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U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

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Opening Statement of
Chairman Doug Lamborn
Friday, August 2, 2013, at 9:00 A.M.
1324 Longworth House Office Building
Before the Energy and Mineral Resources Subcommittee
Legislative Hearing on: H.R. 2824, the "Preventing Government Waste and Protecting
Coal Mining Jobs in America Act."

Today the Subcommittee is considering H.R. 2824, the *"Preventing Government Waste and Protecting Coal Mining Jobs in America Act,"* which I introduced along with Representative Johnson. This legislation is designed to save taxpayer dollars and protect jobs, by putting the Office of Surface Mining on a responsible path forward with regard to the management and regulation of coal mining in America.

As I said last week – we need to be clear about the Administration's legacy on their effort to rewrite the Stream Buffer Zone Rule. So far, the Administration has spent nearly \$9 million taxpayer dollars re-writing a rule that was never fully implemented without ever providing sound justification for the need for a new rule. This does not include the amount spent on attorney fees and costly litigation or the internal costs borne by the agency. Nor the costs to the families of the thousands of workers who have been displaced or seen work delayed by the regulatory inaction of the Department.

In fact, we learned just recently that even though the Courts told the Administration in 2009 that they would have to follow APA and allow for public input to revoke the 2008 rule, the Administration went back to the Court and asked again for the Judicial Branch to toss aside a validly promulgated rule rather than follow the rulemaking process. That is an important point because since the 2008 rule was never enacted throughout the country, the Administration actually has no idea if there are any problems with the rule that might need to be addressed with a new rule. Furthermore, the ongoing inability to actually conduct a responsible rulemaking process means the draft of the re-write isn't anticipated until late in 2014. And as we heard from Director Pizarchik – they have no idea how much more money it's going to take to finish the new rule.

The legislation requires the Office of Surface Mining to implement the 2008 Stream Buffer Zone Rule, a rule developed over half a decade through an open public multimillion dollar process. Upon implementation it provides the primacy states two years to amend their state regulations to incorporate the rule and submit them for approval by the Office of Surface Mining. Once all of the plans have been approved – the effects of the new

regulations will be analyzed for a period of five years. On completion of the analysis, the Office of Surface Mining is required to report back to the House and Senate Committees with jurisdiction over SMCRA on the effectiveness of the rule, impact on energy production, and identify and justify anything that should be addressed through a new rule making process.

The legislation will stop the massive ongoing waste currently taking place at the department and save the taxpayer money. It responsibly updates the 1983 regulation by improving environmental safeguards and provides regulatory certainty for an important domestic industry; an industry that not only provides great family-wage jobs with good benefits but also provides affordable energy for the American people and the Nation's manufacturing base.

The States and Tribes participating as cooperating agencies with the Office of Surface Mining in 2010 raised serious concerns about the way the administration was managing the rulemaking process and the direction the Department was proceeding with its new rulemaking. If we review the transcripts and audio tapes of the meetings between OSM and their original contractors it should raise concerns across the board about the way the Administration conducts its business – a few of the more egregious comments included:

- An OSM official worrying about how to “sell” the proposed rule to the public because it will only save 15 miles of stream, while costing millions in taxpayer dollars and thousands of American jobs. It appears the proposed rule would only save 15 miles of stream because coal production would be moved to other regions outside of the Appalachia – meaning the rule would have minimal national environmental benefit but would succeed in causing extreme economic dislocation and devastation in communities all across Appalachian region.
- OSM officials telling contractors to “pretend” that the 2008 Stream Buffer Zone Rule was implemented and applied across the country when it was not, and explaining that this is “not the real world, this is rulemaking” as justification for using analysis that does not actually consider “conditions on the ground.”
- An OSM official admitting that the contractors “did exactly what I told them to do” when completing the draft environmental impact statement. This conflicts with OSM Director Pizarchik’s testimony to the Committee and others who have criticized the work performed by the contractors when completing the draft environmental impact statement.”¹

The 23 states that have primacy to enforce SMCRA feel very strongly that the current rulemaking is unnecessary and unwarranted as OSM had just issued their final revised Stream Buffer Zone Rule in December of 2008. That rulemaking process took five-years and is supported by 5,000 pages of environmental analysis, included 30 different studies, and was issued with the concurrence of the Environmental Protection Agency. OSM spent approximately \$5 million dollars to develop the 2008 rule and never directed the primacy

¹ <http://naturalresources.house.gov/oversight/coalregs/>