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On Behalf of the

National Mining Association

Before the House of Representatives

Committee on Natural Resources

Subcommittee on Energy and Mineral Resources

Legislative Hearing on the

**“Preventing Government Waste and Protecting
Coal Mining Jobs in America Act” (H.R. 2824)**

August 2, 2013

Good morning. Thank you for the opportunity to testify today. My name is John Paul Jones, and I am Vice President, Environmental for Alpha Natural Resources. I have over 30 years of environmental experience with the mining industry. I am testifying today on behalf of both Alpha and the National Mining Association, of which we are a member.

Alpha is America's 3rd largest coal supplier. Alpha and its affiliates employ nearly 12,000 people in Virginia, West Virginia, Kentucky, Pennsylvania and Wyoming; operate 91 active surface and underground mines and 25 preparation plants; and produced over 108 million tons of coal in 2012. Over 80% of our coal is used to produce electricity, and over 20 million tons is high quality metallurgical, or "met", coal used in the production of steel. Exports of our coal have reached customers in 27 countries, contributing significantly to America's balance of trade.

Alpha believes in mining coal the right way, which is embodied in our corporate philosophy we call "Running Right." As a result of our commitment to environmental excellence, Alpha has been recognized with 20 environmental awards for outstanding conservation, mine restoration, and environmental enhancement projects in just the past three years. We have partnered with the U.S. Fish and Wildlife Service and Virginia Tech to study mining's impact on freshwater mussels and have partnered with the Nature Conservancy to prioritize abandoned mine land project restoration opportunities in the Clinch and Powell River watersheds - home to numerous endangered mussels. Alpha also supports the Appalachian Regional Reforestation Initiative and the Powell River Project, both of which are geared towards improving reclamation of mined lands using native trees. We planted 1.7 million trees on reclaimed mine sites in 2012.

Our operations are also run with a strong commitment to safety. In 2012, eight of our mines and processing plants received certificates of achievement for their safety programs from the Mine Safety and Health Administration, as well as four Holmes Safety Association Awards.

Alpha also recently dedicated the “Running Right Leadership Academy” in June of this year – a 136,000 square foot, state-of-the-art education and comprehensive training facility for mine safety and operational excellence. There is no other facility like it in the United States today, and quite possibly the world.

Alpha Natural Resources and the National Mining Association strongly urge this Committee and the Congress to pass H.R. 2824, the “Preventing Government Waste and Protecting Coal Mining Jobs in America Act.” The premise of the bill is simple – it would amend the Surface Mining Control and Reclamation Act (SMCRA) to require States to incorporate the existing federal “stream buffer zone” (“SBZ”) regulation into their approved State programs. It would then require the Office of Surface Mining (OSM) to evaluate the effectiveness of the existing rule before it continues with the process of issuing a new one.

Contrary to what some critics claim, the common-sense requirements included in the 2008 rules were not at all “midnight rules,” nor did it “roll back” environmental protections. The SBZ rule clarified 30-year old interpretations by all 24 state programs (as well as OSM) regarding the permissibility of mining in and around streams. In addition, lawsuits challenging such interpretations were twice rejected by the 4th Circuit Court of Appeals in 2001 and 2003 (See *Bragg v. Robertson* and *Kentuckians for the Commonwealth v. Rivenburgh*). The 2008 SBZ rule was also approved by the then-Administrator of the Environmental Protection Agency.

Midnight rules, as the name describes, are crafted at the 11th hour of an outgoing administration, with little to no public input. In contrast, the 2008 rule was promulgated after a thorough public process spanning over five years (from 2003-2008), including numerous public hearings, and consideration of over 43,000 public comments. The 2008 rule was supported by two environmental impact statements sponsored by OSM, the Environmental Protection

Agency, the US Army Corps of Engineers and the Fish and Wildlife Service (FWS), with over 30 federally-funded studies and 5,000 pages of scientific analysis. Following meetings between the Director of OSM and FWS, the agency decided that formal consultation with FWS on the rule was not necessary since OSM's existing rules contain numerous provisions to protect endangered species and their critical habitat – and the 2008 rule did not amend those rules. The 2008 rule was approved by the Solicitor's office and the Secretary of the Interior which oversees both FWS and OSM.

Likewise, the rule was anything but a “roll back” of current law. In addition to providing clarification and removing the threat of unwarranted litigation by those opposed to coal mining, ***the rule added significant protections to enhance environmental performance*** when mining in and around streams. Among other things, it requires mines to:

- avoid mining activities in or near streams if reasonably possible;
- use the best technology currently available to prevent the contribution of additional suspended solids (sediment) to stream flow or runoff outside the permit area to the extent possible;
- minimize the creation of excess spoil (dirt and rock); and
- if avoidance of streams is not possible, identify a reasonable range of alternatives for placing fills, and select the alternative with the least overall adverse impacts on fish, wildlife, and related environmental values.

In contrast to the 2008 rule, OSM's ongoing rewrite of the SBZ rule has been plagued with controversy that has been well documented by this Committee. A prominent environmental activist described the rulemaking in his written testimony on April 7, 2011 before this committee as “an expensive fiasco.”

We are gravely concerned about the impacts this rulemaking would have on the viability of our mining operations, our workforce, and the communities our operations support. Such concerns were validated by a subsequent analysis of the proposed rule's likely effects on 75 actual mines by Environ International predicting even larger impacts including:

- *133,000 jobs lost nationwide;*
- *a decrease in recovery of coal reserves by 30-41%;*
- *annual value of coal lost to production restrictions of \$14-20 billion; and*
- *federal and state tax revenue reductions of \$ 4-5 billion.*

The choice is clear. OSM's new proposal is unnecessary, unjustified, and dangerous, and certainly does not meet any cost-benefit standard. After five long years of delay by OSM in refusing to implement the current common-sense regulations, H.R. 2824 provides a reasonable framework and timetable for implementing the 2008 rule in primacy States and evaluating an actual record of its effectiveness *before* allowing OSM's "expensive fiasco" to move forward with a costly and unnecessary rewrite of SMCRA regulations that will have devastating economic impacts. For these reasons, we strongly urge this committee to pass H.R. 2824 and bring some much needed finality to this already exhaustive rulemaking process.

Thank you again for the opportunity to testify today. I look forward to answering any questions that you might have.