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Opening Statement of
Chairman Doug Lamborn
Subcommittee on Energy and Mineral Resources
Oversight Hearing on “War on Jobs: Examining the Operations of the Office of Surface Mining
and the Status of the Stream Buffer Zone Rule”
Tuesday, July 23, 2013 at 10:00 am

The people of the United States are desperate for jobs as we now enter our fifth year of the Obama economy. In light of this, the President tomorrow will travel to Illinois to hold a campaign speech calling for more action on jobs. Yet the American people do not need more empty rhetoric, especially when the agencies and Departments of his Administration will continue forward with their war on jobs and job creators.

Some of the hardest hit have been our American coal miners - the coal industry lost 4000 workers between 2011 and 2012. These workers are simply pleading for the Administration to stop the ongoing war on jobs and embrace a real agenda of job creation.

Hence the Committee’s focus on the Obama Administration’s ongoing re-write of a coal production regulation, the 2008 Stream Buffer Zone Rule. This rule was tossed out by the Obama Administration days after taking office and never fully implemented because they simply decided they didn’t like it.

In fact, in the Office of Surface Mining’s June 18, 2010 Federal Register Notice announcing the new “Stream Protection Rule” OSM Director Pizarchik stated: “we had already decided to change the rule following the change of Administrations on January 20, 2009.”

Initially, the Administration tried to illegally vacate the rule, however the court determined that doing so without public notice and comment would violate the Administrative Procedures Act, and said that OSM could only change or revoke the regulations by going through a formal rule making process.

So instead, the Department reached an out-of-court settlement with environmental groups agreeing to an expedited time frame for writing the rule -- it was supposed to be issued by February 28, 2011 – two and a half years ago; a stellar example of the non-transparent practice of Sue and Settle driving the development of public policy.

Unfortunately, this settlement and the decision to discard years of work and create a new rule ran into the Administration’s failure to responsibly manage the process. When the

results of this reckless re-write became public - including projections of massive job losses, reprogramming of State monies to pay for the rule, failure to responsibly consult with states and tribes, and finally the firing of the contractors hired to facilitate the re-write of the rule - the Committee initiated its on-going investigation into the matter.

Let's be clear about the Administration's legacy on this effort. So far the Administration has spent nearly \$9 million taxpayer dollars re-writing a rule that was never implemented. That is an important point because since the 2008 rule was never enacted the Administration actually has no idea if there are any problems with the rule that might need to be addressed with a new rule. Furthermore the ongoing inability to actually conduct rulemaking means the draft of the re-write isn't anticipated until late in 2014.

Maybe that's why in late January 2013 environmental groups announced that they were reopening their lawsuit on the 2008 'Stream Buffer Zone Rule' since the Department has missed all of the agreed upon deadlines.

Since that announcement, the Committee as part of our ongoing investigation sent two letters requesting information about the Department's communications with the plaintiffs and the status of the litigation.

Five months later we received some of the documents requested. However, as I pointed out to Secretary Jewell last week, these documents are not particularly useful due to the extensive redactions. And in an ongoing pattern of deception, somehow the Department forgot to mention that they were filing documents with the court just last Wednesday.

Apparently the Department, including Secretary Jewell, does not understand that this Committee has a constitutional duty to conduct proper oversight.

By not complying with the Committee's requests for information and Subpoenas -- treating them as FOIA requests, which they are not, is the opposite of the "Transparency and Opennessgoals" of this Administration.

Everything associated with the re-write of the 2008 rule has been secretive, reckless and wasteful.

Meanwhile, coal miners are losing jobs; the regulatory uncertainty is stifling investment and leaving our partner states to permit with a 1983 law that needs some refinement. Tomorrow when the President calls on new policies for creating jobs, his first call should be to stop the reckless OSM rulemaking and restore certainty to our miners.