Statement of Roger D. Horton

House Committee on Natural Resources:

Subcommittee on Energy and Mineral Resources-

Jobs at Risk: Community Impacts of the Obama Administration's Efforts to Rewrite the Stream Buffer Zone Rule.

September 26, 2011

Good afternoon and thank you for the opportunity to testify today on this very important subject. My name is Roger Horton. I am the founder of Citizens for Coal, a co-founder of the Mountaintop Mining Coalition and a member of Local 5958 of the United Mine Workers of America (UMWA). I have spent over 30 years in the West Virginia mining industry beginning in 1974 as an underground coal miner. During my career I have also been active in union activities, serving in various official capacities for my UMWA local. I am proud to say that I am still a coal miner and a local union officer on a surface coal mine in West Virginia.

A native West Virginian, I have lived virtually all my life in the coalfields of the Mountain State, spending most of that time in Logan County West Virginia, where I live today in the community of Holden. I built a home, raised two children, participated and enriched my community all because of my employment in the coal industry.

Because of my rewarding experiences in and around the coal industry and its communities that in 2008 I founded Citizens for Coal, a group open to everyone no mater their employment or other affiliation, dedicated only to preserving the future of coal mining jobs, to actively participate in the debate surrounding coal mining in West Virginia and Appalachia. It is in this capacity that I appear before you today. I am deeply concerned and troubled by the rulemaking currently being conducted by the federal Office of Surface Mining (OSM). By virtue of regulatory revisions, OSM would re-write the Surface Mining Control and Reclamation Act (SMCRA) and drastically alter the role of coal in the nation's energy mix envisioned by Congress when it passed that law in 1977.

This proposal from OSM is but one part of an "open war" on American coal being waged by bureaucrats in Washington, Pittsburgh and Philadelphia. This assault begins with the permit application process and continues throughout the mining process and finally to the end use of the coal, where EPA announced sweeping regulatory changes as it relates to air emissions from coal fired power plants and the placement of coal combustion residuals such as boiler ash. These end use initiatives, coupled with EPA's obstruction of mining permits and now this outrageous rule from OSM threatens to cripple the viability of West Virginia and other coal producing states as sources of domestic energy.

In its proposed re-write of the Stream Buffer Zone rule, OSM would drastically reduce coal production in West Virginia and across the nation by applying new standards that have no basis in the law and serve only to satisfy a warped political agenda. OSM is unable to identify any rational basis for revising these regulations and potentially eliminating 90 percent of the coal production in this country. All forms of mining across the country, surface and underground are at risk. Amazingly, the rule changes appear poised to dramatically impact underground mining perhaps more than surface mining. If finalized, the rule will throw the nation into an energy crisis the likes of which it has never seen. Unless restrained by this Congress, OSM will destroy the economies of state that produce coal and propel thousands of coal miners on the jobless roles. OSM appears to have advanced these positions without regard to jobs and communities that depend on those occupations for their very survival. If left unchecked, OSM threatens to strip our citizens, our communities and the very social fabric of West Virginia and other coal producing areas of their most important source of existence- coal.

These are not just idle observations. I have personally witnessed the social and economic disruptions that occur when unelected bureaucrats make arbitrary decisions about what is best for my fellow coal miners, my friends and community.

About 11 years ago, through a combination of government interference and frivolous legal challenges, a large scale surface mine in Logan County West Virginia was forced to close because it could not obtain the permits necessary to continue the mining operation. The results were devastating. Some 400 members of Local Union 2935 were out of a job… not because there was no demand for the coal or because the coal reserve had been exhausted but because of pure legal and regulatory interference. The workforce and local were obviously devastated but the county was damaged. The school system and social welfare programs lost revenue that was vital to their existence and operation.

Entire communities were devastated. With nowhere to work and no prospect of the mine reopening any time soon, residents packed up and moved to other states to find lower paying jobs.

Businesses that relied on the mine for their income- gas stations, restaurants, repair shops and equipment vendors vanished.

Families suffered and disintegrated… substance abuse and divorces skyrocketed as these folks struggled to come to terms with the loss of good-paying jobs that were forecast to last decades. In fact, it fair to say that our communities and certain families have never recovered from the loss of those jobs. That experience and those troubling, painful memories motivated me to start the Citizens for Coal organization, and I hope this Committee and the entire Congress is mindful that Washington D.C.'s assault on the coal industry has real, often dramatic effects on our workforce, our people, our schools, our churches and our communities. OSM has chosen to conveniently ignore these effects. OSM has also disregarded the charge given to it by Congress when it created the agency 34 years ago- to balance environmental and community protection with the increased production of coal. Unfortunately, OSM has joined the ranks of other federal agencies intent on ignoring Congress by regulating what it cannot legislate. This dangerous attitude must be changed and, given the behavior of OSM and EPA in Appalachia and West Virginia, needs to be changed quickly.

OSM's proposed rules cast a long shadow of uncertainly over our coal miners and communities by placing our entire economic livelihood in jeopardy. People are

not buying cars or homes or vacationing… we are not spending money… we are not contributing to the economy.

I have been fortunate to be able to spend the majority of my life living and working in my native West Virginia. Every day I enjoy the benefits of our rural way of life… I hope that my children could live and work in West Virginia and enjoy that same lifestyle and experience but everyday that OSM continues its reckless disregard for the rule of law those chances decline.

Finally, as I life-long citizen of the coalfields of Logan County West Virginia, I would like the Committee to carefully consider the excuses for these rule changes offered by OSM. They will come before you as false prophets, claiming to represent the people of the coalfields and our environment and offering to ”help” us survive or transition to other forms of employment when they destroy our coal industry. Whether they are from OSM or EPA or some other agency, we don’t need their help or assistance. We can do just fine on our own.

Thank you.

Brian Sanson
United Mine Workers of America
8315 Lee Highway
Fairfax, VA 22031
bsanson@umwa.org
703-208-7220

Department of the Interior
Office of Surface Mining Reclamation and Enforcement
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Stream Buffer Zone and Related Rules

The United Mine Workers of America, International Union (UMWA) offers the following comments on the above-captioned notice. Our comments are focused on the implications of revisions to regulations concerning the conduct of mining activities in or near streams. We have concerns that revision of the stream buffer zone (SBZ) rule published on December 12, 2008, as part of the interagency action plan that the Administration has developed to significantly reduce the harmful environmental consequences of surface coal mining operations in Appalachia, may negatively impact workers' economic security in Appalachia.

The June 11, 2009 Memorandum of Understanding (MOU).

The UMWA has long supported responsible enforcement of rules and laws used to regulate surface mining. Per the June 11, 2009 Memorandum of Understanding, OSM is proposing Oversight Improvement Actions that will increase OSM's oversight of state surface mining programs. This action is taken as part of an agreement of the MOU's signatory agencies to create an interagency working group to coordinate the development of short-term actions, longer term regulatory actions, and coordination procedures for Appalachian surface coal mining. Unfortunately, these coordinating efforts have resulted in increased time frames, regulatory uncertainty, and a lack of private and public understanding with respect to the criteria that has been established for surface mine permit approval.

Disclosure and Transparency

The UMWA is a primary stakeholder of the Department of the Interior's Office of Surface Mining Reclamation (OSM). When OSM embarks on a rule making the Agency solicits written comments and it also holds public hearings. The process is carried out in full view of the interested parties: Miners, mine operators, equipment manufacturers, and others, as it should be.

We suggest that OSM procedures for evaluating additional rules in the process should be subject to the same level of public disclosure and scrutiny. This is necessary both to ensure public accountability, but also to ensure the necessary expertise be brought to bear in the highly technical nature of water quality subject matter. What to OSM may seem like a trivial "correction" could in fact have important consequences. One way to guard against this would be to have public review of OSM decisions about rules.

Encouraging Public Participation in Agency Rulemaking Processes

Public participation is essential for development of good and useful rules. Encouraging public participation will help ensure that broad based, first-hand knowledge will be considered in the rule-making process, and it helps lead to the creation of rules that will be understandable.

One way to encourage public participation is to require hearings to be held at times and places that are convenient for and accessible to the stakeholders. Sometimes more work is needed to promote active participation. Coal miners wanting to participate in OSM hearings generally must leave work, and may forfeit their income and pay their own travel expenses to participate. Those testifying for environmental groups or coal operators, on the other hand, generally suffer no such loss.

The real consequence of this economic inequality means that there are often fewer workers participating in a public hearing than are the numbers of workers who are interested in the particular subject. Likewise, blue-collar workers like those the UMWA represents sometimes tend to be less comfortable with the written word, so few submit written comments. While we support the holding of public hearings, we also urge changes so the hearings' system will better balance the access for workers.

Regulatory Uncertainty

Regulatory uncertainty has caused many operators to cease capital expenditures related to UMWA operations, thus negatively impacting our members who live and work in Appalachia. To illustrate this problem, we use an example pertinent to the mining industry. Over the last year the surface mining permitting system has been reduced to an extremely slow pace.

Currently many factors are considered when requiring the various permit applicants with respect to the protection of the health and safety of those living within the communities in which the mining occurs. It is important to first define the public health goals, and then to discuss them with the appropriate stakeholders in the states in which these rules are specifically targeted. As an alternative to unilateral rulemaking based on yet-to-be established procedures to best guarantee water quality, we suggest that it may be appropriate to effectively communicate the agencies' criteria to those operators who mine coal in a responsible manner and identify the most reasonable and efficient way to reach goals without compromising the ability of these coal operators to employ our members.

Oversight is always welcome by the UMWA but any oversight which impedes the ability of a state to issue permits based on established permitting criteria has resulted in a "log jam" of

applications. We represent workers who have considerable firsthand practical knowledge about how things get done – or not done – at work. In fact, they have knowledge that so-called experts sometimes lack. Incorporating the knowledge of miners and coal operators is essential when designing policy that will succeed. Different kinds of knowledge are needed to create effective policies and no single approach will ultimately be most successful.

Methods of Ensuring That Regulatory Review Does Not Produce Undue Delay.

The principal aim of this process should be to address the need to issue regulations that protect public health and allow coal miners to continue to produce coal. One primary objective of this should be to clarify the regulatory review process, thus reducing the delay in the established permitting process. This is an important objective and, whatever else OSM may do it should not unnecessarily delay the current rules. There should be no additional delays while the current rule making process is underway.

There are no magic formulae for achieving this. It requires setting deadlines and allocating sufficient resources so that agencies can meet such deadlines. In this case, in which admittedly the scientific data has yet to be established in some areas or additional studies are clearly needed in others, the ability of mine operators to secure permits should not be delayed due to unproven theory or speculation.

Scope of Proposed Changes

In view of the complexity of this proposal and the fact that it extends beyond issues related to the stream buffer zone we believe that additional time should have been granted for public comment. The UMWA is disappointed that various requests for extensions were not granted.

Any proposed changes to return to some version of the 1983 rule should be entered into with clear guidance and an understanding that conducting surface coal mining activities in the stream buffer zone are not prohibited. Rules must be clear that the protections of the SBZ rule are meant to conduct surface coal mining operations so as to prevent, to the extent possible using best technology currently available, additional contributions of suspended solids to stream flow or runoff outside the permit area.

Conclusion

In the past, regulatory reform has generally proceeded with the assumption that federal regulations create better compliance in areas where there is a clear need.

The rules OSM promulgates generally promote the requirements of the Surface Mining Control and Reclamation Act (SMCRA) in cooperation with States and Tribes. The primary objectives are to ensure that coal mines are operated in a manner that protects citizens and the environment during mining and assures that the land is restored to beneficial use following mining, and to mitigate the effects of past mining by aggressively pursuing reclamation of abandoned coal mines.

Indeed, the history of regulation in the coal mining industry demonstrates the effectiveness of direct regulation, i.e., creating rules and a means for enforcing them. However, the UMWA vigorously opposes any unnecessary regulation that results in a loss of employment for the members of our union. Such unnecessary rules would likely deter future capital investment in UMWA represented operations and will prohibit expansion of existing mining operations. This lack of investment will prematurely cause the displacement of UMWA members working at these facilities.

The Surface Mining Control and Reclamation Act of 1977 clearly allows for the extraction of coal using surface mining methods and one of the express 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 to strike a balance between protection of the environment and the Nation's need for coal as an essential source of energy.

In proposing changes to the SBZ and related rules, the agency must also guard against unintended regulatory consequences of its actions. We have concerns that actions that the agency takes that are aimed at surface mining in Appalachia could have a significant impact on mining in other areas, or even on underground operations in the same region. Rules that could potentially impede an operator's ability to store and treat coal mine waste causes serious concerns. The preamble discussion to the 2008 rule (73 FR 75815) makes clear Congress recognized that coal mine waste had been and would continue to be placed in streams. Congress found and declared, in Section 101(b) of SMCRA:

the overwhelming percentage of the Nation's coal reserves can only be extracted by underground mining methods, and it is, therefore, essential to the national interest to insure the existence of an expanding and economically healthy underground coal mining industry;

The vast majority of coal produced by underground mining in the states targeted by the proposed rules must be processed through preparation plants to remove impurities. The waste byproduct lacks the stability of excess spoil and must be placed in disposal areas that extend further down into valleys than excess spoil fills. To prohibit coal mine waste disposal sites in areas that extend into perennial streams in the states targeted by the proposed rules could result in the elimination of the underground coal mine industry throughout Appalachia. There are no provisions in the Act that support or authorize these types of restrictions on coal mine waste placement. Specifically, it would seem that such restrictions would be in conflict with the provisions of SMCRA.

The original intent of the SBZ rule is to ensure compliance with SMCRA's requirements to use caution when mining near streams and to use the best technology currently available to avoid, to the extent possible, the contributions of suspended solids to streamflow or runoff outside the permit area. The rule was never meant as a ban on surface mining activities in streams. As part of the process the Agency should carefully consider past litigation, similar to which caused the elimination of hundreds of UMWA member's jobs at the Ach Coal's Daltex operation, as well as other surface mining complexes over the past decade. If the intent of OSM is to repeal the current version of the SBZ rule then OSM has a duty to clarify what this means

for valley fills, coal refuse pile, and impoundments. OSM has applied the 1983 version of the SBZ rule in the past and coal companies have always had the ability to secure permits required to maintain their operations. However, due to litigation and various rulings from the courts the 2008 rule was put into place by OSM. In repealing such rule OSM should have provisions in place to ensure the ability of surface mining to continue while scientific data is gathered and reviewed by experts from the various stakeholders.

Would future research and analysis accurately reflect the positions held by the stakeholders on either side of the surface mining issue? We do not know. But we do know that premature rulemaking absent creditable studies can cause job loss and financial hardships to communities already suffering from the effects of a worldwide recession. Many of the measures proposed in this notice could affect large numbers of miners working today and many miners' families that rely on these good-paying jobs.

We support the promulgation by OSM of protective rules that allow UMWA members to continue to mine coal in a responsible manner, but let us not venture down a path of potential hardship for those who rely on this vital component of the Appalachian economy. Let us not restrain the regulations necessary to address real problems but let us do so with a clear and decisive plan that will preserve this vital part of our nation's energy needs.