

**STATEMENT OF JOHN R. CRAYNON, P.E.
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OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
BEFORE THE COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES
ON H.R. 493
FEBRUARY 12, 2009**

Mr. Chairman and members of the Committee, thank you for the opportunity to participate in this hearing and discuss the important issues relating to coal ash impoundments and storage areas that are addressed by H.R. 493, the "Coal Ash Reclamation, Environment and Safety Act of 2009."

My name is John Craynon, and I am the Chief of the Division of Regulatory Support at the headquarters of the Office of Surface Mining Reclamation and Enforcement (OSM). I have been at OSM for over 12 years and have spent the past 25 years at the Department of the Interior. I am also a professional engineer, licensed in the Commonwealth of Virginia.

The Department of the Interior and the Administration are currently weighing how best to address this legislation. The Administration has not yet come to a conclusion as we consider different regulatory authorities and approaches for this issue, but will do so in the future. The remainder of my comments today focuses on the technical aspects of the bill and are not intended to provide the official position of the Department of the Interior or the Administration on this legislation.

Impoundment safety was one of the motivating factors for passage of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) and the creation of the bureau for which I work. The failure of a coal waste impoundment at Buffalo Creek, West Virginia, in 1972, which resulted in a catastrophic loss of life and enormous property damage, provided a significant impetus for legislative action. Impoundment safety is an integral part of the surface mining regulatory program, as it has been from the start. The recent failures of coal ash impoundments at power plants operated by the Tennessee Valley Authority in Tennessee and Alabama have created a similar impetus for action, this time regarding the construction and safety of impoundments at non-mine sites.

H.R. 493 assigns three major responsibilities to the Secretary of the Interior. First, it requires him to establish a regulatory framework for coal ash impoundments, using the provisions of SMCRA related to impoundments and waste piles as a foundation. Second, the bill requires him to conduct an inventory of existing impoundments, including an assessment of the risk they pose to human health and the environment. Third, the bill provides the Secretary with the authority to issue orders, based on the risk

assessment in the inventory, that would require existing coal ash impoundments to comply with the new regulatory program.

Implementation of these provisions would require a significant commitment of Department resources. This new program would apply not just to those areas with coal mining activity but also to a new universe of materials and sites beyond active and abandoned coal mine sites. As you know, this would be a very significant expansion of OSM's authority and scope of responsibilities.

Additionally, we believe the ambitious six-month timeframe allowed for publication of a regulatory program would be difficult to meet. Historically, the development and publication of a proposed rule has required in excess of one year, to allow for public outreach, preparation of supporting documentation, and consultation that may be required with agencies such as the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, and other Federal, state, and tribal agencies that may also have statutory and regulatory responsibilities related to these impoundments.

We believe it is appropriate to define more clearly the scope of this legislation. Specifically, a more precise definition of "covered wastes," should be considered. Neither SMCRA nor its implementing regulations define the term "other wastes" as used in Section 515(b)(11) of SMCRA (30 USC 1265(b)(11)). If the intent of HR 493 is to ensure regulation of all surface impoundment facilities constructed of or containing the products of coal combustion, the term "slag" should be eliminated because it encompasses a broad range of industrial waste, not just coal combustion byproducts. Additionally, defining "covered wastes" in a manner consistent with the definition of "coal combustion products" in ASTM Standard E 2201-02a would ensure the appropriate degree of both inclusivity and exclusivity.

We also believe that the term "impoundment" and its definition as used in this bill may be unnecessarily confusing. In common usage, the term "impoundment" refers only to structures holding liquid or semi-liquid materials. The current definition of "covered wastes" also includes "materials stored or disposed of in...solid form." The bill defines impoundment as "any dam or embankment used to retain covered wastes." When these two definitions are read together, the bill could be construed as applying to piles constructed of solid coal combustion byproducts. The meaning and applicability of the bill would be clearer if it were revised to apply to any pile or impoundment constructed for the purpose of disposal or long-term storage of coal combustion byproducts. We have other technical comments that we would be pleased to share with the Committee upon request.

Mr. Chairman, we look forward to working with the Committee and staff in providing our technical expertise on impoundment safety and security. I will be happy to address any questions that the Committee may have.