TESTIMONY OF MR. MIKE CAREY

PRESIDENT, OHIO COAL ASSOCIATION

BEFORE THE

HOUSE COMMITTEE ON NATURAL RESOURCES,

SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

TESTIMONY ON "*JOBS AT RISK: COMMUNITY IMPACTS OF THE OBAMA ADMINISTRATION'S EFFORT TO REWRITE THE STREAM BUFFER ZONE RULE*"

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Chairman Lamborn, Ranking Member Holt, Members of the Subcommittee, good morning.

Thank you for inviting me to testify at this very important hearing on Office of Surface Mining, Reclamation, and Enforcement's (OSM) Stream Buffer Zone Rule and its impact on American jobs. My name is Mike Carey and I serve as President of the Ohio Coal Association (OCA). I am also a member of The National Coal Council, which serves as an advisory committee for the Secretary of Energy on energy resource issues.

In our country today, coal is mined in 27 states and produces affordable electricity for 48 states. Coal provides 86 percent of the electricity needs for powering Ohio's business and residential sectors. The OCA provides a voice for the many thousands of our citizens working in Ohio's coal sector. The companies we represent are proud to directly employ over 3,000 individuals in Ohio alone and the over 30,000 additional jobs dependent on our industry.

The OCA seeks to continually educate state and federal lawmakers on the effects that policies have on American jobs, the economy, the reliability of electric power production and our global energy manufacturing competitiveness. This is why I am here today. Coal provides our country with a strong international competitive advantage, as we have more coal than Saudi Arabia has oil and gas. Energy Information Administration data shows that at least 261.5 billion tons of coal reserves are available in America, making our recoverable coal reserves almost 1/3 of the world's total supply.

Coal is not only America's most abundant energy resource, but it is, by far, our lowest cost domestic energy resource. Cheap, affordable coal is what powers the nation's manufacturing base and keeps the lights on for millions of America families. The low cost electricity that coal provides is a staple of American life and is essential to many Americans' standard of living.

It is difficult for me to confine my remarks today to only the Stream Buffer rule, because nationwide our industry is facing an unprecedented onslaught of new regulations that are, simply put, designed to eliminate America's coal industry and the thousands of jobs associated with coal. The Obama Administration and its allies have declared a de facto war on coal across Appalachia and America. The Department of Interior's (DOI) OSM Stream Buffer rule and EPA's various rules, including greenhouse gas rule, the Cross-State Air Pollution Rule (CSAPR)

and Utility MACT, have one purpose: to force coal out of business. These regulations, coupled with the permit delays across the entire Obama Administration, will be economically devastating and will have an inevitable adverse effect on our nation. Hard-working Americans will lose their jobs, businesses will shutter, families will be forced to pay more to keep warm in the upcoming winter months as we are forced to supplant our nation's most abundant and affordable energy resource.

Mr. Chairman, the Obama Administration's attempts to rewrite the Stream Buffer Zone Rule is nothing but a blatant attempt to kill coal in Appalachia, which will destroy jobs across the industrial Midwest. Why do I say this?

1) The last rewrite undertaken in 2008 – only three years ago - was a thoughtful process involving all of the stakeholders and examining all of the major issues.
2) The Obama Administration's efforts were a rushed job done solely to placate their environmental allies, ignoring stakeholders and the impacted States themselves.
3) When the Obama Environmental Impact Statement (EIS) was criticized for the bluntness of the potential job losses, instead of admitting the problem, they fired the contractor who made the informed observations.

The Right Way to Conduct a Rulemaking

When OSM revised the Stream Buffer Zone rule in December 2008 it was the product of over five years of studies, millions of taxpayers' money spent on research, two environmental impact statements, over 43,000 public comments, and 30 economic and scientific studies.

OSM began the process in 2003, releasing a discussion draft of methods to clarify the older 1983 rule. Later that year OSM, working with the EPA, Army Corps of Engineers, Fish and Wildlife Service, and importantly the State of West Virginia completed a 5,000 page programmatic ESI on mountaintop mining. This EIS contained 30 separate federal studies on all aspects of Mountaintop Mining. They later proposed additional changes to the rule based upon public comments. Then in 2007 they completed another EIS which examined more specifically the stream buffer zone rule, addressed further comments and involved all stakeholders. The final regulation was issued in 2008.

The Wrong Way to Conduct a Rulemaking

This is contrasted directly with the Obama Administration's closed and rushed efforts to ram a new rule through the process to placate their environmentalist allies.

In 2009, at the beginning of the Obama Administration Secretary Salazar signed an memorandum of understanding (MOU) vowing to revisit the stream buffer zone rule and then attempted to vacate the 2008 rule by guidance document. It took a federal court telling them they had to use the APA rulemaking process.

They later published an advanced notice of proposed rulemaking, making 10 significant changes to the stream buffer zone rule. They only allowed 30 days comment and ran the clock between Thanksgiving and just after Christmas.

In 2010, they entered into secret negotiations with several environmental organizations, emerging with a signed settlement agreement and also agreeing to pay their legal fees. They then started a new EIS and decided to expand the scope of the Stream Buffer Zone rules to include major changes to the underlying Surface Mining Control and Reclamation Act regulations.

As opposed to the 2008 efforts, eight States and the Western Governors Association wrote the Agency objecting to the draft EIS conclusions and the lack of opportunity to participate in the process.

Fire the Messenger

The Administration hired an outside contractor to prepare the EIS, without the benefit of any new federal studies. After the EIS draft was completed, the press seized upon the study which predicted at least 20,000 jobs would be lost including the elimination of 20-30 percent of all surface mining in the East.

Two months later, instead of changing direction on the regulation, announcing they were wrong to eliminate jobs, or that they would change their approach, they instead blamed the contractor, fired them, and announced they would hire a new contractor to start the EIS over again. This is a classic example of shooting the messenger, but not changing the message. If this example wasn't so real and troubling, I would swear that they took their strategy from watching the movie Casablanca. Just like Captain Renault was shocked that gambling was going on, OSM Director Pizarchik was shocked that his regulation would lead to job losses. It's not very credible. One can only surmise that the new contractor has either explicitly or at least implicitly been told to steer clear of any job loss projections.

What's at Stake?

OSM's Stream Buffer Rule is the most comprehensive and far-reaching revision of a SMCRA rule in more than 30 years. Rather than providing regulatory clarity as the 2008 rule did, the new rule replaces decades of interpretation of the law, prohibits standard mining practices and has nationwide application. In light of the five years it took to come up with the 2008 rule, OSM could not properly and responsibly rewrite this rule in such a short period. OSM's rulemaking process and the new rule have been widely criticized by states and state agencies responsible for implementing the rule. Moreover, this rule will have damaging effects throughout the states where the mining industry operates and will destroy tens of thousands of coal related jobs.

It is imperative that this Subcommittee and Congress carefully review OSM's rules in order to protect American jobs. We are always concerned when regulatory overreaching negatively impacts job security and growth in our region. We are in difficult economic times when many Ohioans and Americans find themselves out of work. Unemployment in Ohio is 9.1 percent, the same as the overall unemployment rate in the U.S.

Rural regions in West Virginia, Ohio, Pennsylvania, Illinois, Indiana, Kentucky and Tennessee would be economically devastated from losing a major employer such as the coal industry due to the OSM rule. By OSM's own admission, more than 7,000 jobs in Appalachia would be lost. This is an optimistic, underestimated assessment; we believe Appalachia will lose more than 20,000 jobs and nearly 70,000 coal related jobs would also be lost nationwide. This would mean the unemployment rate rising in these states and a loss of more than $650 million of earnings and state revenue.

According to the agency's draft ESI, the Stream Buffer rule would annihilate approximately 1/3 of surface mines in the East and up to 50 percent of underground mines nationwide. In addition to closures of Eastern mines, the OSM rule would cause closures in coal production of 20 percent of Illinois' Basin mines, over 25 percent of the Gulf region and 84 percent of Alaska's mines.

This rule will be economically devastating to many states and communities in the East, but its impacts will be far-reaching effecting the nation's economy, employment rate and energy affordability. Decreases in Eastern coal production will increase electric prices, a fact which OSM did not take into consideration while rulemaking. Twenty-two of the 25 states with lowest electricity costs rely on coal for at least 40 percent of their electricity needs.

Mr. Chairman, when an agency:

1) Ignores the previous open rulemaking processes of its past, ie the 2008 Stream Buffer rulemaking process, and
2) Rushes its replacement through after meeting in secret with environmental organizations and ignoring the stakeholders and the States in the process, and
3) Shoots their own messenger, only after the work is derided by the press,

Then one can only conclude that their proposal was intentional and that they knew exactly what they were doing to the coal industry.

I ask that you help reign in OSM and do all that you can to stop this rulemaking. Americans have lost enough jobs; don’t allow tens of thousands of additional families to suffer for OSM's misguided and unjustified rule.

Thank you for this opportunity to testify, Mr. Chairman, and stand ready to answer any questions the subcommittee may have about this attack on coal jobs, power providers and businesses throughout the United States.