



Attorneys Trace Lineage of Obama's "War on Coal" to Earlier Administrations

by Mark Hand

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Accusing the Obama administration of waging a war on coal may serve as an effective rallying cry in coal-producing states, but the people making the claim either are intentionally misleading their constituents or lack a clear understanding of the history of the Clean Air Act, according to a pair of environmental law experts.

Each of the three major "fronts" in President Barack Obama's so-called war on coal—the Cross-State Air Pollution Rule, the Mercury and Air Toxics Standards and the Clean Power Plan — can trace its lineage to previous presidential administrations, Republican and Democratic, and the dawn of modern environmental policy, Richard Revesz and Jack Lienke write in their new book, [Struggling for Air: Power Plants and the "War on Coal"](#), published by Oxford University Press.

"The basic narrative here is that President Obama took office in 2009 and pretty much immediately set about imposing all sorts of onerous and unprecedented restrictions on the use of coal. And this is very misleading," Lienke, a senior attorney at the Institute for Policy Integrity at the New York University School of Law, said April 5 at a book launch event hosted by Resources for the Future, a nonprofit research organization in Washington, D.C.

Of these three major regulations that opponents have characterized as a war on coal, none was entirely pursued at the discretion of the Obama administration, Revesz and Lienke write in the book. CSAPR was a "necessary" replacement for the George W. Bush administration's Clean Air Interstate Rule, which was struck down by the U.S. Court of Appeals for the District of Columbia Circuit and was left in place only to give the EPA time to develop a substitute, they explain.

The MATS rule was crafted to replace a rule developed under the George W. Bush administration, the Clean Air Mercury Rule, that the D.C. Circuit had vacated. The Obama administration would have had difficulty not issuing its own mercury rule, given the EPA's previous findings that power plants were the largest source of mercury pollution in the country and that such pollution was a threat to public health and the environment, they write.

The EPA's ability to regulate greenhouse gas emissions under the Clean Power Plan was "similarly preordained" by the 2007 Supreme Court decision *Massachusetts v. EPA*, which said the agency must consider greenhouse gas emission as pollutants, according to the attorneys. Once the EPA took steps to regulate greenhouse gas emissions from cars and trucks after the 2007 court decision, the agency did not have a persuasive defense against a lawsuit seeking to compel it to do the same for power plants, they argue.

Observers should be able to recognize that these three rules "weren't really the Obama administration's idea, not entirely," Lienke said in his comments at the Resources for the Future event. "It's understandable that the Obama administration doesn't really want to shout this part from the rooftops. If you're thinking legacy, you want to say, 'I did more to protect the environment than any president in history,' not, 'I took some incremental steps to further regulatory efforts that were set in motion by past presidents.'"

But in the current anti-environmental regulation political environment, incremental steps are far from an insignificant contribution, he added.

The authors also expressed support for efforts to help communities across the U.S. affected by a decline in coal production. "The transition from coal to gas or from coal and gas to renewables also has enormously positive effects in decreasing conventional pollutants. ... Both on the climate change side and on the health side, the net benefits are in the tens of billions of dollars," Revesz said at the book launch event. "This doesn't mean that every group in our society is going to benefit from this rule. And it is definitely the case that coal-mining communities are going to be hurt by it."

Revesz, a professor of law at the New York University School of Law where he directs the Institute for Policy Integrity, described as extremely "cynical" the lack of interest by Republicans in Congress to provide compensation for coal communities. "The president has put forth a program. The Clinton campaign has. The Sanders campaign has. No Republican in Congress. No Republican presidential candidate," he said. "Why don't they do it? The reason they don't do it is because they want to hold these communities hostage. They think that basically by holding these communities hostage, they can defeat the Clean Power Plan and deprive the country of enormous health, environmental and climate change benefits."

In 2015, two U.S. House members reached across the aisle to partner on legislation that would offer various forms of assistance to displaced workers who have lost their jobs in the ailing coal sector. Reps. David McKinley, R-W.Va., and Peter Welch, D-Vt., introduced the Healthy Employee Loss Prevention Act to provide assistance to eligible workers with retraining, job searches and relocations. The bill was referred to the Committee on Education and the Workforce, as well as the Committee on Oversight and Government Reform, but did not get out of either committee.

Republican presidential candidate Donald Trump has vowed to "bring the coal industry back" but has not provided details on how the coal industry might experience a renaissance if he wins the White House.

Revesz pointed to legislation in 2012, introduced by House Republicans, that would have blocked federal regulations from going into effect until the unemployment rate drops to 6% or less. "So basically we would allow the loss of one job hold hostage potentially a large number of lives. So it would be worse to have one unemployed person than potentially thousands of dead people. That was the implication of this kind of legislation," he said.

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