

**STATEMENT OF
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BEFORE THE
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES
COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES
JULY 24, 2003
2:00 PM**

Madam Chairman and distinguished members of the Subcommittee, thank you for the opportunity to participate in this hearing and to discuss the important issues raised by the approaching expiration of the Office of Surface Mining Reclamation and Enforcement's (OSM) authority to collect the Abandoned Mine Land fee.

More than 25 years ago Congress passed the Surface Mining Control and Reclamation Act (SMCRA). At that time, Congress created the OSM to enforce the act and authorized it to collect AML fees to finance reclamation of abandoned mine lands.

The record of accomplishments for this program is impressive. Since 1977, the AML program has been responsible for the reclamation of thousands of acres of abandoned mine sites and the elimination of serious threats to public health and safety. Our partners in reclamation, the primacy states and Indian tribes, have done an outstanding job of reclaiming lands and waters damaged by past mining practices. Because Congress enacted SMCRA and has supported the AML program, living and working in the coalfields is safer and healthier than ever.

As you know, our fee collection authority is scheduled to expire in September 2004. Unfortunately, despite the many accomplishments of this program, the job isn't finished.

More than \$3 billion worth of listed health and safety coal problems still remain. We have another \$3.6 billion worth of identified high priority coal problems affecting the general welfare of individuals in the coalfields and numerous lower priority environmental coal-related problems.

Even if we use all collections received between now and September 30, 2004, when the fee will expire, as well as the unappropriated balance of \$1.5 billion, we would still be left with approximately \$1.8 billion worth of health and safety related problems as well as other general welfare and environmental coal-related problems.

These are not merely "ugly landscapes" that need to be made more attractive. These are serious, life threatening, *high-priority* hazards that have been around for more than 26 years and haven't yet been cleaned up.

Here are some examples of the dangers posed by some of these sites:

April 2001 - On an abandoned mine property in Harlan County, Kentucky, two juveniles were riding All-Terrain-Vehicles (ATV's) down a steep unreclaimed and unstable grade when one lost control of his ATV, overturned, rolled approximately 40 feet to the bottom of an inclined area, and died from his injuries.

January 13, 1996 --A college student in Colorado was lead by curiosity into an abandoned coal deep mine where he died from lack of oxygen.

At Pennsylvania's Muddy Creek East Reclamation project, a site where mining ended in 1952 leaving dangerous highwalls, hazardous water bodies and spoil material, 10 recorded deaths occurred at the site until it was finally reclaimed in 1998.

With today's ever expanding communities, these sites are not all in some out of the way corner of the map. A recent study conducted by the OSM estimated that 3.5 million Americans live less than one mile from health and safety hazards created by abandoned coal mines.

If we are to finish the job Congress gave us to abate the health, safety and environmental problems left behind by mining that occurred before SMCRA was passed, it is imperative that we reauthorize the AML Fee collection authority. The Bush Administration fully supports the reauthorization of AML Fee collection authority.

For some time now I've been discussing reauthorization of SMCRA with members of Congress, coal industry representatives, state reclamation officials, and environmentalists. Those I have talked with agree that abating AML hazards is a job that needs to be done. Accordingly, there is substantial agreement that the AML Fee collection authority should be reauthorized. Many people also agree that fundamental changes must be made to the existing structure of the program. The universe of proposed modifications differs as widely as the stakeholders who support them. Nevertheless, common themes have emerged from my discussions. These themes present issues that Congress will confront as it crafts legislation to complete the cleanup and reclamation work begun under SMCRA.

The Allocation Problem

The clearest and most high priority theme to emerge from my discussions is the call for the wise, efficient, and effective use of the AML funds collected. We looked at how we might be able to accomplish more reclamation with the funds being allocated and we devised several promising program enhancements, including: AML fee credits for re-mining sites; bond credits for re-mining sites; requiring state programs to operate their own AML emergency programs; and avoiding administrative duplication with respect to accounting and fee collection. Each of these enhancements is aimed at leveraging the dollars available to this program.

The reasons underlying why we are not accomplishing more with the funds being allocated are not related to malfeasance, misfeasance, or abuse of funds. Rather, there is a fundamental imbalance between the goals established by SMCRA and the way funds from the AML Program

are required to be allocated under the Act. As a result, the ability of the AML Program to meet its primary objective of abating AML problems on a priority basis is being hindered by the statutory allocation formula, which results in a progressive distribution of resources away from the most serious AML problems.

SMCRA requires that all money collected from tonnage fees assessed against industry on current coal production (\$0.35/surface mined ton and \$0.15/deep mined ton) be deposited into one of several accounts established within the AML fund. These accounts are discussed more fully below. Money in each of these accounts can be used only to accomplish the statutory purpose for which that account was established. Account funds that are not spent in any one year must remain in that account. Typically, money in one account cannot be transferred to another account or be used for any other purpose.

Fifty percent (50%) of the fee income generated from *current coal* production in any one state is allocated to an account established for that state. Likewise, 50% of the fee income generated from current coal production on Indian lands is allocated to a separate account established for the tribe having jurisdiction over such Indian lands. The funds in these state or tribal share accounts can only be used to provide AML grant money to the state or tribe for which the account is established.

Twenty percent (20%) of the total fee income is allocated to the “Historic Production Account.” Each state or tribe is entitled to a percentage of the annual expenditure from this account in an amount equal to its percentage of the nation’s total historic coal production -- that is, coal produced prior to 1977. As is the case with state or tribal share money, each state or tribe must follow the priorities established in SMCRA in making spending decisions using money from the historic production account. However, unlike the allocation of state or tribal share money, once the state or tribe certifies that all abandoned coalmine sites have been reclaimed, it is no longer entitled to further allocations from the historic production account.

Ten percent (10%) of the total fee income is allocated to an account for use by the Department of Agriculture for administration and operation of its Rural Abandoned Mine Program (RAMP).

The remaining 20% of the total fee income is allocated to cover Federal operations, including the Federal Emergency Program, the Federal High-Priority Program, the Clean Streams Program, the Fee Compliance Program, and overall program administrative costs.

The annual appropriated AML grants to states and tribes are derived from money from the state and tribal share accounts and money in the historic production accounts. On a national average, money is distributed to states and tribes from the state and tribal share accounts and the historic production account at a ratio of 2.5 to 1. That is, 29% of the total national grant amount is distributed among the states and tribes based on historic production which has a direct correlation to the magnitude of the AML problem. The majority of the grant dollars, 71% of the total national grant amount, is distributed among the states and tribes based on income generated from each by current production. However, there is *no* relationship between the current production state or tribal share portion of the grant and the magnitude of the AML problem in that state or tribe.

This statutory allocation schedule for AML resources has significant consequences to the overall program's primary objective of abating AML problems on a priority basis. Specifically, there is no parity among the states and tribes in terms of the rate of AML reclamation. Today, some programs have completed reclamation on all of the abandoned coalmine sites or are working on low priority sites while others are still decades away from completing the most critical high-priority sites.

This situation is dramatically illustrated in the attached chart which depicts one projection of how many years it will take for each state and tribe to complete its high-priority projects under the current allocation formula. It is clear that even though states and tribes substantially comply with the priority reclamation system established in SMCRA within their borders, there is no semblance to adherence to that priority system on a National basis.

To understand the impact of the allocation system on the AML program, one must also understand the demographics of the AML problems and the changing demographics of AML fee income. Based on historic production records, we know that 94% of the AML problems are in the eastern United States. The attached chart depicting the trends in AML fee collection shows how the fee income demographics have changed over time. The chart reflects the general shift in coal production from the East to the West. More significantly, it reflects a shift in the east from surface mine production to deep mine production, which is assessed at the lower AML fee of fifteen cents per ton.

In the early years of the AML program, the fee income was generally aligned with the magnitude of AML problems – 75% of the income was in the East where 94% of the AML problems existed, and 25% of the income was in the West where 6% of the AML problems existed. Correspondingly, the state and tribal share portions of the grants were generally being distributed in amounts roughly proportional to the AML problem, much like the historic production portion of the grants is intentionally distributed. Much was accomplished during those early years of the AML program. Over the past 25 years, fee income has shifted away from the areas with high historic production and into the areas where there are fewer or no remaining AML problems. Because 71% of the total grant dollars is based on current production, there has been a corresponding shift of AML resources away from the areas with the most significant AML problems.

The chart depicting Reclamation Trends gives a clear picture of how all of these factors come together to impact the AML program's ability to accomplish its primary objective.

From the program's inception in 1977 through 1993, about 99% of the state grant dollars was used to reclaim abandoned coalmine sites. Ninety-five percent (95%) of that money was used for high-priority AML reclamation. From 1994 through 2002, as current production shifted to regions with fewer AML problems, only 71% of the state grant dollars was used to reclaim abandoned coalmine sites, and only 64% was used for high-priority AML reclamation. This trend will continue into the future as more states that generate the fee income and are therefore entitled to higher percentages of the total grant dollars complete their high-priority AML work, but continue working on low-priority sites and other authorized projects. In order to finish the

job in an efficient and effective manner, we must take advantage of this opportunity to make some fundamental changes in the law to redirect the focus of the AML program toward health and safety hazards.

There are several other critical themes that are interwoven with the allocation issue that will also need to be addressed.

Commitments made to states and Indian tribes under the current law

Since the enactment of SMCRA, 50% of the funds collected from a state or tribe has been allocated to that state or tribe's share account. A substantial portion of these accounts, however, has not been appropriated for the use of the states or tribes. Through the end of Fiscal Year 2002, \$944,768,493 of state and tribal share accounts remains unappropriated. About one half of the unappropriated state and tribal share balances are owed to states and tribes that have certified completion of their abandoned mine sites. As we grapple with the issue of how to allocate fee income from future collections, we need to address how to deal with the unappropriated state and tribal share balances from past collections.

Transfers to the United Mine Workers Combined Benefit Fund

One final theme that is an important part of the reauthorization equation is the OSM's obligation under the law to transfer the interest from the AML Fund to the United Mine Workers Combined Benefit Fund (CBF). I understand that you will be receiving testimony later today on the needs of the CBF for unassigned beneficiaries, a long-standing Federal responsibility. The interest earnings from the AML fund are currently insufficient to meet the needs of the CBF. For 2004, for example, the needs of the unassigned beneficiaries of the CBF are estimated to peak at \$88 million. Actual interest earnings from the AML fund for FY 2002 were only \$43 million, and interest rates have declined since that time.

It is important to note that, should the AML Fee collection authority not be reauthorized, §402 (b) of SMCRA obligates the OSM to establish and collect a fee at a rate sufficient to continue to provide for interest income transfers to the CBF. While we are hopeful that the AML fee will be re-authorized, in order to have the necessary regulations in place should the authority expire, we would have to start a formal rule-making process later this year. Later this summer, I anticipate publishing an advance notice of a proposed rule-making to begin this process and to ensure that we can continue to fulfill our obligation to the CBF.

This afternoon I have identified three themes that must be included in any SMCRA reauthorization proposal: addressing the allocation problem; addressing commitments made to states and tribes; and fulfilling obligations to the CBF. The difficult task for those who must develop proposals to address these themes is that all of the themes, and the stakeholders supporting them, are vying for the same available dollars.

Conclusion

I greatly appreciate the time and attention that has been committed to this important issue by members of this Subcommittee. While there are no easy answers, I believe that we can find common ground that will result in an efficient and effective program that refocuses reclamation towards the highest priority work, yet address our commitments and obligations under SMCRA. I look forward to continuing to work with you to develop legislation to reauthorize the AML fee and get this job done. I would be happy to answer any question you might have at this time.