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Energy Coal Policy in the 112th Congress:

Objectives, Tools, and Compromises

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If the 111th Congress aimed to push the use of energy coal in the United States quickly down a steep slope, the 112th Congress may provide an opportunity to pick out an alternate descent to the sustainable use of an abundant domestic fuel. The path is strewn with environmental boulders and thickets—anthropogenic climate change, emission of air toxics, disposition of coal combustion residues, and fine particulate and ozone air quality impacts. On the other hand, geopolitical concerns make domestic energy security and an expanded reliance on coal a high priority, while at the same time a weakened global economy counsels against any dramatic shift in energy policy that adversely impacts job creation or productivity.

This article briefly outlines, in two parts, how a divided Congress and Administration might work with—and against—each other in the next two years to navigate these oftentimes conflicting goals. First, the objectives of both Republican and Democratic parties and the legislative tools that a divided Congress will use to work on energy-related issues will be considered. Second, with these tools in mind, this article will consider how the Congress may work to facilitate a transition to a sustainable use of energy coal.

Legislative objectives and tools in a divided Congress

The ascendant Republican presence in the House and Senate will focus on economic growth, deficit reduction, and the growing regulatory state to trim the size and mandates of the federal government. The Administration and smaller Democratic majority in the Senate will seek to preserve their core values—anthropogenic climate change is real, clean technologies will make America stronger,



The next Congress has the power to create a comprehensive, clear, and realistic energy policy.

polluters pay, and science matters in the regulatory process—and protect budgets while avoiding regulatory confrontation.

These objectives will not always be at odds and finding common ground—for example, in the production and use of

more domestic natural gas—will not be impossible. But bipartisanship will come with confrontation, particularly in the use of legislative tools to advance each party's objectives.

Oversight & Investigations. House Republicans in particular will use their oversight and investigation authority to examine the regulatory initiatives of the past two years at the White House, the Environmental Protection Agency, the Department of the Interior, and the Department of Energy. Already the House Energy & Commerce Committee has publicly invited the regulated community to identify the regulations that have the most profound impact on competitiveness and job creation. Democrats in both the House and Senate will seek to blunt the effectiveness of this oversight by returning—through witnesses, reports, and statements—to the message of their core values.

Appropriations. Republicans will use their greatly increased power over the appropriations process to make progress on their “cut-and-grow” strategy. Already, the appropriations process has been used in the context of continuing budget resolutions to press for cuts from President



Where the decisions come down—Congress meets in the United States Capitol in Washington, D.C.

Obama's 2011 and 2012 budgets. And the threat of appropriations-related regulatory cutbacks—particularly to EPA regulatory programs that the GOP find objectionable—is quite real.

Congressional Review Act. The threat of Congressional Review Act elimination of regulatory programs—in addition to outright legislative repeal of those programs—is a very important tool to congressional Republicans. For the almost half

of Senate Democrats up for reelection in 2012, House-driven CRA campaigns must be taken very seriously, especially with respect to unpopular regulatory programs or those that actually do or are perceived as job killers.

The Senate filibuster will remain a critically important tool to Democrats. To a lesser degree, the House Democratic minority and Senate Democratic majority can also support presidential vetoes by denying Republicans the two-thirds vote needed to override a veto. These “supermajority” rules can be used to force compromise on or outright block House Republican initiatives, and will be an important lever for Democrats in preserving their core values against strong Republican cut-and-grow objectives.

Taken together, these powerful legislative tools will cause the Obama Administration to avoid regulatory confrontations where possible, while holding its ground on core value-related programs. Already EPA has slowed its regulatory development of coal combustion residue rules, has decided not to alter several National Ambient Air Quality Standards, is proceeding very carefully in the development of a new utility air toxic rule, and is focused on a more sensible multi-pollutant sectoral based approach to air quality regulations. At the same time—even though Carol Browner has left the White House—EPA has given no ground on its GHG initiatives, with Administrator Jackson defending the agency's regulatory approach against all comers. The Department of the Interior is—as always—in the middle of conflicting statutory and political directives, some pressing for development of domestic

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energy sources, and some providing a powerful brake to that development.

With frequently competing objectives, and powerful legislative and regulatory tools in the hands of both parties, the question is whether there is a pathway forward that can promote the sustainable use of an abundant domestic supply of energy coal.

Support for sustainable use of abundant domestic energy coal

Energy coal will be an indispensable component of domestic electricity production for many more decades to come. Nuclear, natural gas, and renewables will all be a part of generation portfolio diversity, but none of these in the short or medium term will entirely displace coal-fueled electric generation. At the same time, the combustion of coal for electric generation has environmental impacts that should be avoided or minimized. Legislative or regulatory policies that fail to recognize the truth of both these statements are doomed to failure. And a “no-compromises” approach from either side will simply maintain an increasingly unstable status quo in which older, inefficient coal-fueled generation is kept online instead of being replaced, and highly arbitrary “regulation by litigation” becomes the governing public policy.

Congress and the Obama Administration have the opportunity to adopt an “all of the above” approach to generation portfolio diversity, which increases support for nuclear generation, supports the deployment of natural gas-fired electric generation, retains tax-based and regulatory support for renewable energy, and begins a sensible transition from older, inefficient coal-fired generation to the next and future generations of coal-based energy production.

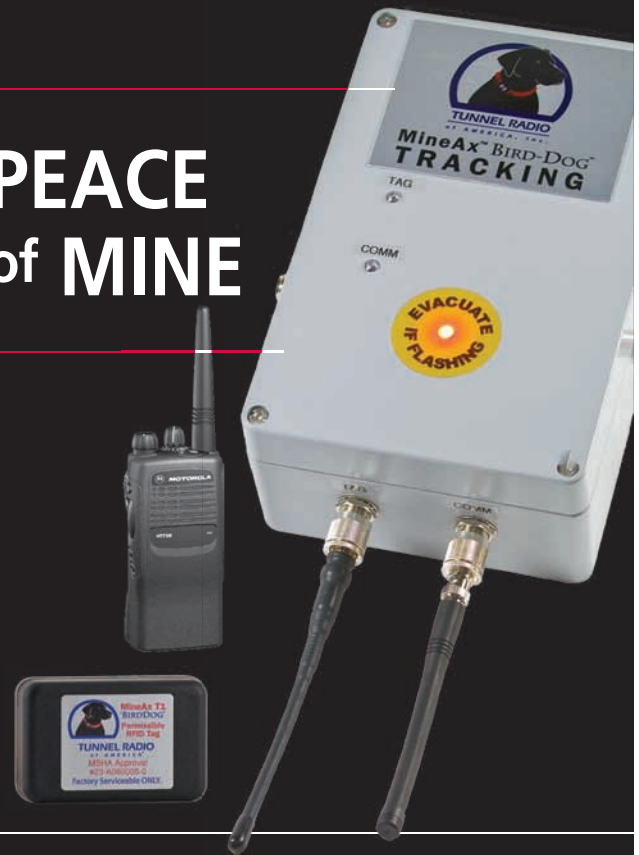
This approach must be comprehensive, clear, and realistic. It must be comprehensive in that addressing climate change related impacts without also addressing traditional air quality impacts will hobble the ability of the energy sector to finance this transition. It must be clear in that merely punting the details to the regulatory process will inevitably entangle this transition in bureaucratic delay, uncertainty, and overregulation. And it must be realistic in that setting unreachable goals and deadlines will eventually lead to “regulation by litigation,” as demonstrated by the Clean Air Act’s air toxics program.

While there are many potential approaches to this coal-based energy transition, one in which coal is not viewed as a fuel but rather as a source of carbon may hold great promise. Technologies that convert coal into other usable forms of energy—syngas, substitute natural gas, coal-to-liquids, methanol, and diesel to name a few—are growing in importance as their costs continue to fall. And though shale-produced natural gas will likely be inexpensive for some time, these coal-based energy sources can play an effective role now as a hedge against future natural gas price increases, and eventually hold their own in the market. Federal and state public policy approaches that support the deployment of these domestic supply-based technologies—principally through funding new energy technologies—while inexorably decommissioning older, inefficient coal-combustion units, can be an effective component of a comprehensive, clear, and realistic energy policy for this next Congress. ♦

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