

**TESTIMONY OF**  
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**PRESIDENT**  
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**BEFORE THE**  
**UNITED STATES HOUSE OF REPRESENTATIVES**  
**COMMITTEE ON NATURAL RESOURCES**  
**RELATING TO**  
**THE SURFACE MINING CONTROL AND RECLAMATION**  
**ACT OF 1977:**  
**A 30<sup>TH</sup> ANNIVERSARY REVIEW**

**JULY 25, 2007**

Good morning, Mr. Chairman, members of the Committee, I am Bill Raney, President of the West Virginia Coal Association.

First, let me thank you, Mr. Chairman, as well as the members and staff of the Committee for the opportunity to participate in this oversight hearing regarding the 30<sup>th</sup> Anniversary of the Surface Mining Control & Reclamation Act (“SMCRA”) of 1977. I am very proud to be here on behalf of the Coal Association’s membership, which accounts for over 85 percent of the Mountain State’s underground and surface coal production. Today’s coal industry in West Virginia directly employs more than 20,000 miners and more than 25,000 contractors whose specialty skills and services are required to keep mines operating everyday.

For purposes of today’s hearing, I am most proud to have been asked to also represent the Coal Associations from the states that collectively make up this country’s Appalachian coal basin. In addition to West Virginia, those include Kentucky, Virginia, Maryland, Pennsylvania, Ohio and Alabama. In 2005, these states produced more than 37% of this nation’s coal while employing more than 54,000 coal miners, nearly 70% of the country’s total mining workforce. Again, using 2005 Energy Information Administration statistics, more than 62% of the miners in Mr. Roberts’ United Mine Workers of America (“UMWA”), are working in one of these seven states. As you can see, this region is absolutely critical to sustaining this nation’s energy production and the employment of a majority of America’s coal miners (*see generally* attachments “A” and “B”).

I am honored to represent the proud heritage of mining in this region that fueled the industrial revolution and made the United States the most powerful nation in the world. The Appalachian coal basin fueled the furnaces, foundries and mills that built the enduring infrastructure of this country, it powered the nation’s railroad system and it helped America achieve victory in two world wars. The proud miners of today continue that legacy so they can raise their families and provide a future for their children in the same area where they were raised, the states of Appalachia. Continued coal mining in West Virginia and the eastern states is absolutely critical to this future.

That, Mr. Chairman, accentuates the importance of what you did thirty years ago. Your influence and involvement, recognizing the challenges of mining coal in the eastern United States, with provisions for steep slope and mountain top mining as well as the use of valley fills, allowed the bill to be passed and signed into law, after two previous vetoes and a difficult time in Congress. The passage of HR2 and the signing of Public Law 95-87 was important to the continued viability of mining in the Appalachian region as it proposed national standards for permitting while allowing states the flexibility to specifically tailor their regulatory programs to meet their unique needs through the innovative concept of primacy. These thirty years have not been without difficulty, conflict and heated exchanges, but the original platform of SMRCA remains in place and has been successful. It is important that this continue because the needs of the eastern U.S. industry are quite different from those of the industry in the Midwest and the Western states. While the practicality of SMCRA has matured over the years through interpretation and regulatory implementation, it was the amazing foresight of its purposes that makes it more pertinent today than ever before. As you will recall, Mr. Chairman, thirty years ago the framers of this legislation stated one of the purposes of the Act was to

...assure the coal supply essential to the Nation's energy requirements, and to its economic and social well-being is provided and strike a balance between protection of the environment and agricultural productivity and the Nation's need for coal as an essential source of energy.

When one considers the tremendous progress our society has made over the past three decades, most of which is energy-dependent, with the fact that America's coal production has nearly doubled in that same period, the relevance of that 30-year-old purpose is evident. Deliberate pursuit of that purpose is more important today than it was in 1977.

It is imperative that U.S. coal production increases so as to contribute to America's energy security and it is equally critical that production from the Eastern states be sustained in order to "keep America's lights on" and to provide Americans with a comfortable, convenient, electrically-dependant, lifestyle. In so many ways, the modern-day American dream is one that is coal-fired and it requires all of our coal, whether it comes from the East, the Midwest or the West. OSM's demonstrated ability to run SMCRA's national regulatory program while recognizing the needs of different regions is critical to this sustainment and

America's continued growth as a model for reclamation and environmental protection throughout the world.

SMCRA has provided the "baseline" of legislation and regulation that has allowed our industry to answer the changing energy needs of this country and we have accomplished that with professional stewardship. It is SMCRA's solid foundation that has afforded our people the opportunity to "set the pace" for reclamation and environmental protection. No one ever gives credit to the states, OSM, Congress, the coal industry or our people for the fact that we are leading the world in mining stewardship. It is a fact and thereby, perhaps, not newsworthy! It is, however, something we point to with pride and is ever more important so as to preserve the jobs and professions of our more than 54,000 miners and thousands of specialty contractors.

Because all of our employees are "practicing environmentalists", working every day to insure their environment, the environment around the mine, is protected, preserved and maintained. Every time I get the chance I tell people I am proud to represent more "practicing environmentalists" than any other organization in the world. That is especially true today since I am speaking for the other six Appalachian coal-mining states. You see, each one of these miners or contractors is protecting the environment while they are mining or helping to mine our coal. They may be protecting water quality, restoring original land contours or providing for future developments, planting trees, constructing ponds and doing the myriad tasks required to insure that their children and grandchildren can hunt the same mountains and fish the same streams as they once did. These coal miners and practicing environmentalists are proud of their work to both fuel this country and protect its social and natural environment, and we are, of course, proud of them and their enormous contribution to the economy, security and social fabric of their native states and this great country and I am honored to speak on their behalf today.

While the reasonable implementation of SMCRA has provided a platform for these demonstrated achievements, it remains under constant attack by lawyers, groups and other federal agencies attempting to detract from its original purposes and intents. Congress intended, thirty years ago, for SMCRA to be the "brace" of protection as the primary environmental enforcement structure for coal mining throughout the federal government and to standardize the complications of permitting and regulation among the states and Indian reservations. SMCRA was to literally "level the field" of requirements among the states and other federal agencies for permitting, operating and reclaiming mine sites throughout the country.

Despite this intent for SMCRA to be the “federal baseline”, some 30 years after its passage there remains conflict and uncertainty. SMCRA encouraged and, in some cases, directed other federal agencies, i.e., EPA, the Corps of Engineers and other Department of Interior offices and services, to cooperate with OSM. SMCRA’s regulatory requirements were to become the platform for evaluating and permitting mining operations, no matter where they were or what type of operations they proposed. Here we are thirty years later and that still has not happened. That “overlapping redundancy” provides fertile ground for harassing lawsuits and judicially inspired regulatory confusion, which is typically overturned at the appeal court level.

Since 1997, there have been scores of federal lawsuits challenging the very foundation of the mining regulatory structure sanctioned and approved by Congress in 1977. Most of these challenges centered on the practice of valley fill construction. All coal mining, surface and underground, in the steeply sloped terrain of Appalachia is dependent on the ability to construct valley fills, a practice that was started in West Virginia and recognized by Congress in SMCRA as the best possible way to safely and permanently store the excess dirt and rock not needed to restore the approximate original contours of the land following the completion of mining (see attachment “C”, relevant pages from OSM’s implementing regulations, attachment “D”, relevant pages from a decision from the U.S Court of Appeals for the Fourth Circuit decision regarding SMCRA and the practice of valley fill construction and attachment “E”, photographs of active and reclaimed valley fills). As you may recall, Mr. Chairman, this was one of the issues that was addressed before the bill was approved in 1977. However, time and time again federal judges, reacting to the claims of extremist environmental groups, have interpreted the Clean Water Act to outlaw the very activities that Congress approved in SMCRA.

For example, SMCRA mandates the installation of ponds below valley fills. These sediment ponds were recognized by Congress as the best technology available to control runoff and meet water quality standards from mining operations (see attachment “F”, photographs of valley fills and in-stream ponds, attachment “G”, relevant pages from an OSM-published *Handbook for Small Mine Operators* and attachment “H”, relevant pages from OSM’s implementing regulations). In June of this year, a federal judge, reacting to an extremist lawsuit, ruled that these ponds cannot be constructed because they are illegal under the Clean Water Act. So, we have a federal judge using one statute to outlaw another agency’s regulations, despite 30 years of outstanding experience and accomplishment through OSM’s interpretation and implementation of SMCRA.

All of that frustrates the development of mining operations in Appalachia and needs Congressional attention. The overlaps that exist between SMCRA and the other federal environmental laws and programs need to be addressed with the same intent as expressed in 1977 that SMCRA was and is to be the “federal baseline” for permitting and enforcement of mining operations throughout the country. While some agencies have perpetuated this confusion, the U.S. Army Corps of Engineers through its Assistant Secretary for Civil Works and its Huntington and Pittsburgh District offices have done as much as possible to reduce and eliminate conflicting program requirements under SMCRA and section 404 of the Clean Water Act. Despite the cooperative efforts of these two agencies pursuant to SMCRA, lawyers continue to attempt to stop mining in West Virginia and take the jobs of our miners and disrupt their lives and the lives of their families. These lawyers, which usually end up being paid by the federal government, are exploiting these “redundant overlaps” among the programs. We hope you and the Committee will give this matter your prompt attention because the original intent of SMCRA was clear in 1977 and has typically withstood many legal tests.

As mentioned earlier, the 1977 Act showed great foresight and vision relative to America’s importance as a leader in balancing the world energy needs and protecting its environment. SMCRA is also unique in that it provided not only the structure for regulation of future coal mining activities, it also established the Abandoned Mine Lands (AML) program, funded entirely by a tax collected on active coal production, to address the environmental, social and infrastructure problems presented by older sites that had been mined prior to the passage of SMRCA. It is important to emphasize the fact that this entire program is paid for completely with industry money because many Americans are not aware of the benefits of this program and the fact that it is funded entirely by the industry. This successful program continues to reclaim “pre-law” mine sites, install much-needed infrastructure in rural mining areas, address emergency situations from past mining and provide medical benefits for thousands of the retired coal miners and their dependents. Again, the foresight and vision of SMCRA, as expressed in 1977, is evidenced in the successful AML Program. However we feel more credit needs to be given to the fact that this program is funded with money from today’s coal production and how important it is for coal mining to continue so the AML program can be sustained at the same level of funding. Lawyers and judges need to recognize the implication of diminished domestic coal production on this notably successful program of environmental remediation, infrastructure development and social rescue.

Back in 1977 West Virginia's pre-SMCRA mining environmental program served as the model for this federal legislation and West Virginia was the first state to obtain primacy under the cooperative federalism structure established by Congress that recognized not only the need for a level playing field of regulation for the sake of interstate commerce and environmental protection but also acknowledged the expertise of the individual states to regulate activities occurring within their own borders.

We believe that SMCRA and the administration of its implementing regulations by the Office of Surface Mining have been largely successful. Again relying on Congress' stated purpose that the country's need for energy must be balanced with environmental protection, one only has to realize that coal production has increased since the passage of the Act in 1977 at no sacrifice to the natural environment.

Sure, there have been growing pains over the years, where industry and sometimes even state regulators have disagreed with OSM but, by and large, we believe that SMCRA has achieved the environmental goals envisioned by this Congress 30 years ago, just as former Secretary of the Interior Bruce Babbitt observed when he and Chairman Rahall marked the 19<sup>th</sup> Anniversary of SMCRA in West Virginia in 1996 (see attachment "I"). On August 3, 1996, then Secretary of Interior Bruce Babbitt visited a reclaimed mountain top mining operation with valley fills in Boone County, West Virginia and observed, among other things, "the landscape is better in many ways". If former Secretary Babbitt was to return to the this site or any site in any of the Appalachian states he would be even more impressed today with the resiliency of SMCRA and the tremendous achievement of the miners and operators, all of whom are "practicing environmentalists".

Mr. Chairman, your attention and amendments in 1977 allowed this bill to be passed because those changes recognized the significance of coal production in the Appalachian region of this country and the need to sustain that production and protect the jobs of our people. Your amendments relevant to this Act and the Clean Water Act that have been passed since 1977 were also important to that sustainment and protection. Your continued leadership is equally important today to be sure those same protections are in place for the operations and the miners of Appalachia. You and your Committee's vision, as demonstrated 30 years ago, is critical today to eliminate the "redundant overlap" between Congressional intent as expressed in SMCRA and the Clean Water Act.

This “overlap” dilemma casts a long shadow over the coal industry in Appalachia, creating regulatory uncertainty that discourages new and continued investment in the very region that serves as the basis for the country’s industrial and electrical fuel supply. Perhaps most disturbing, it questions the future of our more than 54,000 coal miners, our “practicing environmentalists”, who continue to work, live and raise their families in their native Appalachia. Those workers are threatened by these frivolous lawsuits and continued attacks. (See attachment “J”, affidavits filed by four coal miners in a related court case).

Mr. Chairman and members of the Committee, we believe that these miners are owed a stable future as they work to provide the energy for the rest of the country. As we stated previously, SMCRA was a critically important step in providing that stable future. It established that federal baseline, that brace of regulation that leveled the playing field among the coal producing states. It provided protection for the natural and social environmental, allowing the diverse environmental setting of Appalachia to maintain and flourish. SMCRA protects our communities and our people, preserving the social fabric of the Appalachian coal mining communities where our coal miners live and work. But, there is still some work to be done. Removing the judicially-inspired regulatory confusion that flourishes because of these “redundant overlaps” between SMCRA and section 404 of the Clean Water Act will firmly re-establish Appalachia as a source of domestic, industrial and consumer energy, allowing our miners, our practicing environmentalists, to continue to work and live uninterrupted as they mine the coal which not only powers the economic engines of this country, but provides the revenue stream for the AML program and is the economic lifeline for our seven Appalachian states.

Mr. Chairman, once again, I express our appreciation for the opportunity to appear before your Committee. You set the stage 30 years ago and have diligently protected our people and their jobs ever since then. We are, however, threatened today. Our people are threatened. We turn to you, as we did in 1977, to protect us and bring peace of mind to the miners and companies in the coalfields of Alabama, Kentucky, Maryland, Ohio, Pennsylvania, Virginia and West Virginia, the proud states of America’s Appalachian basin.