113TH CONGRESS 2d ~~1st~~ Session } HOUSE OF REPRESENTATIVES { REPORT 113–

PREVENTING GOVERNMENT WASTE AND PROTECTING COAL MINING JOBS IN AMERICA

February 2014 ~~NOVEMBER , 2013.~~ Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural Resources, submitted the following

REPORT

together with

Dissenting VIEWS

[To accompany H.R. 2824]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 2824) to amend the Surface Mining Control and Reclamation Act of 1977 to stop the ongoing waste by the Department of the Interior of taxpayer resources and implement the final rule on excess spoil, mining waste, and buffers for perennial and intermittent streams, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 2824 is to amend the Surface Mining Control and Reclamation Act of 1977 to stop the ongoing waste by the Department of the Interior of taxpayer resources and implement the final rule on excess spoil, mining waste, and buffers for perennial and intermittent streams.

BACKGROUND AND NEED FOR LEGISLATION

This legislation is the result of years of ongoing dysfunction and waste at the Department of the Interior's Office of Surface Mining. Regrettably the Obama Administration made the reckless decision to discard the results of a multiyear rulemaking process for a Stream Buffer Zone Rule that concluded in 2008 in favor of starting from scratch with its own new rulemaking. That rulemaking process has been an unmitigated disaster which has already taken five years and cost the taxpayers more than $9 million without a single result. Meanwhile, states, industry and workers are left in limbo unsure of what the operating rules are on the ground. To stop the waste and provide clarity to states and the Administration, the bill implements the 2008 rule then directs the Department of the Interior to study the impact of the rule for a prescribed time period prior to initiating another new rulemaking. This will provide certainty to the economy, the various agencies and states and allow a clear examination of what may need to be changed in the future so that further costs, wasteful bureaucratic mistakes are not made resulting in lawsuits.

The Surface Mining Control and Reclamation Act of 1977 (SMCRA) is the primary federal law that regulates the environmental effects of coal mining in the United States. SMCRA created two programs: title V for regulating active coal mines and title IV for reclaiming abandoned mine lands. SMCRA also created the Office of Surface Mining (OSM), an agency within the Department of the Interior, to promulgate regulations, to fund state regulatory and reclamation programs, and to ensure consistency among state regulatory programs.

Twenty-five states and three Tribal Nations have coal operations. Twenty-three states have primacy (this means that the state has the responsibility for carrying out the provisions of SMCRA within the state) over the title V and title IV programs in their states. Two Tribal Nations have submitted regulatory programs under title V to OSM for approval for primacy. Currently the 23 primacy states are still operating under the 1983 stream buffer zone rule. The 2008 rule only affects Tennessee, Washington and the three Tribal Nations – the Crow, Navajo and Hopi.

State primacy is important in that each state has different topography, geologic parameters and climatic conditions that can and do affect permit requirements. The state regulators have the firsthand knowledge and expertise to develop regulations and administer them for the on-the-ground environmental conditions found within the state.

Background (112th Congress)

On December 12, 2008, after a five-year deliberative process that included extensive environmental analyses, public comment, and a concurrence from the Environmental Protection

Agency,[1] published its final rule on "Excess Spoil, Coal Mine Waste, and Buffers for Perennial and Intermittent Streams," commonly referred to as the Stream Buffer Zone Rule in the Federal Register. The rule was to go into effect on January 12, 2009.[2]

However, before the new regulation could go into effect, the National Parks Conservation Association and Coal River Mountain Watch filed suit against the Department of the Interior and OSM for failing to consult with the Fish and Wildlife Service with regards to endangered species.[3]

OSM announced that it was withdrawing the newly promulgated regulation and attempted to put in place more restrictive regulations using guidance documents. The National Mining Association (NMA) challenged these actions under the Administrative Procedure Act (APA). The court ruled against the Department, holding that withdrawing the rule without public notice and comment would violate the APA, and said that OSM could only change or revoke the regulations by going through a formal rulemaking process. OSM then reached an out-of-court settlement with the environmental groups agreeing to an expedited time frame for writing the rule (the Department agreed to publish the rule by February 28, 2011).

While Interior Secretary Salazar claimed in court documents that the rule was "legally infirm," internal memorandum and documents from OSM show that the Obama Administration began working to change the rule immediately upon taking office. In fact, in OSM's June 18, 2010, Federal Register Notice announcing the new "Stream Protection Rule" it stated: "we had already decided to change the rule following the change of Administrations on January 20, 2009."[4]

On January 26, 2011, portions of the environmental impact statement being prepared in support of the new "Stream Protection Rule" were leaked to the public. The Associated Press reported that OSM's preferred "Stream Protection Rule" could cost at least 7,000 jobs and reduce coal production in 22 states.[5]

Embarrassed by the critical reporting and the ensuing outrage at the projected job losses, OSM attempted to have the contractor that calculated the job loss numbers revise its initial findings by assuming that the 2008 rule had been implemented and was in effect across the country, when this was not the case. When the contractor refused, the Administration cancelled the contract.

Shortly after the press reports and the dismissal of the contractor the Committee on Natural Resources launched an investigation into the Obama Administration's efforts to rewrite the 2008 Stream Buffer Zone Rule.

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[1] http://s3.amazonaws.com/propublica/assets/docs/johnson_kempthorne_letter_081204.pdf.

[2] http://www.gpo.gov/fdsys/pkg/FR-2008-12-12/html/E8-29150.htm

[3] Referenced lawsuits were filed in December 2008 and January 2009, effectively stopping the implementation of the Stream Buffer Zone Rule. Coal River Mountain Watch, et. al v. Salazar No. 08-2212 (D.D.C) filed; National Parks Conservations Ass'n v. Salazar No 09-115 (D.D.C)

[4] http://www.gpo.gov/fdsys/pkg/FR-2010-06-18/html/2010-14727.htm

[5] http://www.wvgazette.com/News/MiningtheMountains/201101280708

After several oversight hearings and interviews with contractors and subcontractors working on the new rulemaking, it was clear that one of the problems for the Administration and major frustrations for the states that were cooperating agencies was the expedited time frame the Administration had agreed to for issuing the rule as part of the settlement agreement with the environmental organizations. According to several sources, this was an unprecedented timeframe to complete rulemaking of this magnitude.

The Committee's solution was to craft a bill that would serve to extend the rulemaking exercise, giving the Administration time to put together a defensible rule.

In November 2011, Congressman Bill Johnson (R-OH) introduced H.R. 3409, the *Coal Miner Employment and Domestic Energy Infrastructure Protection Act.*

On September 20, 2012, the Committee's oversight office released a report on the status and findings in the on-going investigation into the re-write of the "Stream Buffer Zone Rule."[6]

H.R. 3409 was a part of the Stop the War on Coal Act and passed the House on September 21, 2012.[7]

113th Congress:

In late January 2013, environmental groups announced that they were reopening their lawsuit on the 2008 Stream Buffer Zone Rule because the Department had missed all of the agreed upon deadlines for the new rulemaking.

Partly in response to the renewed litigation, the Committee has sent two additional letters to Secretary Salazar, the first on February 22, 2013, and the second on March 23, 2013, requesting information about the current status of the rule, asking for information about communications with the litigants, and expressing the Committee's disappointment in the lack of transparency and failure to comply with the Committee's document requests

Finally, on April 2, 2013, the Committee on Natural Resources received a response to the February 22, 2013, letter from Joseph Pizarchik, Director of OSM. While the response did not provide everything that the Committee had requested, Pizarchik stated: The Stream Protection Rule remains under development, as does its associated Draft Environmental Impact Statement (EIS) and Regulatory Impact Analysis (RIA). At this time, OSM plans to publish a proposed rule in 2014.

In addition, he stated that OSM has spent approximately $8.6 million on the rulemaking exercise, $6 million of which has been spent for the EIS and RIA, although neither has been completed. Some of the original money was reprogramed from state SMCRA programs. For comparison the Stream Buffer Zone Rule cost the previous Administration approximately $5 million for a five year process.

Five months after the latest request, the Committee received another production of documents in response to the request for information about the Department's communications with the

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[6] http://naturalresources.house.gov/oversight/coalregs/

[7] http://naturalresources.house.gov/news/documentsingle.aspx?DocumentID=309512

plaintiffs and the status of the litigation. Many of the documents received were redacted so that all relevant information was withheld from Congress. The latest Federal Register update estimates that the Department will publish a proposed rule in August 2014, more than five months from now.

Latest Federal Court Action

On July 17, 2013, the Department went back to federal court and again agreed with the environmental plaintiff groups in asking the court to vacate the 2008 Rule. This same request was denied in 2009 when the court told the Administration that granting its request to vacate the rule would "wrongly allow the Federal Defendants to do what they cannot do under the APA, repeal a Rule without notice and comment."[8]

Once again, this legislation is the direct result of the ongoing dysfunction, mismanagement, and waste at the Department of the Interior's OSM. In the last four years since the Department first made the decision to reject the 2008 Rule, it could have completed a simple rulemaking to vacate the 2008 Rule, could have completed a thorough and valid notice and comment rulemaking for their proposed Stream Protection Rule, or could have decided to implement the 2008 Rule that is already on the books. Unfortunately, the Obama Administration has done none of those things. Rather it fired or dismissed contractors, refused to comply with legitimate oversight from the Committee on Natural Resources and cost the taxpayers more than $9 million, without a single result.

SECTION-BY-SECTION ANALYSIS

SEC. 1. SHORT TITLE.

This Act may be cited as Preventing Government Waste and Protecting Coal Mining Jobs in America.

SEC. 2. INCORPORATION OF SURFACE MINING STREAM BUFFER ZONE RULE INTO STATE PROGRAMS.

H.R. 2824 amends Section 503 of SMCRA by requiring states with approved programs under the Act to adopt as part of their program a rule promulgated by OSM on December 12, 2008, concerning excess spoil, coal mine waste and buffers for perennial and intermittent streams. States would have a two-year period to submit a program amendment that incorporates the 2008 Rule.

Once all of the state plans have been approved, the effects of the new regulations will be analyzed for a period of five years. On completion of the analysis, OSM is required to report back to the House and Senate Committees with jurisdiction over SMCRA on the effectiveness of the rule, impact on energy production, and identify and justify anything that should be addressed through a new rulemaking process.

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[8] National Parks Conservation Ass'm v. Salazar, 660 F.Supp 2d 3 (D.D.C. 2009)

COMMITTEE ACTION

H.R. 2824 was introduced on July 25, 2013, by Congressman Bill Johnson (R-OH). It was referred to the House Committee on Natural Resources and within the Committee to the Subcommittee on Energy and Mineral Resources. On August 2, 1013, the Subcommittee held a hearing on the bill. On November 14, 2013, the Natural Resources Committee met to consider the bill. The Subcommittee on Energy and Mineral Resources was discharged from the bill by unanimous consent. An amendment offered by Mr. Holt.001 was NOT AGREED TO by a bipartisan vote of 15 to 24, as follows:

Committee on Natural Resources

U.S. House of Representatives

113th Congress

Date: November 14, 2013 Recorded Vote #: 5

Meeting on / Amendment on: H.R. 2824 - HOLT.001, Not agreed to by a vote of 15 yeas and 24 nays.

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Hastings, WA, Chairman		X		**Mr. Duncan of SC**		X	
Mr. Defazio, OR, Ranking	X			*Mr. Cardenas, CA*			
Mr. Young, AK				**Mr. Tipton, CO**		X	
Mr. Faleomavaega, AS				*Mr. Horsford, NV*	X		
Mr. Gohmert, TX		X		**Mr. Gosar, AZ**		X	
Mr. Pallone, NJ				*Mr. Huffman, CA*	X		
Mr. Bishop, UT		X		**Mr. Labrador, ID**		X	
Mrs. Napolitano, CA	X			*Mr. Ruiz, CA*	X		
Mr. Lamborn, CO		X		**Mr. Southerland, FL**		X	
Mr. Holt, NJ	X			*Ms. Shea-Porter, NH*	X		
Mr. Wittman, VA				**Mr. Flores, TX**		X	
Mr. Grijalva, AZ	X			*Mr. Lowenthal, CA*	X		
Mr. Broun, GA		X		**Mr. Runyan, NJ**		X	
Ms. Bordallo, GU	X			*Mr. Garcia, FL*			
Mr. Fleming, LA		X		**Mr. Amodei, NV**			
Mr. Costa, CA		X		*Mr. Cartwright, PA*	X		
Mr. McClintock, CA		X		**Mr. Mullin, OK**		X	
Mr. Sablan, CNMI	X			**Mr. Stewart, UT**		X	
Mr. Thompson, PA		X		**Mr. Daines, MT**		X	
Ms. Tsongas, MA	X			**Mr. Cramer, ND**		X	
Ms. Lummis, WY		X		**Mr. LaMalfa, CA**		X	
Mr. Pierluisi, PR	X			**Mr. Smith, MO**		X	
Mr. Benishek, MI		X		*Vacancy*			
Ms. Hanabusa, HI	X						
				TOTALS	15	24	

An amendment offered by Mr. DeFazio.002 was NOT AGREED TO by voice vote. The bill was adopted and favorably reported to the House of Representatives by a bipartisan vote of 24 to 15, as follows:

Committee on Natural Resources

U.S. House of Representatives

113th Congress

Date: November 14, 2013 Recorded Vote #: 6

Meeting on / Amendment on: H.R. 2824 - To adopt and favorably report the bill to the House by a vote of 24yeas and 15 nays.

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Hastings, WA, Chairman	X			**Mr. Duncan of SC**	X		
Mr. Defazio, OR, Ranking		X		*Mr. Cardenas, CA*			
Mr. Young, AK				**Mr. Tipton, CO**	X		
Mr. Faleomavaega, AS				*Mr. Horsford, NV*		X	
Mr. Gohmert, TX	X			**Mr. Gosar, AZ**	X		
Mr. Pallone, NJ				*Mr. Huffman, CA*		X	
Mr. Bishop, UT	X			**Mr. Labrador, ID**	X		
Mrs. Napolitano, CA		X		*Mr. Ruiz, CA*		X	
Mr. Lamborn, CO	X			**Mr. Southerland, FL**	X		
Mr. Holt, NJ		X		*Ms. Shea-Porter, NH*		X	
Mr. Wittman, VA				**Mr. Flores, TX**	X		
Mr. Grijalva, AZ		X		*Mr. Lowenthal, CA*		X	
Mr. Broun, GA	X			**Mr. Runyan, NJ**	X		
Ms. Bordallo, GU		X		*Mr. Garcia, FL*			
Mr. Fleming, LA	X			**Mr. Amodei, NV**			
Mr. Costa, CA	X			*Mr. Cartwright, PA*		X	
Mr. McClintock, CA	X			**Mr. Mullin, OK**	X		
Mr. Sablan, CNMI		X		**Mr. Stewart, UT**	X		
Mr. Thompson, PA	X			**Mr. Daines, MT**	X		
Ms. Tsongas, MA		X		**Mr. Cramer, ND**	X		
Ms. Lummis, WY	X			**Mr. LaMalfa, CA**	X		
Mr. Pierluisi, PR		X		**Mr. Smith, MO**	X		
Mr. Benishek, MI	X			*Vacancy*			
Ms. Hanabusa, HI		X					
				TOTALS	24	15	

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of Rule X and clause 3(c)(1) of Rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII

1. **Cost of Legislation.** Clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that Rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

January 23, 2014

H.R. 2824
Preventing Government Waste and Protecting Coal Mining Jobs in America

As ordered reported by the House Committee on Natural Resources on November 14, 2013

H.R. 2824 would require certain states to implement, within two years, a rule published in 2008 by the Office of Surface Mining, Reclamation, and Enforcement (OSM) regarding the disposal of mine waste near streams (the stream buffer zone rule). The bill also would require OSM to assess the effectiveness of that rule after five years of implementation and to report its findings to the Congress. Finally, the bill would prevent OSM from issuing a new rule regarding stream buffer zones until the agency completes the report required under the bill.

CBO estimates that implementing the bill would have no significant impact on the federal budget. Enacting the bill could affect offsetting receipts, which are treated as reductions in direct spending; therefore, pay-as-you-go procedures apply. However, CBO estimates that any such effects would be negligible. Enacting H.R. 2824 would not affect revenues.

Under the 2008 stream buffer zone rule, which CBO expects would be implemented through 2021 under the bill, firms would be allowed to dispose of mine waste near streams if regulators determine that avoiding disturbance of the streams is not reasonably possible. Under the rule OSM is currently implementing, firms are prohibited from disposing of mine waste within 100 feet of streams; however, according to the Office of Information and Regulatory Affairs, OSM is in the process of preparing a new rule to govern such disposal. CBO has no information regarding the content of the new rule or when it might be implemented.

The budgetary impact of enacting H.R. 2824 would depend, in part, on whether the stream buffer zone rule implemented under the bill would be more or less restrictive than the rule implemented under current law. If the rule implemented under the bill imposed relatively fewer restrictions on the disposal of mine waste, coal producers would use less costly methods to dispose of such waste and CBO expects that firms producing coal would increase their valuation of coal leases affected by the rule, including leases on federal lands. Under such a rule, CBO expects that proceeds to the federal government would increase from the sale of federal coal leases. Conversely, a relatively more restrictive

disposal rule would reduce the value of coal leases and thus the proceeds from the sale of coal leases on federal lands.

Based on information provided by OSM, CBO expects that implementing a new stream buffer zone rule would primarily affect coal mining that requires the removal of mountaintops in the Appalachian Mountains. In 2012, the federal proceeds from activities related to coal mining on federal lands in that area totaled $1.5 million. Because the existing federal proceeds from the area affected by this bill are small, and because it is unclear whether the rule imposed by this bill would be more or less restrictive than the rule that OSM will impose under current law, CBO expects that firms in the coal industry would not significantly change their valuation of coal leases under the bill, and therefore, that enacting H.R. 2824 would have a negligible impact on the federal budget.

H.R. 2824 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). The bill would impose additional requirements on states and tribal governments that choose to apply for exclusive jurisdiction—or "primacy"—in regulating surface mining operations within their jurisdiction. However, those requirements would be conditions of participating in a voluntary federal program and thus not mandates as defined in UMRA.

The CBO staff contacts for this estimate are Jeff LaFave (for federal costs) and Michael Kulas (for the state and local impact). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

2. **Section 308(a) of Congressional Budget Act**. As required by clause 3(c)(2) of Rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. CBO estimates that implementing the bill would have no significant impact on the federal budget.

3. **General Performance Goals and Objectives.** As required by clause 3(c)(4) of Rule XIII, the general performance goal or objective of this bill is to amend the Surface Mining Control and Reclamation Act of 1977 to stop the ongoing waste by the Department of the Interior of taxpayer resources and implement the final rule on excess spoil, mining waste, and buffers for perennial and intermittent streams.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of Rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. The Chairman does not believe that this bill directs any executive branch official to conduct any specific rule-making proceedings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977

* * * * * * *

TITLE V—CONTROL OF THE ENVIRONMENTAL IMPACTS OF SURFACE COAL MINING

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STATE PROGRAMS

SEC. 503. (a) * * *

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(e) STREAM BUFFER ZONE MANAGEMENT.—

(1) IN GENERAL.—In addition to the requirements under subsection (a), each State program shall incorporate the necessary rule regarding excess spoil, coal mine waste, and buffers for perennial and intermittent streams published by the Office of Surface Mining Reclamation and Enforcement on December 12, 2008 (73 Fed. Reg. 75813 et seq.).

(2) STUDY OF IMPLEMENTATION.—The Secretary shall—

(A) at such time as the Secretary determines all States referred to in subsection (a) have fully incorporated the necessary rule referred to in paragraph (1) of this subsection into their State programs, publish notice of such determination;

(B) during the 5-year period beginning on the date of such publication, assess the effectiveness of implementation of such rule by such States; and

(C) upon the conclusion of such period, submit a comprehensive report on the impacts of such rule to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, including—

(i) an evaluation of the effectiveness of such rule;

(ii) an evaluation of any ways in which the existing rule inhibits energy production; and

(iii) a description in detail of any proposed changes that should be made to the rule, the justification for such changes, all comments on such changes received by the Secretary from such States, and the projected costs and benefits of such changes.

(3) LIMITATION ON NEW REGULATIONS.—The Secretary may not issue any regulations under this Act relating to stream buffer zones or stream protection before the date of the publication of the report under paragraph (2), other than a rule necessary to implement paragraph (1).

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DISSENTING VIEWS

DOC HASTINGS, WA
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MATTHEW CARTWRIGHT, PA
KATHERINE CLARK, MA

PENNY DODGE
DEMOCRATIC STAFF DIRECTOR

Dissenting Views

H.R. 2824: *"Preventing Government Waste and Protecting Coal Mining Jobs in America"*

This bill is an unwarranted ambush on an ongoing rulemaking process, an uncharacteristic attack by the Majority on the principle of federalism and states' rights, and an unconscionable assault on the health of the residents of Appalachian communities suffering from the devastating impacts of mountaintop removal mining.

As documented by a 2005 Environmental Impact Statement, nearly 2,000 miles of streams were buried or degraded by mountaintop removal mining from 1985 through 2002. Mountaintop removal mining destroys wildlife habitat, contaminates surface and drinking water, leads to flooding, and as a number of new studies show, increases the incidence of cancer, birth defects, lung disease, and heart disease in people who live nearby.

Unfortunately, the Majority has willfully ignored the negative health and environmental impacts of mountaintop removal mining. Instead, they have trained their fire on the Obama Administration's attempts to write a rule that would actually protect streams, as opposed to the illegal Bush Administration's midnight rule that undermined existing protections put in place by President Reagan, and was recently vacated by a U.S. district court.

The Majority has conducted a multi-year investigation into the drafting of the Stream Protection Rule, holding three oversight hearings with the Director of the Office of Surface Mining, issuing two subpoenas, receiving over 13,500 pages of documents and 25 hours of audio recordings. However, this witch hunt has uncovered no misconduct on the part of the Department of the Interior (DOI) or the Office of Surface Mining–a conclusion also reached by the DOI Office of Inspector General in a report released in December 2013. However, the investigation has succeeded in distracting the Department from completing the rulemaking and wasting taxpayer money; the Department reported that in 2013, responding to all the document requests from the Majority took over 19,000 staff hours at a cost of nearly $1.5 million.

H.R. 2824 attempts to prevent the Office of Surface Mining from moving forward with a new rule, before a draft rule has even been published or debated. Further, the bill forcibly enacts the 2008 Bush rule in every state with a coal mining program, regardless of whether the state prefers to maintain stricter standards, and despite the fact that the rule was vacated on February 20, 2014, by the D.C. District Court. Requiring the states to adopt a vacated rule will result in a tremendous waste of state resources, as the states could be forced into litigation immediately upon adoption, and then would be required to adopt the new rule when it is finalized.

http://naturalresources.house.gov

Finally, the bill's mandatory implementation period means that no attempt could be made to protect Appalachian streams from mountaintop removal mining before 2021. In the meantime, streams will continue to get buried, habitat will continue being destroyed, threatened and endangered species will continue being harmed, and communities throughout the region will continue to suffer from degraded water quality, flooding, and health impacts.

During markup up on H.R. 2824, the Majority rejected an amendment by Energy and Mineral Resources Subcommittee Ranking Member Holt that would have allowed the Secretary of the Interior to take into account the growing body of peer-reviewed scientific evidence that mountaintop removal mining is harmful to the health of nearby communities, and an amendment by Ranking Member DeFazio that would have kept in place implementation of the Reagan Administration rule.

We strongly oppose H.R. 2824, a bill that would force states to enact an illegal rule and prohibit the Administration from implementing thoughtful protections for the environment and communities from the impacts of mountaintop removal mining.

Peter DeFazio
Ranking Member
Committee on Natural Resources

Rush Holt

Raúl M. Grijalva

Matthew H. Cartwright

Grace F. Napolitano

Jared Huffman

Alan Lowenthal

Katherine Clark

Madeleine Z. Bordallo