

Statement of John Stefanko, Deputy Secretary, Pennsylvania Department of Environmental Protection, Office of Active and Abandoned Mine Operations, on Behalf of the Interstate Mining Compact Commission re the FY 2016 Proposed Budget for the Office of Surface Mining before the House Interior, Environment and Related Agencies Appropriations Subcommittee -- March 18, 2016

My name is John Stefanko and I serve as Deputy Secretary of the Office of Active and Abandoned Mine Operations within the Pennsylvania Department of Environmental Protection. I appreciate the opportunity to testify before the Subcommittee regarding the views of the Interstate Mining Compact Commission's 26 member states on the Fiscal Year (FY) 2016 Budget Request for the Office of Surface Mining Reclamation and Enforcement (OSM) within the U.S. Department of the Interior. In its proposed budget, OSM is requesting \$63.5 million to fund Title V grants to states for the implementation of their regulatory programs, a reduction of \$5.1 million or 7.4% below the FY 2015 enacted level. OSM also proposes to reduce mandatory spending for the abandoned mine lands (AML) program by \$24.4 million pursuant to a legislative proposal to eliminate all AML funding for certified states and tribes.

The Compact is comprised of 26 states that together produce some 95% of the Nation's coal, as well as important noncoal minerals. The Compact's purposes are to advance the protection and restoration of land, water and other resources affected by mining through the encouragement of programs in each of the party states that will achieve comparable results in protecting, conserving and improving the usefulness of natural resources and to assist in achieving and maintaining an efficient, productive and economically viable mining industry.

OSM has projected an amount of \$63.5 million for Title V grants to states in FY 2016, an amount which is matched by the states. These grants support the implementation of state regulatory programs under the Surface Mining Control and Reclamation Act (SMCRA) and as such are essential to the full and effective operation of those programs. Pursuant to these primacy programs, the states have the most direct and critical responsibilities for conducting regulatory operations to minimize the impact of coal extraction operations on people and the environment. The states accomplish this through a combination of permitting, inspection and enforcement duties, designating lands as unsuitable for mining operations, and ensuring that timely reclamation occurs after mining.

In Fiscal Year 2015, Congress approved \$68.6 million for state and tribal Title V grants pursuant to the Omnibus Appropriations bill.¹ This continued a much-needed trend whereby the amount appropriated for these regulatory grants aligned with the demonstrated needs of the states. The states are greatly encouraged by the amount approved by Congress for Title V grant funding over the past several fiscal years. These grants had been stagnant for over 12 years and the gap between the states' requests and what they received was widening. This debilitating trend was compounding the problems caused by inflation and uncontrollable costs, thus

¹ In approving this amount for state grant funding in FY 2015, Congress noted that: "The Committees find the budget proposal to reduce regulatory grants would undermine the State-based regulatory system. It is imperative that States continue to operate protective regulatory programs as delegation of authority to the States is the cornerstone of the surface mining regulatory program."

undermining our efforts to realize needed program improvements and enhancements and jeopardizing our efforts to minimize the potential adverse impacts of coal extraction operations on people and the environment.

In recent budget requests, OSM displayed a pattern of proposing woefully inadequate funding for state Title V regulatory programs. Congress consistently rejected the proposed reductions and funded the programs at amounts that more closely aligned with the states' projected needs. OSM's FY 2016 budget proposal reflects a better understanding of the importance of adequately funding state regulatory programs and thus represents a welcome departure from previous years.

While the states are appreciative of OSM's apparent change of direction, the amounts proposed will still inhibit the states' ability to operate at the optimal level. The Title V grant amount proposed by OSM is \$5.1 million less than the 2015 enacted level. As a rationale for the reductions, OSM asserts that any shortfalls in FY 2016 can be covered by the carryover from previous fiscal years. While the states understand OSM's position, we believe this plan to be shortsighted in that it fails to consider the improving fiscal conditions in many states and the damaging precedent set by appropriating suboptimal grant amounts. Furthermore, there is no guarantee that these carryover funds will be available into the future or that they would not be reprogrammed for other purposes.

It should be kept in mind that, given fiscal constraints on state budgets from the downturn in the economy, some states have only recently been able to move beyond hiring and salary freezes and restrictions on equipment and vehicle purchases, all of which have inhibited the states' ability to spend all of their federal grant money in years past. With many states now recovering enough to utilize their full grant amount, it is imperative that funding be maintained at the current level of \$68.6 million. Any supplemental increases for tribal primacy programs would need to be in addition to that amount.

Clear indications from Congress that reliable, consistent funding will continue into the future has done much to stimulate support for these programs by state legislatures and budget officers who, in the face of difficult fiscal climates and constraints, have had to deal with the challenge of matching federal grant dollars with state funds. Recall that any cut in federal funding generally translates to an *additional* cut of an equal amount for *overall* program funding for many states, especially those without federal lands, since these states can generally only match what they receive in federal money.

At the same time that OSM is proposing cuts for state programs, the agency is proposing sizeable increases for its own program operations (almost \$4 million), including an increase of 12 full time employees. In making the case for its funding increase, OSM's budget justification document contains vague references to the need "to improve the implementation of existing laws." More specifically, OSM states in its budget justification document that "with greater technical skills, OSM anticipates improved evaluation of permit-related actions and resolution of issues to prevent unanticipated situations that otherwise may occur as operations progress, thereby improving implementation of existing laws" (pg. 58). In our view, this is code language

for enhanced and expanded federal oversight of state programs and reflects a move by OSM to exert a more direct role in state programs, especially regarding permitting decisions, thereby weakening state primacy. Without more to justify the need for additional oversight and the concomitant increase in funding for federal operations related thereto, Congress should reject this request.

The overall performance of the states as detailed in OSM's annual state program evaluation reports demonstrates that the states are implementing their programs effectively and in accordance with the purposes and objectives of SMCRA.² In our view, this suggests that OSM is adequately accomplishing its statutory oversight obligations with current federal program funding and that any increased workloads are likely to fall *upon the states*, which have primary responsibility for implementing appropriate adjustments to their programs identified during federal oversight.

To the extent that OSM seeks to enhance state primacy, we would support a renewed focus on processing state program amendments. Additionally, if OSM is looking for ways to improve and enhance the overall implementation of SMCRA at both the state and federal level, we would urge the agency to move forward with the findings and recommendations of the Government Efficiency Work Groups that spent considerable time and effort throughout 2014 to, among other things, address the continuing fiscal impacts on program implementation and develop workable solutions. While OSM mentions the work of this state/federal initiative in its Budget Justification document (pg. 10), there has been little movement to follow up on this excellent work since the submission of the Work Group reports last July.

For all the above reasons, we urge Congress to approve not less than \$68.6 million for state and tribal Title V regulatory grants, the same amount enacted by Congress over the past few fiscal years. In doing so, Congress will continue its commitment to ensuring the states have the resources they need to continue their work on the forefront of environmental protection and preservation of public health and safety.

With regard to funding for state Title IV Abandoned Mine Land (AML) program grants, Congressional action in 2006 to reauthorize Title IV of SMCRA has significantly changed the method by which state reclamation 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, 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

²The Congress agreed with this assessment when it commented as follows on OSM's proposed increase in FY 2015: "The [Omnibus Appropriations] agreement does not provide funds to expand and enhance Federal oversight activities of State programs."

Workers Retirement 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 “facilitate sustainable revitalization” in addition to cleanup and redevelopment of eligible lands and waters (an additional \$200 million in FY 2016).

With regard to this latter proposal, while the states are supportive of the spirit of the 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. 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. Please keep 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.

With regard to the proposal contained in OSM’s budget to establish a hardrock AML program, the states are well aware of the need to address historic hardrock AML problem areas, beginning 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, be it through a fee or through a meaningful Good Samaritan program that provides liability protection for those undertaking this type of work. We believe that OSM is in the best position to administer a hardrock AML 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 work.

OSM’s budget proposal also includes a legislative proposal which 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 reauthorization package given the overall implications for the AML program. Furthermore, the states are concerned that this significant dispersal of Treasury funds could impact the application of the \$490 million cap on transfers from the Treasury vis-à-vis mandatory Treasury payments to the states for AML work.

We appreciate the opportunity to submit this testimony on the Office of Surface Mining’s proposed budget for FY 2016. We also endorse the statement of the National Association of Abandoned Mine Land Programs (NAAML), which goes into greater detail regarding the implications of OSM’s funding and legislative proposals for the states and tribes. We would be happy to answer any questions.