the amount of coal ash produced. The recycling rate stalled after 2008 as EPA reopened its coal ash regulatory agenda. Coal ash recycling in the United States remained below 2008 levels for the third consecutive year when 43.5% of the 130.1 million tons of coal ash produced in 2011 was beneficially used. At the 2008 peak, 60.6 million tons of coal ash was recycled. In 2011, utilization was 4 million tons lower at 56.6 million tons. If the past three years had simply remained equal with 2008's utilization, 14.2 million tons less coal ash would have been disposed in landfills and impoundments.

### **The best solution to coal ash disposal problems is to quit throwing it away!**

**Congress must act now to take the "hazardous waste" threat off the table.** Forthcoming legislation developed in the last Congress would establish a federal regulatory program to ensure the safe management of coal ash as a non-hazardous waste and allow facilities to operate under traditional, state-administered enforceable permits. This legislation attracted strong bipartisan support in the last Congress, would get meaningful disposal regulations in place years before EPA can, and would allow the beneficial use of coal ash to resume growth.

For more information:

Citizens for Recycling First  
Coal Ash Facts  
American Coal Ash Association

[www.recyclingfirst.org](http://www.recyclingfirst.org)  
[www.coalashfacts.org](http://www.coalashfacts.org)  
[www.acao-usa.org](http://www.acao-usa.org)

[www.wmc-usa.org](http://www.wmc-usa.org)