

STATEMENT FOR THE RECORD
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
U.S. DEPARTMENT OF THE INTERIOR

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES SUBCOMMITTEE ON
PUBLIC LANDS AND FORESTS
U.S. SENATE

ON SENATE BILL 897

MAY 18, 2011

Mister Chairman and Members of the Subcommittee, thank you for the invitation to testify on behalf of the Office of Surface Mining Reclamation and Enforcement (OSM) regarding S. 897, a bill to amend the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The OSM looks forward to working with you on matters relating to the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

S. 897 would allow noncertified states and tribes to use certain SMCRA payments for non-coal reclamation. While we recognize the importance of addressing hardrock mine hazards, we cannot support this bill because it is inconsistent with the President's FY 2012 Budget proposal to limit funding derived from the abandoned mine lands fee on coal production to the reclamation of coal sites that pose the most danger to public health and safety and/or damage to the environment.

The FY 2012 President's Budget includes a proposal to focus AML funds on the critical coal reclamation sites in order to ensure that the most dangerous and environmentally damaging coal sites can be addressed before the AML fee expires in ten years. In addition to terminating unrestricted payments to certified states and tribes that have already cleaned up their abandoned coal mines, the proposal will competitively allocate funding for use on these hazardous and environmentally damaging coal reclamation projects. Recognizing the importance of addressing abandoned hardrock mines nationwide, additionally, the President's FY 2012 budget would build off these reforms to the coal AML program and create a parallel program for hardrock AML reclamation in order to address those sites. This proposal would ensure that the industries whose historic practices created abandoned mines bear the costs of addressing these hazards by paying a reclamation fee on production.

Background

Through SMCRA, Congress established OSM for two basic purposes. First, to ensure that the Nation's coal mines operate in a manner that protects citizens and the environment during mining operations and to restore the land to beneficial use following mining. Second, to implement an Abandoned Mine Land (AML) program to address the hazards and environmental degradation created by two centuries of weakly regulated coal mining that occurred before SMCRA's enactment.

Title IV of SMCRA created an AML reclamation program funded by a reclamation fee assessed on each ton of coal produced. The fees collected have been placed in the Abandoned Mine Reclamation Fund (Fund). OSM, either directly or through grants to States and Indian tribes with approved AML reclamation plans under SMCRA, has been using the Fund primarily to reclaim lands and waters adversely impacted by coal mining conducted before the enactment of SMCRA and to mitigate the adverse impacts of mining on individuals and communities. Also, since FY1996, an amount equal to the interest earned by and paid to the Fund has been available for direct transfer to the United Mine Workers of America Combined Benefit Fund to defray the cost of providing health care benefits for certain retired coal miners and their dependents. Section 402(a) of SMCRA fixed the reclamation fee for the period before September 30, 2007, at 35 cents per ton (or 10 percent of the value of the coal, whichever is less) for surface-mined coal other than lignite, 15 cents per ton (or 10 percent of the value of the coal, whichever is less) for coal from underground mines, and 10 cents per ton (or 2 percent of the value of the coal, whichever is less) for lignite. As originally enacted, section 402(b) of SMCRA authorized collection of reclamation fees for 15 years following the date of enactment (August 3, 1977); thus, OSM's fee collection authority would have expired August 3, 1992. However, Congress extended the fees and fee collection authority through September 30, 1995, in the Omnibus Budget Reconciliation Act of 1990. The Energy Policy Act of 1992 extended the fees through September 30, 2004. A series of short interim extensions in appropriations and other acts extended the fees through September 30, 2007.

The Surface Mining Control and Reclamation Act Amendments of 2006 were signed into law as part of the Tax Relief and Health Care Act of 2006, on December 20, 2006 (Public Law 109-432). The 2006 amendments revised Title IV of SMCRA to make significant changes to the reclamation fee and the AML program and extended OSM's reclamation fee collection authority through September 30, 2021.

The AML reclamation program was established in response to concern over extensive environmental damage caused by past coal mining activities. Before the 2006 amendments, the AML program reclaimed eligible lands and waters using the Fund, which came from the reclamation fees collected from the coal mining industry. Eligible lands and waters were those which were mined for coal or affected by coal mining or coal processing, were abandoned or left inadequately reclaimed prior to the enactment of SMCRA on August 3, 1977, and for which there was no continuing reclamation responsibility under State or other Federal laws.

SMCRA established a priority system for reclaiming coal problems. Before the 2006 amendments, the AML program had five priority levels, but reclamation was focused on

eligible lands and waters that reflected the top three priorities. The first priority was "the protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices." The second priority was "the protection of public health, safety, and general welfare from adverse effects of coal mining practices." The third priority was "the restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices."

As originally established, the Fund was divided into State or Tribal and Federal shares. Each State or tribe with a Federally approved reclamation plan was entitled to receive 50 percent of the reclamation fees collected annually from coal operations conducted within its borders. The "Secretary's share" of the Fund consisted of the remaining 50 percent of the reclamation fees collected annually and all other receipts to the Fund, and was allocated into three shares as required by the 1990 amendments to SMCRA. First, OSM allocated 40% of the Secretary's share to "historic coal" funds to increase reclamation grants to States and Indian tribes for coal reclamation. However, all the funds which were allocated may not have been appropriated. Second, OSM allocated 20% to the Rural Abandoned Mine Program (RAMP), operated by the Department of Agriculture. However, that program has not been appropriated AML funds since the mid-1990s.

Last, SMCRA required OSM to allocate 40% to "Federal expense" funds to provide grants to States for emergency programs that abate sudden dangers to public health or safety needing immediate attention, to increase reclamation grants in order to provide a minimum level of funding to State and Indian tribal programs with unreclaimed coal sites, to conduct reclamation of emergency and high-priority coal sites in areas not covered by State and Indian tribal programs, and to fund OSM operations that administer Title IV of SMCRA.

States with an approved State coal regulatory program under Title V of SMCRA and with eligible coal mined lands could develop a State program for reclamation of abandoned mines. The Secretary determines whether to approve and fund the State reclamation program. At the time the 2006 amendments were enacted, 23 States received annual AML grants to operate their approved reclamation programs. Three Indian tribes (the Navajo Nation, and Hopi and Crow Tribes) without approved regulatory programs have received grants for their approved reclamation programs as authorized by section 405(k) of SMCRA.

Before the 2006 amendments, States and Indian tribes that had not certified completion of reclamation of their abandoned coal lands could use AML grant funds on noncoal projects only to abate extreme dangers to public health, safety, general welfare, and property that arose from the adverse effects of mineral mining and processing and only at the request of the Governor or the governing body of the Indian tribe. In addition, noncertified States were allowed to deposit up to ten percent of their AML grant funds into a state acid mine drainage set aside account to abate and treat acid mine drainage caused by coal mining.

The 2006 amendments reduced the statutory fee rates by 10 percent from the current levels for the period from October 1, 2007, through September 30, 2012, and by an additional 10 percent from the original levels for the period from October 1, 2012, through September 30, 2021.

The Fund allocation formula was also changed. Beginning October 1, 2007, certified States are no longer eligible to receive State share funds. Instead, amounts that would have been distributed as State share for certified States from the AML fund are distributed as historic coal funds. The RAMP share was eliminated, and the historic coal allocation was further increased by the amount that previously was allocated to RAMP. In addition, the amount that noncertified States could set aside for acid mine drainage abatement and treatment was increased to 30 percent of a State's State share and historic coal share funds.

The Amendments also created two new types of payments from the General Treasury under section 411(h). Both certified and noncertified states receive payments equal to their portion of the unappropriated balance of the AML fund that existed at the time the amendments were passed, known as "prior balance funds". Certified states and tribes also receive a payment, known as the "in lieu" payment, equal to 50% of the fees collected in their borders the prior year.

Though the other sources of funding to noncertified states and tribes are available for a variety of purposes under the statute, since 2006, the Department has interpreted the language of SMCRA section 411(h) to preclude noncertified states and Indian tribes from using funds that they receive under that section for noncoal reclamation or for deposit into a state acid mine drainage account.

S.897

Under SMCRA, noncertified states can use "State share" and "historic coal" funds for noncoal reclamation and deposit into state acid mine drainage set aside accounts, which are considered lower priority hazards associated with AML sites. S. 897 would amend SMCRA to allow these states to also use their prior balance funds, which they receive under Section 411(h)(1), for noncoal reclamation and for deposit into state acid mine drainage set-aside accounts. In other words, S. 897 would allow prior balance replacement funds, which are now focused on the reclamation of coal sites in noncertified States, to be used for other purposes: namely, noncoal reclamation and deposit into State acid mine drainage set aside accounts.

In an effort to focus the OSM's AML program on coal reclamation, the President's FY 2012 budget proposes to revise SMCRA to competitively allocate AML funds to ensure that the most dangerous and environmentally damaging coal AML sites are reclaimed before the reclamation fee terminates. Because S.897 is inconsistent with the Administration's goal of ensuring expeditious coal reclamation through the existing AML Fund, we cannot support this bill.

We share this Subcommittee's interest in ensuring that abandoned hardrock mines also are addressed. In order to accomplish this goal, we support the creation of a parallel hardrock AML program, funded through a fee on hardrock production to fund the reclamation of hardrock mine sites nationwide, which the FY 2012 President's budget proposes.

Currently, there is no hardrock reclamation fee similar to the one established by SMCRA

to reclaim abandoned coal mine sites. This leaves States, Tribes, and Federal land managers to address these sites within their budgets or using other sources of funding, such as SMCRA's reclamation funds when possible. To hold each industry responsible for the actions of its predecessors, the President's FY 2012 budget proposes a new reclamation fee on hardrock production. Once the fee is established, OSM would be responsible for collecting this fee, based on its expertise in collecting the coal reclamation fee. The Department of the Interior's Bureau of Land Management would be responsible for allocating and distributing the receipts, using the proposed competitive allocation program.

Thank you for the opportunity to appear before the Subcommittee today and testify on this bill. I look forward to working with the Subcommittee to ensure that the Nation's abandoned mine lands are adequately reclaimed.