NEW COAL GENERATION CAPACITY IS REQUIRED TO MEET FUTURE DEMANDS
NATIONAL ELECTRICITY AND ENVIRONMENTAL TECHNOLOGY ACT

PRINCIPLE: Incentives to improve efficiency and environmental performance at existing power generating facilities and to encourage new plant construction using advanced clean coal technologies are necessary to ensure fuel diversity and an affordable, reliable electricity supply.

BACKGROUND: The economy of the 21st century will require reliable, clean and affordable electricity to keep the engine running, the lights on and the computers humming. The Department of Energy forecasts that by the year 2020, U.S. electricity consumption will be over 40% higher than today. A large number of new base load electric generating plants will be required to meet this new electricity demand at affordable prices.1 Today, more than one-half of U.S. electricity is generated from abundant, low cost, domestic coal but new coal based generating plants are not being built. To illustrate, over 43,000 megawatts (MW) of coal capacity came on line between 1980 and the end of 1984. In the past five years, only 3,500 MW of new coal capacity have been brought on line. This is largely due to uncertainty about new environmental requirements and the risks associated with large investments as the utility industry becomes more competitive. The development and commercialization of more efficient and lower emitting clean coal technologies is necessary to continue the improvement in emissions from coal-based generation and to maintain the option for new coal-based generating plants. Coal-based electricity generation needs to be preserved and expanded to ensure a diversity of fuel supply, produce affordable and reliable electricity, maintain a strong economy, and help stabilize the balance of payments.

DESCRIPTION: In the short term the challenge is twofold: first, to expand the use of newer more advanced NOx and SO2 control technologies in existing plants through retrofits and secondly, to move new advanced clean coal technologies that have been proven at the demonstration stage to, and through, placement in the commercial marketplace. The National Electricity and Environmental Technology Act (NEET) was developed to meet this dual challenge. The proposed legislation has three important programs:

- A financial incentives program that designed to cushion the financial burden of applying advanced technologies to existing coal units;
- A demonstration program that provides tax incentives and/or financial assistance for initial commercial scale application of advanced coal based generating technologies contingent upon achievement of specified requirements for efficiency gains; and,
- An R&D program that addresses long-term technology needs.

These programs would result in significant reductions of emissions. NOx emissions would be reduced by 631,000 tons, SO2 emissions by over 1.9 million tons and CO2 emissions by over 1.9 million tons.

1 The Energy Information Administration forecasts show that nearly 400 GW of new and replacement capacity will be required by 2020, the equivalent of 1,300 plants at 300 MW each. Some 378 MW of the needed capacity is still in the "unplanned" stage.
emissions by over 1.2 million tons. This is because advanced technologies are cleaner burning and are more efficient in the process of turning coal into electricity.

STATUS: The NEET bill has bi-partisan support. It was introduced by Senators Byrd and McConnell in January 2001 as S.60. The NEET provisions are included in Senator Murkowski's comprehensive energy bill, S, 388/389. Introduction in the House is expected soon as a bi-partisan bill.

RECOMMENDATION: The Administration should support legislation as described above that meets the President's commitment to Clean Coal Technology and that (1) enhances funding for coal-based R&D; (2) provides a measure of burden sharing to improve the efficiency and environmental performance of existing coal-based generating facilities; and (3) implements a set of financial incentives and risk sharing for a limited number of early commercial applications of advanced clean coal technology.
HARMONIZING OZONE RULES UNDER THE CLEAN AIR ACT

PRINCIPLE: Provide certainty by administratively synchronizing the NOx reduction compliance deadlines of 2003 in the EPA Section 126 rule and the 2004 court ordered "SIP call" deadline.

DESCRIPTION: In January 2000, EPA issued its Clean Air Act "section 126" rule, requiring power plants and some industrial sources in 13 states to make significant cuts in nitrogen oxide (NOx) emissions to help four states (Connecticut, Massachusetts, New York and Pennsylvania, all of which filed petitions under section 126 requesting source-specific reductions) reduce their ozone levels. EPA insists targeted sources must comply by May 1, 2003, even though this date would make compliance very difficult because of the lead time needed to engineer, purchase, install and test emission control equipment. More importantly, this deadline conflicts with a court-ordered May 31, 2004 compliance date for EPA's "SIP call" rule. The SIP call requires NOx reductions from power plants and some other sources in 22 eastern states, including those subject to the section 126 rule, and will necessitate capital costs in excess of $13 billion and associated O&M costs of at least this much. The North American Electric Reliability Council has issued a study concluding that pending NOx reductions will require many Midwestern coal-fired plants to retrofit with sophisticated new technologies, thus significantly increasing planned maintenance outages (on top of projected low reserves), and hence some reliability risks in the next several years. NOx controls are imminent, but it is imperative that reductions occur in the least burdensome and most economically responsible manner possible.

The section 126 rule also removes state flexibility to decide which sources to control and by how much. Many states want the section 126 rule deadline to be the same as the SIP call compliance date, or made inapplicable for states that implement the SIP call. Some northeast states, companies and environmental groups want the section 126 rule and its deadline retained. Congressional appropriators have repeatedly urged EPA to harmonize the section 126 rule and SIP call implementation dates.

STATUS: The Supreme Court denied an appeal by parties challenging the underlying merits of the SIP call rule; however, this did not affect the May 31, 2004 compliance date. Legal challenges to the section 126 rule are pending in the D.C. Circuit Court of Appeals. A decision is expected by spring 2001, but may not resolve the SIP call/section 126 conflict. In the interim, states face significant uncertainty in developing implementation plans. Similarly, regulatory certainty is critical to companies, yet affected sources currently do not know which deadline and what controls apply.

DECISION: The Section 126 and SIP call rules must be harmonized.

RECOMMENDATION: Congress clearly intended that the SIP call process would drive state compliance with Clean Air Act emission reduction requirements. The section 126 rule explicitly provides the Administrator authority to deny, or withdraw prior approval of, any section 126 petition targeting sources in a state where EPA approves that particular state's implementation plan. The Administrator should clarify immediately that the SIP call implementation schedule is controlling and that NOx reductions must be made by the May 31, 2004 compliance date.

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DOE002-1232

Obtained and made public by the Natural Resources Defense Council, March/April 2002
REGULATION OF MERCURY EMISSIONS FROM
COAL- AND OIL-BASED POWER PLANTS

PRINCIPLE: Review the EPA mercury regulatory determination to ensure it is based on sound
science, provides flexibility for use of market-based programs in compliance; ensures technological
feasibility of any controls required, and, harmonizes compliance schedules with other rulemakings to
criteria pollutants (SO2, NOx, PM) so as to maximize efficiency and minimize cost of compliance.

DESCRIPTION: On December 14, 2000, EPA made a "regulatory determination" under the Clean
Air Act that regulation of mercury and possibly other hazardous air pollutants (HAPs) is "appropriate
and necessary" for coal- and oil-based power plants. This decision automatically triggers a formal
rulemaking, and EPA is scheduled to issue a proposed rule in late 2003 and a final rule in late 2004.
EPA has estimated costs of a mercury control program to be about $5 billion annually, while DOE
and others have estimated significantly higher costs. Members of Congress from both parties have
raised concerns about the adverse consequences of mercury regulation, including impacts to the
fish industry. A stringent mercury control program could impact fuel diversity and coal-based
generation in the same manner as mandatory CO2 reductions.

Unfortunately, the language of the regulatory determination could severely limit the Administrator's
future options. EPA's designation of a specific regulatory approach - even though the regulatory
determination is not a formal rule - means that new coal- and oil-based plants, as well as existing
ccoal- and oil-based plants that are "reconstructed," will be regulated immediately in accordance with
the stringent, source-by-source control program called for in the determination. Ironically, this harsh
impact occurs at the outset of a multi-year regulatory process during which EPA will be attempting
to establish a scientific record that justifies a stringent mercury control rule. Note that a decision today
to modify the regulatory determination would neither affect the regulatory schedule, nor hinder
ongoing mercury-related health effects, fate-and-transport, and emission reduction technology
research critical to making sound regulatory decisions.

STATUS: EPA's regulatory determination was published in the Federal Register on December 20.
The agency indicated it did not want more input on the determination, instead noting that a proposed
rule will be subject to public review and comment. Legal challenges have been filed in the D.C.
Circuit by the utility industry. An administrative Petition for Reconsideration also has been filed with
EPA, in effect requesting the agency to withdraw that portion of the regulatory determination that
prescribes a specific control program and immediately impacts new and reconstructed units.

ISSUES: Electric utilities are explicitly treated differently under the CAA than other major sources
of HAPs, in that EPA's assessment of power plants "shall" address "alternative control strategies." However,
language in EPA's determination sets in motion the regulation of mercury emissions under
a strict, source-by-source control program that eliminates flexibility and use of market mechanisms.
The Administrator should avoid this unnecessary limitation on possible regulatory options.

RECOMMENDATION: The Administrator should (1) reconsider that portion of the regulatory
determination that prescribes a specific control program and immediately impacts new and
reconstructed units; (2) clarify that EPA does not intend to limit regulatory options when proposing a
rule; and (3) clarify further that the regulatory determination applies only to mercury and not other
HAPs.
NEW SOURCE REVIEW

PRINCIPLE: Initiate administrative action to ensure that the EPA's New Source Review program complements national energy policy objectives.

DESCRIPTION: The Clean Air Act imposes stringent "new source" control technology requirements on new units, and on existing sources if they are extensively modified. In 1996, EPA reinterpreted the new source review (NSR) program in a way that redefines when an existing source is considered to have been "modified," and issued a proposed rule consistent with this reinterpretation. EPA's approach presents an obstacle to efficiency improvement projects, safe operations and reliable generation, which is inconsistent with a sound national energy policy and the need to continue to ensure affordable and reliable electricity.1

In addition, EPA has initiated litigation against over 40 investor owned power plants and 10 TVA plants to force installation of new control technology on plants that EPA alleges have been modified. EPA's litigation and enforcement strategy is inconsistent with past interpretations and implementation of the NSR program.

STATUS: EPA has not yet finalized its proposed NSR rule, but, on December 12, 2000, the agency published a Federal Register notice regarding a Detroit Edison project that has national implications because it interprets the existing NSR rule to cover reliability and efficiency improvement projects. In that notice, EPA claims, contrary to the language of the current NSR modification rules, that electric utility sources must get state (or EPA) approval before undertaking necessary maintenance, repair, and replacement projects. An administrative petition has been filed requesting that the Administrator reconsider the Detroit Edison notice and confirm that EPA's 1992 WEPCo rule and pre-1996 policies remain in effect. Regarding ongoing EPA enforcement efforts, additional notices of violation and lawsuits are expected unless policy changes are initiated.

ISSUES: How can the NSR program be reformed to complement national energy policy objectives, and to avoid being an impediment to efficient, safe and reliable plant operations?

RECOMMENDATION: The Administrator should grant the Detroit Edison petition and publish notice of this action in the Federal Register. In that notice, EPA should confirm that the WEPCo rule and pre-1996 policies remain in effect pending a reevaluation of regulatory and policy options. The Administrator also should initiate true NSR reform. The industry is ready to work cooperatively with EPA on this effort.

1 See also attached discussion "Older Power Plants not Exempt from the Clean Air Act."

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DOE002-1234

Obtained and made public by the Natural Resources Defense Council, March/April 2002
NEW SOURCE REVIEW SUPPLEMENT

PRINCIPLE: Contrary to environmental assertions, older power plants are not exempt from Clean Air Act requirements.

Some in government and the public hold the belief that older plants are exempt from the requirements of the Clean Air Act (CAA) because they typically are not subject to New Source Review (NSR). To close the so-called "loophole that exempts grand fathered power plants from the Clean Air Act," EPA has attempted to redefine the meaning of (NSR) to expand its application. This is inappropriate and not necessary to protect the environment. Emissions of older plants are regulated under numerous provisions of the current Act, thus there is little rationale to regulate older plants engaged in routine operations through NSR rulemaking, enforcement actions, or legislation.

Despite nearly a tripling of coal consumption since 1970, air emissions of criteria pollutants and their precursors have been significantly reduced. In fact, total emissions per ton of coal consumed at utility plants have decreased nearly 70 percent since 1970. Much of this is due to the regulatory structure stemming from the CAA's provisions that foster compliance and emission reductions. The belief that older power plants are exempt from the CAA is erroneous.

Significant provisions that impose (or may impose) substantial regulatory requirements on older power plants include:

- National Ambient Air Quality Standards (NAAQS) B primary and secondary NAAQS
- Nitrous Oxides (NOx)
- Sulfur Dioxide (SO2)
- Particulate Matter (PM)
- Carbon Monoxide (CO)
- Lead
- Ozone
- Acid Rain program (annual reductions of 10 million tons SO2 and 2 million tons NOx)
- State Implementation Plans (SIPs; e.g. NOx SIP Call)
- Non-attainment area requirements B Reasonably Available Control Technology (RACT)
- Section 126 provisions B mechanism to reduce emissions that contribute to downwind non-attainment
- Protection of Prevention of Significant Deterioration (PSD) increments
- Visibility Protection Program (SO2)
- Best Available Retrofit Technology (BART)
- National Emission Standards for Hazardous Air Pollutants (NESHAP)
- Mercury Regulatory Determination
- Tall Stack Regulations – limits emissions based on good engineering practice @ stack heights
- Toxic Air Pollutant
- Maximum Achievable Control Technology (MACT)
- Residual Risk Standards
- Prevention of Accidental Releases
- Title V permitting requirements

In addition, these older facilities are subject to regulatory and reporting requirements under other statutes (e.g. CWA, RCRA, EPCRA, CERCLA). Many states also impose regulations beyond those within the Clean Air Act.
REGIONAL HAZE REGULATIONS

PRINCIPLE: Proposed regional haze regulations should be reconsidered to conform with the clear Congressional intent which affords individual states flexibility to facilitate construction of badly needed generation facilities.

DESCRIPTION: In July 1999, EPA promulgated regulations under the Clean Air Act to address the problem of regional haze in the major national parks throughout the U.S. All relevant stakeholders have sought judicial review of the regulations. Industry has challenged the regulations on the grounds that the rule re-writes the Clean Air Act by establishing a national visibility goal (i.e., natural visibility conditions) that plainly conflicts with the carefully crafted congressional program for protecting clean air resources, ignores the D.C. Circuit’s remand of the National Ambient Air Quality Standards (NAAQS) for PM-2.5 (thus elevating visibility protection ahead of health protection), and unduly constrains state discretion to develop and implement regional haze programs. Some states (West Virginia and Michigan) have challenged the rule because they believe the regulations unduly constrain their discretion, and because they, together with most other states, have not been afforded the opportunity, as provided in the Clean Air Act, to participate in Visibility Transport Commissions and to make recommendations regarding the nature and scope of a regional haze program before developing regional haze programs under a federal directive. Environmentalists have challenged the regulations on the grounds that the new rule does not require attainment of natural visibility conditions quickly enough.

STATUS: Review of the regional haze regulations has been held in abeyance pending action by EPA on several administrative petitions for reconsideration that were submitted in the summer of 1999. The reconsideration petitions assert that EPA adopted the regulations without statutory authority to do so and without affording the public an adequate opportunity to review and comment upon major elements of the regulations that appear in the final rule, but which did not appear in the proposed rule, including the goal of natural visibility conditions and a variety of provisions that illegally constrain state discretion. The reconsideration petitions request that EPA withdraw the regulations and re-propose them for further public comment. EPA denied two of the petitions on January 10, 2001.

ISSUES: From a general perspective, should EPA and Federal Land Managers be allowed to use the aesthetically based visibility program as a means to impose emission controls not contemplated by the other major programs of the Clean Air Act, including those designed to protect public health? More specifically, should the regional haze regulations be reconsidered to conform the regulations with the plain terms of the Clean Air Act and to ensure that, as a matter of sound public policy, the regulation of PM-2.5 proceeds, at least initially, on the basis of health-driven NAAQS rather than on the basis of the aesthetic-based visibility program?

TIMING: In the absence of a decision to reopen the regional haze rule for further public review and comment, briefing in the case will likely commence in summer, 2001.

RECOMMENDATION: Seek to stay or settle litigation of the regional haze regulations to allow for (a) public review of, and comment upon, major elements of the rule that have not previously been the subject of public comment; and (b) revisions to the existing rule, as appropriate.
**RULEMAKING TO ESTABLISH BART GUIDELINES**

**PRINCIPLE:** BART regional haze requirements are not consistent with the state flexibility provisions of the Clean Air Act.

**DESCRIPTION:** On January 12, 2001, EPA issued a notice of proposed rulemaking to establish guidelines that would govern how states must implement the best available retrofit technology (BART) requirements under the regional haze rule issued in July of 1999. EPA's BART proposal would severely restrict State prerogatives and burden the nation's energy infrastructure at a time when the ability of electric generators in California and other regions of the country to meet rising demand is at risk. The BART proposal is premised upon regulations that are currently the subject of litigation, but that have not yet undergone judicial review despite the fact that review was sought by industry, states, and environmental groups in August of 1999. Since the filing of petitions for review of the regional haze rule, legal proceedings have been held in abeyance pending action by EPA on several administrative reconsideration petitions, each of which asserts that EPA adopted the regional haze rule without affording the public an adequate opportunity to review and comment on major elements of the regulations, including those that pertain to implementation of the BART requirement. On January 10, 2001, only two days before EPA issued the BART proposal, EPA finally responded to two of the reconsideration petitions by denying them. EPA's delay in responding to the reconsideration petitions insured that the disputed legal issues on which the BART proposal is based would not be resolved before close of the public comment period on the BART guidelines.

**STATUS:** EPA's BART proposal has not yet appeared in the *Federal Register*. The Bush Administration's Regulatory Review Plan dated January 20, 2001 should ensure that the BART proposal will not appear in the *Federal Register* unless first approved by officials appointed by the Bush Administration.

**ISSUES:** Should EPA proceed with issuance of binding BART guidance before disputed legal issues on which the guidance is based are resolved in the pending legal challenge to the regional haze regulations? Alternatively, should EPA reconsider both the proposed BART guidance and regional haze regulations in one integrated proceeding before proceeding with litigation of the regional haze regulations?

**TIMING:** Absent a decision to reopen the regional haze regulations for additional public comment, briefing of the regional haze regulations is likely to commence in the summer of 2001.

**RECOMMENDATIONS:** Reopen the Regional Haze rulemaking to allow for (a) public review of, and comment upon, the disputed legal issues on which the BART guidance proposal and the existing regional haze rule are similarly based (and with respect to which there has not previously been adequate notice and opportunity for public comment); and (b) revisions to the existing regional haze rule as appropriate.
USE OF THE CALPUFF MODEL FOR IMPACT ANALYSIS

**PRINCIPLE:** Limit long-range transport modeling of the effects of new power sources to areas currently required by regulation. EPA's requirement of modeling beyond those areas is delaying construction of new state-of-the-art clean coal power plants.

**DESCRIPTION:** Several companies are seeking permits to construct coal-fired power plants in the Midwest using state-of-the-art technologies. These plants will be among the cleanest, most modern plants in the nation. The plants will use the best available control technology (BACT) and will have significantly lower emissions than required under New Source Performance Standards as prescribed by regulations promulgated under the Clean Air Act.

**ISSUE:** The National Park Service and U.S. Forest Service have proposed that plant developers be required to project the impact of the proposed plants on National Parks which are outside the impact areas covered by current regulations.

**DISCUSSION:** The National Park Service has asserted that these proposed plants are "large sources" relative to other power plants and is insisting that the companies use the CALPUFF model, a relatively new long-range transport model developed to predict model visibility and other impacts at a range of approximately 50-200 km from a source, even though its reliability at distances approaching 200 km and beyond is not well established. There are several reasons that CALPUFF should not be used:

- CALPUFF has not been officially recognized in federal statutes or regulations or in state statutes or regulations;¹
- Normally, long-range transport modeling is required by EPA guidance only for distances up to 100 km except for "large sources," which has not been defined;
- CALPUFF is the subject of a current rulemaking; however, it has not been the subject of a final rule. The protocols for conducting CALPUFF modeling have not been established by regulation, and the proposed protocols may be modified by the final rule.

Federal Land Managers have an affirmative duty to protect air quality around large federal lands called Class I areas. By statute and regulation, they should have the burden of proof to demonstrate that the power plant will have a detrimental impact on Class I areas. The companies planning the project should not have the burden of proof.

**RECOMMENDATION:** Until the CALPUFF is required by law, its use should not be required as part of the permitting process. Projection of impacts of power plants should be limited to the areas surrounding the plant as defined by current regulation.

¹ In one case, the Kentucky Division of Air Quality has concluded that the developer is not required to run the CALPUFF model as part of the permitting process. The Federal Land Managers ("FLMs") indicate they believe the Kentucky plant, for example, could have a detrimental impact on air quality in the "affected" Class I areas: Linville George Wilderness Area and Great Smoky Mountain National Park. The closest borders of the Class I areas are approximately 200 km from the proposed power plant. However, the FLMs have not provided supporting documentation. They argue that Kentucky Division of Air Quality must compel the developer to run a CALPUFF screen in order to "prove them wrong."
THE IMPORTANCE OF FUEL DIVERSITY IN ESTABLISHING A NATIONAL ENERGY POLICY AND A SOUND CLIMATE CHANGE STRATEGY

PRINCIPLE: United States' climate policy, recognizing the global nature of the issue, should be based on voluntary, flexible, inclusive and cost-effective approaches to reducing greenhouse gas emissions. Climate policy should promote the principle of fuel diversity and be complementary to the national energy policy. Climate policy should promote development and global use of more efficient technologies and be designed to promote economic development in the United States and throughout the world. Policy should support an accelerated scientific research program. Voluntary programs should establish incentives for improved energy efficiency and encourage participation and reporting. US climate policy should reject regulation of, or specific reduction targets or caps on, emissions of CO2 or any other greenhouse gas.

The U.S. economy is highly dependent on affordable electricity. Since 1970, electricity growth has closely tracked the rise in GDP. To meet increased demand and to offset retirements of existing power plants, the Department of Energy forecasts that 1,310 new power plants – with 393 gigawatts of capacity – will be needed by 2020.1 A sound national energy policy is needed to continue to ensure the affordability and reliability of electricity, and to meet future energy demands.

The Coal-Based Generation Stakeholders (CBGS) group, of which National Mining Association is a member, believes that fuel diversity – coal, natural gas, nuclear energy, oil, hydropower and other renewables, to generate electricity – must be maintained as a matter of national energy policy and national security. An energy policy that maintains fuel diversity can appropriately balance continued utilization of coal, the most essential fuel for reliable and affordable electricity, with a sensitivity to the climate change issue that reflects both economic and environmental objectives.2

The industries that comprise CBGS have long supported voluntary, flexible, cost-effective and inclusive approaches to reducing greenhouse gases.3 For example, under the Climate Challenge program, the electric utility industry was projected to reduce 174 million metric tons of carbon dioxide (CO2)-equivalent greenhouse gases in 2000. The electric power industry is currently developing a voluntary climate initiative that would serve as an extension of the Climate Challenge program. The industry expects to partner with the federal government – particularly the Department of Energy – and other

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2 Coal-based generation is increasingly clean. Since 1970, coal-based electric generation has increased 234 percent and coal use in power plants has increased 270 percent, yet criteria pollutant emissions have steadily declined. EIA, "Annual Energy Review 1999."
3 "Voluntary" recognizes that the climate change issue merits policy responses that explore economically sustainable measures should any legally binding agreement to address greenhouse gases be adopted. Full "flexibility" encompasses emissions trading, project-based offsets, forestry and soil projects, and banking, which will be critical in the event of any domestic or international agreement. "Inclusive" encompasses all greenhouse gases; all sources and sinks; and all locations, domestic and international. "Reduce" means reduce, avoid, sequester or otherwise mitigate greenhouse gases, whether domestically or internationally.
industries to pursue approaches to further reducing greenhouse gases. This initiative will reduce greenhouse gases in the near term, and promote a technology research, development and deployment (R, D & D) program that will lead to the development of cost-effective options to reduce greenhouse gases.

CBGS supports continued scientific research to evaluate if human activity is adversely affecting the climate, and, if so, to evaluate the causes, costs, policies and adaptation strategies to address possible solutions. Consistent with the President’s March 13 letter to several Senators, CBGS opposes ratification of the Kyoto Protocol because it would cause serious harm to the U.S. economy and lacks binding commitments for all nations. Also consistent with the President’s letter, CBGS strongly opposes regulation of CO₂ or any other greenhouse gas as a pollutant under the Clean Air Act or other legislation.

Because there is currently no cost-effective control technology for greenhouse gas emissions, compliance with stringent, mandatory targets and timetables such as those contained in the Protocol would cause massive fuel switching in the electric utility industry from coal to natural gas, which would be enormously expensive and dramatically increase electricity prices, and which would further exacerbate the fuel diversity issue. A Kyoto Protocol-type scenario would also raise serious problems in natural gas supply, prices and infrastructure, and would cause significant job losses in CBGS industries and among our suppliers. Stringent targets and timetables other than those contained in the Protocol also could be harmful to our nation’s economy and energy policies. Moreover, they could have a chilling effect on badly needed investment in new coal-based generation because of a legitimate concern that such investments would become stranded in the event legally binding regulations were imposed in the future.

As currently envisioned, a sound voluntary climate initiative would consist of three major elements:

1. In the short term, the climate initiative is expected to achieve credible, verifiable emission reductions or offsets of greenhouse gases facilitated by certain policies and incentives from the federal government, including those that encourage full flexibility for emission credit and trading programs.

2. Further reductions of greenhouse gases in the medium to long term would result from the development and application of more energy-efficient, cost-effective electricity supply options, such as clean coal technology and renewables, that allow for a reliable and affordable supply of energy.

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1 See, e.g., the reference study that demonstrates that under a Kyoto Protocol-type scenario, coal would decline from 50 percent of electric generation to as low as 13 percent in 2010, while natural gas would rise from 25 percent to 50 percent in the same time frame. Research Data International, Inc., U.S. Gas and Power Supply under the Kyoto Protocol, Vol. I at 1-9 (Sept. 1999).

2 A recent EIA report (which actually understates costs because mercury has not yet been analyzed) found that reductions in sulfur dioxide, nitrogen oxides and CO₂ consistent with recent legislative proposals would increase electricity prices by 17-33 percent in 2005, and by 30-43 percent in 2010. EIA, Analysis of Strategies for Reducing Multiple Emissions from Power Plants: Sulfur Dioxide, Nitrogen Oxides and Carbon Dioxide xvi, 27 (Dec. 2000). The bulk of the cost increases are due to CO₂ restrictions.
3. A climate technology R, D & D program is needed to ensure that cost-effective technologies are developed in the long term. This program should complement overall U.S. energy policy and the Framework Convention on Climate Change.

- In accordance with legislation introduced in the 106th Congress – such as S. 882, S. 1776, S. 1777 and S. 3253 – and public-private studies, the R, D & D program could focus on 1) advanced technologies in electric generation and transportation, 2) cost-effective direct carbon capture and removal from powerplant and other emission sources, and 3) carbon sequestration in natural "sinks" such as forests, soils and oceans.

- Two program goals could be to 1) fast track such climate technologies to market, and 2) promote export of such technologies overseas, particularly to developing countries such as China and India that could greatly benefit from more energy-efficient electric generation technology.

- In partnership with the federal government, the climate initiative would be expected to adequately fund the climate technology R, D & D program and to provide appropriate financial incentives, with periodic reassessment. Industry partners that install new climate technologies would be interested in recouping any substantial investments over a reasonable period of time.

The climate initiative should be consistent with government policies that encourage full flexibility, both domestically and internationally, in emissions trading, project-based offsets, forestry and soils projects, and banking. Financial and policy-oriented government incentives should be explored as a means to jump start credit and trading programs, offset projects, and the climate technology program.

Development of a voluntary climate initiative presents an opportunity not only for innovative emission reduction programs, but also for the inclusion of a broader number of partners involved in the life cycle of coal-based generation. For example, credit could be given to environmental improvements from extracting coal at the mine and delivering it to the generator.

CBGS believes that a climate change strategy premised on a voluntary climate initiative would achieve both environmental and economic objectives, and would help maintain fuel diversity. The strategy would reduce greenhouse gases in the short term as technological responses are developed for long-term availability, all the while maintaining the viability of coal as a vital component of electric generation. In short, environmental policy would complement energy policy, which is consistent with the President’s goal of ensuring that global climate change issues are addressed “in the context of a national energy policy that protects our environment, consumers, and economy.”

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COAL PRODUCTION

- The Coal Mine Valley Fill Issue
- The Forest Service Roadless Area Conservation Rule Will Eliminate Coal Reserves from Development
- Coal Leasing — The Need for an Orderly, Predictable Process
- Advance Royalty Payments in Lieu of Continued Operations
- Revitalizing the Abandoned Mined Lands Program
- MMS Administrative Appeals Process
- U.S. Forest Service Management Plan Revisions
- Regulation of Diesel Particulate Matter Exposure in Underground Metal/Nonmetal Mines
- Black Lung Disability Benefits Program Final Regulation Employment Standards Administration

1232

DOE002-1242

Obtained and made public by the Natural Resources Defense Council, March/April 2002
THE COAL MINE VALLEY FILL ISSUE

**PRINCIPLE:** Support coal industry operations and employees in Appalachia by adopting proposed rules that clarify the scope of, and remove the ambiguities in, the Clean Water Act Section 404 program with respect to excess spoil. Delays in adopting these rules are restricting coal operations in Appalachian states at a time when coal is needed to provide fuel for affordable electricity.

**DESCRIPTION:** In October 1999, a federal district court in West Virginia stunned the Nation's coal industry with a decision barring the longstanding practice of building valley and hollow fills to dispose of the dirt and rock generated during coal mining. *Bragg v. Robertson*, 72 F. Supp. 2d 642 (S.D. W.Va. 1999), appeal pending, No. 99-2443 (4th Cir). Notwithstanding the fact that these engineered fill structures are both a necessary part of coal mining operations and expressly authorized by federal laws regulating coal mining, the court interpreted regulations issued under those laws as prohibiting their construction in hollows and valleys that inevitably contain stream courses. While the decision remains pending on appeal, the past Administration abandoned the working men and women of America's coal industry and announced that it now agreed with the court's view. The past Administration's action in this regard is not only contrary to the laws it administers, it will have economic consequences. A Marshall University study concluded that the effects in West Virginia alone would be as great or greater than those of the Great Depression.

Earlier in the same litigation, the federal agencies, the Environmental Protection Agency, Office of Surface Mining and the Corps of Engineers (EPA, OSM & COE), settled the claims related to the use of section 404 permits to authorize these fills under the Clean Water Act (CWA). The agencies agreed to conduct a programmatic Environmental Impact Statement that addresses environmental and economic consequences of different actions, as well as evaluates the better coordination of overlapping regulatory programs.

**STATUS:** The appeal in the 4th Circuit has been briefed and was argued on December 7, 2000. In the meantime, the EPA, OSM and COE are preparing a Draft EIS. EPA and COE also have pending a proposed rule published on April 20, 2000 clarifying that excess spoil is fill material subject to section 404 and not section 402 of the CWA. This rule would remove the ambiguity in the agencies' programs that the district court relied on to reach its erroneous conclusion that these fills as well as other activities that have the effect of displacing waters of the United States are not authorized by section 404.

**DECISION:** Should any part or form of a Draft EIS be publicly released before the completion of the underlying technical, economic and other studies.

**RECOMMENDATION:** Delay public release of the Draft EIS in any form until all the underlying studies are complete and have been subject to some form of peer review. This is completely defensible and will assure that the EIS process on this matter will not be subject to criticisms related to its credibility and integrity.

**DECISION:** Should EPA and COE adopt, as a final rule, the proposal clarifying the scope of the section 404 program with respect to excess spoil and other activities that have the effect of replacing waters of the United States.

**RECOMMENDATIONS:**
1. Proceed to adopt as final the proposed rule published on April 20, 2000. The rule is an important part of maintaining the integrity of the 404 program by clarifying a longstanding ambiguity that has caused grave uncertainty for the regulated community and the agencies. It not only addresses the excess spoil issue but other activities as well, e.g. landfills, OR 2) Await the decision of the 4th Circuit to determine whether it would require any modification of the proposal to address the central features of the rule. At some point, the EIS on mountaintop mining will have to analyze how excess spoil fills are to be addressed within the prevailing regulatory schemes under the CWA and SMCRA and whether any conflicts exist.
THE FOREST SERVICE ROADLESS AREA CONSERVATION RULE
WILL ELIMINATE COAL RESERVES FROM DEVELOPMENT

PRINCIPLE: Implementation of the Forest Service Roadless rule will preclude development of the energy resources, including coal, that are located on these lands. The rule must be modified through administrative action or through existing litigation so that resource development is not precluded.

BACKGROUND: In January 2000, the Clinton Administration declared 58.5 million acres of Forest Service land off limits to mineral development by prohibiting road construction and reconstruction activities, including even temporary road construction on lands subject to this rule.

The Department of the Interior (DOI) is the largest owner of western minerals, while the U.S. Forest Service (USFS) in the Department of Agriculture is responsible for the management of the surface. Under the roadless rules, the actions of the surface owner will have a profoundly negative impact on the development of coal, oil and gas found under these lands. This is particularly important as 90 percent or more of the increase in coal production through 2020 is expected to come from federal lands including lands affected by this rule.

IMPACTS: As stated in the Final Roadless Environmental Impact Statement (EIS), several serious impacts have been identified, including: "...preclude future development of leasable minerals within Inventoried roadless areas...[which would result in] decreases in jobs, income, and payments to states." The Department of Energy found that both expansion of existing mines, and tracts of coal of near term commercial interest will be affected.

Among all of the multiple users of the National Forest, coal mining has the distinct and unique requirement — pursuant to the terms of the Surface Mining Act — to restore all surface disturbances to at least as good a condition as the pre-mining condition. This requirement applies to all roads developed in conjunction with exploration or development activities. In short the Surface Mine Control and Reclamation Act already provides the protections the roadless rule purports to safeguard.

EXAMPLES: Two areas of federal coal production have been specifically identified as being impacted by this rule: the Manti-La Sal National Forest in Utah and the Grand Mesa, Uncompahgre, and Gunnison (GMUG) National Forests in Colorado. The impact on the West Elk Mine, located in the GMUG National Forest is discussed as an example. This underground coal mine, which produces about seven million tons of high BTU, low sulfur federal coal per year, is located in western Colorado's North Fork Valley — the fastest growing coal producing region in Colorado. The mine employs about 360 people and has an annual payroll of $26 million. Just over 93% of West Elk's coal is shipped to eastern utilities which need its unique quality characteristics to meet Clean Air requirements. The West Elk mine will be significantly and adversely impacted by the Roadless Area designation in several ways:

- As existing coal leases are modified or renewed, they will become subject to the roadless area prohibitions;
- The roadless boundary includes adjacent areas of unleased federal coal reserves. That would be excluded from potential development since necessary exploration drilling and mine development would be prohibited;
- Approximately $3 billion of federal coal could be impacted by the Roadless Area rule in this one area alone.

RECOMMENDATIONS: The Energy Task Force must consider the effects of this rule on development of resources needed to meet future energy demand. Should the rule go into effect, the Administration should actively engage in the litigation to assure that final settlements do not preclude resource development.
THE POWDER RIVER BASIN RESOURCE DEVELOPMENT ACT OF 2000

PRINCIPLE: Enact legislation that provides for orderly development of all energy resources located on federal lands to ensure that development of one resource does not preclude economic development of a co-located resource.

BACKGROUND: In the 2nd Session of the 106th Congress, the entire Wyoming delegation sponsored legislation (The Powder River Basin Resource Development Act of 2000 - S. 1950 and H.R. 4297) to resolve conflicts between oil and gas and coal developers which arise as a result of simultaneous resource development on federal lands in the Powder River Basin (PRB) of Wyoming and Montana. The proposed legislation (as reported by the Senate Energy Committee) was the result of lengthy negotiations between the Administration, coal producers and oil and gas developers. Unfortunately, on December 15, 2000 the Clinton White House insisted that the bill be excluded from the Omnibus Appropriations package, thus preventing passage and leaving an uncertain future to coal, coalbed methane (CBM) and oil and gas production in the PRB.

THE PRB of Wyoming and Montana is one of the world’s most productive energy resource regions. It contains the largest reserves of low sulfur coal in the United States. Coal mined in Campbell County, Wyoming itself now represents approximately 1/3 of all U.S. coal production. The PRB is also rich in oil and gas, including CBM that lies within and adjacent to the coal seams. Virtually all of the coal and approximately 50% of the oil and gas in the PRB is owned by the federal government and managed by the BLM, under the Mineral Leasing Act of 1920.

ISSUE: The BLM has issued and continues to issue separate federal coal leases and federal oil and gas leases for the same locations in the PRB. In those areas leased both for coal and for oil and gas (common areas), disputes over timing of mineral development have arisen. The sequence of development in the common areas frequently becomes a critical issue. No clear statutory direction exists to resolve disputes over the sequence of mineral development.

LEGISLATIVE SOLUTION: Last session’s negotiated Senate legislation would provide the missing statutory direction to resolve these mineral development disputes and would establish a formal procedure to be used only in the conflict areas of the PRB. By its expressed terms, the bill would have no impact whatsoever outside the PRB.

The bill would require competing mineral developers to negotiate first, and urges the BLM to use its regulatory authority to achieve a possible resolution to each conflict. If both negotiations and regulatory efforts fail, either the coal developer or the oil and gas developer could invoke the formal resolution process established by the legislation by filing a petition in the local federal district court and with the Secretary of the Interior. The bill’s process then would require a public interest determination first by the Secretary, then by the court, as to which mineral will be developed first. There would follow a temporary suspension or termination of rights to develop the conflicting mineral. The court, with the aid of an expert panel, would determine the amount to be paid to the non-prevailing mineral developer.

RECOMMENDATION: The Bush/Cheney White House should encourage early passage and enactment of legislation similar to S. 1950 as approved by the Senate Energy Committee in the 106th Congress. Until such legislation is passed, conflicts involving simultaneous development of competing fossil fuel resources in the PRB will continue to threaten or delay orderly development of much needed environmentally favorable domestic energy resources.

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DOE002-1245

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COAL LEASING – THE NEED FOR AN ORDERLY, PREDICTABLE PROCESS

PRINCIPLE: Implement procedures to shorten the time required to process applications for leases for federal coal reserves and take steps to process lease applications now pending. The reserves included in these applications will be required in the future to fuel increasing demand for affordable electricity.

DESCRIPTION: Since the 1970's, leasing of federal coal has been marked by controversy, lawsuits and long periods of leasing moratoriums. Since the decertification of the Powder River Basin ("PRB") coal producing region in the late 1980's, the Bureau of Land Management ("BLM") has actively used the Lease-By-Application ("LBA") process, which allows an existing coal mining operation to nominate a tract for the express purpose of prolonging the life of the existing mine. The leases are offered to any qualified bidder at the time of sale on a competitive basis through a bid process (termed a bonus bid). This process has been effectively used in Utah, Colorado and Wyoming. This discussion is limited to the PRB of Wyoming.

To date, the LBA process has been highly successful. Since the LBA process was put in place, the BLM has sold ten (10) coal leases in the Wyoming PRB that contained over 2.7 billion tons of coal. These lease sales have generated over $612 million in bonus bids, even before the payment of 12 1/2% production royalties commence. This process has been critical as the PRB of Wyoming now produces a third of the nation's demand for low sulfur coal.

THE LBA PROCESS: The LBA process has allowed for the orderly and predictable leasing of federal coal reserves for the last decade. After a federal coal lease application is filed with the BLM, but before the actual competitive lease sale. The lease application goes through a series of economic, environmental, resource recovery and fair market value procedures and reviews by both state and federal officials. Currently, this process takes three to five years to complete.

After the lease is issued the state and federal regulatory agencies begin the permitting process. The federal agencies involved include the Office of Surface Mining (mining and reclamation plan approval) and the BLM (Resource Recover and Protection Plans). Historically, this process has taken about an additional three years – or six to eight years from lease application to permit issuance.

KEY ISSUES: Coal production in the PRB has jumped dramatically since the Clean Air Act Amendments of 1990. With this dramatic increase has come the need for continued and orderly access to federal coal reserves. Western coal producers clearly recognize this need and make their leasing plans accordingly. In the PRB of Wyoming there are currently eight coal lease applications on file with the BLM totaling over 23.2 billion tons of coal. While this appears to be a large quantity of coal, it only represents about seven years of production from the PRB.

The BLM is now processing and holding only one federal coal lease sale per year. As a result, the most recent coal lease application filed may not be offered for sale for eight years. Permitting requirements will then add another three years. There is an excessive backlog of federal coal lease applications on file, and that the time frame for processing and issuance is impeding orderly development of important domestic energy resources.

RECOMMENDATION: Consolidate the NEPA process and combine several LBAs into one EIS. Evaluate the workload of other BLM offices to determine if there are any personnel available to help work through this backlog. Seek coal industry and the State of Wyoming support for additional Federal funding for the processing of lease applications.
ADVANCE ROYALTY PAYMENTS
IN LIEU OF CONTINUED OPERATIONS

PRINCIPLE: Legislation is needed to provide greater flexibility in the way that requirements for payments of advanced royalties are implemented.

BACKGROUND: On August 4, 1976, the Federal Coal Leasing Act Amendments (FCLAA) were enacted. Section 6 of the FCLAA inserted a new Section 7(b), providing, in part, that the Secretary, upon determining that the public interest will be served thereby, allow the coal operator to pay advanced royalties rather than require continued operation of a mine.¹

The current "advance royalty" provisions provide that:

- Advance royalties may be paid in lieu of the statutory obligation to maintain continued operations, but that they may not be paid for more than an aggregate of 10 years;
- Advance royalties paid during the initial 20-year term of the lease may not be carried over past the twentieth year of the lease; and,
- The Secretary may unilaterally cease to accept advance royalties and require that production continue.

ISSUE: Based upon experience since 1976, the current statutory provisions are counterproductive as these provisions do not give the coal operators the flexibility needed to be able to react to changing market conditions. If market conditions are such that coal is in "over supply", the operator needs the flexibility to slow or stop production for a period of time. Conversely, when coal demand increases the operator needs the flexibility to expand production.

RECOMMENDATIONS: Federal legislation is needed to provide operational flexibility for Western coal operators. Such legislation will also promote the ultimate recovery and conservation of federal coal. While limited to scope, the following amendments to provide operational flexibility to the current lease holders:

- Extend the aggregate authority pay advance royalties in lieu of continued operations from 10 years to 20 years;
- Provide that advance royalty payments are based on the average sales price for coal sold in the spot market from the same region during the month in which the request to pay advance royalties is submitted to the BLM;
- Delete the current prohibition on the carry-over of advance royalty payments made during the initial 20-year period of the lease;
- Delete the current unilateral authorization for the Secretary to cease to accept advance royalties in lieu of continued operations; and
- Delete the last sentence of Section 39 of the MLLA of 1920 (Section 14 of FCLAA) prohibiting the waiver, suspension or reduction of advance royalties.

¹ This provision requires that leases produce one percent of a mining unit’s recoverable reserve each year.
REVITALIZING THE ABANDONED MINED LANDS PROGRAM

PRINCIPLE: Work with industry to reform the Abandoned Mine Land program to ensure that funds are effectively used to complete reclamation work outstanding so that the program can come to a successful conclusion thus meeting SMACRA's original environmental goals.

DESCRIPTION: The 1977 Surface Mining Control and Reclamation Act (SMCRA) mandates that lands disturbed by coal mining be restored to their pre-mining condition. The Act addresses mining sites inactive before 1977 through the Abandoned Mine Land (AML) provisions. SMCRA requires coal operators to pay a fee to the Office of Surface Mining's AML Fund to clean up pre-law abandoned sites. The fee was set at 35¢ per ton for surface mined coal, 15¢ per ton for underground coal and 10¢ for lignite and has been extended twice, most recently in 1992. The fee is levied exclusively on coal production; no other mineral pays an AML fee. The fee is set to expire at the end of FY-2004.

In 1992, interest from the AML Fund was set aside to pay for the health benefits of certain retired coal miners and their widows under the Coal Industry Retiree Health Act.

STATUS: There is a mismatch between the amounts paid into the fund and the amount used for reclamation. To date, $5 billion in contributions have been paid by the coal industry into the AML Fund but only $1.3 billion in Priority 1 and 2 reclamation work has been completed.

Approximately $2.5 billion in Priority 1 and 2 coal reclamation work remains to be completed, yet the AML Fund has an unappropriated balance of $1.5 billion. This mismatch reflects annual appropriations have been significantly less than the fees paid by the industry and a distribution formula that does not reflect an effective use of the fees collected.

There are excessive federal and state administrative expenses of approximately $45 million annually.

RECOMMENDATION: The coal industry believes that 2001 provides a unique opportunity to reform the AML program. The coal industry is prepared to support an extension of the AML fee, if the additional funds are dedicated to the clean up of the remaining Priority 1 and 2 projects, and only if the current fee structure is reduced beginning in FY-2002. The fee structure would be the subject of negotiation. Suggested program reform should include a major reduction in administrative costs and a freeze on the inventory of eligible reclamation projects. Legislation to support these recommendations should be introduced in 2001 to give long-term financial stability to the various state AML programs. The proposed changes in the program would ensure that the SMACRA's original environmental goals are achieved and that reclamation is completed more quickly and effectively.

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MMS ADMINISTRATIVE APPEALS PROCESS

DESCRIPTION: In 1973, the Department of the Interior (DOI) promulgated administrative procedures for the appeal of final orders and decisions of officers of the Minerals Management Service (MMS), directing that appeals would be made to the Director of MMS. The MMS is the only DOI agency with an intermediate appeal to the Director of the agency. All other DOI agency appeals go directly to the Interior Board of Land Appeals (IBLA).

In 1995, the DOI established the Royalty Policy Committee (RPC) to provide advice to the Secretary on the management of Federal and Indian mineral leases, revenues, and other minerals-related policies. The RPC includes representatives from states, Indian tribes and allottee organizations, minerals industry associations, other Federal agencies, and the public. At its first meeting in September 1995, the RPC established eight subcommittees, including the Appeals and Alternative Dispute Resolution (ADR) Subcommittee (Subcommittee). In February 1997, the Subcommittee submitted a consensus report for consideration by the RPC.

ISSUE: The Subcommittee agreed that the principal purpose of the MMS administrative appeals process should be the expeditious and independent review of cases involving disputed facts, legal issues, or policy upon request of the adversely affected party. The Subcommittee recognized that the MMS appeals process has been under criticism and serious review since 1991 and that substantial reform is needed.

While the Subcommittee was working, the Federal Oil and Gas Royalty Simplification and Fairness Act was enacted, establishing among other provisions, a 33-month time limitation for the DOI to make final decisions on appeals involving royalties due on federal oil and gas leases. This provided a further impetus to the Subcommittee’s efforts to reduce the overall time for making final DOI decisions on appeals. In addition, MMS proposed a draft regulation that would place a 16-month time limitation on the MMS appeals process, leaving the rest of the 33-month period for review at the IBLA. The Subcommittee strongly urged that the recommendations in its report be substituted for MMS’s proposed regulation.

The Subcommittee developed a number of specific steps involving both the appeals and ADR processes, incorporating them into a one-stage IBLA administrative appeal process. In March 1997, the RPC approved the Subcommittee report and forwarded it to Secretary Babbitt for his consideration. By letter dated September 22, 1997, Secretary Babbitt informed the RPC that he largely agreed with the report’s recommendations. However, by Memorandum dated June 1, 2000, to the MMS Director, Secretary Babbitt stated that contrary to the RPC’s recommendation, he had decided to retain the current two-tier appeals procedures.

RECOMMENDATIONS: The DOI should initiate administrative procedures which implement the Subcommittee’s one-stage royalty appeals’ recommendations. Otherwise, mineral developers that disagree with MMS decisions will continue to be subjected to a two-stage process which can extend administrative appeals from five to seven years, even before its controversy can enter the courts.
U.S. FOREST SERVICE MANAGEMENT PLAN REVISIONS

BACKGROUND: On a regular basis the U.S. Forest Service (USFS) reviews and, as necessary, revises its Forest Service Management Plans. Over the last year, the proposed revisions to various management plans have steadily moved away from a multiple use concept in favor of a position that favors conservation and recreation and disfavors mining and development. Currently, the USFS is proposing to revise the Thunder Basin National Grasslands management plan. The Thunder Basin National Grasslands is home to the largest coal producing region in the United States – the Powder River Basin of Wyoming (PRB). This region now produces a third of the nation's coal supply and in this time of high and unstable energy prices is a source of reliable, low cost, environmentally friendly coal. Pending lease sales of nearly 2.3 billion tons of mineral resources are in areas that would be affected by the revision. Availability of these reserves is necessary to continue long term operations at existing mines.

ISSUE: The proposed revision to the Thunder Basin National Grasslands management plan includes the establishment of a new wilderness area (pending Congressional approval) and other "special interest areas." These areas would likely trigger requirements that are more stringent than necessary to protect air quality and air quality related values (flora, fauna, etc.). The coal industry is one of the most heavily regulated in the country, and the PRB in particular more air quality monitors per square mile than any other region of the United States. There has never been a monitored violation of the PM_{10} (particulate matter less than 10 microns in size) National Ambient Air Quality Standard in this area. However, the demonstration for protection of air quality would not be based on data from actual air quality monitors, but rather would be based on hypothetical computer models that significantly over-predict emissions.

Unfortunately, these specially designated areas are located 5 to 35 miles downwind of existing coal mining operations in the PRB. As new federal coal leases are issued and as coal operators apply for air quality permits, these specially designated areas have the very real potential of impacting the ability to permit new areas or limiting production of existing operations.

A further Federal Land Managers' proposal would authorize the creation of areas where threatened and endangered species could be re-introduced. In this case, these areas are located immediately east of the existing PRB coal mining operations and would be used to re-introduce black-footed ferrets. There is no discussion of the impact to the mining operations should these animals migrate onto the minesites.

RECOMMENDATION: Revisions to the Forest Service Management Plans should be undertaken in concert with all relevant federal agencies, including the Department of Interior, and should be structured to assure continued access to coal resources on federal lands.
REGULATION OF DIESEL PARTICULATE MATTER EXPOSURE IN UNDERGROUND METAL/NONMETAL MINES

DESCRIPTION: In 1998 the Mine Safety and Health Administration (MSHA) published two proposed rules intended to reduce the exposure of miners to the constituents of diesel fuel combustion in underground mines - one for underground coal and one for underground metal/nonmetal (m/nm). The proposals, while similar in intent, departed dramatically on the options available to mine operators to comply with the proposals. Moreover, the rules proposed for m/nm mines the use of unproven sampling technology and the application of yet unproven and not commercially available for mining applications, after-treatment control technology. It is important to note that concerns regarding both the sampling technology and the availability of after-treatment control technology were raised during the public comment period by the National Institute for Occupational Safety and Health (NIOSH), mining research branch, the principal federal government mine safety and health research authority.

STATUS: The coal and m/nm proposed rules were forwarded to the Office of Management Budget for final approval on December 11 and 14, 2000 respectively. OMB approved the final regulations on January 8, 2001 for publication. The final rules were published on January 19, 2001. They were to become effective on March 20, 2001; however, they were extended until May 20, 2001 under the President's regulatory review directive.

ISSUE: Should The Department of Labor/MSHA, depending upon the effective date of the regulations, re-propose or stay the m/nm regulations in order to reevaluate the scientific, technologic and economic basis upon which the previous Administration proposed and finalized the regulations.

RECOMMENDATION: Immediately stay the rules and re-propose them in order to seek additional public comments and consideration by new Administration.
BLACK LUNG DISABILITY BENEFITS PROGRAM FINAL REGULATION
EMPLOYMENT STANDARDS ADMINISTRATION

DESCRIPTION: On December 20, 2000 the Department of Labor (DOL) issued final regulations that make sweeping changes to the Federal Black Lung Disability Benefits Program. The regulations were to be effective January 19, 2001. Despite extensive medical, economic and other evidence that the proposed regulations were severely flawed, DOL published the final rule. Unprecedented criticisms of the proposed rules were filed by the American Bar Association, Members of Congress, independent medical societies, and many others. The regulations will have significant economic impact on the coal mining and insurance industries (between $3.3 billion and $7.2 billion according to reputable estimates). Moreover, DOL concedes in its economic analyses that small coal mines will be closed with subsequent loss of jobs. Nonetheless, DOL summarily ignored the substantive objections, informed criticisms, and negative economic implications of the proposed regulations.

STATUS: On December 22, 2000 NMA and other parties filed a legal challenge to substantive parts of the final rules. The complaint charges that the final regulations violate the rights of litigants, create illegal presumptions, are arbitrary, capricious, inconsistent with existing laws, and violate the US Constitution. A preliminary injunction was granted on February 8, oral arguments are set for May 21.

OPTIONS:
1) If filed, consent to plaintiff's motion for summary judgment and remand of the final rules for reconsideration by the Secretary, or

2) Immediately propose to stay the effective date and re-propose the regulations in order to evaluate the previous Administration's motives to promulgate such severely flawed and economically damaging regulations, or

3) Engage in settlement discussions with the plaintiffs and consent to substantive settlement offer proposed, by plaintiffs, or

4) Continue with the litigation allowing the possibility of all evidence being open for full disclosure in the court, possibly to the enforcement of the Department and harmful to some employees.

RECOMMENDATION: Permit the regulations to be vacated and remanded by consenting to plaintiff's possible or propose to stay and re-propose the regulations.
CROSSCUTTING

- Federal Government Coal Research Programs
- Modifications in Corporate Income Tax Policies
- Reliable, Timely and Complete Energy Data
  A Requirement for Sound Public Policy
FEDERAL GOVERNMENT COAL RESEARCH PROGRAMS

PRINCIPLE: Support federal coal research programs that: accelerate demonstration of technologies; develop advanced technologies that are focused on greater efficiency and environmental improvement for coal generation; focus research on carbon sequestration technologies; improve mining efficiencies, safety and environmental performance; and, advance mining education.

DESCRIPTION: Federal government coal research programs related to coal utilization and mining (production) are centered within the Office of Fossil Energy, Department of Energy. The National Energy Technology Laboratory coordinates much of the research; some basic research is conducted through the other national laboratories. Most of the research programs are designed as industry-government partnerships with industry providing half or more of the cost of the research. The Fossil Energy program also supports academic research that increases our fundamental understanding and provides for undergraduate education and graduate research on coal utilization systems, but lacks an equivalent program for academic coal production (mining and mineral preparation) research.

Coal Utilization Research Program
The goal of the coal utilization research program systems research program is to develop advanced technologies that increase the efficiency and improve the environmental performance of coal use, principally for the production of electric power and liquid fuels. Among the key DOE programs are the following.

- The Clean Coal Technology Program (CCT) was begun in 1985. Thirty eight projects with a total value of $5.2 billion have been funded, and two-thirds of the funding - $3.5 billion - has been from industry. Many new and successful technologies were developed through the CCT program including the NOx reduction technologies that are now in commercial use on 75% of the coal fired power plants in operation today. Technologies demonstrated include advanced electric power generation systems, environmental control devices and pre-combustion technologies. This program is nearing completion.

- The Power Plant Improvement Initiative (PPII) program accelerates the demonstration of near-commercial technologies that can be installed on existing coal-fired power plants to improve their efficiency and environmental performance. In the FY 2001 appropriations, Congress directed DOE to use $95 million in unspent CCT money to begin the PPII. The initial PPII projects will be selected by the end of FY 2001. The program requires a minimum of 50% in industrial cost-sharing.

- The DOE Office of Fossil Energy, through its Coal and Power Systems program, conducts coal related R&D, including advanced coal gasification and combustion systems, materials development, environmental assessments of coal use, development of mercury control technology, management of solid byproducts from coal combustion, and production of ultraclean liquid fuels. Many of these program elements are combined in and support the Vision 21 concept, which seeks to integrate promising new technologies into highly efficient, low-emitting energy complexes, for the production of electricity, fuels and chemicals.

- A critical element of the Coal and Power Systems program is research on carbon sequestration. If reductions in carbon dioxide emissions from coal-based electricity generating systems become necessary, sequestration may become the only practical, long-term solution. In the near-term, it is essential to know the technical and economic feasibility of a variety of sequestration options to guide public policy. For that reason, it is essential that the DOE program be funded at a level sufficient to...