



September 2012

## Detailed Summary of H.R. 3409

### AN ASSAULT ON AMERICA'S CORNERSTONE ENVIRONMENTAL PROTECTIONS

Committee on Energy and Commerce, Democratic Staff

Since January 2011, the House of Representatives has amassed the most anti-environment record in the history of Congress. During this period, the House has voted over 300 times on the floor to block environmental regulations, weaken environmental laws, and stop environmental research. The single worst anti-environment bill to be considered in the House is H.R. 3409, which is misleadingly titled the "Stop the War on Coal Act." This bill is scheduled for a vote on the floor on Friday, September 21, 2012.

#### **THE HOUSE'S ANTI-ENVIRONMENT RECORD**

Reps. Henry A. Waxman and Edward J. Markey have been maintaining an online database of the anti-environment votes cast in the House of Representatives this Congress (see [here](#) to view the database). Just last week, the House cast five additional anti-environment votes, bringing the total for the Congress to 302.

H.R. 3409 combines five of the most anti-environment bills previously passed by the House in the 112th Congress. It includes three bills in the Energy and Commerce Committee's jurisdiction: the Upton-Inhofe bill to eliminate controls on carbon pollution (H.R. 910); the TRAIN bill to undermine the Clean Air Act and block critical rules to clean up the dirtiest power plants (H.R. 2401); and a bill to weaken requirements for the safe disposal of coal ash (H.R. 2273). H.R. 3409 also includes a bill that overturns Clean Water Act protections (H.R. 2018) and one that blocks the Department of the Interior from protecting streams from the harmful effects of coal mining (the text of H.R. 3049 prior to the inclusion of the other four bills).

#### **DENYING CLIMATE SCIENCE AND ELIMINATING CONTROLS ON CARBON POLLUTION**

Title II of H.R. 3409 contains the Upton-Inhofe bill, which is based on the idea that scientists are wrong and climate change is not happening. Title II legislatively repeals the scientific finding by the Environmental Protection Agency that greenhouse gases endanger public health and welfare. In effect, title II substitutes the misguided beliefs of some members of Congress for the informed scientific judgment of the expert agency. Other provisions eliminate EPA's authority to address greenhouse gas emissions and the danger of climate change.

**Title II Overrules the Supreme Court.** In 2003, states and environmental groups filed suit against EPA for failing to regulate emissions of greenhouse gases from motor vehicles. This litigation culminated in the April 2, 2007, decision of the Supreme Court in *Massachusetts v. EPA*. The Supreme Court held that greenhouse gases, including carbon dioxide, are "air pollutants" subject to regulation under the Clean Air Act. Title II overturns this decision by legislating that greenhouse gases are not "air pollutants."

**Title II Rejects Climate Science.** Under the Supreme Court decision, EPA was legally obligated to determine whether greenhouse gas emissions from motor vehicles could be reasonably anticipated to

endanger public health or welfare. In 2009, EPA issued an endangerment finding based on a 200-page synthesis of major scientific assessments. EPA found that six key greenhouse gases – carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride – constitute in combination “air pollution which may reasonably be anticipated to endanger public health and welfare.” EPA also found that emissions of greenhouse gases from new motor vehicles contribute to atmospheric levels of greenhouse gas pollution. Title II repeals EPA’s endangerment finding.

In June 2012, the D.C. Circuit Court of Appeals upheld EPA’s endangerment finding, referring to the “ocean of evidence” EPA used to support its determination. The court stated that EPA’s interpretation of the governing Clean Air Act provisions was “unambiguously correct.” Title II overturns this decision.

**Title II Nullifies the New Tailpipe Standards to Reduce Carbon Pollution from Motor Vehicles.** In 2009, the Obama Administration set nationwide standards for vehicle fuel efficiency and greenhouse gas emissions. The automobile industry, states, and environmental advocacy groups all supported this approach. The Administration finalized these standards in April 2010. On August 28, 2012, the Obama Administration extended this program to cover model year 2017-2025 vehicles. By 2025, the full set of standards will save 2.2 million barrels of oil per day and provide consumers savings at the pump equivalent to lowering gas prices by \$1 per gallon. The Alliance of Automobile Manufacturers praised the new standards, noting that a “single, national program” helps achieve the shared goal of getting more fuel-efficient cars on the road.

Title II would nullify the carbon pollution standards for 2017-2025. In addition, the bill jeopardizes the legal defensibility of the standards for 2012-2016 and for heavy duty vehicles. Repealing these standards could potentially cost thousands of jobs in the auto industry.

**Title II Eliminates EPA and State Authority to Reduce Carbon Pollution from Other Mobile Sources.** Title II repeals California’s authority to regulate carbon pollution from motor vehicles and repeals other states’ authority to adopt such standards. The title also prohibits EPA from requiring carbon pollution reductions from other mobile sources, such as planes, trains, boats, and large construction equipment, leaving us more dependent on oil.

**Title II Bars EPA from Requiring Large Industrial Sources to Reduce or Report Carbon Pollution.** On March 27, 2012, EPA proposed new source performance standards (NSPS) for new power plants, the largest industrial source of carbon pollution in the United States. These standards set limits for carbon pollution from new power plants based on the best demonstrated technology, taking costs into account. Ninety-five percent of natural gas combined cycle units meet this standard without additional controls. Title II bars EPA from setting carbon pollution standards for power plants or developing similar standards for new refineries, the second largest source of carbon pollution in the United States.

The title also eliminates the greenhouse gas reporting program, adopted by Congress in 2007, which requires the largest sources of carbon pollution simply to report their emissions to EPA.

## **UNDERMINING THE CLEAN AIR ACT**

Title III of H.R. 3409 contains the TRAIN Act, which would overturn 40 years of clean air policy by requiring EPA to consider industry costs when determining what level of air pollution is “safe.” It would also nullify EPA’s standards to clean up toxic mercury from power plants, replace the Clean Air Act’s proven standard-setting criteria for toxic air pollution with an unworkable new approach for power plants, and effectively eliminate the Clean Air Act’s “good neighbor provision,” which protects downwind states from upwind air pollution.

**Title III Would Eliminate Health-Based Air Pollution Standards.** Since 1970, the core of the Clean Air Act has been the “national ambient air quality standards” (NAAQSs) for pollution levels in the air. The NAAQSs are “health-based” standards because they are set by EPA at a level adequate to protect public health, including the health of sensitive groups such as children and the elderly.

Economic costs come into play in determining how to achieve the health-based standards. EPA sets deadlines for compliance that take costs and difficulty of achieving the standards into account. The states consider costs when they develop their plans to control air pollution to meet the standards. EPA considers costs when reviewing these state plans.

This structure has been extraordinarily effective in cleaning the air and has made the Clean Air Act the nation’s most successful environmental law. EPA has set NAAQSs for six air pollutants: ozone, nitrogen dioxide

(NO<sub>2</sub>), sulfur dioxide (SO<sub>2</sub>), carbon monoxide (CO), lead, and particulate matter (PM). Between 1980 and 2009, emissions of these six air pollutants dropped by 57%. During the same time period, the nation’s gross domestic product increased 122%, vehicle miles traveled increased 95%, energy consumption increased 22%, and U.S. population grew by 35%.

These emissions reductions have generated dramatic public health benefits. In 2010, the Clean Air Act saved more than 160,000 lives and prevented millions of cases of respiratory problems. It also enhanced productivity by preventing 13 million lost work days.

Title III would overturn the cornerstone of these successes by requiring EPA to consider industry costs when determining what level of air pollution is “safe.” This will allow polluters to override scientists and base air quality standards on profits rather than health. This would reverse decades of progress in cleaning our air.

**Title III Nullifies the Mercury and Air Toxics Standards (MATS).** Power plants are by far the largest U.S. source of mercury air pollution. Mercury is a powerful neurotoxin of particular concern for pregnant women and young children because it damages the developing brain and reduces children’s IQ and their ability to learn. Power plants also emit arsenic, chromium, and other toxic metals, which can cause cancer and other health effects. To address these threats, EPA issued the Mercury and Air Toxics Standards in December 2011 to reduce power plant emissions of toxic air pollutants. The rule will prevent 90% of the mercury in the coal from being emitted into the air. The rule will also substantially reduce fine particle emissions, which will produce tremendous health benefits.

Title III nullifies EPA’s mercury air toxics rule. It prohibits EPA from issuing a new rule for at least two years, bars implementation for at least five more years from the rule’s effective date, and eliminates all deadlines for the rule. These provisions ensure no reductions of toxic air pollution from power plants before 2020 and allows indefinite delay beyond that date.

According to EPA, each year of delay will produce up to an additional 11,000 premature deaths; 4,700 non-fatal heart attacks; 130,000 asthma attacks; 5,700 hospital and emergency room visits; and 540,000 days when people miss work or school due to illness. It will also damage our economy. EPA has found that the pollution reductions required by the rule will yield health benefits of \$150 to \$380 billion per year, which are many times their costs. These estimates do not include the value of preventing the exposure of infants and children to mercury because of the difficulty of putting a price tag on the avoided birth defects and other effects.

**Title III Eliminates the Cross-State Air Pollution Rule and Future “Good Neighbor” Rules.** On July 6, 2011, EPA finalized the Cross-State Air Pollution Rule (CSAPR) under the “good neighbor” provisions of the Clean Air Act. The rule requires 27 states in the eastern, central, and southern United States to reduce power plant emissions that pollute the air in downwind states, causing the downwind states to violate the ozone and particulate matter standards. EPA estimates that by 2014, this and other federal rules will reduce regional emissions of sulfur dioxide by 73% and nitrogen oxides by 54%. On August 21, 2012, the D.C. Circuit vacated the cross-state rule in a controversial 2-1 decision that EPA is expected to appeal.

Title III nullifies the cross-state rule, prohibits EPA from issuing a new rule for at least five years, and bars implementation for at least three more years. The amendment ensures no new SO<sub>2</sub> and NO<sub>x</sub> emission reductions before 2020 at the earliest. According to EPA, the title will likely block EPA from ever issuing another good neighbor rule to address ozone and particulate problems in downwind states because it bars reliance on modeling for any such rule. Because individual pollution particles are impossible to track, assessments of how air pollution moves between states necessarily rely on a combination of monitoring and modeling.

**Title III Replaces Clean Air Act Criteria for Toxic Air Pollution Standards with New, Unworkable Approach for Power Plants.** Since 1990, EPA has set numeric limits on toxic emissions under section 112 of the Clean Air Act on a pollutant-by-pollutant basis for more than 100 industrial source categories. Under section 112, EPA sets the standards based on its determination of the “maximum achievable control technology” (MACT). For each toxic pollutant, the MACT standards have to be as stringent as the emission reductions achieved by the best-performing 12% of sources. This approach has been a striking success, reducing emissions of carcinogens and other highly toxic chemicals by 1.7 million tons each year.

Title III discards this proven approach in favor of an industry-supported approach that would require EPA to set standards not on a pollutant-by-pollutant basis, but on a novel “aggregate” basis. This would require EPA to make completely subjective decisions about whether a plant that emits more carcinogens but less neurotoxins is better or worse performing than a plant that emits fewer carcinogens but more neurotoxins. There is no known methodology for making these decisions, which would be impossible to defend in court.

**Title III Creates a New Bureaucracy for Biased and Unnecessary Study.** The bill establishes an interagency committee to analyze the cumulative impacts of various air quality and hazardous waste rules and other actions by EPA, states, and localities. The study focuses on costs to industry, while ignoring the benefits to public health and the environment, and it includes rules that have not been finalized or even proposed.

### **BLOCKING EFFORTS TO ENSURE SAFE DISPOSAL OF COAL ASH**

Title IV of H.R. 3409 incorporates the text of H.R. 2273, which repeals EPA authority to ensure the safe disposal of coal ash from power plants.

Improper coal ash disposal poses environmental and public safety risks. Under the existing and inadequate system of state regulation, coal ash has contaminated drinking water supplies, destroyed home values, and polluted the air. Coal ash impoundments have catastrophically failed and disposal structures have collapsed, causing significant environmental damage, economic harm, and impairment of public drinking water systems. Coal ash impoundments are located in 46 states, and EPA has identified 45 impoundments as “High Hazard,” where failure or misoperation will probably cause loss of human life.

Title IV would block existing federal authority to ensure coal ash is properly disposed of and would delegate that responsibility to the states. Unlike other federal environmental statutes with state

delegation, title IV does not establish a minimum federal floor of protection and does not hold state programs to any standard of protection.

Title IV also does not apply minimum safety requirements to existing impoundments. In fact, it provides that impoundments may continue receiving coal ash for ten years or more, even if the impoundment is leaching contaminants into sources of drinking water. The bill does not cover inactive or closed sites, despite the risks they pose. The bill does not allow EPA to develop relevant disposal criteria to address the risks of coal ash. According to EPA, the bill does not include sufficient requirements for groundwater protection or dust control, and the bill will not allow EPA to establish such relevant requirements.

### **OVERTURNING CLEAN WATER ACT PROTECTIONS**

Title V of H.R. 3409 contains H.R. 2018, which severely limits EPA's authority to apply minimum national standards to protect the nation's waters from pollution. The title prevents EPA from strengthening weak state water quality standards, unless the state concurs, even if the water quality standard is insufficient to protect human health or aquatic life. It also strips EPA's authority to enforce discharge limits by prohibiting the agency from objecting to state discharge permits that fail to meet the requirements of the Clean Water Act. According to EPA, this title would "overturn almost 40 years of Federal legislation by preventing EPA from protecting public health and water quality."

In addition, the title limits EPA's ability to protect waterways from the devastating effects of mountaintop removal coal mining. Mountaintop removal coal mining involves removing mountaintops to expose coal seams and disposing of the material in adjacent valleys, a process known as valley fills. This bill removes EPA's authority to veto a valley fill permit based on environmental concerns, unless the state concurs with the veto. The bill also limits the amount of time EPA, the U.S. Fish and Wildlife Service, and other agencies have to provide comments to the Army Corps of Engineers on the potential environmental impacts of a proposed valley fill operation.

### **BLOCKING EFFORTS TO REDUCE THE ENVIRONMENTAL IMPACT OF COAL MINING**

Title I of H.R. 3409 would prevent the Secretary of the Interior from issuing any regulation under the Surface Mining Control and Reclamation Act (SMCRA) through December 31, 2013, if the regulation would prohibit coal mining in any area, reduce employment in coal mines, or reduce coal production. Title I is apparently aimed at preventing the Obama Administration from issuing a new stream protection rule, but it is drafted far more broadly.

The title would block the Department of the Interior (DOI) from developing stronger standards to protect streams from surface coal mining impacts. It also would prevent the DOI from issuing other rules related to mine closures and reclamation, such as rules to control the use of coal ash as minefill and to ensure that mining companies takes steps to protect the environment if they temporarily cease operations at a mine. In fact, Title I is so broadly drafted that DOI would be powerless to issue almost any new regulation related to coal mining or reclamation for the next 15 months. This undermines the purposes of SMCRA to "strike a balance between protection of the environment and agricultural productivity and the nation's need for coal as an essential source of energy."