

**THE GREEN AGENDA AND THE WAR ON COAL:  
PERSPECTIVES FROM THE OHIO VALLEY**

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**HEARING**

BEFORE THE  
SUBCOMMITTEE ON REGULATORY AFFAIRS,  
STIMULUS OVERSIGHT AND GOVERNMENT  
SPENDING

OF THE

**COMMITTEE ON OVERSIGHT  
AND GOVERNMENT REFORM  
HOUSE OF REPRESENTATIVES**

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# THE GREEN AGENDA AND THE WAR ON COAL: PERSPECTIVES FROM THE OHIO VAL- LEY

Tuesday, July 31, 2012

HOUSE OF REPRESENTATIVES  
SUBCOMMITTEE ON REGULATORY AFFAIRS, STIMULUS  
OVERSIGHT AND GOVERNMENT SPENDING  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM  
*Washington, D.C.*

The subcommittee met, pursuant to call, at 8:00 a.m., Ohio University Eastern Campus, Shannon Hall, 45425 National Road W., St. Clairsville, Ohio, Hon. Jim Jordan [chairman of the subcommittee] presiding.

Present: Representatives Jordan and Kelly.

Also present: Representatives Johnson and McKinley.

Staff present: Christopher Hixon, Deputy Chief Counsel, Oversight; Ryan M. Hambleton, Professional Staff Member; and Alexia Ardolina, Assistant Clerk

Mr. JORDAN. The House Oversight Subcommittee will come to order. We are pleased to be here at the Ohio State University Eastern Campus. If we could have Dean Richard Greenlee come forward. Come right on up.

Mr. GREENLEE. I want to welcome you to our campus. We are glad you took the opportunity to use our fine facilities, and we hope you have a very productive meeting.

Mr. JORDAN. Thank you. Thank you so much for your hospitality. We will start with opening statements and get right to our first panel. We have two panels. We look forward to hearing testimony from everyone.

Let me again thank the Dean and the University here for allowing us to be here this morning. I also want to thank Congressman Bill Johnson. We are in the fine district of the Congressman, and we appreciate him joining us today, as well as Congressman Kelly from Pennsylvania and Congressman McKinley from West Virginia.

It is important and helpful for the Committee to hear firsthand about the problems facing local communities across the United States. We have come here today to learn about the effects of the Obama administration's war on coal and the impact of federal regulations on families and businesses here in southeast Ohio.

Coal is very important to communities in this area and to the nation as a whole. According to 2010 data from the U.S. Energy Information Administration, in Ohio, Pennsylvania and West Virginia,

there are 765 coal operations employing over 32,000 miners. As of 2011, these three states account for over 20 percent of the coal production in the United States. Not only is coal produced in this region, but it is used here, too. As of 2010, Ohio derived 82 percent of its electricity from coal. In Pennsylvania this figure was 48 percent. West Virginia relied on coal for almost 97 percent of its electricity that year.

America needs coal to provide nearly half of its entire electricity. Coal is used so heavily because it is cheap, reliable and abundant. Inexpensive and dependable electricity is crucial to manufacturing operations, which is important to a state like Ohio that depends on manufacturing to create jobs. However, coal in this country is under assault by this administration.

The President has made statements to indicate his support for ending or significantly curtailing the use of coal and other fossil fuels as an energy source. In 2008, as a candidate, then Senator Obama said, quote, under my plan of a cap-and-trade system, electricity rates would necessarily skyrocket. Coal power plants, you know, natural gas, you name it, whatever the plants were, whatever the industry was, they would have to retrofit their operations. That will cost money.

Unfortunately it appears the President is making good on his campaign promise. The present anti-coal philosophy has found its way into the operations of the United States Environmental Protection Agency among other parts of the Administration. In fact, the EPA has been the most zealous in enacting the President's philosophy. The agency has taken unprecedented action by overstepping its Congressionally approved authority under the Clean Water Act to slow down new coal permits and to attempt to veto existing permits after they have already been approved properly by the Army Corps of Engineers.

EPA's assault on the industry has also taken a form of rules that will make it harder to use coal. Local examples of this assault include the Utility MACT rule which requires extremely expensive upgrades to coal-fired power plants and the Greenhouse Gas New Performance Standards for electric generation units which would essentially ban the construction of new coal-fired electricity generation facilities. These regulations will cost billions of dollars and will result in massive job losses.

I want to welcome today's witnesses. Thank you all for being here. We are looking forward to hearing your testimony on the impact of the EPA regulations and permitting issues on the coal industry and on job creation and economic growth here in southeast Ohio.

We also appreciate the attendance of the witnesses representing EPA and look forward to their testimony on the second panel. These witnesses represent two regional administration offices that have jurisdiction over Ohio, Pennsylvania and West Virginia. We look forward to hearing more from them about the role that the EPA's regional administrators play in implementing the policies of this Administration. Again, thank you all for coming. We will get to our witnesses here in just a minute.

First I want to yield to the gentleman from Ohio whose district we are in, Congressman Johnson.

We have one housekeeping matter. Can we have unanimous consent to have Mr. Johnson sit on the committee and participant in this hearing?

Hearing no objection, Mr. Johnson, you are recognized.

Excuse me. We need that for David as well. No objection. So recorded.

Mr. Johnson you are recognized for your opening statement.

Mr. JOHNSON. Thank you, Mr. Chairman. I appreciate you yielding me time and for hosting this important hearing on the Administration's War on Coal. I would also like to thank our witnesses for taking the time to come and testify before us today on this important issue.

Since taking office, this President and his Administration has led an all-out fight against the coal industry. And the fight has been a 2-front war, one on the production side of coal and one on the market side of the coal industry.

On the production side, we have seen the EPA slow-wall permitting for coal mines, and in one egregious case they even retroactively vetoed a permit that had been approved by the Army Corps of Engineers. But the EPA isn't the only department in the Administration attacking the ability of coal companies to mine our natural resources. The Department of the Interior has been trying to rewrite the 2008 Stream Buffer Zone rule since late January 2009, just mere days after this President took office. By some estimates this proposed rewrite of the Stream Buffer Zone rule could cost tens of thousands of direct and indirect jobs and cause the price of electricity to skyrocket.

Now, since I took office in 2011, I have been fighting tooth and nail to stop the Administration from going forward with this new rule, and I have introduced legislation to do exactly that.

On the market side of the equation, the EPA has aggressively placed standards on coal-fired power plants that are unrealistic and uneconomical for utility companies to meet. Power plants throughout the midwest are left with the impossible decision of shutting down or spending billions of dollars raised through rate hikes on consumers to meet the new standards.

Down near my home of Marietta, Ohio, a large power plant will close in the coming months because of these new standards. Over 150 Ohioans will lose their jobs, and families and small businesses will be left with higher utility rates. As a candidate, as the chairman pointed out, the President told us what his policies toward coal and coal-fired power generation would do when he infamously said that if a company wants to build a coal-fired power plant, they can, but it will bankrupt them.

This President doesn't seem to understand that for states like Ohio, which receives over 80 percent of its power from coal plants, the people who are hit hardest are the seniors on fixed income, hardworking families and the small businesses that are the job engines of our economy.

In fact, the average American family has seen a \$300 per year increase in their utility bill since this President took office, and that is a direct impact of his crippling coal policies. Now, you can guarantee that this number will only go up for Ohioans if the President's war on coal is not stopped and is not stopped soon.

I would like to thank you again, Mr. Chairman, for hosting this important hearing and shedding light on this Administration's economically destructive coal policies, and I look forward to hearing the important testimony from our witnesses.

With that I yield back the balance of my time.

Mr. JORDAN. Thank the gentleman. Now I yield to the gentleman from Pennsylvania, Mr. Kelly, for his opening statement.

Mr. KELLY. Thank you, Mr. Chairman, for holding this hearing. I am not too far from here, over in Pennsylvania, and there are a lot of my friends that are in the coal business. Most of the time when I get a chance to talk to people, I talk about a country that has been so blessed with natural resources. Coal is abundant. It is accessible. It is affordable. It is has been the backbone of our nation's electric power for so long. About half of the electricity we have in Pennsylvania comes us from coal.

When I hear people talk about coal, they talk about coal in a way that I do not particularly care for. I know this Administration does have a war on coal. Do not be fooled by the small talk and the chit-chat about they do not. I am telling you there is a war on coal. There is a war on fossil fuels. This Administration through the EPA has made it very difficult for my friends that are in the coal business. They are making it for difficult for Americans who rely on touching that switch and flipping it on and having their lights come on, able to cool their houses in the summer, able to light lights and do an awful a lot of things and run their industry. When you hear this going on day after day, week after week, month after month, it is time to stop chitchatting and tap dancing around the issues.

Now, listen, all of us want clean air. All of us want clean water. But you know what we also want? We want our economic freedom. Why in the world would we put this country at risk with the abundance of natural resources that we have, the abundance of coal that we have. 200 years' supply right here beneath our feet.

Other places around the world would love to have what we have. They look at us and they scratch their heads and say, "What is it with you folks? Why would you put yourselves behind the 8 ball? Why would you put yourselves in a position where you can't power yourselves?"

Now, I am glad we are having this hearing today, and I am glad that the public is here. I hope that America is paying attention. There are very clear decisions in the way this country is being run. For those of you who are not watching it closely, please, please wake up and smell the coffee. We are at dire risk of losing the greatest country in the world because of an onerous government that keeps its boot on the throat of our job creators, that keeps its boot on coal and does not want coal as part of our energy production. Make no mistake about it. That is what they are trying to do.

So the fact that we are here today and we are able to talk to different witnesses and talk to people who do produce this power and produce this product that allows America to rise to the top, I sure welcome that chance.

We also have our friends at the EPA here. I got to tell you, gentlemen, at some point someone better take a look at what is happening in America. We cannot legislate and regulate and make it

impossible for America to continue its great success if we keep up with these policies.

Mr. Chairman, I am going to yield back. Thank you so much for having this hearing.

Mr. JORDAN. I thank the gentleman for his comments.

The gentleman reminded me that the world is better and safer when America leads. The simple fact is you cannot lead militarily, you cannot lead diplomatically if you don't lead economically. You cannot lead economically if you don't have energy. The gentleman's comments about affordable, abundant and accessible coal is critical to being able to lead in the energy area and, therefore, being able to lead economically and, therefore, make the world a better place. That is really what is at stake here.

I appreciate the gentleman's comments from Pennsylvania. They were right on target.

I would now yield to the gentleman from West Virginia for his opening statement.

Mr. MCKINLEY. Thank you, Chairman Jordan. Thank you for holding this hearing today to expose this war on coal being waged by the EPA and President Obama's Administration. The coal that is mined here in eastern Ohio and throughout West Virginia powers America and provides good paying jobs for thousands of families and revenue for numerous state and local governments.

But the coal industry and the coal-fired electric generating plants are under siege, and the future is indeed in jeopardy. Under the pretext of global warming his playful support of radical and environmental extremists and his passion for renewable energy models, President Obama is relentlessly pursuing a dangerous gamble of diminishing the contribution of coal and our country's energy portfolio.

The President himself has said, as you have heard from other speakers, that he may not be able to prevent coal-fired utilities from being constructed, but the taxes and regulations that he will impose will bankrupt those that try.

How about Secretary of Energy, Secretary Chu who said coal is his worst nightmare. The leading speaker for energy in America has said coal is his worst nightmare. Or Vice-President Biden who has said the present Administration is not supporting clean coal technology. Or what about Senator Reid who announced, "Coal makes me sick. It is ruining our country."

Wait. What about the assault from the EPA. The coal industry and the electric generating plants have had to deal with issues like delayed water permitting, unreasonable water conductivity expectation, a mercury emission standard that is crippling the current plants, a threat of treating coal ash as a hazardous material, regulating minute particulate matter designated with virtual no health benefit but costing the consumers billions of dollars, proposing New Source Performance Standards when there is no technology available to perform that standard, cooling water temperature, cross-state air pollution standards, intimidation of state and local environmental agencies by the powerful EPA, potential roadblocks permitting companies from exporting coal and even natural gas and oil, and then coupled with a 41 percent reduction in the R & D spending of the Department of Energy's money for clean coal tech-

nology. That is backed on the fact that last year, they had 39 percent reduction in the R & D for clean coal technology.

This form of industrial harassment has already cost utilities across America to initiate plans reluctantly to begin the closure of approximately 125 power generating plants across America out of the 700. That is a result of almost 25 percent less power that's going to go into the grid because of this war on coal. But keep in mind the EPA's own economic model only predicted a 2 percent reduction. How wrong they have been.

The integrity of the grid, the ability of consumers and manufacturers to have access to low cost electricity could very well be put to the test in the coming years unless other electrical generation from natural gas, oil, biomass, hydro, wind, solar become available and dependable.

President Obama is depending on the environmental side of this equation to shore up his argument for this war on coal. Little, if any, of the global greenhouse gas emissions can be achieved without comparably enforced environmental standards in China and India. Both of these countries are seizing every opportunity to expand their economies using coal as a primary energy source.

More specifically, China has been constructing the equivalent of a new powerhouse, coal-fired powerhouse every week for the last three years. 12 years ago the United States and China were both producing and operating on a billion tons of coal. 12 years later, China is now at 3,000,000,000 tons, triple in just 12 years. They tripled their dependency and use of coal whereas in America, we are still back at 1.1 billion, but we are exporting the majority of that.

We all want clean, affordable and dependable energy with increases, not reductions in money for R & D. We will get there. The ideologues and regulators in Washington need to step back and simply say to themselves just because you can doesn't mean you should. Regulators need to slow down, take a close look at the economic impact of their actions. Perhaps if these regulators and bureaucrats got out of the Washington Beltway and came over to America's coalfields here in eastern Ohio and throughout West Virginia and toured the technological marvels of our country's coal-fired powerhouses and met with the hardworking men and women in these communities, perhaps then they wouldn't turn their backs on our nation's coal industry.

Hopefully this hearing held today in the heart of Ohio's coal belt will demonstrate once and for all that the coal industry and our coal-fired utilities are clearly in an all-out confrontation with the Obama Administration and its rogue agency, the EPA. The outcome of this struggle, this war on coal, will demonstrate how vital our communities will be in the future and how manufacturers and consumers will react if king coal is overthrown. I look forward to hearing more of the testimony.

I yield back my time. Thank you.

Mr. JORDAN. Thank the gentleman for his opening statement which is right on target.

Let me introduce our first panel. We have Mr. Bob Hodanbosi, who is the Chief of the Division of Air Pollution Control at the Ohio Environmental Protection Agency.

We have the Honorable Andy Thompson—good to have you with us, Representative—who represents the 93rd District in the Ohio House of Representatives, Mr. Anthony Ahern, who is president and CEO of the Ohio Rural Electric Cooperatives, Inc. and Buckeye Power, Inc. and Mr. Tom Mackall who is the president of Sterling Mine Corporation.

Gentlemen, I want to thank you. You know how it works. You have to listen to us first. Then you get to go. You get five minutes. If you can stick to that five minutes, that would be great. We are kind of lenient. But one thing we have to do, and it is the practice of the oversight committee is before we hear from you, we want to swear you in.

[Witnesses sworn.]

Mr. JORDAN. Let the record show that each witness answered in the affirmative.

Mr. Hodanbosi you are recognized for your five minutes.

#### **WITNESS STATEMENTS**

##### **STATEMENT OF ROBERT HODANBOSI**

Mr. HODANBOSI. Thank you. Mr. Chairman, members of the committee, thank you for the opportunity to provide this committee with information on the effects of the U.S. EPA requirements on the coal industry in Ohio and surrounding states. These series of new and additional standards continue to increase the cost of using this important domestic fuel.

My name is Robert Hodanbosi. I am chief of the Division of Air Pollution Control at Ohio EPA. I have almost 40 years of experience in the field of air pollution control and have seen great improvements in air quality in the Ohio Valley and throughout the state. Attached is an example of the dramatic improvement in sulfur dioxide concentrations in Ohio. This improvement came at a substantial cost to Ohio utilities and industry. This reduction of sulfur dioxide emissions even further will require an even greater expense to obtain a diminishing return in improvement in air quality.

There are several regulatory initiatives under way by U.S. EPA that have a direct adverse impact on coal or the major users of coal. In June of 2012 U.S. EPA promulgated a more restrictive ambient air quality standard for sulfur dioxide at 75 parts per million one hour average. This new standard was promulgated without the implementation requirements for states to follow. U.S. EPA issued draft guidance on the air dispersion modeling methodology that should be used in attainment areas.

Over 20 state and local air agencies expressed concern to U.S. EPA over the proposed methodology. After these concerns were raised by state and local air agencies and others, the U.S. EPA held a series of stakeholder meetings to receive comments on possible revisions to the guidance. We are still awaiting the outcome of the meetings and guidance.

The Cross State Air Pollution rule was promulgated in 2011 to regulate the amount of emission of sulfur dioxide and nitrogen oxide from utilities that can affect downwind states. This rule allows for limited trading of emissions. With the continued tight-

ening of ambient air quality standards, U.S. EPA will be required to go back and promulgate even more restrictive standards. This leads to more regulatory uncertainty and increased cost to operate coal-fired power plants, leading to increased use of coal.

On February 16, 2012, U.S. EPA promulgated the Utility Mercury and Air Toxic rule to reduce emissions from coal-fired power plants. This rule establishes very stringent standards for emissions of mercury, particulate matter and hydrochloric acid. The federal rule allows three years to comply with the standards. So by February 16, 2015, all units must be in compliance. U.S. EPA recognizes that the compliance date will be difficult to achieve for many units, and state permitting authorities have the ability to extend the compliance deadline by one year. Ohio EPA already initiated preliminary discussions with Ohio utilities to outline the documentation that will be necessary to approve the 1-year extension.

What has been the result of all these U.S. EPA rules? There have been a series of announcements by the utility companies that over 25 boilers at power plants in Ohio will be closed. These closures will have a direct impact on mining and use of coal. Although these units are older, this does not mean that these units are no longer used.

The Columbus Dispatch reported that some industrial consumers were required to reduce electrical consumption due to the lack of available electricity during a recent heatwave. For American Electric Power Company in Ohio, except for the small Picway unit, the other plants scheduled for shutdown were in operation. Ohio EPA remains concerned that if there are spot shortages of electricity today, the problem will be exacerbated when Ohio loses significant electrical generation capacity due to the closures as a result of the U.S. EPA requirements.

U.S. EPA has proposed standards for coal-fired utility plants in the form of New Source Performance Standards. In the proposal U.S. EPA sets the standard for new coal plants to be the same as efficient new gas-fired plants. This proposed standard has not been achieved in practice by any coal-fired plant.

Another aspect of this rule is that both the news release and preamble state that the rule only addresses new sources; however, U.S. EPA signed a consent decree that commits the agency to regulate new, modified and existing sources. Once this NSPS rule is promulgated, U.S. EPA will have no choice but to go forward on regulating existing sources under 111(d) of the Clean Air Act. Again, there is no cost effective controls for CO<sub>2</sub> from existing power plants. This particular issue will have a huge impact on the continued operation of coal-fired power plants in the midwest and elsewhere.

There are also additional requirements that the U.S. EPA is proposing on facilities that use coal. U.S. EPA is moving forward to tighten limitations on water discharges from coal-fired power plants and to change the manner that coal residuals are regulated.

Finally, any significant increase in electric rates will have an adverse impact on Ohio industry. For example, the only two manganese ferroalloy plants in the United States are located in Marietta, Ohio and New Haven, West Virginia. These plants are located near power plants due to the large electric demand needed to make

the product. These plants can only remain competitive if there is reliable, inexpensive electric power.

The same issue applies to aluminum producer Ormet in Hannibal, Ohio and other metal producers and alloy manufacturers in Ohio. For Ohio and other states to maintain an industrial base, there will continue to be the need for inexpensive power.

Thank you for the opportunity to present these views on behalf of Ohio EPA. We would be glad to work with the committee for our recommendations on U.S. EPA requirements that are protective of public health but do not have as great an adverse impact on coal and coal-related industries.

[Prepared statement of Mr. Hodanbosi follows:]

**Testimony of Robert Hodanbosi  
Ohio EPA  
Division of Air Pollution Control**

**Subcommittee on Regulatory Affairs,  
Stimulus Oversight and Government Spending**

**July 31, 2012**

Thank you for the opportunity to provide this committee with information on the effects of U.S. EPA requirements on the coal industry in Ohio and surrounding states. These series of new and additional standards continue to increase the cost of using this important source of domestic fuel.

My name is Robert Hodanbosi and I am Chief of the Division of Air Pollution Control at Ohio EPA. I have almost 40 years of experience in the field of air pollution control and have seen great improvements in air quality in the Ohio Valley and throughout the state. Attached is an example of the dramatic improvement in sulfur dioxide concentrations in Ohio. This improvement came at a substantial cost to Ohio utilities and industry. The reduction of sulfur dioxide emissions even further will require an even greater expense to obtain a diminishing return in improvement in air quality.

There are several regulatory initiatives underway by U.S. EPA that have a direct impact on coal or the major users of coal.

In June of 2010, U.S. EPA promulgated a more restrictive ambient air quality standard for sulfur dioxide at 75 ppb, 1 hour average. This new standard was promulgated without the implementation requirements for states to follow. U.S. EPA issued draft guidance on the air dispersion modeling methodology that should be issued in attainment areas. Over 20 state and local air agencies expressed concern to U.S. EPA over the proposed methodology. After these concerns were raised by state and local air agencies and others, the U.S. EPA held a series of stakeholder meetings to receive comments on possible revisions to the guidance. We are still awaiting the outcome of the meetings and guidance.

One of the important issues raised in the comment period for the sulfur dioxide implementation guidance was the application of the AERMOD model to predict one-hour ambient concentrations of sulfur dioxide. The State of Indiana has conducted a study that clearly shows that the use of AERMOD produces predicted concentrations up to 300% above actual concentrations. We support the State of Indiana in their effort to improve the accuracy of the AERMOD model. Due to the stringency of this new standard, the accuracy of the tools that must be utilized by states to develop emission limitations becomes critical, and we hope that U.S. EPA will seriously evaluate improvements to the AERMOD model.

The Cross State Air Pollution Rule (CSAPR) was promulgated in 2011 to regulate the amount of emissions from utilities that can affect downwind states. This rule restricts the emissions of sulfur dioxide and nitrogen oxides from utilities. The rule allows for limited trading of emissions. Of even greater concern is that this rule applies only to the current PM2.5 ambient air quality standards and the 1997 ozone standard. With the continued tightening of the ambient air quality standards, U.S. EPA will be required to go back and promulgate even more restrictive standards. This leads to more regulatory uncertainty and increased cost to operate coal-fired power plants leading to decreased use of coal. At the request of Ohio EPA, the Ohio Attorney General has appealed the CSAPR to the D. C. Circuit Court of Appeals.

Utility MATS – On February 16, 2012, U.S. EPA promulgated the utility mercury and air toxics rule to reduce emissions from coal-fired power plants. This rule establishes very stringent standards for emissions of mercury, particulate matter, and hydrochloric acid. The federal rule allows three years to comply with the standards so by February 16, 2015, all units must be in compliance. U.S. EPA recognizes that the compliance date will be difficult to achieve for many units and state permitting authorities have the ability to extend the compliance deadline by one year. Ohio EPA has already initiated preliminary discussions with Ohio utilities to outline the documentation that will be necessary to approve the one year extension. Due to the far reaching adverse impacts of this rule, Ohio EPA also requested the Ohio Attorney General to challenge this rule promulgation.

What has been the result of all of these U.S. EPA rules? There have been a series of announcements by the companies that operate power plants in Ohio that the following utility units will be closed:

American Electric Power

- Picway, Unit 5, 100 MW
- Conesville, Unit 3, 165 MW
- Muskingum River, Units 1-4, 840 MW

Duke Energy

- Beckjord Units 1-6, 1120 MW
- Miami Fort, Unit 6, 160 MW

First Energy

- Bay Shore, Units 2-4, 495 MW
- Eastlake, Units 1-5, 1123 MW
- Lake Shore, Unit 18, 245 MW
- Ashtabula, Unit 1, 244 MW

## Gen On

- Niles, Units 1-2, 217 MW
- Avon Lake, Units 7&9, 733 MW

These closures will have a direct impact on the mining and the use of coal.

The regional utility distribution company, PJM, recently put out bids for power during the June 2015 to June 2016 timeframe. The bids for base power in the Mid-Atlantic area will be \$167 per megawatt. In Northern Ohio, served by First Energy, the cost will be \$357 per megawatt, more than double the Mid-Atlantic States. This significant increase in the cost of electricity bids illustrates what can happen as a result of reduced generating capacity.

Finally, although these units are older, that does not mean that these units are no longer used. The Columbus Dispatch reported that some industrial consumers were required to reduce electrical consumption due to a lack of available electricity during the recent heat wave. For American Electric Power Company in Ohio, except for the small Picway unit, the other plants scheduled for shutdown were in operation. Ohio EPA remains concerned that if there are spot shortages of electricity today, the problem will be exacerbated when Ohio loses significant electrical generation capacity due to closures as a result of U.S. EPA requirements.

U.S. EPA has proposed standards for new coal-fired utility plants in the form of New Source Performance Standards (NSPS). In the proposal, U.S. sets a standard for new coal plants to be the same as an efficient new natural gas fired plant. This proposed standard has not been achieved in practice by any coal-fired power plant. The technology is not available today to control CO<sub>2</sub> in a cost-effective manner. U.S. EPA recognizes this issue by deferring controls for ten years, if, the utility agrees to more stringent controls for the next twenty years. This "flexibility" is not practical or workable. A new coal-fired power plant will cost 3 to 4 billion dollars. In order to plan, bid, and construct the massive controls would take five years. No utility will risk such a large investment on the hope that controls will be available in five years.

Another aspect of this rule is that both the news release and preamble state that the rule only addresses new sources. However, U.S. EPA signed a consent decree that commits the agency to regulate new, modified, or existing sources. Once this NSPS rule is promulgated, U.S. EPA will have no choice but to go forward on regulating existing sources under 111(d) of the Clean Air Act. Again, there are no cost effective controls for CO<sub>2</sub> from existing power plants. This particular issue will have a huge impact on the continued operation of coal-fired power plants in the Midwest and elsewhere. Please find attached the consent decree signed by U.S. EPA.

Application of Greenhouse Gas Rules to Underground Coal Mines – U. S. EPA promulgated requirements that major sources of Greenhouse Gas emissions must

apply for Title V permits by July 1, 2012. In many cases, this requirement does not apply to "fugitive" sources, meaning sources that do not have a discrete emission point of release. The question has arisen as to whether an underground coal mine shall be treated as a "fugitive" source. U.S. EPA's initial reaction was that these sources should be treated as "point" sources and subject to Title V permitting requirements. In response, Ohio, along with Illinois, Indiana, Kentucky, Virginia and West Virginia, requested that U.S. EPA revisit this determination since the nature of venting of coal mines is fugitive in nature. Please find attached letter from states to U.S. EPA.

There are also additional requirements that U.S. EPA is proposing on facilities that use coal. U.S. EPA is moving forward to tighten the limitations on water discharges from coal-fired power plants and to change the manner that coal residuals are regulated.

Finally, any significant increase in electric rates will have additional adverse impacts on Ohio industry. For example, the only two manganese ferroalloy plants in the United States are located in Marietta, Ohio, and New Haven, West Virginia. These plants are located near power plants due to the large electric demand needed to make this product. These plants can only remain competitive if there is reliable, inexpensive, electric power. This same issue applies to aluminum producer Ormet in Hannibal, Ohio and other metal and alloy manufacturers in Ohio. For Ohio and other states to maintain an industrial base, there will continue to be a need for inexpensive power.

Thank you for the opportunity to present these views on behalf of Ohio EPA. We would be glad to work with the committee to provide recommendations on U.S. EPA requirements that are protective of public health but that do not have as great an adverse impact on coal and coal related industries.

Mr. JORDAN. Thank you. I appreciate your fine testimony. Representative Thompson will be recognized.

#### STATEMENT OF ANDY THOMPSON

Mr. THOMPSON. Mr. Chairman and members of the subcommittee, thank you for inviting me to testify at this hearing. My name is Andy Thompson. I am in my first term representing Ohio's 93rd House District, and I represent Guernsey, Noble and Munroe, as well as portions of Washington and Muskingum Counties. Before being elected to the state legislature, I served on the Marietta City Council for three terms, getting elected to my final term in 2009.

I appreciate the opportunity to speak before you today about the impacts of the Obama Administration's ill-advised energy and environmental policies and their impacts here in Ohio.

Today I would like to discuss, number one, the Administration's war on coal and the impact on coal jobs, the impact on utility jobs and the greater coal communities, what this means for manufacturing in Ohio, and how this impacts our growing natural gas industry.

This is coal country, and here in eastern Ohio we rely on coal not only for electricity, but also for good-paying jobs and a strong tax base to help provide critical services. Coal not only provides jobs for our miners, equipment operators and support personnel. It also provides many jobs in the surrounding communities where coal industry employees work and live.

For example, a study from Pennsylvania State University has demonstrated that every direct coal mining job supports 11 other jobs in such areas as trucking, railroads and equipment suppliers, as well as local businesses, including restaurants, stores, and gas stations. Coal has been integral to the wellbeing of eastern Ohio's communities for many, many years. When coal is doing well, we do well.

But unfortunately, coal is in a tough spot right now. Many of the environmental policies that the Obama Administration has undertaken in recent years have caused substantial hardship in our region, and I fear that this may only be the beginning.

Just last week, a major coal mine in my district announced that it was laying off 29 workers in direct response to several Obama Administration policies aimed at coal. Not too long before that, I learned of a surface mining company in Noble County that cannot get any new permits approved by the Corps of Engineers and the EPA. This company has mined almost all of its permitted property, but now is considering shutting down operations because the government has not granted it new permits. These are just two of the many troubling examples that have been brought to my attention recently.

As every elected official knows, this is county fair season, and at every fair that I have been to, people have come up to me and expressed deep concerns about the war on coal and what it means for communities and for eastern Ohio. These people have spouses, brothers and uncles in the mining business, and they are all scared for its future and for their own future. I hear this more than any other issue. People in eastern Ohio are deeply concerned that the

war on coal is going to ruin their livelihoods, their families, and their communities.

When you hear about layoffs in the coal industry, you generally think about coal miners and others who work at a mine, and that is understandable because they are the first ones to lose their jobs and their livelihoods when a coal mine shuts down. But we also need to be thinking about what is going to happen to people who work at the coal-fired facilities that are being shut down. Those layoffs are starting to happen right here in Ohio.

For example: AEP will shut down 5 units at the Muskingum River in Beverly, costing 128 jobs. They will shut down one unit at the Conesville Generating Station, eliminating 20 jobs. AEP will shut down one unit for nine months annually at its Picway plant near Lockbourne, costing 24 jobs. Duke will shut down one of its generating units at its Beckford Station in New Richmond, Ohio, impacting 120 jobs. First Energy will close units at its Bayshore, Eastlake, Lakeshore and Ashtabula locations, jeopardizing up to 530 jobs. GenOn will shut two units at its Avon Lake plant, costing 80 jobs, and GenOn will shut two units at its Niles plant, cost cutting 40 jobs.

But Ohio alone will not be the only state impacted in our region from the war on coal. Two facilities are slated to shut their doors on the other side of the border in Pennsylvania, and three are going to shut down across the river in West Virginia. When you add in the job losses in West Virginia and Pennsylvania, we are talking about nearly 9000 direct, indirect and induced jobs in the Ohio Valley.

Ohio is a manufacturing state, and it always has been. The energy boom in the Midwest has provided many opportunities that Ohioans are excited to pursue, but those opportunities are running head on into the Obama Administration's environmental policies.

Let me provide a key example. The largest electricity user in Ohio is Ormet Corporation in Monroe County, which is an aluminum producer capable of producing 270,000 tons of aluminum per year. Ormet had employed roughly 1,100 employees with more than 900 represented by the United Steelworkers Union, but the company just announced that it was considering laying off 90 to 100 of them due to concerns about increasing electricity prices. We are going to continue seeing this at other manufacturing facilities, both large and small, all across Ohio.

Mr. Chairman, coal is not the only industry taking the brunt of this Administration's destructive environmental policies. Unfortunately, despite the unprecedented boom in natural gas production in our state, environmentalists and the Obama Administration are starting to turn a negative eye to natural gas.

I am sure everyone here knows about the "Beyond Coal" campaign run by the Sierra Club. Now, they are beginning a "Beyond Natural Gas" campaign, which will attempt to cast the same negative light on the natural gas industry that it did on the coal industry. And the Obama Administration is not far behind.

There are many questions at the end of the day about the Obama administration's policies toward the coal and natural gas industries. What people really want to know is how much is this going

to cost, and the costs are substantial. I see that I am running out of my time, so I will wrap it up here.

I want to thank you and your colleagues, Chairman Jordan, for conducting this much needed oversight of the Obama Administration. I very much appreciate your efforts along with Speaker Boehner, Majority Leader Cantor and others who have passed several bills promoting energy development and reigning in the EPA and the Administration.

I want to acknowledge Congressman Johnson because I know he has worked very hard on this. I just wish that the United States Senate and the President of the United States would follow suit.

I should also note, Mr. Chairman, that I am doing my best here in Ohio to support those efforts. Specifically I have sponsored two separate resolutions in the legislature urging the President to suspend both Utility MACT and CSAPR. I also led the passage of a resolution in the House of Representatives that urges the President to discard proposals to increase taxes on producers of coal, natural gas and oil and instead adopt policies that encourage domestic production of these important resources.

Thank you again, Mr. Chairman, for inviting me to testify today. I would be pleased to answer any questions at the appropriate time. Thank you.

[Prepared statement of Mr. Thompson follows:]

**Testimony of The Honorable Andy Thompson  
Ohio State Representative  
Before the  
House Committee on Oversight and Government Reform  
Subcommittee on Regulatory Affairs, Stimulus Oversight & Government  
Spending  
Field Hearing**

**"The Green Agenda & the War on Coal: Perspectives from the Ohio Valley"  
July 31, 2012**

Mr. Chairman and members of the Subcommittee, thank you for inviting me to testify at this hearing. My name is Andy Thompson. I am in my first term representing Ohio's 93 District in the State House of Representatives. The 93<sup>rd</sup> District currently includes the counties of Guernsey, Noble and Munroe, as well as portions of Washington and Muskingum Counties. Before being elected to the State Legislature, I served on the Marietta City Council for three terms, getting elected to my final term in 2009. I appreciate the opportunity to speak before you today about the impacts of the Obama Administration's ill-advised energy and environmental policies and their impacts here in Ohio.

Today I would like to discuss:

1. The Administration's war on Coal and the impact on coal jobs,
2. The impact on utility jobs and the greater coal communities,
3. What this means for manufacturing in Ohio, and
4. How this impacts our growing natural gas industry.

**The War on Coal**

This is coal country, and here in eastern Ohio we rely on coal not only for electricity, but also for good-paying jobs and a strong tax base to help provide critical services. Coal not only provides jobs for our miners, equipment operators and support personnel – it also provides many jobs in the surrounding communities where coal industry employees work and live. For example, a study from Pennsylvania State University has demonstrated that every direct coal mining job supports 11 other jobs in such areas as trucking, railroads and equipment suppliers, as well as local businesses such as restaurants, stores, and gas stations. Coal has been integral to the well-being of eastern Ohio's communities for many, many years. When coal is doing well, we all do well. But unfortunately, coal is in a tough spot right now. Many of the environmental policies that the Obama Administration has undertaken in recent years have caused substantial hardship in our region, and I fear that this may only be the beginning.

Just last week, a major coal mine in my district announced that it was laying off 29 workers in direct response to several Obama Administration policies aimed at coal. Not too long before

that, I learned of a surface mining company in Noble County that cannot get any new permits approved by the Corps of Engineers and the Environmental Protection Agency. This company has mined almost all of its permitted property but now is considering shutting down operations because the government has not granted it new permits. These are just two of the many troubling examples that have been brought to my attention recently.

As every elected official knows, this is county fair season, and at every fair that I have been to, people have come up to me and expressed deep concerns about the War on Coal and what it means for our communities and for eastern Ohio. These people have spouses, brothers and uncles in the mining business and they are all scared for its future, and for their own. I hear about this more than any other issue. People in eastern Ohio are deeply concerned that the War on Coal is going to ruin their livelihoods, their families, and their communities.

There are a number of regulations being pursued by the Obama Administration and several of its agencies that seek to attack coal. It starts with permitting, where several Administration efforts are making it increasingly difficult to get new coal mines permitted. From scaling back general permits to retroactively vetoing permits for mines that are already operating, these permitting reforms are a major obstacle to developing our coal resources. When it comes to mining, there are two major proposals being pushed by the Obama Administration that will have an enormous adverse impact: the Mine Safety and Health Administration's Respirable Mine Dust Regulation and the Office of Surface Mining's rewrite of the Stream Buffer Zone Rule. These proposals will essentially make it too expensive for coal producers to continue mining mainly because they will not be able to comply with new federal standards that are unachievable and cost-prohibitive. On the issue of burning coal to generate electricity, one need look no further than the EPA, which in the last year finalized two regulations that are already forcing the shutdown of coal-fired power plants in our state. Those regulations are EPA's Utility MACT Rule and the Cross-State Air Pollution Rule. I will provide additional examples, details and statistics on these rules later in my testimony, but for now I will say that these proposals are going to shut down an enormous percentage of coal-fired generation here in Ohio and across the country.

#### **Impacts to Utilities and Communities**

When you hear about layoffs in the coal industry you generally think about coal miners and others who work at a mine, and that is understandable because they are the first ones to lose their jobs and their livelihoods when a coal mine gets shut down. But we also need to be thinking about what is going to happen to people who work at the coal-fired facilities that are being shut down. Those layoffs are starting to happen right here in Ohio. For example:

- AEP will shut down five units at the Muskingum River in Beverly, costing 128 jobs.
- AEP will shut down one unit at the Conesville Generating Station, impacting 20 jobs.
- AEP will shut down one unit for nine months annually at its Picway plant near Lockbourne, costing 24 jobs.
- Duke will shut down one of its generating units at its Beckjord Station in New Richmond, Ohio, impacting 120 jobs.
- First Energy will close units at its Bayshore, Eastlake, Lakeshore and Ashtabula locations, jeopardizing up to 530 jobs.

- GenOn will shut two units at its Avon Lake plan, losing 80 jobs.
- GenOn will shut two units at its Niles plan, impacting 40 jobs.

But Ohio alone will not be the only state in our region to feel the effects from the War on Coal. Two facilities are slated to shut their doors on the other side of the border in Pennsylvania, and three are going to shut down across the river in West Virginia. When you add in the job losses in West Virginia and Pennsylvania, we are talking about nearly 9,000 direct, indirect and induced jobs in the Ohio Valley.

I would like to explore this and its impacts a little further, Mr. Chairman. Unfortunately, Ohio offers a very good case study of what happens when an industry comes under attack and what happens to the many people and communities that rely on that industry for direct and indirect jobs. On the opposite end of the state, in northern Ohio on Lake Erie, is a town called Avon Lake. It is a community of 23,000 residents roughly twenty miles from Cleveland. On February 29<sup>th</sup> of this year, a large utility announced that it would close its coal and oil-fired generating facility in Avon Lake in 2015. As is the case with many of these utilities, the operator made clear that the facility could not comply with the rising costs of EPA's air regulations and that it would simply be too expensive to comply and keep the facility open. 80 direct employees will lose their jobs once the facility is closed, and these are high-paying, high-skilled jobs. But that is not the only impact. There will be enormous, real-world ripple effects in Avon Lake. For example, closure of the facility will cost the city over \$77,000 in income taxes and at least \$268,000 in property taxes annually. These losses will impact the normal functions of government but they will go deeper than that: Avon Lake EMS will lose about \$50,000 annually, which is about a 50 percent reduction in its budget. That will impact critical medical programs like ambulance maintenance and repair, training and education of paramedics, and so on.

Avon Lake is only one example, but this is what we are looking at across Ohio if the Administration does not change course. Layoffs at the closed plants will be the beginning, but the ripple effects will hit everything from EMS to schools to the local road departments and municipal park systems. As many of you here today know, Ohio has some large cities but we have many, many small towns that will often times rely on one or a handful of facilities, whether it is a coal plant or a steel plant or a chemical facility. When those facilities shut their doors, everybody is affected. People leave town and go elsewhere looking for work. What is happening in Avon Lake is tragic, but it will be more tragic if it happens again, somewhere else.

#### **What It Means for Manufacturing**

Ohio is a manufacturing state, and it always has been. Our manufacturing base has taken a hit in recent years but we are adapting to a new economy and pursuing new opportunities. Ohio remains a very strong state for manufacturing. The energy boom in the Midwest has provided many opportunities that Ohioans are excited to pursue, but those opportunities are running head on into the Obama Administration's environmental policies. Let me provide a key example: The largest manufacturer in Ohio is Ormet Corporation in Monroe County, which is an aluminum producer. The Company's aluminum smelter, located in Hannibal, Ohio, is capable of producing 270,000 tons of aluminum per year. The company sells its aluminum to aluminum rolling mills, which make flat rolled products that are used to make beverage cans, transportation,

construction, appliance and other general industrial applications. Ormet had employed roughly 1,100 employees with more than 900 represented by the United Steelworkers Union, but the company just announced that it was laying off 90 – 100 of them due to concerns about increasing electricity prices. We are going to continue seeing this at other manufacturing facilities, both large and small, all across Ohio.

### **The Prospects for Natural Gas**

Mr. Chairman, coal is not the only industry taking the brunt of this Administration's destructive environmental policies. Unfortunately, despite the unprecedented boom in natural gas production in our state, environmentalists and the Obama Administration are also starting to turn a negative eye to natural gas. Before describing these attacks, I would like to speak a little about shale gas industry in Ohio.

I happen to represent the largest shale play in the United States, known as the Marcellus Shale Formation. The Energy Information Administration estimates that the Marcellus Shale formation in the Eastern United States contains approximately 140 trillion cubic feet of natural gas. Because of our coal and natural gas resources the Ohio River Valley should be the energy capital of America. We recently formed the Ohio Shale Coalition, which seeks to bring the attention of the world to the opportunities for shale gas development in Ohio. The Coalition is a diverse, statewide partnership that wants to maximize the opportunities provided by shale gas in our state, including economic development organizations, local chambers of commerce and individual businesses. I also want to make note of the U.S. Chamber of Commerce's recent creation of the "Shale Works for US" campaign, which is a grassroots effort pushing for policies that will foster shale development, which will include fighting some of these unnecessary regulations that can only harm the potential of shale gas in Ohio and other states. These efforts are working, as people are paying more and more attention to the manufacturing opportunities in Ohio. Steel producers are making investments in Ohio and towns like Youngstown and Steubenville are experiencing low unemployment thanks to this energy boom. Shale gas can be a game changer for Ohio and for the country and it can play a pivotal role in rejuvenating American manufacturing, but the government needs to be a willing partner.

But unfortunately, it looks increasingly likely that the Administration and environmentalists are turning their attention to natural gas. I am sure that everyone here knows about the "Beyond Coal" campaign run by the Sierra Club. Now, they are beginning a "Beyond Natural Gas" campaign, which will attempt to shed the same negative light on the natural gas industry that it did on the coal industry. And the Obama Administration is not far behind. For example, the EPA recently released a draft guidance document for regulating the use of diesel in hydraulic fracturing operations under the Clean Water Act. The EPA is also starting to conduct inspections of hydraulic fracturing operations under authorities that it has seldom used in the past, such as the oil spill prevention provisions of the Clean Water Act. I would also be hard-pressed to name a day of the week when the EPA is not conducting yet another investigation into possible groundwater contamination from hydraulic fracturing and coming up empty-handed. Most troubling is their announcement that they will issue new fracturing regulations at the end of this year, coincidentally after the election.

### What Are the National Costs of the War on Coal?

There are many questions at the end of the day about the Obama Administration's policies towards the coal and natural gas industries, but what people really want to know is how much this is going to cost. What will it cost our coal miners, our utility plant worker, our communities and our consumers? Furthermore, what will it cost our larger economy nationwide and what will the impacts be? National Economic Research Associates has done some outstanding research on these very questions, and here are the troubling facts that I can share with you, Mr. Chairman. NERA analyzed four EPA rules including CSAPR and Utility MACT and found the following:

- Regions of the U.S. covering all or part of 30 states will see peak-year increases in retail electricity prices ranging from ten percent to 19 percent. It also expects natural gas prices to increase by 14 percent in 2013. When electricity prices increase, you obviously have less disposable personal income available that can be spent on other things, and NERA projects these rules to result in a cumulative loss of \$222 billion by 2020. That means that the average U.S. family will lose \$270 per year in disposable income, or \$1,750 by 2020.
- Costs for the electric sector to comply with the four rules are projected to be \$21 billion per year, which includes \$104 billion (present value) in capital spending.
- Nationwide *net* employment losses will total 1.65 million jobs per year by 2020, averaging 183,000 jobs lost per year.
- Natural gas use for electric power generation will rise, causing natural gas prices to rise, residential, commercial and industrial consumers will spend \$8 billion more per year for natural gas, totaling \$52 billion (present value) by 2020.

Mr. Chairman, the most effective way to understand what these regulations will mean for the coal industry and the country is to consider the cumulative impact of all of them. Unfortunately, at a policy level, the EPA has not done and appears unlikely to do a cumulative analysis to consider what the total costs of these regulations, when combined, will be. But at the human level, we are already seeing substantial negative impacts resulting from these regulations. Coal plants and coal mines are shutting their doors, leaving hard-working Americans out of work and driving up electricity prices, requiring working families to spend more of their hard-earned money on their electricity bills than they have in the past. The Obama Administration's War on Coal is a tragedy for the coal industry and the thousands of Americans who rely on coal to provide affordable electricity. But I also fear that the great opportunities for Ohio and the rest of the country, thanks to the shale gas revolution, may be in jeopardy because the War on Coal is not going to be restricted to coal – it is going to be used to go after any and all fossil fuels no matter how beneficial they are to our communities and the rejuvenation of American manufacturing.

### Conclusion

Mr. Chairman, this country was, quite literally, built on the back of the American coal miner. From the light switch to the iPad, the availability of inexpensive, abundant American coal has played an integral role in making America the wealthiest, most productive country on earth. Coal helped produce the steel that built our cities and powered the trains that brought that steel to market. Coal has always been, and continues to be, a staple of American life, especially here in Ohio. Manufacturing in America and Ohio has hit some rough times over the last several decades, but we have an opportunity to bring it back and that can happen right here in Ohio. Ohio can be once again at the center of an American industrial revolution, and as I mentioned earlier in my statement, communities across Ohio are seeing economic opportunities that we have not seen in a very long time. But we are at a critical juncture. If we continue to work together to implement energy policies that create jobs, Ohio can lead the way for this country. We are currently not on that path. To the contrary, the Obama Administration has embarked on an energy policy that is crippling an industry, discouraging innovation and putting people out of work. I sincerely hope that the Administration changes, but it is more likely that we will need to change administrations to save the coal industry and set our energy policy right once again.

I want to thank you and your colleagues in the House, Mr. Chairman, for conducting this much-needed oversight of the Obama Administration. I also very much appreciate all of your efforts with Speaker Boehner, Majority Leader Cantor and others to pass several bills promoting energy development and reigning in the EPA and this Administration. I just wish that the United States Senate and the President of the United States would follow suit. I should also note, Mr. Chairman, that I am doing my best here in Ohio to support those efforts. Specifically, I have sponsored two separate resolutions in the legislature urging the president to suspend both Utility MACT and CSAPR. I also got passed a resolution in the House of Representatives that urges the president to reconsider proposals to increase taxes on producers of coal, natural gas, and petroleum and instead adopt policies that encourage domestic production of these important resources.

Thank you again, Mr. Chairman for inviting me to testify today. I would be pleased to answer any of your questions.

Mr. JORDAN. Thank you, Representative.  
 Thank you. Appreciate your work with the general assembly.  
 Mr. Ahern, you are recognized for five minutes.

#### STATEMENT OF TONY AHERN

Mr. AHERN. Thank you, Mr. Chairman and other committee members. I appreciate the opportunity to give testimony to you today. Buckeye Power is a generation and transmission cooperative owned by the Ohio distribution cooperatives. Ohio cooperatives serve 10 percent of the State of Ohio. Just upriver from where we are sitting here is the Cardinal station. We own two of the 600 megawatt units there, Cardinal Units 2 and 3. We have spent in the last 10 years \$1 billion for SCR and scrubbers for those units.

We have made, as a result, a substantial reduction to sulfur dioxide and NOx emissions, as this chart over here vividly shows, a significant reduction. Cardinal now is able to use local high sulfur coal. So jobs have been added with this investment. That has helped the economy. Our Cardinal units are among the cleanest in terms of conventional pollutant coal plants in the United States. But this has come at a cost. The average residential cooperative consumer today pays about \$20 more a month to provide this result. But they are getting something for this. There is an air quality benefit. Everybody is happy about it. Our members are happy about it.

I wish I can end my story here, but I can't. Why can't I? Because EPA is overly aggressively pursuing additional regulations. Let me give you an example using the MATS, the Mercury and Air Toxic rule.

When EPA was looking at whether they should impose MATS, they assessed the damages, the health effects from mercury and hazardous air pollutants, and they estimated the annual economic value or impact on the country was \$6 million a year. They then estimated what it was going to take to reduce emissions to what they considered an acceptable level, and that number was \$9.6 billion. That is right, a \$4 to \$6 million benefit at a \$9.6 billion cost.

How do they connect the 2? They have done what they have been doing for many years now, double counting. Mercury benefits alone couldn't justify their actions, so they looked at secondary benefits, in this case fine particulate reductions which they already regulate under another part of the Clean Air Act. So they are using over-compliance of fine particulate, what is referred to as PM2.5, by taking those levels below what they have established as an acceptable PM2.5 limit as a level they have established as protective of human health.

This has got to stop, this double counting. The MATS rule, we are going to be able to meet the MATS rule we think. We are going to be close perhaps, but we think we have done enough. We don't think we should have to incur more cost. Our biggest concern about the MATS rule is the monitoring requirements. We strongly believe and EPA has provided testimony that have said they think the combination of SCR and scrubbers on eastern coal takes care of the mercury level.

So we are not concerned about whether our mercury level is going to be on an absolute basis low enough. We believe it is. Our

problem is going to be proving it through testing because mercury is so dilute in concentration. The standards they want to apply are 1.2 pounds per trillion BTUs. You typically think about an issue in pounds per million. This is pounds per trillion. So we are very concerned about the mercury emissions.

Let me echo what other speakers have already said today about the greenhouse gas rule. Our nation is foreclosing coal with this action. History has shown it is dangerous to think we can predict over the long-term what energy sources are going to be economical and reliable. In the past our federal government has banned the use of natural gas for electric generation. Nuclear power, it has its up and downs. Therefore, the prudent course of action is to not put all of our eggs in one basket. We need to retain coal for reliable generation.

As Mr. Hodanbosi has already said, one of the biggest problems we have with the greenhouse gas rule is they then will apply it to existing units, and they think this should be corrected.

So on behalf of Buckeye Power and our cooperative consumers, I thank you, Mr. Chairman and committee members, for allowing me to testify.

[Prepared statement of Mr. Ahern follows:]

House Oversight & Government Reform Subcommittee on Regulatory Affairs, Stimulus  
Oversight and Government Spending  
Field hearing on July 31, St. Clairsville, Ohio  
The Green Agenda and the War on Coal: Perspectives from the Ohio Valley  
Statement of Tony Ahern

I am Tony Ahern, the President and Chief Executive Officer of Buckeye Power, Inc. and Ohio Rural Electric Cooperatives, Inc. I appreciate the opportunity to provide testimony before the subcommittee at this field hearing.

A generation-and-transmission (G&T) cooperative, Buckeye supplies wholesale electricity to the 25 electric distribution cooperatives operating in Ohio. The cooperatives, also the members and owners of Buckeye, provide retail electric service to approximately 400,000 homes, farms, businesses and industries in the state.

Buckeye owns or has the right to the output of approximately 2,463 megawatts (MW) of electric generation facilities, including approximately 1,200 MW at the Cardinal Generating Station, located nearby in Brilliant, Ohio, as well as natural gas, wind, hydro and bio-gas generation resources.

Buckeye operates on a nonprofit, cooperative basis for the benefit of its electric distribution cooperative members and their retail members/consumers.

Ohio Rural Electric Cooperatives, Inc. (OREC) is a nonprofit trade association for the electric distribution cooperatives operating in Ohio. It provides legislative, communications, education, and safety-and-loss control services to its 24 electric distribution cooperative members.

Buckeye Power is committed to providing electricity to our members that is affordable, reliable and protective of human health and the environment. Buckeye owns two coal-fired units at the Cardinal power plant. Buckeye has invested \$1 billion in scrubbers, SCRs and related equipment for its Cardinal units in the past 10 years, allowing us to substantially reduce sulfur dioxide (SO<sub>2</sub>) and nitrogen oxide (NO<sub>x</sub>) emissions (see attached chart.)

The installation of scrubbers also has enabled the Cardinal plant to use local, high sulfur coal as fuel. This has added investment and jobs that benefit the regional and state economies of both Ohio and West Virginia. The Cardinal plant is a major contributor, directly and indirectly, to the economic wellbeing of thousands of local families.

Today, Cardinal is among the cleanest coal-burning power plants in regard to currently regulated emissions. But there has been a cost for the members of Buckeye and those they serve with electricity. Our wholesale power rates are higher today. Electric cooperative members in Ohio have seen their rates increase 1.5 cents per kilowatt-hour as a result of our spending on environmental controls. Our residential consumers are paying

on average \$20 per month more for these environmental controls, but as a result SO<sub>2</sub> and NO<sub>x</sub> emissions have been substantially reduced, providing an air quality benefit.

I wish I could end my account here of where our Cardinal units stand today regarding emissions, economics and EPA regulations. But unfortunately I cannot.

I would like to address two areas where EPA's exercise of its broad authority to develop these regulations is of concern to Buckeye's member-owners and me:

1. Additional environmental regulations that threaten to add significant additional costs and that will provide little to no benefit to anyone.
2. EPA's recently proposed new source performance standard for CO<sub>2</sub> emissions from new coal- and gas-fired power plants

Regulations that threaten to add significant additional costs and that will provide little to no benefit to anyone

There are two examples I wish to cite regarding this: one is about EPA's claims of fine particulate co-benefits in its proposed Mercury and Air Toxics Standard (MATS) rulemaking, and the other is about the EPA's possible classification of coal combustion residuals (CCRs) as a hazardous waste.

EPA's claims of fine particulate co-benefits

EPA has used fine particulate (PM<sub>2.5</sub>) co-benefits over the past 15 years as a primary justification for virtually every action due to the purported cost avoided from premature deaths and hospital admissions. While EPA accounts for the fine particulate benefits under the PM<sub>2.5</sub> NAAQS standard, they also take credit for the benefits of PM reductions under each criteria and air toxics standard, in essence double counting the benefits.

For example, in the MATS rule issued this year, the benefit of the mercury and other hazardous air pollutant emission reductions was estimated to be just \$4-\$6 million per year, while the compliance cost was estimated at \$9.6 billion per year. EPA justified the mercury rule by crediting a co-benefit of \$37-\$90 billion per year, based upon the fine particulate emission reduction.

The EPA correctly states that the combination of SCRs and scrubbers reduces mercury. However, for plants that have already installed these technologies to meet other rules – and are currently achieving mercury reductions – the net benefit claimed by the agency is incorrect.

Furthermore, Buckeye will incur significant expense for compliance mercury monitoring and testing. Because the mercury standard is set so low that accurate measurement is questionable, we are very concerned that we may find ourselves in non-compliance over the monitoring requirement (i.e., scrubbers and SCRs). Wouldn't it make sense for EPA

to accept that installation of these technologies is adequate to meet the mercury rule with periodic (quarterly) performance testing to assure continued effectiveness?

#### Coal Combustion Residuals

Regarding the possible classification of coal combustion residuals (CCRs) as a hazardous waste, Buckeye has been safely handling and storing coal ash at its Cardinal plant for decades with no environmental harm. In fact, we know these byproducts of coal combustion provide materials used by a variety of industries, from concrete production and road-and-bridge construction to home building. The beneficial uses of CCRs have a huge nationwide economic impact. Yet if the EPA changes its designation of CCRs for disposal purposes, we will see greatly increased costs for handling and storage, plus a negative impact on industries that benefit from using CCRs and the markets dependent on coal ash byproducts.

#### The proposed new source performance standard for CO<sub>2</sub> emissions from new coal- and gas-fired power plants

EPA recently proposed a new source performance standard for CO<sub>2</sub> emissions from new coal- and gas-fired power plants. This standard makes it impossible to build a new coal plant. Further, it raises doubts regarding whether existing coal plants will have to face unachievable CO<sub>2</sub> emissions standards.

Under the CAA, the new source performance standard is a pre-cursor to regulations on existing sources. Although EPA officials say they have no plans to issue a standard for existing plants, they did not exempt existing plants. Why? Many in our industry believe the next step is to regulate carbon emissions from existing coal-fired units. So when the EPA issues the regulations setting a CO<sub>2</sub> emission standard for existing coal plants, will Buckeye's \$1 billion investment in the units at the Cardinal prove to be prudent or will it be a stranded investment?

As history has shown, it is dangerous to think that we can predict what energy sources will be economic and reliable over time. Natural gas currently seems to be plentiful and affordable, but in the recent past the federal government banned the use of natural gas as an energy source for electric generation. Nuclear power has had its ups and downs and still struggles to find public acceptance. Therefore, the prudent course is not to put all of our eggs in one basket, but to retain coal-fired generation as a viable source for reliable and affordable electricity.

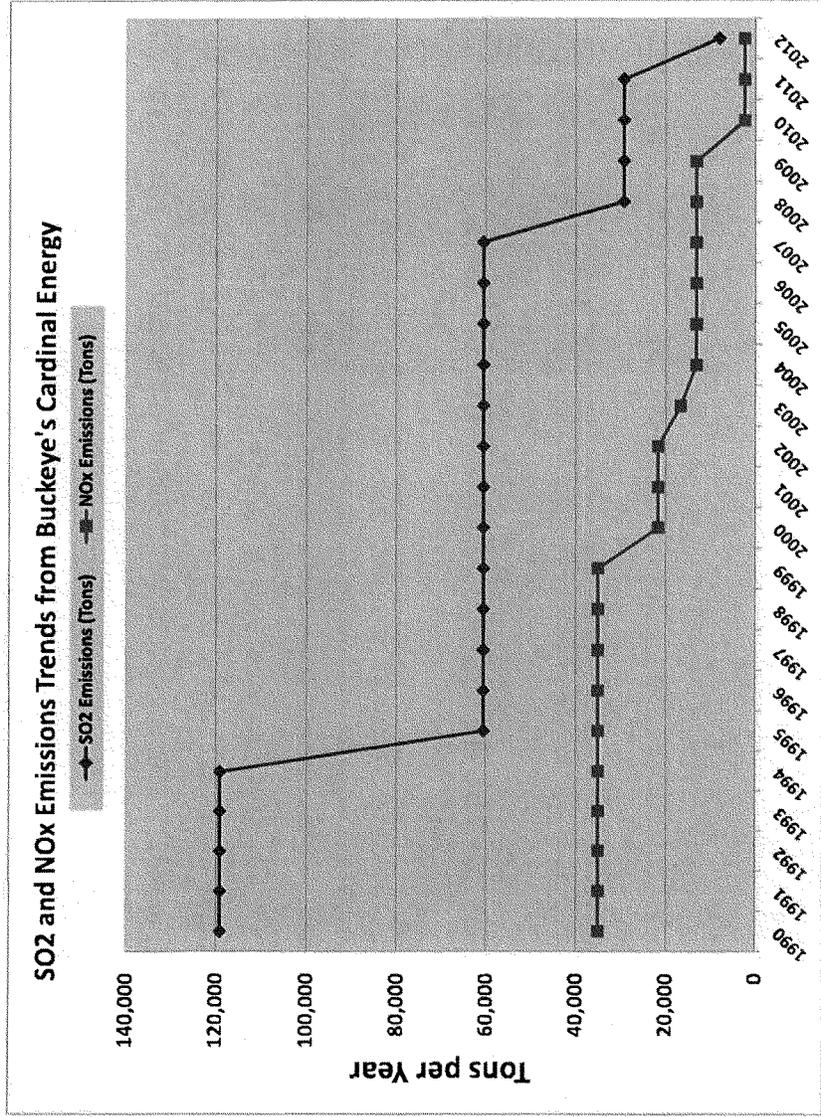
Electric cooperatives around the country have called on the EPA to withdraw the new source performance standard because of the potential impact on both new and existing coal plants. Ohio cooperatives' consumers submitted nearly 2,400 comments to the EPA. Our members understand the need to be good environmental stewards. They are currently paying more for their electricity because Buckeye Power acted with forethought and did the right thing to reduce emissions from the Cardinal plant. Will they now be punished because of the EPA's regulatory over-reaching?

Summary

I can't help but be concerned that the true goal of recent EPA environmental initiatives is to ultimately eliminate coal-fired power plants as a generation source. The recent CO<sub>2</sub> regulations for new coal fired power plants have effectively eliminated coal as a future electric generation source, given that carbon-capture and sequestration is unproven both technically and economically. Furthermore, it appears possible that CO<sub>2</sub> regulations will eventually be proposed for existing coal-fired power plants, leading to the horrible choice for Buckeye and its members of shutting down its coal-fired units and stranding the investment in environmental controls recently made.

In this time of economic distress, many of our members simply can't afford further rate increases, resulting from more stringent environmental requirements that produce little to no benefits. Those with low or fixed incomes, the unemployed and senior citizens are hurt the most. Although the CAA does not require the EPA to take into consideration the economic impact of rulemakings on citizens and consumers, should the agency be unchecked in further driving up costs for little or no environmental benefit? Every increase in the monthly electric bill is a true burden and takes funds away from our member-owners, affecting their ability meet other important needs. This affects families, businesses and our entire economy.

On behalf of Buckeye Power, I appreciate the opportunity to provide our perspectives on the effect of EPA regulations on our assets and operations. I would be happy to answer questions.



Mr. JORDAN. Thank you, Mr. Ahern. We appreciate your work and the organization's work. You have been extremely helpful over the years when we have dealt with cap-and-trade issue and other things. We appreciate that.

Mr. Mackall will be recognized for five minutes.

#### STATEMENT OF TOM MACKALL

Mr. MACKALL. Chairman Jordan and members of the subcommittee, good morning.

My name is Tom Mackall, and I am President of East Fairfield Coal Company. I appreciate the opportunity to appear before you once again.

East Fairfield Coal Company has operations in both Ohio and Pennsylvania, and we employ over 160 hardworking Americans. We mine underground for clay, coal and limestone. We are a small business, and I am proud to say that my father worked for the company when it was started in 1934. I have been with the company for over 40 years, and my son works there today.

In 2008, then Senator Obama stated in a press interview that under his preferred policy of cap-and-trade, anyone who wanted to build a new coal-fired power plant would go bankrupt in the process. He stated that under his cap-and-trade plan, electricity prices would necessarily skyrocket. He left out the fact that it would put thousands of people out of work.

The Obama Administration has systematically waged a war on coal, attacking the industry on multiple fronts, and to date they have been very successful. What I would like to address today are the details of the war on coal, specifically On Permitting, they continue to raise new obstacles. Through the use of administrative guidance, the Administration has effectively implemented a policy where isolated, non-navigable waters would receive the full protections of the Clean Water Act.

On Mining, their goal is to throw up as many regulatory hurdles as possible. MSHA's Mine Dust Regulation provides yet another example of the Administration's war on coal and its attempts to limit coal mining. Essentially MSHA is proposing a standard for respirable dust that cannot be met. On burning coal, they seem intent on punishing any utility that dares to burn coal.

Perhaps the most expansive and most visible attack on the coal industry over the last few years has been the Administration's efforts to drastically curtail the percentage of our electricity that is generated from coal. Electricity prices are going to go up and the electric grid will be stretched even farther posing serious challenges for reliability.

Last but not least is the issue for me for coal flyash. The flyash residue from coal combustion is used as a cement substitute in our cement block plant. The prospect of a hazardous material designation puts this type of use in jeopardy. On top of it all, I fully expect the second Obama term would focus on cap-and-trade while the President is following through on his promise to enact cap-and-trade by regulation. His allies in the Senate haven't given up on legislation. I expect them to try and move climate legislation in the next year.

I would like to say this about CO2. One of my customers operates large industrial size greenhouses in Michigan and Canada. In order to promote quicker growth, they operate large CO2 generators which raise the concentration of CO2 in the greenhouses from 340 parts per million, which is the ambient, to over a thousand parts per million. All this CO2 is absorbed by the plants. I don't believe CO2 is really an issue in the natural world.

Mr. Chairman, I would also like to briefly mention that the Administration is not the only player on the war on coal. Well-funded environmental groups have done everything in their power to kill coal in America. For example, one of America's largest environmental groups teamed up with one of America's largest natural gas producers on the so-called Beyond Coal Campaign. In fact, it was recently discovered that the natural gas company donated \$26,000,000 to the environmental group in a joint effort to destroy the coal industry. This reliance was not to be, however, as the same environmental group just announced a new campaign entitled Beyond Natural Gas.

Mr. Chairman, the war on coal is real and is doing tremendous damage to our industry. The Obama Administration and its environmental allies are doing everything they can to stop coal from being permitted, to make it uneconomical to mine, and stop utilities from burning it. They discourage the use of the byproducts for beneficial uses. This is a highly coordinated aggressive effort to literally destroy the industry by attacking coal at every point of its life cycle.

The Obama Administration's war on coal is a tragedy for the coal industry and the thousands of Americans that our industry employs who rely on us to provide affordable electricity.

On behalf of myself, East Fairfield Coal Company and many thousands of people in our region who rely on coal for their livelihoods, thank you for supporting and conducting vigorous oversight of the Obama Administration and its war on coal. I have to remind you, though, that if definitive action is not taken to reverse the above-referenced policies, this industry is going to be in deep, deep trouble.

Thank you for the opportunity to testify today, and I look forward to answering your questions at the appropriate time.

[Prepared statement of Mr. Mackall follows:]

**Testimony of Mr. Tom Mackall  
President, East Fairfield Coal Company  
Before the  
House Committee on Oversight and Government Reform  
Subcommittee on Regulatory Affairs, Stimulus Oversight & Government  
Spending  
Field Hearing  
"The Green Agenda & the War on Coal: Perspectives from the Ohio Valley"  
July 31, 2012**

**Introduction**

Chairman Jordan, and members of the Subcommittee, good morning.

My name is Tom Mackall, and I am President of East Fairfield Coal Company. I appreciate the opportunity to appear before you once again.

East Fairfield Coal Company has operations in both Ohio and Pennsylvania, and we employ over 160 hardworking Americans. We mine underground for clay, coal, and limestone. We are a small business, and I'm proud to say that my father worked for the company when it was started in 1934. I have been with the company for over 40 years, and my son works there today.

In 2008, then-Senator Obama stated in a press interview that under his preferred policy of cap and trade, anyone who wanted to build a new coal-fired power plant would go bankrupt in the process. He stated that under his cap and trade plan, electricity prices would necessarily skyrocket. He left out the fact that it would put thousands of people out of work. Later that year, then-Senator Joe Biden stated that he and Mr. Obama wanted, "No coal plants here in America!" Many thought that those were just statements made during a political campaign and that no president would really try and kill coal in America, but that is exactly what this Administration has done for the last four years. They have systematically waged a War on Coal, attacking the industry on multiple fronts, and to date they are being very successful.

What I would like to address today are the details of the War on Coal, specifically:

- On Permitting, they continue to raise new obstacles,
- On Mining, their goal is to throw up as many regulatory hurdles as possible,
- On Burning coal, they seem intent on punishing any utility that dares to burn coal,
- On Waste, they are ignoring decades of state laws and programs to make residual use a crime.

Through the Corps of Engineers and the Environmental Protection Agency, the Obama Administration is imposing more and greater obstacles to permitting through the guise of protecting our waters. Through the Mine Safety and Health Administration and the Office of Surface Mining, the Administration is trying to make it uneconomical to mine for coal by imposing cost-prohibitive requirements ostensibly in the name of public safety and

environmental protections. EPA's Office of Air and Radiation is also hard at work on regulations that will shut down dozens of coal-fired power plants and bring hundreds of megawatts offline. Then on the disposal side, the EPA is considering designating coal fly ash as a hazardous substance, which would lead to the shutdown of even more coal-fired power plants and would also destroy the beneficial use market for coal ash.

On top of all of this I fully expect that a second Obama term would focus on Cap and Trade. While the President is following through on his promise to enact Cap and Trade by regulation, if Congress failed, his allies in the Senate haven't given up on legislation. It's my understanding that Senator Boxer is holding a Climate Change hearing in Washington DC tomorrow. I wouldn't be a bit surprised to see them try and move climate legislation next year. I would like to say one word on CO2. One of my biggest clients operates large industrial-sized greenhouses in Michigan. In order to promote quicker growth they operate large CO2 generators which raise the concentration of CO2 in the greenhouses from the naturally occurring 340 parts per million to over 1,000 parts per million. All of this CO2 is absorbed by the plants. If they turn off the generators, by the next morning the CO2 concentration levels are back to normal. I don't believe that CO2 is really a problem in the natural world.

**On Permitting, they continue to raise obstacles**

Through the use of administrative guidance, the Administration has effectively implemented a policy where isolated, non-navigable waters would receive the full protections of the Clean Water Act. Several years ago, the Supreme Court threw out EPA and Corps regulations that essentially did the same thing. The Court said that the Clean Water Act did not provide the government with authority to be as restrictive with its permitting as it had become over the previous few decades. When Democrats in Congress tried to overturn that ruling, they failed resoundingly and the sponsors of that legislation in the House and Senate, both of whom had been considered relatively safe for reelection, were defeated in the 2010 election. However, the Administration appears not to have gotten the message because it is now doing through guidance what it could not get done through regulation or in Congress. The Administration claims that ambiguity in the Supreme Court opinions was confusing enough to require new direction from the Administration, but I fail to see how what they are doing now is any different from what has been rejected by the Supreme Court and Congress.

Additionally, early this year the Corps announced that it was eliminating the most commonly used nationwide permit for coal mining, known as NWP 21. This will substantially increase the number of proposed coal mines that are subject to delay and litigation under the individual permit process. For years, the general permit process was key to ensuring that a mine permit application could be timely and efficiently evaluated. However, that is not to say that general permitting allowed the industry to avoid compliance with environmental regulations. You still had to be in compliance with all state and federal environmental laws in order to get a permit, but for some reason, the Administration concluded that that responsible, streamlined process was insufficient.

The third permitting issue that I want to highlight is the Administration's enhanced coordination policy. This has allowed EPA to set aside permit applications for further review, subjecting the applicant to uncertainty and, in some cases, leading to the withdrawal of the application. The Clean Water Act's Section 404 gives EPA authority to veto permits issued by the Army Corps

for dredge and fill projects in wetlands and waterways. However, under this so-called enhanced coordination policy, EPA was essentially holding permits hostage by pushing them off to the side without going through public notice and comment procedures. EPA set aside 79 mining projects for enhanced review, and of those, the Corps issued eight permits. Two dozen or so projects remained under review until a federal district judge threw out the policy. During the court proceedings, that judge stated that "The role EPA is playing now is significantly different than it was in the past", and that "EPA is basically running the show." What the judge identified was a fundamental shift in the relationship between the two agencies in their rule of issuing permits. It used to be, and was supposed to be, that the Corps would make the decisions and that the EPA would consult in order to help avoid real, serious environmental impacts. Instead, EPA was essentially becoming the main permitting agency. Not long after the judge made those statements, he threw out the policy, ruling that EPA had exceeded its statutory authority afforded to it by the Clean Water Act." He called EPA's actions "unlawful."

The last issue I want to mention on permitting is the Administration's use of the retroactive veto and the Obama Administration's decision in 2011 that retroactively vetoed a Section 404 Clean Water Act permit for one of Arch Coal's mines in West Virginia, which had already been operating for nearly four years. A federal court ruled against the EPA, telling them they can not retroactively veto a permit because such action provides no business certainty. Unfortunately the Obama Administration hasn't given up, they have announced their intent to appeal. The fact that the Administration wants to have this fight is disconcerting enough, but what is even more incredible is the argument that the government attorney who was assigned the case made in his brief before a federal appeals court. This individual wrote that, "Contrary to the claims of industry and several states, there was precedent for EPA's decision to revoke the permit retroactively." His examples? He cited a case in 1981 where EPA stopped a city from filling wetlands with garbage, and another case in 1992 where EPA retroactively vetoed a construction permit for a reservoir in Virginia. Mr. Chairman, I don't know what is more discouraging: the fact that EPA is saying they are justified in doing something because they have done it twice before or the fact that the agency is spending more time and limited resources on fighting a mine that employs people and helps provide for our nation's energy needs. Let me say that this is a fight worth having. Just imagine the message that it would send to industry if EPA could retroactively stop mining and other industrial activities years after they had first been permitted.

**On Mining, their goal is to throw up as many regulatory hurdles as possible**

In the case of the Stream Buffer Zone Rule, the Administration undertook it after the Bush Administration spent years and millions of dollars updating it to make it more efficient and effective. The Administration decided almost immediately after taking office that the Bush-era rule was not good enough and got to work rewriting it. This process has been conducted behind closed doors and the only information that has been made public by the Administration showed that it would result in the loss of thousands of jobs in the coal mining industry. Despite several inquiries by Congress and two subpoenas for additional documents, the Administration has provided almost no information on what it intends to do with this rule and what its impacts will be. From what we can tell, this regulation will majorly curtail coal mining wherever there may be a presence of water, regardless of its location and hydrological significance.

One type of mining, common in the Ohio Valley is longwall mining. This proposed Stream Buffer Zone regulation would drive this practice out of business. In longwall mining you shear off the coal in long strips. The SBZ proposal would require the stopping and moving of the equipment whenever you get within so many feet of a stream or even a rain ditch, even though the process is occurring well under ground. Moving the equipment costs hundreds of thousands of dollars making this mining technique cost prohibitive. Internal documents from the Obama Administration pointed out there would be thousands of job losses in Appalachia, but that would be alright because new jobs would be created in Wyoming. That is little comfort here in the Ohio Valley.

It is important that you understand exactly what this regulation will do and what the impacts will be. It appears very likely that the proposal will prohibit mining in, through or near intermittent streams and within 100 feet of those streams. It will impose substantial restrictions on where excess spoil fill can be placed, and it will fundamentally redefine 'material damage' in these areas. It is impossible for longwall mines to avoid many of these impacts -these so-called streams which, again, often do not have any water in them, can be found in many places in the regions that we mine and our mines are oftentimes directly under them. If we are prohibited from moving the earth where in those locations, we will not be able to mine for coal.

A large coal mining company recently conducted an engineering analysis of the impacts of this rule in the draft from that was released by the Obama Administration. That analysis used a moderate interpretation of a protected stream. That analysis concluded that the Stream Buffer Zone Rule would result in a 40 percent loss of their coal that they would be allowed to mine - over 1 billion tons. The company projects that this would lead to a loss in future revenues by over \$66 billion. But that would not be the only problem for this company and many others like it under this regulation. As I briefly mention above, when one of these so-called streams crosses over where we are mining for coal, we would be required to literally stop mining in that location. Now, the Administration says that we would just have to avoid that area and could resume mining where the stream ceases to be impacted. However, that exhibits either blatant dishonesty or a fundamental misunderstanding of longwall mining. The equipment that we use in this kind of mining is some of the largest machinery imaginable, incredibly expensive, and takes lots of time and resources to assemble and disassemble. We cannot mine one area of a longwall, stop, disassemble, move the equipment and then reassemble it and start again. It just doesn't work that way. What that means is that it would become uneconomical to mine that entire coal seam. In the case of the company I referenced above, it projects that this proposal could further reduce annual production by 25 to 30 percent. For that one company alone, that would mean that it would have to shut down many of its longwall mines because they would simply be unprofitable.

I would also like to discuss briefly how irrational it is that the Administration is going to such great lengths to protect ditches, intermittent streams and creeks that run dry most of the year. The Surface Mine Control and Reclamation Act, known as SMCRA, was intended to strike a balance between environmental protections and the nation's need for reliable, affordable electricity. Yet this proposal essentially says that you cannot mine underground if that mining would have any single impact on the environment. That doesn't sound like a balance to me. You simply cannot mine for coal underground and have absolutely no impact on the ground above you. But at the same time, that does not mean that we are destroying the environment. To the contrary, these waters the Administration is focusing on sit above areas that have been mined for

decades. It has been done in accordance with state and federal law and regulations. There are very few cases where that mining has resulted in impacts on the surface and when they have, industry has taken the necessary actions to fix the problem.

Let us also briefly discuss what this will mean for jobs in our region and other places where coal is mined in the Eastern United States. The Administration has gone to great lengths to say that it has not actually completed its analysis or a draft rule yet and, therefore, that it cannot make an informed projection on job losses that would result from the rule. Yet there is plenty of evidence to demonstrate that the impacts will be substantial. One of the parties that expressed concerns about how the Administration was conducting its analysis was the contractor that OSM hired to help them. The contractor was concerned that some of the assumptions that OSM wanted them to use in the analysis were going to minimize the potential job loss projections. When the contractor refused to go along, there were basically fired. Not long after these events unfolded, a report commissioned by the National Mining Association found that the rule would jeopardize more than 100,000 jobs. Relying on 2010 draft language that was circulated by OSM, the analysis concluded that between 55,120 and 79,870 direct mining jobs were at risk. Counting jobs related to coal mining, the analyst said that more than 100,000 were in jeopardy. To conclude on the issue of the Stream Buffer Zone rule, the impacts will be tremendous.

MSHA's Mine Dust Regulation provides yet another example of the Administration's War on Coal and its attempts to limit coal mining. In addition to lowering the already low, existing limits for respirable coal mine dust and applying standards beyond measuring the exposure to the miner, it would mandate that we employ continuous personal dust monitors that are unaffordable and unproven. Simply put, MSHA is proposing to set a standard for respirable dust that cannot be met. MSHA estimates the cost of this proposal to be only \$40-70 million. In reality, it will force alterations to production schedules and impose other requirements that will lead to estimated costs of \$1 billion to the industry.

MSHA also relies on flawed science as confirmed by preliminary review of unbiased scientific experts. The rule is based on misleading data, ignoring the continual decline of black lung cases. The agency has refused to release the study data, under the Data Quality Act, that formed the basis of their decision. MSHA has also failed to demonstrate causation and is selectively interpreting the data. The statistical analysis must be based in sound science, and, at a minimum, be able to demonstrate causation between dust exposure level trends and incidence of black lung.

Despite serious concerns from Congress and industry, and multiple efforts to resolve issues with MSHA's analysis and how it went about writing the rule, MSHA is moving ahead with it nonetheless. There is one example of this that is particularly egregious. Last year, Representative Denny Rehberg of Montana worked with his Republican colleagues in the House and Senate on inserting language in an appropriations bill that would require a study from the Government Accountability Office on how MSHA was going about writing the rule. The amendment also made explicitly clear that MSHA was not to finalize the rule until the study was completed. As everyone here knows, getting a rider into an appropriations over the last few years has not been an easy process, and it took considerable effort in Congress to strike an agreement on this. Congressional intent was clearly to have MSHA slow down and make sure that they were doing this properly, and what better entity to look into that than the GAO? Nevertheless, MSHA has continued the rulemaking process without the benefit of the GAO

report. When questioned about this development, MSHA responded that "The rider does not restrict MSHA's ability to promulgate the rule, only MSHA's ability to implement or enforce the rule." Mr. Chairman, if there is a better example out there of typical Washington shenanigans, I would be hard pressed to find it. Congress clearly intended for the Administration to stop what it was doing for the time being, yet MSHA continues to move forward under whatever wiggle room it could find in the law.

This year, Mr. Rehberg has proposed a rider that would prohibit any funds from being used to do anything on this proposal. I cannot express to you how important it is that you follow Mr. Rehberg's lead and force the Senate and president to accept this language. MSHA is doing everything it can to help the Obama Administration win the War on Coal and if Congress fails to step in with proactive legislation like this, I fear that it will be one more nail in the coffin for the coal industry. This regulation is yet another proposal designed to stop coal production. The Administration is clearly and intentionally setting standards that it knows cannot be met. We will be forced to shut our doors.

**On Burning Coal, they seem intent on punishing any utility that dares to burn coal**

Perhaps the most expansive and most visible attack on the coal industry over the last few years has been the Administration's efforts to drastically curtail the percentage of our electricity that is generated from coal. There is little question that their efforts are working: in response to the Cross State Air Pollution Rule and the Utility MACT regulation, at least 57 coal-fired power plants in the United States are expected to shut their doors early or entirely, because of these EPA regulations. This represents 25.1 GW of electricity that have gone on the chopping block in addition to 29,000 people who will lose their jobs. Additional plants will close because of age or fuel switching, but the 25.1 GW will close due to the regulations. Electricity prices are going to go up and the electric grid will be stretched even further, posing serious challenges for reliability. According to the Electric Power Research Institute, these and other EPA regulations when combined with low natural gas prices could result in the retirement of more than one third of our coal-generating capacity by 2020. Furthermore, EPRI projects that compliance with these rules will cost the U.S. economy up to \$275 billion from 2010 to 2035 or about \$11 billion a year. These aren't just numbers and academic projections, Mr. Chairman. These are real impacts that are going to happen to real people. For example - and I know that you have seen these numbers, Mr. Chairman - of the 25.1 GW that I mentioned earlier, nearly 6,000 MW will come from Ohio. That represents 11 units at 9 different locations in our state. The War on Coal is going to hit us hard here in Ohio.

The costs of these regulations are tremendous problems, but equally problematic is that the Administration is employing false advertising in order to justify them. For example, the Administration likes to say that Utility MACT is a mercury reduction rule, but it isn't. We agree that reducing mercury pollution is important, but EPA's own regulatory impact analysis shows that an overwhelming majority of the benefits that EPA predicts will occur under the rule will come from reductions in pollutants other than mercury, and specifically from fine particulate matter or PM. EPA's data show that of the \$10 billion in annual costs of the rule, the benefits from mercury reductions would be \$6 million or less, but instead of trying to improve the rule and reduce its costs, EPA refers to these additional reductions as a "co-benefit" of Utility MACT. EPA is clearly double-counting benefits in order to justify the Utility MACT, which is going to

be cost prohibitive and extremely difficult to achieve. We must also not forget that EPA already regulates PM under the National Ambient Air Quality Standard and just recently proposed a new revision to that standard which will further reduce the existing limits for PM. That is expected to go final this December.

**On Wastes, they are ignoring decades of State laws and programs to make residual use a crime**

Last but not least is the issue of coal fly ash or coal ash. When you burn coal, you are left with combustion residuals that must be disposed of in a manner that protects the environment and public health. We believe that the states already do an adequate job of ensuring that coal-ash disposed of onsite is adequately controlled, but not long after the Administration took office it started considering whether or not coal ash should be designated as a hazardous substance, which would impose much stricter controls on the disposal of this material. Coal ash also has many beneficial uses in the construction and agriculture industries, but the prospect of a hazardous material designation is already discouraging some customers from using products that contain coal ash. Let me be clear on this: if coal ash is designated as a hazardous material, the requirements and costs for managing it are going to go up substantially, thereby providing utilities with yet another reason to either shut down their coal-fired units or convert them to natural gas. If demand for coal decreases, more coal jobs will be lost. There is strong bipartisan support in Congress for legislation that would stop the EPA from moving forward with a hazardous material designation, and the House of Representatives has passed bipartisan legislation to do just that. But the White House, driven by the unwarranted and inaccurate scare tactics of environmentalists has apparently not gotten the message.

I also want to be clear about the dangers of this proposal for the beneficial use market and that market's role in the larger economy. Fly ash has been used in concrete and cement to build roads and highways in the United States for over half a century. Coal ash is also used to make gypsum, which in turn is used in drywall for home construction. If coal ash is designated as hazardous, companies would likely be forced to stop using gypsum because customers will not want to buy wallboard that contains it, due to its association with coal ash. Companies that use it would also be at increased risk of lawsuits. Obviously, they would then have to look for gypsum from another source, which will increase costs and impose yet more financial burdens on these companies. Coal ash is a key ingredient in our nation's transportation and residential housing markets. And somehow, EPA and its environmentalist allies see nothing wrong with putting that important market and the many jobs it provides across this country at risk.

**Conclusion**

Mr. Chairman, I also want to briefly mention that the Administration is not the only player in the War on Coal. Well-funded environmental groups have done everything in their power to kill coal in America. For example, one of America's largest environmental groups teamed up with one of America's largest natural gas producers on the so-called "Beyond Coal" campaign. In fact, it was recently discovered that that natural gas company donated \$26 million to the environmental group in a joint effort to destroy the coal industry. This alliance was not to be, however, as that same environmental group just announced a new campaign entitled "Beyond Natural Gas." Now that the environmentalists are succeeding in their efforts with the

Administration to win the War on Coal, they no longer need to cooperate with the natural gas industry and are turning their sights on them. I don't want to be too critical of natural gas now that the tables have turned, but let me just say that they are in for a ride. One needs to look no further than the increasing number and complexity of rulemakings coming out of the Administration to regulate hydraulic fracturing. I would also be remiss if I did not mention the abhorrent ads being run by some of these environmental groups that show babies coughing and with inhalers strapped to their faces. These are scare tactics, pure and simple.

Mr. Chairman, the War on Coal is real and is doing tremendous damage to our industry. The Obama Administration and its environmentalist allies are doing everything they can to stop coal from being permitted, to make it uneconomical to mine at the ones that are already operating, to stop utilities from burning it, and to discourage the use of its by-products for beneficial uses. This a highly-coordinated, aggressive effort to literally destroy the industry by attacking coal at every point of its lifecycle.

The Administration's multi-pronged approach to permitting reform will have an impact on many industries, but it is clearly aimed at making it more difficult to start new coal mines. From scaling back general permits to retroactively vetoing permits for mines that are already in operations, these permitting reforms are a major obstacle to developing our coal resources.

The Mine Dust Rule and the Stream Buffer Zone Rule, if not stopped, will put thousands of coal miners out of work by shutting down mines across the country. These rules aren't meant to protect the environment or public safety: they are clearly designed to make it uneconomical to mine, and to lead coal companies to the inevitable conclusion that it would be cheaper to close down than to keep people working.

CSAPR and Utility MACT were designed and intended to discourage the continued use of coal in electricity generation, and they are working. When an Administration sets standards in statutes that are unachievable for coal, utilities have no choice but to switch to natural gas. But let me be clear, Mr. Chairman: utilities are switching from coal to natural gas due to regulations like CSAPR and Utility MACT. These are fuel-switching regulations, pure and simple. The administration likes to say that low natural gas prices are responsible for a large majority of these negative impacts to the coal industry, but that is simply untrue and the Administration is starting to see the impacts of these decisions. And designating coal ash as a hazardous substance is just one more example, Mr. Chairman. Wherever the opportunity exists to attack coal, this Administration will take it.

The most effective way to understand what these regulations will mean for the coal industry and the country will be to consider the cumulative impact of all of them. We are already seeing substantial negative impacts resulting from these regulations. Coal plants and coal mines are shutting their doors, leaving hard-working Americans out of work and driving up electricity prices, requiring working families to spend more of their hard-earned money on their electricity bills than they have in the past.

The Obama Administration's War on Coal is a tragedy for the coal industry and the thousands of Americans that our industry employs and who rely on us to provide affordable electricity. On behalf of myself, East Fairfield Coal Company and the many thousands of people in our region who rely on coal for their livelihoods, thank you for supporting us and conducting vigorous

oversight of the Obama Administration and its War on Coal. I have to remind you, though, that if definitive action is not taken soon to reverse the above-referenced policies, this industry is going to be in deep, deep trouble.

Again, thank you for the opportunity to testify before you today. I look forward to answering your questions.

Mr. JORDAN. Thank you, Mr. Mackall. You mentioned some of the environmental groups who also are fighting this attacking coal, but in the end, it is the Administration. The buck stops with them. They make the rules. They implement the law. They pass the policies.

I want to go to you, Mr. Hodanbosi. You have an undergraduate degree from Cleveland State University in chemical engineering?

Mr. HODANBOSI. Yes, that is correct.

Mr. JORDAN. You have a Master's degree in chemical engineering as well?

Mr. HODANBOSI. Yes, that is correct.

Mr. JORDAN. I believe you said have you worked in this field for 40 years, almost 40?

Mr. HODANBOSI. Almost 40.

Mr. JORDAN. 39 years. And all of that at the Ohio EPA?

Mr. HODANBOSI. Yes.

Mr. JORDAN. So I am looking at your resume, biographical information. You started in 1973?

Mr. HODANBOSI. That is correct.

Mr. JORDAN. So you have worked for Republicans and Democrats; you worked for all kind of folks?

Mr. HODANBOSI. Yes.

Mr. JORDAN. You have interacted with the federal EPA for all those 39 years?

Mr. HODANBOSI. Yes.

Mr. JORDAN. When you think about it, that is Nixon. That is Ford. That is Carter. That is Reagan. That is Bush. That is Clinton. That is Bush. And now Obama. That is a lot of experience working both side of the aisle.

In that time, in that 39 plus years of working with all those administrations and the various governors, both Republican and Democrat, have you ever seen an administration who has this much animosity towards coal?

Mr. HODANBOSI. Mr. Chairman, overall this current Administration has promulgated more rules that directly affect coal than any time in the history of the Clean Air Act and the Environmental Protection Agency.

Mr. JORDAN. Unprecedented action we have seen in the three and a half years of this Administration and the 39 years of experience you have had with both Republican and Democratic administrations, you have never seen it like this?

Mr. HODANBOSI. Yes, that is correct is correct.

Mr. JORDAN. I am just curious. I don't know the answer to this. Have you ever testified before in that 39 years of experience? Have you ever participated in hearings like this?

Mr. HODANBOSI. Yes, I have. In the U.S. Senate I testified once.

Mr. JORDAN. Who was president at that time when you testified?

Mr. HODANBOSI. Boy, actually I do not know who was president. It had to do with air permitting. That was the issue.

Mr. JORDAN. So 39 years of your service, this is the first time you have testified and talked about the nature of the rules being promulgated and enforced by the Administration?

Mr. HODANBOSI. Yes.

Mr. JORDAN. You would agree with the title of today's hearing to talk about the Green Agenda and the War on Coal? Do you think that is an accurate title? Do you think there is actually a war on coal we are seeing from the Obama Administration? I know these guys would, but I am curious what you would say.

Mr. HODANBOSI. I didn't use that term, war on coal.

Mr. JORDAN. We did. I am asking if you agree with it.

Mr. HODANBOSI. That is more I am going to say a term that was used in a political sense. I don't try to go down that line, but you can look at the rules that have been promulgated, what the effect is both in terms of direct coal mines or the uses.

Mr. JORDAN. I am forgetting my Ohio history. Who was governor in 1973?

Mr. HODANBOSI. It was Gilligan.

Mr. JORDAN. So when you first were hired at the Ohio EPA, it was a Democratic Administration that you were hired in under, is that right?

Mr. HODANBOSI. Right. That was Governor Gilligan.

Mr. JORDAN. I am running low on time. I want to get to our three other members who are more the experts on the coal industry.

The blackout that we have been hearing about in India, I have not heard the cause of it. I am just curious your thoughts on that and if something like that could happen in the United States if we continue this effort to make it difficult to use coal to meet our electric and energy needs. I will start with you. Then we will go down to the line.

Mr. HODANBOSI. Just quickly, I read about the blackout in India yesterday, but instead of it having gotten better, I heard on the radio today it has gotten worse. Instead of 300,000,000 people without power, it is now up to 600,000,000 people without power.

Can it happen in this country? Well, I think we have experienced some blackouts in 2008, maybe it was a little earlier, in Ohio and in the east coast. So it has happened here, and it is certainly something to be concerned with.

Again, part of my testimony, I submitted the article from the Columbus Dispatch that talks about the units that were going to be shut down during the last heatwave. They are in use. So where is that power going to come from? How are we going to replace it to keep the electricity going?

Mr. JORDAN. Let me quickly talk to the other three witnesses.

I think I know the answer to this. The title of today's hearing is Green Agenda and War on Coal. Would you agree that is an accurate description of what is going on, Representative?

Mr. THOMPSON. Yes, Mr. Chairman. I do think it is kind of unprecedented because administrations in the past at the federal level would have had a mutual interest seemingly in having inexpensive energy. Energy independence has been a goal for this country since the beginning of time. President Carter started the energy department with the stated goal to try to have energy independence, and it seems as though this Administration is driving us in the opposite direction.

We are going to be more and more dependent on other sources of energy, more expensive sources of energy and probably from hos-

tile countries. I think that is a problem. Clearly there is a war on coal, and we are feeling the effects of it already.

Mr. JORDAN. Mr. Ahern, you deal with electric cooperatives all over the state. Would you agree with the title of today's hearing, War on Coal?

Mr. AHERN. I think probably the greenhouse gas rule that the EPA has proposed for new units is probably the signature that declares war on coal because it is a standard that the demonstrated technology is not available in order to meet that standard.

Mr. JORDAN. Mr. Mackall.

Mr. MACKALL. I obviously agree very much, and I would point out that Ohio's success in the past has been our coal-fired electricity providing economical power for industry. With the proposals they have now, what industry are we going to have left in Ohio? It is an attack on the economy, not just on coal.

Mr. JORDAN. Remember the title. We said the Green Agenda and the War on Coal. It is both. There is a war on coal. You have all made that clear. We have a gentleman who has 40 years of experience with the Ohio EPA who understands how different this Administration is from previous administrations. But it is also the green agenda. Mr. McKinley brought up Secretary Chu of the Department of Energy, the loan guarantee program at the Department of Energy. They took \$16 billion of taxpayer money and gave it to 26 companies. 22 of those companies that got the money—this is Solyndra, this is Beacon Power, this is Abound Solar, three companies that went bankrupt, gave them your money—22 of those 26 companies had a credit rating of BB-

Mr. Mackall, you are in business. You know what that means. That means it was junk. No one would invest in it. But it was okay to give them your money. This is to add insult to injury. Not only are they at war on coal, but they are also saying oh, by the way, the tax money you do send to us, we are going to take it and give it to your competitors.

Meanwhile, three of them have gone bankrupt and 22 of the 26 companies that got your money would have never got any money in the private sector because they weren't a good risk.

That is what is going on with this Administration. So when Mr. Hodanbosi says he has never seen it like he has with this Administration, it is true. We got all the facts to point it out. So we want to thank you all for being here. I went over time.

The gentleman from Ohio will get extra time. Mr. Johnson, you are recognized.

Mr. JOHNSON. Thank you, Mr. Chairman.

Mr. Hodanbosi, in your background and with your experience, do you think that the EPA has an agenda that it is trying to effectuate by the promulgating of regulations that specifically impact the coal industry?

Mr. HODANBOSI. I think it is pretty clear that all the rules that are coming out are overall specifically designed to certainly restrict the use of coal.

Mr. JOHNSON. You know the Vice-President came through Ohio not too long ago touting a resurgence in manufacturing at the same time that the Administration has begun an all-out attack on the

very energy sources to fuel any kind of resurgence in manufacturing.

How do we fuel a resurgence in manufacturing if the EPA and the Administration persists with this attempt to shut down the coal industry? Where is the power going to come from to fuel manufacturing plants?

Mr. HODANBOSI. Well, that remains a concern of not just Ohio EPA, but the Public Utilities Commission of Ohio on the rules that were promulgated. Both agencies filed comments to that extent. In order for us to have a strong industrial base, we need to have inexpensive electric power. That is just the bottom line. And if the costs go up too much, we will lose some of our heavy manufacturing to companies that move overseas where the power is cheaper.

Mr. JOHNSON. Thank you very much.

Mr. Mackall, uncertainty is one of the big issues that businesses talk to us about these days and the uncertainty around the regulatory process and the EPA's actions.

How has uncertainty created by the EPA and the Clean Water Act permitting process harmed your ability to expand your business and create jobs?

Mr. MACKALL. Across the coalfields today, the uncertainty, especially with the election ahead of us and so on, most companies that I know of, maybe all companies I know of have stopped considering making further purchases of mining equipment because what are we going to do if Obama goes another four years? I feel my company will have a very difficult time continuing in the coal business.

I am not going to buy any new equipment. It is starting to really stop the economy. I think that is another reason why we see the slow growth across the metric today. There is so much uncertainty with their economic policies.

Mr. JOHNSON. Well, if you knew about the uncertainty, the red tape and the costs of EPA regulations in acquiring permits, would you still have gone into the coal mining business?

Mr. MACKALL. I have to answer that by going back to my coal miners. They are wonderful people. I suppose I would have retired a long time ago if it wasn't for them. There is a lot of great, intelligent, hardworking young coal miners who need jobs, and they will never find jobs like this again. Really the only reason I continue is for them.

Mr. JOHNSON. As a coal operator, what would you say to a company or an individual that is trying to invest in new coal mining operations today? Based on what you know and the impacts that the EPA and their regulations or the Administration is having on the coal industry, would you invest in new coal mining operations today?

Mr. MACKALL. Not in the United States of America. We don't mine anything in the United States of America today. In fact, that is one of the points that they made with Solyndra, is that China controls all over our earth. So they are going to control many of the manufacturing anyway. I guess today we need to invest in coal mines in India and China. They are going to lead the world's economy if we continue with Obama's policies.

Mr. JOHNSON. I appreciate your responding to those questions.

Representative Thompson, first of all, I appreciate you being here, and I enjoy working with you. We cover a lot of the same territory in our respective districts, and I know that you are a passionate advocate for the coal industry as well.

Can you give us a sense of how coal production affects the economy, your specific area that you represent?

Mr. THOMPSON. Thank you, Congressman. I appreciate working with you very closely as well. As you well know, a lot of communities depend upon the revenues generated by these utility plants that are burning coal. Several school systems in our districts right now are very, very concerned about the shutdown of these utility plants and what it is going to mean to their revenue sources. We have so many people who are working in the mining business, particularly Noble, Washington. Monroe County is huge. So these are real individuals. These are real communities. These are real people. They count on coal for that certainty.

We talked about uncertainty. There is a tremendous palpable sense of dread right now. As I discussed in my testimony, as we go around to county fairs, and I know you are experiencing this as well, people just say please stand up for coal. Please do something. Please see what you can do to stop what is going on in Washington with these regulatory agencies. Because everybody has got a family story. My uncle was in coal. My granddad owned a coal company.

That future may not exist for people going forward just because of the uncertainty, because of this deliberate attempt to eliminate this energy source. We are not going to have that baseload power we need. We need that baseload power to make Ohio's economy go. Ohio can't be open for business if we're shutting down coal.

Mr. JOHNSON. We talk about the effect on the consumer and on business. Let us look at it from a different perspective. The state requires revenue to function as well, to conduct its business. As a state representative, one of your legislative responsibilities is to help draft the budget for the State of Ohio.

If coal production in the state continues to suffer more, what would be the effect on state revenues and on the budget? What would have to be done to counter the effects of the diminished revenues?

Mr. THOMPSON. It is a huge impact. I don't have a specific figure for you, Congressman, but I think, again, it is a reliable source. We count on the jobs that it generates. We count on the jobs that it facilitates when we have inexpensive energy in the State of Ohio. You eliminate that component of coal—obviously we are excited about some of the shale things that are going on right now, but you also need the competition between the 2. You need that vibrant market that keeps rates down, keeps them cost effective.

So there is additional uncertainty for our budget obviously if we are shutting down those plants because of the income tax it generates, the sales tax it generates. There is so much investment. We talked about those 11 additional jobs that each coal job relates to and creates and supports. So we need that. We need that basic undergirding of the economy or else Ohio is going to be in desperate straits.

It was a struggle this year to try to solve an \$8 billion budget hole. It is going to get a lot tougher if we don't have coal as an in-

expensive energy source in Ohio because it impacts throughout the entire community.

Mr. JOHNSON. Because it is actually a trickle down effect. It is not just the income taxes that the coal operators provide and the coal mining operations themselves provide, but it is also the manufacturing companies that are dependent upon energy that will shut down as a result of not having affordable energy. It is a really big impact.

Mr. THOMPSON. It is heavy equipment manufacturers. They count on coal. Trucking companies, people that provide equipment, clothing, housing, everything else. It is vitally important. The sense of uncertainty in eastern Ohio is really strong right now, and I understand that. It is heartbreaking to hear about people who are being laid off.

We talked about Monroe County. As well Ormet is a critical component there. Beyond Ormet there is not a lot going on there that is positive economically, and we want to see them continue and be strengthened.

Mr. JOHNSON. Mr. Chairman, if you would indulge me for one more question.

Mr. JORDAN. Sure.

Mr. JOHNSON. Mr. Ahern, if regulations prevent or seriously limit a co-op from burning coal, how would the underserved in rural areas like we represent here along the Ohio River, how will they receive their electricity?

Mr. AHERN. Well, it probably will be from other sources that are likely to be more expensive.

Mr. JOHNSON. You are talking about people that are already struggling day to day, unemployment in many places, some double digits, and yet they are going to have to pay higher utility rates to power their homes. It is even going to have a further crippling effect on those businesses that operate in those rural areas because as their cost to provide power to their business and manufacturing operations increase, they are going to have to probably lose people, not hire people.

Mr. AHERN. Chairman Jordan and Representative Johnson, I think right now natural gas is relatively inexpensive. It is helping to hold down electricity prices, but once people turn away from coal, the only reasonable place you can turn to for baseload generation is natural gas. Natural gas prices are going to rise significantly. It is going to raise electricity prices for Ohio and many other areas of the country. They are going to see significant price increases.

As Mr. Hodanbosi already mentioned, we are going to lose some generating capacity. With today's very low natural gas prices, nobody will build anything today. You won't be building a combustion turbine at today's low wholesale power prices. So we are going to wind the spring and do nothing, and then when that spring lets go, we are not going to have enough electricity, and it is going to drive up the price, and people are going to feel it and businesses are going to feel it.

Mr. JOHNSON. Thank you, gentlemen.

Mr. Chairman, I yield back.

Mr. JORDAN. Thank you, Mr. Johnson. In your questioning, you brought out the jobs that are associated with the coal industry and the positive impact that has on communities and the school districts.

I would like to recognize Mr. Murray is with us, of Murray Energy. Of course, they employ a lot of folks and have a lot of positive impact on the countless number of communities across this state and across the country. So we appreciate him being with us today.

With that, I recognize the gentleman from Pennsylvania, Mr. Kelly.

Mr. KELLY. Thank you all for being here. I walked in with one of the gentlemen that is in the industry. We take for granted this idea that you flip the switch and the lights come on, hit the switch at night and the air conditioning comes on, or in the winter, you just turn up the thermostat a little bit and the house gets warm and the lights get lit.

The fragility though of this grid and the inability to keep it at a level, a baseload, any of you please explain that. I think hearings like this are great because the general public doesn't understand how fragile this is. We start talking about brownouts and blackouts. The fact we haven't had any absolutely amazes me right now.

The startup, you can't just start them back up again. Once these plants shut down, you don't start them back up again that easily. Am I right or wrong on that, Mr. Ahern?

Mr. AHERN. Chairman Jordan and Representative Kelly, you are right. The grid is not a real stable system in terms of it doesn't tolerate upsets very well. A great example of that is August of 2003 when there was a disruption due to problems in northern Ohio, and we ended up with a blackout that blacked out 55 million people that went from Ohio to Michigan, around the north side of Lake Erie, across upstate New York and down to New York City. So the grid, it is not self-correcting in that way. You have got to maintain the voltage. You have got to maintain the frequency to keep it stable.

Mr. KELLY. So the importance of the grid, we all agree how critical it is. We put \$16 billion in green energy. How much of an investment have we made in the grid? See, I never hear that. I always about renewables and the way we are going to go for renewables. That seems to be the push that this Administration has.

Mr. AHERN. Chairman Jordan and Representative Kelly, one of the things that I think is not really appreciated broadly is that the only reason the grid is there is because it is being maintained. The idea that we have an antiquated infrastructure, I reject that idea. It is cared for. It is taken care of. Sure, we have seen deficiencies.

You have got FERC. You have got NERC. You have got state commissions. You have got the individual utilities themselves. You have got regional transmission organizations. For Ohio you have got PJM. There is a tremendous amount of focus going on to maintain the grid.

One of the things that the green agenda is doing that is going to present challenges to the grid is that the two major sources of power that they seem to strongly advocate are wind and solar and they are intermittent resources. They can come up quickly, but more importantly, they can come down quickly. Clouds can shield

a solar field. The wind can die off rather quickly. Those dramatic changes, the rest of the grid has to really hustle to keep the voltage and the current in line. Otherwise, the system will go unstable as the blackout of 2003 shows, the blackout of 1965 and other regional blackouts that have occurred.

Mr. KELLY. We rely on sun that may not shine and wind that may not blow. Then we turn our back on all the other stuff we know, which is right beneath the surface. That is really amazing to me, that an Administration that many people will say these are the smartest guys—I don't know. When you run a business 1.7 trillion in the red every year, I don't know that I would go to any of those guys for business advice.

One of the things I do want to point out, and I think you would all agree, while we face a global market that is out there for us all, we may never ever get to a point where we can compete on an hourly wage, but we can compete when our energy costs are lower than every other place in the world. So while you have wages that allow us to have a sustainable life form and a way of life we like, we can offset it by low energy costs, can we not? That is part of the formula of what drives the cost of a product either up or down.

I look at this and I say if we are ever going to fair fight, shame on us. With what we have at our disposal, we put our men and women in a situation where they can't absolutely blow everybody else away, what are we thinking about. This is not the type of a country that I know of, ruin its greatness. We have it. It is here. It is affordable. It is abundant. It is accessible. Why in the world would we ever, ever turn our back on what we know and how we can offset the rising cost of wages that our people need and put ourselves in jeopardy. It makes no sense.

Mr. Mackall, I know that your company is doing a great job. Mr. Murry's company is doing a great job. Why is there this war on coal? Why?

Mr. MACKALL. I have no understanding. It makes no sense to me. It is all over a phony CO2 issue, which I mentioned in my speech that my greenhouse customer totally, to me, disproves the science. I don't understand.

I do know that all these plants they want to close right now, including two that I supply, two GenOn plants, they are slated to close, but they are running right now, or our grid wouldn't be functioning right now. There is no other source of electricity. Every available source of electricity is running right now to keep the electricity grid working. Without them, they would be dead.

Mr. KELLY. It is baffling, is it not? Representative, I mean, I think there is some confusion sometimes. We think that the government is somehow just this benevolent monarch that showers on the people all these gifts. But the reality of it is every single penny that the government uses comes out of a hardworking American taxpayer's pocket. Unfortunately, only half of us are paying taxes anymore.

Please explain, because I think these types of hearings allow the community to understand. Every single penny that Ohio needs, where does it come from?

Mr. THOMPSON. Chairman Jordan and Representative Kelly, it comes from people who are actually working. I think the way that

Ohio goes to work is Ohio has reasonable priced energy. That energy is supplied to the manufacturers. The manufacturers put people to work. They put people to work in mining coal. They put people to work in transporting it, shipping it and delivering it.

The green agenda, I think, which concerns me the most, it is almost an article of faith, it is an alternative to religion, to the one that we understand, and it is a religion where they disdain fossil fuels. They consider fossil fuels to be the enemy of our health and our safety and our way of life.

If you look at California's energy policy, you will see what America is going to look like shortly. It is a mess. They disdain energy sources that we know are reliable. They are increasingly trying to rely on wind and solar which cannot be effectively stored, cannot be transmitted very well. So it just makes this economy much more problematic, increases the uncertainty.

We have 200 years of proven reserves of coal. Why aren't we doing everything possible to invest in that? If we need to make it cleaner, let us invest in clean coal technology. We have the ability to do that. As we do that, again, we get all the benefits that we are seeking.

We have got reliable reserves. We know we can produce it cost effectively. That goes right into the economy, and it makes Ohio viable because it is an advantage for Ohio, not just for the nation. Right here in Ohio we have very inexpensive energy sources that can power the manufacturing sector comeback we would all like to see.

Mr. KELLY. I know Pennsylvania is doing the same thing. I think all of us sit back, and it is one of these things where you scratch your head and kind of raise your shoulders and you just keep asking why. I do not know. After watching the current Administration, when they were running for office, they absolutely have kept their word to the American people, and they have certainly kept their word to coal.

For the life of me, I just keep asking why. Nobody can ever answer that to me. Why do you want to do this? I guess the answer for all of us is because they can.

With that, I yield back, Mr. Chairman.

Mr. JORDAN. Thank the gentleman for his good questioning. I want to ask one thing real quickly before we go on to Congressman McKinley.

Mr. Ahern, when you and Congressman Kelly were dialoguing, you mentioned that you think the grid is maintained, but I want to make sure I heard accurately. You said with the focus you are seeing from this Administration on wind and solar, you think the likelihood of blackouts and the likelihood to maintain that quality grid is somewhat jeopardized, is that accurate?

Mr. AHERN. Mr. Chairman, it is close. I would say it this way more specifically, it is going to be a great challenge. To put more intermittent resources onto the grid and maintain the reliability, it is a bigger challenge. I am not saying it is impossible.

Mr. JORDAN. So the conclusion is that the potential for blackouts, in fact, is greater with this unreliability of wind and solar being added to the mix?

Mr. AHERN. Mr. Chairman, that is correct. It is a great possibility, yes.

Mr. JORDAN. Thank you.

The gentleman from West Virginia is recognized.

Mr. MCKINLEY. Mr. Ahern, you mentioned in your remarks about flyash. For those people who are not aware, it is an unavoidable byproduct of burning coal.

Mr. AHERN. Yes.

Mr. MCKINLEY. If you burn coal, you get an ash. The EPA since 2009 has been contemplating and developing and perfecting a piece of legislation, a new rule and reg. that would potentially classify flyash as a hazardous material.

We know that flyash is used in concrete. It is used in brick and block. We know it is used in drywall. We know it is used in bowling balls. It is used in ceramic tile. It is used in a variety of beneficial recyclable uses.

What are you doing at Cardinal? What are you doing with the flyash there?

Mr. AHERN. Chairman Jordan and Representative McKinley, most of the flyash at Cardinal, we store it on site long term. Although we do sell some of the flyash, there are certain products—for example, you mentioned bowling balls. There is a certain part of the flyash that is very small, spherical hollow particles that are great for making plastics of improved quality and things like that.

One of the other things that is not flyash directly, but it is indicative of the effort we go to, our scrubbers, the sulfur dioxide gets converted to gypsum, calcium sulfate. That can be used for drywall. Over half of the gypsum we produce at the Cardinal station is put on a barge, and taken downriver to a drywall plant and made into drywall. So we have looked for avenues.

Much of the bottom ash has a different character than the flyash. It is a great aggregate for concrete.

Mr. MCKINLEY. But, if this becomes hazardous material? Don't you think consumers—I know that there are studies that say across America, there are 316,000 jobs involved in the recycling of coal ash and gypsum. All of those would be in jeopardy, wouldn't it, if the EPA has its way with the coal ash rule?

Mr. AHERN. Mr. Chairman and Representative McKinley, it would be a huge problem if flyash was declared hazardous because of just the laws that would apply to the ways you have to protect workers, clothe them, ventilators, things like that, what we would have to do to our handling systems and things like that.

Mr. MCKINLEY. Have you been able to project at all what the cost to the consumer could be? Because that would be passed along through the Public Service Commission, that cost. Do we have a sense of what that could be to the consumers if they persist in making this a hazardous material?

Mr. AHERN. Chairman Jordan and Representative McKinley, we do not have a good cost estimate of what the impact would be.

Mr. MCKINLEY. Let me move on. There was the other comment, I think it was Mr. Mackall, about the new performance standards, New Source Performance Standards. Did you not make that statement in your remarks about that?

Mr. MACKALL. Yes.

Mr. MCKINLEY. Again I think more people across America need to understand what that is all about. The mercury standard was to go back to the old plants to bring them into compliance. But under this new performance standard, this is for all the potentially new coal-fired generating plants. This would be their rule. That would put them in a bind. The real crux, as I understand, is coming down to the carbon capture and sequestration or carbon capturing utilization processes that could be available.

I think you mentioned and others have said that technology, as we know, is currently not available and may not be available for 10 years or more. Yet the EPA is promulgating this rule. We have a hearing. We just put a bill in last week. I am honored. I know that Representative Johnson is on that bill with me and others in Congress. We are going to try get that rule held back until there is technology commercially available.

In other words, they can set it up, but until it is commercially viable, that rule can't be enforced. We think that is a realistic response to this effort. We just got word yesterday that the leadership is going to have a hearing on that in September. For those of you that have an interest in that legislation, watch in Washington for September when we have the opportunity to be able to understand more how the EPA has gotten ahead of the curve here and not using science, but using ideology as their driving force.

Again, I thank you all for being here today. I hope to see you again in September. Thank you. I yield back my time.

Mr. JORDAN. Thank the gentleman. Now we will go quickly a second round. We will start with the gentleman from Ohio, Mr. Johnson.

Mr. JOHNSON. Mr. Hodanbosi, I want to turn a little bit to the issue of the effects of these regulations on the supply of electricity. You have heard a little bit talk about reliability.

From a reliability standpoint, how do you think Ohio coal-fired power plants will be able to comply with Utility MACT and provide electricity during peak hours, such as in a heatwave like we have had here in Ohio recently?

Mr. HODANBOSI. I guess the issue is not so much the plants that are operating and can comply. Mr. Ahern talked about the Cardinal plant and the expense, that he believes his plant can comply. So we will have some facilities that will be able to comply.

The issue is all of the facilities that are closing and are not going to be in operation. Where are we going to get the capacity from to make up when we need the electricity?

Mr. JOHNSON. Let us turn to that issue. How many electricity generating units have already been prematurely retired as a result of Utility MACT and do you have any idea how many are projected?

Mr. HODANBOSI. Well, there 25 specific boilers that are shutting down as a result of the Utility MACT and other EPA requirements that have been announced. That is over 5000 megawatts of capacity that will be gone in the next three years.

Mr. JOHNSON. I know that you sit in a regulatory agency, so I don't know how many businesses you talk to, but do you have any sense of the direct effects of increased electricity costs as a result

of EPA's regulations? Are companies laying off workers and shutting down businesses?

Mr. HODANBOSI. Well, there certainly is a direct impact when electricity rates go up. The example of Representative Thompson of Ormet that is just down the river, the aluminum producer, that they have laid off some workers, and if the price of electricity continues to go up, that will be the course there. That is a huge employer in Ohio.

Mr. JOHNSON. Mr. Ahern, will regulations like the Utility MACT increase the cost of electricity that you provide to your customers, and what implications does this have? We have dealt with this a little bit, but I want to give you a chance to expound on it.

What implications does this have for economic growth and job creation in rural areas like your company serves?

Mr. AHERN. Mr. Chairman and Representative Johnson, it is unclear to us exactly how the Utility MACT might expose us to additional costs. We are hoping that it doesn't, but as I mentioned previously, one of the big uncertainties is the monitoring requirements. Mercury is just so dilute in concentration. It is extremely difficult to measure. And what sort of testing requirements will they have, what sort of testing frequencies. Tests particularly with very dilute concentrations, sometimes you can actually be performing well, but the tests will raise doubt. So you could be required to spend a lot of money on testing, a lot of money on monitoring equipment.

Overall, it is difficult to say exactly how it is going to impact us, but as I described, the accomplishments that we have had so far have added up to a billion dollars of capital costs and \$20 a month for the average consumer. We don't think it is appropriate to add any more costs on top of that because our customers have already paid for significant improvement in air quality.

Mr. JOHNSON. Rural cooperatives like yours, do you have reliability concerns about the Utility MACT compliance, particularly during peak hours?

Mr. AHERN. Mr. Chairman and Representative Johnson, any time you do anything to the old, it can affect the whole electric system. Everybody that is connected to it is potentially impacted. Even though our plants may be fine, may be well controlled, may meet the standards, if others around us retire, if there reliability problems because a lot of generation is taken out, we will be impacted, and probably the most direct and costly way is the possibility of blackouts.

Mr. JOHNSON. If the co-op wants to build a new coal-fired power plant, will it be able to given the New Source Performance Standards for greenhouse gas emissions?

Mr. AHERN. Mr. Chairman and Representative Johnson, I don't see with the proposed greenhouse gas standard how anyone could take on the task of building a new coal plant.

Mr. JOHNSON. Representative Thompson, let us come back to you. We talked a little bit before about the effect of reduced coal production on state revenues. What about local government revenues? I know you and I talk to a lot of local government folks that are struggling to fund their sewer upgrades, their water upgrades,

also a part of the regulatory process that is being mandated on them, and yet they don't have the funds to be able to do that.

What effect on local governments would diminished revenues as a result of lower production and use of coal have?

Mr. THOMPSON. Mr. Chairman and Congressman Johnson, I think, again, in more of a micro way, they count on all the local jobs, the people that are paying income tax. They count on the services that are used locally by these coal companies and the utility companies. Again, their base revenue sources are very much dependent on these companies.

We talk about local government. We talk about schools that are going to be suffering, school districts. In many cases, the utilities are partners with local charities and things. There is so much. It radiates through so much of that local economy. It is obviously very tough for local governments right now because of revenue at the state level and also at the local level. So any variable that you introduce into that equation is really going to harm them in a significant way.

This is something that doesn't have to happen. This is something that is happening in Washington by design. And this war on coal and this disdain for, again, our electric utilities and also our coal producers and the livelihoods that are dependent upon it, it is a huge impact. You and I are experiencing it. We hear it. The discussions and palpable fear in local communities is on the rise.

I hope we can turn this back. I hope we can reverse this. A lot of it is under way, and it is hard to get bureaucracies to move in the right direction. But I appreciate what this committee is doing to call attention to it, and I will do everything I can in the State of Ohio to be of help.

Mr. JOHNSON. Thank you. Mr. Chairman, I yield.

Mr. JORDAN. I now recognize Mr. Kelly for a second round.

Mr. KELLY. One of the things we talked about, Mr. Ahern, was the grid. When I am back in western Pennsylvania and I get a chance to visit with the folks that I represent, I talk to a lot of the machinists.

I talked to one of my friends up in Meadville. He was saying, hey, are you guys going to get this thing taken care with the grid? Are you guys going to do something about this? Because the problem I have is that I can't afford the surge. I said, what do you mean the surge? He said, I can't turn these machines on and then have there be a dip in the power because then I have to go back and restart and recalibrate everything. He said, you know the cost of doing that? I said, no, I have absolutely no idea the cost. He said, well, I will tell you what. It is going to put us out of business.

The reliability of the grid is also one of those things that is absolutely critical. Mr. Ahern, when we talk about all these different alternative uses, you look at what we have done with coal over the years, I am talking about something that is so consistent and so reliable and so affordable, what is the purpose in all that? I know you talked a little bit about the grid, keeping it up, but the reality of it is these surges also really affect these businesses and their ability to power up the machines.

How often do you see that? It is going to become more and more prevalent I would think.

Mr. AHERN. Mr. Chairman and Representative Kelly, you bring up a very good point. It is part of the evolution of technology. There is so much greater use of electronics and electronic controls and things like that, much more than there were decades ago. This is the kind of equipment that is not very tolerant of even a fraction of a second blip in the voltage or the frequency.

So it is more and more important that the grid reliability be maintained. I am telling you from my experience the utilities know how to maintain grid reliability. They know what needs to be done. It is not rocket science, but it is fundamental. You have got to have enough grid. You have got to have enough transmission. You have got to have enough generators, and you have got to deal with the upsets.

As I mentioned before, the biggest challenge that I see coming for the grid is the intermittent resources growing to be a larger and larger percentage of the supply which is going to introduce an environment that is not the norm that they are used to, and there is going to be a learning curve. And during that learning curve, there are probably going to be problems.

Mr. KELLY. But it doesn't make sense to me for us to go away from something we already know. Maybe you can help out. My friends in the business tell me about the secondary power sources, how you have the backups. It is almost like one of these big diesel trucks. When they go in and grab a cup of coffee, they don't shut them down. They leave them running because it is cheaper to leave them run than it is to shut them down and start them back up again.

That is where I keep going to with this grid and the availability, that you have this backup system in place so when you have the dip, the other kicks in so you don't have those surges. This is what bothers me. If we keep shutting down these plants, these coal-powered electric producing plants, there is a dire effect that happens in industry with this.

A guy like me that sells cars and trucks, I get it. I know why the guys leave the diesels running. What I can't understand is why the government wants to shut down our most reliable source of electric generation. I don't get it. Is there something I am not getting?

Mr. AHERN. Mr. Chairman and Representative Kelly, I think you are getting it. It is just very important to maintain the reliability. Now, the grid operator, which today in our region of the country is PJM, they have the oversight of all the transmission. They are the ones that give dispatch orders to the generators, pick up, drop off. They always keep some generators at part load so that they are prepared to pick up load or to reject load.

As Mr. Hodanbosi has mentioned, when some of these coal plants get taken out over the next few years, we are entering a new environment. As I mentioned previously, hardly any new generation is being built today because wholesale power prices are so low that nobody sees an opportunity for a good investment to be made.

And this is even more so in states that have chosen to go to a greater use of markets. In Ohio it is one of those for the investor and utilities, competitive markets and market suppliers, and a lot of these marketers, they are sharp businesspeople. They say, well,

I don't want to build a new plant today because I don't know that five years from now, there isn't going to be overbuilding. That is another new element that we now have that we didn't have before, which is another urge for caution and not to go with full abandon in the direction we are going.

Mr. KELLY. Mr. Jordan and I have sat in on a number of these hearings. One of the things I find absolutely astounding is that we would pour \$16 billion into renewables. That sends a signal to the private investors. They don't want to put that money in themselves until the government says, we will underwrite it. You don't have to worry about that. Then we find out from a lot of them as soon as they saw what was going on, they got out of that investment so fast, when they found out this stuff was going upside down, it wasn't going to be subsidized by the American taxpayers. It is amazing to me that we have turned our back on a lot of things that we have.

Again, I keep going back to this. I still keep asking myself why. Why are we abandoning a source that has been so reliable, provides so many jobs, provides so much revenue to run this country, and turning our backs on it and saying we want to try this other stuff? It just does not make any sense. It is a waste of taxpayer money. I thank you for being here.

Mr. Chairman, I yield back.

Mr. JORDAN. Thank the gentleman.

We will recognize Mr. McKinley for a short round and then get the second panel in here.

Mr. MCKINLEY. Thank you again, Mr. Chairman.

We have spent a lot of time here today talking, and it seems like the majority of the questions had to do with the utility companies and what it is going to do to the consumers and businesses. But I think we have to be equally cognizant of the mining industry.

Mr. Mackall, I am going to focus some of my attention to you. We know the rules, the Utility MACT, the air transport Rules. We know all that. The New Performance Standard, we know what it is going to do to the utility. Let us go back to the men and women in the mines where they are going to produce the coal. I looked at here a series of things. Bill Johnson has worked very hard. I have seen him work the floor on the Stream Buffer rule that is going to open up opportunities for that.

We have water permitting, the water conductivity. There are 6 bottled waters in America that if we went to a mine site and we drank this water and poured some of it on the ground, we would be in violation of the EPA water conductivity standards. That just is incredible, what it is doing to our industry.

We have got the use of flyash being proposed not to allow it to be used as a buffer on acid mine runoff. We have got the roadblocks that the Sierra Club and others are trying to put up about shipping coal overseas. If we can't burn it in America, perhaps someone else can do it and put our men and women back to work with that. I am sure there are more from your industry. I am not in the coal industry.

But what actions of the EPA do you think have been the most onerous? If Congress could focus on one issue when we go back be-

tween now and the end of the year, which would be the one that would affect the mine industry that should be reversed first?

Mr. MACKALL. That is a very difficult question to answer. We talked about all the different ways we are being attacked, and they are all important. The cumulative effect of all of them is what is really significant. I mean, to get a permit, it is a ridiculous tremendous maze you have to go through. I am convinced there are a lot of the people in the bureaucracy that don't want to give us a permit. They have embraced this war on coal. They don't want us to have permits. They throw up even more personal roadblocks in the middle of the process.

We have spent years trying to get permits, whether it is Army Corps permits or mining permits. They are getting a little better in Ohio finally. But it is the cumulative of the whole thing.

Mr. MCKINLEY. You got a group of individuals here today that are focused on trying to push back on this war on coal to get some common sense. I am one of two engineers in Congress. So I am trying to use my background and experience. I want to make sure I am fighting based on science. But I need to know what your priority is. So I am trying to hear from you what would be your top priority, first bill to get repealed?

Mr. MACKALL. Our most important issue, I guess, focuses on our customers. We have lost many, many customers over the years that have quit burning coal. I want to make sure that our customers continue to burn coal.

It amazes me when I see the records and I see how clean the air is. I have never seen the air so clean. I used to be in Pittsburgh. It was a horrible mess. Cleveland was a big mess. Youngstown was a big mess. The air is so clean now. We have accomplished so much. I don't want any more regulations to impact on the customer base that is left that we can sell coal to. We can at least deal with the other regulations as long as we have a customer left at the end of the day. If there is no customer, then why even fight it.

Mr. MCKINLEY. I yield back my time.

Mr. JORDAN. I thank the gentleman, and I thank the panel. Let me finish with just one question here. Just to dispel this idea that this is nonpartisan, I mean, I think it has been clear based on what we have heard, this Administration is different, different than previous Republican administrations, different than previous Democratic administrations. This is just the fact, that this Administration is, in fact, engaging in a war on the coal industry and has this green initiative.

Mr. Mackall, I bet you employ both Republicans and Democrats in your business, is that accurate?

Mr. MACKALL. We don't ask that question.

Mr. JORDAN. I won't ask you which one you are either.

Mr. MACKALL. I guess we are 98 percent Republican.

Mr. JORDAN. Some of the guys that work for you in your organization, I am sure people who work in the coal mining industry aren't all Republican; is that right?

Mr. MACKALL. No, they are not.

Mr. JORDAN. You make no distinction about it.

Mr. Ahern, in the cooperatives that you represent and Buckeye Power, I am sure you have got both parties in your organization.

Mr. AHERN. Certainly do.

Mr. JORDAN. Mr. Thompson, if my memory serves me right, your district for many years represented by Democrats in the general assembly. When you are out talking with constituents, I bet you have had Democrats come up to you and say they are just as concerned about what this Administration is doing to coal as you are.

Mr. THOMPSON. Very much so.

Mr. JORDAN. The Republicans are.

Mr. THOMPSON. It is not a partisan issue. We want to allow people to continue to work, and they can't do that with this war on coal.

Mr. JORDAN. Mr. Hodanbosi, we determined in the first round of questions with you that you have been in this business for almost 40 years, worked for, if I have got my history right, Gilligan, Rhodes, Celeste, Voinovich, Strickland and Kasich, all administered both Republicans and Democrats in there. You have worked with and interacted with what would have been Nixon, Ford, Carter, Reagan, Bush, Clinton, Bush, Obama. So you have worked there, too. And you definitely see this Administration as different than other administrations that you have had the privilege and opportunity to work with.

Mr. HODANBOSI. Yes, that is correct, Mr. Chairman.

Mr. JORDAN. I want to thank all of you for being here today and your important testimony. We appreciate what you do in these communities and the service you provide the taxpayers of this great state.

We will go now to our second panel.

[Recess.]

Mr. JORDAN. We have the second panel with us, Mr. Shawn Garvin, who is the administrator of Region 3 of the Environmental Protection Agency and Mr. Bharat Mathur who is deputy administrator of Region 5 of the United States Environmental Protection Agency.

We want to thank you both for being here. You guys know how this works. You have to stand up and be sworn.

[Witnesses sworn.]

Mr. JORDAN. Let the record show that both witnesses answered in the affirmative.

Again, I know you guys have done this before, but you get five minutes. And I think, if I understood from our staff, just Mr. Garvin is going to make his opening statement and then be ready for questions.

Mr. Garvin, you are recognized for five minutes.

#### STATEMENT OF SHAWN M. GARVIN

Mr. GARVIN. Good morning, Chairman Jordan and Members of the Subcommittee. I am Shawn Garvin, Regional Administrator of the United States Environmental Protection Agency, Mid-Atlantic Region, Region 3. I am here today to testify on behalf of EPA's Great Lakes and Mid-Atlantic Regions and am joined by my colleague, Deputy Regional Administrator Bharat Mathur, of EPA's Great Lakes Region, which includes Ohio.

As the Agency has indicated to your staff, we are responsible for the implementation of regulations designed and promulgated in

EPA's headquarters offices in Washington, D.C. in both the Mid-Atlantic and Great Lakes regions respectively. As the agency has also indicated to your staff, while questions that relate to specific national efforts fall outside of our responsibility, we are more than happy to refer those questions to the appropriate EPA staff.

Let me begin by being clear, EPA does not have a "war on coal." The actions of the agency are based on sound science and the law. I will focus my testimony on EPA's work with clean water.

Mr. Chairman, as you know, our communities' businesses depends on our nation's water for drinking, swimming, fishing, farming, manufacturing, energy development, tourism and other activities central to the American economy and quality of life. Without protections at the state and federal level, many of these activities would be threatened by the polluted water. Congress recognized this in a bipartisan fashion when it passed the Clean Air Act of 1972, which was signed by President Nixon.

While the agency works very closely and collaboratively with the state partners, the Clean Water Act requires that EPA oversees these authorized state programs to ensure the goals and requirements of the Act are being met.

Relating to the permitting of certain types of coal mining projects, the Clean Water Act designated the U.S. Army Corps of Engineers as the permitting agency for discharges of dredge and fill materials. EPA may provide comments and information to the Corps on specific permit applications and may request the Assistant Secretary of the Army for civil work review certain permit decisions.

Also, the Act authorizes EPA to prohibit, deny, restrict or withdraw specifications of the fill disposal sites, an authority EPA has exercised only 13 times since 1972. Our regional office works constructively with the Corps, states and other partners to provide input that may assist applicants in developing environmentally sound projects in cases where discharge of dredge or fill material into the nation's water is being proposed.

I know the Committee has a special interest in Appalachia surface coal mining. Our work here is informed by peer-reviewed science documenting the environmental and public health impact of certain unsustainable mining practices of the past. Recent studies point to environmental impact and challenges from surface coal mining that were largely unrecognized even 10 years ago. Between 1992 and 2002, more than 1200 miles of Appalachia headwater streams had been impacted by Appalachian surface coal mining practices.

EPA has documented ecologically detrimental changes to Appalachia's ecosystems associated with impacts from surface coal mining. Today EPA works closely with partners in the federal government, the states and industry to ensure that projects can move forward when designed to minimize environmental impacts.

Let me be clear, EPA has not established a moratorium on coal mining. EPA is not blocking or delaying National Pollution Discharge Elimination Systems permits from being issued. In fact, EPA has issued very few objections that would prevent NPDES permits for mining discharges from being issued.

Of the 283 draft NPDES permits for mining discharges received by EPA from West Virginia, for example, between July 21, 2011 and June 25, 2012, EPA issued a specific objection to the draft permits less than 2 percent of the time. In those cases, EPA is continuing work with the state and other applicants to resolve issues that are the basis for EPA's objections. In June 2012, the average time for EPA to review for NPDES permits for mining discharges in West Virginia was 11 days. The State of Ohio has chosen to cover surface coal mines under general permits where appropriate.

We are committed to working together with our states and federal partners, coal companies and the public to ensure that the decisions under the Clean Water Act are consistent with the law and best available science. Families should not have to choose between healthy water and a healthy economy. They deserve and can have both.

Thank you for the opportunity to be here today. Bharat and I will be pleased to answer any questions you may have. Thank you, Mr. Chairman.

[Prepared statement of Mr. Garvin follows:]

**TESTIMONY OF  
SHAWN M. GARVIN  
REGIONAL ADMINISTRATOR  
U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION III  
AND  
BHARAT MATHUR  
DEPUTY REGIONAL ADMINISTRATOR  
U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION V  
BEFORE THE  
SUBCOMMITTEE ON REGULATORY AFFAIRS, STIMULUS OVERSIGHT,  
AND GOVERNMENT SPENDING,  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM  
UNITED STATES HOUSE OF REPRESENTATIVES**

Good morning, Chairman Jordan, Ranking Member Kucinich, and Members of the Subcommittee. I am Shawn M. Garvin, Regional Administrator for the United States Environmental Protection Agency (EPA)'s Mid-Atlantic Region, Region III. I am here today to testify on behalf of EPA's Great Lakes and Mid-Atlantic Regions, and am joined by my colleague Deputy Regional Administrator Bharat Mathur of EPA's Great Lakes Region. As the Agency has indicated to your staff, I am responsible for the implementation of regulations in the Mid-Atlantic Region. Mr. Mathur focuses on the implementation of regulations in the Great Lakes Region. Our testimony will focus on our implementation of EPA's work. Additionally, as has been indicated to your staff, as leaders of Regional offices, we are able to address questions on implementation, whereas matters of national policy are more suited to national policymaking staff. We are happy to refer any such questions to them.

EPA has responsibilities under the Clean Water Act and other statutes that may impact coal production. The work implementing these statutes is essential to protecting the air we breathe, the water we drink and the land where we live. This testimony will focus on Clean Water Act water permitting, related to mining, but the Agency also works with State partners to implement other environmental statutes.

The EPA recognizes the significant contribution of coal mining to the Nation's economic and energy security. I want to assure you that we use our Clean Water Act authorities in a responsible and environmentally effective manner, and while carefully considering potential

environmental justice and economic implications. I am confident we can work with all of our partners and the public to provide the environmental and public health protections required under the law while supporting the Nation's energy and economic security.

#### **A. EPA's Role in Working with States under the Clean Water Act**

EPA and our State and Federal agency partners work diligently toward the goal of protecting human health and the physical, chemical and biological integrity of our Nation's waters. Communities depend on our Nation's waters for drinking, swimming, fishing, farming, manufacturing, energy development, tourism and other activities essential to the American economy and quality of life.

EPA has responsibilities under the permit programs established under Sections 402 and 404 of the Clean Water Act. While each of the States in the Great Lakes and Mid-Atlantic Regions have been authorized to issue National Pollutant Discharge Elimination System (NPDES) permits pursuant to Section 402,<sup>1</sup> the Clean Water Act provides EPA with critical coordination responsibilities regarding these authorized State programs to ensure the goals and requirements of the Act are being met. The Clean Water Act, its implementing regulations and Memoranda of Agreement (MOAs) that EPA and each State have signed, clarify the respective roles of EPA and the States.

The Clean Water Act and MOAs lay out categories of permits that EPA reviews to assure consistency with the requirements of the law. EPA Regions, in collaboration with our States, identify and review industrial and municipal NPDES permits using a variety of factors, including size and location of a facility's discharge. While we typically review most permits for large dischargers and many mining projects, we also review permits for discharge to waterbodies that serve as drinking water sources or have use impairments that impact recreation, subsistence fishing, or aquatic life. Examples of some of these impaired waterbodies include the Chesapeake Bay and the Mississippi River.

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<sup>1</sup> The District of Columbia within the Mid-Atlantic Region has not been authorized to implement the NPDES program, and therefore the EPA administers the program directly within Washington, D.C.

Section 404 of the Clean Water Act designates the U.S. Army Corps of Engineers (Corps) as the permit issuing agency for discharges of dredged or fill material in addition to providing other specific authorities and responsibilities to EPA. For one, the Clean Water Act requires EPA, in conjunction with the Corps, to issue regulations (known as the 404(b)(1) Guidelines) establishing the environmental criteria that the Corps applies in the evaluation of permit applications. Additionally, EPA may provide comments to the Corps on specific permit applications and may request that the Assistant Secretary of the Army for Civil Works review certain permit decisions pursuant to coordination required by Section 404(q) of the Act. Also, Section 404(c) authorizes EPA to prohibit, deny, restrict, or withdraw specification of dredged or fill disposal sites in waters of the U.S. (commonly known as EPA's "veto" authority), an authority that EPA has exercised only 13 times since 1972. Our Regional offices work constructively with the Corps, States and other partners to provide input that may assist applicants in developing environmentally sound projects in cases where a discharge of dredged or fill material into the nation's waters is being proposed.

#### **B. Impacts of Appalachian Surface Coal Mining**

EPA's role in reviewing Clean Water Act permits for Appalachian surface coal mining is informed by peer-reviewed science documenting the environmental and public health impacts of mining practices such as valley fills. Many waters of the Mid-Atlantic and Great Lakes regions carry the pollution legacy of past coal mining operations, particularly those operations that preceded the Clean Water Act and surface mining laws. Data compiled by the EPA and the Region III States pursuant to Section 303(d) of the Clean Water Act show that impacts from mining were among the many leading causes of stream impairment in the Mid-Atlantic Region.

Recent studies point to environmental impacts and challenges from surface coal mining that were largely unrecognized even ten years ago. Between 1992 and 2002, more than 1,200 miles of Appalachian headwater streams have been impacted by Appalachian surface coal mining

practices, at an estimated rate of 120 miles per year.<sup>2</sup> Such impacts have placed new stresses on the water quality and ecological viability of previously impacted Appalachian watersheds. Stream assessments by the States and efforts to develop total maximum daily loads for mining-impaired waters indicated that additional controls were needed to protect water quality beyond basic technology requirements.

EPA Regions and States are taking steps to help remediate past contamination from surface mining. In the past five years, EPA's Mid-Atlantic Region has provided over \$10 million in grant funding to implement 30 abandoned mine drainage projects to reduce legacy pollutants such as aluminum, iron, and manganese from past mining practices. Similarly, EPA's Great Lakes Region provided \$8.6 million for 24 projects to treat abandoned mine drainage. These efforts complement additional funding being provided by other Federal and State Agencies, such as the Department of Interior's Office of Surface Mining Reclamation and Enforcement.

### **C. EPA's Review of Mining Permits**

#### Section 402 Reviews

One of EPA's responsibilities in reviewing draft Clean Water Act permits for Appalachian surface coal mining is to help ensure that discharges associated with current mining practices are fully consistent with the requirements of the Act. The Agency is guided in its permit reviews by Clean Water Act provisions and its implementing regulations, as well as relevant science. When EPA reviews a draft NPDES permit and identifies an inconsistency between the draft NPDES permit and the Clean Water Act or its implementing regulations, EPA has discretion to issue an objection, provide the State with comments and suggestions, or take no action. Of these possible responses, only an objection has the effect of preventing the State agency from issuing the permit while issues are being resolved. In deciding how to respond to a particular draft NPDES permit, EPA considers a variety of factors in exercising its discretion, including but not limited to, the

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<sup>2</sup> Final Programmatic Environmental Impact Statement on Mountaintop Mining/Valley Fills in Appalachia. 2005. Available at <http://www.epa.gov/region03/mtntop/eis2005.htm>.

nature of the discharge (volume, potential constituents, etc.), the characteristics of the receiving water and compliance with Clean Water Act implementing regulations. Our reviews of draft NPDES permits have helped to assure that these permits protect applicable water quality standards, incorporate appropriate requirements for new discharges to impaired waters, and include appropriate compliance schedules.

Let me be clear – EPA has not established a “moratorium” on coal mining. EPA is not “blocking” or delaying 402 Clean Water Act permits from being issued. As the following data demonstrate, the Regional offices have worked cooperatively with the States, other Federal agencies, and permit applicants to reach resolution and allow protective permits to be issued. We can find ways to both mine and also protect our environment, and the bulk of this work is done with the States.

EPA has issued very few objections that would prevent NPDES permits for mining discharges from being issued. Of the 283 draft NPDES permits for mining discharges received by EPA from West Virginia between July 21, 2011 and June 25, 2012, EPA took an action that has the potential to ultimately prevent the State from issuing the permit in only five instances, or less than 2% of the time. In those cases, EPA is continuing to work with the State and other applicants to resolve issues that are the basis for EPA’s objection. Therefore, in the majority of its reviews, EPA took no action that would prevent the State agency from issuing a permit. In June 2012, the most recent full month for which we have data, the average time for EPA’s review for NPDES permits for mining discharges in EPA Region III was 11 days. The State of Ohio has chosen to cover surface coal mines under general permits where appropriate. The Great Lakes Region reviewed a total of 46 Notices of Intent for coverage under the Ohio General Permit between June 2009 and May 2011, and recommended that the State require individual permits for 7 of these were reviewed in order to provide data that would better assess potential impacts on water quality. However, while EPA’s comments on these Notices of Intent represent our recommendation on how to ensure that permits protect water quality, they do not prevent Ohio from covering these projects under the General Permit.

EPA strongly prefers to work with authorized State agencies to resolve concerns regarding NPDES permits without having to resort to the formal objection process. To that end, EPA uses the review periods provided by the regulations and the MOA to try to work with the authorized State agency to reach resolution. We work to find systemic solutions that will require less active involvement by EPA on a permit-by-permit basis and that enable State programs to issue permits efficiently and consistent with the Clean Water Act.

The following are just two examples of many that show how the regional offices have worked with States and mining companies to address NPDES permit concerns identified by EPA:

The Mid-Atlantic Region recently worked successfully with an applicant and the West Virginia Department of Environmental Protection (WVDEP) to resolve EPA's concerns with the Hampden Coal Company's Canebrake Surface Mine. EPA, WVDEP, and the applicant resolved EPA's water quality concerns within 30 days of EPA's receipt of a draft NPDES permit, resulting in issuance of an NPDES permit by WVDEP on June 5, 2012.

In Pennsylvania, EPA and the Pennsylvania Department of Environmental Protection (PADEP) worked cooperatively with the company to agree on a draft NPDES permit for a proposed treatment facility near the existing St. Michaels abandoned mine discharge that will allow the applicant to mine additional coal reserves. PADEP estimates that the proposed treatment plant will reduce the total acid mine drainage loading to the Little Conemaugh River by 44%. The permit is the first mining permit in Pennsylvania to include specific language requiring the permittee to document that it is offsetting pollutant loads.

#### Section 404 Reviews

Similarly, with respect to discharges of dredged and fill material pursuant to Section 404 of the Clean Water Act, EPA has worked cooperatively and successfully with the Corps, and with applicants, to promote permits that protect waters of the US and allow projects to move forward. When EPA receives a public notice from the Corps of an application to discharge dredged or fill material, EPA reviews the public notice and may provide comments to the Corps. Most of the

comments from EPA are intended to assist the Corps District as they make decisions to assure that permits issued for proposed discharges of dredged or fill material are consistent with the Section 404(b)(1) Guidelines, including ensuring adequate avoidance and minimization, preventing significant degradation and protecting water quality standards. EPA also offers its assistance to other agencies in identifying issues early in the permitting process so they can be resolved quickly and efficiently. For example, on a quarterly basis, Great Lakes regional staff attend Ohio Department of Natural Resources' Coal Workgroup meetings along with State and Federal regulators, the Ohio Coal Association, and industry representatives. Great Lakes regional staff participate in pre-application meetings held by the Corps to review project proposals with applicants and regulators, and are members of workgroups that discuss agency positions and hear industry suggestions to address re-mining and mitigation.

EPA and the Corps established procedures under Section 404(q) of the Clean Water Act for those instances when EPA determines that issuance of the permit will result in unacceptable adverse effects to Aquatic Resources of National Importance. This coordination process may be triggered if concerns are not resolved at the Regional and District level. The final permit decision under these procedures remains with the Assistant Secretary of the Army for Civil Works. Of the 40 public notices for Section 404 permits for discharges for coal-related activities received by the Mid-Atlantic Region since January of 2009, and of the 48 Section 404 public notices reviewed in Ohio, to date neither Region has formally requested higher level review of a Corps permit decision related to a coal mining project. The majority of proposed projects have received comments from EPA intended to ensure that permits are consistent with the Section 404(b)(1) Guidelines and in some cases EPA has reserved its ability to request higher level review of a Corps permit decision under the Section 404(q) MOA. EPA is committed to successfully resolving concerns to avoid elevation of any permit decision, and is working closely with the Corps and the applicants to achieve this. EPA also recognizes the importance of ensuring close coordination with State SMCRA agencies as it provides comments to the Corps, because EPA's comments on water quality issues and the Section 404(b)(1) Guidelines may result in changes to the project that should be reflected in the project's SMCRA permit.

As an example of our collaborative efforts, the Mid-Atlantic Region's work with one applicant and the Corps resulted in a permit for the Hobet 45 mine in West Virginia that allowed the applicant to extract 92% of the coal originally proposed for extraction and reduced the impacts to the streams. In 2010, EPA worked with the Corps on a Section 404 permit application for Coal Mac Inc.'s Pine Creek project. This collaboration resulted in development of additional best management practices that are now demonstrating positive water quality results. For Hampden Coal Company's Canebrake project, which I mentioned earlier, EPA worked closely with the applicant, the Corps, and the state SMCRA agency to review and provide encouraging comments on the project's innovative valley fill design that will reduce direct environmental impacts and minimize the potential for harmful downstream pollution. In the Great Lakes Region, after receiving input from EPA, the Corps and Ohio EPA, Oxford Mining revised its application for the Peabody 3 mine in Ohio to avoid mining through nearly a mile of the highest quality category of streams while enabling coal extraction to move forward.

#### **D. Conclusion**

We are committed to working together with our State and Federal partners, coal companies and the public to assure that decisions under the Clean Water Act are consistent with the law and best available science. We are confident that we can work with our partners and the public to protect public health and the environment while supporting the Nation's energy and economic security. Families should not have to choose between healthy watersheds and a healthy economy -- they deserve both.

Thank you for the opportunity to be here today. Bharat and I would be pleased to answer any questions you may have.

Mr. JORDAN. Thank you, Mr. Garvin. Mr. Garvin, you said in your testimony, if I heard it correctly, that EPA does not have a war on coal. Do you stick by that?

Mr. GARVIN. Yes.

Mr. JORDAN. What about this Administration, do you think this Administration is waging a war on coal?

Mr. GARVIN. No.

Mr. JORDAN. Do you think there is a bias towards other forms of energy and a bias against coal?

Mr. GARVIN. No.

Mr. JORDAN. Were you sitting here in the audience with the first panel, Mr. Garvin?

Mr. GARVIN. I was.

Mr. JORDAN. You heard what all four witnesses had to say?

Mr. GARVIN. Yes.

Mr. JORDAN. Specifically Mr. Hodanbosi, you heard what he had to say in his 40 years of experience in working for the Ohio EPA?

Mr. GARVIN. Yes.

Mr. JORDAN. How many years have you worked for the EPA?

Mr. GARVIN. Since 1997.

Mr. JORDAN. What is that? 15?

Mr. GARVIN. 15 years, a little over.

Mr. JORDAN. So he has got 25 more years working. You are saying his description of this Administration is not accurate?

Mr. GARVIN. I am saying I am not qualifying what he said. I am telling you from—

Mr. JORDAN. You don't think it is a bias from an Administration that takes \$16 billion of taxpayer money and gives it to 26 companies, 22 of which have a BB-rating from Fitch on their credit rating and three of those 22 companies have gone bankrupt? You don't think that is a bias against alternative forms of energy?

Mr. GARVIN. That is outside of my role and responsibilities.

Mr. JORDAN. You just answered my question a little bit ago. I said, do you think there is a bias towards other forms of energy and a bias against coal? You said, no. Now I am asking, you don't think there is a bias when 26 companies get tax dollars, 22 of them have a BB-rating and three of them have already gone bankrupt?

Mr. GARVIN. I can only respond based on what we are doing in EPA Region 3.

Mr. JORDAN. You mentioned Region 3. I know there are 10 regions. Let me play for you some of the statements made by people in other regions who have the same job that you have but oversee different parts of the country.

[Video played.]

Mr. JORDAN. Mr. Garvin, let me take them in order. The first, Mr. Armendariz, do you agree with his statement where he talked about people who aren't doing what they want? He used the term. I don't like to say the term. But do you agree with the way he described how he was going to treat people in this particular industry?

Mr. GARVIN. I can only focus on what I do in Region 3 and how we approach it.

Mr. JORDAN. But he has the same responsibility in his region that you have in yours. All I am asking is, do you think he was

appropriate in his comments and how he described it, or do you think his comments were appropriate?

Mr. GARVIN. I can only respond to what we focus on.

Mr. JORDAN. What about the second one? You saw on the film Ms. Hedman accepting petitions from people supporting a rule that the first panel testified about how difficult it is for them to do their business and create jobs?

Do you think it is appropriate for an administrator to accept petitions from a group supporting a rule and show that acceptance by her conduct? Do you think that is appropriate?

Mr. GARVIN. The agency receives comments from all sectors on all rules, and we treat them all the same.

Mr. JORDAN. Do you typically show up at a press conference, at a rally and applaud those people for giving you those petitions?

Mr. GARVIN. I can only talk about what I do in Region 3.

Mr. JORDAN. Have you ever shown up at a pep rally and applauded the people who bring you petitions, environmentalists?

Mr. GARVIN. I have not.

Mr. JORDAN. You have not?

Mr. GARVIN. I have not.

Mr. JORDAN. Never?

Mr. GARVIN. Never.

Mr. JORDAN. What about the third clip where Mr. Spalding is speaking at Yale University and said Lisa Jackson has put forth a very powerful message to the country, if you want to build a coal plant, you have got a big problem?

Mr. GARVIN. I can't comment on that. I can only focus on what we do in Region 3. We focus on—

Mr. JORDAN. Lisa Jackson, was she not telling the truth there?

Mr. GARVIN. I believe the administrator can speak for herself.

Mr. JORDAN. Do you think the statement she made, if you want to build a coal plant, you got a big problem, do you think that is accurate?

Mr. GARVIN. I am not familiar with that statement, so I can't respond to it.

Mr. JORDAN. Well, I am reading it to you. Lisa Jackson has put forth a very powerful message. This is Curt Spalding who has the same job in Region 1 that you have in your region. He says, she said it plainly, if you want to build a coal plant, you got a big problem.

Mr. GARVIN. I don't know what statement he is referring to, so I can't comment on it.

Mr. JORDAN. It has to do with what the law and policy suggested. And it is painful. It is painful every step of the way. Do you agree with that statement or not?

Mr. GARVIN. That is Mr. Spalding making a statement about what the administrator may or may not have said. I am not familiar with what the administrator said. So I can't comment on that.

Mr. JORDAN. Mr. Mathur, is there a reason why Ms. Hedman was not able to join us today? Do you know why you are here? She is your boss; is that right?

Mr. MATHUR. That is right.

Mr. JORDAN. Why wasn't she able to join us?

Mr. MATHUR. She had a longstanding engagement with senior members of 15 federal agencies that she found it very difficult to cancel.

Mr. JORDAN. That is more important than coming to an area of the country where jobs have been lost because of policies from this Administration and speaking to a Congressional hearing?

Mr. MATHUR. It is not more important. It had to do with—

Mr. JORDAN. No, no. By definition you said she had a long-standing meeting. She went there and didn't come here, so obviously to her it is more important that she is there than to be in southeast Ohio talking about how jobs are impacted by this Administration in three states, Ohio, Pennsylvania and West Virginia. She felt that was more important than coming here today and having to answer why she was at a rally accepting petitions from people who want to make it difficult for jobs to continue to be available in these three states.

Mr. MATHUR. She was meeting, Mr. Chairman, with 15 senior officials of 15 federal agencies about the—

Mr. JORDAN. Yeah. I got that the first time.

Mr. MATHUR. She was not able to cancel.

Mr. JORDAN. I got you.

Mr. MATHUR. She regrets not being here.

Mr. JORDAN. 15 people in this Administration are more important than four members of Congress and the thousands of jobs at stake in southeast Ohio, West Virginia and Pennsylvania. I got that.

Mr. MATHUR. I can't speak for her beyond what I just said.

Mr. JORDAN. Do you think it was appropriate for her to stand at a rally and accept petitions and thank the people for giving us petitions that are going to impact the very jobs we are here talking about today?

Mr. MATHUR. I know when she was first invited to meet with that group, she declined. It was only when they assembled outside our building in fairly significant numbers and were actually noisy and demonstrations that she decided to go down. I think she would have met with anyone who would have asked to meet with her under those circumstances.

Mr. JORDAN. Well, she wouldn't meet with us. She might with anyone, but she won't meet with us because we asked her. We asked her to come today. She said no, I would rather hang out with 15 people in the Administration than talk with four members of Congress in southeast Ohio where jobs are being lost, plants are being closed and communities are being devastated because of the policies of this Administration.

That is not just Jim Jordan talking. That is not the three members of Congress talking. That is the first panel talking that you just heard. That is one with 40 years of experience in the EPA who was hired by a Democratic administration saying the same thing.

Mr. MATHUR. I am hopeful, Mr. Chairman, that I can respond to questions regarding Region 5 procedures to your satisfaction.

Mr. JORDAN. We appreciate you being here. We do appreciate that someone from Region 5 was able to come here even though the administrator was not able to.

I see I am over time. I will yield now to the gentleman from southeast Ohio, Mr. Johnson.

Mr. JOHNSON. Mr. Chairman, thanks.

I appreciate you gentlemen being here. I am actually sitting here kind of chuckling, Mr. Garvin, because of your arrogance and your tone of adversarialism in responding to the questions that have been proposed to you already. You are making the case that we are here trying to make to the American people and the people of eastern and southeastern Ohio and West Virginia and other places across this country that are dependent upon coal, your bury your head in the sand responses, "that is not my responsibility, it is not within my scope."

Let me ask you a question. I sat with one of your superiors not too long ago, and I asked them the question about the impacts of the regulations coming out of your department, out of the EPA, and its effect on industries that are critical to national security. That individual said to me, "Mr. Johnson, it is not my job to be concerned about national security. It is my job to protect the air."

Do you subscribe to that same philosophy Mr. Garvin, that you have no responsibility in your actions to the national security of the United States?

Mr. GARVIN. I think we all have a specific role to play.

Mr. JOHNSON. I asked a very specific question. I don't want innuendo. I said, do you subscribe to the philosophy that that director said, that it is the EPA's responsibility not to be concerned about national security, but to be concerned about the air?

Mr. GARVIN. I have a certain role in the Administration and—

Mr. JOHNSON. Are you concerned about national security?

Mr. GARVIN. I think everybody is concerned about it.

Mr. JOHNSON. No. I asked you, are you concerned in your role and responsibility about national security? That is a yes or no question, Mr. Garvin.

Mr. GARVIN. My role is to discharge the various statutes.

Mr. JOHNSON. What you are telling me is no. Again, your arrogance and your tone of adversarialism and your waffling on the questions is proving exactly to the American people what we are trying to demonstrate here today, that not only does this Administration have a war on coal, but you have a war on the very idea of American exceptionalism and you have no concern whatsoever for national security and other implications of your actions. You should be ashamed, Mr. Garvin, you and everyone else in the EPA that subscribes to that philosophy.

What is your background? What did you do before you came to the EPA?

Mr. GARVIN. I worked in local government.

Mr. JOHNSON. You worked in local government. In your testimony, you talked about how EPA's decisions are based on valid science. How much education and experience do you have in science? Have you ever been a scientist?

Mr. GARVIN. I have not.

Mr. JOHNSON. Have you ever worked in an industry where science was a requirement of your job?

Mr. GARVIN. I have not.

Mr. JOHNSON. Have you ever worked as a chemist or biologist or any of that?

Mr. GARVIN. I have not.

Mr. JOHNSON. Then you don't know personally, do you, whether or not EPA's policies are based on sound science?

Mr. GARVIN. I do.

Mr. JOHNSON. How do you know that? What are your qualifications to tell us? What is your expert opinion?

Mr. GARVIN. I have been doing this for 15 years.

Mr. JOHNSON. But you have no background in science, Mr. Garvin. Tell us how you know that the EPA's policies are based on sound science.

Mr. GARVIN. Because I know the science, and I have——

Mr. JOHNSON. No, you don't. You just testified that you don't know the science, Mr. Garvin, because you never worked in a scientific field. How do you know that it is based on sound science?

Mr. GARVIN. I have been doing this in this field.

Mr. JOHNSON. You can testify to this Subcommittee what you hear from the EPA officials above you in terms of sound bites and talking points to advocate sound science when we can prove through industry proof that it is not sound science, that it requires compliance technologies that aren't even available. You can testify to that, but yet you can't answer simple questions that are directed to you by the Chairman of this Subcommittee and the representatives here about what your roles and responsibilities are.

Let me submit something to you. You work for the EPA. The EPA is part of the Executive Branch of the United States, and the first and foremost responsibility of the Executive Branch is to ensure the national security of this nation. We do that through ensuring that we have a vibrant economy and that we have manufacturing and that we have energy in order to protect ourselves. For you and your Administration and for you and your leadership to say that you are not responsible for national security, I want to make sure I go on record because you just told me that is what you said.

Mr. GARVIN. That is not what I said.

Mr. JOHNSON. That is exactly what you said, Mr. Garvin. You said my roles and responsibilities are such-and-such. You never answered my question directly about whether or not you were concerned about national security.

Mr. Chairman, I don't know what we do about compelling these witnesses to answer our questions, but I am pretty frustrated. I will yield back.

Mr. JORDAN. Let me pick up there real quick, if I could. Mr. Garvin, what was your undergraduate degree in?

Mr. GARVIN. Political science.

Mr. JORDAN. Do you have a graduate degree?

Mr. GARVIN. I do not.

Mr. JORDAN. Have you ever worked for anyone in politics?

Mr. GARVIN. Yes.

Mr. JORDAN. Who did you work for?

Mr. GARVIN. I worked for United States Senator Joseph Biden, County Executive Dennis E. Greenhouse.

Mr. JORDAN. Is that the same Joe Biden who is now vice-president of the United States?

Mr. GARVIN. Yes.

Mr. JORDAN. You still stick by the statement that there is no bias in this Administration towards green energy and against coal? That is what you said.

Mr. GARVIN. We don't have a bias against coal.

Mr. JORDAN. Now you are changing. Do you have a bias? Pro green energy, pro wind and solar?

Mr. GARVIN. Our responsibility is focused on the environment. So depending on how you characterize the green agenda will depend on how I answer.

Mr. JORDAN. I just want to make the last point I think Mr. Johnson was making. You got an undergraduate degree in political science. You worked for Joe Biden. So no background in science other than political science. On our first panel, we had Mr. Hodanbosi who has an undergraduate degree in chemical engineering. He has got a Master's degree in chemical engineering. He is a professional engineer in the State of Ohio. He is part of the American Institute for Chemical Engineers Air, Waste Management Association and has worked almost 40 years for both Democrat and Republican administrations, and his testimony was that there is certainly a bias in this Administration towards coal. Any response?

Mr. GARVIN. He is entitled to his opinion. I stand by mine.

Mr. JORDAN. I would just say the facts are the facts, and the background is the background.

With that I will yield to Mr. Kelly.

Mr. KELLY. If we could, I wanted to just look at the footage again. Mr. Mathur, you are here because Ms. Hedman can't be here; correct?

Mr. MATHUR. That is correct.

Mr. KELLY. If we could just go back to Ms. Hedman.

[Video played.]

Mr. JORDAN. Ms. Hedman could have been here. There is a difference. She could have been here. She chose not to come. It wasn't like she had a family emergency or anything like that. She chose to go to another meeting; is that right?

Mr. MATHUR. Mr. Chairman, my understanding is that she could not get out of the other meeting on the Great Lakes, regarding the Great Lakes.

[Video played.]

Mr. KELLY. Were you also there that day?

Mr. MATHUR. Beg your pardon?

Mr. KELLY. Were you there that day?

Mr. MATHUR. I was not at the event.

Mr. KELLY. But it was a group that showed up outside your office?

Mr. MATHUR. That is correct.

Mr. KELLY. You said because there were so many of them out there, that she felt like she ought to address them.

Mr. MATHUR. That is correct.

Mr. KELLY. So if we took our miners who are losing their jobs every day because of this war on coal—and there is a war on coal.

I wish we would stop tap dancing and call it what it is. If it waddles like a duck and quacks like a duck, it is a duck. This is a duck. Okay?

Ms. Hedman, if she was so compelled to go out and meet with these folks and hold up all these petitions—and I am sure she went through each one to make sure they were valid. I am just wondering. You would think Ms. Hedman would feel compelled. Miners who were losing their jobs and there are people that own these mines that are closing down their mines and our electric power generation plants are closing down. If those folks showed up, do you think she would be compelled to go down there and thank them for showing up?

Mr. MATHUR. I can't speak.

Mr. KELLY. I know you can't speak. Neither one of you can speak for anybody. You sure as hell can't speak for the American people, and you can't speak for these miners, and you can't speak for these people that own these coal mines.

I want to tell you what a tough job is. A tough job is not a tough political environment. It is an environment that makes it so impossible for our job creators to even exist anymore. That is what a tough environment. Don't give me this hogwash about oh, it is so tough being in one of these agencies enforcing all this stuff. I don't buy that for one second.

Now, Ms. Hedman couldn't be here. I love Kurt Spalding talking. I even asked you, Mr. Garvin. I know you don't like this. You want to build a coal plant, you got a big problem. Moreover, we understand the decision is painful. You got to remember if you go to West Virginia, Pennsylvania—he didn't include Ohio, but Ohio is the same way—and all these places, you have coal communities that depend on coal, and to say we just think those communities should just go away, we can't do that. But she had to do what the law and the policy suggested.

You know the key to that is the policy suggested. I got to tell you we sit in these meetings. I wish you all would walk the same places we walk in our districts and look these folks in the eyes, and you tell them you are doing it in their best interest, and you tell them that it is okay to shut down these plants, it is okay to shut down their mines, it is okay to shut down their communities, tell them the biggest problem we have in this country is some people just don't pay their fair share.

I will tell you what they are not sharing is the pain. You want to talk about pain. You lose your job. You lose your ability to feed your family. You lose your ability to stay in the hometown that you grew up in in the state that you grew up in because of a government that has decided you are no longer viable. For anybody to walk around this district or any other district and say there is no loss of jobs, they are either outright liars or they are in severe denial and they need to see somebody else that has a degree in another field. I have sat in front of these too many times.

I understand you don't want talk about what somebody else said. I don't care if you are Republican or Democrat. We are all Americans. And you can tell me that you can sit there as an American and say that you think this is all right because you are enforcing a policy. I would quit that job as fast as I could. I would run away

from anybody that was taking the livelihood away from Americans. I am going to ask you a question. You are not going to answer it. You are just not. But we have it on tape. We know what they say. We know what other people are saying about this community, about there is no loss of jobs. Really? Really. Go to those homes where the dad isn't working. Go to those homes where mom can't make the budget anymore because dad doesn't have his job. I want you to look them in the eye and sit before them.

I represent 705,687 people in western Pennsylvania. I don't know if they are Republican, Democrat, Independent, Libertarian. I don't know what they are. You know what I do know? They are all Americans. For this Administration, to pick out fossil fuels, specifically coal, and have a war on coal—your boss, Mr. Garvin, is very biased towards coal. You can't deny that. The fact you work with him or worked for him many years, if you don't think he was biased—I don't see how you can sit here and say, I don't think he has a bias.

I think he has a bias. I think his boss has a bias. I think this whole Administration has a bias. That is why we're here today. I believe America needs to understand what the bias is.

I will tell you what, Mr. Chairman. People say to me Kelly, you seem like you are mad. I am mad. I am mad. I am not going to sit here and watch this great country go down the drain because of upside down thinking people and people that go out and distort, purposely lie to the public and try to hide what is going on because their party asked too much of them. President Kennedy said one time, sometimes your party asks too much. It is not about our party. It is about our people, these folks right here. If you think you represent anything other than the American people, you got raised by the wrong folks.

I yield back.

Mr. JORDAN. Thank the gentleman. Appreciate his passion. Go down to the gentleman from West Virginia, Mr. McKinley.

Mr. MCKINLEY. Thank you, Mr. Chairman.

What I am detecting here is a little frustration both ways on this. I am hearing a lot of denial as it relates to employment. I saw in the Pittsburgh Post-Gazette the other day there was an article there about the President is probably the most pro coal President we have had in years. I can't comprehend that. I go back on that where they are saying that there is no layoff, there have been no layoffs in coal. And I ask, what world are people living in just sitting here based on some remarks you made, I saw layoffs with Consol, Arch Coal, Patriot, PBS Coal, Rocks Coal, Murray Coal, Murray Energy. They are all across America. There are coal companies that are laying off people here in Belmont County and West Virginia.

I heard you say something about science, and it caught my attention, Mr. Garvin, because I am interested in science as an engineer and in training science. We looked at in Washington the TCLP ratings, Toxicity Characteristics Leaching Profile. We have listened to the pushback of the Administration time and time again, Lisa Jackson saying how coal is toxic. She says it is toxic because of the mercury content. But the mercury content in coal is .17 parts per

million. There is more mercury in a can of tuna fish at .39 parts per million.

Would you suggest that tuna fish is toxic? Should there be an ad run about toxicity for tuna fish?

Mr. GARVIN. There has been a recognition when looking at impacts of water that consumption of tuna should be—

Mr. MCKINLEY. Mr. Garvin, if she is trying to make flyash and coal a hazardous material, has the Administration talked about doing that with tuna fish?

Mr. GARVIN. We are trying to find ways to deal with what is causing the mercury in tuna fish as well as in humans and other things that are drastic sources.

Mr. MCKINLEY. It has been around. I have known about it. I have known that the mercury level in tuna fish and other marine products is high. But we don't see the attack on that. We see something going after the jobs, something that is creating jobs for Americans, just as some of the Congressmen have said here. Let me go back here. Two quick points.

In a hearing we had before the Energy and Commerce Committee, it was interesting that a representative of the EPA was saying we need more research into clean coal technology. I thought that was a great position. That is what we have been saying all along. Let us keep doing that. Yet the President and Secretary Chu, in my opening remark—perhaps you heard that—they cut funding for clean coal technology 41 percent this time and 39 percent last year.

Do you think people are talking to each other in Washington? Is the EPA talking with Chu and the Department of Energy?

Mr. GARVIN. I know there is coordination between our agencies, yes.

Mr. MCKINLEY. Go back to that earlier remark. We are adults here. This idea of going into denial is just really a waste of time. We have got Secretary Chu's own remarks. He said time and time again that coal is his worst nightmare. When he testified before the Committee, I remember turning to him. I will say the same thing to you. With all due respect, I think the EPA and the DOE are the worst nightmare for the working men and women of America in the coalfields all across America. It is not the reverse. It is not coal. It is the actions, the overregulation with it.

Let me conclude with one thing. I am just curious where the EPA may be going. Maybe you can give me some insight into it. When the EPA's own website says that indoor air quality can be as much as 96 times more hazardous to people's health, why aren't we paying more attention to some of those issues instead of going after the industry that are employing men and women all across America on the outdoors? I would think that 90 percent of our time we spend indoors. But yet the EPA and some of the individuals come to us in Congress and our Committee and say that the outdoor air is causing asthma, is causing deformities in our childbirths, it is causing premature deaths, it is causing lack of school days.

How do you differentiate that when 90 percent of your time is spent indoors where you are not exposed to the greenhouse gas exposure that perhaps you have on the outside? How do you differentiate that when someone says, I have got asthma that was caused

because of coal-fired powerhouses, not because I was breathing dust mites or aerosols or formaldehyde emission inside my house? How do you differentiate that from the EPA's position?

Mr. GARVIN. Well, we are focusing on both indoor and outdoor air. We do know the chemicals that cause certain issues as well as environmental issues inside the home. We are trying to focus on addressing all of those issues. You talked about kind of focusing on jobs and focusing on coal. And what we have been focusing on in Region 3 is working with our states and working with industry. So at least from the coal mining side of that, we can still find a way to extract the valuable energy resource by doing it in a way that protects public health and the environment. That is what we are working on.

Mr. MCKINLEY. I think you are picking on an old dog, something that has generated jobs. It was the backbone of this America. It is one that fueled our economy in the industrial revolution, coal. Having that science that you claim the EPA uses, I wish you would use it to fight the right area, where people truly do have issues. It is not the outdoor air quality. It is that exposure to indoor air quality. We ought to take a much harder look at that before shutting down our powerhouses and threatening our manufacturers.

With that I yield back my time.

Mr. JORDAN. Thank you gentleman.

Mr. Garvin, I want to go back where Mr. Kelly was on Mr. Spalding's statement. Again, Mr. Spalding is a colleague of yours representing the region just to the north of you. He is New England.

Mr. GARVIN. New England. He is two up from us.

Mr. JORDAN. Your area again, give me the states in your district.

Mr. GARVIN. Delaware, Pennsylvania, West Virginia, Virginia, Maryland and the District of Columbia.

Mr. JORDAN. Mr. Spalding stated, this is a quote, "Lisa Jackson put forth a very powerful message to the country. If you want to build a coal plant, you got a big problem." Spalding goes on to explain that the decision was painful because you got to remember if you go to West Virginia, Pennsylvania and all those places, you have coal communities that depend on coal. And to say that we just think these communities should go away, we can't do that. But you have to do what the law and the policy suggested. And it is painful. It is painful every step of the way.

Let me ask you: Do you think it is painful? I am not asking whether you agree with Mr. Spalding necessarily, but do you think it is painful to implement the law and policy as they are suggested by this Administration?

Mr. GARVIN. Our focus in Region 3 has been focusing on the law and science, and as we focused on mainly the clean water, that is really the issue of implementation. We have been focusing on ways in which the industry can continue to extract the resources, but do it in a way that is protective of human health and the environment. That is what we have done in West Virginia. That is what we have done in Pennsylvania.

Mr. JORDAN. I understand that. Yes or no. Is it tough? Is it painful? Is it difficult?

Mr. GARVIN. I don't know how to qualify that. I mean, we focus on the impacts of decisions we make. We make our decisions based on sound science and basis of law, and it is protecting both, focusing on both what the industry is trying to do and we are protecting the public health of the citizens that live in that area.

Mr. JORDAN. Is your answer you don't think it is difficult for these policies to be implemented? The impact it has, you don't think it's difficult for —

Mr. GARVIN. I am not sure how to qualify that question.

Mr. JORDAN. Mr. Mathur, do you think it is difficult?

Mr. GARVIN. I am not sure of the question. We do our job and we do it to the best of our ability and we focus on all the various impacts.

Mr. JORDAN. I understand that. What I am asking, is it difficult when you do your job on the policy that is there? Do you think it is difficult for the folks in the field? The folks who were on the first panel, do you think it is difficult for them to implement your policy? I mean, your colleague Mr. Spalding does.

Mr. GARVIN. I think we all generally want to have the same outcome which is —

Mr. JORDAN. Do you know Mr. Spalding?

Mr. GARVIN. I do.

Mr. JORDAN. What is his background? Does he have a political science degree, or does he actually have a degree in some kind of science?

Mr. GARVIN. I can't answer that. I don't know.

Mr. JORDAN. But you know him?

Mr. GARVIN. I know him.

Mr. JORDAN. Do you think he is a sharp guy?

Mr. GARVIN. Yeah.

Mr. JORDAN. You disagree, you don't think what he said here is accurate?

Mr. GARVIN. I can't really respond to what he said.

Mr. JORDAN. I don't know why it so difficult to respond. He is saying it is tough. You were here for the first panel. You heard how tough they are saying it is. The people that had to lay off, the difficulties they have had to deal with. You heard from the state representative who represents people in this area. It is not difficult?

Mr. GARVIN. I am not sure I understand the question, sir.

Mr. JORDAN. Okay. I am just flabbergasted. Is it you don't understand or you won't answer?

Mr. GARVIN. I don't understand.

Mr. JORDAN. Can you give me a yes or no? Do you think it is difficult to implement the policies that come from this Administration? You heard in the first panel from someone who has 40 years experience at the Ohio EPA who says this Administration is making it more difficult than any he has ever dealt with, and he has dealt with several since 1973. But you don't think it is more difficult?

Mr. GARVIN. I think we are implementing the statutes that are passed by Congress, the regulations that have been promulgated and basing it on sound science.

Mr. JORDAN. Do you think that is harder for the people who have to live under those regulations?

Mr. GARVIN. More difficult than what?

Mr. JORDAN. More difficult than previously.

Mr. GARVIN. I think we are basically dealing with the same laws and the same regulations that we have dealt with.

Mr. JORDAN. Now you said it. Now you said it. This is the point. The Clean Water Act has been around for a while. Suddenly, according to Mr. Hodanbosi and according to the witnesses on the first panel, they say now it is more difficult for sure them to deal with it. Mr. Hodanbosi says this Administration is taking this to a level he has never seen before. That is the question.

Mr. GARVIN. I can't answer what he thinks is more difficult or not difficult. We are implementing the statutes that were passed by Congress.

Mr. JORDAN. Are they just out to lunch? They don't get it? If you are just implementing the law and the policy and if that is the same as it has always been, then why do these four people—do you think they are lying when they testified on the panel?

Mr. GARVIN. I can't speak for them, Congressman.

Mr. JORDAN. That is what you are saying.

Mr. GARVIN. That is not what I am saying. I am saying we are implementing the laws and regulations.

Mr. JORDAN. And they are saying the laws and regulations you are implementing are much more difficult than they have been under any previous Administration, and that is the punt of the whole question. I am asking, do you think that is accurate?

Mr. GARVIN. Again, I can't speak to that.

Mr. JORDAN. Your region includes West Virginia and Pennsylvania; is that right?

Mr. GARVIN. Correct.

Mr. JORDAN. Some of the folks here have people who work in those states. Do you think part of your job is to listen to what they say and take that back?

Mr. GARVIN. Absolutely.

Mr. JORDAN. And take that into account?

Mr. GARVIN. Absolutely, and I have done that.

Mr. JORDAN. We hope you do that. We really do.

I will yield now to the gentleman from Ohio, Mr. Johnson.

Mr. JOHNSON. Thank you, Mr. Chairman.

Mr. Garvin, when did you work for now Vice-President Biden, what years?

Mr. GARVIN. From 1989 to 1991.

Mr. JOHNSON. I would like to ask you a question probably a little bit easier because it is based on your extensive scientific background that we talked about here. In 2007 Vice-President Biden said that coal is more dangerous than high fructose corn syrup.

Based on your scientific assessment of that, is that true?

Mr. GARVIN. I can't respond to that.

Mr. JORDAN. It is science, Mr. Garvin.

Mr. GARVIN. I can't respond to that.

Mr. JOHNSON. You won't respond to that.

Mr. GARVIN. I can't.

Mr. JOHNSON. I got it. You said just a few minutes ago to the Chairman that in your region, you are implementing the statutes that had been passed by Congress, but that is not what one of your

colleagues in Region 1 says. He says that you are making policies based on what the law suggests, not what the law says.

Is that what you do in your region? Do you base your decisions in your region based on the words of the statute or what the statutes in your interpretation suggest?

Mr. GARVIN. We do it based on statute, regulations.

Mr. JOHNSON. So you disagree then with what the gentleman from Region 1 said, right?

Mr. GARVIN. I can only speak to what we are doing in Region 3.

Mr. JOHNSON. I got that, too. Mr. Garvin, do you have any responsibility, sense of responsibility to the job creators and the businesses and the consumers in the district that you represent or the region that you represent? Do you have a sense of responsibility to them?

Mr. GARVIN. We take that all into consideration when we implement the statutes and the regulations, finding ways to work with the states and with the industries to protect human health and the environment and continue to have a healthy—

Mr. JOHNSON. That is right on your mission statement; right. You got that down pretty good.

Who do you work for, Mr. Garvin?

Mr. GARVIN. I work for Lisa Jackson.

Mr. JOHNSON. Does it ever occur to you that you work for the American people?

Mr. GARVIN. I do.

Mr. JOHNSON. You do? Yet you can't tell me you have got a responsibility to the job creators that are in your region? How can you say you work for the American people when all you know how to do based on your extensive scientific background and experience is to read talking points that someone has given to you? How can you say that you stand up, man up to that responsibility?

Mr. GARVIN. We focus on our responsibility of protecting human health and the environment as well as the economic impacts.

Mr. JOHNSON. You do consider the economic impacts?

Mr. GARVIN. Yes.

Mr. JOHNSON. What do you say then to policies that threaten thousands of coal-related jobs? What do you say to the families that are associated with those kind of policies? Because now you are contradicting yourself.

Mr. GARVIN. We focus on the Clean Water Act. We focus on the 402 permits, the NPDES permits and the 404 permits which are the fill permits. We look to find ways to avoid, to mitigate and to minimize, avoid, minimize and mitigate to allow a project to move forward so it is still protecting the human health and the environment of the people.

Mr. JOHNSON. Memory is a tricky thing, isn't it? When you can't remember those talking points, it gets tough trying to evade these questions.

Mr. Chairman, this is going nowhere. I yield back.

Mr. JORDAN. I recognize the gentleman from West Virginia.

Mr. MCKINLEY. Let us go back to the science again, that issue. The standards set forth by the EPA using the TCLP, very clear about what levels of toxicity in barium, arsenic, mercury, selenium, lead, other heavy metals. They are very clear. But coal doesn't

achieve any of those. It has always below in all tests. Virtually every coal, whether it is from the Powder Ridge Basin out west or the northern Appalachian coal, it all tests below those in all that, but yet the EPA continues to refer to coal as being toxic. It doesn't meet the standards of toxicity. It is below the standard.

Do you think coal is toxic?

Mr. GARVIN. I believe that burning coal has an environmental impact that we are looking to—

Mr. MCKINLEY. No. Is it toxic? Does it exceed the TCLP of your own standard? Does it exceed the standards you set up, the EPA set up for toxicity? Does it exceed it?

Mr. GARVIN. I have to refer that back to our scientific experts. I can give you an answer to that question.

Mr. MCKINLEY. It just causes uncertainty what you are saying there. You know, it doesn't reach those toxicity levels, but yet it is commonly referred to as a toxic material. I have already demonstrated to you that the mercury level in a can of tuna fish—there is more mercury in a can of tuna fish than there is in an equivalent can of flyash, but yet over here we are trying to class it as a hazardous material and this we serve it to our children to eat.

Maybe you remember the statement I made earlier, perhaps you do, and that was just because you can doesn't mean you should. Just because you can doesn't mean you should. The EPA has a tendency of continuing to swirl the uncertainty because it can. It can create any standard that it wants. They don't answer to us in Congress. They only answer to the President. You know that. We can't correct it. We can offer alternatives. We can offer legislation, but we can't get them to repeal an EPA standard. I don't know where you are going with the EPA.

With the soot standard, the soot rule, we want to go from 15 milligrams per cubic meter down to 12. We are going to spend billions of dollars to reduce the amount of particulate matter in the air. Why stop at 12? Why not 10? Why not 5? Because as soon as industry, the powerhouses or the manufacturing plants once they achieve 12, then you say I am going to issue another standard. Then they have to go change their technology, different baghouses, different electrostatic precipitators, different devices.

It is uncertainty that you keep creating at the federal level just because you can, not because you should. They have testified before us in Energy and Commerce. They can't justify on the health standard to make a reduction in particulate matter from 15 to 12. But you are allowed to do it because the President has authorized the EPA to promulgate these rules. But there is no basis of them.

Where are you going with this? Is there a reason that we just do it incrementally? Why not tell industry that 20 years from now you are going to get down to 5 micrograms per cubic meter and they can plan for that instead of incrementally. You keep changing the rules as we go along. What is the thought process there with the EPA?

Mr. GARVIN. As I told you in my opening statement, our job in the regions is implementation. We don't create or promulgate the rules. That is done by the policymakers in D.C. So I can't really respond to that.

Mr. MCKINLEY. I guess we will have to deal with it another day. When you come to Washington, we can carry on this conversation. You can see how frustrating it is. We know the EPA is promulgating the rules. If we want to parse our words and say it is the regulators doing it, it is what the EPA is doing.

Mr. JORDAN. The previous question I asked you was part of your job was to listen to what constituents in your district have to say. I think we were on the first panel. So which is it? Are you going to listen to them and take the information back? You can only do what they say. Or are you going to actually take that information back and try to impact those regulations because you heard from people who you represent or at least you are supposed to represent? You heard from them on the first panel.

Mr. GARVIN. Absolutely. As I said, we will take that information back and we will provide that to those who make the decisions. My point to the Congressman from West Virginia was I can't respond to how the ultimate decision is going to be made, but we can help provide information on what we are seeing in our regions from various areas and sectors on issues and concerns that are related to those.

Mr. JORDAN. Before the decisions were made on Utility MACT and other rules that have been promulgated by this Administration, did you seek input from West Virginia and Pennsylvania? Did you pass that up the line to those folks?

Mr. GARVIN. We had our staff that was passing along information based on our engagement.

Mr. JORDAN. Did you? Did you pass it along?

Mr. GARVIN. Not personally, no.

Mr. JORDAN. Mr. Kelly.

Mr. KELLY. Mr. Garvin, in your discussion I think with Congressman McKinley, you said not only environmental impact, but you also look at the economic impact.

Mr. GARVIN. Yes.

Mr. KELLY. So what are the metrics? Tell me when you look at the economic impact, where is the cut-off point? Where do you say we are trying to achieve something that doesn't make sense economically?

Mr. GARVIN. There is not a matrix. What I am referring to is we have an applicant that comes before us with a permit, be it either a 402 which is direct delegated authority from EPA to the states or a Corps permit in which EPA is engaged in the process. We look at the project that they are looking to implement, and we try to find ways to work with both the state, the Corps and the applicant to figure out how best to protect the environment as well as continue to move forward with their projects.

I will give you an example. The Hobath Mine that was permitted, we were all able to successfully work together to minimize, to reduce 50 percent of the impacts and still getting over 91 or 92 percent of the coal take that the company was looking for. When I talk about economics, that is kind of—

Mr. KELLY. In business time is always of the essence. Permitting times, I have friends that do this. And they tell me it has gotten to the point right now—it may be that there is not enough people to review permits. I don't know. But this idea it can take whatever

amount of time it takes to get something reviewed, I mean, you could stall anybody for about as long as you want.

In the coal business, these people have done this, some for generations, and are experiencing a tie-up in getting permits. There is no permit authority. I will tell you that that may be okay for you to say, but when you are actually on the field, there is a tremendous tie-up. These folks cannot keep their machinery idle and their working crews idle while the Department, whether you or the Army Corps of Engineers, continues to sift through this permitting. You don't think it is taking longer to get permits?

Mr. GARVIN. In Pennsylvania—

Mr. KELLY. Just yes or no, because I don't want to put you through this too much longer.

Mr. GARVIN. No. In Pennsylvania basically there are no Corps permits, no 404. There is no mountaintop mining. It is all sub-surface and all longwall mining.

Mr. KELLY. So these people that are telling me it is taking longer to get permitting—

Mr. GARVIN. I can't speak for the process for the state to get it to us, but we have a 30-day clock to do a general objection, then a 90-day clock to address that. We have had 113 permits from the same period of 2011 to 2012. In Pennsylvania we had one objection which has been resolved. So I am not sure what that is based on.

Mr. KELLY. I will tell you what it is based on is going out and actually talking to people in the business and saying to them so how much tougher is it for you now than it was before, and they are telling me it is much more difficult. They have no reason to tell me that other than the fact they are trying to make payrolls, they are trying to be profitable and they are just trying to keep their business alive.

What they keep saying to me is, what can you guys do to help us? So returning to this, if we are not studying the economic impact of some of this policymaking that we are doing, how do we know it is beneficial? Is there no determination of where we are trying to get to? And at what point do we say it is no longer economically feasible to do it? I think that is what we are doing with a lot of these folks. We are putting them out of business. They can't continue to do what we are asking them to do, because we are raising the bar all the time for them.

I wish the DOE had used the same type of a metric when they were talking to all these people with renewables. We threw billions of dollars away. Do you not look at that? I know you can't speak what is going on in other regions, but I would think that you all get together from time to time and you talk about best practices and what would be more efficient and what would be more effective.

Is there any consideration given to the job creators as to what would be better for them?

Mr. GARVIN. Again, what I know we focus on, we focus on trying to look at it, but trying to do it working with the states and the applicants.

Mr. KELLY. So the people that are in the business, that is not part of the equation?

Mr. GARVIN. Well, the projects are in the equation which then engage the folks who going to do the projects. Our focus is trying to move the projects along, but protect the environment.

Mr. KELLY. I guess somewhere you said that would be on them, talking to people that actually have to make a living and actually sign those paychecks. I will tell you that until you have been in that position—you fellows work for the government. I don't think you guys ever miss getting paid. I can tell you there are many times I have not paid myself and made sure that the guys and gals that work for me get paid first. I wish we could flip that around in this government. I wish we could hold up the paychecks until this becomes more effective and more efficient and doesn't run \$1.7 trillion a year in the red. And that same group of people that is running that model is trying to tell these folks how to run theirs? I would guarantee you if all of you didn't get paid because of poor performance, you would see the performance level rise real quick.

I yield back, Mr. Chairman.

Mr. JORDAN. Thank you. Good point.

Mr. Mathur, Dr. Hedman, she is chairing a Great Lakes restoration initiative, is that why she couldn't come to the meeting, the reason she gave for not being able to be with us today?

Mr. MATHUR. Yes, Mr. Chairman. She is chairing a committee of 15 federal agencies.

Mr. JORDAN. Where is that? Where is that meeting taking place?

Mr. MATHUR. I am not sure of the location.

Mr. JORDAN. We are looking at her schedule from yesterday. It says will chair the annual budget meeting for the federal agencies involved in implementation of the Great Lakes restoration initiative. That was yesterday at 12:00 noon, 12:05. Is this a 2-day meeting?

Mr. MATHUR. I was under the impression the meeting was continuing today.

Mr. JORDAN. But there is no way she could have gone from 12:00 to 5:00, five hours yesterday at this meeting, flew to Columbus, then here, and then flew—we understand this meeting is in Chicago—back to Chicago? She just couldn't do that?

Mr. MATHUR. I can't speak to her schedule.

Mr. JORDAN. Obviously she told you. She said, I am not going. You are going to have to go take what they are going to give to Mr. Garvin and what they would have given to me. You have to take this. I don't want to be there. I would rather chair a meeting that takes place five hours the day before and I am going to make sure I stay overnight and be there for the second day because I don't want to talk to the members of Congress who are going to talk about the jobs that have been lost because of the policies of this Administration.

Mr. MATHUR. She actually asked me last week to represent her here today. After consultation with appropriate folks in Washington, I am here. She wanted to make sure I can answer your questions on how Region 5 does its business.

Mr. JOHNSON. Mr. Chairman.

Mr. Mathur, I might remind you that you are under oath.

Mr. MATHUR. Yes.

Mr. JOHNSON. Are you saying you do not know whether your boss' meeting was yesterday or today? When was the meeting, Mr. Mathur?

Mr. MATHUR. I honestly don't know exactly what were the dates of her meeting with the other federal agencies. All I was made aware of was that—

Mr. JOHNSON. Where is she today? Where is she physically today? Most everybody that has a boss checks in periodically. You are the deputy administrator. So she is probably pretty anxious about hearing how this hearing went.

Where are you going to be calling her? Where is she today?

Mr. MATHUR. I honestly don't know where she is today.

Mr. JORDAN. This is a meeting that happens periodically?

Mr. MATHUR. A face-to-face meeting happens infrequently.

Mr. JORDAN. No. I am talking about the meeting she is at. This happens periodically. Is it typically a 1-day meeting, a 2-day meeting, 5-day meeting, all week meeting? Only a 2-day meeting when you have to come in front of a committee of Congress?

Mr. MATHUR. Particularly they meet by telephone. Face-to-face meeting is infrequently held. I cannot tell you how long.

Mr. JORDAN. This is a face-to-face meeting?

Mr. MATHUR. Yes.

Mr. JORDAN. Is it typically one or two days?

Mr. MATHUR. It can go either one or two days. It has gone both ways in the past.

Mr. JORDAN. But you don't know if this meeting is a one or two day?

Mr. MATHUR. I do not.

Mr. JORDAN. She didn't tell you were coming here till last week? She didn't tell you were going to be in front of this Committee until last week?

Mr. MATHUR. I was made aware that I was going to attend this meeting I think very soon after the Committee requested her presence at the meeting.

Mr. JORDAN. Did you guys discuss this meeting, what you would say, the response you would give or the fact that you wouldn't give an opening statement? Did you discuss all that?

Mr. MATHUR. Not with Ms. Hedman. That was discussed with—

Mr. JORDAN. You are the number two at the region, is that correct?

Mr. MATHUR. That is correct.

Mr. JORDAN. If this is an indication of the infrequency that you communicate with the boss, then it is no wonder that people in the field have a misunderstanding of what is going on. If that is the kind of communication that we have with the region, I think it is understandable why people are confused about this as well.

Mr. MATHUR. I think the preparation for this meeting was discussed more with the Congressional folks in Washington.

Mr. JORDAN. Further questions? Mr. Johnson.

Mr. JOHNSON. It is not untypical that we ask witnesses to respond back with answers to questions that they don't know the answer to.

Mr. Mathur, we are going to be here for a few minutes after the adjournment of this meeting. Can you find out where your boss is? Can you call the office and find out where she is today?

Mr. MATHUR. I most certainly will do that.

Mr. JOHNSON. We would like to know. Thank you.

Mr. JORDAN. Members will have 7 days to submit questions and information to the Committee.

Mr. JORDAN. I want to thank our guys. I know it is not always pleasant. But it is the nature of this job. We appreciate you coming here and taking the time. I know you have busy schedules as well. We appreciate you coming—it is an important part of the country on an important issue—and participating in this morning's hearing.

I thank all our members for being here. I want to thank the audience and members of the first panel, those who are still here. We appreciate you all being here today.

With that we are adjourned.

[Whereupon, at 10:50 a.m., the subcommittee was adjourned.]

