American Coal Council

October 26, 2015

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U.S. Department of the Interior
Office of Surface Mining Reclamation and Enforcement
U.S. Department of the Interior
1951 Constitution Ave. N.W.
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Re: Proposed Stream Protection Rule, 80 Fed. Reg. 44,436 (July 27, 2015)

The American Coal Council (ACC) submits these comments in response to the Department of the Interior's Office of Surface Mining Reclamation and Enforcement's (OSM) proposed Stream Protection Rule (SPR). 80 Fed. Reg. 44,436 (July 27, 2015). The ACC has been in existence for 33 years and represents the collective business interests of the American coal industry. Our members include mining companies and suppliers, transportation companies and terminals, electric utilities and industrial coal consumers, and many industry support services providers. They touch every aspect of turning one of America's most abundant energy resources into reliable, affordable electricity for all Americans and the United States economy. Coal is also integral to the steel-making process and the industrial production of cement, chemicals, and paper. Our diverse membership base encompasses the entire coal supply chain, and it is from this broad perspective that we assess the impacts of new regulations impacting coal supply and use. Our coal supplier membership segment would be directly impacted by this proposed OSM rule, but the indirect impacts would permeate the entire coal supply chain and much more. The effects will ultimately extend to each and every American household and business and threaten our nation's energy and economic security – the lynchpins of our national security. ACC's comments address our deep concerns about these impacts and the problems and lack of benefits of OSM's proposed rule.

OSM's proposal was issued after six years in the rule-making pipeline. It is a sweeping regulatory rewrite that changes the nature and scope of OSM's regulatory framework. It contains modifications and amendments to hundreds of existing rules, and as well as imposing many new requirements. During the six year period of development, much changed with regard to OSM's approach for developing the proposal. OSM initially characterized this rule as a means to address surface coal mining operations in one area of the country, Appalachia. In its final proposed form, OSM has expanded it to a comprehensive, nationally applicable stream protection rule. Both surface and underground mining operations would be affected.

Economic Impact

In 2012, Environ completed a report [1] on the projected impacts of an OSM proposed rule as it was anticipated at that time. Key critical findings and projections in the report:

- Total jobs at risk for mining and related sector employment – 133,441 to 273,227 (29% to 59% of current employment levels)
- Direct mining jobs at risk – 55,120 to 79,870
- Overall decrease in recovery of demonstrated coal reserves - 30.4% to 41.5%
- Annual value of coal lost to production restriction – $14 billion to $20 billion
- Total annual federal and state tax revenue potentially foregone due to lost production - $4 billion to $5 billion

With the OSM proposal released in July 2015, Environ has prepared a new report.[2] Key critical findings and projections in the new report:

- Total jobs at risk for mining and related sector employment – 112,757 to 280,809 (30% to 75% of current employment levels)
- Direct mining jobs at risk – 40,038 to 77,520
- Overall decrease in recovery of demonstrated coal reserves – 27% to 64%
- Annual value of coal lost to production restriction – $14 billion to $29 billion
- Total annual federal and state tax revenue potentially foregone due to lost production – $3.1 billion to $6.4 billion

With such devastating impacts projected in 2012 and again in 2015, where are the benefits of OSM's proposal?

Environmental Impact

Regarding any potential environmental improvement, there is little basis for OSM's assertion that a new rule is needed to better protect streams. This is evidenced by OSM's own annual reviews of state programs, which show effective performance under the existing rules. In the coal producing states accounting for nearly 75% of U.S. production,

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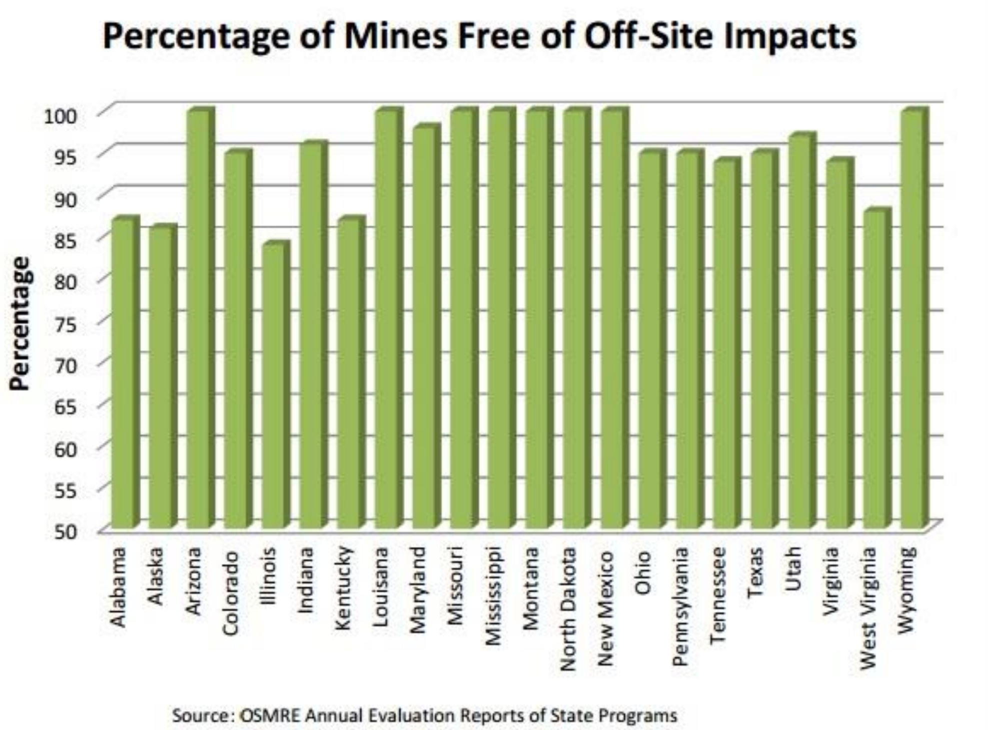
[1] Environ International Corporation "Economic Analysis of Proposed Stream Protection Rule", March 5, 2012.
[2] Ramboll Environ, "Economic Impact of Proposed Stream Protection Rule", October 23, 2015.

95% to 100% of the mining operations have no offsite impacts.[3] This is shown by OSM's own data used in the chart below.[4]



Regulatory Impact

When the rule was announced in July 2015, Assistant Secretary for Land and Minerals Management Janice Schneider said, "The proposed rule would also provide the mining industry with something it has asked for time and time again – regulatory certainty".[5] The proposal contains more than two thousand pages including the rule, draft environmental impact statement, and regulatory impact analysis. The rule is redundant and duplicative, overlapping with the jurisdictions of others including the Environmental Protection Agency, the U.S. Army Corps of Engineers, and state agencies. The rule fails on providing regulatory certainty. If enacted, it would be costly and burdensome to administer and would extend the already-lengthy permitting process.

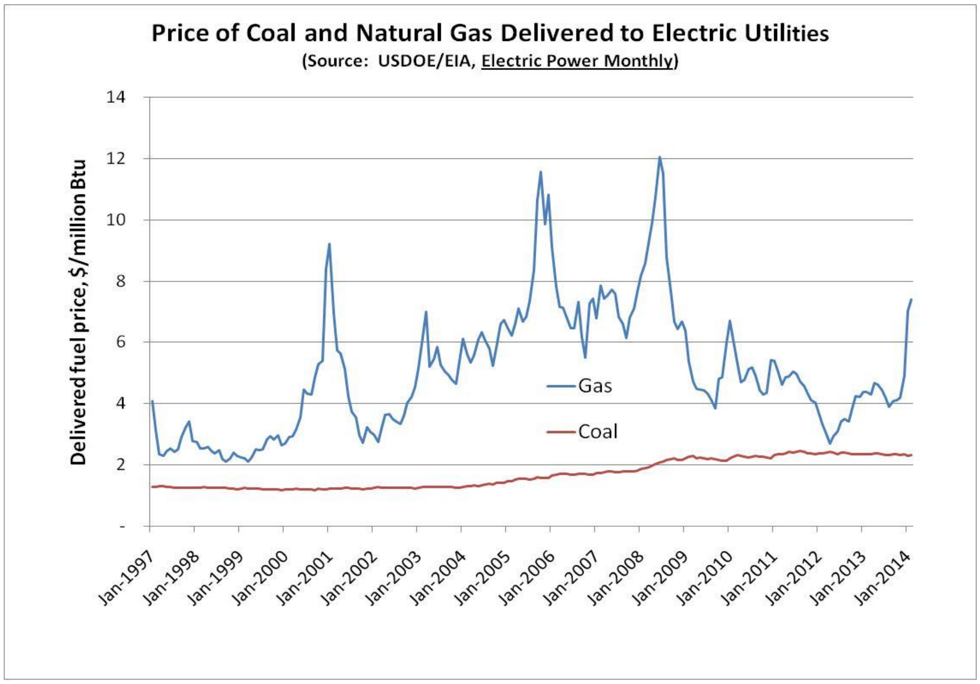
This rule adds to a growing list of unworkable federal regulations for coal mining and use that are complex, ambiguous, over-reaching, counterproductive, and costly. It is alarming

[3] National Mining Association Press Release "New Study Discredits OSM's New Mining Regulations in Advance of Senate Oversight Hearing", October 25, 2015.

[4] National Mining Association at http://www.nma.org/images/Percentage-mines-no-offsite-impact-OSMRE.jpg

[5] U.S. Department of the Interior Press Release "Interior Department Unveils Proposed Stream Protection Rule to Safeguard Communities from Coal Mining Operations", July 16, 2015.

that the harmful impacts of such regulations are not being adequately addressed in the public policy arena. The chart below from the National Coal Council, a federal advisory committee to the U.S. Secretary of Energy, shows electric utility fuel costs for the period 1997-2014.[6] It demonstrates the importance of coal in terms of both its low price and price stability over time in comparison to natural gas.



These coal regulations will force drastic reductions in coal mining and use for electricity generation. They will have outsized impacts on energy and electricity markets. Fuel marketplace competition will be greatly reduced and electric system reliability will suffer as coal generating plants become far less available to back up renewables or to buffer spiking natural gas prices. Electricity prices for consumers will rise, disproportionately affecting those who can least afford to pay for those increasing costs, and driving American business and manufacturing offshore.

It is imperative that the aggregate effects of the surging number of coal-related regulations be recognized. One study by Energy Ventures Analysis (EVA) in November 2014 incorporated the cumulative cost impacts of EPA regulations including MATS, regional haze, and the proposed Clean Power Plan. It projected residential, industrial, and commercial customers will pay over $284 billion more in 2020 for electricity and natural gas than in 2012, a 60 percent increase. The average household bill will increase by $680 in 2020 compared to 2012. EVA found that on a percentage basis the industrial sector

[6] National Coal Council "Reliable and Resilient: The Value of Our Existing Coal Fleet", May 2014. http://www.nationalcoalcouncil.org/NEWS/NCCValueExistingCoalFleet.pdf

would be hardest hit, with costs 92 percent higher in 2020 than 2012.[7] Some of the cost increase is related to higher demand and pricing for natural gas due to the premature shutdown of coal plants. Fuel choice and diversity are reduced, coal is less available to hedge natural gas, and all American consumers pay the price.

Conclusion

While lacking in benefits to the natural environment, this proposed rule will take a huge toll on the *human environment,* with massive job losses projected. Over the past three years, 45,000 coal mining jobs have already been lost.[8] The 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. 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 30% of all global coal reserves, more than any other country.[9] The rule would needlessly limit recovery of a vast amount of those reserves, up to two-thirds of them. While industry continues to pore over the OSM proposal – with its unreasonable, unjustified re-definition of terms, ambiguity created by language changes, assessment and compliance processes and protocols that lack clarity and do not provide a basis for improvement – the short timeframe for submitting comments has come to an end. Secretary Jewell stated upon the rule's release, "We are committed to working with coalfield communities….." The stark reality is that this rule will devastate coalfield communities. Balanced policy should support the creation and sustaining of bona fide, high-wage jobs that allow people and communities to thrive and that provide the basis for a strong economy. This OSM rule is the latest in a series of harmful policies that will shortchange all Americans, trading economic well-being for bureaucratic morass.

The American Coal Council requests the rule be withdrawn and re-proposed following substantive consultation with stakeholders.

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[7] Energy Ventures Analysis, "Energy Market Impacts of Recent Federal Regulations on the Electric Power Sector", p. 4.

[8] Hal Quinn, National Mining Association, "The Changing Political and Policy Landscape" speech to Longwall USA 2015, June 17, 2015, p.2.

[9] BP Statistical Review of World Energy, June 2015, p. 30.