

**STATEMENT OF
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U.S. DEPARTMENT OF THE INTERIOR**

BEFORE THE

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

ON S. 2779

**TO AMEND THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
TO CLARIFY THAT UNCERTIFIED STATES AND INDIAN TRIBES HAVE THE
AUTHORITY TO USE CERTAIN PAYMENTS FOR CERTAIN NONCOAL
RECLAMATION PROJECTS**

JULY 9, 2008

Mr. Chairman and Distinguished Members of the Committee, thank you for the opportunity to submit testimony on S. 2779, a bill to amend the Surface Mining Control and Reclamation Act of 1977 (SMCRA), as amended. This bill would authorize States and Indian tribes that have not certified completion of their coal related abandoned mine land (AML) problems to expend funds received under section 411(h)(1) on non-coal related AML problems.

While this legislation would apply to all uncertified states, it is of particular importance to three States (New Mexico, Colorado, and Utah) that have traditionally spent a substantial portion of their AML funds to address hazardous non-coal AML problems.

We recognize that many states have used AML funds to support a variety of worthwhile goals in addition to reclamation of coal related health and safety issues. One of SMCRA's objectives is to provide funding to address these coal related issues. Accordingly, we are concerned that the bill would ultimately delay coal-related health and safety reclamation work that is a priority to ensuring the health and safety of people who live in or near our Nation's historic coalfields.

Therefore the Administration cannot support the bill.

Background

There are 21 uncertified States receiving grants under the abandoned mine land (AML) program. Together, they have a recorded inventory of over \$3.1 billion of high-priority, coal-related AML

problems (those representing health and safety hazards to the public) remaining to be addressed. Each of these uncertified States is now receiving grants from at least three sources. Two of these sources, State share funds (SMCRA 402(g)(1)) and historic coal share funds (SMCRA 402(g)(5)), have been allocated to uncertified States since 1990. Historic coal share funds are allocated only to those States that have remaining high-priority coal problems in their inventory, while state share funds are allocated to any state that has not certified completion of all remaining coal AML problems even if it no longer has an inventory of high priority problems.

Also, since 1990, funds from these two sources are the only funds that may be used for non-coal reclamation by uncertified states. The 2006 amendments added Treasury payments (SMCRA 411(h)(1)), a third source, for repayment of unappropriated State share balances (prior balance replacement funds). However, these funds, which are paid out over seven years beginning in FY 2008, must be used for coal-related AML problems.

In some cases, a fourth funding source is available. Before the 2006 amendments were passed, SMCRA authorized all uncertified States with high-priority coal problems remaining to receive at least \$2 million annually. The 2006 amendments raised that level to \$3 million over a four year phase in period. When the sources of funding outlined above total less than the minimum funding level, an amount necessary to reach that threshold is granted from funds otherwise designated for the Secretary of the Interior's (Secretary) use. Use of these funds is also limited to addressing high priority coal AML problems.

Historically, New Mexico, Colorado, and Utah have spent about half of their AML grants on non-coal problems. These three States received approximately two-thirds of their fiscal year 2008 funding in prior balance replacement funds.

It is important to note that the 2006 amendments provide enough State share and historic coal share to allow each of these three States to maintain their current non-coal programs at historic levels. As mandatory funding under the 2006 amendments is fully phased in, these states will have substantially more funding available for non-coal AML work than they were spending on non-coal prior to the 2006 amendments.

S. 2779

As introduced, S. 2779 would amend SMCRA to enable uncertified States to use prior balance replacement funds to reclaim non-coal problems. Since prior balance replacement funds are a major source of AML funding for uncertified states through FY 2014, this will substantially increase funds available for non-coal. However, since S. 2779 does not increase overall funding available, any increase in expenditures by a State on non-coal problems will mean a corresponding decrease in funds spent to address coal related problems, thus delaying completion of high priority coal AML work shown in that State's inventory. This, in turn, would delay certification of completion of all coal problems for States that would increase spending on non-coal as a result of this bill.

Certification of Completion of Coal Reclamation

Once a State certifies completion of its coal AML problems, it is no longer eligible for AML funds. Instead, it receives payments from the Treasury in an amount equal to what the State

share would have been (as well as any remaining prior balance replacement funds if certification occurs prior to 2014). This foregone State share, along with the historic share that state had been receiving, will be distributed as historic coal share funds to the remaining uncertified States to clean up high priority coal problems. Thus, the funding to states with remaining high priority problems is increased each time another state certifies. On the other hand, certified states have broad discretion and very little accountability to OSM for how they use their grants, which can certainly all be used for non-coal AML work.

In summary, while S.2779 will increase the funding available for non-coal AML problems for uncertified states, it will cause a corresponding delay in the completion of high priority coal AML problems in those states which spend more on non-coal problems as a result of this bill. Further, as states delay certification of completing their remaining coal problems, it limits funding that would otherwise be available to remaining uncertified states.