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"Environmental Justice for Coal Country: Supporting Communities Through the Energy Transition"

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Thank you Chair Lowenthal and Ranking Member Stauber, and members of the Subcommittee, for the opportunity to testify today.

When Congress wrote the Surface Mining Control and Reclamation Act (SMCRA) in 1977 no one anticipated the current coal industry collapse. Some parts of SMCRA do not provide the Office of Surface Mining Reclamation and Enforcement (OSMRE) and the states with the tools they need to effectively manage the current coal industry crisis in order to minimize adverse impacts to coal communities. These adverse effects impede the ability of disadvantaged communities to navigate the energy transition. There are actions Congress can take to help.

I have served in state and federal government mining programs for twenty-six years. I started as a coal-mining program attorney in 1991 with Pennsylvania Department of Environmental Protection (PADEP). In 2002 I became PADEP's Director, Bureau of Mining and Reclamation, and served in that capacity until I was confirmed by the Senate in 2009 as President Obama's Director, Office of Surface Mining Reclamation and Enforcement. I served as President Obama's OSMRE Director for both terms.

I have experienced and witnessed many issues, coal industry ups and downs, and the beginning of the coal industry collapse that is in progress. The current crisis has illuminated a number of areas where OSMRE and the states are ill-equipped to effectively manage large portions of what had been a mostly successful environmental program that has reduced burdens imposed on coal communities and the environment.

The first 200 years of coal mining in America were unregulated. Coal companies routinely destroyed land, water, the environment, and local communities for corporate profits. Coal companies left millions of acres of productive land as dangerous wasteland. More than 50,000 underground mine openings were abandoned and continuously threatened or took people's lives. Tens of thousands of miles of streams and rivers were destroyed or polluted with toxic mine drainage. The water supplies of more than 50,000 people were polluted by coal companies. Tens of thousands of acres of productive land were buried under mountains of coal refuse/waste coal/culm that polluted waterways. It is not unusual for coal refuse to spontaneously combust and poison the air. Hundreds of uncontrolled mine fires burned.

In the 1960s and early 1970s some states began the environmental regulation of coal mining. Many did not. Citizen outrage and advocacy convinced Congress to enact the Surface Mining Control and Reclamation Act in 1977 to, among other things, create minimum national

reclamation standards to protect society and the environment from the adverse effects of coal mining; assure adequate procedures are undertaken to reclaim surface areas as contemporaneously as possible with the coal mining; and reclaim areas mined and abandoned before August 3, 1977, which continue to substantially degrade the environment, prevent or damage the beneficial use of land or water resources, and endanger the health and safety of the public (these pre-1977 abandoned coal mines are called abandoned mine lands [AML]). 30 USC Section 1202.

SMCRA established that coal companies had to provide the state with a reclamation bond to cover the state's cost to reclaim the land if the coal company defaulted on its legal obligations. The bond could be in various forms, such as surety bonds, cash, certificates of deposits, etc. States were also given the discretion to accept self-bonds, which in essence is no bond at all other than a corporate promise the coal company would reclaim its mine. States were also given the option to not require full-cost reclamation bonds but instead to create an alternative system that will achieve the objectives and purposes of full-cost bonding. 30 USC Section 1259(c).

SMCRA also established a program to address the dangerous abandoned mines the industry created before August 3, 1977. A fee was assessed on each ton of coal that was mined. The funds were used to establish state and tribal AML Programs to address 200 years of dangerous coal mines and toxic mine drainage.

The coal industry claimed these new reclamation programs would kill coal mining. There were industry ups and downs over the next 30 years (as there had been for the previous 200 years) but the opposite happened—coal production nearly doubled. The SMCRA environmental programs did not kill coal. Instead, the reclamation standards of SMCRA have been a vast improvement for the environment and the people of coal country. The wanton land and water destruction were mostly stopped. The tribes and states inventoried most of their AML. The AML fees collected by OSMRE were distributed in accordance with the law. The states, tribes, and OSMRE eliminated more than 46,000 underground mine openings and more than 1,000 miles of highwalls (cliffs made by coal companies). The government restored potable water to more than 50,000 people and protected more than 7.2 million people from sudden, devastating AML emergency events such as landslides and collapsing underground mines.

However, there are glaring problems. Coal began to lose some of its market with the Great Recession of 2008. Coal lost and continues to lose even more of its market to low-cost shale gas and due to the closure of inefficient, old, outdated coal-fired powerplants. Low-cost, clean wind and solar are also displacing coal in the energy market. All of these forces have caused a sudden precipitous decline of the coal industry. No mine in Tennessee has produced coal in the past 12 months. In Kentucky only 54 mines out of 812 are producing coal. Wyoming has seen multiple coal companies file for bankruptcy—something that had not occurred for decades. On June 8, 2021, American Consolidated Natural Resources, which emerged from the bankruptcy of Murray Energy last year, announced 180 workers will lose their jobs when it closes an underground mine on the Pennsylvania/West Virginia border. Consolidated Coal sold the mine to Murray in 2013. Production at this mine dropped from more than 5.6 million tons in 2014 to 4 million tons in 2019 and to 2 million tons in 2020. Coal has lost more than 54% of its market in the past 12 years, 43% of it in the past six years. This sudden industry collapse has illuminated some shortcomings in the coal regulatory program.

**ISSUE NO. 1**

The collapsing coal industry has amplified a known weakness in the law and regulations that govern when a company stops production of coal at a mine. SMCRA and the implementing federal rules allow a mine to temporarily cease operations. All the mine operator is required to do is provide written notice to the regulator. There are no time limits on how long the mine can remain inactive. These minimal standards make it very easy for a coal company to stop all activity at a mine when there is no market for the coal, or all economically recoverable coal has been exhausted, or the coal company simply does not want to reclaim the land. This was a problem for OSMRE with a surface coal mine in Washington State. The mine operator ceased production and purchased the coal it needed from another state. After 10 years of no activity OSMRE ordered the company to reclaim the mine. That order was appealed. The court concluded that whatever "temporary" was, 10 years was not temporary and upheld OSMRE's reclamation order.

The law in several states prohibits the state regulatory authority from having rules that are more effective or protective than the minimum federal standards. These states have a lot of inactive mines. Some states have rules that establish limits on how long a mine can "temporarily cease operations." Pennsylvania law allows a surface coal mine to be inactive for up to one year if the operations were shut down by a labor dispute or court order. After one year, the coal company is required to reclaim the mine. It is my understanding that some other states also have limits on how long a mine can be inactive.

In the 2010s OSMRE began a rulemaking effort to adopt federal rules based on the best practices of the state rules that were more effective than the federal rules. Unfortunately, this rulemaking was unable to proceed because OSMRE is understaffed, as was the Department of the Interior Solicitor Office. The small number of attorneys who performed work for OSMRE were overwhelmed with litigation and were not able to complete the legal work necessary for this rule change to proceed.

The number of inactive coal mines across the United States is huge. The longer these mines are inactive, the more environmental problems arise and the more harm they cause in disadvantaged communities. Reclamation costs will also increase while the available reclamation bond does not.

**RECOMMENDATIONS FOR Issue No. 1:** The states and OSMRE should work together to identify every inactive coal mine, the date mining operations ceased, whether the mine is in compliance with the law, and the amount of the bond. States should follow OSMRE's example and exercise their enforcement power and order mine operators to reclaim mines that have been inactive for more than two years. It is clear that market conditions will only get worse for the thermal coal industry (thermal coal is used to generate electricity). OSMRE should proceed with rule changes based on best practices to end the practice of abandonment of permitted coal mines through the "temporary cessation of operations" process. States should immediately adopt the best practices of the improved regulation.

**ISSUE NO. 2**

Full-cost bonds are only as good as the state's calculation and enforcement of the approved regulatory program. If a state chooses to not accurately calculate the true cost of reclamation or

does not have the competency to do so, then the state will not have the money to properly reclaim the mine when the coal company defaults on its legal obligations. For example, Kentucky failed to accurately calculate the cost of reclamation bonds for several years. This failure was proven when the state could not properly reclaim 80% of the forfeited coal mines. Kentucky was aware of this but failed to follow the law and take action to address the deficiency. Only after OSMRE initiated the process to take over all or part of the regulatory program in Kentucky did the state act. I believe there are states that do not properly calculate the true cost of reclamation. They enable coal companies to provide bonds that are insufficient. This could be the case where a state had regularly chose to accept self-bonds before the coal companies filed bankruptcy and then, by law, had to require the bankrupt companies to provide real bonds.

**RECOMMENDATIONS for Issue No. 2:** OSMRE and states that have full-cost bond programs should accurately assess whether the reclamation bond on each coal mine actually is the full amount of the cost for the state to complete the approved reclamation plan. These assessments should also include evaluation of the conditions at the mine to determine whether the coal company deviated from the reclamation plan in a manner that has increased the cost of reclamation. They should work together to develop an up-to-date effective cost calculation methodology that is open to public scrutiny and input and specific to that state's particular mine conditions. They could use that state's actual cost data to reclaim forfeited coal mines or costs to reclaim AML. The data should be from the prior year. Perhaps an outside independent engineering firm could help a state calculate the true reclamation cost.

**ISSUE NO. 3**

SMCRA gives states complete discretion on whether to accept a self-bond from a coal company instead of a bond in the full amount of what it would cost the state to complete the approved reclamation plan should the company default on its legal obligations. A self-bond is merely a corporate promise to complete the reclamation and is in essence no bond at all. The regulations require that when a coal company fails to continue to meet the self-bond eligibility standards it must provide a full-cost bond within 90 days. 30 CFR 800.23.

However, in 2015–16 three of the largest coal companies in America filed for bankruptcy. Between them they had $2 billion of self-bond. They did not comply with the law and replace the self-bonds with real bonds within 90 days of becoming ineligible to self-bond. It was demonstrated that the self-bond system had failed. Based on what happened with the self-bonds the state of Wyoming had accepted, it was clear the regulations that govern the use and replacement of self-bonds did not work. The state allowed bankrupt companies to mine coal without a reclamation bond. Mining without a bond is contrary to the law. We also learned that a number of states narrowly read the regulations and avoided consideration of public information that documented that the companies no longer met the self-bond eligibility standards. Therefore, the states did not ask the company to replace the self-bonds with real bonds when it was obvious the coal companies were no longer eligible to self-bond. States did not order the mine operator to cease mining even though the coal company did not provide a replacement reclamation bond, which is required by law.

These systemic failures and the publicly announced coal-fired powerplant closures were part of the basis for the issuance of the OSMRE Self-Bonding Policy Advisory on August 5, 2016.

Notwithstanding these facts, and the continued decline of the coal industry, some states have chosen to not require all self-bonds be replaced.

Furthermore, an official of one of the three companies that filed for bankruptcy told us at the Department of the Interior that there were no fiscal costs with self-bonds. Because there were no costs, they had not focused on completing reclamation of their surface mines nor did they pursue final bond release approval from the states. I appreciated their candor. This disclosure also explained why some states had a very low rate of final bond release. This was particularly a problem where federal coal was being mined and the surface was owned by citizens in such states as Wyoming. These surface landowners have been deprived of the use of their land far longer than was necessary. The adverse impacts on these ranchers is incalculable.

**RECOMMENDATIONS for Issue No. 3:** Congress should amend SMCRA to prohibit states and OSMRE from accepting self-bonds. Congress should also require all existing self-bonds be replaced within 90 days. OSMRE should update and reissue the Self-Bonding Policy Advisory.

**ISSUE NO. 4**

SMCRA is based in part on the assumption that all surety companies are fiscally sound and properly regulated. We know that has not always been the case. It is my understanding that states now know not every surety that issued reclamation bonds the past few years is financially stable. The current coal-mining crash has resulted in the disclosure that a surety has issued reclamation bonds for coal mines in West Virginia for which it does not have the money to pay the state to reclaim mines. Some sureties appear to have been more interested in short-term profits earned by selling bonds for less-than-reputable sureties. Some also do not appear to base their fee on the financial stability of the coal company, nor do they require the coal company to give them collateral to minimize the surety's risk if the coal company fails.

We saw a surety do this a number of years ago. Sureties were regulated by the Treasury Department and sometimes by a state, such as New York. Some of us in the states and at OSMRE recognized the looming crises. We contacted the Treasury Department and the New York regulatory agency to get them to address the problem. We were not successful in getting the surety regulators to make sure the surety was financial solvent. In Pennsylvania, once we discovered the surety only had $15,000 underwriting hundreds of thousands or more of reclamation bonds, we refused to accept bonds issued by that surety. PADEP also required coal companies that had bonds that had been approved before the discovery to replace them with surety bonds issued by fiscally sound sureties or to provide collateral bonds like irrevocable letters of credit. PADEP took this action to protect the landowners and the state from a catastrophic failure by a coal company, which would result in the collapse of the surety. That disaster did happen. The states that had accepted that surety's bonds were left without bond funds when a large coal company failed and the surety failed. This issue is also compounded when the weak surety provides most or all of the reclamation bonds for a coal company.

**RECOMMENDATIONS for Issue No 4:** There does not appear to be a viable solution to this problem at this late date. However, states and OSMRE should work together to limit the percentage of bonds that fiscally unstable sureties can provide for a single coal mine and for a coal company. Some states already have such limits. States should require coal companies to replace some or all of these high-risk bonds with bonds issued by reputable sureties and various

forms of collateral like cash, insured certificates of deposits, irrevocable letters of credit, etc. Are the surety regulators again failing to ensure sureties are financially sound?

**ISSUE NO. 5**

SMCRA also gives states the option to not require full-cost reclamation bonds but instead to create an alternative system that will achieve the objectives and purposes of full-cost bonding. 30 USC Section 1259(c). Several states chose to create an alternative bond system (ABS). These systems vary. The basic premises shared by each ABS is that coal companies are only required to provide a reclamation bond that is a fraction of the state's cost to reclaim the mine. If a coal company fails to fulfill its legal reclamation obligations, then the state is supposed to use the forfeited bond money plus money from the ABS (the source of the supplemental funds can vary between individual state ABSs) to complete the approved reclamation plan.

The source of the supplemental funds can also be compromised. When it is, the ability of the state ABS to reclaim the land and water is compromised. This happened to the Pennsylvania ABS about two decades ago. The solution was to require all coal mines to provide full-cost bonds. How to pay for the reclamation of the land and treatment of the acid mine drainage on mines that had been forfeited under the ABS has been a long, complicated process.

The ABSs typically look backward. They tend to be based on the historic bond forfeiture/coal company rate of failure in that state. They do not look ahead to what may happen in the near future or what happened last week. State-created ABSs function as a state subsidy of coal companies through reduction of the companies' cost to provide full-coast reclamation bonds. It is not unusual for the state legislatures, or entities other than the mining regulatory authority, to have control of the operations of the ABS. Such structure and political control can make responses to address fiscal shortcomings of an ABS to be slow or politically difficult.

Coal companies have become adept at dumping their environmental obligations in bankruptcy. It is not unusual for those obligations to be dumped on a state ABS. I am not aware of an ABS that was designed to handle the reclamation liabilities that are dumped on it via bankruptcy proceedings. Nor am I aware of a state ABS that was designed to handle the bankruptcy of multiple companies with hundreds of coal mines. Both of these are happening in the current crisis.

States often do not adjust the amount of bond provided by the coal company based on inflation. States do not always have the expertise to evaluate the actuarial soundness of the ABS. Outside consultants are often hired to perform the actuarial study and they do not always understand the ABS. OSMRE, which must approve an ABS created by a state, does not have the expertise to determine whether a state-created ABS is actuarially sound. OSMRE is dependent on the analysis prepared by others. All of the aforementioned points can result in an ABS that cannot handle the cost of reclamation as required by federal and state law. There have been reports of and documented instances of state ABSs that do not have the money to reclaim failed coal mines from the current industry crisis.

It is my understanding that in Kentucky numerous mines have been effectively abandoned by coal companies. The state's ABS does not currently have the money to properly reclaim these coal mines. It is also my understanding that Kentucky state officials have claimed that because the coal company mining permits expired, the state-approved reclamation plan that is in every

coal mining permit no longer exists. Therefore, the state of Kentucky does not need to properly reclaim the land and water. State officials asserted they will do the best they can with the small amount of forfeited bond money collected.

A state that takes this position violates federal and state law. Not only is this position legally incorrect, but it is absolutely the wrong way for the state to treat the environment, the land owners, and disadvantaged communities. Congress created SMCRA to stop the destruction of land and water resources by coal mining. Congress specifically decided the land and water should be restored.

SMCRA also provides states the opportunity to choose to be the primary regulator of coal mining subject to federal oversight by OSMRE. This relationship is often called cooperative federalism. When a state chooses to be the primary regulator it must meet the minimum federal reclamation standards. A state that has made such a choice to create an ABS instead of requiring its coal companies to provide full-cost reclamation bonds, which has been approved by OSMRE in accordance with law, does not have the discretion or authority to not implement that ABS.

A recently documented example of multiple deficiencies in a state-created ABS is the West Virginia ABS called the Special Reclamation Fund. On June 7, 2021, the Post Audit Division of the Joint Committee on Government and Finance, West Virginia Office of the Legislative Auditor, issued a legislative audit report titled "WV Department of Environmental Protection Division of Mining & Reclamation—Special Reclamation Funds Report."

This audit report identifies significant issues with the West Virginia alternative bond system. The report's executive summary lists 11 issues and recommendations. A copy of the executive summary is attached to this testimony. Here is just one of the issues: "A Lack of Limitations on Amounts Permitted to be Underwritten by Single Insurers for Mining Reclamation Surety Bonds Increases the Risk of Insolvency of the Special Reclamation Funds." I urge you to read the summary of all 11 issues. It is clear that the West Virginia coal-mining regulatory authority is dependent on others to make changes to the state ABS so the ABS can meet the reclamation demands of the current crises.

More than one state has been sued because of deficiencies in the state ABS or the implementation of the ABS. Those states knew of the issues and lacked either the political will or power to correct the issues. Courts have ruled that the state must operate the ABS in the manner necessary to reclaim the land and water adversely affected by the defunct coal companies.

**RECOMMENDATIONS for Issue No 5:** States with an ABS should read the West Virginia audit report and have a similar audit performed by a competent entity. Congress should require the states to have their ABS audited in a manner similar to what was done in West Virginia.

**ISSUE NO. 6**

State coal-mine regulators and OSMRE also have their hands tied by the Bankruptcy Code and bankruptcy proceedings. The prevailing view is that bankruptcy proceedings should prioritize Chapter 11 reorganization over Chapter 7 liquidation. Coal companies exploit this predisposition of bankruptcy judges and bankruptcy lawyers, as well as the Bankruptcy Code, to dump their federal SMCRA environmental obligations (and union contractual obligations). Most coal mines are held by a subsidiary of the parent coal company. It is a common practice for coal

companies to extract as much profit from a coal mine as possible before the land reclamation and pollution-treatment responsibilities become due. Assets are stripped from the subsidiary and the underfunded subsidiaries are spun off into a new entity. These underfunded companies are doomed to failure and bankruptcy liquidation. When that happens, any mines that have a glimmer of profitability are "sold" to a vulture capitalist company for further exploitation, and ultimate failure. It is often impossible for OSMRE solicitors and state lawyers to overcome the bias of the bankruptcy professionals to the detriment of the environment, state ABSs, the surface landowners, and the local community. Recently, unreclaimed coal mines that were essentially abandoned by the coal company, and could not be sold during the bankruptcy proceedings, were dumped on the state and the state's ABS for reclamation. Had the bankruptcy system not been exploited and tilted toward reorganization of a doomed coal company, more assets would have been available in liquidation to fulfill the coal company's state and federal environmental obligations.

For a thoughtful and more detailed analysis of this problem please read the article titled "Bankruptcy as Bailout: Coal Company Insolvency and the Erosion of Federal Law" by Joshua Macey and Jackson Salovaara (*Stanford Law Review* 71 [April 2019]: 879–962).

**RECOMMENDATIONS for Issue No 6:** The Bankruptcy Code is Bankrupt. It should be revised to prevent coal companies from abandoning their environmental obligations and obligations to their coal miners.

**ISSUE NO.7**

It has been my experience that political leadership of a state or federal department or bureau can drastically impede career staff from fulfilling their legal duties. I have seen first-hand how political appointees have impeded career staff from implementing the requirements of SMCRA and the implementing regulations and I witnessed the same thing at the state level. When I became OSMRE Director, in the beginning I had to assure staff across the agency that I expected them to properly implement the law, I expected supervisors to support their staff, managers to support their supervisors and staff, and regional directors to support their managers, supervisors, and staff. I told them I would support all of them. I believe it made a positive difference regarding oversight as well as efforts to address some long-festering problems. Most career staff want to protect the environment and people from the adverse effects of coal mining. Human nature being what it is, there are some people who appeared to be industry- and not environmental law–oriented.

The leadership structure Congress established for OSMRE, together with the layers imposed by the Department of the Interior, can limit, and at times largely prevent, OSMRE from fulfilling its statutory oversight obligations. For example: one OSMRE inspector told me how he had issued a cease order to a coal company that was mining in violation of the law. The next day he found the coal company had resumed mining. At the coal company's request the then–OSMRE director vacated the order the inspector had issued the day before. Two weeks later the OSMRE inspector was transferred to work in another state halfway across the country.

Another example is a discussion I had with an OSMRE inspector I encountered a few years ago at a non-SMCRA function. The inspector said once Donald Trump was in the White House the OSMRE inspectors were told to not issue any "Ten-Day Notices" or oversight violations as they

would not be supported by administration leadership. Other OSMRE staff shared similar experiences.

Technologic advances have made it easier and more cost effective to restore the land after coal mining. A state and the local mining companies proved the new method to be superior and less costly than the standard practice used across the country. OSMRE was prevented from amending its regulations to use this new advancement. The rule change was prohibited on the reasoning that the advancement had not been proven in other regions of the country.

Another personal experience I had concerns SMCRA's requirement that the Secretary shall annually submit to the President and Congress a report (these reports were prepared by OSMRE). The law says the report shall cover the activities of the Secretary, the federal government, and the states that were conducted pursuant to SMCRA. The law also requires the report to include "recommendations for additional administrative or legislative actions" as the Secretary deems necessary and desirable to accomplish the purposes of SMCRA. 30 USC Section 1296. Section 201(c) of SMCRA provides the Secretary is to act through the OSMRE Director in regards to SMCRA. The first such annual report I prepared included recommendations for additional administrative or legislative actions. A political appointee who was part of the DOI Office of the Secretary blocked submission of the report. The reason provided to me for why the report was blocked was no previous Director of OSMRE had ever included such recommendations.

When I was with PADEP, an administration change brought new political leadership. An area that was petitioned to be declared unsuitable for underground mining because mining that coal would generate acid mine drainage that would leak from the mine into the creek in the valley below was rejected by the political appointee, in spite of the scientific evidence. This political decision was based on the reasoning that about 40 acres could still be underground mined without polluting the creek until decades later. It did not matter that no one would ever open a such a small underground coal mine. Work on all other lands unsuitable mining petitions was stopped.

**RECOMMENDATIONS for Issue No. 7:** Congress should amend the law to provide that a political appointee is personally liable in civil proceedings for misfeasance and malfeasance. The law should also provide that a political appointee guilty of misfeasance would be a misdemeanor offense. Further, a political appointee who engaged in malfeasance would be guilty of a felony. This should be the law for both federal political appointees and state political appointees.

**ISSUE NO. 8**

All underfunded and other struggling coal companies have not paid the Abandoned Mine Land fees they owe the federal government. These fees are collected by OSMRE and then disbursed the following year to uncertified states to reclaim land and water that was destroyed by coal companies who engaged in unregulated coal mining for 200 years (the AML fee will expire on September 30, 2021, if Congress does not renew it). Coal companies have also not paid royalties, severance taxes, and state and local taxes. Wyoming state and local governments have suffered significant losses. It is not unusual for these legal obligations to go unfulfilled when the coal company fails. The failure of coal companies to pay their AML fees adversely affects the

environment and economic recovery of communities that have suffered for decades under the economic burden of land and water destroyed before Congress passed SMCRA in 1977. While SMCRA does authorize OSMRE to collect these fees it does not provide collection of the fees has priority over corporate officer bonuses, excessive corporate officer compensation, shareholder dividends, etc. The very people who led coal companies into bankruptcy continue to profit while they fail to pay their abandoned mine land environmental obligations. Abandoned coal communities continue to suffer.

Furthermore, the decreased coal production has resulted in a corresponding decrease in AML grants provided to uncertified states, less reclamation, and fewer jobs. If the amount of AML fees was renewed and if coal production does not further decline, it would take more than 100 years to address the dangerous abandoned coal mines and polluted waterways created by the first 200 years of unregulated coal mining. Something more than simple renewal of the existing fees should be done. Coal mined in the United States is primarily used for two purposes. One is to generate electricity. Coal used for this purpose is called thermal coal. The other major purpose is to manufacture steel. Coal used to make steel is called metallurgic or met coal and sells for about $140 per ton. It has been as high as $300 per ton. Coal used to generate electricity sells for about $7 to $40 dollars per ton, depending on its BTU value.

**RECOMMENDATIONS for Issue No. 8:** Change the law to give priority to collection of AML fees over all other creditors or unpaid taxes, corporate officer bonuses, and excessive corporate office salaries. Alternatively, authorize OSMRE to recover unpaid AML fees from any of the owners and controllers (as this term is defined in SMCRA and the regulations) of the coal operator. Congress could also appropriate $10 billion to the AML Fund and specify that for every dollar of AML fees a coal company pays, that company is eligible to complete three dollars of AML reclamation. This could employ former and existing coal miners to reclaim AML.

**ISSUE NO. 9**

As Director of OSMRE I saw how OSMRE was understaffed and unable to fulfill all of the obligations established by SMCRA. Since it was created, OSMRE has lost more than two-thirds of its workforce. According to a Department of the Interior report, OSMRE lost 29% of its workforce from 2000 through 2013. That erosion of staff has continued. OSMRE has had to choose which obligations it will fulfill because it lacks sufficient staff or accept that completion of the work is delayed. This shortage has limited OSMRE's effectiveness in oversight, processing of state program amendments, needed federal rule changes, assistance to the states, processing of FOIA requests, responding to citizen complaints, timely processing regulatory and AML grants, reporting to Congress, addressing administration priorities, etc., etc., etc.

**RECOMMENDATIONS for Issue No. 9**: There should be an objective assessment of OSMRE's workforce needs to fulfill its legal obligations, including those listed above and others contained in statutes, regulations, and rules. This assessment should consider the demands of the current crisis and anticipated future needs. Congress should provide OSMRE the necessary funds so OSMRE can fulfill its obligations. Appropriations should be tied to inflation and only reduced if another independent assessment documents less staff is needed for OSMRE to fulfill its legal obligations.

Thank you for the opportunity to identify issues that impede OSMRE and states from properly managing the current crisis in the coal-mining industry. I will work with Congress to improve the function of our state and federal government to protect the environment and society from the adverse effects of coal mining. OSMRE is a good example of how a very small government agency can make large improvements to the environment and for the benefit of the people.