

**STATEMENT
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U. S. DEPARTMENT OF THE INTERIOR
COMMITTEE ON NATURAL RESOURCES**

**“The Surface Mining Control and Reclamation Act (SMCRA) of 1977: A 30th
Anniversary Review”**

July 25, 2007

Mr. Chairman and Members of the Committee, it is a great honor to appear before you today as a witness for the Office of Surface Mining Reclamation and Enforcement (OSM) on the Surface Mining Control and Reclamation Act (SMCRA) of 1977.

August 2007 will mark the 30th Anniversary of SMCRA, and September 2007 will mark my own 28th anniversary working for OSM. I have served OSM as an inspector, investigator, and manager and, in a few weeks, I will begin a new position as Director of OSM’s Knoxville Field Office with responsibility for the Tennessee Federal Program and with oversight responsibility for Virginia. In my various positions, I have inspected mine sites in at least a dozen states and visited coal mines in nearly every state in this nation with active operations.

For nearly three decades, I have seen how SMCRA works on the ground, and the evolution of its implementation. I have had the opportunity to personally witness many of OSM’s greatest successes as well as some of its failures.

Like many of my colleagues in OSM, I grew up with coal. My late father and grandfather were coal miners in Harlan County, Kentucky. I was born in the company hospital and lived in a company-owned house. As a child, I learned that our existence revolved around coal. Not only did coal heat our house, it also put the groceries on the table, clothes on my back, and toys in my stocking. I also remember learning that the coal company made the rules and that was the final word.

I spent my childhood hunting, fishing, gardening, climbing trees and climbing mountains. My great appreciation for nature led me to study earth sciences and, specifically, reclamation in college. My first job was as an inspector for the State of Kentucky.

The Need for SMCRA

During the mid 1970s, most counties in the Appalachian coal fields were dotted with hundreds of small surface mines. Small operators were often heavily in debt and light on experience. One unanticipated event could easily lead to a total business failure. In contrast, large operators supported local economies by providing large numbers of jobs,

related infrastructure, and a local revenue stream.

From both the small and large operations I saw streams choked with sediment, and spoil and rocks dumped on the downslope in steep terrain. I witnessed the results of unpredictable blasting events and saw the exposed highwalls and abandoned entries that were left behind. These failures to reclaim the land resulted from many failures in the system that existed then -- under-capitalized operators and highly variable regulatory standards and inconsistent enforcement from one state to the next. This created an economic advantage for operations in states with low reclamation standards or lax enforcement. In short, the reclamation principles now embodied by Congress under SMCRA were not used in a consistent way by state regulators or by the industry prior to its passage.

It was these conditions that were to be addressed by SMCRA, which was enacted by Congress in 1977. Mr. Chairman, you were there, and you don't need to be reminded that SMCRA was hotly debated, vetoed twice and remained controversial for years. There were those who thought that enacting SMCRA was the end of the world. A great many disparaging things were said then about SMCRA and about OSM. Given this tense environment, it is amazing to me that the authors of the SMCRA had the foresight to see so far into the future and give us such a coherent framework in a very complex document. I can say that now, having witnessed three decades of SMCRA's development.

Implementation of SMCRA

SMCRA leveled the playing field in a number of ways. It standardizes coal mining and reclamation regulations from State to State. It assures that coal mining operations in one State do not have an economic advantage over operations in another State. It requires the companies to take responsibility for the impacts of their operations. Perhaps most importantly, it requires that citizens have a voice in the permitting process, enforcement of regulations, and rulemaking.

During the early years of SMCRA's implementation, I believe the OSM inspector was the most unpopular person in the coal fields. The State agencies just could not imagine someone telling them how to permit or inspect operations within their boundaries. The coal operators disliked OSM even more and often attempted to play us and the states against each other. Finally, there were the citizens. They were upset because they thought we should put an end to all surface coal mining operations.

Despite the resistance to change, OSM inspectors marched on. If someone threatened us, we figured they were just having a bad day; if our tires were flattened, we simply changed the tire; if we were refused entry at the mine, we returned with the U.S. Marshall. We did not go away, and slowly, we began to see a change.

In those early years, OSM experienced one of its first course corrections. Initially, each violation carried a mandatory civil penalty that increased daily if operators did not comply. Very soon, using our enforcement authority, OSM had issued thousands of violations and assessed millions of dollars in unpaid federal civil penalties. However,

OSM was doing little to compel compliance beyond requiring cessation of operations, and basically nothing was done to collect outstanding penalties from the under-capitalized small operations that found it easier to quit than to comply, particularly when facing penalties that were increasing each day. Further, some of those same individuals that abandoned sites created new companies and came right back in business under a new name. Citizens groups sued OSM because of the huge backlog of unpaid fines that had developed.

In 1980, OSM revised its rules to place a cap on penalties for unabated violations and required the use of one or more alternative tools to achieve compliance. Soon after, my job changed from being an inspector to being an investigator for a task force created specifically to deploy one of those alternative tools from the tool bag Congress gave us in Section 521(c) of SMCRA. This provision authorizes OSM to compel individuals who own or control coal mines to correct violations attributable to a corporate permittee.

Members of the task force worked closely with the Solicitors Office to determine if owners or controllers had sufficient corporate or personal assets for us to compel them to reclaim the land. That Task Force and resulting case law established the principle that the ability to control a coal mine creates the duty to comply with environmental aspects of SMCRA. I investigated a number of these cases and when it was all said and done the result was thousands of acres of land reclaimed and collection of many outstanding penalties. This concept, known as alternative enforcement, has continued to gain momentum in getting land reclaimed and, more importantly, serves as a powerful deterrent for companies who consider abandoning a site without conducting proper reclamation.

Another problem in the early days was the two-acre exemption, a loophole in the law by which large mining companies avoided regulation by working through contractor companies to mine along a string of operations, which individually could qualify for the two-acre exemption. Congress eventually closed the two-acre exemption loophole, but that did not eliminate all abuses that were associated with coal mining through contract operators.

I investigated many instances in which well-heeled coal operators who used contractors (who had to deliver the coal they mined to them) were claiming they had no responsibility for complying with SMCRA at these contract operations. OSM and the States had to start paying attention to the ability of larger coal companies to control those contractors and hold the controlling companies responsible under appropriate circumstances. In response to a 1985 Court case settlement involving civil penalty collections, OSM developed the Applicant/Violator System (AVS) to track control of mining operations and hold controlling companies and individuals responsible for mining within the regulations, paying fees, and reclaiming the land.

Since 1990, I have served as investigator, team leader and manager of the AVS Office. The AVS implements another tool Congress supplied in Section 510(c) of the Act. Under this provision of SMCRA permittees know that if they control a site with

outstanding violations or unpaid penalties or fees, they cannot obtain additional permits until the outstanding issues are resolved. In my opinion, this has been SMCRA's most effective tool in changing the behavior of coal companies.

AVS has been very effective in making sure those companies and individuals interested in remaining in the coal mining business take care of past problems they can be linked to. The AVS has given us a means of resolving unabated state and federal environmental violations and civil penalty assessments without resorting to court action to compel reclamation. Since the AVS was created we have resolved hundreds of cases attributable to past operations of the major producers. One of those accounted for reclamation of nearly 500 contract mining operations in three states. The reclamation alone was valued at over five million dollars. The AVS has produced thousands of settlement agreements resulting in considerable reclamation and millions of dollars of payment in fees and penalties for both OSM and the State Regulatory Authorities.

In the 1990s, the hostile relationship between States and OSM began to fade. This began with the effort by Director Robert Uram to refocus OSM's oversight role on results and to involve the states more directly in the evaluation process. Rather than spend days pointing out each others shortcomings, the States and OSM began working as partners to find resolutions to problems. That relationship, the true "cooperative federalism" envisioned in SMCRA, has continued to build to this day.

More recently, the State Regulatory Authorities and OSM have added a new meaning to cooperative federalism. Beginning in 2002, we saw several entities file bankruptcy in an attempt to evade reclamation obligations. These were multi-state operations where the mines and liabilities are located in one state and the assets and ultimate controllers are located in another. One case involving 425 SMCRA permits located across five states was the largest coal bankruptcy case in history. By utilizing dual enforcement and combining legal resources, the States and OSM together sent a clear message that it was unacceptable to socialize reclamation liabilities. The result was reclamation activities and assurances valued at nearly 400 million dollars.

The Continuing Legacy of SMCRA

I cannot imagine what our nation's land and water resources would be today if it were not for SMCRA. Congress' enactment of such a forward-thinking law was an awakening and recognition of the potentially dangerous and harmful cumulative effects of coal mining on the land and water. After years of resistance, coal companies acknowledge that reclaiming the land benefits them as well as the communities in which they operate. I believe that these companies now approach reclamation thoughtfully, with a businesslike attitude and an awareness of environmental impacts that did not exist before SMCRA. This is the true success of SMCRA.

About 29.5 billion tons of coal have been mined while SMCRA has been in place. Most of that, about 90 percent, was used to generate electrical power. During this same time, the coal mining industry has successfully reclaimed more than 2 million acres (2,238,560) of mined lands. The reclamation accomplishments at many of these mines

are truly impressive, exceeding all State and Federal regulations. Millions of trees have been planted for both commercial forestry and wildlife habitat, trees that recreate or extend the hardwood or pine forests native to the area. Wetlands, often part of mine drainage control, also have been reclaimed and restored. Mines that have been reclaimed for farmland show high levels of productivity. In re-mining operations, similar results occur with the added benefit of cleaning up abandoned surface, as well as underground mines.

In addition to ensuring that active mines operate in an environmentally-sustainable manner, the other daunting task assigned to OSM under SMCRA was to restore mined lands that were abandoned before the law was passed. Today, almost 240,000 acres of high-priority mine lands abandoned before 1977 have been reclaimed. The Abandoned Mine Land Program has eliminated safety and environmental hazards on a total of 314,108 acres. As with the active mining operations, the reclamation accomplishments are extensive and can now be done to a standard barely imaginable when the law passed. Useful buildings have been saved from collapse, sheer highwalls turned to rolling grassland, streams where fish could not live now support thriving wildlife populations. Forests are beginning to grow.

The credit for these accomplishments belongs largely to the people working in the regulatory and reclamation programs for the coal States and Indian Tribes. There are about 2,400 people in this country responsible for implementing the Surface Mining Act. Only a little over 500 of them work for OSM. That's the way Congress envisioned things working when it gave us SMCRA. We try to set the standards and solve the problems at the federal level, but it's the States and Tribes and their citizens who know their own issues best.

The first 30 years of SMCRA have shown that we can balance the nation's need for domestic coal energy with protection for the environment. Mining should be a temporary use of the land and when mining is done, the land should be put back the way it was or put to some good use.

The Next 30 Years of SMCRA

Over the next 30 years, I expect that vibrant debate will continue over provisions of the law or how it's implemented. Many citizens are opposed to mining techniques like longwall mining or mountaintop mining. Some oppose the use of coal ash in reclaiming abandoned mines. Ongoing litigation continues between OSM and the mining industry over issues like ownership and control.

As someone who has lived through and participated in many of the debates in SMCRA's history, I have confidence that eventually these questions will be settled, and the discussion will move on to new issues. When we experience failures, as in the examples I have cited today, we should do our best to turn them into successes. SMCRA will be better for it, as will the coalfields, communities, and the States.

My generation -- SMCRA's first generation -- is getting to be retirement age. In the next

five or six years we're going to be replaced by a new generation. These new folks coming up bring with them new ideas and new technological tools my generation could not have dreamed possible. For example, technology continues to provide us with new ways to measure and mitigate environmental impacts. One of the challenges we face now is how to combine what my generation has learned with what the next generation can discover and use it to benefit Americans living and working in the coalfields.

Conclusion

I appreciate this opportunity to provide my personal insight into 30 years of the Surface Mining Control and Reclamation Act. I am not here today to say SMCRA is without flaws or has always been perfectly implemented. But I do believe that SMCRA has been good for the country. It may well be one of the best things Congress has done for the environment.

So, as a boy who grew up in the old coalfields, who has devoted his career to OSM, and who has seen dramatic changes for the better because of what Congress did back in 1977, I am here to say thanks. It was the right thing to do.

Mr. Chairman, I would be happy to answer any questions that you or members of the Committee may have.