

**STATEMENT FOR THE RECORD  
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT  
U.S. DEPARTMENT OF THE INTERIOR**

**BEFORE THE**

**COMMITTEE ON NATURAL RESOURCES  
ENERGY AND MINERALS SUBCOMMITTEE  
U.S. HOUSE OF REPRESENTATIVES**

**FOR THE  
HEARING TO CONSIDER:**

**H.R. 2824**

**THE PREVENTING GOVERNMENT WASTE AND  
PROTECTING COAL MINING JOBS IN AMERICA ACT**

**AUGUST 2, 2013**

Mister Chairman and Members of the Subcommittee, thank you for the opportunity to provide this statement for the record regarding H.R. 2824, which would direct state surface coal mining regulatory agencies to implement the Office of Surface Mining Reclamation and Enforcement's (OSM) 2008 Stream Buffer Zone Rule (2008 SBZ Rule). OSM opposes H.R. 2824; its enactment would force states to spend limited resources to implement an outdated rule with significant defects. OSM would also like to take this opportunity to provide the Subcommittee with an update on the 2008 SBZ Rule litigation and the development of OSM's Stream Protection Rule.

Congress gave OSM its regulatory authority and responsibilities in 1977, when it passed the Surface Mining Control and Reclamation Act (SMCRA). At that time, Congress mandated that OSM strike a balance between protecting the environment and providing for the nation's energy needs. Specifically, Congress established the bureau to carry out two basic functions: First, OSM is responsible for ensuring that coal mines operate in a manner that protects both people and the environment, and that the land is restored and is as productive after mining as it was before mining. Second, OSM is responsible for establishing and administering an Abandoned Mine Land program to address hazards to people and the environment that were created during more than two hundred years of inadequately regulated coal mining that occurred before SMCRA's enactment.

As Interior Secretary Sally Jewell has stated, our commitment to the President's "all of the above" energy strategy will enable us to continue with the safe and environmentally responsible expansion and diversification of our nation's energy production, further reducing our reliance on foreign oil, and protecting our land and water at the same time. Protecting people, land, water, and the environment and promoting responsible coal mining are compatible goals. We can have both. The "all of the above" energy

strategy is working. Activity in the Gulf of Mexico exceeds levels before the Deepwater Horizon spill, within an improved safety and environmental regulatory framework. Similarly, onshore oil production from Federal lands is at its highest level in over a decade.

Along with responsible oil and gas development and the growth of clean, renewable energy, the production of coal is an important component of our nation's energy portfolio. The responsible development of this important resource is a key part of America's energy and economic security. Coal will remain an important part of our energy mix for years to come. We are committed to safe, responsible coal production and the jobs it supports.

Although OSM is not involved in coal leasing, which is conducted by the Bureau of Land Management for Federal lands, the Administration is also making more coal available, with the number of producing acres rising four percent from FY 2009 to FY 2012. In fact, in FY 2012, the Bureau of Land Management leased more Federal coal than at any other time since FY 2003.

Under SMCRA, most coal-producing states have primary responsibility, also known as "primacy", to protect people and the environment from the adverse effects of coal mining. States with primacy have demonstrated that their state regulatory programs satisfy the minimum statutory and regulatory Federal standards established in SMCRA and OSM's regulations. OSM provides assistance to, and oversight of, primacy states to help ensure proper regulation of coal mining and the protection of people and the environment. We also continue to ensure the reclamation of high-priority abandoned mine sites, and are reducing the number of remaining dangerous abandoned mine sites nationwide.

In December 2008, OSM published a final rule that modified the circumstances under which mining can occur in or near streams. The 2008 SBZ Rule has been challenged by ten organizations in two separate complaints filed in Federal District Court for alleged legal deficiencies. The Department of the Interior recognized error in the 2008 SBZ rulemaking process. In a motion filed with the Court in one of the cases on July 17, 2013, the government admitted error in one of the pending legal challenges to the 2008 SBZ Rule. That error is believed to be a flaw that could result in invalidation of the 2008 SBZ Rule. In that case, the government has asked that the 2008 SBZ Rule be vacated.

While the litigation has been pending, the Department of the Interior has identified additional considerations that the 2008 SBZ Rule did not address. As a threshold matter, there have been significant advances in science and technology since the promulgation of a 1983 rule, which preceded the 2008 rule. Those advances were not addressed in the 2008 SBZ Rule. The 2008 SBZ Rule, now almost five years old, did not incorporate the most modern technology and science that were available at that time, nor does the rule reflect the scientific advances that have occurred since the rule was promulgated. As we proceed with development of the Stream Protection Rule, we are combining on-the-ground experience with peer-reviewed scientific literature to

modernize our rules. We will use the best available technology and science to improve mining practices in order to minimize and mitigate environmental damage from coal mining. Our proposed revisions will provide solid benchmarks for companies to meet, and will be based on the latest accepted scientific methods. Clear and uniform standards will provide greater predictability and certainty to the mining industry, and can better protect affected communities.

A revised rule that more effectively incorporates modern science will enable the coal industry to do a better job of reclaiming the land and restoring natural resources, and in many cases, will lead to that work being done in a more economic and efficient manner. These goals are fully consistent with Congress' mandate and OSM's mission, while also retaining much-needed, well-paying jobs, and generating revenue in the nation's coal-producing regions.

OSM will consider the extensive public and agency comments it has received to date on the Stream Protection Rule, and on the comments it will receive when OSM publishes a proposed rule. Further, it will consider the benefits, as well as the costs, of the agency's regulatory alternatives. Development of the proposed rule language and the Draft environmental impact statement (EIS) is an iterative and interactive process; we are developing each in concert with the other. The cost/benefit analysis of potential rule changes helps inform agency decisions regarding what should be included in the proposed rule. OSM plans to publish a proposed rule and associated Draft EIS in 2014.

As a result of our extensive outreach efforts, we have already received significant input from the public, states, and other Federal agencies on issues that we will consider in drafting the proposed rule, including more than 32,000 comments in 2009, and more than 20,000 after we held public scoping meetings in 2010. Consistent with SMCRA, the National Environmental Policy Act, the Administrative Procedure Act, and other applicable laws, we will ask interested stakeholders --Congress, state agencies, industry, environmental organizations, and members of the public -- to comment on the proposed rule and Draft EIS once those documents have been published. We look forward to additional public review and comment on the proposed rule and Draft EIS after they are published.

For the reasons stated we oppose H.R. 2824. We believe the development of the Stream Protection Rulemaking is the approach that will best result in regulatory improvements that will more completely implement the law, make use of the best available science and technology, provide for a more sustainable coal industry and its jobs, better protect streams nationwide, and provide greater clarity and certainty to the mining industry and affected communities.

OSM looks forward to working with you to ensure that we protect the nation's land and water while meeting its energy needs.