

STATEMENT OF

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BEFORE THE

**COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE**

On S. 1701 and S. 961

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10:00 AM

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. I would like to thank Senator Thomas for introducing his bill, S. 1701, as well as Senator Rockefeller for introducing his bill, S. 961. We applaud the efforts of these sponsors seeking to reauthorize OSM's authority to collect the AML fee, set to expire on June 30, 2006, and to make positive changes to this important program. We look forward to working with the Senate on the important issues surrounding the collection and use of the AML fee.

As we enter the third year of this reauthorization effort, it is important to keep in mind that there are an estimated 3.5 million Americans who live less than one mile from a dangerous, high-priority abandoned mine site whose lives, health and safety are threatened daily by these sites. People are frequently injured and too often die as a result of the hazards of abandoned mine lands.

The Administration believes that the AML problem is a national problem that calls for a national solution. The Administration believes AML funding needs to be focused 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.

The Administration supports the repayment of the unappropriated balances for certified states. However, we cannot support creating new mandatory spending programs with which to make such repayment. Moreover, while the allocation formula has improved, neither proposal would adequately expedite the cleanup of high priority lands, and therefore the Administration cannot support the allocation provisions as drafted. For the reasons noted here, we cannot support the bills as drafted; however, we would like to work with the Committee to reach an agreeable solution.

Background

Since the enactment of the SMCRA by Congress in 1977, the AML program has reclaimed thousands of dangerous sites left by abandoned coal mines, resulting in increased safety for millions of Americans. Specifically, more than 285,000 acres of abandoned coal mine sites have been reclaimed through \$3.5 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 in construction costs alone are needed to reclaim the high priority health and safety coal related problems remaining.

Even if we were to use all of the AML fees collected between now and June 30, 2006, the date the fee collection authority is scheduled to expire, as well as the unappropriated balance of \$1.6 billion, we would still have insufficient funds to address the health and safety-related surface mining problems in part because of the fund's current distribution formula. Even under a simple extension of the current law and the current distribution formula, it would take non-certified states an average of 47 more years to complete reclamation. In some cases, remediation could take nearly a century.

We do not believe the current allocation system will enable us to complete the job of reclamation in the most efficient way we believe Congress intended. We view the expiration of the current AML fee collection authority as an opportunity to reform the AML program 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% of the 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 it is 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 believes any legislation seeking to reauthorize the AML fee collection authority must reflect the following principles:

- Expedite the cleanup of high priority health and safety abandoned coal mines.
- Provide for the expedited payment of unappropriated balances to certified States and Tribes.
- The total cost must not exceed the President's Budget and must not include mandatory funding.

These principles 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. In light of those principles, we offer the following analysis of the key elements of the bills under consideration by this Committee.

Bill Analysis

There are three factors that must be considered in order to complete high priority work; the fee rate, the length of time authorized to collect the fee, and the way the money is allocated toward high priority reclamation or other uses.

Fee Allocations

Both S. 1701 and S. 961 would continue the current practice of allocating 50% of the fees collected in a state to that state or tribe's "State-share" or "tribal-share" account, without regard to that state or tribe's coal reclamation needs.

S. 1701 would add a new provision requiring that all aggregate unappropriated State-share and tribal-share balances (as of October 1, 2006) be returned to those States and Indian tribes between December 31, 2006 and December 31, 2010. The schedule and amount to be paid each year would be dependent upon the total State-share balance with larger balances requiring a

longer payout period. These payments would not be subject to Congressional appropriation. While the Administration agrees with the principal of honoring the commitments made to states and tribes under the current law, and has proposed additional funding in its FY 2005 and FY 2006 budget to provide for, *inter alia*, the accelerated return of State-share, the Administration cannot support the proposed repayment plan including provisions for mandatory spending because it is not consistent with the Administration's budget and program priorities.

Both S. 1701 and S. 961 would increase the percentage of funding that goes towards the historical production allocation, and thereby accelerate the cleanup of high priority sites, by discontinuing the RAMP allocation and increasing the historical production (that portion distributed based on need) allocation from 20% to 30% of the AML fee revenues.

The Administration supports the elimination of the AML allocation for the RAMP program and the reallocation of those fees for high priority needs

AML Reclamation Fee Rates/Length of Collection Period

S. 1701 modifies reclamation fee rates with stepped decreases through the life of the extension to September 30, 2016, a 10 year extension. An estimated total of \$2.8 billion would be collected over the life of this proposed extension.

S. 961 maintains the fee rates currently established by law but extends the OSM's authority to collect those fees through 2019, a 13 year extension. An estimated total of \$4.4 billion would be collected over the life of this proposed extension.

As previously indicated, under the allocation structures of both proposals, at the fee rate and collection periods proposed, an insufficient amount of funds will be collected and available to finish the job of reclaiming the high priority health and safety coal sites on the current inventory.

United Mine Workers of America Combined Benefit Fund (CBF)

While providing health care benefits is not part of OSM's mission, providing for the transfer of funds to the CBF, equivalent to the amount of interest earned on the AML fund, is an important obligation. Both S. 1701 and S. 961 honor the commitments made to the 16,500 unassigned beneficiaries of the CBF under current law by maintaining these transfers including the assignment of interest "stranded" from prior years. S. 1701 also adjusts the annual cap on transfers to the CBF from the amount of estimated AML fund interest earnings during the current fiscal year to the amount of interest actually earned during the prior fiscal year.

S. 961 expands the obligations of the interest transferred to include two additional UMWA plans. Interest would be made available for UMWA plans in the following order of priority: the CBF, the 1992 Plan, and the 1993 Plan. In addition, any unappropriated balance of the RAMP allocation would be available for these transfers, beginning with FY 2004. The Administration does not support paying benefits for additional beneficiaries, beyond the unassigned beneficiaries in the CBF, out of the AML fund.

Minimum Program Funding

Both S. 1701 and S. 961 provide that no State or tribe with an approved AML program would receive an annual grant of less than \$2 million. This provision would ensure that States and tribes with relatively little historic production would receive an amount conducive to the operation of a viable reclamation program. The Administration is concerned about provisions in both bills that add 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. The precedent of allowing a non-primacy state to receive AML grants could have a detrimental effect on the overall state-federal primacy scheme which has proven to be an effective method of surface mining regulation. Furthermore, both proposals call for removing current provisions which restrict the granting of funds to minimum programs based upon need. This removal would result in a further diversion of needed funds from either the historical production account or the federal operations account. In order to ensure that efforts focus on priority sites, the Administration would prefer to see this minimum restricted to states with high priority problem sites.

Remining

Both bills take a positive step in reinstating remining incentives which have now expired. These incentives 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. 1701 also 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.

AML Reclamation Priority

Both bills impact a state's or tribe's autonomy to make expenditures from the AML fund on eligible lands and water for coal-related sites by altering the current priority structure. Both S. 1701 and S. 961 amend the current priority system to eliminate the general welfare component of priorities 1 and 2, leaving public health and safety as the principle elements of those priorities. S. 961 takes an additional step of requiring a scrub of the AML inventory to eliminate all general welfare entries since 1998. S. 1701 proposes adding environmental restoration of adjacent lands to the P1 category.

S. 1701 and S. 961 both require that priority 3 environmental work be undertaken only if it is incidental to a priority 1 or 2 project. Finally, S. 961 eliminates the P4 and P5 priorities, which relate to construction of public facilities and development of publicly owned land.

Both S. 1701 and S. 961 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. Removing the cap is consistent with the 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.

Acid Mine Drainage Set Aside

Both S. 1701 and S. 961 modify the existing provision in SMCRA that allows States to set aside ten percent of grant awards made from their State-share and historical production allocations. Both bills eliminate the option to place those monies in a special State trust fund for use for AML reclamation purposes. Both bills also propose streamlining the requirements for the placement of those monies into accounts for the abatement and treatment of acid mine drainage. S. 1701 calls for increasing the percentage of grant awards that may be set aside in these accounts from 10% to 20%.

State Collection of AML Fees

S. 1701 adds a new section to SMCRA to allow States and Indian tribes the ability to collect reclamation fees and retain half of the fees collected in lieu of receiving a State-share allocation. As proposed, a State or tribe has the option to collect the AML fee, retain 50% and provide the remaining 50% to the Secretary of the Interior. States and tribes would have to use the retained funds for the purposes and priorities established under the AML program. The Administration has concerns regarding this provision. First, the OSM is very proud of our 99.9% collection rate of AML fees. This achievement is the result of our employee's years of experience and expertise as well as an efficient infrastructure to support the collection of these fees. The efficacy and cost of having 26 different agencies collecting and processing AML fees, in addition to maintaining the federal infrastructure to collect and account for the fees submitted to it, is a substantial issue of concern. In addition, issues of equity arise over the inability of smaller AML programs to staff and maintain this collection function as compared to programs with larger revenue and capacity. Finally, the constitutionality of a state or tribal AML program collecting the federally imposed AML fee is an unanswered area of concern.

Cost

The Administration is concerned about the cost of both S. 1701 and S. 961. As discussed above, the Administration believes any bill to reauthorize the AML should not exceed the cost assumed in the President's budget.

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.

We believe the introduction of S. 1701 and S. 961 signal the continuation of constructive efforts 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 on June 30, 2006. 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 recognize that these issues can be contentious, but we are eager to continue working through these issues with the Committee. We look forward to an open and productive dialogue to amend and reform OSM's fee collection authority to fulfill the mandate of SMCRA to address these high priority health and safety concerns in a manner that directs the funds to the states and tribes where they are needed.

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.