



**Testimony of Hal Quinn
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National Mining Association
before the
United States Senate
Committee on Energy and Natural Resources**

Hearing on the Office of Surface Mining's Proposed Stream Protection Rule

October 27, 2015

Good morning, I am Hal Quinn, president and CEO of the National Mining Association (NMA). NMA is the national trade association representing the producers of most of the nation's coal, metals, industrial and agricultural minerals and manufacturers of mining and mineral processing machinery, equipment and supplies.

The Office of Surface Mining Reclamation and Enforcement's (OSM) so-called "Stream Protection Rule" (SPR) is not about protecting streams and all about protecting federal regulators' jobs at the expense of the jobs of our nation's energy providers—America's coal miners. How else does one explain a proposal lacking any purpose apart from duplicating and conflicting with state and federal laws that already address the same subjects? All of this is in the service of separating 40,000-78,000 coal miners from their high-wage jobs. OSM's regulatory accounting places lost coal mining jobs in the acceptable column because the agency believes some of those jobs will be replaced by new regulator and record-keeper jobs to comply with this massive burden.

What is the Proposed Stream Protection Rule?

What began as modest objective to address ambiguities surrounding a single rule for surface mines in one coal mining region has mutated into a massive rewrite of 475 existing rules and the addition of many new ones for both surface and underground mines in all regions of the country. Both the additions and revisions largely hijack, and interfere with, the mission of other agencies under other state and federal laws. To be clear, this is not an exercise in aligning the SMCRA program with these other laws. The proposal demonstrates that OSM does not understand these other programs, how they work or apply to mining. As a result, OSM is sowing conflict and confusion into the fabric of an array of other laws and regulations that govern coal mining operations.

Even within the confines of the Surface Mining Control and Reclamation Act (SMCRA), the proposal purposefully crosses lines drawn on the agency's authority and

reach. The proposal robs SMCRA of its core federalism feature—vesting states with the authority and responsibility for developing and applying standards suitable to the vast diversity in terrain and physical conditions throughout the coal fields. Moreover, the proposal largely eliminates the law’s distinctions between surface and underground mining by applying for the first time provisions that are only intended for surface mining. The proposal also diminishes the choices of landowners for developing and using their land after reclamation. It establishes OSM as a federal zoning czar by empowering it to dictate how reclaimed mined lands will be used notwithstanding the desires of the landowners.

OSM’s proposal is a text book example of an agency ignoring and frustrating the very objectives set forth in President Obama’s Executive Order for *Improving Regulation and Regulatory Review* (Exec. Order 13563). In every respect, OSM’s proposal purposefully defies the President’s regulatory directive to:

- Reduce burdens and maintain flexibility and freedom of choice
- Avoid redundant, inconsistent and overlapping requirements
- Promote predictability and reduce uncertainty
- Specify performance objectives rather than the manner of compliance
- Rely upon objective information
- Promote economic growth and job creation.

If you support these fundamental principles for sound and balanced regulations, I urge you to consider joining Senator Dan Coats and twenty-one of your colleagues in co-sponsoring S. 1458, the “Supporting Transparent Regulatory and Environmental Actions in Mining Act of 2015.”

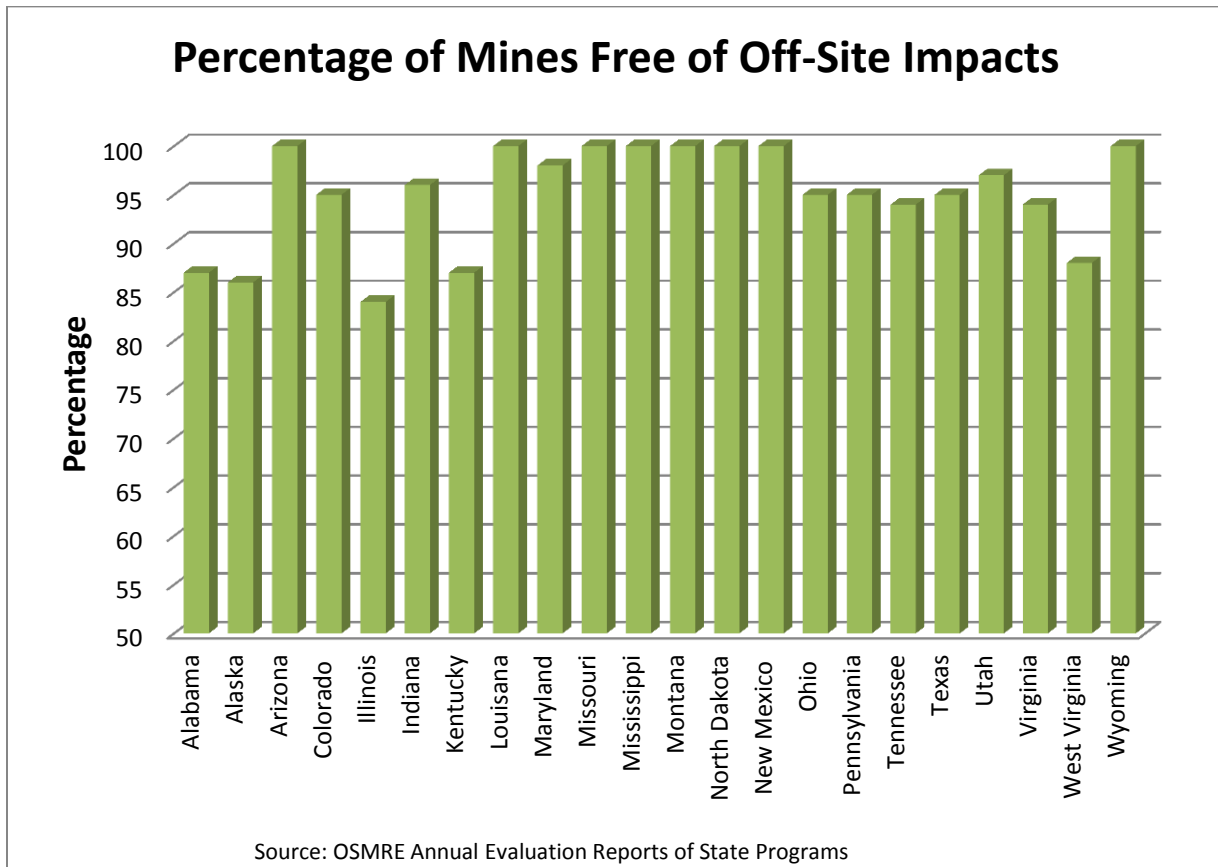
What is the Purpose or Need for this Proposal?

Since the beginning of the SPR rulemaking odyssey six-years ago, OSM’s proposal has been a rule searching for a problem. OSM claims now that the proposal is needed to reflect advances in science, mining and reclamation techniques over the past 30 years. Yet, the SMCRA regulatory program has been continually updated over the past 30 years at both the federal and state level. Indeed, the program was updated in 2008 to address key features OSM now desires to unravel.

The claim that new science is the justification for this rule cannot be reconciled with the agency’s reasoning when it embarked on this rulemaking in 2009. In a notice soliciting comments about the need for any rulemaking, new science was not mentioned. Rather, in responding to state and industry comments explaining the lack of any need for a rulemaking, OSM candidly admitted “[W]e already decided to change the rule following change of Administrations on January 20, 2009.”¹ The proposal has nothing to do with new science and everything to do with new politics.

¹ 75 Fed. Reg. 34,667 (June 18, 2010).

OSM's claim that the purpose of the rule is to minimize adverse impacts of mining rings no less hollow. OSM's own annual reports show continuous performance improvement with 90 percent of active operations free of any adverse off-site impacts.² In 15 states accounting for almost 75 percent of the nation's coal production, 95-100 percent of the operations in those states have no adverse off-site impacts.



The evidence demonstrates a lack of need for this proposal and an insatiable appetite for destroying coal mines and putting more miners out of work.

What will the Proposal Accomplish?

The SPR proposal will push 40,000 and perhaps as many as 78,000, miners into the unemployment lines. They would join the more than 40,000 coal miners who have already lost their jobs since 2011—largely as a result of other unbalanced regulatory policies prematurely closing coal power plants. If we include the jobs at risk in sectors that supply products and services to the industry, as well as jobs attached to industries

² United States Department of the Interior, Budget Justifications and Performance Information, Fiscal Year 2016: Office of Surface Mining Reclamation and Enforcement, pp 30.

that rely on household consumption, the total employment losses rise to a range of 113,000 to 281,000.

As one might expect, OSM's projects lower job losses. However, it is important to note that OSM's estimates are based upon "*hypothetical mines*." NMA's analysis uses data from *actual* operating mines—36 mines (surface and underground) located in all coal regions of the country and operated by companies representing two-thirds of the nation's annual coal production.³ NMA's analysis also shows other devastating economic outcomes from the proposal:

- A 27-64 percent loss in recoverable coal reserves. The potential sterilization of coal resources will be substantially greater at underground mines than surface mines—a stunning outcome considering that: (1) the rule was originally intended to address surface mining in Central Appalachia; and, (2) one purpose of SMCRA is to "*encourage* the full utilization of coal resources through the development and application of *underground coal technologies*."⁴
- Annual value of lost coal production of at least \$14 billion and as much as \$29 billion
- Annual forgone tax revenue in the range of \$3.1-\$6.4 billion.

Bad policies carry bad consequences. The proposed SPR is yet another example of a series of unbalanced regulatory policies—ones that destroy high-wage jobs, make our industries less competitive and increase the cost of energy for households and businesses.

If this proposal accomplishes anything, it is making a compelling case for why the agency is increasingly irrelevant and unnecessary. Under the watchful eye of state regulators with more than 30 years of actual on the ground experience administering the program for 97 percent of all coal production, adverse impacts have diminished. As a result, OSM is left grasping at the missions of rival state and federal agencies to feign relevance. Coal miners should not have to pay with their jobs for the agency's mid-life crisis.

³ Ramboll Environ, Economic Analysis of Proposed Stream Protection Rule (Oct. 2015)

⁴ 30 U.S.C. § 1202(k).