Adverse Actions by Obama Administration, Congress or US Environmental Protection Agency (US EPA) Against Coal

	Date:	Action/Issue:	Response by Industry, Courts, Congress et al	Current Status of Issue/Comments:
Issue # 1	3/20/2009	Article in Wall Street Journal documenting Lisa Perez Jackson (Obama appointee to head the US EPA) declaring environmental justice agenda.	Industry suffered her outrageous actions until she joined Apple at the end of the first term.	Environmental Justice Agenda still being advanced by administration.
Issue # 2	4/1/2009	US EPA issues Endangerment Finding which would later be promulgated into rules. They will advocate for regulation of CO2 emissions.	No significant opposition.	Six gases, including Carbon Dioxide were listed as hazardous; This action allowed the EPA to set the greenhouse gas emission standards to light-duty vehicles proposed jointly with the Department of Transportation's Corporate Average Fuel Economy (CAFE) standards in 2009.
Issue # 3	4/24/2009	Article on Endangerment Ruling Appears in Wall Street Journal	The Wall Street Journal highlights the negative impact to business and the US Economy that would be forthcoming as a result of these actions. Limits on CO2 will show up 6 years later in the Clean Power Plan Initiative.	Democrats know that their cap-and-tax agenda is losing ground, notably among Midwestern Senators. The EPA "endangerment" is intended to threaten businesses and state and local governments until they surrender and support the Obama agenda.
Issue # 4	6/11/2009	Memorandum of Understanding signed between the US Army Corps of Engineers (USACOE) and US EPA.	The coal industry stood by helplessly as the US EPA usurped the powers granted the USACOE by the Clean Water Act (CWA).	EPA and Corps devised an “Enhanced Review Process” that stopped all CWA 404 permits dead in their tracts for months. As of February 2011 there were over 80 permits stalled in the EPA’s enhanced process.
Issue # 5	6/15/2009	US EPA Suspends Nationwide 21 Permitting Program in Coal-bearing Appalachian Counties.	The coal industry was forced to apply for CWA 404 Permits instead of NWP 21 Permits costing additional millions of dollars of costs and months of delays.	The Corps reauthorized use of NWP 21 for surface coal mines in February 2012. The new NWP 21 imposes new limits on stream impacts and prohibits valley fills as well as limits applicability of NWP 21 to very small wetland areas. Expansion of mining operations into new areas may trigger the need for individual Corps approvals which could be more costly and take more time to obtain.
Issue # 6	6/26/2009	HR 2454 American Clean Energy and Security Act Passes the House of Representatives	Bill failed to pass the US Senate due to the many adverse conditions it would impose on the electrical industry and economy in general. It would tax the use of coal to subsidize the use of renewables.	https://www.congress.gov/bill/111th-congress/house-bill/2454/all-actions?overview=closed#tabs
Issue # 7	6/30/2010	US EPA begins initiative to regulate Coal Combustion Residuals (CCRs) as hazardous waste.	The coal and electric industries pushed back by participating in lobbying and other actions to oppose these actions.	After many public hearings and comments related to usurpation of states' rights to regulate CCRs, the US EPA backed off the issue. It would have been costly to landfill the ash, etc and disregard beneficial uses of
Issue # 8	12/13/2010	EPA promulgated the SIP Call Rule on December 13, 2010 on the heels of the Agency’s adoption of a series of new rules to regulate greenhouse gas emissions as pollutants under the Clean Air Act, including the so-called “Tailoring Rule,” which governs permitting of major stationary sources of	A number of states filed suit against the EPA.	The rule required states to update their previously approved SIPs to account for greenhouse gas emissions in their PSD permitting programs. EPA found 13 states’ SIPs were inadequate at that time to regulate greenhouse gases from stationary sources and directed those states to modify them or face federalization of their permitting programs.
Issue # 9	12/15/2010	US EPA revokes the State of Texas's Primacy on Issuing Air Permits	Texas would litigate the issue for years.	""To wit, the EPA violated every tenet of administrative procedure to strip Texas of its authority to issue the air permits that are necessary for large power and industrial projects. This is the first time in the history of the Clean Air Act that the EPA has abrogated state control, and the decision will create gale-force headwinds for growth in a state that is the U.S. energy capital. Anyone who claims that carbon regulation is no big deal and that the EPA is merely following the law will need to defend this takeover. Since December 2009, the EPA has issued four major greenhouse gas rule-makings, and 13 states have tried to resist the rush. The Clean Air Act stipulates that pollution control is "the primary responsibility of states and local government," and while the national office sets overall priorities, states have considerable leeway in their "implementation plans." When EPA's instructions change, states typically have three years to revise these plans before sending them to Washington for approval.""
Issue # 10	1/13/2011	US EPA revokes the Arch Coal CWA 404 Permit for Spruce Creek Mining Permit.	Arch and other parties filed suit against the EPA.	The Environmental Protection Agency, in an unusual move, revoked a key permit for one of the largest proposed mountaintop-removal coal-mining projects in Appalachia, drawing cheers from environmentalists and protests from business groups worried their projects could be next.
Issue # 11	5/3/2011	EPA issued a final rule rendering permanent its interim revocation of Texas’s PSD SIP. Texas, in turn, petitioned for review of the May 3 final rule in the D.C. Circuit Court of Appeals.	The State of Texas would eventually relent to the US EPA.	Construction of a number of new coal-fired power plants were cancelled in Texas.
Issue # 12	6/15/2011	Clean Air Mercury Rule (CAMR), EPA intends to propose air toxics standards for coal- and oil-fired electric generating units by March 15, 2011 and it finalized a rule on December 21, 2011 which went into effect February 2012.	A number of groups opposed the rule package and filed suit against the US EPA.	On April 15, 2014, the U.S. Court of Appeals for the D.C. Circuit, in a 2-1 decision, upheld EPA’s Mercury and Air Toxics Rule over the challenges of numerous petitioners.

Issue # 13	6/17/2011	In June 2011, the EPA finalized CSAPR, a replacement rule to CAIR, which requires 28 states in the Midwest and eastern seaboard of the U.S.to reduce power plant emissions that cross state lines and contribute to ozone and/or fine particle pollution in other states. Nitrogen oxide and sulfur dioxide emissions reductions were scheduled to commence in 2012, with further reductions effective in 2014.	A number of opposition groups filed suit against the US EPA.	August 2012, the U.S. Court of Appeals for the District of Columbia Circuit (the "D.C. Circuit") vacated CSAPR and ordered the EPA to continue enforcing CAIR. In April 2014, the U.S. Supreme Court reversed the D.C. Circuit's decision vacating CSAPR. The EPA subsequently moved the Appeals Court for an order lifting the stay of CSAPR and extending the CSAPR compliance deadlines. In October 2014, the Court granted the EPA's request to lift the stay, and in November 2014, the EPA issued an interim final rule reconciling the CSAPR rule with the Court's order, which called for Phase 1 implementation in 2015 and Phase 2 implementation in 2017. For states to meet their requirements under CSAPR, a number of coal-fired electric generating units will likely need to be retired, rather than retrofitted with the necessary emission control
Issue # 14	8/16/2011	The EPA Issues Cross-State Air Pollution Rules in August of 2011. The EPA is forging ahead with a measure that would have dire consequences for the northern Appalachian Coal Region. The CAIR would force 31 states to dramatically reduce SO2 (SOX) and NOx (NOX) and <2.5 micron particulate emission levels by 2012. A further reduction on in another round in a fewer states would be required by 2014. Ohio is a target in both rounds.	A number of affected parties sued and the United States District Court of Appeals for the District of Columbia Circuit Ruled on August 21, 2012 against the USEPA. In the meantime, American Electric Power went about complying by switching half of their coal generation to natural gas in anticipation of compliance.	Once the larger utilities in Appalachia, such as American Electric Power, First Energy and Cinergy switched to gas, it became a shrinking market that would rock the coal industry and assist in its demise in 2015 and 2016.
Issue # 15	12/15/2011	In December 2011, the EPA issued a final rule under which the emission caps imposed under CSAPR for a given state would supplant the obligations of that state with regard to visibility protection. In May 2012, the EPA finalized a rule that allows the trading programs in CSAPR to serve as an alternative to determining source-by-source Best Available Retrofit Technology ("BART"). This rule provides that states in the CSAPR region can substitute participation in CSAPR for source-specific BART for sulfur dioxide and/or nitrogen oxides emissions from power plants.	The State of Wyoming pushed back against the US EPA.	The Tenth Circuit Court of Appeals is hearing Wyoming's challenge to the EPA's partial disapproval of the State's related plan for reducing emissions of haze-causing nitrogen dioxide. Wyoming's current plan to mitigate nitrogen dioxide will continue during the appeal. In September 2014, the Court stayed the EPA's rejection of Wyoming's plan and the litigation is still ongoing.
Issue # 16	2/15/2012	In February 2012, the EPA formally adopted a rule to regulate emissions of mercury and other metals, fine particulates, and acid gases such as hydrogen chloride from coal- and oil-fired power plants, referred to as "MATS".	A number of plaintiffs filed suit against the EPA challenging the rules.	In March 2013, the EPA finalized reconsideration of the MATS rule as it pertains to new power plants, principally adjusting emissions limits for new coal-fired units to levels considered attainable by existing control technologies. In subsequent litigation, the U.S. Court of Appeals for the D.C. Circuit upheld various portions of the rulemaking in two separate decisions issued in March and April 2014, respectively. In June 2015, the U.S. Supreme Court struck down the MATS rule based on the EPA's failure to take costs into consideration and remanded the case back to the D.C. Circuit. The D.C. Circuit has remanded the rule to the EPA, but allowed the current rule to stay in place until the EPA issues a new
Issue # 17	5/15/2014	In May 2014, the EPA issued a new final rule pursuant to Section 316(b) of the CWA that affects the cooling water intake structures at power plants in order to reduce fish impingement and entrainment.	This is just another example where the EPA has continued the attack on the industry.	The rule is expected to affect over 500 power plants. These requirements could increase our customers' costs and may adversely affect the demand for coal, which may materially impact our results or operations.
Issue # 18	6/2/2014	US EPA Recommends Changing CO2 Emission Limits for power plants to cause fuel switching to gas.	The US Congress should be opposing the US EPA's actions and have not been able to exert any oversight. The only club they have is the EPA's budget.	Congress does keep cutting the funds to the EPA and staff reductions follow. However, it does not slow the rogue actions of the agency.
Issue # 19	7/1/2014	USEPA is Forcing Ohio and other states to Revise General National Pollution Discharge Elimination System - NPDES Program	Industries are pushing back. Some parameters are based on levels established in states like Minnesota.	US EPA is making the State of Ohio, who administers the National program for the USEPA, to add additional restrictive metrics on Sulfates, Chlorides and Total Dissolved Solids.
Issue # 20	12/15/2014	In December 2014, the EPA finalized regulations that address the management of coal ash as a non-hazardous solid waste under Subtitle D. The rules impose engineering, structural and siting standards on surface impoundments and landfills that hold coal combustion wastes and mandate regular inspections. The rule also requires fugitive dust controls and imposes various monitoring, cleanup, and closure requirements. There have also been several legislative proposals that would require the EPA to further regulate the storage of CCR.	States are pushing back due to the fact that regulating CCRs is under their purview.	Whenever the EPA gets involved, social costs of regulations impose hidden taxes on the ultimate consumers of energy. They continue to fail to include benefit/cost studies along with their regulatory fiats.

Issue # 21	12/15/2014	In December 2014, the OSM announced its decision to pursue a rulemaking to revise regulations under SMCRA which will address all blast generated fumes and toxic gases. OSM has not yet issued a proposed rule to address these blasts.	WildEarth Guardians (WEG) has been the plaintiff in a number of lawsuits/adjudicatory actions against coal mine operators in the west.	On April 18, 2014, WEG petitioned OSM to initiate rulemaking pursuant to Section 201(g) of the Surface Mining Control and Reclamation Act (SMCRA), 30 U.S.C. § 1201(g), which permits any person to petition the Director of OSM to begin a proceeding for the issuance, amendment, or repeal of any SMCRA regulation.1 WEG asserted that blasting at coal mines leads to dangerous levels of visible nitrogen oxide (NOX) emissions, visible as orange-red clouds and irritating to the eyes, nose, throat, and lungs. At higher levels, the group claimed NOX emissions can cause more severe reactions and even death. WEG argued that SMCRA requires OSM to control NOX emissions because the statute was enacted to protect society and the environment from the adverse effects of surface coal mining operations. SMCRA Section 102(a), 30 U.S.C. § 1202(a). WEG also contended that SMCRA Section 515(b)(15)(C)(i)-(ii) requires that blasting activities must be controlled so as to prevent injury to persons and damage to public and private property outside the mine permit area, which WEG believes should extend to regulating NOX. 30
	3/9/2015	The Department of the Interior's Office of Surface Mining Reclamation and Enforcement (OSM) has granted a petition for rulemaking from WildEarth Guardians (WEG) to revise OSM's blasting rules for surface coal mining operations to control emissions from blasting. 80 Fed. Reg. 9256 (Feb. 20, 2015). Use of explosives is a method often used to move earth and rock during surface mining. Typically, gasses like visible nitrogen oxide are released if explosive charges are not properly detonated.	OSM will grant a petition for rulemaking if the agency determines it sets forth facts, technical justification, and law establishing a "reasonable basis" for amending OSM's regulations. 30 C.F.R. § 700.12(c). After taking public comment on whether it should grant or deny the petition,2 OSM Director Joseph Pizarchik decided to grant the petition on February 20, 2015. He opined that state regulatory authorities have taken inconsistent permitting and enforcement actions in response to fumes released during blasting. Accordingly, Director Pizarchik "concluded that the current silence in our regulations on toxic gases released during blasting is no longer acceptable and only perpetuates the disparities between the various practices of the state regulatory	The agency will now work to develop a proposed rule for publication in the Federal Register, after which time it will provide a further opportunity for public comment before finalizing the rule. The entire process could take several years. In crafting the rule, OSM will not adopt the precise regulatory changes suggested by WEG, but will independently determine what regulatory changes are necessary to prevent injury to people and damage to property from any harm that could result from all gases generated by mine-related blasting. OSM also plans to propose a definition of "blasting area" to help ensure that the areas affected by blasting are properly secured and the public protected. The agency further will propose amendments to the training and testing requirements for certified blasters in 30 C.F.R. § 850.13 to ensure that blasters can identify and mitigate impacts of blast fumes.
Issue # 22	7/27/2015	OSM published a proposed rule on July 27, 2015 to revise its regulations related to protecting streams and related wildlife from adverse impacts of surface coal mining operations. This proposed rule, or other new SMCRA regulations, could result in additional material costs, obligations and restrictions associated with our operations.	A number of coal associations is opposing the proposed rule.	This rule has the potential to sterilize a great amount of coal reserves, rendering them un-mineable.
Issue # 23	8/15/2015	In August 2015, the EPA issued its final Clean Power Plan ("CPP") rules that establish carbon pollution standards for power plants, called CO_2 emission performance rates. The EPA expects each state to develop implementation plans for power plants in its state to meet the individual state targets established in the CPP. The EPA has given states the option to develop compliance plans for annual rate-based reductions (pounds per megawatt hour) or mass-based tonnage limits for CO_2. The state plans are due in September 2016, subject to potential extensions of up to two years for final plan submission. The compliance period begins in 2022, and emission reductions will be phased in up to 2030. The EPA also proposed a federal compliance plan to implement the CPP in the event that an approvable state plan is not submitted to the EPA	A number of judicial challenges have been filed.	On February 9, 2016, the U.S. Supreme Court granted a stay of the implementation of the CPP before the United States Court of Appeals for the District of Columbia ("Circuit Court") even issued a decision. By its terms, this stay will remain in effect throughout the pendency of the appeals process including at the Circuit Court and the Supreme Court through any certiorari petition that may be granted. The stay suspends the rule, including the requirement that states submit their initial plans by September 2016. The Supreme Court's stay applies only to EPA's regulations for CO_2 emissions from existing power plants and will not affect EPA's standards for new power plants. It is not yet clear how either the Circuit Court or the Supreme Court will rule on the legality of the CPP. If the rules were upheld at the conclusion of this appellate process and were implemented in their current form, demand for coal will likely be further decreased, potentially significantly, and adversely impact our business.
Issue # 24	10/15/2015	In October 2015, the EPA released a rule that establishes, for the first time, new source performance standards under the federal Clean Air Act for CO_2 emissions from new fossil fuel-fired electric utility generating power plants.	A number of litigants are fighting continued actions by the EPA to act beyond their statutory authority.	The EPA has designated partial carbon capture and sequestration as the best system of emission reduction for newly constructed fossil fuel-fired steam generating units at power plants to employ to meet the standard. However, there is currently no large-scale use of carbon capture technologies in domestic coal-fired power plants, and as a result, there is a risk that such technology, which may include storage, conversion, or other commercial use for captured carbon, may not be commercially practical in limiting emissions as otherwise required by the proposed rule or similar rules that may be proposed in the future.
Issue # 25	1/4/2016	On January 15, 2016, the Secretary of the Department of the Interior ("DOI") announced a moratorium on the issuance of new leases for coal resources on federally-owned lands in order to allow for a "comprehensive review" of the federal coal programs. The terms of this moratorium preclude the BLM from accepting new applications for thermal coal sales, or modifying existing leases subject to	A number of companies are pushing back stating that this is a veiled attempt to make federal coal more expensive to mine.	Several goals such as attempting to make federal coal more expensive to mine by increasing the royalty rate from 12.5% to 20.0% and making the cost of attaining a federal coal lease higher will be a part of the government's actions.

Issue # 26	1/4/2016	In January 2016, the federal Office of Surface Mining Reclamation and Enforcement ("OSMRE") sent Ten-Day Notices to the Wyoming Department of Environmental Quality regarding self-bonding of certain other coal companies who have filed for bankruptcy. In its notices, OSMRE asserted that a violation of the Wyoming approved state program may exist by allowing the specified companies to continue mining without sufficient reclamation bonding in place. In addition, as a result of increasing credit pressures on the coal industry, it is possible that surety bond providers could demand cash collateral as a condition to providing or maintaining	The State of Wyoming is pushing back on OSM's usurpation of its coal program primacy and bonding program.	This issue is still being disputed. In all likelihood self-bonding will be eliminated in Wyoming. It will be a mater of time before the US government will eventually require full-cost bonding for all federal leases.
Issue # 27	4/22/2016	Obama signs the Paris Climate Accord	This Earth Day, President Obama signed the Paris Agreement on climate change, which seeks to limit greenhouse gas emissions and funnel aid to developing nations. Amid the pageantry and celebration, a crucial fact will be downplayed: Obama's signature is good for a maximum of nine months.	President Obama is signing the Paris Accord, but The United States is not. To bind the country, the Agreement must be ratified as a treaty by two thirds of the Senate.
Issue # 28	6/22/2016	US EPA Director - Gina McCarthy testified before House committee on Science, Space and Technology to explain the inconsistent actions of the EPA regarding sound science.	The committee accused the director of using selective science that was selected to promote the environmental agenda of the administration, rather than basing policy on sound science.	Environmental Protection Agency (EPA) Administrator Gina McCarthy appeared as the sole witness before the Committee hearing on Wednesday to discuss "sound science" at the agency. Concerns have been raised previously over the integrity of science in particular EPA findings and rulings. Also on Wednesday, the House Natural Resources Committee held an oversight hearing to review the "appropriate role" for National Environmental Policy Act (NEPA) in the land permitting
Issue # 29	2009-2016	Mine Safety & Health Administration (MSHA) use of the 2006 MINER Act to harass the coal industry.	The industry has responded by implementing new costly monitoring and redundant safety systems. It has caused a decrease in mine productivity and increase in coal mine production costs.	MSHA increased the number of inspections and increased the number of citations and the dollar amount of fines against the industry. They also increased the regulation of dust particles, etc.
Issue # 30	2009-2016	EPA New Source of Review Process: The EPA's new source review program under certain circumstances requires existing coal-fired power plants, when modifications to those plants significantly change emissions, to install the more stringent air emissions control equipment required of new plants.	A number of environmental groups are trying to get fossil fuel usage diminished. The EPA can still move forward to impose more hurt on the coal industry.	Litigation seeking to force the EPA to list coal mines as a category of air pollution sources that endanger public health or welfare under Section 111 of the CAA and establish standards to reduce emissions from sources of methane and other emissions related to coal mines was dismissed by the D.C. Circuit in May 2014. In that case, the Court denied a rulemaking petition citing agency discretion and budgetary restrictions, and ruled the EPA has reasonable discretion to carry out its delegated responsibilities, which includes determining the timing and relative priority of its regulatory agenda. In July 2014, the D.C. Circuit denied a petition seeking a rehearing of the case *end banc* .
Issue # 31	2009-2016	A Wall Street Journal news article on Murray Energy Company stated on July 1, 2016 "The ailing US coal sector, focused in Wyoming, Illinois and the Appalachian region, has lost more than 30,000 jobs since 2009, according to the Mine Safety and Health Administration." According to a Penn State University study, between 7-10 jobs are connected to each mining job. Therefore, the impact to the US Economy is in effect more like 300,000 jobs lost.	Supreme Court's invalidation of the MATS Rule came too late for the 163 generating units across the country that had already closed for good, with each depicted here citing EPA regulations as a cause for their closure. While some states escaped unscathed from this EPA offensive, others such as Ohio lost over thirty electric generation units that could have otherwise been saved if the MATS Rule had been subject to a stay during its judicial review. In total, over 50 GW of affordable, reliable power plants have been shuttered by	In advance of the judicial rebuke of the MATS Rule, EPA Administrator Gina McCarthy brazenly brushed off the potential for a loss by noting that the forthcoming verdict really didn't matter because the Agency had already achieved what it set out to do – close plants. That is exactly what the EPA hopes will occur again with its carbon emissions rules—and without a stay, they might get their wish. We can only hope that the Court will this time prevent the EPA from pulling another fast one on our constitutional system of checks and balances … and the American people.