

**Statement of Eric Cavazza, Director, Bureau of Abandoned Mine Reclamation,
Pennsylvania Department of Environmental Protection On Behalf of the National
Association of Abandoned Mine Land Programs re the FY 2016 Proposed Budget for the
Office of Surface Mining before the House Interior, Environment and Related Agencies
Subcommittee – March 18, 2015**

My name is Eric Cavazza and I serve as the Director of the Bureau of Abandoned Mine Reclamation within the Pennsylvania Department of Environmental Protection. I am appearing today on behalf of the National Association of Abandoned Mine Land Programs (NAAML), for which I currently serve as President. The NAAML represents 31 states and tribes, of which 28 implement federally approved abandoned mine land reclamation (AML) programs authorized under Title IV of the Surface Mining Control and Reclamation Act (SMCRA). As you know, Title IV of SMCRA was amended in 2006 and significantly changed how state and tribal AML grants are funded. These grants are still based on receipts from a fee on coal production, but beginning in FY 2008, the grants are funded primarily by mandatory appropriations. As a result, the states and tribes should receive \$209 million in FY 2016. In its FY 2016 proposed budget, the Office of Surface Mining (OSM) is requesting \$385 million for state and tribal AML grants (which includes \$200 million of new funding for the President's Power Plus Plan), an increase of \$176 million. OSM's budget also includes five legislative proposals, the first of which would eliminate funding to states and tribes that have "certified" completion of their highest priority abandoned coal reclamation sites (a reduction of \$24.4 million in FY 2016); the second of which would return the AML reclamation fee paid by coal operators to pre-2006 levels; the third of which would establish a hardrock AML fee and accompanying program; the fourth of which would provide enhanced payouts to the United Mine Workers pension funds; and the fifth of which would accelerate the distribution of grant funds for a portion of the remaining unappropriated balance in the AML Trust Fund to target the cleanup and redevelopment of eligible lands and waters (an additional \$200 million in FY 2016).

Over the past 35 years, the accomplishments of the states and tribes under the AML program have resulted in tens of thousands of acres of abandoned mine lands having been reclaimed, thousands of mine openings having been closed, many streams having been restored from the adverse impacts of acid mine drainage, hundreds of mine fires having been extinguished, thousands of homes, schools and businesses having been stabilized from the adverse impacts of mine subsidence and landslides, and safeguards for people, property and the environment having been put in place. Additionally, potable drinking water supplies have been re-established for tens of thousands of citizens in areas where groundwater and water wells have been contaminated or diminished by mining. Be assured that states and tribes continue to be committed to address the unabated hazards at both coal and non-coal abandoned mines. We are united in achieving the goals and objectives as set forth by Congress when SMCRA was first enacted – including protecting public health and safety, enhancing the environment, providing employment, and adding to the economies of communities impacted by past coal and noncoal mining. In this regard, a recently updated "Safeguarding, Reclaiming, Restoring" accomplishments report prepared by state and tribal Administrators of AML programs under SMCRA is available on the NAAML website (<http://naamlp.net/documents/>), which provides several on-the-ground examples of the type of work that is being done around the country.

When passed in 1977, SMCRA set national regulatory and reclamation standards for coal mining. The Act also established a Reclamation Trust Fund to work towards eliminating the

innumerable health, safety and environmental problems that existed throughout the Nation from mines that were abandoned prior to the Act. The Fund generates revenue through a fee on current coal production. This fee is collected by OSM and distributed to states and tribes that have federally approved regulatory and AML programs. The promise Congress made in 1977, and with every subsequent amendment to the Act, was that, at a minimum, half the money generated from fees collected by OSM on coal mined within the boundaries of a state or tribe, referred to as the “State Share”, would be returned for the uses described in Title IV of the Act if the state or tribe assumed responsibility for regulating active coal mining operations pursuant to Title V of SMCRA. The 2006 Amendments clarified the scope of what the State Share funds could be used for and reaffirmed the promise made by Congress in 1977.

If a state or tribe was successful in completing reclamation of abandoned **coal** mines and was able to “certify” under Section 411 of SMCRA¹, then the State Share funds could be used to address a myriad of other abandoned mine issues as authorized by SMCRA and as further defined under each state’s or tribe’s Abandoned Mine Reclamation Plan, each of which is approved by OSM. Like all abandoned mine reclamation, the work of certified states and tribes eliminates health and safety problems, cleans up the environment, and creates jobs in rural areas impacted by mining. In this regard, the certified states and tribes have been good stewards of the AML funds they receive, especially with regard to addressing dangerous non-coal mines.

The legislative proposal to eliminate funding for certified state and tribal AML grants not only breaks the promise of State and Tribal Share funding, but upsets the balance and compromise that was achieved in the comprehensive restructuring of SMCRA accomplished by the 2006 Amendments following more than ten years of discussion and negotiation by all affected parties. The funding reduction is inconsistent with the Administration’s stated goals regarding jobs and environmental protection. We therefore respectfully ask the Subcommittee to support continued funding for certified states and tribes at the statutorily authorized levels, and turn back any efforts by OSM to amend SMCRA in this regard.²

OSM’s budget includes several new discretionary funding requests related to the AML program under Title IV of SMCRA. The first would provide funding and additional FTE’s to evaluate AML program implementation, including “identifying more effective and efficient tools for AML site identification, contract management and program oversight”. Part of this funding will be used to review the current projects in the Abandoned Mine Land Inventory System (AMLIS) given the date when they were originally entered into AMLIS. While we see this as a potentially useful exercise, especially as we look toward reauthorization of the program prior the expiration of fee collection authority in 2021, we believe it is critical that OSM coordinate any such efforts with state AML program managers given that much of the inventory data and information resides with the states (and can often be updated more effectively by syncing AMLIS with state AML inventories which are generally more up to date and accurate). A

¹ While a certified state or tribe confirms at the time of certification that it has completed all of the coal sites on its current inventory, the certification contemplates that new, formerly unidentified high priority coal AML sites may occur in the future and the state/tribe commits to addressing these sites immediately. All AML states and tribes, including those that are certified, have identified additional previously unknown high priority coal sites as a result of on-going field investigations, new information and features that have been expressed to the surface. The state of Montana alone spent \$8.5 million on coal projects (80% of the annual grant) in FY 2014.

² In this regard, we should note that funding to certified states and tribes was already capped at \$15 million annually pursuant to an amendment to SMCRA as part of the Moving Ahead for Progress in the 21st Century Act (P.L. 112-14) in 2012.

portion of this increased funding is also targeted at program oversight. Frankly, we are unaware of any significant problems with the states' and tribes' administration of their respective AML programs and therefore believe OSM should spend this funding on more useful and productive initiatives related to overall program improvements. For instance, we believe the proposed increase in funding for applied science projects related to AML work is justified.

One of the more effective mechanisms for accomplishing AML restoration work is through leveraging or matching other grant programs, such as EPA's 319 program. In FY 2014, language was included in OSM's appropriation that encouraged the use of these types of matching funds, particularly for the purpose of environmental restoration related to treatment or abatement of acid mine drainage (AMD) from abandoned mines. This is an ongoing, and often expensive, problem, especially in Appalachia. NAAMLIP therefore requests that the Subcommittee once again include language in the FY 2016 appropriations bill that would allow the use of AML funds for any non-Federal cost-share required by the Federal government for AMD abatement.

We also urge the Subcommittee to support increased funding for OSM's training program and TIPS, including moneys for state/tribal travel. These programs are central to the effective implementation of state and tribal AML programs as they provide necessary training and continuing education for state/tribal agency personnel, as well as critical technical assistance. We also strongly support funding for the Watershed Cooperative Agreements in the amount of \$1.5 million because it facilitates and enhances state and local partnerships by providing direct financial assistance to watershed organizations for acid mine drainage remediation.

Among the legislative proposals contained in OSM's proposed budget, two deserve special attention. The first is a proposal to "Revitalize Communities Impacted by Abandoned Mine Lands," which would be accomplished by dispersing \$1 billion from the AML Fund over five years for the purpose of reclamation that "facilitates sustainable revitalization." While the states are supportive of the spirit of this proposal and have in fact designed many projects around these types of purposes using local contractors whenever the opportunities and partnerships exist, we cannot support a programmatic change of this magnitude without a better understanding of the specifics of how it will be implemented. The success of such an endeavor, as well as the states' support for it, is highly dependent on robust consultation between OSM and state AML program managers. At this juncture, the states are concerned that the proposal could have negative ramifications for the overall remediation of AML hazards and thus public health and safety. Additionally, such projects rely on a combination of partnerships, infrastructure and other factors to sustain them into the future once the AML reclamation is completed. Depending on how the proposal is implemented, the addition of "economic eligibility factors" to existing site selection criteria could potentially divert some amount of funding away from the highest priority AML sites. In this regard, it should be kept in mind that the \$1 billion of AML Fund money which would be repurposed by the proposal is already slated for dispersal to the states under the allocation system and site prioritization method ordained by Congress in the 2006 amendments to SMCRA — and primarily for remaining high priority AML projects.

With respect to this legislative proposal and as a further expansion of it, OSM has proposed a new discretionary funding amount of \$2 million to support "OSM technical assistance to states and communities to plan coordinated reclamation projects of abandoned coal mines and mine drainage, as well as area-wide planning to help target reclamation projects that

facilitate beneficial post-reclamation land use and sustainable revitalization in economically depressed coalfield communities”. While this funding justification gives us a bit more of the picture about the \$1 billion Power Plus proposal, it still leaves many of our questions unanswered and as such we are uncertain of exactly how OSM intends to actually spend this money. To the extent that it can be used to accelerate the completion of priority projects on AMLIS and create jobs, we believe we can work cooperatively with OSM to make that happen given the current structure of the AML program under Title IV. To the extent it expands into untested waters that require adjustments to the current statutory mandates, we must be more circumspect in our support, as noted above. Until we learn more about how AML moneys can appropriately be spent to “help diversify the economy of coal country” without impinging on mandated high priority reclamation, the jury is still out on the proposal’s feasibility and legality.

OSM’s budget proposal also includes a legislative proposal that would require a massive transfer of \$363.4 million from the Treasury to various components of the UMWA Health and Retirement Funds. The states recognize the importance of this issue and are supportive of efforts to ensure the long-term solvency of the UMWA Pension Funds. However, the states believe that this issue should be pursued as part of a more comprehensive AML reauthorization package given the overall implications for the AML program. In this regard, the states are concerned that this significant dispersal of Treasury funds would trigger the application of the \$490 million cap on transfers from the Treasury vis-à-vis mandatory Treasury payments to the states for AML work. An analysis of OSM’s proposed budget demonstrates that the combination of this transfer to the UMWA Funds along with the mandatory AML program transfers to states, including funding for certified states and tribes that we request be continued, would exceed the \$490 million cap.

With regard to the proposal contained in OSM’s budget to establish a hardrock AML program, the states and tribes are well aware of the need to address historic hardrock AML problem areas, which initially began with the inclusion of Section 409 of SMCRA in 1977. There is clearly a need to establish both the funding mechanism and the administrative program to address these legacy sites. We believe that OSM is in the best position to administer this program, given its 35 years of experience in operating the Title IV program under SMCRA. Our only concern is that, while on the one hand OSM is advocating for the establishment of a hardrock AML program, it is also pushing for the elimination of funding for certified states and tribes to accomplish this very same type of work. Granted, OSM’s position is based on its belief that SMCRA funding should be restricted to high priority coal problems only. However, Congress clearly felt differently from the outset of SMCRA’s formation and, while there have been many recent opportunities to adjust its views and amend SMCRA accordingly, Congress has chosen not to do so. To the contrary, Congress has adopted legislation that would clarify the use of SMCRA AML funds to address noncoal problems. Nonetheless, we would welcome an opportunity to work closely with OSM if such a program is developed in examining the potential for a hardrock AML program, wherever it may reside and however it may be constituted.

Thank you for the opportunity to submit this statement regarding OSM’s proposed budget for FY 2016. I would be happy to answer any questions you may have or provide additional information.