



American Bridge

Trump Policy Brief: Stream Protection Rule

2/16/17

STREAM PROTECTION RULE

President Trump signed a House Joint Resolution repealing the Stream Protection Rule, which was implemented two months earlier by the Obama administration to protect streams from toxic chemicals unearthed by coal mining.

- ✓ The resolution was passed without being referred to the relevant House or Senate committees.
- ✓ The resolution intended to clarify vague language in the 1977 Surface Mining Control And Reclamation Act, which ordered companies not to cause “material damage to the environment” to the extent feasible.
- ✓ The rule was repealed using the Congressional Review Act, which means that no substantially similar act could ever be passed again.
- ✓ Streams located below coal mining sites failed Clean Water Act standards, and turned orange and white due to the presence of toxic chemicals.
- ✓ The ecological impairment of streams was correlated to the human cancer mortality rate in surrounding areas.
- ✓ The rule was expected to protect 6,000 miles in streams and 52,000 acres of forests, primarily in Appalachia.
- ✓ Opponents of the rule donated over \$1 million to the congressional Republicans who introduced the resolution.

President Trump Signed A House Joint Resolution Repealing The Stream Protection Rule

FEBRUARY 2017: TRUMP SIGNED HOUSE JOINT RESOLUTION 38

President Trump Signed House Joint Resolution 38 On February 16, 2017. According to the Bluefield Daily Telegraph, “Area lawmakers joined President Donald Trump for the signing Thursday of H.J. Res. 38, which disapproves the rule submitted by the Department of the Interior known as the Stream Protection Rule, which opponents said adversely impacted the coal industry.” [Bluefield Daily Telegraph, [2/16/17](#)]

HOUSE JOINT RESOLUTION 38 NULLIFIED THE STREAM PROTECTION RULE, WHICH TOOK EFFECT TWO MONTHS PRIOR

House Joint Resolution 38 Nullified The Stream Protection Rule, Which Addressed The “Impacts Of Surface Coal Mining Operations On Surface Water, Groundwater, And The Productivity Of Mining Operation Sites.” According to the Library of Congress, “H.J.Res.38 - Disapproving the rule submitted by the Department of the Interior known as the Stream Protection Rule. [...] This joint resolution nullifies the Stream Protection Rule finalized by the Department of the Interior's Office of Surface Mining Reclamation and Enforcement on December 20, 2016. The rule addresses the impacts of surface coal mining operations on surface water, groundwater, and the productivity of mining operation sites.” [Library of Congress, accessed [2/16/17](#)]

- **The Stream Protection Rule Was Finalized By The Department Of The Interior's Office Of Surface Mining Reclamation And Enforcement On December 20, 2016.** According to the Library of Congress, "H.J.Res.38 - Disapproving the rule submitted by the Department of the Interior known as the Stream Protection Rule. [...] This joint resolution nullifies the Stream Protection Rule finalized by the Department of the Interior's Office of Surface Mining Reclamation and Enforcement on December 20, 2016." [Library of Congress, accessed [2/16/17](#)]

The Resolution Was Passed Without Being Referred To The Relevant House Or Senate Committees

Earthjustice Lobbyist Jenifer Collins Noted That The Repeal Of The Stream Protection Rule Was Passed Without Oversight From House Or Senate Committees. According to Bloomberg, "The Stream Protection Rule was worked on throughout the Obama administration, finally getting published in its waning days. Its repeal, while not unexpected, is a blow to environmentalists who helped shape the regulation and Appalachian communities concerned about the health of their waterways and water supplies. 'To see eight years of work disappear without committee of jurisdiction oversight and just a few hours debate on the House and Senate floor doesn't seem very democratic,' said Jenifer Collins, a lobbyist with the environmental group Earthjustice." [Bloomberg, [2/2/17](#)]

THE STREAM PROTECTION RULE LIMITED THE AMOUNT OF WASTE MINING COMPANIES COULD DUMP INTO STREAMS

The Stream Protection Rule Aimed To Prohibit Mining Practices That Permanently Polluted Streams, Destroyed Drinking Water Sources, And Threatened Forests. According to The New York Times, "The goal of the Interior Department's 'stream protection rule' was to prohibit mining practices that permanently pollute streams, destroy drinking water sources and threaten forests." [New York Times, [2/10/17](#)]

The Rule Was Intended To Clarify Vague Language In The 1977 Surface Mining Control And Reclamation Act. According to Vox, "In early February, the House and Senate voted to repeal the so-called 'stream protection rule' — using a regulation-killing tool known as the Congressional Review Act. On Thursday, President Trump signed the bill, which means the stream protection rule is now dead. Coal companies will have a freer hand in dumping mining debris in streams. [...] In theory, there's a law to mitigate this. The 1977 Surface Mining Control and Reclamation Act says that companies should not cause 'material damage to the environment to the extent that it is technologically and economically feasible.' But that language is awfully vague. And the agency responsible for enforcing this law, the Office of Surface Mining Reclamation and Enforcement (OSMRE), hasn't clarified what this language entails since publishing the 'stream buffer rule' in 1983." [Vox, [2/16/17](#)]

- **The 1977 Surface Mining Control And Reclamation Act Stated That Companies Should Not Cause "Material Damage To The Environment To The Extent That It Is Technologically And Economically Feasible."** According to Vox, "In theory, there's a law to mitigate this. The 1977 Surface Mining Control and Reclamation Act says that companies should not cause 'material damage to the environment to the extent that it is technologically and economically feasible.' But that language is awfully vague." [Vox, [2/16/17](#)]

The Rule Required Mining Companies To Monitor Water Quality And Protect Local Communities From Mining Techniques Like Mountain Top Removal. According to Bloomberg, "The Stream Protection Rule was worked on throughout the Obama administration, finally getting published in its waning days. [...] The Interior Department rule requires mining companies such as Arch Coal Inc. and Peabody

Energy Corp. to monitor water quality and to take other safeguards to protect surrounding communities from the impacts of mountain top removal and other mining techniques.” [Bloomberg, [2/2/17](#)]

The Rule Limited The Amount Of Mining Waste That Could Be Dumped In Streams. According to Reuters, “The battered U.S. coal industry rejoiced after the Senate voted on Thursday to repeal a rule that limited companies from dumping mining waste in streams, saying the move could halt the sector's decline. The Senate, approving a resolution passed by the House of Representatives on Wednesday, overturned the Stream Protection Rule as part of a broader move by Republicans to reverse what they see as overregulation by former President Barack Obama's administration on energy development.” [Reuters, [2/2/17](#)]

The Rule Would Have Helped Affected Communities Take Legal Action Against Coal Companies That Polluted Under The Clean Water Act. According to The New York Times, “The goal of the Interior Department's ‘stream protection rule’ was to prohibit mining practices that permanently pollute streams, destroy drinking water sources and threaten forests. It requires coal companies to compile and provide information about contamination, so affected communities could take legal action against polluters under the Clean Water Act.” [New York Times, [2/10/17](#)]

PRESIDENT TRUMP BECAME THE FIRST PRESIDENT IN 16 YEARS TO SIGN A REGULATORY REPEAL RESOLUTION

Trump Became The First President In 16 Years To Sign A Regulatory Repeal Resolution When He Signed The Repeal Of The Stream Protection Rule. According to Bloomberg, “Republicans in Washington took their biggest step yet to reverse Barack Obama’s regulatory legacy, dusting off a little-used congressional tool and voting to kill a rule aimed at protecting streams from the effects of coal mining. With the Senate following the House in voting for the measure, President Donald Trump is now poised to be the first president in 16 years to sign a regulatory repeal resolution. [...] Trump has characterized the so-called Stream Protection Rule as ‘excessive,’ while Republican lawmakers echo mining industry warnings that the edict could strand billions of dollars of coal in the ground.” [Bloomberg, [2/2/17](#)]

The Resolution Overturned The Stream Protection Rule Using The Congressional Review Act, Which Meant That No Substantially Similar Rule Could Ever Be Passed Again

The Stream Protection Rule Was Only The Second Rule Overturned Using The Congressional Review Act. According to Bloomberg, “Republicans in Washington took their biggest step yet to reverse Barack Obama’s regulatory legacy, dusting off a little-used congressional tool and voting to kill a rule aimed at protecting streams from the effects of coal mining. With the Senate following the House in voting for the measure, President Donald Trump is now poised to be the first president in 16 years to sign a regulatory repeal resolution. It will be only the second rule overturned by the Congressional Review Act -- and for Republicans it’s just a start..” [Bloomberg, [2/2/17](#)]

- **The Congressional Review Act Forbids The Passage Of Any Rule “Substantially The Same” As A Repealed Rule.** According to Bloomberg BNA, “One route would involve a future OSMRE testing the language in the CRA that forbids any administration from ever again passing another rule that is ‘substantially the same.’ That clause has never been tested—in large part because the CRA has only been used once before—so it’s not clear what does and what doesn’t count as substantially the same.” [Bloomberg BNA, [2/14/17](#)]

Trump Called The Stream Protection Rule “Excessive” During His 2016 Presidential Campaign

September 2016: Trump Called The Stream Protection Rule “Excessive.” According to the transcript of a speech given by presidential candidate Donald Trump published by The Hill, “I will rescind the coal mining lease moratorium, the excessive Interior Department stream rule, and conduct a top-down review of all anti-coal regulations issued by the Obama Administration.” [The Hill, [9/22/16](#)]

Repealing The Stream Protection Rule Threatened The Lives Of Appalachian Residents By Exposing Them To Harmful Pollutants

BLOOMBERG: STREAM PROTECTION ACT REPEAL WAS A “BLOW” TO APPALACHIAN COMMUNITIES

Bloomberg Characterized The Repeal Of The Stream Protection Rule As A “Blow” To Appalachian Communities “Concerned About The Health Of Their Waterways And Water Supplies.” According to Bloomberg, “The Stream Protection Rule was worked on throughout the Obama administration, finally getting published in its waning days. Its repeal, while not unexpected, is a blow to environmentalists who helped shape the regulation and Appalachian communities concerned about the health of their waterways and water supplies.” [Bloomberg, [2/2/17](#)]

STREAMS LOCATED BELOW COAL MINING SITES FAILED TO MEET HEALTH STANDARDS, AND TURNED STRANGE COLORS

An EPA Biologist Found That More Than 90 Percent Of A Sampling Of Appalachian Streams Located Below Mining Fill Sites Did Not Meet Clean Water Act Standards, While All Sampled Streams In Nonmined Streams Met Standards. According to an article written by David C. Holzman for Environmental Health Perspectives, “Health studies that have been conducted in Appalachia have revealed direct and indirect links to MTR mining. For starters, Gregory J. Pond, an environmental biologist with EPA Region 3 in Wheeling, showed that more than 90% of 27 Appalachian streams below valley fill sites were impaired as per Clean Water Act standards, while none of 10 streams sampled in nonmined valleys were impaired.” [David C. Holzman – Environmental Health Perspectives, [11/1/11](#)]

According To Sierra Club Ohio Chapter Director Jen Miller, Streams In Ohio Ran Orange And White As A Result Of Pollution From Toxins. According to The Post (Athens), “The Stream Protection Rule, in addition to regulating mining companies' dumping of waste, would require streams and mined areas to be returned to pre-development conditions. There would also be more monitoring of streams, and companies found polluting would be held financially accountable. ‘I think the communities in southeast Ohio are no stranger to the impact that (mining) has on the region,’ Jen Miller, director of the Ohio chapter of environmental group Sierra Club, said. ‘(There are) streams that run orange and run white because they’re so full of dangerous toxins.’” [The Post, [2/15/17](#)]

- **Miller Said That Coal Mining Deposited Mercury, Arsenic, And Other Chemicals Into Waterways.** According to The Post (Athens), “Communities near coal fields and coal mines are likely to continue to experience heavy metal pollution,’ Miller said. ‘Coal mining will spew mercury, arsenic and other chemicals into waterways, putting families near those waterways at risk.’” [The Post, [2/15/17](#)]

MOUNTAINTOP REMOVAL MINING DESTROYED THOUSANDS OF MILES OF STREAMS IN CENTRAL APPALACHIA

As Of 2016, Mountaintop Removal Mining Destroyed Approximately 2,000 Miles Of Streams Across Central Appalachia. According to testimony by Appalachian Voices director of programs Matt Wasson before the Senate Committee on Environment and Public Works, “Mountaintop removal is responsible for the destruction of over 500 mountains and approximately 2000 miles of stream channels across Central Appalachia.” [Senate Committee on Environment and Public Works, [2/3/16](#)]

THE ECOLOGICAL IMPAIRMENT OF STREAMS BELOW MINING SITES CORRELATED TO HIGHER HUMAN CANCER MORTALITY RATES

The Ecological Impairment Of Streams Was Found To Correlate To Human Cancer Mortality Rates In Surrounding Areas. According to the abstract of an article written by U.S. Geological Survey research fish biologist Nathaniel P. Hitt and Indiana University School of Public Health applied health science professor Michael Hendryx for EcoHealth, “In a novel investigation, Hitt and Hendryx found that ecological impairment of streams correlated with human cancer mortality rates in surrounding areas. First they calculated a ‘stream condition index,’ which reflects the presence of a healthy, well-functioning ecosystem. In this case they used metrics including the sum of taxonomic groups present, the sum of individuals from three specific taxa, and percentages from various other taxa. The cancers that rose with the declining stream condition index measure of impairment included respiratory, breast, and urinary cancers. Poverty, smoking, and urbanization, which predict cancer mortality, failed to account for the observed correlations.” [Nathaniel P. Hitt and Michael Hendryx – EcoHealth, [August 2010](#)]

THE STREAM PROTECTION RULE WAS EXPECTED TO PROTECT 6,000 MILES OF STREAMS AND 52,000 ACRES OF FORESTS, PRIMARILY IN APPALACHIA

According To The Interior Department, The Rule Protected 6,000 Miles Of Streams And 52,000 Acres Of Forests, Primarily In The Appalachia Region. According to Bloomberg, “The Stream Protection Rule was worked on throughout the Obama administration, finally getting published in its waning days. [...] The rule, which updates regulations issued in 1983, would protect 6,000 miles of streams and 52,000 acres of forests, primarily in Appalachia, according to the Interior Department.” [Bloomberg, [2/2/17](#)]

The Rule Was Expected To Have A Positive Economic Impact

THE RULE WAS EXPECTED TO CREATE 280 JOBS AND GENERATE \$57 MILLION IN BENEFITS OF REDUCED CARBON EMISSIONS ANNUALLY

The Stream Protection Rule Was Expected To Create 280 Jobs, And Generate \$57 Million In Benefits From Reduced Carbon Emissions Per Year. According to the Center for American Progress, “The Stream Protection Rule: Issued by the U.S. Department of the Interior to better protect communities downstream of coal mining operations whose drinking water is at-risk from toxic pollutants. Benefits: Will protect or restore 22 miles of intermittent and perennial streams per year; will yield water quality improvements in 263 miles of streams per year downstream of mine sites; will result in an estimated gain of 280 jobs; \$57 million in benefits per year from reduced carbon emissions.” [Center for American Progress, [2/14/17](#)]

The Coal Mining Industry Bankrolled Republicans Who Sponsored Legislation Repealing The Rule

THE COAL MINING INDUSTRY GAVE CONGRESSIONAL REPUBLICANS OVER \$1 MILLION TO DEFEAT THE STREAM PROTECTION RULE

Opponents Of The Stream Protection Rule Donated Over \$1.2 Million To The Members Of Congress Who Sponsored Legislation Repealing The Resolution. According to the Center for American Progress, “According to data available at MapLight.org, mining industry opponents of the rule have donated \$1,200,781 to members of Congress sponsoring the resolution to repeal the rule.” [Center for American Progress, [2/14/17](#)]

- **Republican Lawmakers And The Mining Industry Claimed That The Stream Protection Rule Would Prevent Billions Of Dollars In Coal Mining.** According to Bloomberg, “Trump has characterized the so-called Stream Protection Rule as ‘excessive,’ while Republican lawmakers echo mining industry warnings that the edict could strand billions of dollars of coal in the ground.” [Bloomberg, [2/2/17](#)]

Peabody Energy Spokesperson Stephanie Weiler Said The Company Was “Pleased” By The Repeal Of The Stream Protection Rule. According to Reuters, “The Senate, approving a resolution passed by the House of Representatives on Wednesday, overturned the Stream Protection Rule as part of a broader move by Republicans to reverse what they see as overregulation by former President Barack Obama's administration on energy development. [...] Stephanie Weiler, a spokeswoman at Peabody Energy said the company was ‘pleased’ by the elimination of the rule and supported ‘any actions aimed at reining in unnecessary regulations that don't improve the environment yet harm the economic and jobs landscape.’” [Reuters, [2/2/17](#)]

THE STREAM PROTECTION RULE WOULD HAVE COST THE COAL MINING INDUSTRY 0.1 PERCENT OR LESS OF THEIR TOTAL REVENUE, AND WOULD NOT HAVE UNDERMINED ENERGY SUPPLY

According To The Interior Department, The Stream Protection Rule Would Not Undermine The Economy Or Energy Supply. According to Reuters, “The Senate, approving a resolution passed by the House of Representatives on Wednesday, overturned the Stream Protection Rule as part of a broader move by Republicans to reverse what they see as overregulation by former President Barack Obama's administration on energy development. [...] The coal waste rule was intended to protect 6,000 miles (9,700 km) of streams and large areas of forests over the next two decades, the Interior Department said when it issued the rule in December. It argued the rule would protect drinking water without undermining the economy or energy supply.” [Reuters, [2/2/17](#)]

The Compliance Costs Of The Stream Protection Rule Would Have Amounted To 0.1 Percent Or Less Of Coal Mining Industry Revenues. According to the Center for American Progress, “The Stream Protection Rule: Issued by the U.S. Department of the Interior to better protect communities downstream of coal mining operations whose drinking water is at-risk from toxic pollutants. [...] Costs: Industry compliance costs would average \$81 million per year, which is 0.1 percent or less of annual industry revenues; could result in an estimated 124 jobs lost.” [Center for American Progress, [2/14/17](#)]