

STATEMENT OF
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U.S. DEPARTMENT OF THE INTERIOR

BEFORE THE

COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ON HOUSE RESOLUTION 4817

SEPTEMBER 23, 2010

Mister Chairman and Members of the Subcommittee, thank you for the invitation to testify on behalf of the Office of Surface Mining Reclamation and Enforcement (OSM) regarding H.R. 4817. I look forward to working with you on matters relating to the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

H.R. 4817 would allow noncertified states and tribes to use certain SMCRA payments for non-coal reclamation; while the President's Budget proposed to limit SMCRA payments to high priority coal sites. While we recognize the importance of addressing hardrock mine hazards, we cannot support this bill because it is inconsistent with the President's Budget.

The FY 2011 President's Budget includes a proposal to focus AML funds on the high-priority coal reclamation sites in order to ensure that the most hazardous issues can be addressed before the AML fee expires. In addition to terminating unrestricted payments to certified states and tribes, the proposal will require all noncertified states to use their funding only for high priority coal reclamation projects.

Background

Through SMCRA, Congress established OSM for two basic purposes. First, to ensure that the Nation's coal mines operate in a manner that protects citizens and the environment during mining operations and to restore the land to beneficial use following mining. Second, to implement an Abandoned Mine Land (AML) program to address the hazards and environmental degradation created by two centuries of weakly regulated coal mining that occurred before SMCRA's enactment.

Title IV of SMCRA created an AML reclamation program funded by a reclamation fee assessed on each ton of coal produced. The fees collected have been placed in the Abandoned Mine Reclamation Fund (Fund). OSM, either directly or through grants to States and Indian tribes with approved AML reclamation plans under SMCRA, has been using the Fund primarily to reclaim lands and waters adversely impacted by coal mining conducted before the enactment of SMCRA and to mitigate the adverse impacts of mining on individuals and communities. Also, since FY1996, an amount equal to the interest earned by and paid to the Fund has been available for direct transfer to the United Mine Workers of America Combined Benefit Fund to defray the cost of providing health care benefits for certain retired coal miners and their dependents. Section 402(a) of SMCRA fixed the reclamation fee for the period before September 30, 2007, at 35 cents per ton (or 10 percent of the value of the coal, whichever is less) for surface-mined coal other than lignite, 15 cents per ton (or 10 percent of the value of the coal, whichever is less) for coal from underground mines, and 10 cents per ton (or 2 percent of the value of the coal, whichever is less) for lignite. As originally enacted, section 402(b) of SMCRA authorized collection of reclamation fees for 15 years following the date of enactment (August 3, 1977); thus, OSM's fee collection authority would have expired August 3, 1992. However, Congress extended the fees and fee collection authority through September 30, 1995, in the Omnibus Budget Reconciliation Act of 1990. The Energy Policy Act of 1992 extended the fees through September 30, 2004. A series of short interim extensions in appropriations and other acts extended the fees through September 30, 2007.

The AML reclamation program was established in response to concern over extensive environmental damage caused by past coal mining activities. Before the 2006 amendments, the AML program reclaimed eligible lands and waters using the Fund, which came from the reclamation fees collected from the coal mining industry. Eligible lands and waters were those which were mined for coal or affected by coal mining or coal processing, were abandoned or left inadequately reclaimed prior to the enactment of SMCRA on August 3, 1977, and for which there was no continuing reclamation responsibility under State or other Federal laws.

SMCRA established a priority system for reclaiming coal problems. Before the 2006 amendments, the AML program had five priority levels, but reclamation was focused on eligible lands and waters that reflected the top three priorities. The first priority was "the protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices." The second priority was "the protection of public health, safety, and general welfare from adverse effects of coal mining practices." The third priority was "the restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices."

As originally established, the Fund was divided into State or Tribal and Federal shares. Each State or Indian tribe with a federally approved reclamation plan was entitled to receive 50 percent of the reclamation fees collected annually from coal operations conducted within its borders. The "Secretary's share" of the Fund consisted of the remaining 50 percent of the reclamation fees collected annually and all other receipts to the Fund, and was allocated into three shares as required by the 1990 amendments to SMCRA. First, OSM allocated 40% of the Secretary's share to "historic coal" funds to

increase reclamation grants to States and Indian tribes for coal reclamation. However, all the funds which were allocated may not have been appropriated. Second, OSM allocated 20% to the Rural Abandoned Mine Program (RAMP), operated by the Department of Agriculture. However, that program has not been appropriated AML funds since the mid 1990's.

Last, SMCRA required OSM to allocate 40% to "Federal expense" funds to provide grants to States for emergency programs that abate sudden dangers to public health or safety needing immediate attention, to increase reclamation grants in order to provide a minimum level of funding to State and Indian tribal programs with unreclaimed coal sites, to conduct reclamation of emergency and high-priority coal sites in areas not covered by State and Indian tribal programs, and to fund OSM operations that administer Title IV of SMCRA.

States with an approved State coal regulatory program under Title V of SMCRA and with eligible coal mined lands may develop a State program for reclamation of abandoned mines. The Secretary may approve the State reclamation program and fund it. At the time the 2006 amendments were enacted, 23 States received annual AML grants to operate their approved reclamation programs. Three Indian tribes (the Navajo, Hopi and Crow Indian tribes) without approved regulatory programs have received grants for their approved reclamation programs as authorized by section 405(k) of SMCRA.

Before the 2006 amendments, States and Indian tribes that had not certified completion of reclamation of their abandoned coal lands could use AML grant funds on noncoal projects only to abate extreme dangers to public health, safety, general welfare, and property that arose from the adverse effects of mineral mining and processing and only at the request of the Governor or the governing body of the Indian tribe.

The Surface Mining Control and Reclamation Act Amendments of 2006 were signed into law as part of the Tax Relief and Health Care Act of 2006, on December 20, 2006. Public Law 109-432. The 2006 amendments revised Title IV of SMCRA to make significant changes to the reclamation fee and the AML program. One change extended OSM's reclamation fee collection authority through September 30, 2021. The statutory fee rates were reduced by 10 percent from the current levels for the period from October 1, 2007, through September 30, 2012, and an additional 10 percent from the original levels for the period from October 1, 2012, through September 30, 2021.

The Fund allocation formula was also changed. Beginning October 1, 2007, certified States are no longer eligible to receive State share funds. Instead, amounts which would have been distributed as State share for fee collections for certified States are distributed as historic coal funds. The RAMP share was eliminated, and the historic coal allocation is further increased by the amount that previously was allocated to RAMP.

Since 2006, the Department has interpreted the language of SMCRA section 411(h) to require that OSM use grants to provide funds to eligible States and Indian tribes and to preclude noncertified states and Indian tribes from using funds that they receive under that section for noncoal reclamation.

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Under SMCRA, states can use some of the AML funds they receive for non-coal reclamation. H.R. 4817 would amend SMCRA to allow noncertified states and tribes to use their mandatory funds received under Section 411(h)(1) from their unappropriated AML Fund balance for reclamation activities on non-coal mine sites. Noncertified states and tribes can already use the funds they receive from the “state share” and “historic coal” formulas for non-coal reclamation.

When Secretary Salazar appeared before the Committee on Energy and Natural Resources to testify about the FY 2011 President’s Budget for the Department of the Interior, he noted that in developing a balanced budget request for FY 2011, tough choices had to be made. The budget, in addition to eliminating unrestricted payments to certified states, also proposes limiting the use of AML payments to priority coal reclamation projects. The Department cannot support H.R. 4817 because it is inconsistent with the Fiscal Year 2011 budget.

In an effort to focus the AML program on coal reclamation before the reclamation fee terminates, the President’s FY 2011 budget proposes to restrict the use of AML funds by noncertified states to high priority coal reclamation. Because H.R. 4817 is inconsistent with the Administration’s goal of ensuring expeditious coal reclamation, we cannot support this bill.

While we recognize the dangers that abandoned hard rock mines can pose, AML funding needs to be focused on the highest priority problems Congress originally identified in 1977. The challenging economic conditions, coupled with this Administration’s commitment to fiscal responsibility, only heighten the need for AML funds to be devoted to the highest priority coal problems. We note that the administration has continued to invest in AML, both through the Bureau of Land Management and National Park Service American Recovery and Reinvestment Act of 2009 funding and the FY 2011 President’s Budget to address hardrock mine reclamation on Federal Lands.

We share the concern about non-coal abandoned mine sites and would be happy to share the expertise gained administering SMCRA and work with the Congress and this committee as we seek to address abandoned non-coal mine problems.

Thank you for the opportunity to appear before the Subcommittee today and testify on this bill. I look forward to working with the Subcommittee to ensure that the Nation’s abandoned mine lands are adequately reclaimed.