STATEMENT OF
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BEFORE THE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

ON S. 2049 AND S. 2086
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Mister Chairman and members of the Committee, 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's) authority to collect the Abandoned Mine Land (AML) fee. In particular, I would like to thank Senator Specter for introducing the Administration's bill, S. 2049. In addition, I would like to thank Senator Thomas for introducing his bill, S. 2086. Both bills seek to reauthorize OSM's authority to collect the AML fee, set to expire on September 30, 2004, and to make positive changes to this important program. S. 2049 will solve problems with the existing program in a manner that is consistent with the Administration's budget and program priorities. We look forward to working with the Senate to reach agreement on the important issues surrounding the collection and use of the AML fee.

The Administration believes that the AML problem is a national problem that calls for a national solution. The Administration's legislative proposal seeks to focus more AML funding on the areas most damaged by this nation's reliance on coal for industrial development and wartime production, long before the establishment of reclamation requirements in the Surface Mining Control and Reclamation Act of 1977 (SMCRA). We believe that shifting the program's focus to historic production, which is directly related to the AML problems that currently exist in so many states, and distributing future fees based on need, offers a national solution for reducing the current, ongoing threats to the health and safety of millions of citizens living, working and recreating in our Nation's coalfields.

While the Administration's bill and Senator Thomas's bill are not the same in every respect, they have much in common. With an estimated 3.5 million Americans who live less than one mile from a dangerous, high-priority abandoned mine site, both bills share the significant goal of protecting the lives, health and safety of people living in the coalfields; people who live with - and too often die as a result of the hazards of abandoned mine lands.

We cannot support the provisions in S. 2086 that call for additional funding because they are inconsistent with the Administration's budget and program priorities. Neither can we support the allocation provisions because they do not further the goal of expediting

cleanup as quickly as those provisions contained in S. 2049. In addition, the Administration cannot support creating new mandatory spending programs.

Background

Since the enactment of the Surface Mining Control and Reclamation Act (SMCRA) by Congress in 1977, the Abandoned Mine Land program has reclaimed thousands of dangerous sites left by abandoned coal mines, resulting in increased safety for millions of Americans. Specifically, more than 260,000 acres of abandoned coal mine sites have been reclaimed through $3.4 billion in grants to States and Tribes under the AML program. In addition, hazards associated with more than 27,000 open mine portals and shafts, 2.9 million feet of dangerous highwalls, and 16,000 acres of dangerous piles and embankments have been eliminated and the land has been reclaimed. Despite these impressive accomplishments, $3 billion worth of high priority health and safety problems remain to be reclaimed.

Even if we were to use all of the AML fees collected between now and September 30, 2004, the date the fee collection authority is scheduled to expire, as well as the unappropriated balance of $1.5 billion, we would still have insufficient funds to address the health and safety-related surface mining problems because of the fund's current distribution formula. Moreover, under the current distribution formula, it would take non-certified states an average of 47 more years to complete reclamation. In some cases, remediation would take nearly a century.

We do not believe the current allocation system will enable us to complete the job of reclamation in the way that Congress intended. However, we view the September 30th expiration of the current AML fee collection authority as an opportunity to reform that authority and the distribution formula, and put it on track to finish the job of reclaiming abandoned coal mine problems.

SMCRA's Fee Allocation Problem

SMCRA requires that all money collected from tonnage fees assessed against industry on current coal production ($0.35/surface mined ton; $0.15/deep mined ton; and $0.10/lignite) be deposited into one of several accounts established within the AML fund. 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.

In the early years of Abandoned Mine Reclamation Program, most of the fees collected went directly to cleaning up abandoned coal mine sites. Some states and tribes with fewer abandoned coal mine sites finished their reclamation work relatively soon. However, under current law, those states and tribes are still entitled to receive half of the fees collected from coal companies operating in their states. In the early years of the program this didn't cause a considerable problem, because the Eastern states, where 93% hazardous sites are located, were also the states where most of the coal was being mined and were, therefore, receiving the majority of the AML fees.

However, beginning in the 1980s, a shift occurred whereby the majority of the coal mined in this country began coming from mines in Western states. This shift revealed an inherent tension in the AML program which now allocates a large part of AML fees to states that have no abandoned coal mine sites left to clean up. By contrast, each year less and less money is being spent to reclaim the hundreds of dangerous, life-threatening sites. Currently, only 52 percent of the money is being used for the primary purpose for which is it collected - reclaiming high priority abandoned coal mine sites. That percentage will continue to decline each year unless the law is reauthorized and amended and the fundamental problem is corrected.

The Administration's legislation accomplishes four primary objectives by:

- Extending the authorization of fee collection authority while balancing the interests of all coal states and focusing on the need to accelerate the cleanup of dangerous abandoned coal mines by directing funds to the highest priority areas so that reclamation can occur at a faster rate, thereby removing the risks to those who live, work and recreate in the coalfields as soon as possible;

- Honoring the commitments made to states and tribes under the current law;

- Providing additional funding for the 17,000 unassigned beneficiaries of the United Mine

Worker's Combined Benefit Fund (CBF) while protecting the integrity of the AML fund; and,

- Providing for enhancements, efficiencies and the effective use of funds.

These objectives recognize the need to strike a balance that addresses both the ongoing problems faced by states with high priority coal-related health and safety issues while not placing those states where the majority of fees are currently generated at a disadvantage. The Administration's proposal achieves this balance in a fiscally prudent manner.

Bill Analysis

A. Changes to the Allocation Formula

S. 2049 would change the current statutory allocation of fee collection which is progressively directing funds away from the most serious coal-related problem sites. All future AML fee collections, plus the existing unappropriated balance in the RAMP account, will be directed into a new single account. Grants to non-certified states or tribes, those states that still have coal problems remaining, will be distributed from that single account based upon historic production, which is directly related to the magnitude of the AML problems. As a result of these modifications, S. 2049 completes the reclamation of the highest priority work much faster than would happen under current law, while avoiding $3.2 billion in collections that would have been necessary under current law. S. 2049 will remove more people at risk from the dangers of health and safety coal sites (142,000 per year or an increase of 87%).S. 2049 provides that no non-certified state or tribe could receive an annual allocation that would exceed 25 percent of the total amount appropriated for those grants each year. This provision would ensure that no one State receives too high of a percentage of the grants in any one year. Any State whose allocation would otherwise exceed this cap would recoup the difference in the program's latter years as other States and tribes complete their high-priority projects and are no longer eligible for future grants.

Existing state and tribal share accounts will not receive any additional fees collected after September 30, 2004. The current unappropriated balance in the state and tribal share accounts will be dealt with in one of two ways: 1). Certified states and tribes would receive the current unappropriated balances in their accounts on an accelerated basis in payments spread over ten years (FY 2005-2014), subject to appropriation. There would be no restrictions on how these monies are spent, apart from a requirement that they be used to address in a timely fashion any newly discovered abandoned coal mines. 2). Non-certified states and tribes will receive their unappropriated balances in annual grants based upon historic production. If a non-certified state or tribe completes its abandoned coal mine reclamation before exhausting the balance in its state share account, it will receive the remaining balance of state share funds in equal annual payments through FY 2014. Non-certified states and tribes that exhaust their unappropriated state share balances before completing their abandoned coal mine reclamation will continue to

receive annual grants in amounts determined by their historic coal production from the newly-created single account.

In contrast to the Administration's proposal, S. 2086 would continue to allocate 50% of the fees collected in a state to that state or tribal share account, without regard to that state or tribe's coal reclamation needs. For certified states and tribes in which public domain lands are located and available for leasing,
S. 2086 would amend current law to transfer from Federal revenues generated by the Mineral Leasing Act, on a proportional basis, an amount equal to the sum of the aggregate unappropriated amount allocated to the qualified state or tribe. Thereafter, an amount equivalent to the amount provided to the state or tribe from the Mineral Leasing Act would then be debited from that state or tribe's state share account and made available to the historic production account for use in reclamation. As a result, certified states and tribes with leasable public domain lands would receive their current unappropriated state share balance as well as an amount equivalent to their 50% state share distribution going forward. These payments would not be subject to Congressional appropriation, would have additional costs of as much as $750 million, and cleanup would take longer to complete than under S. 2049.

S. 2086 also makes provisions to certified states and tribes without leasable public domain lands to receive their unappropriated balances. Those payments are made from the unappropriated balance of the Rural Abandoned Mine Land (RAMP) account. In addition, these states and tribes are also guaranteed $2 million per year regardless of their coal reclamation needs.

B. Elimination of AML funding for the RAMP Program

S. 2049 amends SMCRA to remove the existing authorization of expenditures from the AML fund for the Rural Abandoned Mine Program (RAMP) under the jurisdiction of the Secretary of Agriculture. No funds have been appropriated for this program, which reclaimed lower priority abandoned mine land (AML) sites, since FY 1995. Elimination of this authorization would facilitate the redirection of AML fund expenditures to high-priority sites. Accumulated unappropriated balances in the RAMP account would be made available for abandoned coal mine reclamation. S. 2086 also endorses eliminating future allocations to the RAMP fund, but makes portions of the accumulated unappropriated balance available for distribution to non-public land certified states.

C. AML Reclamation Fee Rates

S. 2049 modifies reclamation fee rates in an effort to closely match anticipated appropriations from the fund with anticipated revenues. The proposed changes would maintain the current fee structure while uniformly reducing the fee rates by 20% on average (15 percent for the five years beginning with FY 2005, 20 percent for the next five years, and 25 percent for the remaining years through September 30, 2018). Those rates are based on an analysis of coal production trends and the resultant impacts on reclamation fee receipts. The Administration's proposed uniform graduated fee

reductions make the program revenue neutral and have the added benefit of resulting in lower costs to consumers who purchase coal-generated electricity. The new expiration date reflects the time required to collect revenues sufficient to reclaim all outstanding currently inventoried coal-related health and safety problem sites. Finally, existing language requiring the Secretary to establish a new fee rate after September 30, 2004, based on CBF transfer requirements would be removed.

The Administration's legislative proposal extends the fee collection authority for 14 years, to 2018.
This extension would facilitate the collection of sufficient fees to enable all states and tribes with high priority mining-related health and safety issues to reclaim those sites in 25 years or less.

S. 2086 proposes to extend the fee collection authority for 10 years, but given its fee allocation proposal, it would take much longer to clean up the remaining high-priority sites, resulting in the need for another fee extension. S. 2086 also proposes to lower the reclamation fee rates by 10 cents per ton (about 29%) for surface mining and 20 percent for lignite and coal mined by underground methods.

D. United Mine Workers of America Combined Benefit Fund (CBF)

S. 2049 amends SMCRA by adding a new provision that governs transfers from the fund to the CBF for health benefits for unassigned beneficiaries. The Administration's bill would replace and improve upon the existing provisions in SMCRA by removing the $70 million per year cap, and by making interest credited to the account in prior years available. These measures would protect the integrity of the AML fund while providing additional monies to meet CBF needs for unassigned beneficiaries.

S. 2086 addresses this issue by maintaining the current restrictions (the lesser of $70 million, the interest earned in any one year, or the needs of the unassigned beneficiaries of the CBF) on interest distribution to the CBF until FY 2006 at which time any remaining interest from previous years will be made available for transfer to the CBF to meet its needs of the unassigned beneficiaries.

E. Minimum Program Funding

S. 2049 provides that no State or tribe with high-priority problem sites would receive an annual allocation of less than $2 million. This provision would ensure that States and tribes with relatively little historic production receive an amount conducive to the operation of a viable reclamation program.

S. 2086 requires a minimum annual grant of $2 million for all states and tribes regardless of their certification status. Any shortfalls in appropriations for this purpose are to be made up from the Federal Share account. The Administration is concerned that S. 2086 also adds Tennessee as a minimum program state regardless of the existing SMCRA

requirements for a state to maintain an active regulatory (Title V) program before it is entitled to receive AML grants.

F. Remining

Both bills extend the remining incentives existing in current law, which provide reduced revegetation responsibility periods for remining operations and an exemption from the permit block sanction for violations resulting from an unanticipated event or condition on lands eligible for remining.

S. 2049 makes these incentives permanent by removing the expiration date while S. 2086 extends the expiration date to 2014. Additionally, S. 2049 authorizes the Secretary to adopt other remining incentives through the promulgation of regulations, thereby leveraging those funds to achieve more reclamation of abandoned mine lands and waters.

S. 2086 does not provide for the creation of additional remining incentives.

G. AML Reclamation Priority

S. 2049 preserves the autonomy of the states and tribes by maintaining the current priority structure and requires that expenditures from the AML fund on eligible lands and water for coal-related sites reflect the listed priorities in the order stated. S. 2049 focuses on collecting enough money to provide each state or tribe with sufficient funds to complete its highest priority AML sites. The Administration's bill will accomplish these objectives by providing funds for all States and tribes to finish in less time than under a continuation of the current program, on average 22 years sooner, but in many cases, decades sooner.

S. 2086 amends the priority system to eliminate the general welfare component of priorities 1 and 2, leaving public health and safety as the only elements of those priorities. S. 2086 also requires that priority 3 work be undertaken only in conjunction with a priority 1 or 2 project; eliminates priority 4 (public facilities); and eliminates priority 5 (development of publicly owned land). Finally, for state share and historic production grants to non-certified States, S. 2086 requires strict adherence to the revised priority rankings.

Both S. 2049 and S. 2086 remove the existing 30 percent cap on the amount of a State's allocation that may be used for replacement of water supplies adversely affected by past coal mining practices. This change is consistent with the proposed legislations' goal of focusing fund expenditures on high-priority problems. The lack of potable water is one of the most serious problems resulting from past coal mining practices, particularly in Appalachia.

H. Emergency Reclamation Program

S. 2049 proposes amending the emergency reclamation program for abandoned mine land problems that present a danger too great to delay reclamation until funds are available under the standard grant application and award process. S. 2049 would revise this section by authorizing the Secretary to adopt regulations requiring States to assume responsibility for the emergency reclamation program. This change would promote efficiency and eliminate a redundancy in that potential emergencies would be investigated only by the State, not by both the OSM and the State, as occurs under the current program.

S. 2086 does not alter the existing emergency reclamation program structure.

I. Reclamation Set-Aside Programs

S. 2049 revises future reclamation set-aside program provisions to specify that expenditures from funds set aside under this program may not begin until the State or tribe is no longer eligible to receive an allocation from AML grant appropriations under SMCRA. The revised date in the Administration's proposal is more consistent with the purpose of this set-aside, which is to provide States and tribes with a source of funding to address abandoned mine land problems that remain or arise after funds are no longer available under SMCRA.

S. 2086 removes the authorization for this set-aside.

Both bills provide that states and tribes can set-aside up to 10% of their historic production grant funds in an interest-bearing trust fund for comprehensive abatement and treatment of acid mine drainage in qualified hydrologic units. Both bills provide for simplification and streamlining of the requirements for the acid mine drainage treatment trust fund set-aside program, including removal of the requirement for Secretarial review and approval of individual treatment plans.

J. Completion of Coal Reclamation - Certification

S. 2049 establishes the conditions under which a State or tribe may certify that it has completed all coal-related reclamation of eligible lands and waters. Under the existing provisions, the State or tribe would then be eligible to spend its State share allocation on sites impacted by mining for minerals other than coal. The draft bill would amend this section by revising SMCRA to clarify that certification means that all coal-related high priority health, safety and environment reclamation has been achieved. This subsection previously did not specify which priorities must have been met. S. 2049 also allows the Secretary to make the certification for a State or tribe in which all coal-related reclamation work has been completed.

S. 2086 maintains current certification procedures.

K. Black Lung Excise Tax Collection and Auditing

S. 2049 authorizes the expenditures for collection and audit of the black lung excise tax. This revision would synchronize collections and allow OSM auditors to conduct audits of black lung excise tax payments at the same time as they audit payment of reclamation fees under SMCRA. It would promote governmental efficiency, eliminate redundancies, and reduce the reporting and record keeping burden on industry.

S. 2086 does not contain a similar provision.

L. Incidental Coal Extraction

S. 2086 adds a proviso to Title V of SMCRA which changes the interpretation of the term "government-financed" to exclude expenditures from the AML reclamation fund. This change would have the effect of nullifying long-standing practice that has resulted in significant environmental improvements and more efficient AML operation. This change would also have the effect of nullifying OSM's AML enhancement rule, which, as promulgated on February 12, 1999 (at 64 FR 7483), interprets the term "government-financed" to include AML reclamation fund expenditures. With this proposed change, any coal removed incidental to the reclamation of an AML site would require a mining permit. As a result, various AML sites with physically recoverable coal would remain unreclaimed because it would not be economically viable to undertake the reclamation based on coal receipts alone. In the alternative, coal removed during the course of the AML reclamation project would be discarded, which is both inefficient and potentially damaging to the environment. To date, incidental coal extraction has brought about successful reclamation and inventory reduction of AML sites without any known problems.

S. 2049 makes no change to this provision and maintains existing provisions contained in SMCRA.

Conclusion

The problems posed by mine sites that were either abandoned or inadequately reclaimed prior to the enactment of SMCRA do not lend themselves to easy, overnight solutions. To the contrary, these long-standing health and safety problems require legislation that strikes a balance by providing states and tribes with the funds needed to complete reclamation, while fulfilling the funding commitments made to states and tribes under SMCRA. This is the inherent tension that currently exists in SMCRA. We look forward to an open and a productive debate to amend and reform OSM's fee collection authority to fulfill the mandate of SMCRA to address these high priority healthy and safety concerns in a manner that directs the funds to the states and tribes where they are needed. As noted earlier, the current fee collection authority is scheduled to expire in just over six months, on September 30, 2004. There is much work to be done to ensure that reforming the AML fee collection authority, allocation formula, and other needed reforms become a reality. We believe that S. 2049 addresses these problems in a manner that is fair to all States and is consistent with the Administration's budget and program priorities.

We stand ready to assist the Committee. We thank the Committee for this opportunity to present the Administration's views on these important legislative proposals and we look forward to working together as Congress continues consideration of these important measures.