Energy, Climate Change and the 111th Congress

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Who We Are and What We Do

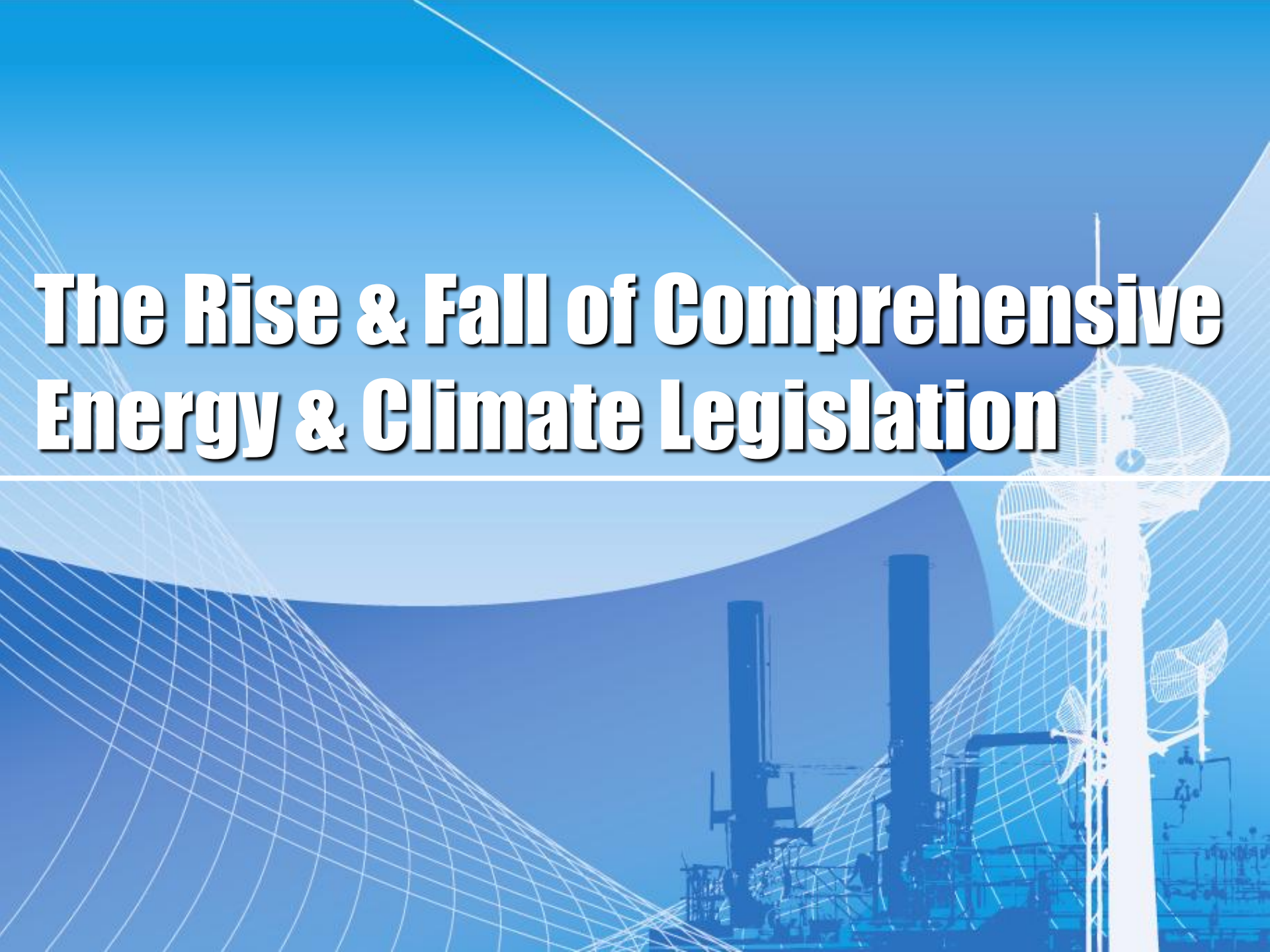
- **The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses of every size, sector and region. The Chamber's membership includes hundreds of associations, thousands of local chambers, and 106 American Chambers of Commerce in 94 countries. 96% of our membership consists of small businesses.**
- **Our core mission is to fight for business and free enterprise before Congress, the White House, regulatory agencies, the courts, the court of public opinion, and governments around the world.**
- **The Chamber's professional staff includes 300 of the nation's top policy experts, lobbyists, lawyers, and communicators. The Washington staff is supported by eight regional offices around the country; offices in New York and Brussels; an on-the-ground presence in China; and a network of grassroots business activists.**

The Chamber's Position on Climate Change

The Chamber supports efforts by the Congress to address global climate change. However, such climate legislation must:

1. **Preserve American jobs and the competitiveness of U.S. industry;**
2. **Provide an international solution that includes developing nations;**
3. **Promote accelerated development and deployment of greenhouse gas reduction technology;**
4. **Reduce barriers to the development of climate-friendly energy sources; and**
5. **Promote energy conservation and efficiency.**

The Rise & Fall of Comprehensive Energy & Climate Legislation



One Year Ago: House Passes ACES, 219-212

Fast-Forward to Today . . . What Went Wrong?

POLITICO

POLITICO 44 | CLICK | CONGRESS | 2010 | ARENA | LOBBYING | POLICY | COMM

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Climate bill blame game begins

By DARREN SAMUELSOHN | 7/22/10 7:39 PM EDT

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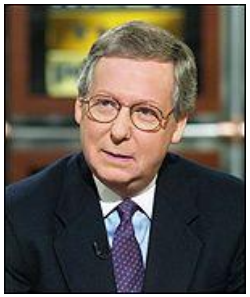
Senate Majority Leader Harry Reid announced

Eighteen months ago, Barack Obama took office pledging to deal with a "planet in peril."

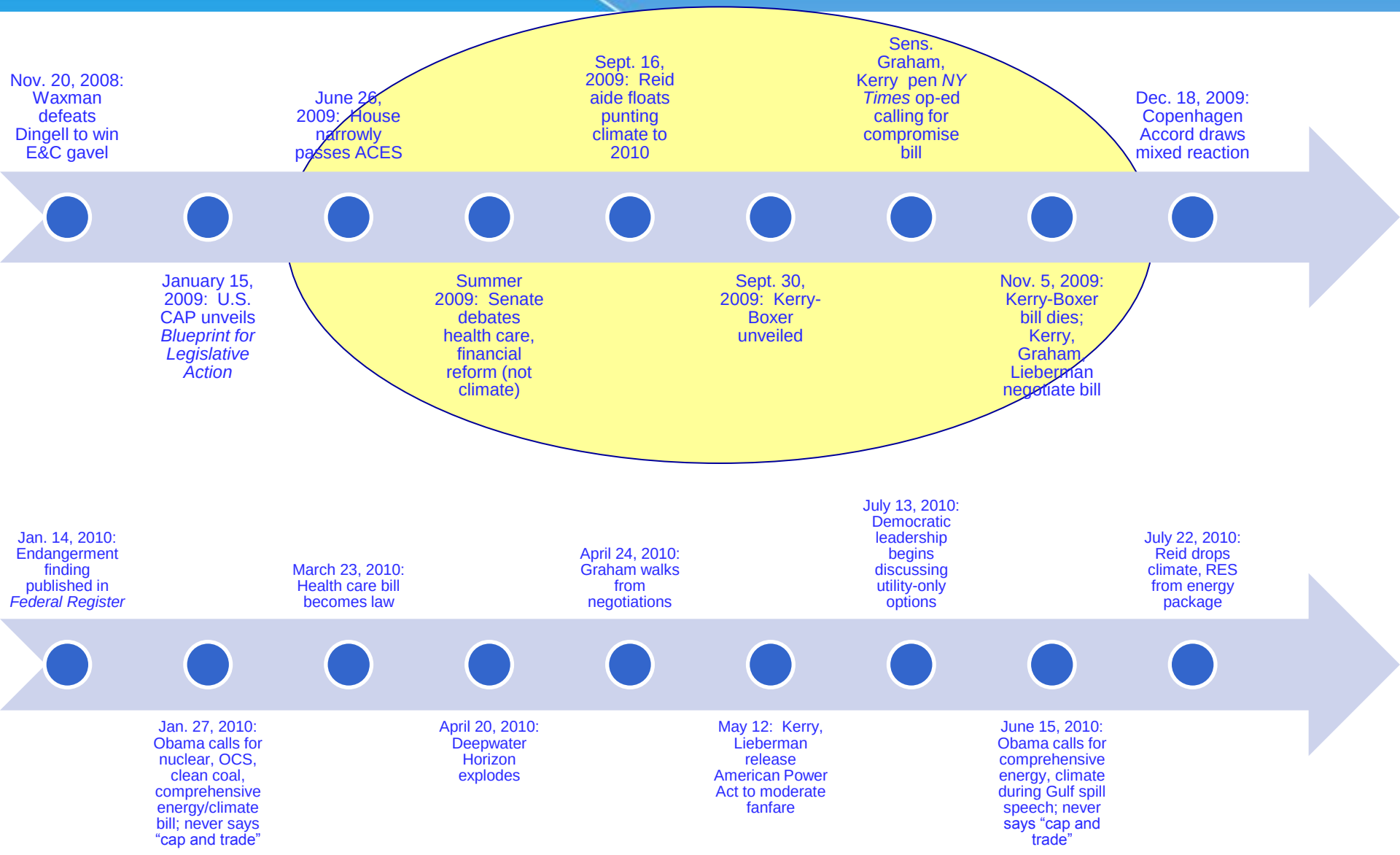
His party held big majorities in Congress, and the House answered by passing a tough cap-and-trade bill. A massive climate conference in Copenhagen, with Obama at the center of the action, focused the world on the need to address global warming.

Then came the nation's worst-ever environmental disaster, an **oil spill** in the Gulf that put momentum behind environmentalists and scarred the image of big,

Depends who you ask...



Timeline of Events



The Legislation: Waxman-Markey and Kerry-Lieberman

Waxman-Markey

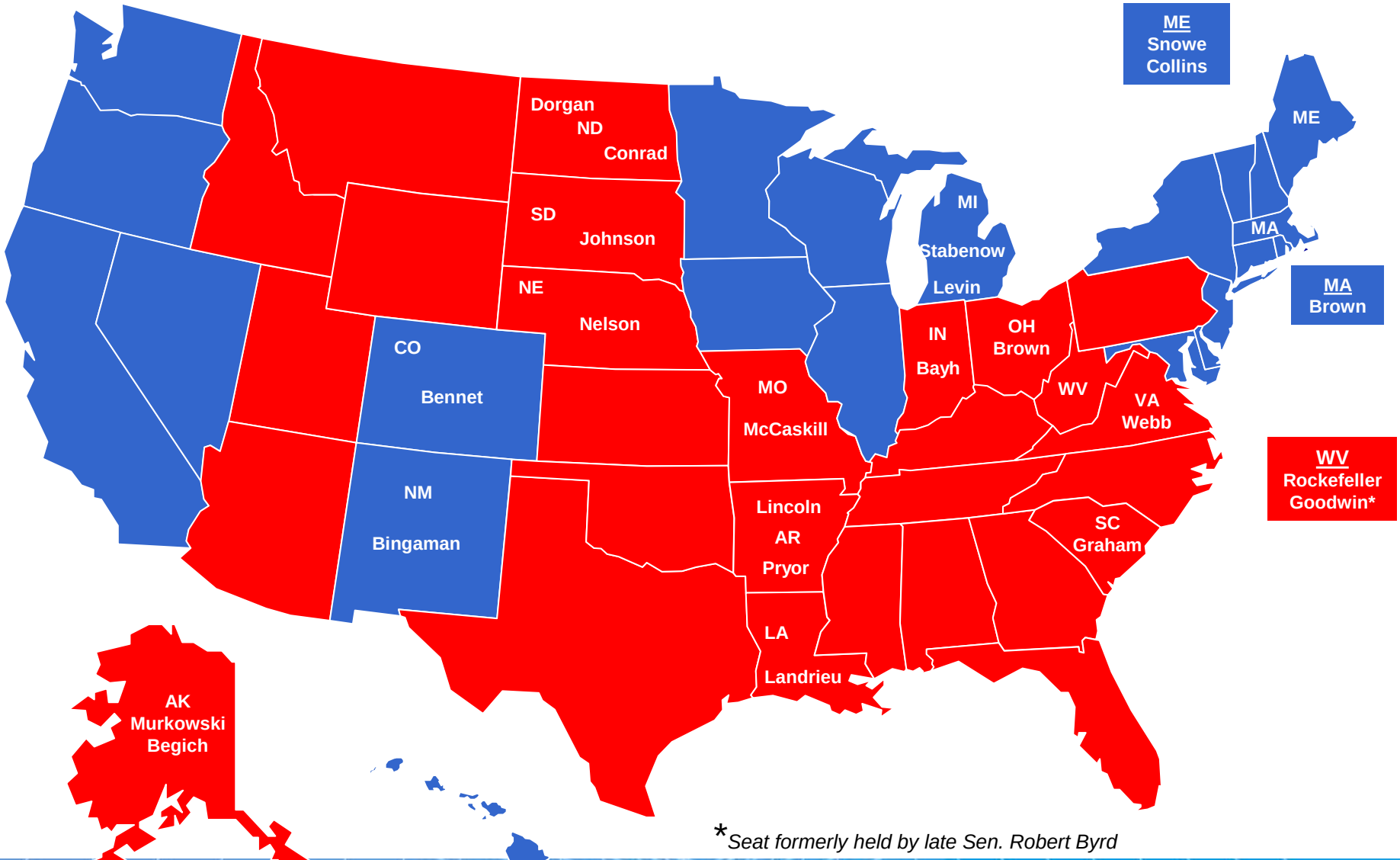
- H.R. 2454, the "American Clean Energy Security Act of 2009"
- ***Cap-and-trade*** program intended to cap domestic GHG emissions to 2005 levels and reduce 17 percent by 2020, 42 percent by 2030, and 83 percent by 2050
  - Covers the entire electric utility sector; for everyone else, threshold is 25,000 tons per year of CO2-equivalent
- ***Renewable electricity standard***: 20 percent by 2020; allows 15% renewables, 5% efficiency; governor can reduce to 12% with 8% from energy efficiency if state can't meet mandate
- Specialized ***NSPS for coal***
- ***Energy efficiency mandates*** and building standards

Kerry-Lieberman

- The "American Power Act"
- Overall targets of 17 percent reduction from 2005 levels by 2020, 42 percent by 2030, and 83 percent by 2050
- ***Cap-and-trade*** program for GHGs
  - Covers the entire electric utility and natural gas sector; phases in manufacturers in 2016; threshold for non-utilities to be covered is 25,000 tons per year of CO2-equivalent
- ***Separate GHG allowance purchase*** program for ***transportation fuels***
- ***Nuclear energy incentives***
- ***Increased oil and gas drilling***
- Specialized ***NSPS for coal***
- ***Energy efficiency mandates*** and building standards

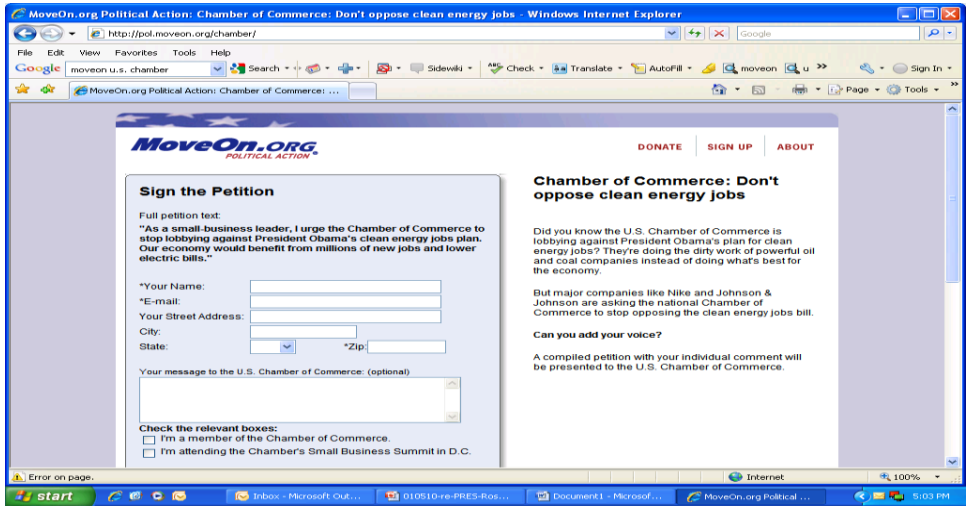
States With Majorities Voting Against Waxman-Markey in the House With Senate Swing Vote Overlay

(States voting against are in RED)



Seat formerly held by late Sen. Robert Byrd

How the Environmental Groups Spent their Summer



Where Does That Leave Us?

Election Could Yield More Questions than Answers

111th House of Representatives

255 Democrats
178 Republicans
2 vacant

111th Senate

57 Democrats
41 Republicans
2 Independents (caucus with Ds)

112th House Projections

(218 needed for majority)

209 Democrats *(154 safe, 25 likely, 30 leaning)*
181 Republicans *(161 safe, 14 likely, 6 leaning)*
45 Undecided

- *Almost all are held by Democrats*

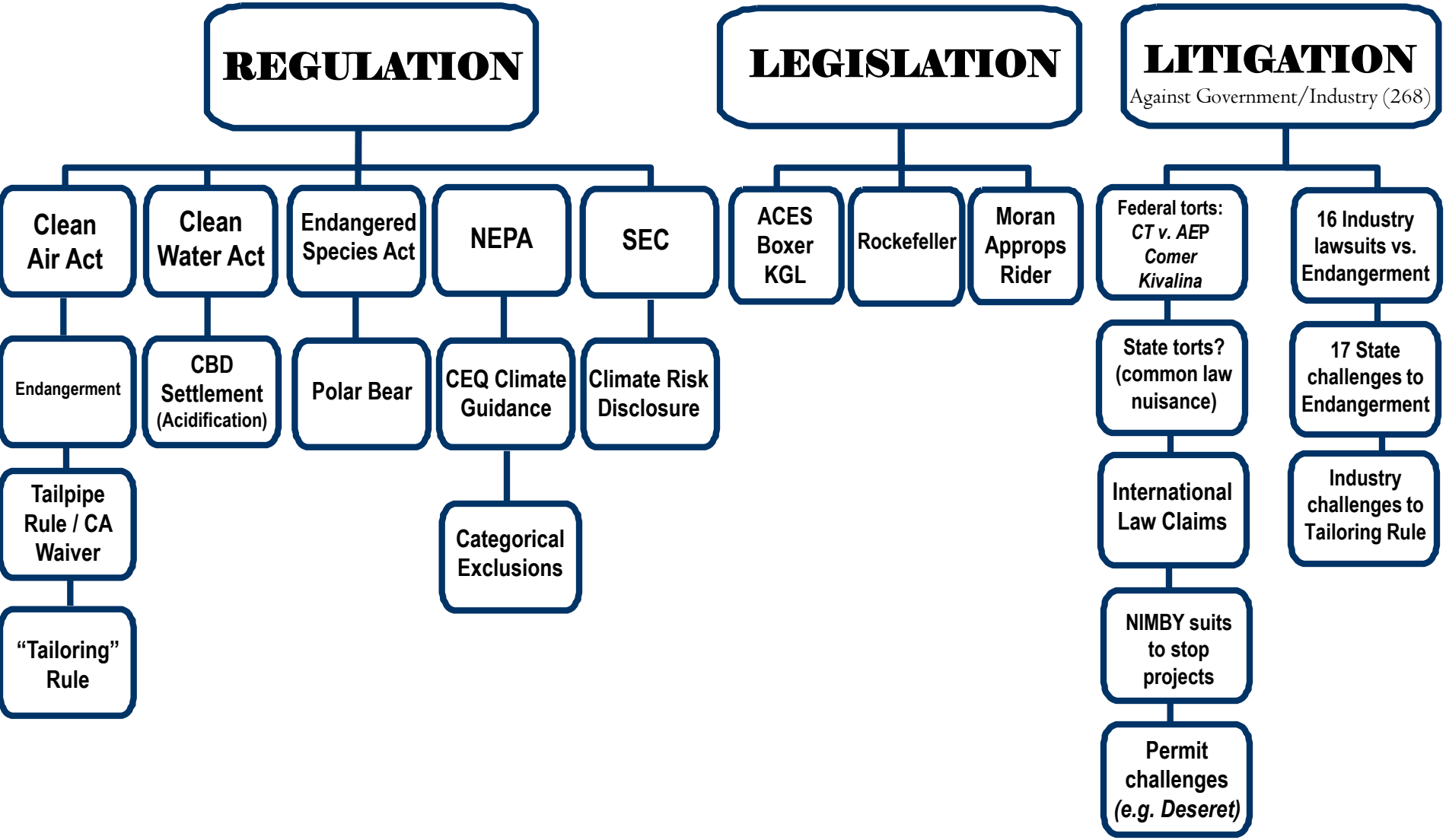
112th Senate Projections

(37 total races)

47 Democrats (incl. 2 independents)
36 Republicans
17 Undecided

- *11 are held by Democrats*
- *6 are held by Republicans*

We Already *Have* a Climate Policy



The Clean Air Act Regulatory "Cascade"

The trigger:

1. **Endangerment Finding** holds that GHGs cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare.
2. **Auto Rule** makes GHGs "subject to regulation"

The cascade:

1. Endangerment is foundation for all future Clean Air Act regs. "If GHGs from cars endanger health and welfare, then GHGs from [insert source] do as well." Flowing from endangerment are New Source Performance Standards and possible NAAQS.
2. "Subject to regulation" triggers permit provisions (PSD, Title V). This will have major impact on construction. "Tailoring Rule" would raise thresholds temporarily.

Short term impacts:

1. Downstream impacts (i.e. price increases) from imposition of NSPS on energy producers and requirements that they install Best Available Control Technology.
2. PSD permits for new/modified facilities, and related lawsuits.
3. Title V operating permits: fees (carbon tax on first 4000 tons), citizen suits.

Long-term impacts:

1. NAAQS for CO2, an absolute disaster
2. PSD and Title V thresholds lowered to cover small sources.

Life Under the Tailoring Rule

Phase 1: January 2011 – June 2011

- If your facility is already subject to the NSR/PSD program for another pollutant (e.g., lead, SO2, NO2), and makes a modification that will result in an additional 75,000 tons per year (tpy) or more of CO_2 from the facility, then the modification will be subject to PSD for GHGs. New construction of major sources will not trigger PSD for GHGs at this time.
- If you already have a Title V permit for any other pollutant, and the Title V permit must be renewed during the Phase 1 period, you will be required to address GHG requirements when you apply for, renew or revise the permit.

Phase 2: July 2011 – June 2013

- All new construction of stationary sources with the potential to emit more than 100,000 tpy of CO_2, and all modifications (physical changes or changes to the method of operation) of stationary sources that increase CO_2 emissions by more than75,000 tpy, will be subject to PSD for GHGs.
- If you already have a Title V permit for any other pollutant, and the Title V permit must be renewed during the Phase 2 period, you will be be required to address GHG requirements when you apply for, renew or revise the permit. In addition, all sources exceeding the 100,000 tpy threshold for GHGs will need to obtain Title V permits.

Phase 3: July 2013 – April 2016

- Will do another rulemaking; threshold will not be below 50,000 tpy.

You're subject to PSD. Now what?

- PSD Permits are issued on a case-by-case basis, often by state authorities—meaning **a lot** of inconsistency from state to state. EPA estimates a typical PSD permit will cost $125,120 and will impose 866 hours of burden. PSD permits usually take 6-12 months.

- Entities subject to PSD will be required to install Best Available Control Technology (BACT) for greenhouse gases. BACT determination typically involves going through a lengthy five-step process, with a great deal of the legwork handled by the regulated source:

1. Identification of available pollution control options: Applicants must determine all "air pollution technologies or techniques with a practical potential for application to the emissions unit and the regulated pollutant under evaluation."
2. Elimination of technically infeasible options: To determine whether a control technology is technically feasible, an evaluation must be made of its availability and applicability.
3. Ranking of remaining control technologies by effectiveness: Technologies not eliminated by Step 2 above are ranked, from best to worst, according to their emissions reduction potential.
4. Evaluation of the most effective controls (considering energy, environmental, and economic impacts) and documentation of the results.
5. Making of the BACT selection: The regulated source submits proposed BACT selections to the state permitting agency, which makes the final selection.

What is BACT for your industry?

"Right now, we're just throwing a bunch of things out to the wall and seeing what sticks."

---Peter Tsirigotis, EPA Office of Air and Radiation, October 2009

- **EPA is in the process of developing guidance for what constitutes BACT for greenhouse gases at coal-fired and other power plants. In the meantime, the states are left to their own devices—and are failing miserably. For instance:**
  - **Michigan and Georgia have already proposed that BACT for a coal-fired power plant is an integrated gasification combined cycle (IGCC) plant.**
  - **EPA's Environmental Appeals Board remanded a permit issued to the Desert Rock Energy Facility (a coal-fired power plant on Navajo land in New Mexico) on the basis that permitting authorities had failed to consider IGCC as part of their BACT assessment.**
  - **<u>BUT</u>, on December 15, 2009, EPA ordered the Kentucky Division of Air Quality to reconsider whether *natural gas used* as the primary fuel source could be BACT for reducing air pollution at a proposed *IGCC plant*, the Cash Creek coal-fired power plant in Henderson County.**
- **On the table as possible BACT options for coal are: CCS (not likely), IGCC, co-firing with biomass, cogeneration with waste heat, fuel switching, coal drying.**
- **BACT for gas-fired plants is very unclear. Very little thought has been given to this issue by EPA to date.**

States Can't Make EPA's GHG Regulation Deadline

The Deadline: January 2, 2011

1 state (TX) does not have authority

3 states (AZ, FL, WY) will not have authority by the deadline

17 states (AR, CT, CO, HA, ID. IL. KS, LA, MA, MI, NY, NC, ND, OK, OR, SD, WVA) will not be able to modify their regulations by the deadline

5 states (IN, MN, MO, SC, WI) will implement interim energy regulations

2 states (NE, NV) have not indicated if they have authority

ONLY 17 states believe they can modify their regulations to meet the deadline

What EPA Regulation *Won't* Get You

Regulatory certainty

Any meaningful impact on GHG concentrations

Cost containment

Relief for trade-exposed industries

An end to litigation (maybe federal tort suits though)

Cap-and-trade (maybe)

Why do it then? Because we're back to the threshold issue of doing something vs. doing nothing.

Endangerment Litigation: For and Against

Court Filings in Support

- 15 states (AZ, CA, CT, DE, IA, IL, ME, MD, NH, NM, NY, OR, RI, VT, WA) and the City of New York
- Coalition of large environmental groups (Natural Resources Defense Council, Environmental Defense Fund, Sierra Club, and National Wildlife Federation)
- Conservation Law Foundation (extreme-left)

Petitions for Reconsideration

- Southeastern Law Foundation
- Pacific Legal Foundation
- Peabody Energy Co.
- Competitive Enterprise Institute

Court Filings in Opposition

- State of Texas
- State of Alabama
- Commonwealth of Virginia
- Coalition for Responsible Regulation
- American Farm Bureau Federation
- NAM, NPRA, API, Corn Refiners, NAHB, NOPA
- National Mining Assn.
- Utility Air Regulatory Group
- U.S. Chamber
- Portland Cement Assn.
- Ohio Coal Assn.
- Competitive Enterprise Institute
- American Iron & Steel Institute
- Gerdau Ameristeel Corp.
- Southeastern Legal Foundation
- Peabody Energy Co.

The Regulatory Landscape Going Forward

Not in My Back Yard!

Anti-Coal Campaign

In 2009, 26 new coal plants defeated or abandoned

Between 2001-2009, 111/150 new local plants defeated or abandoned

DM&E Railroad's Power Review Base project abandoned

Opposition to Nuclear

"Green budget" assembled by 34 national environmental groups recommends cutting $1.8 billion federal nuclear, including the entire nuclear loan guarantee program.

The $1.8 billion cut represents just about every federal penny devoted to nuclear power in 2011.

No Biomass Burn

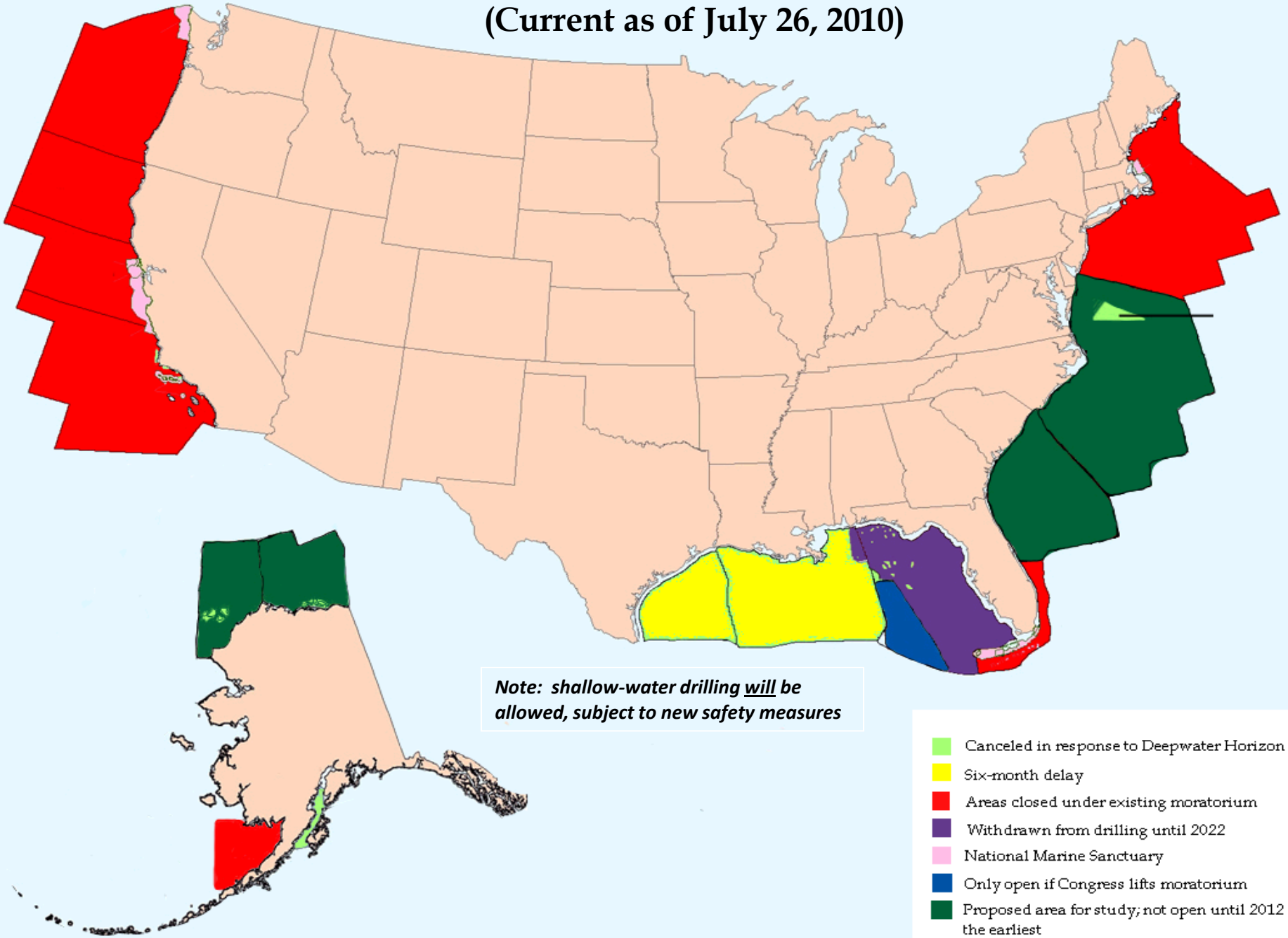
Grassroots coalition whose mission is to confront the myth of sustainable biomass energy

"Little more than a status quo false solution, scientifically recognized to significantly exacerbate the climate crisis."

Regulatory & Legal Roadblocks Are Killing Projects

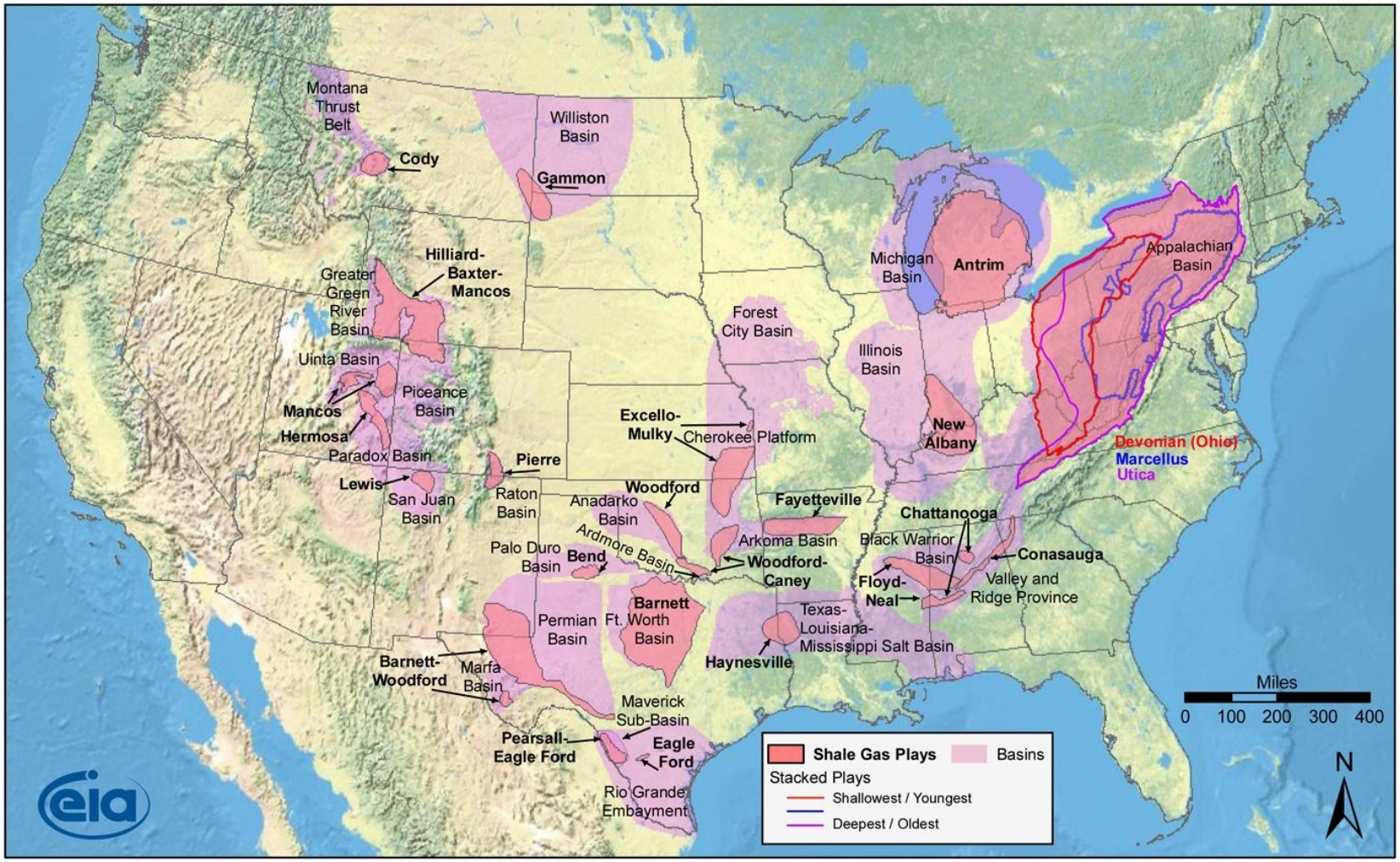
Areas Blocked for Drilling in the U.S. Outer Continental Shelf

(Current as of July 26, 2010)



The Next Big Attack!

Shale Gas Plays, Lower 48 States



Source: Energy Information Administration based on data from various published studies
Updated: May 28, 2009

Attacks on Hydraulic Fracturing

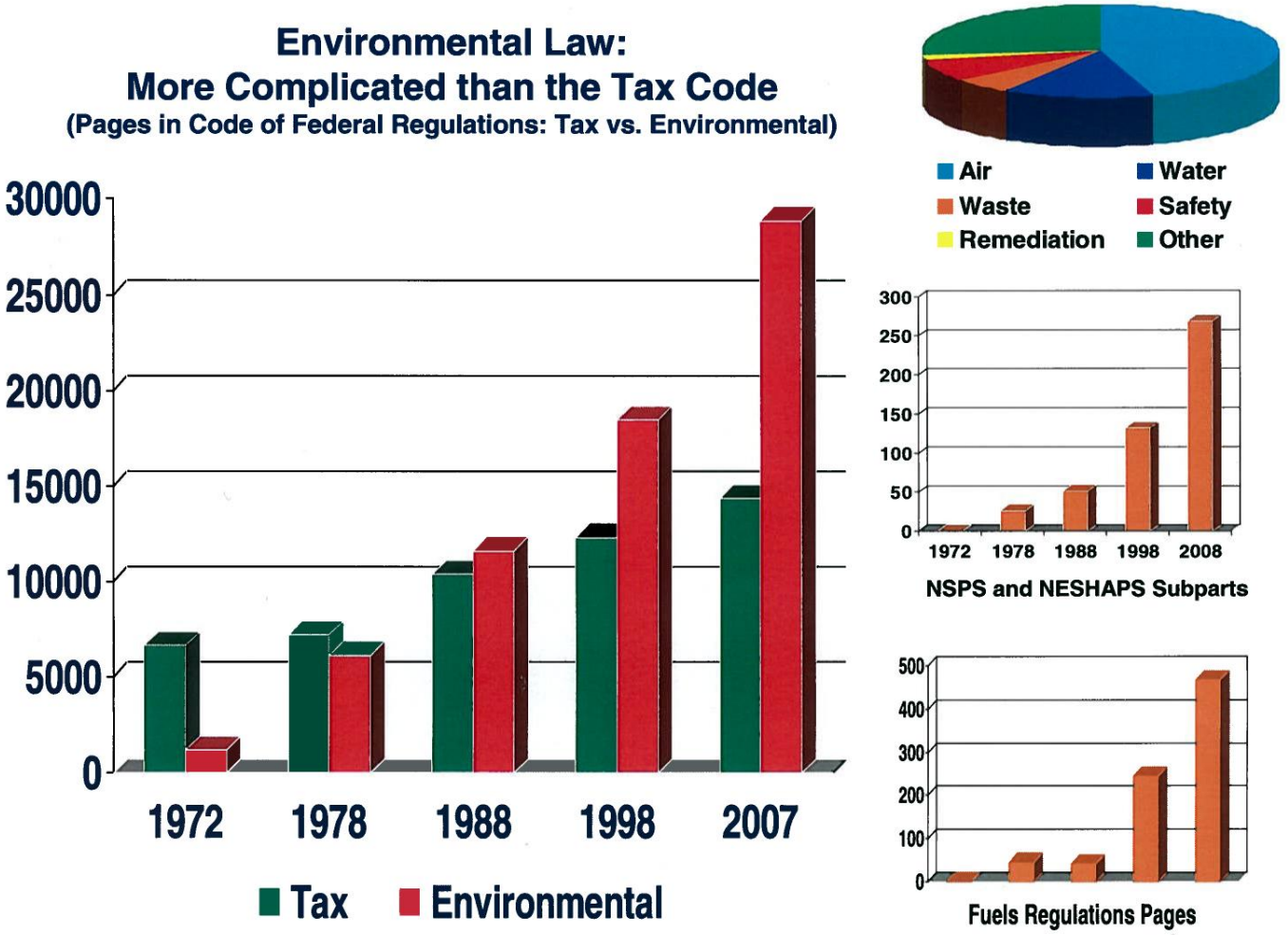
New York:	New York City urged the state to ban natural gas drilling in its Catskills watershed, becoming the most powerful opponent to date of a process that critics say is poisoning drinking water.
Pennsylvania:	In northeastern Pennsylvania, Marcellus drilling is stalled because of opposition in the Delaware River basin.
	June 4, 2010 explosion of natural gas and polluted drinking water
Colorado:	Lexam Explorations Baca National Wildlife Refuge; Saguache County
New Mexico:	Shell Oil and Gas; Mora County
Pennsylvania:	Atlas Energy; Marcellus Shale, Washington County Cabot Oil & Gas; Marcellus Shale, Susquehanna County Encana Oil & Gas; Luzerne County
Texas:	Williams Co Inc.; Flower Mound, Denton County
West Virginia:	Explosion on June 7, 2010

Regulatory Overload:

EPA's 309-page Semi-annual Regulatory Agenda was last published December 7, 2009. The following items are listed as "major" rules—those likely to result in an annual effect on the economy of $100 million or more or meets other criteria specified in the CRA (5 U.S.C. 801, *et seq.*).

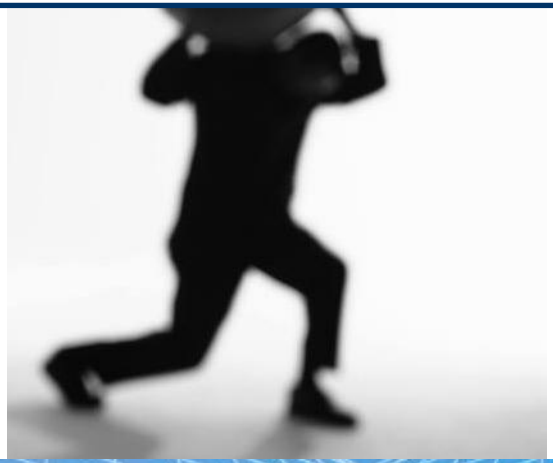
- Criteria and Standards for Cooling Water Intake Structures
- National Primary Drinking Water Regulations: Radon
- Federal Requirements Under the Underground Injection Control (UIC) Program for Carbon Dioxide Geologic Sequestration Wells
- Standards for the Management of Coal Combustion Residuals Generated by Commercial Electric Power Producers
- Revisions to the Spill Prevention, Control, and Countermeasure (SPCC) Rule
- NAAQS Review for Carbon Monoxide
- Combined Rulemaking for Industrial, Commercial and Institutional Boilers and Process Heaters at Major Sources of HAP and Industrial, Commercial, and Institutional Boilers at Area Sources
- Implementing Periodic Monitoring in Federal and State Operating Permit Programs
- NAAQS Review for Particulate Matter
- NAAQS Review for Sulfur Dioxide
- Review of the Secondary NAAQS for Oxides of Nitrogen and Oxides of Sulfur
- Clean Air Transport Rule
- PSD/Title V GHG Tailoring Rule
- Reconsideration of the 2008 Ozone NAAQS
- NESHAP Portland Cement Notice of Reconsideration
- NAAQS Review for Nitrogen Dioxide
- Review of the NSPS – Portland Cement
- Renewable Fuels Standard Program
- NESHAP for Reciprocating Internal Combustion Engines
- EPA/NHTSA Joint Rulemaking to Establish Light-Duty GHG Standards and CAFÉ Standards
- NAAQS Review for Ozone
- NESHAPs for Coal- and Oil-Fired Electric Utility Steam Generating Units
- GHG Mandatory Reporting Rule
- Lead: Clearance and Testing Requirements for the Renovation, Repair and Painting Program
- Lead: Amendment to the Opt-out and Recordkeeping Provisions in the Renovation, Repair, and Painting Program

Environmental Law



Your Industry: How Much is Too Much?

FINANCIAL REFORM
HEALTH CARE
FRACKING
CLEAN WATER ACT EXPANSION
CHEMICAL PHASE-OUTS
SOLID WASTE DISPOSAL REGS
NAAQS REVISIONS
BOILER MACT
GHG REGULATIONS



Looking forward to 2011

What to expect on environmental/climate issues:

- **Oversight**
- **Scrutiny of Appropriations**
- **Litigation**
- **Legislation to roll back EPA**

What *not* to expect on environmental/climate issues:

- **Comprehensive climate legislation**
- **Any sort of regulatory certainty**