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**THE REGULATORY AGENDA FOR COAL
Hal Quinn
President & CEO
National Mining Association**

Good morning.

Thank you for this invitation. It's great to be here with you in West Virginia.

As different as Washington may be from West Virginia, there is one thing today they share. The dominant issue here -- as in Washington and across the country for that matter -- is the state of the economy ... the lingering effects of recession on businesses, households and jobs.

Guess the author of the following quote:

"I don't think the unemployment rate will be coming down significantly anytime in the near future."

That was Chairman of the President's Council of Economic Advisers', Austan Goolsbee, assessment last year.

The weak recovery and prolonged unemployment is casting a shadow over the upcoming elections -- just as it has over legislative issues in Congress. If the last election was about hope, this one is about fear.

The result is what I would call a recessionary political environment. Opinion polls show this anxiety is the dominant issue among all voters across the land by a considerable margin.

As a result, the recession's impact on the political landscape may be as dramatic and far-reaching as it has been on the economy.

The Political Landscape

Washington is now deadlocked over whether to stimulate the economy further in an attempt to revive a jobs market showing no signs of recovery - - or heed a chorus calling for fiscal restraint to stop government spending from adding still more to a \$1.4 trillion deficit.

The midterm elections are now within sight -- and the results are likely to be determined by how well voters believe the recovery has been managed. In Washington the on-going debate is about when the economy will fully recover ... and how many seats will change hands in November. It's probably too soon to say—but it is appearing more likely—that the changes will exceed the normal losses expected from the party in power in mid-term elections.

But as the voluntary and involuntary retirements of many current elected officials has made plain, any incumbent – Democrat or Republican – that

runs on his or her record risks being run over.

Adding to the uncertainty for business is a menacing regulatory environment: A score of federal agencies are preparing new rules for major industries ...

- The financial sector awaits an estimated 533 separate rules that will implement the Frank-Dodd financial reform legislation
- The health care industry is facing new rules governing insurance, physicians' fees and expanded coverage ... and
- The manufacturing and power sectors face new regulation of GHG emissions ... tougher clean air standards for a host of conventional emissions ... and a coal ash rule.
- EPA alone has 29 active rulemakings underway, the Labor Department about 100. Some days I think we're the target of all of them.
- Our own industry faces a broad array of regulations that some have likened to a concerted war on coal. I'll discuss these more fully in a minute.

With this backdrop it's obvious why some humility is required when describing the outlook for any industry. This is an especially hazardous assignment for so-called experts from Washington. With the lowest jobless rate of any of the nation's big cities, Washington isn't the best vantage point for feeling the rest of the country's pain.

So humility is called for. Luckily, as a married man with grown children, humility comes naturally to me.

Let's start by taking a closer look at the upcoming elections.

Mid-term Elections

The midterm elections now just one month away and voters are uneasy and unhappy.

- Twice as many voters say the country is on the wrong track (61.2%) than on the right track (31.7%) – RealClearPolitics.

Not surprisingly then, anti-incumbent sentiment is at all time high. ABC-Washington Post poll last month found less than a third of voters are inclined to support their incumbent representative. This is even lower than in '94, when voters swept out Democrats after 40 years in the majority. Congress is as unpopular now as it has ever been—with a 73 percent disapproval rating in a recent WSJ.NBC News Poll.

But Republicans fare no better than Democrats. In August Republicans received their lowest ratings since 2000. More than half of voters who say they want to switch control to Republicans do so because they dislike incumbent Democrats and the president's policies – not because they support Republicans. Only slightly more than a third support Republican policies.

The president's personal popularity has been mostly intact until recent weeks when it's declined along with support for his economic policies. Last month for the first time since he took office, more Americans disapproved of his performance than approved.

Independent voters -- who constitute almost half the voting population -- are turning sharply away from the president they helped to elect. They fear growing federal power and federal deficits -- and increasingly perceive the president to be responsible for both.

Mid-term elections often turn on which party does a better job of turning out its base. Polls show the Republican base ... at least now ... is more motivated to vote in November. And the Tea Party seems to have marshaled a lot of enthusiasm in the primaries, although with mixed results.

But the primaries don't always present a reliable forecast of what we can expect in November. That's because primary voters represent a narrow slice of the broad electorate. They are highly partisan -- and tend to support candidates as angry as they are. Because primary voters are more partisan, candidates they select will be more partisan -- and therefore less appealing to the broad electorate they will face in the fall.

Also, while advantages of incumbency may be less valuable this year, they exist nevertheless. Even in 1994, a supposedly watershed election, fully 90% of representatives and 92% of senators up for election kept their jobs.

That said, Democrats clearly have much to be nervous about.

- Republicans lead by 51% to 41% among registered voters in Gallup weekly tracking of 2010 congressional voting preferences—the largest GOP lead in mid-term elections since Gallup began tracking party preferences in 1942. However that gap appears to have closed to three points among likely voters according to a WSJ/NBC poll released this week.

- Of the 80 House seats listed as up for grabs by the Cook Political Report, Republicans hold just ten -- leaving Democrats to defend the lion's share against the lions.
- Voters trust Rs over Ds to address 9 of 10 major issues – preferring Ds only on environmental issues.

Pundits are now asking if Democrat losses will be deeper than they were in '94. I would note that in '94 the jobless rate was 5.6 percent. Today it's 9.6 percent.

You can see how the political environment is very unsettled. How it shakes out could possibly have a more decisive impact on West Virginia's coal community than the economic environment.

Outlook for Coal Demand

For one thing, when the economy recovers – so will the demand for energy.

Already we have seen coal demand from Asia boost the market for met coal as the global steel industry emerges from a brief slump. China alone consumes more steel than the U.S., Japan and Europe combined. Demand for steam coal will follow.

- Here in the U.S., the Energy Information Agency estimates coal consumption will grow by more than 30 percent by 2035.
- By then consumers are expected to need almost a third more power than they do today.

- But the bigger story for coal is in the developing world. EIA forecasts that in 15 years the global demand for coal will jump 90 percent.

By 2035, China, the world's largest coal producing and consuming country will more than double its current coal consumption. India will not be far behind.

This remarkable increase in coal consumption is explained by the voracious appetite for energy in the developing world, especially in Asia. There demand is expected to increase by 50 percent by 2035.

Behind this energy growth is a related phenomenon: the startling increase in global urbanization. Today, just 100 cities, many in the developing world, account for most of the world's population and a third of its economy.

- In 15 years, China alone will have 219 cities of more than 1 million residents. All need steel and electric power – and coal provides both.

Put simply, the world, including the U.S., needs much more of what we produce. There is little question about that.

The Regulatory Challenge

The question is whether policymakers will allow us to produce it. Or put another way, will policymakers allow enough time for the technological progress we see in emissions controls and mine safety to develop? Are we facing a collision with difficult new standards now under discussion before the technology is available? In short, will a punitive regulatory climate stifle innovation and productivity in our industry?

The answers may be first known here in Appalachia. From emission controls on greenhouse gases to mine safety rules, coal mining in Appalachia will be the subject ... if not the target ... of new regulations. As divided government and partisan gridlock block legislation, regulators will continue to pose the greatest challenge for coal mining and the communities it supports.

In fact, regulations may be the only tool for our detractors to enact their agenda.

Let me give you a brief tour of these regulatory challenges and where we stand today in our efforts to meet them.

Climate Change – Congress failed to pass cap and trade. This outcome was largely the result of bipartisan opposition to the disproportionate costs this policy would impose on coal producing states like this one and coal consuming states that enjoy the lowest energy costs.

Higher electricity costs – and substantial lost employment – will be the inevitable result of capping emissions -- especially if emissions are capped before control technology is commercially available to utility companies.

Getting the technology right will be crucial – not just for the coal industry but for the world economy.

- The International Energy Agency asserts that stabilizing global climate change will be 70 percent more costly without CCS technology.

In any event, the expected results of midterm elections makes it unlikely Congress will pass cap and trade legislation anytime soon. In the meantime we will face climate policies served in slices through various proxies.

The spotlight now falls on EPA, which will use the Clean Air Act to regulate greenhouse gases from power plants and businesses. EPA's GHG policies will have profound effects upon our entire economy. Rep. John Dingell (D-MI), who has presided over the enactment and implementation of the Clean Air Act, has called the prospect of EPA regulation of GHGs "a glorious mess."

Sen. Rockefeller has been promised a vote on his resolution to halt EPA's regulatory approach for two years. The president has promised a veto if it passes.

Expect protracted litigation to result from EPA's regulation of greenhouse gases. NMA has several legal challenges, as have other businesses and states.

Clean Air Standards - Climate change regulations may get all the headlines. But revised standards for conventional air emissions will pose a more immediate threat to coal-based power plants.

EPA has proposed to cut SO₂ emissions by 70 percent from their 2005 level and cut NO_x emissions in half. The agency is also preparing a rule to curb mercury emissions from power plants.

These clean air standards are expected to force many older, smaller coal-based power plants to shut down. While the impact on the economy is unknown, their cumulative impact on coal is expected to be substantial.

With perhaps 15-20 percent of the current coal fleet capacity at risk of becoming uneconomic under these standards ...

- Annual coal consumption could decline by more than 150 million tons, and
- Direct job losses in coal, utility and rail industries could total 50,000.

There are additional concerns. Will state agencies feeling budget cuts be able to handle the coming permit load? Will new clean air regulations impair the reliability of our power system, as some observers predict?

Mine Safety – The UBB tragedy has rekindled support in Congress for once again changing our federal mine safety laws. But in advance of the investigation’s findings, political expediency may already be getting ahead of mine safety.

The House held hearings this summer and the Committee on Education and Labor reported a bill. But the House hasn’t yet voted. The Senate is considering its offering. The proposals to date lean toward granting more powers to MSHA – while the legislative hearings revealed an agency with ample yet unexercised authorities.

NMA agrees the citation backlog should be reduced ... the POV process reformed. No one’s interest is well served by the status quo. We favor MSHA’s attempt to restore inspection and assessment conferences to help bring this about.

But overall, the bills to date do not address fundamental impediments for improving mine safety. Rather than rush to pass legislation, we proposed an

assessment of MSHA's implementation of the existing law. We need to better understand

- the correlation, if any, between MSHA's enforcement practices and injury rates;
- the role of behavioral factors in safety performance
- And we need to attain clarity, consistency and credibility in the applications of safety laws and regulations.

Perspective is hardest to achieve after a mine tragedy, but that's often when perspective is needed most. Recall that 2008 and 2009 were two successive years of record mine safety in America. More than 86 percent of our mines operated in 2009 without a lost time accident.

In view of this record, we don't believe wholesale changes in mine safety laws are merited. MSHA already has authorities to address unsafe practices and shut down unsafe operations– which raise questions about the need for the additional ones being advanced.

That said, our voluntary work to improve mine safety technologies continues. Examples are:

- Proximity detection on continuous miners
- Wireless communications monitoring systems
- Personal dust monitors

Last month the on-going collaborative research partnership with NIOSH was recognized by the Secretary of Health and Human Services. I am proud to

recognize NMA's Senior Vice President Bruce Watzman who was a participant in that work in helping to develop new personal dust monitors.

Our goal remains zero fatalities. This goal is more likely to be reached by building a culture of safety innovation – for better technology, training and awareness – than a culture of regulation with its emphasis on more punitive measures.

Coal Mine Permits – Coal mining in this region faces a serious threat from EPA's new policy for reviewing mining permits.

In effect, a moratorium on new mining has resulted from arbitrary guidelines EPA has imposed on more than 200 pending permits last year. The EPA Administrator herself acknowledges "no or very few" valley fill permits will be approved under these guidelines.

NMA believes these guidelines are both misguided and unlawful. The relevant science does not justify the new water quality criteria being used by EPA and the Corps of Engineers.

There is no scientific or statutory basis for the numerical standards that EPA is now foisting on states. Nor is EPA justified in usurping authorities that Congress has reserved for the states in reviewing valley fill permits.

- At a time when the Director of National Economic Council, Lawrence Summers, calculates that 1 in 5 American men between the ages of 25 and 54 are either unemployed or underemployed – and when a greater proportion of the unemployed have been jobless longer than at any

time since the Great Depression – the potential impact of EPA’s moratorium on the region’s employment is particularly disturbing.

In the simplest terms—permits delayed are jobs denied. This is why we sued EPA in July – challenging their new process and standards. Last week we followed with a request for a preliminary injunction against EPA and the Corps.

Coal Ash – EPA is expected to finalize rules that may regulate large portions of coal ash as a hazardous substance. This poses a potential threat to the multi-billion-dollar beneficial reuse industry.

- Last year the U.S. generated 131 million tons of coal ash and reused 43 percent of it.

An OMB analysis of the rule showed that EPA minimized the rule’s economic impact by assigning virtually no cost to the loss of the reuse market for coal ash byproducts.

The angry reaction from the reuse industry prompted equally strong -- and bipartisan -- opposition from House members last month.

The Regulatory Paradox

What is plain from all this is a deliberate effort to constrain the production and use of coal and, at the same time, deny businesses and households the benefits of low cost and reliable electricity. What is not plain is the cumulative impact these varied rules will have on coal mines, coal dependent communities and the coal supply chain. The regulators are not

keeping count ... but our experience suggests that the costs will be substantial.

Here is the paradox of government regulation. Agencies are responsible for assessing the economic impact only of each individual rule under their jurisdiction – not the cumulative impact of the multitude of rules that each and their sister agencies churn out.

Even when this analysis is done conscientiously, it's of limited use. What the real world wants to know is this: what is the economic burden on specific sectors of the economy that are subject to multiple rulemakings?

Looked at separately as each agency does, the regulatory cost of each rule may seem reasonable – some rules may actually be reasonable. But the coal community doesn't bear these costs separately – it bears them cumulatively. This explains why costs that may appear reasonable to OSM, EPA, MSHA and the Corps are nevertheless intolerable to a company subjected to them all.

Regulators in Washington don't look at their costs from this perspective. But we do. And when we do, the picture can be alarming.

- For example, this summer the minority staff of the Senate Environment and Public Works Committee reported that EPA's moratorium on coal permits alone could cost Appalachia up to 17,000 jobs and bankrupt 81 small businesses.

War on Coal

Figures like these lead some to conclude there is a war being waged on coal. Over time, this has become a prevalent view. Whether or not you subscribe to the view that the administration is waging war on us, there should be no doubt that some of its supporters are. Clearly we have our enemies.

But we have even more friends. And a confident industry—one whose interests are aligned with the public interest--should dwell on its friends and nurture their support.

We can count on 30,000 employees in Appalachia whose jobs depend on coal ... and many thousands more who rely on the coal industry.

Here in West Virginia alone ...

- The coal industry supports jobs for more than 84,000 men and women. Many of them, along with others from the Appalachia, gathered in Washington on Sept. 15 to remind Congress where America's affordable energy comes from.
- The \$4.3 billion in wages from these high-wage jobs is the lifeblood of scores of communities and thousands of local businesses
- The \$15 billion in economic activity generated by the coal industry is the source of revenue that finances local and state governments and schools, and
- The electricity it generates provides affordable power so that West Virginia businesses can compete globally.

The time is now to remind our government of these facts.

Political Engagement (MTV)

A month from now we will have an election. To those who feel besieged by coal's critics ... or feel thankful for its friends ... I urge you to vote accordingly.

If you, your colleagues or friends need information about registering to vote or what the candidates are saying about coal, visit NMA's "Mine the Vote" website (www.minethevote.com). You don't have to be a member, only a curious voter. We don't tell you who to vote for, only how you can be ready to vote.

So my concluding message is: get politically educated ... get politically active ... and get to the voting booth in November.

With a \$1.4 trillion federal deficit, we're paying a lot for our government. Let's make it work for us.

Thanks for inviting me.