

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

TESTIMONY ON OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT'S
RULEMAKING TO BETTER PROTECT STREAMS

NOVEMBER 4, 2011

Mister Chairman and Members of the Committee, thank you for the invitation to testify on behalf of the Office of Surface Mining Reclamation and Enforcement (OSM) regarding the bureau's proposed rulemaking to better protect streams from the adverse effects of coal mining. OSM looks forward to working with you on matters relating to its mission under the Surface Mining Control and Reclamation Act (SMCRA).

OSM derives its regulatory authority and responsibilities from SMCRA, an act that Congress passed more than 34 years ago. Congress specified several purposes for SMCRA. One purpose is to assure that American coal mines operate in a manner that protects people and the environment, and that the land is restored to beneficial use following mining. Another purpose is to assure that the coal supply essential to the Nation's energy requirements is provided, and strike a balance between protection of the environment and agricultural productivity and the Nation's need for coal. And a third purpose is to provide an Abandoned Mine Land program to address hazards to people and the environment that were created by more than two hundred years of unregulated coal mining that occurred before SMCRA's enactment.

We fully appreciate how important coal production is to the Nation's economy and energy supply. Coal mining provides well-paying jobs. Coal also produces about half of the Nation's electricity and will remain an important part of our energy mix for decades to come.

We also recognize the need to not only carry out our mandate, but to do so using the best available science and technology. We are considering revising the 2008 Stream Buffer Zone Rule because there are areas that should be improved. Scientific advances not fully explored and considered in the 2008 rule will allow us to better understand coal mining's impact on water and aquatic ecosystems. With that information, together with our on-the-ground experience, we are exploring ways to improve mining practices to prevent environmental damage *before* it occurs. We also know that existing technological advances enable industry to do a better job of reclaiming the land and restoring natural resources for the benefit of the communities that will remain long after the coal is gone. These goals are fully consistent with SMCRA's mandate and OSM's mission.

As we proceed with development of the Stream Protection Rule, we are considering ways to improve key regulatory provisions. SMCRA requires that surface coal mining and reclamation operations be conducted to minimize disturbances to fish, wildlife, and related environmental values "to the extent possible using the best technology currently available." We are considering revisions that will provide solid benchmarks for companies to meet, and that will be based on the latest accepted scientific methods. Clear and uniform standards provide greater predictability and certainty to the mining industry, and can better protect affected communities.

As OSM described in its Advance Notice of Proposed Rulemaking (ANPR) on the Stream Protection Rule, SMCRA prohibits "material damage to the hydrologic balance outside the permit area." This phrase has never been defined in OSM's regulations. We are considering ways to provide a clear definition that can be applied uniformly across the country. It is important to define the term in order to fully implement the law to protect water resources beyond the area covered in the mining permit; to protect drinking water; and to protect water quality and resources for recreation, wildlife, and scenic values. Protection of our waterways is a high priority as we continue to develop our important coal resources.

As the ANPR also noted, OSM has never clearly specified what is required for coal operators to return mine sites to their approximate original contour. SMCRA requires that mine operators reclaim mined areas to closely resemble their original pre-mining shape and size. Decades of research and on-the-ground practice have demonstrated that careful restoration of post-mining areas will limit, and, in many cases, eliminate, harmful levels of pollution from mines that often impact local communities and degrade downstream aquatic resources. Uniform regulations that result in carefully reclaimed areas will create opportunities for continued productive use of the land and water after coal mining ends.

The ANPR also described OSM's intent to consider whether SMCRA regulations should be updated to require mine operators to take more extensive or more specific measurements of water quality and biology in streams before, during, and after mining. These data would better provide a baseline to set the standard for successful restoration of streams after mining is completed. Data collected during mining would allow the operator to make adjustments as mining continues, so that corrective measures can be implemented before long-term damage occurs.

As OSM proceeds with development of its proposed Stream Protection Rule, it will consider the extensive public and agency comments it has received. It will also consider the benefits, as well as the costs, of the agency's regulatory alternatives.

The Environmental Impact Statement (EIS) that OSM is developing in support of the rule will examine a range of alternatives. In addition to analyzing the significant environmental issues associated with the proposed Stream Protection Rule and its alternatives, the EIS will evaluate the economic impacts of each alternative, and will provide OSM with critical information needed to inform its regulatory decision-making and the public. OSM plans to publish a Proposed Rule and associated Draft EIS next year. OSM will take the time necessary to make informed regulatory decisions supported by the Draft EIS analysis, with ample opportunity for additional public input on both the rule and its Draft EIS.

Consistent with the National Environmental Policy Act (NEPA), the Administrative Procedure Act, and other applicable laws, we will ask interested stakeholders — whether from Congress, industry, environmental organizations, or members of the public — to read and comment on the Proposed Rule and Draft EIS once those documents have been published. We have received extensive input from the public, states, and other Federal agencies on issues that we ought to consider in drafting a proposed rule, including more than 32,000 comments in 2009 on the ANPR, and more than 20,000 after we held public scoping meetings last year. We look forward to receiving additional public review and comment on the proposed rule and Draft EIS once they are published.

Thank you for the opportunity to appear before the Committee today to testify on the development of OSM's Stream Protection Rule. Our efforts will result in regulatory improvements that will more fully carry out the bureau's mission, make use of the best available science and technology, better protect streams nationwide, and provide greater clarity and certainty to the mining industry and the affected communities. I look forward to working with you to ensure that we protect the Nation's land and water while meeting its energy needs.