

# COAL CEO MEETING

SEPTEMBER 21, 2023



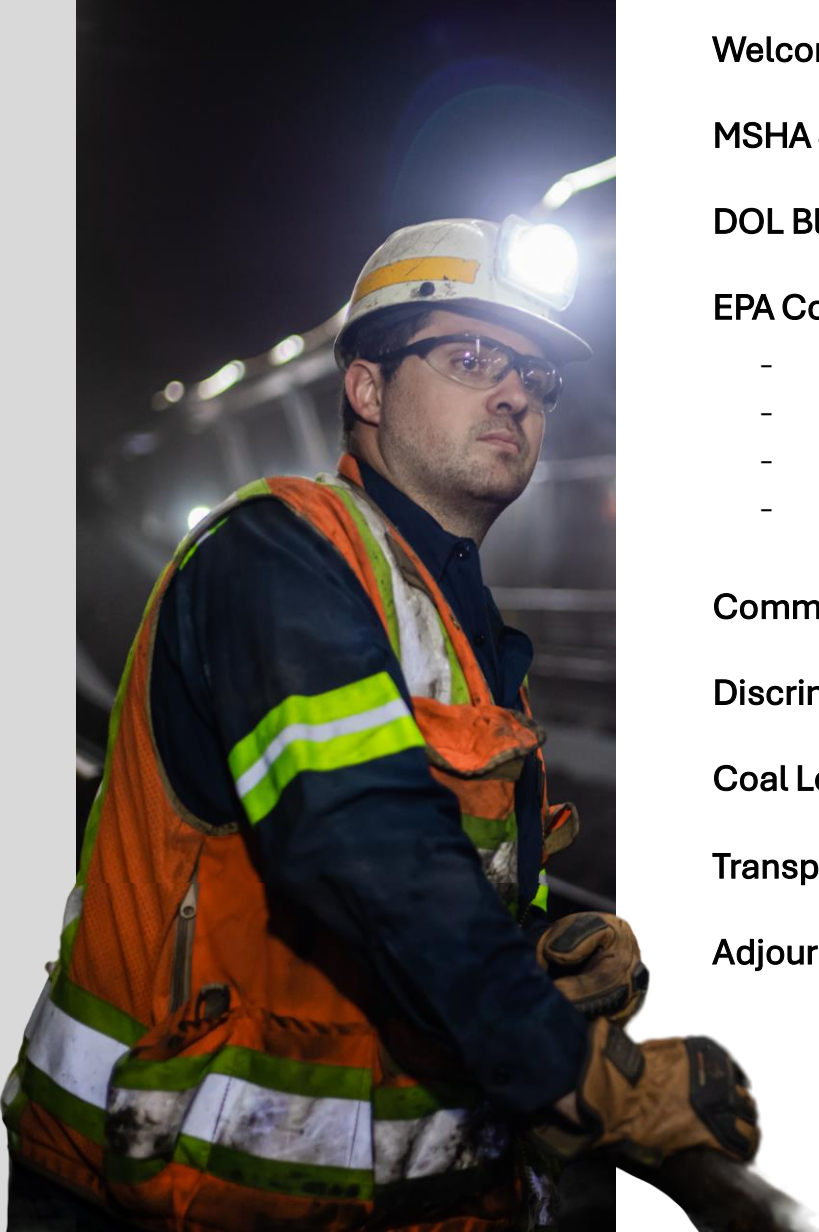
**NMA**

National  
Mining  
Association





# Agenda



Welcome and Introductions .....	Paul Lang
MSHA Silica Rule .....	Paul Krivokuca/Ashley Burke
DOL Black Lung Self-Insurance .....	Katie Sweeney
EPA Coal Plant Strategy	
- Regulatory Update .....	Tawny Bridgeford
- Litigation Update .....	Tawny Bridgeford
- State Oversight – Attorneys General .....	Jerry Mullins
- Congressional Oversight .....	Ryan Jackson
Communications .....	Conor Bernstein
Discriminatory Lending .....	Jerry Mullins
Coal Leasing .....	Katie Sweeney/Justin Prosser
Transportation - Rail .....	Katie Mills/Scott Gemperline
Adjournment .....	Paul Lang

# MSHA Silica Rule



**Topline:** The NMA supports the 50 µg/m<sup>3</sup> Permissible Exposure Limit for silica to better protect miners

## Significant implementation concerns:

- Inconsistent application of the hierarchy of controls
- Refusal to accept personal protective equipment such as respirators
- Unreasonably short timeframe for implementation
- Failure to adopt a risk-based approach to sampling and surveillance
- Failure to provide an error factor applied to the PEL
- Use of an eight-hour shift length

## Next Steps:

- Update members on any new information
- Monitor MSHA's docket for any significant comments



# Black Lung Self-Insurance

## NMA Comments on Office of Workers' Compensation Programs' (OWCP) Proposal:

- Condemned requirement to post security equal to 120 percent of obligations
- Emphasized rule is **not** necessary to ensure eligible miners receive coverage
- Premised on false assumptions on availability of affordable surety
- Failed to differentiate between claims accepted and those incurred but not reported
- Urged withdrawal of proposal and further engagement with industry on approaches

## Subsequent Steps:

- NMA request to meet to discuss reasonable approaches rebuffed

## Timing:

- November timeframe for final rule likely to slip
- NMA will make another appeal for changes during interagency review
- Evaluate litigation opportunities



## States Defend Their Permitting Programs:

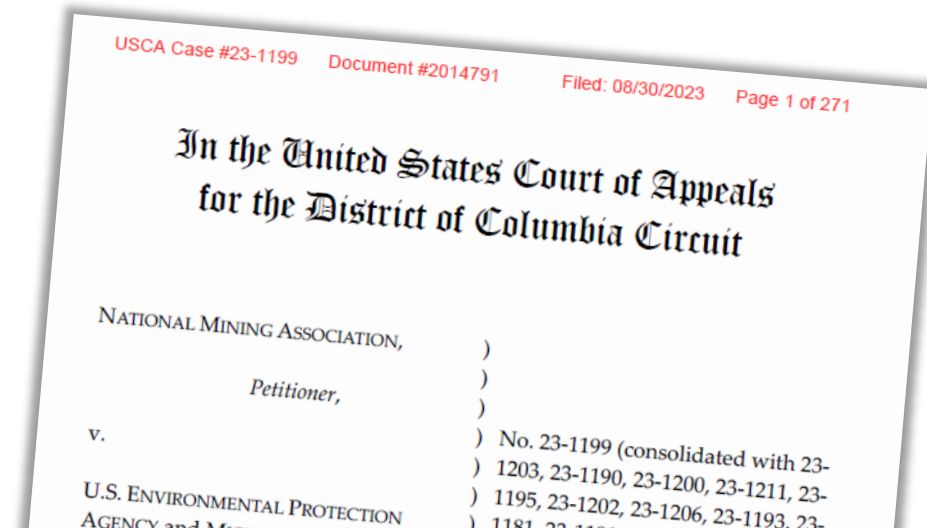
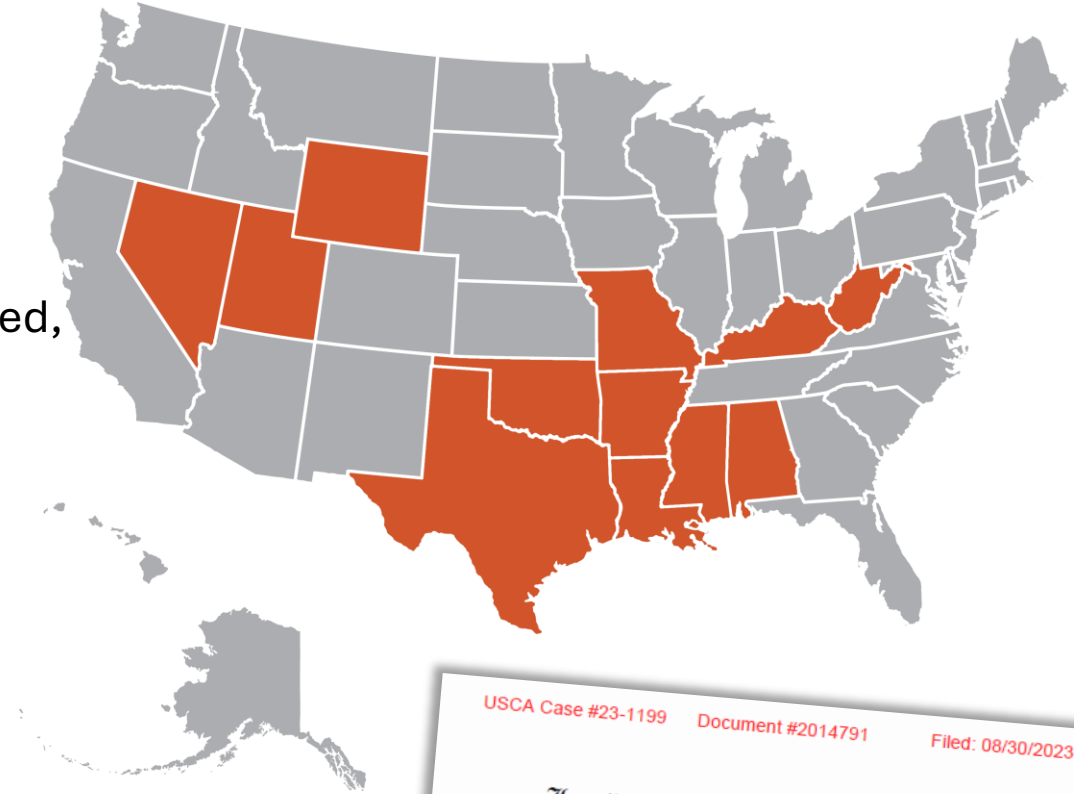
**7** regional circuit courts of appeals grant stay motions

**12** state implementation plan disapprovals now stayed, preventing federal plan from taking effect

**89%** of emissions limits on power plants currently blocked

## Cascade of Legal Challenges on EPA's Federal Implementation Plan:

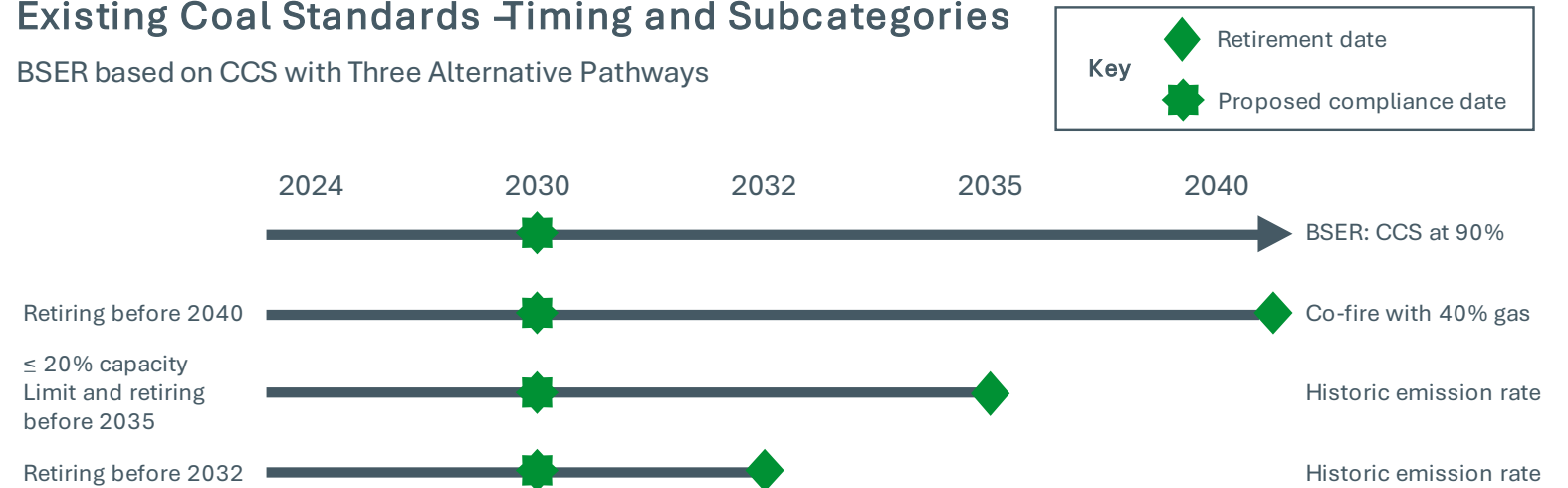
- D.C. Circuit
  - National Mining Association
  - Utah, Ohio, Indiana, West Virginia, Nevada
  - Utilities, oil and gas, paper, cement, pipelines, steel
- Regional circuits hearing cases in Texas, Mississippi, Kentucky, Indiana, Illinois, Arkansas, Missouri, Nevada, Utah, Oklahoma challenges



- Third attempt to regulate greenhouse gas emissions
- Subcategorizes requirements based on retirement dates
- Selects specific add-on technologies (e.g., CCS)
- Elements of generation-shifting return (e.g., co-firing)

### Existing Coal Standards -Timing and Subcategories

BSER based on CCS with Three Alternative Pathways



Source: Environmental & Energy Law Program | Harvard Law School



# EPA Coal Plant Strategy

# Clean Power Plan 2.0: NMA Advocacy Strategy



AUGUST 2023

## Overview & Analysis of Key Assumptions in EPA's 2023 Proposed GHG Rule

Prepared for:

National Mining Association & America's Power

Prepared by:



ENERGY VENTURES ANALYSIS

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Submitted via [www.regulations.gov](http://www.regulations.gov)

August 8, 2023

The Honorable Michael S. Regan  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

**Re: Comments of the National Mining Association on EPA's Proposed New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule; 88 Fed. Reg. 33,240 (May 23, 2023); Docket No. EPA-HQ-OAR-2023-0072.**

Dear Administrator Regan:

The National Mining Association ("NMA") submits these comments on the U.S. Environmental Protection Agency's ("EPA") proposed rule, "New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule."<sup>1</sup>



# EPA Coal Plant Strategy

# Congressional Oversight

THE FEDERAL ENERGY  
REGULATORY COMMISSION  
**ON THE IMPORTANCE OF COAL  
FOR THE RELIABILITY OF OUR NATION'S  
POWER GRID**

Chairman Willie Phillips

Q: If you pulled it [coal] off right now, would it give you the certainty that the system would give you the reliability needed?

**"It would not."**



Commissioner James Danly

Q: Do you think it's possible to eliminate coal today or in the near future and be able to maintain a reliable [electric grid] system — is coal irreplaceable at this time?

**"No, as things stand — coal is required."**



Commissioner Allison Clements

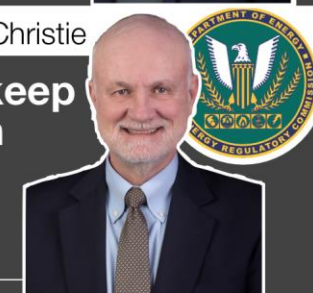
Q: Do you think it's possible to eliminate coal today or in the near future and be able to maintain a reliable [electric grid] system — is coal irreplaceable at this time?

**"Right now, today — no."**

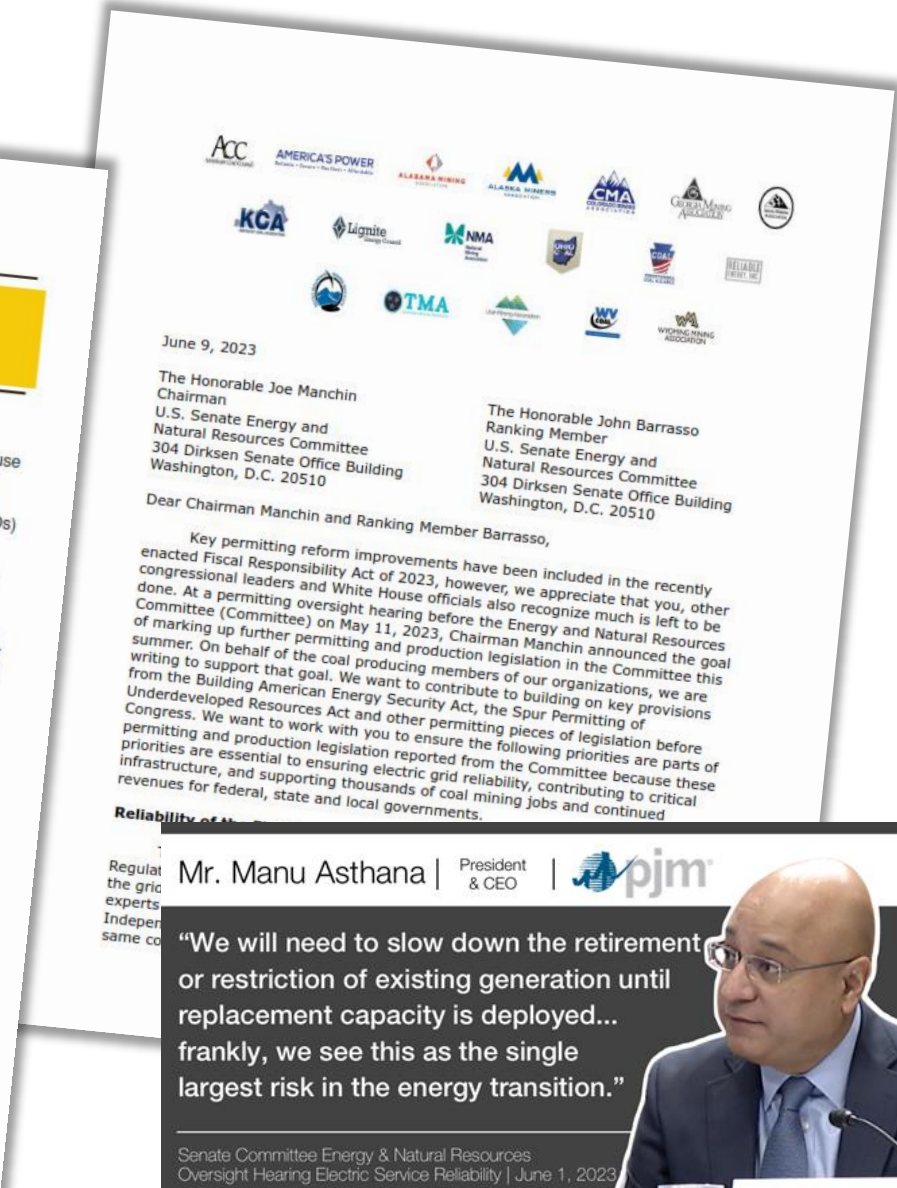
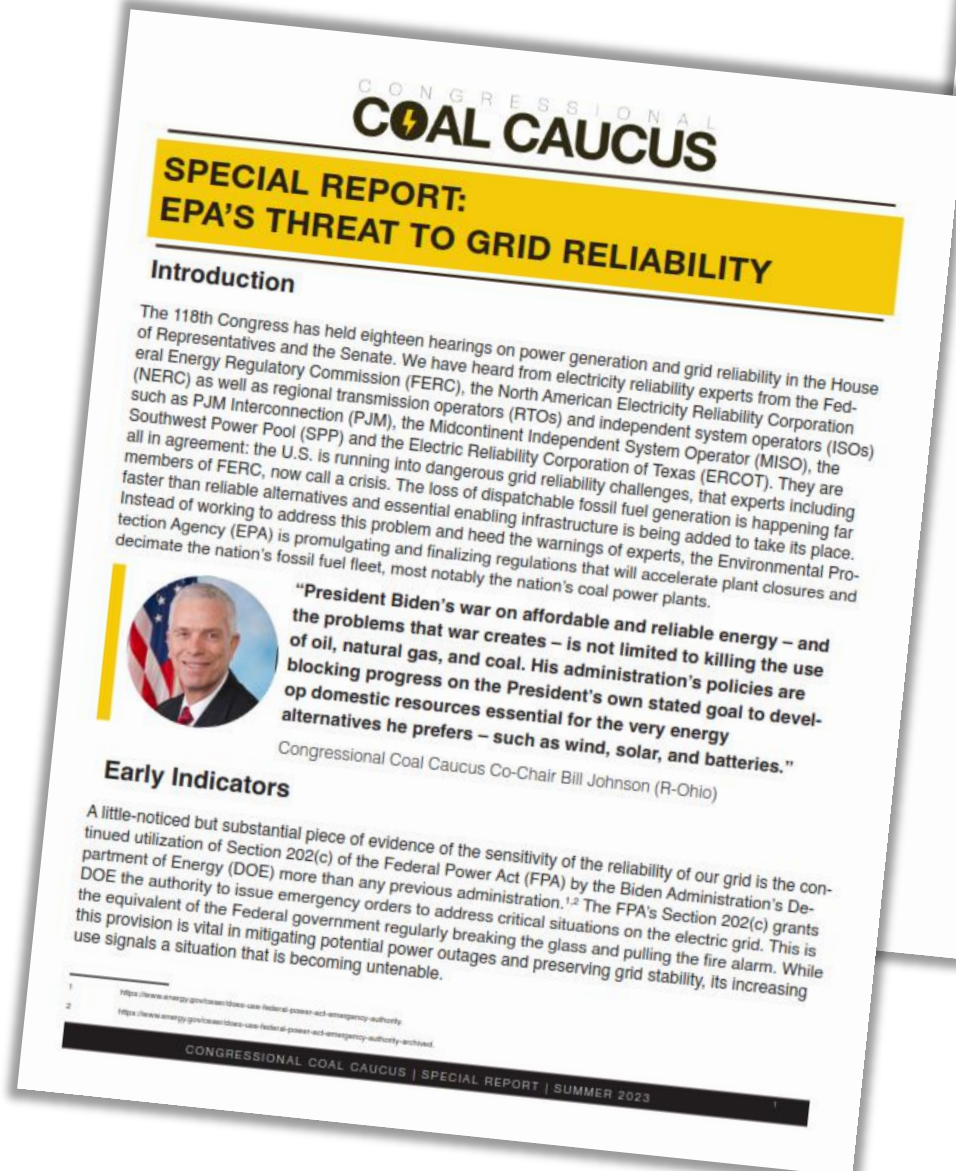


Commissioner Mark Christie

**"...we need to keep coal generation available for the foreseeable future"**



Senate Committee Energy & Natural Resources  
Oversight Hearing on FERC | May 4, 2023





# EPA Coal Plant Strategy

## Regulatory Updates

EPA's Regulatory Agenda Includes Six Other Rules/Policies Affecting the U.S. Power Sector to Drive Premature Coal Retirements

### IMPACTS

#### Mercury Air Toxics Standards

- Appropriate & Necessary Finding – Proposed: Feb. 2022; Final: Mar. 2023
- Residual Risk & Technology Review – Proposed: Apr. 2023; Final: Mar. 2024
- NMA filed comments on both rules

Significantly lowers standards on lignite coal, lowers filterable PM standards, requires continuous emissions monitoring

#### Particulate Matter NAAQS

- Proposed rule: Jan. 2023
- Final rule: Oct. 2023 (likely delayed until end of 2023)
- NMA filed comments on PM10 NAAQS; Supported coalition on PM2.5 NAAQS

Will likely lower the PM<sub>2.5</sub> (fine particulate) standards, requiring coal plant upgrades

#### Ozone NAAQS

- Reconsideration process ended Aug. 2023
- New statutory review started; proposed rule delayed until 2025-2026
- NMA supported coalition in defending existing standards

EPA punted decision on keeping current standard due to science advisory pressures delaying any new permit obligations

#### Regional Haze

- State Implementation Plans submitted in 2022; EPA disapprovals likely
- Findings of failure to submit on 19 states; Federal Implementation Plan threat
- Rulemaking early 2024 on State Implementation Plan requirements
- NMA monitoring for appropriate action

EPA is likely to disapprove any regional haze plans that did not impose controls on power plants and will implement a federal plan that does

# EPA Coal Plant Strategy

## Regulatory Updates

## IMPACTS

### Effluent Limitation Guidelines

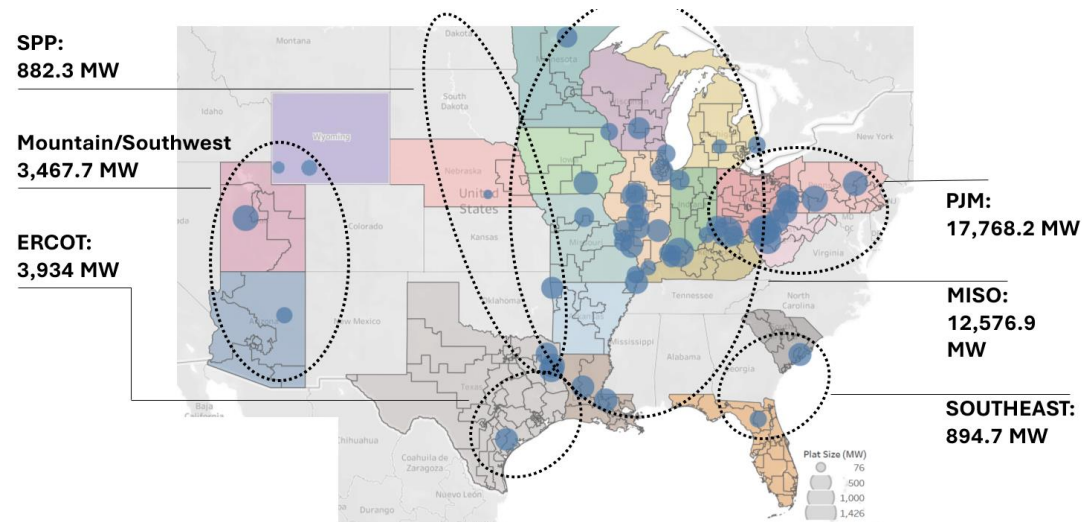
- Proposed Rule: Jan. 2023
- Final Rule: Apr. 2024
- NMA filed comments

Mandates costly controls on certain waste streams and incentivizes early retirements

### Coal Ash

- 54 plants in 19 states depending on Part A Extension Requests (54.5 GW) with none approved to date
- All Part B alternate liner demonstration applications preliminarily denied
- EPA interfering with state permitting programs (e.g., Alabama)
- Final federal permitting rule this year
- Coal ash legacy impoundment rule proposed

Coal plants cannot continue to operate due to expensive waste and groundwater controls





# EPA Coal Plant Strategy

## Congress Weighs In

### Appropriations Provisions Eliminating Funding for:

- **Clean Power Plan 2.0**
- **Interstate / Ozone Transport**
  - Rule or Good Neighbor Rule
- **Effluent Limitation Guidelines**
- **Reliability Evaluation for Coal**
  - Combustion Residual
  - Determinations
- **New Technology Review for**
  - Mercury Air Toxic Standard

#### LIMITATION

SEC. 480. None of the funds made available by this Act may be used to finalize, implement, or enforce the proposed rule titled “National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review” and published April 24, 2023 (88 Fed. Reg. 24854).

#### OZONE

SEC. 467. None of the funds made available by this or any other Act may be made available to implement, administer, or enforce the final rule titled “Federal ‘Good Neighbor Plan’ for the 2015 Ozone National Ambient Air Quality Standards” published by the Environmental Protection Agency in the Federal Register on June 5, 2023 (88 Fed. Reg. 36654).

#### STEAM RULE

SEC. 462. None of the funds made available by this or any other Act may be obligated to finalize, administer, or enforce the proposed rule titled “Supplemental Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category” published on March 29, 2023 (88 Fed. Reg. 18824).

#### FUNDING LIMITATION REGARDING BLM RULE

SEC. 490. None of the funds made available by this Act may be obligated or expended to—

(1) develop, finalize, or issue a final rule with respect to the proposed rule entitled “Conservation and Landscape Health” published by the Bureau of Land Management in the Federal Register on April 3, 2023 (88 Fed. Reg. 19583); or

(2) implement, administer, or enforce such proposed rule or any substantially similar rule.

Additionally, the Committee remains concerned about the Agency’s implementation of the “Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; A Holistic Approach to Closure Part A: Deadline To Initiate Closure” published in the Federal Register on August 28, 2020 (85 Fed. Reg. 53516) and the “Hazardous and Solid Waste Management System: Disposal of CCR; A Holistic Approach to Closure Part B: Alternate Demonstration for Unlined Surface Impoundments” published in the Federal Register on November 12, 2020 (85 Fed. Reg. 72506), specifically the Agency’s denials and limited conditional approvals of requests for extensions or alternative. The Committee is particularly concerned about the impact of the Agency’s implementation of these rules on the reliability of the electric grid. The Committee directs the Agency to provide a report within 90 days of enactment of this Act on the process used to evaluate applications, the reasons for failing to grant full approval of applications, and an assessment of the Agency’s actions on the reliability of the electric grid.

### Governors



Gov. Burgum  
N.D.



Gov. Gordon  
Wyo.



Gov. Lombardo  
Nev.



Gov. Parson  
Mo.



Gov. McMaster  
S.C.



### Attorneys General



AG Morrisey  
W.Va.



AG Marshall  
Ala.



AG Landry  
La.



AG Knudsen  
Mont.



AG Bird  
Iowa

### Public Utility Commissioners



Commissioner McAdams  
Texas



Commissioner Fedorchak  
N.D.





# Communications

WSJ | OPINION

## *An EPA Death Sentence for Fossil-Fuel Power Plants*



### The Nation's Power Supply Hangs in the Balance

Posted to [Energy](#) August 09, 2023 by [Rich Nolan](#)



Rich Nolan

President and CEO, National Mining Association

FT

FINANCIAL  
TIMES

The coal industry was quick to condemn it. “Mandating [the use of carbon capture] in a rulemaking before this technology is technically and fully economically demonstrated is nothing more than unlawful showmanship reinforcing a destructive agenda,” the National Mining Association said.

## Walking the Reliability Tightrope

Soaring demand is colliding with increasingly complex operating conditions as reliable, traditional generation is pushed off the grid



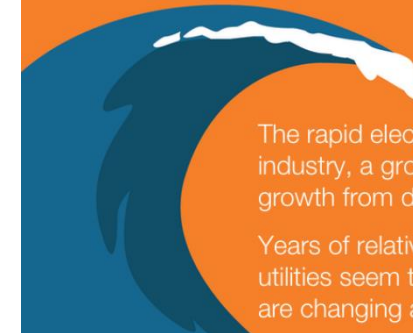
CRUNCH  
CLANK  
BANG

THE GREAT RENEWABLE ENERGY  
BUILDOUT CAN'T SEEM TO GET  
OUT OF FIRST GEAR

Rather than surging ahead, permitting challenges, supply chain woes, inflationary pressure and sky-high interest rates are proving a far taller hill to climb than anyone in the administration wants to admit.



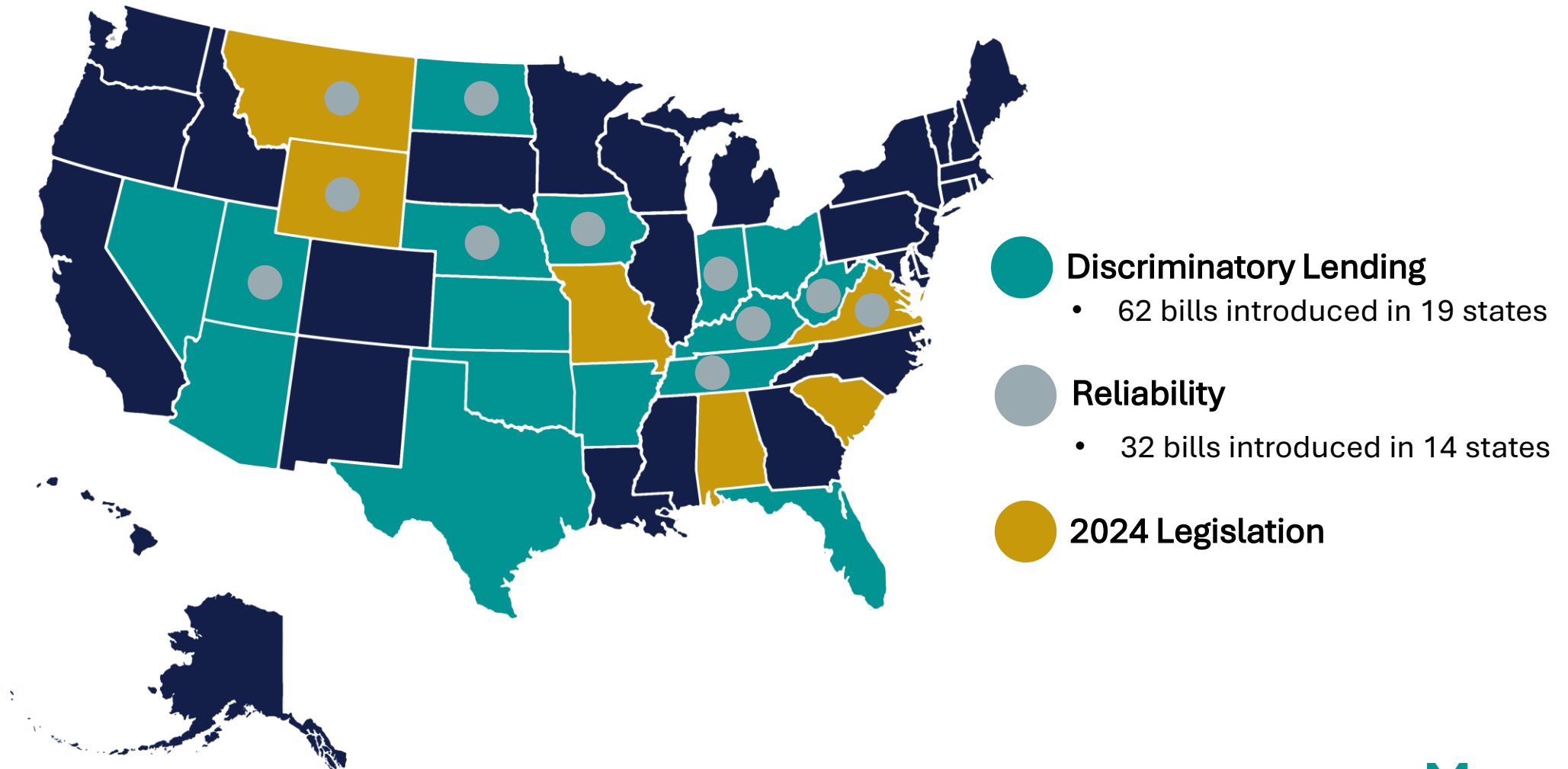
## WARNING: There's a power demand tsunami heading our way



The rapid electrification of transportation, heating and heavy industry, a growing economy and surging electricity demand, growth from data centers and AI are upending the status-quo.

Years of relatively flat power demand are long gone and utilities seem to be struggling to grasp how much things are changing and how quickly.

# Discriminatory Lending





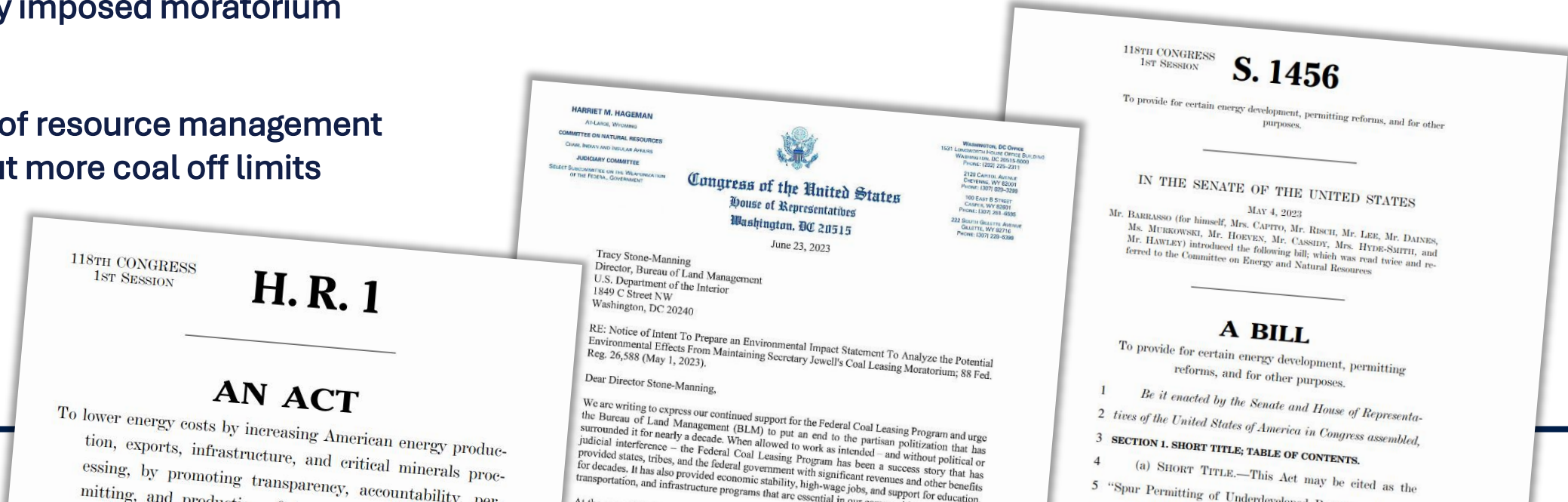
# Coal Leasing

- Pipeline for new leases is frozen
- BLM working to finalize its environmental impact statement on maintaining or lifting the moratorium
- Broader review of federal coal program in limbo
- Briefing nearly complete on NMA appeal of judicially imposed moratorium
- BLM's use of resource management plans to put more coal off limits

## Domestic Coal.

–The Committee remains concerned about the ongoing delays in the review and issuance of lease expansion, lease by applications, and other authorizations needed for domestic coal production on Federal lands. Such delays contribute to the loss of well-paying jobs in the coal sector, depriving the taxpayer of Federal revenue and the low-cost, reliable energy offered by domestic coal.

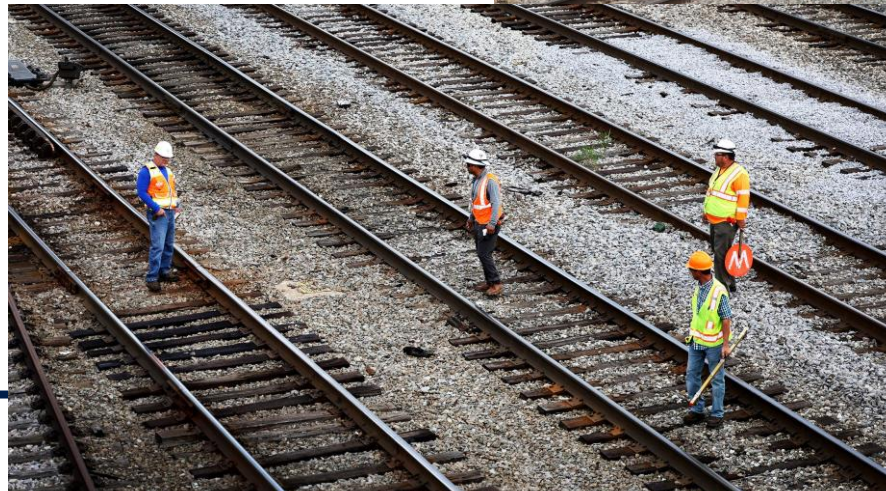
Department of the Interior, Environment, and Related Agencies Appropriations Bill, 2204  
118th Congress House of Representatives



# Transportation

## Rail

- NMA Quarterly Rail Survey
- Surface Transportation Board (STB) Rail Energy Transportation Advisory Committee
  - Next meeting: Oct. 18, 2023
- STB Proposed Rule on Reciprocal Switching
- Congressional Oversight Activities
- Bipartisan Rail Reliability Legislation





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