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RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
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WASHINGTON, DC 20515–6115

Majority (202) 225–2927
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July 21, 2011

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Upton:

We are writing to express our concern about the FY2012 Interior, Environment, and Related Agencies Appropriations bill currently pending consideration in the House. This legislation would place the health of the American people in jeopardy by allowing for increased pollution and decreased accountability for polluters.

As described below, the Appropriations Committee is writing national policy on at least 16 matters within our Committee's jurisdiction through the use of spending limitations and the inclusion of legislation in the Appropriations process. These policy decisions should be made through regular order, including full consideration by our Committee. In one case, the Appropriators have included language reported by our Committee, but otherwise they are running roughshod over the prerogatives of our Committee and the legislative process.

We urge you to protect public health and defend the jurisdiction of our Committee by objecting to the inclusion of these policy riders in the Appropriations process.

Carbon Pollution from Power Plants and Other Industrial Sources

Section 431 of the Interior Appropriations bill prohibits EPA, for the one-year period dating from enactment, from proposing or promulgating regulations to reduce carbon pollution from stationary sources to address climate change. The bill would halt EPA's ongoing rulemakings to establish minimum pollution control requirements for new and modified utility and refinery facilities, two of the largest industrial sources of carbon pollution in the United

States. This overturns recent litigation settlement agreements in which EPA committed to promulgating performance standards for utilities and refineries in 2011 and 2012, respectively.[1]

Section 431 also bars EPA and states from implementing carbon pollution pre-construction permit requirements, which require new and modified industrial facilities to be energy-efficient. Specifically, for the one-year period, these provisions would nullify any regulatory provision requiring a pre-construction permit for emissions of carbon pollution from a stationary source and any permit condition on carbon pollution issued before the enactment of the Appropriations bill. Section 431 also prohibits any permit from including federally enforceable conditions for carbon pollution if the permit application was submitted within one year from the date of enactment. In addition, the bill prevents anyone from bringing suit under federal or state common law or civil tort on the basis that carbon pollution causes climate change or the potential impacts of climate change.

Carbon Pollution from Motor Vehicles

Congressman Austria's amendment to the Interior Appropriations bill, adopted in full committee, prohibits EPA from developing or finalizing new carbon pollution or other greenhouse gas emission standards for motor vehicles after model year 2016. On April 1, 2010, EPA and NHTSA issued joint final rules establishing standards for greenhouse gas emissions and fuel economy for model year 2012-2016 passenger cars, light-duty-trucks, and medium-duty passenger vehicles. EPA and NHTSA project that this program will reduce U.S. carbon pollution by 960 million metric tons and save 1.8 billion barrels of oil. Consumers will save more than $3,000 over the lifetime of a model year 2016 vehicle.[2]

The Appropriations language will prevent EPA from expanding this program to future model years and prohibits EPA from granting a waiver to states to allow them to adopt such standards. This will stop state and federal efforts already in progress. On January 24, 2011, EPA, NHTSA, and the state of California announced a single timeframe for proposing fuel economy and greenhouse gas standards for model year 2017-2025 cars and light-duty trucks.[3] EPA and NHTSA already have issued a notice of intent to conduct a joint rulemaking to

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[1] Environmental Protection Agency, *Fact Sheet: Settlement Agreements to Address Greenhouse Gas Emissions from Electric Generating Units and Refineries* (online at www.epa.gov/airquality/pdfs/settlementfactsheet.pdf) (accessed July 19, 2011).

[2] Environmental Protection Agency and National Highway Traffic Safety Administration, *Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards*, 75 Fed. Reg. 25323-25728 (May 7, 2010) (final rule)

[3] Environmental Protection Agency, *EPA, DOT and California Align Timeframe for Proposing Standards for Next Generation of Clean Cars* (Jan. 24, 2011).

establish such standards.[4] Based on preliminary estimates, EPA and NHTSA project that more stringent fleet-wide emissions and fuel economy standards would save consumers up to $7,400 over the lifetime of a model year 2025 vehicle car. At the same time, new standards would save up to 1.3 billion barrels of oil and reduce carbon pollution by up to 590 million metric tons over the lifetime of model year 2025 vehicles.[5]

The Appropriations language also will eliminate funding to begin implementation of medium- and heavy-duty truck carbon pollution standards for model years 2014-2018. In November 2010, EPA and NHTSA proposed the first-ever program to reduce carbon pollution and improve fuel economy of medium- and heavy-duty vehicles, such as the largest pickup trucks and vans, semi trucks, and all types and sizes of work trucks and buses in between. EPA and NHTSA estimate that the proposed standards would reduce carbon pollution by nearly 250 million metric tons and save approximately 500 million barrels of oil over the life of vehicles sold between 2014 and 2018. The standards also would provide truckers with an estimated $35 billion in net benefits.[6]

Greenhouse Gas Emissions from Livestock

Section 428 of the Interior Appropriations bill prohibits funds for the promulgation or implementation of any regulation requiring a Title V permit under the Clean Air Act for emissions of carbon dioxide, methane, or other gases resulting from biological processes associated with livestock production. In testimony before the House Agriculture Committee on March 10, 2011, EPA Administrator Lisa Jackson stated that it was a "myth" that EPA is planning on regulating greenhouse gas emissions from agricultural sources.[7]

Section 429 of the Interior Appropriations bill prohibits EPA from implementing any rule provision that requires reporting of greenhouse gas emissions from manure management systems, which are lagoons, pits, and other systems used to store livestock manure. Under EPA's Mandatory Reporting of Greenhouse Gases rule, owners or operators of facilities that contain a manure management system that emits at least 25,000 metric tons or more of

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[4] Environmental Protection Agency and National Highway Traffic Safety Administration, *2017 and Later Model Year Light Duty Vehicle GHG Emissions and CAFE Standards*, 75 Fed. Reg. 62739-62750 (Oct. 13, 2010) (notice of intent).

[5] *Id.*

[6] Environmental Protection Agency and National Highway Traffic Safety Administration, *Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles*, 75 Fed. Reg. 74152-74456 (Nov. 30, 2010) (proposed rule).

[7] House Committee on Agriculture, Statement of Environmental Protection Agency Administrator Lisa Jackson, *Public hearing to review the impact of EPA regulation on agriculture*, 112th Cong. (Mar. 10, 2011).

greenhouse gases must calculate and report their emissions. This reporting requirement applies only to the country's largest livestock operations. Farms with fewer than 29,000 beef cattle, fewer than 7 million turkeys, or fewer than 38 million broiler hens do not have to report. Exempting even the largest facilities from reporting will prevent EPA from understanding and quantifying methane emissions from these major sources. Congress placed a similar funding restriction on EPA in the final FY2010 appropriations legislation, and EPA is not currently implementing the reporting requirements with respect to manure management systems.

Transported Air Pollution

Congresswoman Lummis's amendment to the Interior Appropriations bill, adopted in full committee, prohibits EPA from implementing the just-finalized Cross-State Air Pollution Rule. This rule is designed to reduce emissions of sulfur dioxide and nitrogen oxides that contribute to air quality problems in downwind states. EPA estimates that this rule will prevent up to 34,000 premature deaths, 15,000 heart attacks, 400,000 cases of aggravated asthma, and 1.8 million sick days a year beginning in 2014 – achieving up to $280 billion in annual health benefits.[8]

Toxic Emissions from Power Plants

The Lummis amendment would also block EPA from finalizing a rule reducing emissions of mercury and other toxics from power plants. EPA's air toxics rule, proposed on March 16, 2011, would reduce power plant emissions of heavy metals, including mercury, arsenic, and chromium, and acid gases, including hydrogen chloride and hydrogen fluoride. These toxic air pollutants are known or suspected to cause cancer, developmental damage in babies and children, and other serious health effects. The proposed rule would reduce emissions of mercury, preventing 90% of the mercury in the coal from being emitted into the air, and cut emissions of other toxic air pollutants and fine particles.[9] EPA estimates the monetized benefits of this proposed rule to be between $59 billion and $140 billion in 2016.[10]

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[8] Environmental Protection Agency, *Cross-State Air Pollution Rule* (online at http://www.epa.gov/crossstaterule/) (accessed July 19, 2011).

[9] Environmental Protection Agency, *National Emission Standards for Hazardous Air Pollutants From Coal and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units*, 76 Fed. Reg. 25073 (May 3, 2011) (proposed rule); Environmental Protection Agency, *Fact Sheet: Proposed Mercury and Air Toxics Standards* (May 4, 2011) (online at: http://www.epa.gov/airquality/powerplanttoxics/pdfs/proposalfactsheet.pdf).

[10] *Id.* at 25078.

New Study of EPA Regulations

In addition, the Lummis amendment directs the EPA to conduct a biased and burdensome study of EPA regulations, which is similar to the study required by H.R. 2401, which was voted to be reported out of the Committee on July 12, 2011. This amendment directs EPA to examine the cumulative cost impacts, but not the cumulative benefits, of important regulations and individual permits issued by EPA, states, and localities to protect public health and the environment. The economic analysis contemplated by this bill would be full of guesswork and assumptions that could dramatically over- or under-estimate the true costs of the programs.

Texas Air Permits

Section 441 of the Interior Appropriations bill prohibits EPA from taking action to disapprove or prevent implementation of any flexible air permitting program. This directly benefits the state of Texas by allowing the continued operation of the state's illegal cap-and-trade program. Under the Clean Air Act, each new major source of air pollutants must have a permit with source specific limits for each regulated pollutant.[11] The Texas flexible permit program allowed sources to establish pollution caps that apply across multiple sources. This eliminated the source-specific limits and allowed the sources to trade off pollution increases and reductions at separate sources, potentially avoiding installation of pollution control technology. According to EPA, the program lacks sufficient transparency to ensure that pollution reductions are actually being achieved. EPA proposed to disapprove the Texas program on September 23, 2009, and issued the final disapproval on June 30, 2010.[12]

EPA has offered holders of Texas flexible air permits an opportunity to participate in a voluntary audit program, which aims to help sources quickly identify and fix deficiencies in their permits.[13] As of July 2011, 136 industrial plants, representing all of the flexible permit holders, had formally notified EPA that they plan to bring their permits into compliance with the federal requirements.[14]

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[11] *See* 40 CFR 51.165; 40 CFR 51.166.

[12] Environmental Protection Agency, *Approval and Promulgation of Implementation Plans; Texas; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Flexible Permits; Final Rule*, 75 Fed. Reg. 41312 (July 15, 2010).

[13] Environmental Protection Agency, *Final Notice of Clean Air Act (CAA) voluntary audit compliance program for flexible permit holders in the State of Texas*, 75 Fed. Reg. 59711 (Sept. 28, 2010).

[14] *136 Texas plants to get new permits*, Houston Chronicle (July 12, 2011).

Air Pollution from Cement Kilns

Congressman Carter's amendment to the Interior Appropriations bill, adopted in full committee, prohibits EPA from implementing or enforcing its 2010 rule to reduce emissions of mercury, particulate matter, and hydrochloric acid from cement kilns. Mercury, which is dangerous in minute amounts, is a powerful neurotoxin that causes learning disabilities and developmental damage, especially in young children. Every year, an estimated 60,000 American newborn babies are threatened with a diminished ability to think and learn due to exposure to mercury pollution.[15]

These long-overdue standards, first proposed in 1998, will cut emissions of mercury, particle pollution, and other harmful pollutants from Portland cement manufacturing. The standards will reduce mercury pollution and fine particulate matter from cement kilns by 92%, preventing up to 2,500 premature deaths and avoiding 17,000 cases of aggravated asthma each year. These standards also will reduce other hazardous air pollutants such as lead, arsenic, dioxins, and benzene, which are known to cause cancer, birth defects, and other catastrophic health consequences. EPA estimates that the rules will yield $6.7 billion to $18 billion in health and environmental benefits, outweighing the costs by between seven and nineteen times.[16]

Air Pollution from Offshore Drilling

Section 443 of the Interior Appropriations bill amends the Clean Air Act to include the language of the Jobs and Energy Permitting Act, which passed the House on June 22, 2011. This bill precludes EPA from requiring offshore drilling operations to demonstrate compliance with health-based air quality standards anywhere but in a single onshore area; reduces the length of time during which offshore drilling operations are subject to emissions controls; prohibits EPA from setting emissions control requirements for vessels servicing the offshore drilling operations; and eliminates the role of the Environmental Appeals Board, which has served as a faster, cheaper, more expert substitute for judicial review. The bill also preempts the right of states with delegated authority, such as California and Delaware, to implement more stringent standards to protect air quality.

California and Delaware opposed this legislation. The Obama administration also opposed this legislation, stating that this bill would "curtail the authority of the Environmental Protection Agency under the Clean Air Act to help ensure that domestic oil production on the

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[15] National Academy of Sciences, *Toxicological Effects of Methyl-mercury* (2000).

[16] Environmental Protection Agency, *EPA Sets First National Limits to Reduce Mercury and Other Toxic Emissions from Cement Plants* (Aug. 9, 2010).

Outer Continental Shelf proceeds safely, responsibly, and with opportunities for efficient stakeholder input."[17]

Particulate Air Pollution Standards

Congressman Flake's amendment to the Interior Appropriations bill, adopted in full committee, prohibits funding for EPA to modify the air quality standard for coarse particulate matter under the Clean Air Act. This could interfere with EPA's ability to make sound science-based decisions necessary to protect public health.

EPA is currently reviewing the latest science to decide whether to revise standards for coarse particulate matter. The Clean Air Act requires EPA to conduct this review every five years to ensure that the standards adequately protect public health and reflect the best available science. Scientific studies have linked coarse particles to a variety of health problems, including increased respiratory symptoms in children and premature death in people with heart and lung disease. Although proponents of this policy rider argue that EPA is attempting to regulate farm dust, coarse particulate matter can come from any number of sources.

In testimony before the House Agriculture Committee on March 10, 2011, EPA Administrator Lisa Jackson stated EPA has "no plans" to regulate dust from farms but reminded the Committee that the Clean Air Act requires the agency to examine the most recent scientific studies.[18]

Ammonia Emissions

Congressman Cole's amendment to the Interior Appropriations bill, adopted in full committee, prohibits funding for the EPA to regulate ammonia or ammonium under the secondary ambient air quality standards for nitrogen oxides and sulfur dioxide.

On July 12, 2011, EPA issued a proposed rule setting secondary National Ambient Air Quality Standards (NAAQS) for nitrogen oxides and sulfur dioxide. EPA proposed retaining the current secondary standards for these pollutants to protect plants from the direct effects of exposure to these pollutants in the air but proposed an additional set of secondary standards to reduce the indirect impacts of these pollutants, such as acidification of estuaries, lakes, and

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[17] Executive Office of the President, *Statement of Administration Policy: H.R. 2021* (June 21, 2011).

[18] House Committee on Agriculture, Statement of Environmental Protection Agency Administrator Lisa Jackson, *Public hearing to review the impact of EPA regulation on agriculture*, 112th Cong. (Mar. 10, 2011).

streams.[19] EPA has not proposed to regulate ammonia or ammonium as part of this review. EPA's rule focuses on oxides of nitrogen, not ammonia and other reduced forms of nitrogen.

Coal Ash

Section 434 of the Interior Appropriations bill prohibits EPA from regulating fossil fuel combustion waste (coal ash) as hazardous waste under subtitle C of the Solid Waste Disposal Act. After decades of unsafe disposal, EPA is currently attempting to establish legal requirements for the safe disposal of coal ash. Coal ash impoundments can rupture and cause catastrophic damage to property and the environment, as happened in December 2008 when a Tennessee Valley Authority coal ash impoundment failed in Kingston, Tennessee, releasing 5.4 million cubic yards of toxic sludge into a nearby river and community. Coal ash wastes deposited in unlined pits also can leach toxic chemicals and metals, such as arsenic, lead, selenium, and cadmium, into groundwater and drinking water.

EPA Risk Assessment

Section 444 of the Interior Appropriations bill would require changes to EPA's Integrated Risk Information System (IRIS) based on recommendations made by the National Academy of Sciences in April 2011. IRIS is a human health assessment program that evaluates quantitative and qualitative risk information on effects that may result from exposure to environmental contaminants. The Academy recommended that EPA reduce the text volume and address redundancies in future IRIS assessments and develop clear and concise statements of the criteria used to evaluate studies and the weight of evidence assigned them. EPA has already announced plans to streamline the development of IRIS assessments in response to those recommendations.[20] Section 444, however, would block the agency from using the 555 IRIS assessments already proposed or completed until EPA makes the changes recommended by the Academy report. Those assessments have been completed over the 26 year life of the IRIS program and are not called into question by the Academy's recommendations.

Prohibition on Risk Reduction

Section 444(c) of the Interior Appropriations bill is a sweeping prohibition on "action of any kind" to reduce public health or environmental risks posed from air pollution, drinking water contamination, or other pollution, if "based on EPA exposure assumptions" the level of exposure to the pollutant or contaminant is within or below background concentrations. Background concentration levels are not necessarily safe levels. This overarching one-year prohibition

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[19] Environmental Protection Agency, *Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Sulfur* (July 12, 2011) (proposed rule).

[20] Environmental Protection Agency, *Strengthening the IRIS Process - 2011* (online at www.epa.gov/IRIS/pdfs/irisprocessfactsheet2011.pdf) (accessed July 19, 2011).

applies to every EPA proposal after May 21, 2009, including actions required by statutes within the Committee's jurisdiction. It could affect a range of public health and environmental issues, including proposals to address climate change.

Lead Abatement

An amendment offered by Congressman Rehberg, adopted in full committee, prohibits EPA from implementing or enforcing the Lead, Renovation, Repair, and Painting (LRRP) rule until EPA identifies a commercially available lead testing kit that meets the regulation's criteria. The LRRP rule requires lead-safe practices for renovation and repair jobs in houses that are likely to contain lead paint. More than one million children today are affected by harmful levels of toxic lead, and exposure to dust from lead paint is the most common source of lead poisoning. Exposure to even very low levels of lead harms the development of children's brains, causing learning disabilities and behavioral problems. Many construction companies and contractors have paid statutorily required fees to receive training and credentials to perform lead-safe work. When a lead testing kit that meets the regulation's criteria becomes available, homeowners will be able to test for the presence of lead paint and potentially demonstrate that lead-safe practices are not necessary. Even in the interim, the requirements are targeted and do not apply to newer homes, which are unlikely to contain lead paint.[21] Delay of the rule will expose more than a million children to irreparable damage from lead poisoning, punish the many businesses that have invested in training and credentials, and remove the commercial incentive to develop lead testing kits.

Hard Rock Mining

Congressman Rehberg's second amendment, adopted in Committee, prohibits EPA from developing financial assurance requirements for hard rock mining operations. EPA is required to develop those requirements under the Comprehensive Environmental Response, Compensation, and Liability Act (commonly referred to as "Superfund") to protect taxpayers from the cost of cleaning up abandoned sites.[22] In the case of hardrock mining, the federal government has already spent more than $2.6 billion to clean up abandoned mines and expects to incur an additional $24 billion in cleanup costs. Although some have claimed the costs will be covered

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[21] Environmental Protection Agency, *Lead: Renovation, Repair, and Painting Program*, 73 Fed. Reg. 21691 (April 22, 2008) (final rule).

[22] Environmental Protection Agency, *Identification of Priority Classes of Facilities for Development of CERCLA Section 108(b) Financial Responsibility Requirements*, 74 Fed. Reg. 37213 (July 28, 2009).

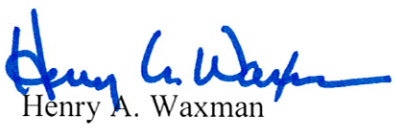
by bond requirements imposed by the Bureau of Land Management, GAO has examined those requirements and found significant shortfalls.[23]

Conclusion

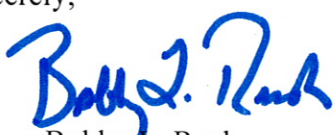
In our view, the FY2012 Interior, Environment, and Related Agencies Appropriations bill poses a major threat to the public health of the American people. Whether you agree with our assessment or not, we hope you will agree that these policy decisions should be evaluated by our Committee, not inserted as riders in an appropriations bill. We urge you to work with us to have them stripped from the bill and moved only through regular order.

Thank you for your attention to this matter.

Sincerely,



Henry A. Waxman
Ranking Member



Bobby L. Rush
Ranking Member
Subcommittee on Energy and Power

cc: The Honorable Ed Whitfield
Chairman
Subcommittee on Energy and Power

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[23] Government Accountability Office, *Hardrock Mining: Information on Abandoned Mines and Value and Coverage of Financial Assurances on BLM Land* (GAO-08-574T) (Mar. 12, 2008).