

**Statement of Brent Wahlquist
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U.S. Department of the Interior
before the
Committee on Energy and Natural Resources
of the
United States Senate**

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Mr. Chairman and Members of the Committee, thank you for the opportunity to appear before you today to share the perspective of the Office of Surface Mining Reclamation and Enforcement as we look back on 30 years of the Surface Mining Control and Reclamation Act of 1977.

The Surface Mining Control and Reclamation Act (SMCRA) was signed into law on August 3, 1977, after 5 years of Congressional debate and two Presidential vetoes. The Office of Surface Mining Reclamation and Enforcement (OSM) was created to implement the law. More recently, on December 20, 2006, SMCRA was amended by the Tax Relief and Health Care Act of 2006, Public Law 109-432 (2006 Amendments).

One of the purposes of SMCRA is “to assure that 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.” This balance between environmental protection and energy production is embodied in our logo and serves as a guiding principle in our implementation of SMCRA.

Another fundamental principle embodied in SMCRA is the concept of State primacy. For express reasons, Congress clearly intended that States would and should be the primary regulators under SMCRA. Of the nearly 2,400 government employees directly involved with implementing the regulatory and restoration programs of SMCRA on a daily basis, less than 25 percent work for OSM. The rest are State and Tribal employees who permit and regulate 97 percent of the Nation’s coal production and use 90 percent of the Abandoned Mine Lands (AML) project funds. OSM’s task is to provide the regulatory and policy framework, oversight, assistance, training and technical tools needed to maintain stable and effective regulatory and AML programs of the highest quality.

The first years after SMCRA’s passage were filled with controversy, contention, litigation, and uncertainty. OSM faced the challenge of striking the proper balance between oversight, direct enforcement, and assistance, in order to promote both quality State programs and achieve a high level of industry compliance. Through the years, efforts to clarify OSM’s oversight role, increase cooperation with States, develop a training program, provide technical tools, and promote technology transfer have largely

eliminated the highly contentious relationship with States and other interested parties that existed during the early years of SMCRA. We believe that OSM has succeeded in its efforts to develop and implement a stable regulatory structure that achieves the desired balance between environmental protection and energy production, while respecting the role of States as the primary regulators.

Since SMCRA was passed 30 years ago, domestic coal production has increased by 67 percent and has gone from third place in United States domestic energy production, behind oil and natural gas, to a solid first place. At the same time, unlike oil or natural gas, coal is cheaper today than it was 30 years ago. Coal is now the fuel providing more than half of the Nation's electricity that is so essential to the economy and our daily life. Further, 97 percent of that coal production is regulated by States under primacy programs approved by the Secretary.

The coal industry has changed over the past 30 years. At the time SMCRA was passed, coal production occurred mainly in the eastern United States, and small operators and privately-held companies produced much of our Nation's coal. Since that time, many of those small operations have been replaced by larger, publically-held operators. Most of the increase in coal production has largely occurred in the West, while total production in the rest of the country has remained relatively constant.

Under SMCRA's regulatory program, hundreds of thousands of acres have been successfully mined and reclaimed. In addition, numerous AML problems, including hundreds of miles of abandoned highwalls and numerous refuse piles, culm banks, and acid-mine-drainage sources, have been eliminated during re-mining of previously mined areas, substantially reducing the extent of AML problems that must be addressed through the AML fund.

Under the AML program, enormous progress has been made in addressing the 200 year legacy of hazards and environmental degradation from past coal mining. The AML Program has reclaimed almost 240,000 acres of hazardous high-priority coal-related problems. Safety and environmental hazards have been eliminated on almost 315,000 acres containing coal or non-coal problems. Since 1977, OSM has provided \$4.06 billion in grants to its partners in 24 States and three Indian Tribes to clean up dangerous abandoned mine sites. Since 1999, OSM has funded 161 Watershed Cooperative Agreements with local non-profit watershed organizations totaling \$14.1 million. This funding has been leveraged with other resources by these organizations to undertake projects valued at over \$45 million. Almost 8,000 emergencies have also been addressed.

Over the past 30 years, there have certainly been some course corrections. Congress has passed amendments eliminating the two-acre exemption, and requiring restoration of water supplies damaged by underground mines and repair or compensation for homes damaged by subsidence. Congress has also revised and extended the AML program, with the latest changes contained in the 2006 Amendments to SMCRA passed and signed into law last December. These changes provide a framework for completing remaining coal-related reclamation.

OSM has made changes to the regulations implementing SMCRA in response to identified needs and to issues that arose during litigation. For example, OSM has developed the Applicant Violator System (AVS) and corresponding regulations that block those responsible for outstanding violations from getting new permits. In support of State primacy and to lift the quality of regulatory and AML programs, OSM:

- Maintains a highly successful training program addressing regulatory and AML issues that now utilizes State/Tribal staff for more than half of its instructors;
- Provides, through our Technical Information and Professional Services (TIPS) program, off-the-shelf technical software at tremendous savings through license sharing arrangements, training on that software, and cutting edge technical tools;
- Provides technology transfer programs to promote the utilization of best practices; and
- Provides an alternative enforcement framework and supports State regulators to help compel reclamation by those with outstanding violations, particularly in bankruptcy cases.

Our AML enhancement regulations have been very successful in stretching the reach of AML funding by allowing and encouraging the sale of coal encountered during the abatement of AML problems to help offset the cost of AML remediation.

Another important shift has been promotion of reforestation as a post-mining land use. Virtually all of the land that has been surface mined for coal over the past 30 years in Appalachia was forested before it was mined. However, the vast majority of that land has not been returned to forest. Instead, much of it has been reclaimed to hayland/pasture with smoothly graded (and thus compacted) surfaces and heavy groundcover unsuitable for growing trees.

Yet, forests moderate temperatures, control runoff, improve water quality, sequester carbon, and provide enormous biological diversity. Researchers at several universities have demonstrated that mined land, if properly reclaimed, can sustain tree survival and growth rates even greater than average sites on unmined land.

Over the past few years, in partnership with a wide range of State and Federal agencies, industry groups, environmental organizations, academic institutions, and individuals, OSM has established the Appalachian Regional Reforestation Initiative to promote reforestation through use of a science-based approach. The challenge before us is to completely change the perception among regulators, mine operators, and landowners, of what good reclamation looks like, while continuing to foster further scientific development and understanding of forest restoration.

This problem demonstrates the value of maintaining collaborative relationships with the academic institutions across the coal fields, since the problems related to reforestation were known within the academic institutions for several years before that knowledge began to work its way into practices accepted by regulators and industry.

In summary, while there are still some areas of controversy, such as those surrounding mountaintop mining, OSM has made enormous progress in bringing regulatory stability, based upon State primacy, to the coal fields in a manner that protects the public and the environment during mining and assures that land is restored to productive uses following mining. Emphasis on limiting regulatory changes to areas where greater clarity is needed, training, technical tools, technology transfer, and assistance have proven highly cost effective in lifting the quality and consistency of State programs and encouraging high quality reclamation. Along the way, we have pioneered partnerships with other Federal agencies, affected communities, and academic institutions across the coal fields to promote emerging technologies and practices. We also have been working with Tribes in implementing those aspects of the 2006 amendments authorizing Tribal primacy.

According to the Energy Information Administration, coal is expected to remain the primary fuel source for electricity generation over the next 20 years and coal production is forecasted to increase to match demand. Meeting that demand for coal, while protecting people, land, and water, will require a stable regulatory environment wherein all parties, including citizens, industry, landowners, and regulators, can make informed decisions affecting their interests.

As we look to the future, we will continue our emphasis on regulatory stability and clarity in a manner that promotes the development and application of sound science and new technologies so that the coal so essential to the Nation's well being can be produced while minimizing environmental impacts.

Thank you for this opportunity to highlight our challenges and accomplishments during the first 30 years of SMCRA.