

U.S. House of Representatives
Committee on Natural Resources

Testimony

“The Surface Mining Control and Reclamation Act of 1977:

A 30th Anniversary Review”.

Wednesday, July 25, 2007

By

John F. Husted, President

National Association of Abandoned Mine Land Programs

**Statement of John F. Husted, President
National Association of Abandoned Mine Land Programs
Before the House Natural Resources Committee – July 25, 2007**

Greetings Mr. Chairman and Members of the Committee. My name is John F. Husted and I am the Deputy Chief of the Ohio Department of Natural Resources, Division of Mineral Resources Management and also the President of the National Association of Abandoned Mine Land Programs (NAAMLPL). I started my career in 1979 with the State of Ohio and have worked exclusively in Title IV and Title V programs under the Surface Mining Control and Reclamation Act of 1977. I have represented the Ohio Department of Natural Resources as a member of the NAAMLPL since 1993 and have been proudly serving as President of the Association since September 2006.

I am submitting this testimony on behalf of the NAAMLPL. The NAAMLPL is a tax-exempt organization consisting of 30 states and Indian tribes with a history of coal mining and coal mine related hazards. These states and tribes are responsible for 99.5 percent of the Nation's coal production. All of the states and tribes within the NAAMLPL administer abandoned mine land (AML) reclamation programs funded and overseen by the Office of Surface Mining Reclamation and Enforcement (OSM) pursuant to Title IV of SMCRA, P.L. 95-87.

The Association appreciates the opportunity to participate in this oversight hearing on "The Surface Mining Control and Reclamation Act of 1977: A 30th Anniversary Review". I would like to present the member states' and tribes' views and sentiments related to implementation of the Abandoned Mine Land Reclamation Program (Title IV) under SMCRA.

Since the enactment of the SMCRA by Congress in 1977, the AML program has reclaimed thousands of dangerous sites left by abandoned coal mines, resulting in increased safety for millions of Americans. Specifically, more than 285,000 acres of abandoned coal mine sites have been reclaimed through \$3.5 billion in grants (administration and construction) to states and tribes under the AML program. This means hazards associated with more than 27,000 open mine portals and shafts, 2.9 million feet of dangerous highwalls, and 16,000 acres of dangerous piles and embankments have been eliminated and the land reclaimed. Despite these impressive accomplishments, \$3 billion Priority 1 and 2 problems threaten public health and safety and remain unreclaimed. These hazardous sites require safeguarding by the states and tribes AML programs.

The Association is extremely pleased over the passage of the 2006 Amendments to SMCRA. The 15-year extension coupled with increased funding will provide the states and tribes with the ability to carryout the remaining AML reclamation work. It is the intention of the states and tribes to focus on the protection of the public health and safety to ensure restoration in the coalfields of America. The Association would also like to

thank the Congress for reauthorizing the AML Program and for taking the AML funding to states and tribes “off-budget”. With the funding off-budget, this will finally allow the states and tribes to make staffing decisions and in turn begin planning for long range design and reclamation activities. Included with our testimony is a copy of an AML booklet called “Safeguarding, Reclaiming, Restoring” for your review. The booklet was developed by the Association and OSM to highlight the various AML projects across the United States that have protected the public’s health and safety.

It is important to remember that the AML program is first and foremost designed to protect public health and safety. The majority of state and tribal AML projects specifically correct AML features that threaten someone’s personal safety or welfare. While state and tribal AML programs do complete significant projects that benefit the environment, the primary focus has been on eliminating health and safety hazards first. The OSM inventory of completed work reflects this fact.

This committee has asked the NAAML P to comment on the 30th Anniversary Review of SMCRA. The following quotes and excerpts are from some of the Association members that I believe are representative of many of the members views and are intended to address the effectiveness of Title IV of SMCRA:

1. Montana: “From the Montana perspective the Abandoned Mine Reclamation Program under Title IV of SMCRA has been a huge success. Montana’s AML program was approved in 1980 and the program has had a high approval rating ever since. Montana’s program is a success from the aspect of protecting human health and safety, protecting the environment, and from the perspective of creating jobs and putting people to work. Acceptance of the AML program has run high because AML results in on the ground accomplishments that are immediately visually apparent.

From the program management perspective Montana’s AML program is a success because of the manner in which the Abandoned Mined Lands program is managed by Office of Surface Mining. Montana’s experience with OSM oversight in the AML program is one of collaborative assistance that focuses on accomplishing the goals of AML. OSM provides the oversight and assistance necessary to keep the AML program on track without creating unnecessary or confusing paperwork or reports.

OSM provides important training in the areas of computer software and modeling geographic information systems, and data systems. This focused training gets staff trained using software packages that would not be available through State computer systems. In addition, OSM sponsors training through their National Technical Training Program in subjects such as subsidence control, mine fire abatement, mine hydrology and project management. This specialized training is just not available from other sources and without it Montana AML would not have the necessary problem solving tools.

2. North Dakota: “Overall, I believe the AML program has been very successful in identifying abandoned mine sites and eliminating safety hazards associated with many of them. As you know, much more AML work remains to be done in most states and re-authorization of the program will allow most of this remaining work to be completed over the next 15 years. However, for the minimum program states, one of the failures has

been the lack of full funding for the minimum program states over the past 15 years. SMCRA amendments in 1992 set the minimum program funding level at 2 million dollars per year, but Congress typically appropriated only enough funds for 1.5 million per year. If the other 0.5 million dollars had been appropriated each year, the backlog of AML work in these states would be much less and hazards would have been eliminated sooner and at lower costs. Since there is nothing that can be done about past actions, we shouldn't dwell too much on that and move forward instead. With re-authorization now in place, it's time for OSM to ensure that funding for minimum program states is at the 3 million dollars per year authorized in that legislation. The increased funding to that level for the minimum program states needs to begin in FY 2008."

In closing, I would like to commend OSM for their efforts to work with the states and tribes in the rulemaking process for the implementation of the 2006 Amendments to SMCRA. OSM has spent considerable time and effort meeting and responding to questions and concerns from the Association regarding rule development. Although much has been done to address problems identified by the states and tribes, there are still significant shortcomings that need to be addressed. Several issues still have not been resolved, thus the states and tribes have serious concerns about how effectively the 2006 Amendments to SMCRA will be implemented. The issues are:

1. Funding for Minimum Program States.

- The Minimum Program States are Alaska, Arkansas, Iowa, Kansas, Maryland, Missouri, and Oklahoma.
- OSM has indicated that the minimum program states will not receive the full \$3 million allocation until FY 2010. The states believe that this is a misinterpretation by OSM and that the minimum programs should receive \$3 million per year beginning in FY 2008.

2. Use of Grant Mechanism to Distribute Payments from the U.S. Treasury for both the prior unappropriated state/tribal balances and payments in lieu of future state and tribal share to certified states and tribes.

- The states and tribes would like the option of receiving the Treasury payment by the current grant process or by direct payment from the Treasury similar to mineral royalties paid to states under the Mineral Leasing Act.
- The states and tribes want flexibility and discretion with regard to the types of mechanisms that are available for distributing and expending Treasury payments.

3. Use of Unappropriated State Share Balances for Noncoal Reclamation and AMD Set-Aside.

- In its most recent interpretation of the 2006 Amendments, OSM has stated that the funds returned to the states and tribes from the unappropriated state share balance cannot be used for noncoal reclamation or for the 30 percent AMD set-aside.
- Pursuant to Section 411(h)(1) of the 2006 Amendments, the states and tribes assert that these moneys should also be available for noncoal reclamation under Section 409 and for the 30 percent AMD set-aside. There is nothing in

the new law that would preclude this interpretation. Policy and practice over the past 30 years confirm it.

These three items represent some of the unresolved issues between OSM and the States and Tribes on the 2006 Amendments to SMCRA. These issues are very important and we request that this Committee urge OSM to address these problems, as we believe they will lay the foundation for successful implementation of the AML Program for the next 15 years. The Association can provide this committee a copy of a letter to OSM dated May 21, 2007 which provides significant detail and rationale behind our concerns over these listed topics and other important issues. We can also provide a copy of the response letter from OSM dated June 14, 2007.

Thank you for the opportunity to submit this statement and provide comments. Please contact me if the NAAMLPP can provide more information or assist the Committee in any way. My contact information is:

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