

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA

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Coal Cleanup and Reclamation

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The Pennsylvania House of Representative
Environmental Resources & Energy Committee

Main Capitol Building
Room 60, East Wing
Harrisburg, Pennsylvania

Tuesday, June 24, 1997 - 10:00 a.m.

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BEFORE:

Honorable Robert Reber, Majority Chairman
Environmental Resources & Energy
Honorable David Argall
Honorable Jerry Birmelin
Honorable Joe Conti
Honorable Charles Dent
Honorable Kenneth Jadowiee
Honorable Albert Masland
Honorable Eugene McGill
Honorable John Pippy
Honorable Carole Rubley
Honorable Samuel Smith, Chairman of subcommittee
Honorable Camille George, Minority Chairman
Honorable Anthony DeLuca
Honorable Stanley Jarolin
Honorable David Levdansky
Honorable Joseph Markosek
Honorable Sara Steelman
Honorable Gregory Vitali

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1 CHAIRMAN REBER: Good Morning. I'd like to
2 convene the hearing of the Environmental Resources
3 and Energy Committee. This morning we are going to
4 have a number of witnesses. Present with myself at
5 the table are a number of representatives. I'd like
6 them to introduce themselves starting on my far
7 right.

8 (Roll call taken)

9 CHAIRMAN REBER: I'd like to thank the
10 members of the committee for their presence today.

11 Initially, before we get into our first
12 testifiers, I'd like to recognize Representative
13 George, Minority Chairman of the Committee.

14 Representative George has another matter
15 going on so he temporarily will miss this meeting,
16 and he does have a short statement he would like to
17 present for the record.

18 In the event he is detained, before he can
19 get back to the committee, I'd like to have him
20 present his remarks at this time.

21 Representative George.

22 REPRESENTATIVE GEORGE: I thank the
23 majority chairman for this opportunity. I state to
24 you, one and all, good morning. I won't be long, but
25 do intend, once I've committed to the meeting, that

1 unfortunately I had set up some time ago, I'll be
2 back to hear the testimony on the entire matter.

3 It's a pleasure to be here this morning to
4 discuss an issue that has been a concern of mine
5 since I joined the legislature 24 years ago.

6 It is no secret that Pennsylvania leads the
7 Nation in miles of polluted streams and rivers.

8 Over 2400 miles of our waterways are not up
9 to standard, and the main contributing factor is
10 without question acid mine drainage.

11 Several years ago, I met with a regional
12 administrator from the EPA who explained that the
13 Federal Government was interested in making the
14 cleanup of acid mine water and the reclamation of
15 abandoned mines a top priority.

16 From the lack of funding we currently
17 receive from the Federal Government, that has not
18 happened.

19 Mr. Seif's department estimates that we are
20 looking at a 15 billion dollar problem. That is a
21 tremendously costly proposition, but the sad fact is,
22 that if we do not attack it now, it will only grow
23 more costly.

24 That cost will be borne by every water
25 company, municipal authority, and ratepayer in

1 Pennsylvania.

2 On April 30 I introduced house bill 1427,
3 which is currently the only major piece of
4 legislation aimed at remediating this problem. It is
5 my hope that after we hear from our witnesses today,
6 this committee can move forward and work together on
7 this issue.

8 Incidentally, on the record, the majority
9 chairman of this committee has been more than
10 cooperative with the minority chairman and together
11 we can continue to work and hopefully push 1427.

12 To the department and/or witnesses I want
13 to say to Mr. Hess and Mr. Dolence the cooperative
14 spirit that they have provided, especially in my
15 area, has been superb.

16 I know that they want to work with us as we
17 want to work with them.

18 Mr. Reber allow me, if you will, to submit
19 this for the record.

20 CHAIRMAN REBER: Thank you. At this time I
21 would like to recognize our sub-committee chairman on
22 mining, Representative Smith. Sam has taken the lead
23 in moving with Chairman George and looking at the
24 entire water quality issue as it relates to mines,
25 acid mine drainage, reclamation and things of that

1 nature.

2 Sam has been very instrumental in moving
3 forward in presenting and preparing for this
4 particular hearing as well as a possible few other
5 ones through the summer and early fall on this issue.

6 Sam, I'd like to recognize you for a few
7 moments.

8 REPRESENTATIVE SMITH: I just briefly
9 wanted to thank you, of course, for allowing us to
10 hold this hearing. I wanted to put on the record
11 relative to Representative George's comments that
12 although the hearing isn't focused specifically on
13 his legislation, certainly that legislation is a
14 component of this hearing and one of the reasons that
15 I asked Chairman Reber to have this hearing and
16 hopefully, we will have a little more dialogue on
17 this throughout the summer.

18 I think we all recognize it, the department
19 recognizes it, and those of us in the legislature
20 that deal with it recognize the nature of this
21 problem. And while we are addressing it, we do need
22 to look to newer and more creative methods of dealing
23 with both acid mine drainage and abandoned mine lands
24 reclamation.

25 So, I appreciate the chairman for holding

1 this hearing and look forward to our future
2 discussions on this matter.

3 CHAIRMAN REBER: At this time I'd like to
4 recognize for appropriate introduction the first two
5 witnesses that we are going to hear from this morning
6 from the Pennsylvania Department of Environmental
7 Protection. We have Executive Deputy Secretary Dave
8 Hess as well as Deputy Secretary for Mineral
9 Resources, Bob Dolence.

10 MR. HESS: Thank you, Chairman Reber,
11 Representative Smith, Representative George and
12 members of the House Environmental Resources and
13 Energy Committee.

14 My name is David Hess, I am Executive
15 Deputy Secretary for policy the DEP. With me today
16 is Robert Dolence, Deputy Secretary for Mineral
17 Resources Management.

18 On behalf of DEP Secretary James M. Seif,
19 we want to thank you for this opportunity to talk
20 about the steps now being taken by local, state and
21 federal governments, environmental groups and the
22 coal industry to undo the environmental consequences
23 of more than 200 years of coal mining in the
24 Commonwealth.

25 Over 10 billion tons of coal has been taken

1 from Pennsylvania mines. The mining of coal in
2 Pennsylvania helped fuel the industrial revolution,
3 win two world wars, provided hundreds of thousands of
4 jobs for immigrants and helped position the United
5 States as a world power.

6 But today, coal continues to be an
7 important part of things we do every day, like
8 turning on a light switch. Fifty-eight percent of
9 the electricity Pennsylvania uses is generated by
10 coal. But with this success brought about by coal
11 mining came a cost.

12 In direct human terms, the cost was highest
13 over 51,480 coal miners lost their lives in
14 Pennsylvania mines since 1870.

15 The cost to the environment was also high:
16 250,000 acres of land were left unreclaimed, causing
17 over 2,400 miles of polluted streams; more than
18 150,000 acres are vulnerable to mine subsidence; 2.6
19 billion cubic yards of coal refuse dot the landscape
20 in huge piles; 45 deep mine fires and 100 million
21 cubic yards of coal refuse continue to burn.

22 Environmental problems caused by past coal
23 mining affect 45 of Pennsylvania's 67 counties.
24 Pennsylvania has one-third of all the abandoned mine-
25 related problems in the United States.

1 The cost of cleaning up this legacy of 200
2 years of coal mining is estimated at \$15 billion, but
3 it's probably more. This is easily Pennsylvania's
4 single biggest water quality problem.

5 Have we learned from these mistakes? I
6 would say absolutely yes.

7 The worker safety record of modern coal
8 mining operations is now comparable to industries
9 like agriculture and construction because of the
10 combined efforts by mine workers, coal companies and
11 state and federal agencies like DEP's Bureau of Deep
12 Mine Safety.

13 Pennsylvania pioneered the adoption of laws
14 regulating coal mining. In fact this month we are
15 celebrating the 60th anniversary of the Clean Streams
16 Law that was prompted by water pollution problems
17 caused by coal mining.

18 Modern regulations tell mine operators
19 where and how they can mine and set requirements for
20 restoring land after mining ends. Under these new
21 rules and with a more scientific approach to
22 reviewing permits, more than 97 percent of surface
23 mining operations permitted in the last five years
24 have not caused water pollution.

25 In the last 30 years nearly one billion

1 dollars has been spent through a variety of state and
2 federal programs to restore about 25,000 acres of
3 abandoned mine lands, reclaim refuse piles and help
4 stabilize underground mines. About two-thirds of
5 these funds came from active mine operators who paid
6 special fees on every ton of coal they mined to
7 support reclamation efforts.

8 Modern surface mining techniques are
9 allowing the coal industry itself to restore old
10 areas by going back in and remining and reclaiming
11 abandoned areas at no cost to taxpayers. Half of all
12 new surface coal mine permits issued in Pennsylvania
13 today involve remining, representing about one-fourth
14 of the total acres mined.

15 Remining is a result in the reclamation of
16 abandoned mine lands at more than twice the rate of
17 taxpayer funded reclamation projects. Last year more
18 than 2,500 acres of abandoned mine lands were
19 reclaimed by the private sector through remining,
20 while DEP-sponsored projects reclaimed 1,200 acres.
21 And the rate of reclamation by remining is
22 increasing.

23 While Pennsylvania has achieved important
24 successes in cleaning up the environmental legacy of
25 past coal mining, we have only addressed a little

1 more than six percent of the problem.

2 We also recognize that no matter how much
3 taxpayer money is set aside to deal with this
4 problem, there can never be enough public money to do
5 all the work that needs to be done.

6 To speed up reclamation, we need to
7 maximize the effectiveness of the public funds that
8 are available and find new, innovative ways to
9 encourage reclamation work by current mine operator,
10 landowners and other partners.

11 With these principles in mind, DEP has
12 undertaken a series of initiatives, along with our
13 local and federal partners, members of the General
14 Assembly and the mining industry, that we believe
15 will result in a significant increase in reclamation.

16 Our first step when the original
17 administration came in was to start to get our own
18 house in order by getting the right people to do the
19 job and one of those people was Bob Dolence. His
20 broad experience in mining and with the federal
21 opposite surface mining, he came in obviously to be
22 our deputy in that area.

23 Next we brought the district mining offices
24 under Bob's control so that the closer working
25 relationship between the active mining side of the

1 agency and the side of the agency that reclaims
2 abandoned mines.

3 We also named new leadership to the
4 bureau's Mining and Reclamation Abandoned Mine
5 Reclamation and district mining operations.

6 With this new team in place we did
7 something unique, we asked citizens, industry,
8 environmental groups local officials and other
9 agencies to evaluate the effectiveness of our
10 programs and make recommendations for improving them
11 to what we call our customer needs projection.

12 Together with our ongoing regulatory Basics
13 Initiative, the Customer Needs Projection resulted in
14 a series of regulatory and policy recommendations
15 designed to encourage quicker and more effective
16 reclamation.

17 At the same time we proposed a
18 comprehensive mine reclamation plan that had been
19 advocated by DEP's mining and reclamation advisory
20 board and our citizens advisory council to better
21 coordinate DEP reclamation programs.

22 The specific recommendations of the Plan
23 are to maximize the benefits of our existing programs
24 by doing better in long term planning, focusing
25 resources on specific areas, developing new

1 partnerships, and coordinating the activities of
2 active and abandoned mine programs. Those may seem
3 to sound simple, but in fact they were a new approach
4 to the way we do business under our reclamation
5 programs.

6 We expect that plan to be finalized in
7 July. One of the key recommendations coming out of
8 this effort for customer needs of the comprehensive
9 mine reclamation plan was the suggestion that we
10 focus our resources on cleaning up the watersheds not
11 just individual problems.

12 Watersheds are the basic building blocks of
13 the environment. Looking at abandoned mine problems
14 in a particular watershed and systematically planning
15 how state, federal and industry resources can be
16 brought to bear to solve those problems is
17 potentially a very powerful tool. But, this tool
18 will not work effectively without the guidance and
19 involvement of people in these watersheds.

20 We are now working with local partners in
21 eight watersheds across the state in a special pilot
22 program to test this method. Watersheds in Butler,
23 Cambria, Clinton, El, Lebanon, Luzerne, Schuylkill,
24 Tioga and Westmoreland counties are participating.
25 Slippery Rock Creek (from Boyers to headwaters,

1 Butler County) Sulphur Creek (Cambria County)
2 Tangascootack Creek (Clinton County) Little Toby
3 Creek (from Brandy Camp Creek confluence upstream to
4 all Elk County) Swatara Creek (Lebanon and Schuylkill
5 Counties) Nescopeck Creek (Jeddo Tunnel discharge,
6 Luzerne County) Babb Creek (Tioga County)
7 Beaver Run (Westmoreland County) Swatara Creek in
8 Lebanon and Schuylkill counties is a good example of
9 how this process has worked.

10 The first step was forming a strong
11 watershed association lead by people in the
12 watershed, with technical support from DEP.

13 The group has identified the primary mine-
14 related problems in the watershed and a variety of
15 projects are now underway by local people, DEP and
16 the active mining industry to deal with them.

17 We've also begun to explore a variety of
18 new mine reclamation technologies that we think will
19 have a significant potential to improve not only the
20 environmental effectiveness of reclamation, but
21 reduce reclamation costs.

22 At the Bark Camp Mine Reclamation
23 Laboratory in Clearfield County we are demonstrating
24 several reclamation techniques in cooperation with
25 the Environmental Protection Agency, the U.S. Army of

1 Engineers and Penn State University. We are testing
2 one technology that involves bringing in river silt
3 and mixing it with fly ash to create a structural
4 fill-type material.

5 We believe this could be a win-win
6 situation abandoned mine lands are reclaimed and
7 river silt is "recycled" into a useful material.

8 We have also been promoting the use of
9 wetlands as inexpensive, but effective ways to treat
10 runoff from abandoned mine lands by testing a wetland
11 purification systems at Bark Camp and by designing
12 and constructing proven systems under DEP-sponsored
13 abandoned mine reclamation projects.

14 Recent changes in law that you all have
15 brought about Act 181 of 1994 and Act 43 of 1996 have
16 made it easier for county conservation districts,
17 mine operators and landowners into partnership on
18 reclamation projects.

19 These laws created a variety of new
20 programs to help mine operators apply for permits to
21 remine abandoned areas through the Remine Operator
22 Assistance Program, designating areas suitable for
23 remining, giving bond credits for reclaiming
24 previously affected land and financial guarantees to
25 support operator bonding on remining sites.

1 Act 43 provides DEP as well with additional
2 authority to cooperate with surety companies to allow
3 third parties to reclaim abandoned sites where the
4 bonds have been forfeited and collected. We have
5 done several agreements like this in the last couple
6 years, and there are now several groups of sites now
7 being considered formally under the Act 43.

8 We have welcomed as other partners in our
9 reclamation efforts county conservation districts
10 particularly that make up the Western and Eastern
11 Coalition for Abandoned Mine Reclamation.

12 Through this relationship we are promoting
13 reclamation by funding specific projects, providing
14 technical support and encouraging direct EPA funding
15 to the coalitions.

16 DEP has been successfully using mine
17 operators who have violations to do reclamation work.
18 Under this initiative, operators complete mine
19 reclamation work on an abandoned site in-lieu of
20 paying a penalty to DEP.

21 All these efforts together result in about
22 37-38 million dollars worth of reclamation activity
23 each year. To summarize that activity we brought
24 along several charts.

25 The biggest area that you see there is

1 about a 20 million dollar block of funds from the
2 federal government under what's called Title IV
3 funding from the office of surface mining.

4 The next biggest chunk is remaining efforts
5 that are done in connection with active mining
6 operations, and we can see from the testimony and the
7 chart other sources of reclamation activity include
8 our Bond Forfeiture program, no cost reclamation
9 contracts, and some of the projects we are doing with
10 landowners and watershed groups. I don't want to
11 repeat all that, it's there for you to take a look
12 at.

13 But again, total we do about 37-38 million
14 dollars on average of reclamation work through these
15 different programs.

16 In our testimony, in addition, we provided
17 another column that list the trends in each of these
18 areas, whether the funding or level of activity is
19 staying the same, going up or going down. We thought
20 that might be useful as you deliberate our next steps
21 with reclamation.

22 Our partnership with the federal government
23 on mine reclamation initiatives is important to the
24 Commonwealth. We think the U.S. Department of the
25 Interior's Appalachian Clean Streams Initiative and

1 EPA's new focus on mine reclamation in general are
2 important steps forward and will help Pennsylvania
3 address our problem.

4 Pennsylvania receives about 20 million
5 dollars annually, this year for the first time
6 through better management of those funds we will not
7 have carry overs to the next year.

8 We continue, however, to be concerned that
9 the federal Abandoned Mine Lands Trust Fund now has
10 an estimated surplus of one billion dollars in fees
11 collected from mine operators.

12 The Western and Eastern Coalitions for
13 Abandoned Mine Reclamation as well as other states
14 have joined us in trying to convince the federal
15 government to release the one billion dollar surplus
16 for use by states. You might note that the Senate
17 and house have resolutions in supporting that
18 activity and we appreciate that action.

19 As I said at the outset there's a lot of
20 work to be done in mine reclamation and we need to do
21 much more to eliminate the harsh environmental legacy
22 left by the mining industry in Pennsylvania. We are
23 trying to work harder and smarter with the resources
24 that we have our federal and local partners.

25 If I could suggest some possible areas of

1 inquiry for the sub-committee they would be a couple
2 of areas. One is providing incentives for third
3 parties or "good Samaritans" such as watershed and
4 other environmental groups, landowners and mine
5 operators to do reclamation projects without fear of
6 becoming legally responsible for discharges caused by
7 past mining.

8 Looking at the need for additional
9 liability reforms that make it easier for mine
10 operators to reclaim sites with pre-existing
11 discharges, establishing a discharge credit program,
12 that gives credit for reducing discharges anywhere in
13 the watershed from reducing requirements, supporting
14 efforts to establish and provide technical assistance
15 to county conservation districts and watershed groups
16 interested in mine reclamation and other water
17 quality protection projects.

18 And finally on the issue of the billion
19 dollar surplus we obviously would appreciate help and
20 support on that issue as we deal with federal
21 government.

22 This has been just a very quick overview of
23 mine reclamation efforts. I would be happy to answer
24 any questions along with Bob Dolence.

25 REPRESENTATIVE REBER: First of all, I

1 would like to have the members who have just joined
2 us or joined us immediately following the
3 commencement of the presentation, to introduce
4 themselves.

5 REPRESENTATIVE DENT: Representative
6 Charles Dent.

7 MS. RUBLEY: Carole Rubley.

8 MR. MASLAND: Al Masland.

9 MR. JAROLIN: Stanley Jarolin.

10 MR. BIRMELIN: Jerry Birmelin.

11 MR. CONTI: Joe Conti.

12 REPRESENTATIVE REBER: At this time I would
13 like to recognize the Chairman of the sub-committee
14 on mining for a few questions. Representative Smith.

15 REPRESENTATIVE SMITH: Thank you, Mr.
16 Chairman. A couple of the questions I thought maybe
17 I would get you to expand a little bit on, first of
18 all, relative to the department's plan for realigning
19 the comprehensive plan and the developing and
20 implementing, one thing you didn't mention there was
21 the inventory. And when I was reviewing the document
22 that had been out in 1996, preliminary to the plan,
23 it indicated that kind of survey had been done with
24 the Scarlet program many years ago, but that that
25 information isn't really in a useful form and it

1 hasn't been updated and I was wondering if you might
2 give us a little feeling for how important that is
3 and if the department is considering proceeding with
4 inventory of acid mine drainage and abandoned mine
5 land problems.

6 MR. HESS: We currently are taking a look
7 at AMD and abandoned mine land problems, and further
8 we are having discussions with federal office of
9 surface mining of how we can address some of the AML
10 existing problems, specifically focusing on acid mine
11 drainage.

12 Updating all the records, we have to be a
13 little bit prudent how we go about that. We do
14 across the board, across the Commonwealth reassessing
15 the data that we have may not be the best approach.

16 We would be spending a lot of money in
17 areas that it shouldn't be spent, just gathering more
18 data.

19 What we are doing now is on watershed by
20 watershed basis, if there's interest from industry
21 going to specific areas for re-mining we are assisting
22 in that area for re-mining and operator assistance
23 programs.

24 We are trying to target to maximize the
25 return on the dollars we spend and delineate some of

1 those problems.

2 REPRESENTATIVE SMITH: So as you look at
3 the watersheds and try to prioritize based on the
4 watersheds, I'm inclined to think that's a good way
5 to go. Do you utilize more like the Bureau of
6 Abandoned Mine Reclamation people, or the active
7 mining industry to make those assessments and
8 determinations of priority?

9 MR. HESS: Each watershed is different, we
10 are trying not to have a cookie cutter approach and
11 say this is how we are going to do all of them.
12 Depending on the watershed, if there is a lot of
13 potential for remining we'll have the active district
14 mine offices involved industry involved to express to
15 us areas that they may be interested in.

16 If we have a watershed that has very little
17 remining, the focus would be with the abandoned mine
18 reclamation group. Also entering into that a very
19 important part is the active participation by local
20 groups, watershed groups, or organizations that are
21 participating in the cleanups.

22 REPRESENTATIVE SMITH: I guess we're I am
23 going a little bit, one the concerns I have as we
24 look at dealing with the problem, is that, you have
25 the abandoned mine reclamation out there looking at

1 their projects and doing their things, and you have
2 people over on the active mining side looking at
3 remining and those incentives. And those two, the
4 right hand and the left hand if you will, aren't
5 always in good communication and coordination and
6 while I work with both of those entities dealing with
7 local problems in my district, I become aware of
8 that, and I guess as we unfold this problem and try
9 to figure out how to put the solution together one of
10 the things I would want to encourage the department
11 is to do more to make sure that those two sides of
12 the department are working more in coordination.

13 I know you have heard me say this before,
14 but I kind of wanted to put it on the record here and
15 mention it in front of the other committee members,
16 any comments you have to that would be appreciated.

17 MR. HESS: Well your comment's right on the
18 mark and something that we have been looking at and
19 we've done some things and there's more to do.

20 First of all, as Dave has stated earlier,
21 district mining operations is now in a single
22 depurate with land mine reclamation and the Bureau of
23 Mining Reclamation.

24 We had some leadership changes, we have the
25 Bureau of Records for Abandoned Mine Reclamation, who

1 was the former Bureau director in mining and
2 reclamation, so we had a good cross top there. His
3 primary field deputy is a former bureau director for
4 district mining operations. So there's good rapport
5 going that way naturally from the unit side.

6 What we've also done is we are trying to
7 enhance our coordination on those efforts. Steps
8 that we try to take or we do take to try to avoid
9 spending AML dollars, limited AML dollars, on a site
10 that could be remined is, when we go out and ask a
11 landowner, very early in the development part of the
12 project, we go out and get landowner consent. And we
13 ask the landowner at that point, do you have any
14 inclination to have this property mined or remined?

15 If they say yes we stop the development
16 right there, if they say no we proceed. Then after
17 we are in the design phase we go back to the property
18 and say have you changed your mind?

19 If they say that they have no inclination
20 to have the property mined, then we continue with our
21 project.

22 At the same time the Bureau of Mining
23 Reclamation has permit applications come in they go
24 the Bureau of Abandoned Mine Reclamation and they
25 cross check to make sure there is not an overlap.

1 We have had a couple of overlaps occur.
2 We're trying our best to avoid that.

3 Some of the situations that get a little
4 bit tricky for us is when the landowner gives us
5 consent, says I don't want my property mined, we go
6 ahead and design our project and move forward. And
7 then the landowner sells the land to somebody else
8 and that person wants it mined, well, we're already
9 in pipeline not knowing that the land has changed
10 hands.

11 That's an area that we need to try and
12 figure out how we can avoid that problem.

13 REPRESENTATIVE SMITH: Well, I recognize
14 that, and I appreciate your comments. It's a problem
15 area and I think that between the two sides of the
16 department that there's a lot of good things going on
17 and that they should tie that into some local groups.
18 I think that we're moving in the right direction if
19 we just pick up the pace it would probably be better.

20 Just to switch gears just a little bit. On
21 the funding, what on our charts, Dave, you had given
22 us like the trend, what do you see there as the
23 biggest growth area relative to funding on those
24 trends? Where's our best potential for...

25 MR. HESS: I think clearly the best

1 potential is in remining. That's clearly where
2 things are headed. That is something that the
3 industry is interested in doing, so a number of
4 things come together to make that trend. As we said
5 a significant portion of the permits that we issue,
6 have issued over the last couple years, have involved
7 remining. And, we're trying, as Bob has said, in a
8 number of ways to help that percentage.

9 And, obviously, the federal funds, if we
10 could have more access that's a given.

11 But, you know, the watershed projects as
12 well I think have a lot of promise, because as you
13 bring more partners into the process more resources
14 into the process that becomes an important growth
15 area.

16 REPRESENTATIVE SMITH: And where does the
17 Appalachian clean streams issue fit into this mix?
18 You didn't mention anything about it but I noticed, I
19 read a little bit on it and I'm curious how you guys
20 see it fitting in.

21 MR. HESS: The Appalachian clean streams
22 initiative which was initiated several years ago
23 cooperation between states and federal office of
24 surface mining started to proceed down a road where
25 the federal office would pick and do projects under

1 the Appalachian clean streams initiative and part of
2 the money if not a third of the money was actually
3 come out of the AML programs. They would take their
4 cut out at the beginning then they would divvy up the
5 rest of the pot. And the state associations for
6 abandoned mine reclamation protested that concept.

7 At the beginning we weren't even going to
8 select the projects that federal office surface
9 mining has backed off of that a little bit where it's
10 more of a cooperative effort.

11 Our position all along has been, if you're
12 going to bring in new money, additional money, and do
13 additional projects, we'll open the door. But, if
14 you're going to take our money and go do projects
15 without us having a say where that money is being
16 spent. We weren't real keen on that concept.

17 Right now the cooperation is a little bit
18 better than what it initially was and we are trying
19 to work with the federal office of surface mining so
20 they understand where the priority needs for spending
21 the money exist.

22 CHAIRMAN REBER: Thank you, Mr. Chairman.

23 MR. HESS: If I can add one thing, a point
24 just for people whose -- members who may not know
25 where the source of the funds, The type IV monies,

1 the emergency reclamation monies comes from a fee
2 that is paid by active operators. Surface mined coal
3 pays 35 cents a ton, underground mining pays 15 cents
4 a ton, it goes into a federal trust fund and that
5 money is then divvied up and given back to the states
6 to do reclamation.

7 The emergency reclamation program, the
8 source of the funds is the same place, and that is
9 directly spent by the federal government in
10 Pennsylvania.

11 I just wanted to emphasize that a lot of
12 that money is being paid by industries straight up
13 and that if you add in the remaining portion, which we
14 think is the greatest potential out of the programs,
15 you see the very important role that an active
16 industry plays in doing the reclamation.

17 Part of the formula is based on historic
18 production and also current production in the state.
19 So the money we get back is based on the coal we
20 produced out of the state.

21 REPRESENTATIVE REBER: For the record we
22 have joining the committee on my immediate left,
23 Representative Steelman and on my far left,
24 Representative Pippy has joined the committee at the
25 table. Representative McGill.

1 REPRESENTATIVE MCGILL: I was sitting here
2 in awe a little bit because I did the math, and based
3 on the math it is going to take 450 years to clean up
4 this problem, that's \$37 million a year a billion
5 every 30 years.

6 Am I missing something here, I mean, that's
7 an astounding length of time, or an incredibly small
8 amount of money that we're putting into this problem.

9 If you could for me please expand on the
10 97% or the 3% of the surface mining activities that
11 do pollute, is there a zero tolerance for that? What
12 were the fines that were given to them? And then
13 take it one step further and tell me if you could,
14 how do we resolve this problem maybe in a lifetime,
15 or two lifetimes, instead of 7 or 8?

16 MR. HESS: Representative, it certainly is
17 a big challenge that we have in front of us, always
18 has been, it took two hundred years to build up to
19 the point that we're at now. And it is a very
20 expensive problem, and that's why we think we need to
21 get our house in order as I said before in terms of
22 our requirements, in terms of our procedures, we have
23 to deal with this problem, and deal with it in a
24 different way targeting watersheds rather than just
25 dotting the landscape with different projects so we

1 can sort of clean up a section at a time, as you go.

2 As I said we can devote an awful lot of
3 public money to it if we wanted to devote the entire
4 state budget to it one year that would probably just
5 about do it. It is a major undertaking. I'll let
6 Bob address the other question about active mine...

7 MR. DOLENCE: The 97% figure deals with
8 permits that could be issued today, because of
9 increased science and greater capability of the
10 department, if we think a proposed mining site, an
11 application is in the door, will result in a post-
12 mining discharge, after reclamation is done there
13 would be bad water coming from the site, we do not
14 issue the permit.

15 And the 3% does not mean those people are
16 polluting the streams. What it means is 3% of the
17 permits over the past five years resulted in some
18 sort of post-mining discharge, which the operator is
19 still liable for and must continue treatment. Our
20 goal is to get that zero, because we don't want the
21 industry on the hook for treatment costs and it's
22 just in the best interest of the Commonwealth.

23 Again the federal government tried to get
24 us into a risk based bonding scenario and we argued
25 vehemently about we will not do that because it

1 infers that we permitted operations knowing that
2 there will be a discharge. That's not our
3 philosophy.

4 I occasionally get some heated phone calls
5 because someone's permit application has been
6 returned to them and we are not going to issue it
7 because we think there will be a post-mining problem.

8 That's the way we treat it, we do the best
9 science available, we have some very skilled,
10 talented people out in our district mining offices
11 that are looking at these and doing a very scientific
12 assessment.

13 REPRESENTATIVE MCGILL: If I could follow
14 up on that. We have a major problem that has been
15 created in the last two hundred years, if we're
16 allowing any discharge without shutting down a mine
17 in operation, how will we ever -- I can't imagine how
18 we are going to get caught up to begin with, but with
19 that in mine we're still letting 3% of a problem to
20 exist and if it goes on, you know, that's -- how do
21 we resolve that particular problem? We need zero
22 tolerance from now on and then we need to go back and
23 fix the problems that have been created before we got
24 here.

25 MR. DOLENCE: You're absolutely right.

1 Before we had primacy in the early 80's, the
2 discharges from the past go untreated, and that's the
3 nature of the problem.

4 If a discharge results today the operator
5 must maintain treatment. It's not pollution going
6 into the streams, but bad water emanating from the
7 site, they have a treatment facility on site to
8 maintain treatment of that water.

9 But to move forward we have examples across
10 the Commonwealth of the success of reining. The
11 fisher mine in Wyoming County, Otter Run in 1977 was
12 declared dead and void of life because one abandoned
13 D mine had a blowout and the acid mine drainage was
14 killing the stream, all the life in the stream.

15 Fisher mine has gone up there and reined
16 it, day lighted the deep mine workings, removed the
17 coal, and it is now a cold water fishery. So they've
18 restored Otter Run.

19 In Allegheny and Washington counties, Alow
20 and Midway Coal, back in the mid 80's, day lighted
21 Pittsburgh base coal steam workings and restored
22 Potato Garden Run which feeds into the State Park.

23 The reining, by getting these people, the
24 active operators out there to take care of the
25 problems under today's standards to fix the problems

1 is part of the solution.

2 What keeps people from doing that, it boils
3 down to two things that keep this from happening at a
4 greater rate, one is the liability of uncertainties
5 associated with going into an old abandoned site and
6 not knowing what's there. We have a Subchapter X
7 program, which basically said that if you don't make
8 the water worse you're not liable for what's there,
9 but if you do make it worse you're liable.

10 You can have the best operator doing all
11 the right things, go in there and hit something that
12 nobody could have predicted and that hook of
13 liability is on them. But that hook of liability
14 keeps a lot of these sites from being reclaimed. So
15 that's one barrier of getting more remining done.

16 The other is economic. These sites are
17 marginal at best, if the price of coal drops a little
18 bit and an operator is sitting on a remining site
19 that is marginal, he is now in the red.

20 So if we can do some things to provide,
21 whether it's a market pinch or even take some of the
22 economic barriers away, we will get more lands
23 reclaimed cheaper at no cost to the taxpayer.

24 For seven million dollars we've had twice
25 as much acreage reclaimed by active industry than

1 what we were able to do with twenty million. I think
2 that's a natural place that's begging for us to take
3 a hard look at which we are already doing.

4 CHAIRMAN REBER: Representative Argall.

5 REPRESENTATIVE ARGALL: I guess I grew up
6 literally in the shadow of a strip mine. I can't
7 begin to understand why the Federal Government has a
8 billion dollars sitting in a fund -- do you want to
9 explain to me what is going on there, why that money
10 hasn't been released.

11 What does it take, a signature? What does
12 it take, the signature of the Governor, an act of
13 congress. Why don't we see that money flow?

14 MR. HESS: I think part of the reason is,
15 you may have heard the federal government has some
16 budget problems and I think part of the reason is
17 they want to keep some money in an account,
18 especially that big, to help them on there revenue
19 side. It makes their books look a little better if
20 they have a billion here and a billion there.

21 Bob has been working, and others have been
22 working very diligently, to try to get them to free
23 up some of these monies and plan out over a longer
24 period of time how those monies are going to be let
25 go.

1 Obviously, if they let the billions dollars
2 go at one time we could literally absorb them. But,
3 to plan out how we can efficiently, how we can
4 efficiently use those monies to address problems that
5 we do know. And, Bob, would you want to go over that
6 in a little bit more detail?

7 MR. DOLENCE: Yes, just a couple more
8 facts. With the AML trust fund, for every dollar the
9 industry pays into the Federal AML trust fund,
10 Pennsylvania gets back just short of \$1.80 that we
11 can spend. And that has to do primarily because of
12 the historic coal production out of Pennsylvania.

13 The second fact I wanted to bring to your
14 attention is the reauthorization, or the
15 authorization for collecting the fee will be up in
16 the year 2004, I believe. And at that point if
17 congress does not reauthorized that source of funding
18 will go away, regardless of what happens to that one
19 billion dollars.

20 The reauthorization, if you look at 350,
21 450, years whatever the rate would be, stopping that
22 AML fund at that point would not be beneficial to
23 Pennsylvania.

24 I think there's another fact you need to
25 realize, when this authorization came up for

1 reauthorization, I believe, around 1992, there were a
2 lot of discussions about whether that wanted to be
3 continued or not. And the United Mine Workers of
4 America entered in to continue it, and Senator
5 Rockerfeller, I believe, from West Virginia, knowing
6 that the EMW (sic) pension fund -- I am pretty sure
7 that I have these names right so bear with me if they
8 are not right, was in trouble, the pension fund. And
9 they went from a non-interest bearing account in the
10 AML trust fund to an interest bearing account during
11 the reauthorization, with a footnote that part of the
12 interest coming off that fund would go into the EMW
13 pension fund.

14 So, there is just another piece of
15 information that might add value into the thought
16 process with the AML trust fund.

17 MR. HESS: But again, we are not talking
18 about using the interest, we are talking about using
19 the money that is in the fund.

20 MR. DOLENCE: In fact, the plan that we
21 supported, along with the National Association of
22 Abandoned Mine programs proposed, was a multi-year
23 planning mechanism with access to the funds without
24 going through the annual allocation of funds through
25 the grant process. Give up the multi-year plan,

1 approve our plan, and allow us to tap those monies as
2 we need them. Tell us how much is Pennsylvania's and
3 allow us to move forward. That was, in nature, the
4 plan that we have been endorsing.

5 REPRESENTATIVE ARGALL: The most recent
6 advances I have seen are in Schuylkill County are at
7 a site called Big Gorilla, which is now being
8 reclaimed and it is being done by cogeneration
9 facilities, and some of the independent power
10 facilities are doing the same thing, taking hugh
11 sites and then doing it. Where do they fit in on
12 that pie chart; is that, what, what we call landowner
13 reclamation, that tiny little piece there?

14 MR. DOLENCE: No, depending on what permit
15 scenario they are under some of those sites are being
16 reclaimed under a remining scenario that would fall
17 under remining. Some of those sites are being
18 reclaimed where they are taking some residues and
19 calling material out and putting ash back and
20 reclaiming, those would be under the non cost
21 government finance reclamation agreements. It is
22 really split up in several categories. And the
23 Gorilla pit is one of three demonstration projects
24 which is a special category we are looking at, using
25 fly ash for that type of reclamation.

1 REPRESENTATION ARGALL: It is my fear that
2 the energy market is changing so much with the new
3 competition, what happens if those cogeneration
4 facilities, independent power facilities, somehow
5 can't make it in the future. That means that whole
6 program comes to an end.

7 The last question, you mentioned day
8 lighting, do you want to expand a little bit on that
9 one, especially for those committee members who don't
10 live in the shadow of a strip mine?

11 MR. HESS: I apologize. I slipped into the
12 technical jargon and it is my oversight, I apologize.

13 Day lighting is a situation where you have
14 an old abandoned deep mine still covered with the
15 earth above. And a surface mine operator comes in
16 and closes the mine, surface mine, by removing the
17 rock and dirt off of the deep mine and it exposes the
18 old mine workings, and basically what they are mining
19 are the pillars that are left behind. And what they
20 do is, they remove the rock and they allow, if you
21 will, day light, opening up the mine workings and day
22 lighting them so they can get to the coal and remove
23 it. And then they put the rock back, a lot of times
24 they put alkaline material in the over burden as part
25 of the back filling and proceed with the minings,

1 hence the term, as exposing the old deep mine
2 workings and removing them.

3 CHAIRMAN REBER: Thank you. Representative
4 Steelman.

5 REPRESENTATIVE STEELMAN: Thank you, Mr.
6 Chairman. I would like to follow up on
7 Representative McGills' question. For many years
8 this committee has been very much concerned with
9 trying to promote the remining, because we generally
10 agree with the Department that it is a good way to
11 try to reclaim some of these workings, but even
12 though it is a good idea it's got some other
13 limitations. And looking at the situation in
14 Southwestern Pennsylvania, where I come from, where
15 deep mines are actually being closed down at this
16 point, they are not creating discharge problems, but
17 still it doesn't even seem to be profitable to work
18 these mines.

19 Looking at this enormous increase of mines,
20 does the department have an estimate of how many of
21 these mines, how many acres, how many cubic feet, are
22 actually suitable for remining, because I suspect
23 that some of them either just do not have enough coal
24 in them for it to be profitable, or the water problem
25 in some of these mines may be such that it becomes

1 uneconomical to try to day light them.

2 So, can you give us an idea of just
3 assuming that all potential remining that could take
4 place in Pennsylvania did, do you have an idea of how
5 much of the problem would be solved?

6 MR. HESS: We are trying to quantify that
7 and it is a moving target. Depending on the price of
8 coal is going to dictate how many acres can be
9 reclaimed by the private sector. There is a limit.
10 You are absolutely right. Some of the older deeper,
11 deep mines, at greater depth, nobody is going to be
12 able to day light those, and there is a concern over
13 some of those old deep mines of water, mine coal
14 elevations rising and what the impact of that would
15 be if the discharge occurs from those old abandoned
16 deep mines. And we are currently assessing that to
17 see where the potential for that is.

18 Our concern has been primarily in the Monn
19 River area even as it proceeds down into West
20 Virginia. They had a recent occurrence in the
21 Fairmont mine pole in that area.

22 To give you a percentage of remining, we do
23 not have that figure yet. We are trying to quantify,
24 earlier I alluded to spending money canvassing the
25 whole state on determining what that percentage would

1 be. What we have been trying to do is assist
2 operators that have expressed an interest in given
3 areas for remining. We have felt it is more
4 important to promote that at this time versus going
5 out in data collections.

6 REPRESENTATIVE STEELMAN: But can you at
7 least give us some kind of ball park estimate.
8 According to the numbers that you gave us the amount
9 of remining in past years helped to solve 1% of the
10 existing problem. If everything that could feasibly
11 be remined were, setting aside the cost, you know,
12 would we be looking at potential solutions to a
13 quarter of a problem, half the problem, seventy-five
14 percent of the problem?

15 MR. HESS: On looking historically at the
16 acreage that is permitted by remining, and assuming
17 that that does not get worse, hopefully it will get
18 better with the initiatives we are trying to do, I
19 would say the remining on a surface acreage
20 assessment would be 25 percent of the problem, just
21 by the mine acreage that we are seeing. That is a
22 little bit suspect of a number, and I admit that. It
23 is really a very wild guess.

24 REPRESENTATIVE STEELMAN: So that leaves us
25 with somewhere around 75 percent of the problem that

1 still has to be solved by other agencies then
2 remining. Thank you very much.

3 CHAIRMAN REBER: Representative Vitali.

4 REPRESENTATIVE VITALI: Thank you. First
5 of all I would like to thank the Chairman of the
6 Board for holding this hearing on this important
7 issue. And I just make a request that he consider
8 fully hearing on Council Bill 1427, Representative
9 George's bill, on this issue. Having said that, I
10 have to confess I come from practically a zero base
11 of information on this issue. But one red flag that
12 did go up in my head is when I heard the term fly
13 ash. I believe Mr. Hess indicated that fly ash
14 either is being used or is considered to be used in
15 combination with river silt as some sort of fill
16 material. And also, I heard mention that
17 cogeneration facilities, which presumably means, land
18 incinerators, are also using fly ash.

19 And the reason the red flag went up in my
20 head is because I remember in my community, probably
21 seven, eight, nine years back, there was a public
22 uproar when it was suggested that we use fly ash to
23 fill a local quarry. And the concern raised at that
24 time -- and as I understand with fly ash, correct me
25 if -- is that the materials that are burned in the

1 incineration process of municipal and other waste,
2 when they are not completely consumed the ash that is
3 collected as the vapors fly out the stack, it is
4 collected and this is fly ash. And some of the
5 things that aren't consumed in that incineration
6 process are heavy metals, such as mercury, lead, and
7 so forth. That is my understanding of what fly ash
8 is. And those materials, I guess, are toxic and
9 harmful to human beings.

10 So, could you discuss, and just to give me
11 a primer and the committee a primer, on the issue of
12 fly ash, how it is presently being used, and what are
13 your plans to use it in the future?

14 MR. HESS: I will ask Bob to take over for
15 the engineering primer, but just a general comment.
16 There are many different kinds of fly ash out there.
17 And the kinds of projects that we have in terms of
18 demonstration are obviously using certain kinds of
19 fly ash that test out appropriately, and especially
20 when mixed with other things, have the desire and
21 effect out there in terms of reclamation.

22 So, we are not looking at materials that
23 aren't stable, that leach into ground water and so
24 forth and so on.

25 I will ask Bob here to give you more

1 details in what we are doing with our fly ash
2 programs.

3 MR. DOLENCE: It is very important to keep
4 in mind that every source of fly ash has different
5 characteristics, and the project that Representative
6 Argall was talking about is commonly referred to as a
7 cogen. Those facilities are burning waste coal in an
8 anthracite they call a culm pile. And the technology
9 used in burning that are circulating through
10 alkalized (sic) bed combusters. And this is a
11 technology that has a traveling grate with air being
12 blown up in it and excess limestone is put into the
13 combustion zone and the reason for the limestone is
14 to capture the sulfur, primarily the sulfur, before
15 it has to be treated as an exhaust gas.

16 Well, in order to make sure that you
17 capture the maximum amount of sulfur, excess
18 limestone is put into the ash.

19 Now, ash itself has, depending on the
20 source of the fuel and the facility, but most of the
21 sites have a alkaline characteristic to begin with.
22 If you add limestone in the heating portion of this,
23 the burning chamber, and you end up with a material
24 that, with some moisture added to it, has a concrete-
25 like characteristic, the molecules binding together,

1 and the project that Dave referenced, combining the
2 river silt material with ash ends up with a product,
3 500 pounds per square inch on structural fill
4 material, when appended to the mine is 6
5 permitibility, which means when you do a leach test
6 on it hardly anything comes out. It is approaching a
7 concrete type material.

8 And the material that is defined in the
9 anthracite is extremely alkaline and people are using
10 it as a soil enhancer because it adds the alkalinity
11 to the over burden, where anthracite, not to offend
12 anybody, but there is not much soil in those
13 mountains. I mean, topsoil is not there. And to try
14 to grow vegetation, you need to enhance the over
15 burden. And what is critical of that is knowing the
16 source of it, testing the source, and only
17 maintaining the sources that are approved for us on
18 the given uses.

19 REPRESENTATIVE VITALI: I wish I had a
20 better background to ask these questions. What
21 sources specially is your fly ash coming from now?

22 MR. DOLENCE: That depends on each project
23 we have. The gorilla pit that the Representative
24 talked about, I believe is coming from the Northeast
25 Power Plant. Each plant has a different source.

1 We have multiple sites being reclaimed, out
2 of Cambria cogen plant in the western part of the
3 state.

4 REPRESENTATIVE VITALI: Are municipal solid
5 waste facilities, are those facilities used for this
6 material?

7 MR. DOLENCE: They can be.

8 REPRESENTATIVE VITALI: Are they?

9 MR. DOLENCE: It is not being used yet. We
10 have one approved.

11 REPRESENTATIVE VITALI: You are planning on
12 it?

13 MR. DOLENCE: Yes.

14 REPRESENTATIVE VITALI: What do you test
15 for when you test this fly ash? What materials do
16 you test for?

17 MR. DOLENCE: That one I have to -- I defer
18 to our solid waste folks and I would have to get back
19 to you to give you the list of that, if I may.

20 Would that be okay, Mr. Chairman?

21 CHAIRMAN REBER: Perfectly fine. If you
22 would submit that to the Chairman's office we will
23 circulate it for all of the members' consideration.

24 REPRESENTATIVE VITALI: Let me end my
25 questioning at this point, but I do have some

1 concerns at the uses of the fly ash.

2 CHAIRMAN REBER: Just a follow up, Mr.
3 Hess, would it be fair to say that any fly ash that
4 is disseminated in the Commonwealth of Pennsylvania,
5 is appropriately tested and falls within and complies
6 with any state regulations relative to the
7 disposition of same.

8 MR. HESS: Absolutely.

9 CHAIRMAN REBER: I just wanted to make sure
10 we didn't change our policy over the last 15 minutes.

11 MR. HESS: I don't think we did.

12 CHAIRMAN REBER: Okay, thank you. Are
13 there any questions from any of the members? To my
14 left, Past Representative Conti.

15 MR. CONTI: Mr. Chairman, I would just like
16 to commend you and Subcommittee Chairman Smith for
17 keeping this important environmental problem and say
18 how refreshing it is to hear the non-partial support
19 in reviewing this issue and since I come from a
20 district that I do not live in the shadow of a strip
21 mine I will continue to listen and learn today and
22 yield back the balance of my time as chairman for my
23 colleagues that do live in the shadow of the strip
24 mines. Thank you.

25 CHAIRMAN REBER: Representative Birmelin.

1 REPRESENTATIVE BIRMELIN: Just a quick
2 request, I come from northeastern Pennsylvania, and
3 although I didn't grow up in the shadow of a strip
4 mine, I did grow up in the general neighbor. I would
5 be interested in knowing if somebody from your
6 department could give me a little bit of a local
7 tour, preferably in Lancaster, Pennsylvania,
8 preferably in the Lackawanna County area?

9 MR. DOLENCE: We would be happy to do that.
10 In fact, some of the information we have put together
11 for the committee today includes listings of projects
12 that we have had going on in districts for the last
13 couple of years.

14 And, of course, you can always visit our
15 world wide web site to get that same information too.

16 CHAIRMAN REBER: Representative Levdansky.

17 REPRESENTATIVE LEVDANSKY: Thank you, Mr.
18 Chairman. I just want to follow up on Representative
19 Birmelin, Jerry, I too would like to meet with
20 someone from the department, but not for them to take
21 me out and show me where the environmental problems
22 are in my district, but I need to know who your
23 contact person is out in Allegheny County because I
24 have got, I mean, off the top of my head, I can take
25 you to about seven or eight or nine places where

1 there is really bad orange streams flowing into major
2 rivers all throughout my district.

3 And we had one project going like this, but
4 I would really like to know who the person is in the
5 department. Right now, I have been a little bit busy
6 dealing with land fill issues, hazardous waste sites,
7 disposable fly ash, a lot of other important
8 environmental things that have kept my attention over
9 the last couple of years. But, it is summertime and
10 I need to get caught up on the home front. If you
11 could just let me know who that person is out there,
12 I want to take them for a day and show them all of
13 the orange streams running through my district and
14 try to get some prioritization of this. So, if you
15 could let me know who to contact I would appreciate
16 it.

17 MR. DOLENCE: We certainly can.

18 CHAIRMAN REBER: Representative Rubley.

19 REPRESENTATIVE RUBLEY: Just a quick
20 comment to follow up on Representative Argall and
21 Representative Vitali's comments on cogeneration
22 plants.

23 I did have the opportunity last summer to
24 visit a couple of plants in northeastern Pennsylvania
25 with our House Consumer and Affairs Committee on

1 energy related issues, and I was very impressed with
2 the fact that these plants were burning and using the
3 coal, which is a waste, and of no value any other
4 place, and then coming out with a final product that
5 was helping to reclaim these areas.

6 And I am just wondering, in the scheme of
7 things, how does this fall in terms of what it is
8 doing to reclaiming areas.

9 Is this something that we can look to in
10 the future, and are you just looking at pilot
11 projects now or are we going to see a greater use of
12 this. I am just not sure from your description where
13 it falls.

14 MR. DOLENCE: We have been very supportive
15 of the activities from the cogeneration plants.

16 In fact, the government finance no-cost
17 reclamation agreements, which is on the chart in the
18 testimony that Mr. Hess submitted, that program was
19 developed primarily for the cogen plants where you
20 had gulf piles or culm plies. Typically people would
21 go past because they were smaller in size or just
22 weren't worth the cost of permitting.

23 We developed a program that we basically
24 hang a carrot out there and encourage people to go in
25 and reclaim these gulf piles which many times sit

1 abutted right against the streams. Every time it
2 rains substation (sic) goes into the stream, there is
3 ply (sic) right in the material, we have acid mine
4 drainage, draining into the stream, and through the
5 no-cost contracts, we are getting a lot of these
6 piles picked up, taken to the cogen plants, they do
7 bring a couple of loads of the alkaline ash back to
8 help enhance the re-vegetation of the area. It is a
9 great plus on the environmental ledger. Going from a
10 debit to a credit. And we encourage the use of that.

11 So, our focus has been there. We continue
12 to try an encourage people to go out and take
13 advantage of that.

14 REPRESENTATIVE RUBLEY: So we should see
15 greater use of this method then?

16 MR. DOLENCE: Hopefully. Actually, we see
17 most of it in southwest Pennsylvania and in
18 Representative Levdansky's, maybe not his specific
19 district, but in that area, we have seen the greatest
20 use of the no-cost contracts.

21 CHAIRMAN REBER: Mr. Hess, Mr. Dolence,
22 thank you very much for taking your time today to be
23 present and present us with this testimony. And I
24 think as equally, listening to some of the concerns
25 of the members of the committee. We will be holding

1 some additional hearings on this issue and if there
2 is anything that we feel we would like to have you
3 come back into resubmit some evaluations on or some
4 of the determinations that we develop as a result of
5 these to bounce off of you, we will certainly be in
6 touch with you either in a formal or informal basis.

7 And just generally, we look to move in this
8 area. The committee is moving this session in this
9 area of water quality, with watershed situations
10 relative to storm water management as well as water
11 quality, the acid mine drainage or the reclamation
12 end of it, as we are talking about today, and just
13 generally point, non-point source, of pollution
14 issues.

15 This is something that is very important
16 and will be in the forefront of this committee during
17 this session. So, we again appreciate your concern
18 and anything that is ancillary to these kind of
19 issues and you feel we should be aware of, please
20 keep in touch with us because we certainly will keep
21 in touch with you.

22 Thank you very much.

23 MR. HESS: Thank you, Mr. Chairman.

24 MR. DOLENCE: Thank you.

25 CHAIRMAN REBER: Mr. Stilley, welcome to

1 the committee, I appreciate your attendance. Could
2 you formally identify yourself for the record.

3 MR. STILLEY: Certainly. Chairman Reber,
4 Sub-Committee Chairman Smith, members of the house,
5 Departmental Resources and Energy Committee, Good
6 Morning, my name is John Stilley, President of
7 Amerikohl Mining Company which is headquartered in
8 Butler, PA.

9 Amerikohl mines coal by the surface mining
10 methods in Butler, Armstrong, Lawrence, Fayette and
11 Westmoreland Counties, Pennsylvania. Last year we
12 produced over 600,000 tons of coal.

13 Since 1978 we have successfully mined and
14 reclaimed 241 individual and separate mine sites.

15 Amerikohl is also at the forefront in
16 developing cost-effective and creative reclamation
17 concepts for abandoned mine lands (AML).

18 Over the past decade, Amerikohl has
19 received 26 awards from the Pennsylvania Coal
20 Association (PCA) and mining groups in Ohio and West
21 Virginia for its outstanding reclamation work.

22 Since 1995 we have reclaimed and/or
23 remediating water problems in 96 separate mine sites
24 abandoned by private or bankrupt operators with
25 consent agreements between the state, DEP, various

1 asurity companies and ourselves.

2 In view of our unique background, Amerikohl
3 appreciates this opportunity to testify on the legal
4 and regulatory impediments that deter operators from
5 pursuing remining and reclamation work on AML.

6 Besides paying close attention to every
7 business decision in today's tough regulatory and
8 competitive environment, one of the most daunting
9 problems for today's surface coal operators in the
10 Commonwealth is finding coal to mine.

11 Indeed, with tens of thousands of acres of
12 prime coal reserves designated "Unsuitable for
13 Mining", and other reserves off limits because of
14 expansive regulatory programs to protect
15 environmental features like wetlands, operators find
16 they must increasingly turn to abandoned mine sites
17 as a product source.

18 Fortunately, with modern equipment and
19 higher productivity mining techniques, remining can
20 glean enough good quality coal to pay operator costs
21 and turn a small profit.

22 But more importantly for Pennsylvania, when
23 surface operators remine abandoned sites, they take
24 on the responsibility to reclaim them to modern
25 standards.

1 In the process, they remove hazards like
2 old mine openings, surface structures, high walls and
3 water-filled pits.

4 According to the DEP, remining also
5 eliminates or buffers baseline pollution loading of
6 acid discharges 99 percent of the time.

7 Most active mining permits today include at
8 least some abandoned acreage, and, over the past
9 decade, Pennsylvania coal operators have reclaimed a
10 total of some 15,000 acres of surface mined land.
11 Last year alone, the private sector was responsible
12 for reclaiming about 2,500 acres.

13 Given the high cost of treatment to
14 mitigate acid drainage from abandoned sites, remining
15 is one of our best options to help control it. In
16 recent years, the Pennsylvania Legislature has
17 acknowledged the benefits of remining by enacting
18 legislation that seeks to promote it.

19 The most recent legislation was House Bill
20 1940 of the previous session that was sponsored by
21 Representative Sam Smith, passed the legislature
22 overwhelmingly and was signed into law by Gov. Ridge
23 as Act 43 of 1996.

24 This legislation is intended to encourage
25 the remining and reclamation of unreclaimed surface

1 mines. Among other things, it included a provision
2 that provides statutory authority for the DEP to
3 allow a surety to elect to reclaim forfeited sites
4 even though the surety had previously paid DEP the
5 bond amount.

6 In these cases, if the Department approves
7 the surety's proposal to reclaim the forfeited site,
8 the state treasurer is authorized to return to the
9 surety any money paid to the DEP in connection with
10 the forfeited bond.

11 It is this point, allowing a surety to
12 retrieve a forfeited bond amount by electing to
13 reclaim the related site, that, because of my
14 familiarity with the issue, I will talk about in more
15 detail.

16 In 1994, AMI and DEP signed a historic
17 agreement whereby AMI would reclaim at no cost to the
18 Commonwealth 63 abandoned mine sites covering more
19 than 11,000 acres stretched across five counties
20 including (Butler, Venango, Mercer, Lawrence and
21 Armstrong) abandoned by the Adobe Mining Co.

22 The agreement represented a breakthrough in
23 cooperative effort between DEP and the coal industry
24 in solving Pennsylvania's abandoned mine land
25 problems.

1 In its consent order and agreement, DEP
2 transferred Adobe's mining permits to Amerikohl, with
3 new reclamation bonds issued on our behalf by the
4 United Pacific Insurance Company.

5 Reclamation bonds are required when permits
6 area issued. Should a company fail to meet its
7 reclamation obligations, its bonds are forfeited t
8 the state, which are used in most cases along with
9 public funds to finish reclamation at the company's
10 mine sites. But with its agreement with Amerikohl,
11 reclamation at the Adobe sites was completed at no
12 cost to the Commonwealth.

13 Bringing in a third party to reclaim the
14 sites saves the state millions of dollars normally
15 spent overseeing the projects under its Abandoned
16 mine Reclamation Program. And because Amerikohl's
17 reclamation activities didn't have to go through the
18 state's bidding process, the work was completed more
19 quickly.

20 This was a truly novel approach to solving
21 a coal industry problem with a win-win solution for
22 all parties involved, affected landowners had their
23 lands and farms reclaimed in a much more timely
24 manner and to a better condition than under normal
25 procedures; the surety companies did not forfeit the

1 bond money they posted on behalf of Adobe mining Co. ;
2 and the coal industry was allowed to correct its
3 problems from within while bolstering its excellent
4 reputation for environmentally sound mining and
5 reclamation.

6 Since this project, AMI has undertaken
7 three other similar projects in Pennsylvania where
8 reclamation was effected on another 64 sites as well
9 as an additional 18 abandoned mine sites in Maryland
10 and Ohio.

11 We are currently negotiating with the state
12 of Kansas and Travelers Insurance Company to
13 completed reclamation on 12,000 acres in that state.
14 The bond program substitution worked for several
15 reasons. The most important was that the funds never
16 found their way into the state treasury. Once that
17 occurred, statutory requirements raised the cost of
18 reclamation significantly.

19 In order to expand the program, there had
20 to be some mechanism to remove the paid in funds from
21 the state treasury. Our solution was to pass
22 legislation, Act 43, which would resurrect the
23 previously forfeited bonds and to return the funds to
24 the surety.

25 Prior to Act 43, when a coal mining

1 reclamation bond was issued by a surety for the
2 benefit of a coal operator and where there was a
3 forfeiture, a surety traditionally had two options;
4 either to perform the reclamation work itself via
5 contractor; or, pay the bond monies into the state.

6 If the first approach was followed, the
7 surety assumed continuing exposure, a lot of
8 paperwork, a sometimes long-term commitment to the
9 problem and, oftentimes significant legal fees.

10 If the latter practice was followed, the
11 surety's exposure was limited and further liability
12 terminated; however, the entire bond amount was lost.

13 The bond substitution approach developed by
14 AMI and DEP and incorporated into Act 43 provides a
15 third option, allowing a surety to submit a plan for
16 reclamation work for a site where the surety's bond
17 money has been forfeited and collected by DEP.

18 A reclamation operator (in our case, AMI)
19 agrees to reclaim the property for an agreed upon
20 price. In addition, the reclamation operator
21 substitutes its bond for the surety's posted bond.
22 At the closing of the transaction the surety receives
23 an unconditional release of its bond and an
24 irrevocable waiver of collection from the state.

25 The reclamation operator receives the

1 negotiated payment from the surety. Finally, the
2 reclamation operator enters into a consent order and
3 agreement with the state regarding the scope of
4 reclamation to be performed. Its performance is
5 assured with a performance bond provided by a new
6 surety.

7 The advantage to the surety is that it pays
8 less than the face amount of the bond and it receives
9 a total release of liability. In addition to the
10 release, AMI provides a hold harmless and
11 indemnification covenant.

12 Under traditional approaches, the state
13 would receive the funds and the performance history
14 in Pennsylvania was not laudable. It took between on
15 average 6-7 years from the date the state received
16 the forfeited bond funds to begin reclamation. In
17 fact, if the problem was not considered priority, the
18 site may never get reclaimed. The bond substitution
19 program developed by Amerikohl and others has
20 dramatically improved the system. With specific
21 reference to the Adobe agreement, Amerikohl again
22 reclaimed over 11,000 acres inside of 30 month time
23 frame.

24 In all other cases over the additional 64
25 sites, reclamation was completed within 12-18 months

1 after execution of the agreements.

2 On March 25 of this year, DEP of PA issued
3 a draft policy guidance on how it intends to
4 implement those provisions of Act 43 covering
5 abandoned surface coal mining sites where the
6 Department previously forfeited and collected some
7 amount of the surety bond. In general areas this
8 draft is inconsistent with Act 43 and imposes
9 limitations which are not justified and would
10 undermine the framework for a bond substitution
11 program as conceived by the framers of Act 43.

12 In the draft policy, the Department has
13 developed project eligibility criteria and procedures
14 which are unwarranted under the Act, overly
15 burdensome and will not encourage surety reclamation
16 of the abandoned mine sites in the Commonwealth.

17 Our specific concerns with the document
18 include the following: First the draft guidance
19 assumes DEP has more discretion than envisioned under
20 Act 43. Act 43 provides adequate protection to the
21 public interest by requiring the posting of a full
22 replacement bond. Under the Act, the Department has
23 very little discretion as to whether or not to accept
24 or reject surety reclamation proposals if the
25 reclamation plan is consistent with or better than

1 the approved permitted reclamation plan, and the
2 company posts a full replacement bond.

3 The Department's "measuring stick" should
4 be the adequacy of the work in the field, or the
5 actual reclamation itself.

6 Secondly, the Department has indicated that
7 projects involving reclamation of several sites
8 should be encouraged. There is no requirement under
9 the Act for multiple sites to be considered; where it
10 makes sense to negotiate with the department for a
11 multiple site reclamation plan companies will
12 consider it, however, the department has no
13 discretion in judging project eligibility based on
14 whether multiple sites were involved.

15 Third, Act 43 does not contemplate that the
16 solvency of the surface mining conservation and
17 reclamation fund will play any role in eligibility
18 criteria for surety reclamation.

19 Fourth, the exclusionary criteria stated in
20 paragraph four of the draft regard to whether or not
21 the reclamation work will cost significantly less
22 than the amount of money to be returned is clearly
23 unjustified.

24 Utilization of this factor by the
25 department will defeat the purpose of the act by

1 providing a disincentive to bond substitution
2 regulations.

3 Fifth, we agree that the site reclamation
4 approach should be reviewed by the department and
5 become part of the consent order and agreement.

6 The reclamation proposal should address the
7 technical aspects of the project as would the
8 reclamation plan of a surface coal mining
9 application. However, as long as the company is
10 posting a new full performance bond on the site,
11 there is absolutely no need for an economic analysis
12 of the project by the Bureau of Mining and
13 Reclamation or the Bureau of Abandoned Mine Land
14 Reclamation.

15 Last, we strongly recommend that the
16 district mining offices take the lead in reviewing
17 the projects. There is no need for an additional
18 administrative layer to evaluate the adequacy of
19 reclamation proposals when the permit reviewers and
20 inspectors responsible for the site have already
21 conducted their review when the site was an active
22 mine.

23 The Act 43 program should not be modeled
24 based on the Title IV AML program.

25 In sum, Act 43 provides a way for our

1 industry to deal with many of its own problems
2 efficiently and effectively if implemented in a
3 manner consistent with the legislative intent under
4 which is was passed and signed by the governor. If,
5 however, the present draft under which Act 43 is to
6 be implemented is saddled with burdensome and
7 unwarranted procedures and requirements, the chances
8 of utilizing it as a tool to clean up abandoned mine
9 lands in Pennsylvania will be greatly diminished.

10 Perhaps the most formidable deterrent to
11 remining work being performed by coal operators today
12 is the liabilities associated with abandoned mine
13 land sites. Particularly the long term risk of
14 financial responsibility for water discharges, that
15 is the obligation to perpetually treat a preexisting
16 water discharge which is the single most significant
17 barrier that limits industry's involvement.

18 In discussing this with other operators in
19 our industry, they invariably cited horror stories
20 about engaging in voluntary reclamation work at the
21 request of the dept or mining under a remining permit
22 in which they were subsequently cited by the DEP for
23 failure to treat a preexisting discharge beyond what
24 was specified in their permit.

25 One operator told me of an incident in

1 which he performed voluntary reclamation work where
2 he was subsequently charged and required by both OSM
3 and DEP to perform long-term treatment of a discharge
4 that predated his mining, it was off the permit area
5 and was not hydro logically connected to his mine.

6 After spending over \$250,000 in engineering
7 and legal fees and despite having an OSM
8 administrative law judge rule in his favor, he still
9 awaits a trial before the EHB on the same issue.

10 This is because the DEP has not backed off its order
11 which contains the same argument that was struck down
12 by the Administrative Law Judge.

13 Until the disincentives of operator
14 liability for preexisting discharges at abandoned
15 mines is made more economically realistic or until
16 the state is prepared to share in the liability, many
17 otherwise suitable remining sites will be passed over
18 by industry.

19 Coal companies simply will not place their
20 economic future at risk in terms of the potential
21 long-term liabilities imposed by the program.

22 Another major disincentive to remining is
23 the expense of gathering all the hydrologic data
24 needed for approval of a remining permit. In some
25 cases it's more difficult and more expensive to

1 obtain a permit on an abandoned mine land site with a
2 bad discharge than on a virgin site.

3 In addition to the bond money that is
4 forfeited to the state and other supplemental funds
5 that the state uses towards reclamation of forfeited
6 sites, the other funding source for this purpose is
7 contained in Title IV of Federal Surface Mining
8 Conservation and Reclamation Act.

9 Recognizing coal mining's legacy, Title IV
10 provided for a federal abandoned mine reclamation
11 fund paid for by coal operators through a levy on
12 their production and reimbursed to the states by the
13 Office of Surface mining on the basis of historical
14 coal production.

15 Since SMCRA was signed into law in 1977,
16 OSM has collected a levy on coal production to
17 support its abandoned mine land funds to the tune of
18 35 cents per ton from surface operators and 15 cents
19 per ton from underground companies.

20 Pennsylvania bituminous coal operators
21 contribute approximately 12 million dollars into the
22 federal AML fund every year, for a total of over 300
23 million dollars since the fund's inception. Because
24 disbursements to the states are calculated on the
25 basis of historic coal production, the Commonwealth

1 receives some 20 million dollars from the AML funds
2 every year for a total of over 600 million dollars to
3 date. Approximately 7,500 acres have been reclaimed
4 in Pennsylvania under this program since it was
5 started.

6 Beyond environmental improvements, and
7 health safety and general welfare benefits, there are
8 other significant economic benefits directly
9 resulting from AML reclamation contracting. For
10 every one million in AML reclamation contracts, 27
11 jobs are created in support of those construction
12 efforts. Nearly all of AML contract is awarded to a
13 Pennsylvania company, and all contractors employ
14 Pennsylvania labor. Measured in job opportunities,
15 the 600 million dollars granted to Pennsylvania has
16 created over 16,000 jobs for Commonwealth citizens.
17 Since many AML reclamation projects occur in rural
18 areas, significant rural development and long term
19 investment in the future of rural areas is generated
20 as well. Projects in urban and suburban areas
21 protect properties and property values and provide
22 land use alternatives which prove economically
23 beneficial.

24 While this is significant, more growth
25 could occur if the entire fund was used for its

1 intended purpose. There is currently available over
2 one billion dollars of unappropriated balance in the
3 trust fund and the balance continues to grow. The
4 fund is controlled by the U.S. Congress, which at
5 least until now refuses to release more reclamation
6 dollars at time when they are juggling massive budget
7 deficits.

8 A number of groups including the coal
9 industry, private groups and state regulators have
10 long urged congress to release more money from the
11 federal AML fund. Most recently, the state of
12 Pennsylvania unanimously adopted senate resolution 38
13 which urges both the president and congress to make
14 more of the one billion dollars of federal moneys
15 already earmarked for abandoned mine lands available
16 to states to clean up and make safe our abandoned
17 mine lands.

18 We need to continue these efforts to
19 convince the federal government to return more of our
20 industry's hard-earned money to the states to correct
21 our past environmental problems.

22 Among other recommendations to provide
23 incentives for remining is to enact legislation that
24 creates remining tax credits to be applied against an
25 operator's total state tax liability. This concept

1 is very similar to the tax credit legislation adopted
2 in Virginia and most recently in West Virginia.

3 Given the attrition which has occurred
4 within the Pennsylvania's surface coal industry and
5 the continuing economic and regulatory threats to its
6 future including fuel competition, utility
7 deregulation and implementation of the clean air act
8 amendments of 1990, now is not the time to impose
9 further restrictions on an industry that is fighting
10 for its very survival, but instead to provide
11 incentives for environmentally sound growth.

12 With better understanding by regulators of coal
13 industry needs, innovative agreements to reclaim
14 abandoned mine lands, continuing research into
15 effective acid mine drainage treatment and
16 constructive input by industry, government,
17 communities and concerned citizens, Pennsylvania's
18 modern surface mining companies can continue to offer
19 the capital, equipment, personnel and reclamation
20 know-how necessary to help abate acid mine drainage
21 and bring abandoned mine lands back into safe,
22 productive use across the Commonwealth.

23 If there are any questions I would be
24 pleased to answer them.

25 CHAIRMAN REBER: I would like to recognize

1 for the record on my far right, Representative
2 DeLuca. Mr. DeLuca, do you have any questions?

3 REPRESENTATIVE DELUCA: No, thank you.

4 CHAIRMAN REBER: Representative Steelman?

5 REPRESENTATIVE STEELMAN: I was wondering
6 if you could explain to us a little bit more fully
7 just exactly what is meant in this case by the term
8 a full replacement bond. What -- obviously that's
9 some sum of money, what estimate is it based on? And
10 what's it supposed to accomplish?

11 MR. STILLEY: If I could talk in specifics,
12 we reclaimed sites abandoned by five separate
13 companies in the Commonwealth of Pennsylvania within
14 the past 3 or 4 years.

15 In those individual cases the bonds have
16 been posted to insure that the prior company would
17 complete the reclamation ranging from half a million
18 dollars up to about fifteen million dollars per
19 company.

20 Where we would enter into a consent
21 agreement with the state we were required to replace
22 the entire amount of that bond dollar for dollar that
23 had been posted previously to insure that
24 reclamation.

25 REPRESENTATIVE STEELMAN: But what I'm

1 asking is what are those bond values based on?

2 MR. STILLEY: It's based upon an acreage
3 amount. Prevailing bond requirements are three
4 thousand dollars an acre for coal or for lands that
5 will be mined and a thousand dollars per acre for
6 lands that will be used in support to accommodate the
7 mines such as erosion and sedimentation control
8 facilities, treatment facilities, topsoil storage
9 areas and alike.

10 REPRESENTATIVE STEELMAN: Now, would a
11 major difference between the agreement that was
12 worked out AMI, Adobe, and the department as I
13 understand was although an important function of the
14 contractor for Adobe the complete working
15 relationship is different than previously because you
16 actually assume the liability which under previous
17 scenarios you would not have done.

18 MR. STILLEY: That is correct. The
19 difference between our agreement or our method is to
20 complete the reclamation, compared to previous
21 arrangements under the Bureau of Abandoned Mine
22 Reclamation is that reclamation plans are part of the
23 permit application submitted by the coal operator.

24 We did nothing more than comply with the
25 reclamation plans that were included as part of the

1 previous operators permit.

2 If the bonds had been forfeited and
3 collected and into the state treasury prior to Act 43
4 what would have been required is that the Bureau of
5 Abandoned Mine Reclamation would basically reinvent
6 or draw up a whole new reclamation plan for this site
7 which may be very different from that which was
8 required in the original permit application. Submit
9 that, or basically pull out the bid proposals based
10 upon that reclamation plan that they drawn up and
11 collect bids to have that reclamation completed.

12 REPRESENTATIVE STEELMAN: I see, because my
13 third question was going to be, if you do manage to
14 come to this three way agreement in 1994 before Act
15 43 was passed why did you need Act 43, it appears
16 that was an unusual circumstance in which the Adobe
17 was being threatened with having to forfeit its
18 bonds. But it not actually done so. Whereas Act 43
19 makes it possible to take the bond money that has
20 already passed into the treasury and move it back
21 into the area that -- it can be returned to the
22 original insured.

23 MR. STILLEY: That's correct. Act 43's
24 intent was to allow the coal industry and the DEP
25 replicate what we did in the Adobe agreement

1 prevention in coal company agreement and a number of
2 other agreements where bonds had already been
3 forfeited and collected.

4 Up until Act 43 those funds were in the
5 state treasury with no mechanism to get those back
6 out without going through the prior procedure of the
7 bureau of abandoned mine reclamation.

8 CHAIRMAN REBER: Representative Vitali:

9 REPRESENTATIVE VITALI: Does Amerikohl use
10 fly ash in its mine reclamation?

11 MR. STILLEY: We've used fly ash on three
12 separate reclamation projects, three separate sites.

13 REPRESENTATIVE VITALI: And how many sites
14 are you involved with? Three of how many?

15 MR. JOHN STILLEY: Three out of probably a
16 total sites between straight reclamation and coal
17 mining reclamation is about three hundred odd sites
18 over the past twenty years.

19 REPRESENTATIVE VITALI: That's a very small
20 percent. Where do you get your fly ash?

21 MR. STILLEY: We source our fly ash from a
22 scrub grass generating station in Venango County
23 Pennsylvania.

24 REPRESENTATIVE VITALI: Scrub grass?

25 MR. STILLEY: Scrub grass, yes.

1 REPRESENTATIVE VITALI: And are you
2 currently using fly ash?

3 MR. STILLEY: We currently are not using
4 fly ash.

5 REPRESENTATIVE VITALI: What are the
6 economics there? Do they pay you to take it off
7 their hands?

8 MR. STILLEY: What generally happens is, as
9 explained somewhat before, is the congen's use a
10 waste fuel or a refuse product from old temples or
11 wash plants from years past, that is shipped to the
12 cogeneration facility being burnt at with a fluid
13 type combustion chamber and inject limestone into
14 that, which the waste product is fly ash.

15 Scrub grass pays us a fee to take that fly
16 ash from them and use it for remediation in the
17 process that we use in those locations.

18 REPRESENTATIVE VITALI: What do they pay a
19 ton for that?

20 MR. STILLEY: It's a dollar to two dollars
21 a ton.

22 REPRESENTATIVE VITALI: And are you aware
23 of other companies such as yours who are seeking fly
24 ash in their mine reclamation?

25 MR. JOHN STILLEY: Fly ash plays a very

1 important role in our industry right now, most
2 particularly one in remediation where the problem is
3 acid in the acid mine drainage. When they burn the
4 limestone it creates a high PH kind of material.

5 If you could mix that in with your spoils
6 or waste products from what occurs at the mine site,
7 it neutralizes the acid in the mine drainage. It
8 brings the PH up and also drops metals that much
9 quicker and you generally end up with a much better
10 fluid from the site that you're using it at.

11 REPRESENTATIVE GEORGE: Mr. Stilley, I
12 didn't hear your complete presentation, I'm going to
13 ask you real pointedly, I have a bill that I hope
14 many of my colleagues are going to join with me. Do
15 you favor the type of bill or will you do this
16 reclamation through bond and state activities so that
17 we can catch up on this fifteen billion dollar worth
18 of material?

19 MR. STILLEY: Representative George, I think
20 if we are sincere about completing all of the
21 reclamations in the state of Pennsylvania that's
22 about the only way that you are going to get it done.

23 REPRESENTATIVE GEORGE: Pardon me.

24 MR. STILLEY: To complete all of the
25 reclamation that is required in the Commonwealth you

1 are going to need another funding mechanism such as
2 what you are suggesting in the bill you're sponsoring
3 to get it done.

4 REPRESENTATIVE GEORGE: I will thank you
5 for that.

6 Now I know Amerikohl and I think you people
7 do a great job.

8 MR. STILLEY: Thank You.

9 REPRESENTATIVE GEORGE: I'm aware of Adobe
10 and also aware of some of the conditions that you do
11 not have to live with when you take over the bonding
12 and you take over that that some company has put
13 forward.

14 It's been my argument that if you are going
15 to do reclamation that we shouldn't allow eighty
16 million dollars to sit over in the treasurer's office
17 because even though it's been grabbed, so to speak,
18 it hasn't been spent. So the bonding company hasn't
19 bought a nickel. You did say something I'd like to
20 question. And I'd like to do it in an honorable
21 manner.

22 I don't very often stick up for the DEP,
23 but you know yourself that for what your charge per
24 acre, there is no one in the world, including you,
25 could backfill that per acre, and you couldn't

1 eliminate the destruction that is caused by some
2 people, whether it be inadvertent or not, for that
3 price per acre, right?

4 So the truth of the matter is they're
5 charging people in surety bonds about as much as they
6 dare because if they charge anymore they would put
7 you out of business. Am I right or wrong?

8 MR. STILLEY; I can't agree with you
9 Representative George, but let me explain why. If
10 the operator and the department both do their jobs,
11 keeping reclamation as concurrent as it possibly can
12 be kept, and within the permit application all
13 precautions are taken to be sure that the chances of
14 a acid mine discharge, subsequent to mining will not
15 occur through overburden analysis, in our case in
16 particular I can tell you that the three thousand
17 dollars per acre for area to be mined, and the
18 thousand dollars per acre for support, is in excess
19 of what would be required to reclaim our sites.

20 REPRESENTATIVE GEORGE: Now, the area that
21 you entered into agreement with both the surety
22 company and DEP on Adobe destruction, did you have to
23 put up a surety bond on that?

24 MR. STILLEY: Yes, sir

25 REPRESENTATIVE GEORGE: And for how long

1 does that surety bond hold?

2 MR. STILLEY: That surety bond that we
3 posted to replace what Adobe had posted originally,
4 the release of those funds are cleared by what would
5 occur if we had actually been the original operator
6 on the site. So standard release procedures of Stage
7 1, Stage 2 and Stage 3.

8 REPRESENTATIVE GEORGE: Now you're aware,
9 hypothetically, that if I owned a piece of land and
10 something happened that the operator went bankrupt
11 and I wanted to reclaim that land under the law and
12 DEP agreed I could do that.

13 MR. STILLEY: That's correct.

14 REPRESENTATIVE GEORGE: And if an acid mine
15 discharge occurred I wouldn't be responsible.

16 MR. STILLEY: That's also correct.

17 REPRESENTATIVE GEORGE: You are also in
18 agreement, I'm sure, that if the department puts out
19 a reclamation project and you contract it from them
20 and a year an acid mine discharge occurs you're not
21 responsible for it?

22 MR. STILLEY: That's the case under the
23 current VAMER (sic) standards.

24 REPRESENTATIVE GEORGE: That is the case
25 from the time of eternity that you are not held

1 responsible if they put a contract out and you did
2 what they told you do and an acid mine discharge
3 occurred.

4 Now, was there any acid mine discharges in
5 any of the Adobe sites?

6 MR. STILLEY: Yes, sir.

7 REPRESENTATIVE GEORGE: Did you clean them
8 up?

9 MR. STILLEY: Yes, sir.

10 REPRESENTATIVE GEORGE: And they are now
11 gone?

12 MR. STILLEY: They now meet the criteria.

13 REPRESENTATIVE GEORGE: Now, was some of
14 that land remined?

15 MR. STILLEY: No.

16 REPRESENTATIVE GEORGE: And you removed
17 your overburden and day lighted the whole affair.

18 MR. STILLEY: What we did to eliminate
19 those discharges that existed on the Adobe sites was
20 two things, we used fly ash, scrub grass generating
21 station, we also built a number of acid treatment
22 systems to accommodate the acid mine drainage which
23 emanated from those sites.

24 REPRESENTATIVE GEORGE: Mr. Stilley, that
25 doesn't remove the discharge it just treats it. I

1 ask you, did you remove them, did you put them out of
2 function?

3 MR. STILLEY: All I can tell you is that
4 there's no bad water entering the streams from these
5 sites.

6 REPRESENTATIVE GEORGE: Understand that I
7 agree with you in the fact that I don't believe that
8 we should treat good water and put it into bad water.
9 But this isn't what you and I are talking about.

10 Now, do you put sludge on any of your
11 properties?

12 MR. STILLEY: No, we have not.

13 REPRESENTATIVE GEORGE: Never used sludge?

14 MR. STILLEY: Never used it, no.

15 REPRESENTATIVE GEORGE: Why don't you use
16 it?

17 MR. STILLEY: Because of the public's
18 sentiment towards using sludge.

19 REPRESENTATIVE GEORGE: Now does DEP
20 recommend you use sludge under a reclamation program?

21 MR. STILLEY: I don't know that they
22 recommend it but they will approve it.

23 REPRESENTATIVE GEORGE: Let me use another
24 term. Maybe they recommend it maybe they don't. If
25 you put it on your land don't they release the bond a

1 year sooner? By putting sludge on your land? Don't
2 they allow the return of those bonds a year sooner?

3 MR. STILLEY: I don't think so, but since
4 I've never used sludge I'm not sure.

5 CHAIRMAN REBER: David.

6 REPRESENTATIVE LEVDANSKY: Your testimony
7 on Page 8 talks about your exclusionary criteria in
8 this DER letter that came out.

9 In reference to the exclusionary criteria
10 you go on to say on the top of Page 9 that obviously
11 the purpose of Act 43 is to promote reclamation by
12 allowing the surety to save some of the bond amount
13 and then you go on to say that there is no savings to
14 the surety, there is no surety reclamation.

15 My question to you is, isn't the total
16 release from liability in and of itself enough of a
17 savings to the surety to participate in the program?

18 MR. STILLEY: Absolutely not. The surety
19 is only on the hook, if you may, for the amount of
20 the bond. They have no additional liability other
21 than the stated amount on the actual face of the
22 surety bond.

23 So if a company would bail and they had
24 posted example a million dollars in bond to insure
25 the reclamation, and the reclamation did not cost two

1 million dollars, the surety's exposure is only the
2 first one million dollars. So there is no incentive
3 if all they are going to do is just get -- be offered
4 -- pay the million dollars out.

5 CHAIRMAN REBER: Representative Pippy.

6 REPRESENTATIVE PIPPY: The question is
7 concerning sites that have already been reclaimed.
8 You had mentioned earlier that there were those sites
9 that you had acid run off and you used fly ash, which
10 I agree with and I think is a good idea by, with the
11 use of that you you got the acid run off up to
12 standards, how is that monitored and for how long,
13 and who is responsible for it?

14 MR. STILLEY: We are required to monitor
15 that on a quarterly basis for a 5 year bond term.
16 Until final release.

17 REPRESENTATIVE PIPPY: And if some time
18 during those five years the implement exceeds
19 criteria standards set you then go in and clean it up
20 again per se?

21 MR. STILLEY: Let me back up a second,
22 under the agreement that we signed, the consent
23 agreement on Adobe and Benjamin and a number of other
24 bankrupt companies, we specifically in those
25 agreements, because we had no role in the actual

1 mining itself, have no liability for water problems.
2 Under our consent order and agreement with the state.

3 So, even though we had no obligation to
4 clean up the water under the agreement, but we did,
5 our bonds would not be held up under those agreements
6 it's very specific to that. Where we actually mined
7 the coal and reclaimed the sites in our own
8 operations there's a feel on that and a perpetuity if
9 there's a bad discharge, our bonds would not be
10 released.

11 REPRESENTATIVE PIPPY: Okay, thank you.

12 CHAIRMAN REBER: I'll pass along to
13 Representatives of the Department of Environmental
14 Protection a copy of your testimony and I would
15 direct their attention to the language on Page 7
16 where you noted that the draft policy that the
17 department has developed relative to eligibility
18 criteria procedures.

19 In your opinion you wrote, "are unwarranted
20 under the Act, overly burdensome and will not
21 encourage surety reclamation of abandoned the mine
22 sites in the Commonwealth of Pennsylvania." You then
23 go on from Page 7 through Page 10 and list 6 specific
24 concerns with this particular draft policy.

25 I'm going to specifically ask the

1 department to take a look at those six specific
2 concerns and that they could present to us a written
3 rebuttal if you will or a response whatever the
4 characterization they determine would be appropriate
5 so we at least have not agreeing and hold over part
6 of the representation, I would like to, since you
7 raised those questions, I would be interested in
8 hearing the department's response as to what the
9 industry is doing on these particular areas.

10 So, I would just like to state that for the
11 record and ask staff to insure that a copy of the
12 testimony is appropriately delivered to the
13 department so they can scrutinize those references on
14 Pages 7 through 10.

15 REPRESENTATIVE GEORGE: Mr. Chairman, if you
16 will...

17 CHAIRMAN REBER: Sure, Representative
18 George.

19 REPRESENTATIVE GEORGE: Now, you mentioned
20 for everybody, for interest in matter of passive
21 treatment systems, where you worked in and remediated
22 an area that somebody else had mined.

23 MR. STILLEY: Yes, sir.

24 REPRESENTATIVE GEORGE: And in that a deal
25 would be you would get the ball of money hopefully

1 where you could do this work.

2 One question that sort of bothers me is,
3 passive treatment requires maintenance, who maintains
4 those passive treatments now that you're done, you've
5 collected the money, you've spent it, the jobs were
6 all remediated, who maintains the passive treatments
7 in the months to come, the years to come?

8 MR. STILLEY: We are designing and building
9 the passive treatment systems for minimum fifty year
10 life. Any maintenance that would be required on
11 those, over the first four, five years, or until the
12 bonds are released is certainly our responsibility.

13 Again, the systems are built for fifty
14 minimum year life and we don't suspect that there
15 will be any maintenance up until that point that
16 wouldn't be corrected within the first four to five
17 years after they were built.

18 REPRESENTATIVE GEORGE: We'll, but you
19 fully admit that somebody would take up an activity
20 adjacent or whatever that could in some way
21 influenced, my only question is that, when are we
22 certain that those as followers, generations to come,
23 are going to be able to look at that, you say fifty
24 years, I know what your plan is, but that's just no
25 guarantee that in five years or 10 years or 15 years

1 there won't be a reoccurrence or something will
2 develops, all I'm asking is who takes care of it
3 then. I don't expect you to, but who takes care of
4 it then? DEP? I mean, that's what I'm asking.

5 MR. STILLEY: I'm not trying to evade your
6 question, but my best judgement on that is that it
7 will require no maintenance over it's designed life,
8 that's fifty years. Subsequent to fifty years, to be
9 truthful with you, your guess is as good as mine. I
10 can't foresee that far out in the future. I don't
11 know the answer.

12 REPRESENTATIVE GEORGE: Thank you very
13 much. Thank you, Mr. Chairman.

14 CHAIRMAN REBER: Representative Pippy.

15 REPRESENTATIVE PIPPY: Relative to the
16 passive treatment, does DEP review your plans on
17 these systems? Or do they have some type of
18 oversight insurance that they are engineered
19 appropriately to the specific needs of that area?

20 MR. STILLEY: In some cases they do and in
21 some cases they don't.

22 REPRESENTATIVE PIPPY: I guess the question
23 then is, obviously you have technical engineers that
24 is doing this, at one point or how do we determine
25 which project will require governmental review before

1 we start it?

2 MR. STILLEY: I think the best way to
3 handle that issue is allowing with private sector do
4 as much of the work on its own as we can and avoid
5 spending public monies to reinvent what we've already
6 invented.

7 We have what we believe to be the premiere
8 water treatment people working on our behalf. We
9 have a fellow by the name of Robert Hebner (sic) who
10 has worked with the Bureau of Mines for 20-25 years,
11 that's been his life since he graduated from college
12 that long ago. We have other experts, hydrologists,
13 professional engineers, we've been doing this now for
14 probably ten years. We think we have a pretty good
15 working knowledge of what is required. We certainly
16 believe that we should be subject to oversight of our
17 design, but I don't think it should go much farther
18 than just that.

19 REPRESENTATIVE PIPPY: When you say
20 oversight, I guess the first point I want to get down
21 to is that, there's two established criteria, you had
22 mentioned fifty year designs, does the DEP tell you
23 they want this design to withstand natural forces
24 for...

25 MR. STILLEY: That...

1 REPRESENTATIVE PIPPY: Do they establish
2 the parameters or does the private industry?

3 MR. STILLEY: The fifty years is the, the
4 determination as to fifty years dictates how much of
5 materials such as alkaline materials or limestone or
6 compost is required to accommodate the precipitate
7 that's going to occur in the bog system or wetlands
8 or drains or other types of systems that are used to
9 treat that water.

10 The actual structural design criteria for
11 wet lands is pretty simplistic, it's not subject to -
12 - in a lot of cases, or in most cases, you know,
13 damage by catastrophic type of events. So it's more
14 of an engineering, chemistry type of calculation more
15 than anything else.

16 REPRESENTATIVE PIPPY: Thank you.

17 CHAIRMAN REBER: Thank you, Mr. Stilley,
18 for your testimony.

19 Our next witnesses are the regional
20 coordinators respectively of the Eastern and Western
21 Coalition for Abandoned Mine Reclamation, Mr. Robert
22 Hughes and Mr. Mark Killar. If you gentlemen will
23 come forward.

24 Gentlemen, we are running just a little
25 behind time. If you can paraphrase or summarize at

1 times in your prepared remarks, we would appreciate
2 it. All the members of the committee have received
3 them. If you could identify yourself for the record
4 we would appreciate it.

5 MR. KILLAR: Chairman Reber, Sub-committee
6 Chairman Smith, Members of the Committee, my name is
7 Mark Killar and I am the regional coordinator for the
8 Western Pennsylvania Coalition for the Abandon Mine
9 Reclamation. Just to give you a little background
10 on our coalition, it was formed back in 1981-82, I
11 will read you the general purpose of this independent
12 non-profit, non-partisan, unincorporated group is to
13 encourage the reclamation and development of
14 abandoned mine lands in the bituminous coal area of
15 Western Pennsylvania.

16 This includes the reducing of hazards to
17 health and safety; eliminating soil erosion;
18 improving water quality; returning abandoned mine
19 land to productive use: and improving the local
20 economy of the region.

21 Basically our organization was formed
22 because of an effort in Washington to cut funding for
23 the Rural Abandoned Mine Program which was a program
24 that began with SMCRA.

25 Our coalition leaders had been working

1 within the communities where the rural abandoned mine
2 projects began and they had noticed the extreme
3 changes that were taking place when these abandoned
4 mine problems were remediated, often times right
5 within the community.

6 They saw a change in the attitude of the
7 people within these communities, a willingness now to
8 have pride in where they lived, a willingness to
9 begin to clean up their properties, to spend money on
10 their houses, to paint their houses, doing things we
11 believe they would have never done if these abandoned
12 mine problems had remained within their community.

13 So once the leaders of our coalition saw
14 that happening and heard that congress wanted to
15 eliminate the RAMP program, they decided to join
16 together and they formed this coalition to try to
17 fight that move.

18 Basically it started out with six then
19 quickly grew to 13 counties, the conservation
20 district directors from those counties joined
21 together to form this organization, went to congress
22 and petitioned congress to keep this program alive
23 because of the good it had done. And they were
24 successful in doing that.

25 They have continued every year to go to

1 congress and to lobby for continuation of abandoned
2 mine reclamation programs.

3 Again, they supported the RAMP program in
4 particular because it was geared more towards the
5 local folks, basically the soil conservation service
6 at the time had worked closely with farmers and with
7 the local communities on many other projects, and
8 when it came time for the RAMP program to come up,
9 they continued that work and they asked the local
10 people for their input in these projects.

11 So that's why we basically supported the
12 work of the Rural Abandoned Mine Program, because it
13 was locally oriented.

14 Our coalition was instrumental in the
15 formation of another organization called the National
16 Coalition for Abandoned Mine Reclamation.

17 That coalition has similar goals as ours
18 and it includes all of the states with abandoned mine
19 problems.

20 Last year we hosted the annual meeting of
21 that group and it was clear that Pennsylvania stands
22 head and shoulders above all the other states when it
23 comes to locally met initiatives in trying to clean
24 up abandoned mine problems.

25 Historically some of the things that we've

1 done, the coalition prompted DER administrators to
2 seek input from the Conservation Districts during the
3 development of the Abandoned Mine Lane Program during
4 the formative years of the Bureau of Abandoned Mine
5 Reclamation through communication with former
6 secretary, Art Davis. The coalition helped to
7 develop the environmental objectives which DER
8 created to address AML and acid mine drainage issues.
9 We currently work with the Natural Resources
10 Conservation Services, formerly the soil conservation
11 service, RC&D who are affiliated with the natural
12 resources conservation service, we also worked with
13 DEP, the office of water management, and the office
14 of Mineral Resources Management. We are very proud
15 of our association with those organizations.

16 We mostly work cooperatively and closely
17 with water shed organizations developing remediation
18 plans for mine drainage problems. We've long
19 recognized that mine drainage was a high priority
20 problem, although in the past it had not been treated
21 that way, it was considered priority III, low
22 priority, and if you look at the map that I've
23 included with my testimony you can see that according
24 the EPA's estimates, which were based on information
25 they got through the fish and boat commission, that

1 we have 3,200 miles of streams impacted, and I can
2 say that we have more than 3,200 miles of stream
3 impacted because I know of streams that are not
4 identified on that map that are impacted by mine
5 drainage, basically dead. And if you included all
6 the unnamed tributaries that are also impacted, that
7 figure would be substantially higher. I believe that
8 these numbers were based on trout populations, and we
9 know that not every stream has trout populations,
10 many smaller streams just support forage fish.

11 To spearhead our move toward more active
12 involvement by the local folks, we held a seminar
13 back in 1993 in Westmoreland County which was
14 attended by federal, state, local representatives,
15 watershed groups, local individuals and private
16 foundations, and that basically led to our
17 conservation district demonstration program, the
18 remediation of acid mine drainage in western
19 Pennsylvania.

20 The involvement of our coalition and the
21 conservation districts with the EPA and OSM helped
22 lead to the statement of mutual intent between OSM
23 and EPA region 3 and we are a signing partner in that
24 agreement.

25 I am also involved with the document, the

1 "citizens guide to AMD" which EPA is trying to pull
2 together and help new groups and individuals get
3 started with AMD reclamation to help them basically
4 get the information that they need to make informed
5 decisions.

6 In 1994 our organization applied and
7 awarded the 319 grant from DER's, the Bureau of land
8 and water conservation to begin a demonstration
9 program to treat the number non-point source
10 pollution in Pennsylvania, acid mine drainage.

11 The intent of the program was to remediate
12 abandoned mine drainage problems that would show
13 beneficial environmental results and to do so using
14 these passive treatment technologies that we've hear
15 about today.

16 We try to create a ground level approach to
17 this rather than a top down approach, basically
18 calling on our partners to help us locate and to plan
19 for the remediation of these sites.

20 We also wanted to see how the western
21 coalition and the conservation districts could take
22 part in the state's comprehensive mine reclamation
23 plan.

24 Throughout the effort we were trying to
25 promote better public understanding of non-point

1 source pollution mining related problems, because we
2 felt if we could educate the public we could show
3 them that something indeed can be done to bring back
4 their streams.

5 In other words, try to give them a little
6 bit of hope, where in the past they basically had
7 none.

8 So, what we did was, we brought together
9 our water quality technical advisory committee, which
10 is basically a committee of the experts in the field,
11 so to speak, folks from all of the federal agencies,
12 state agencies, mining industry, educational
13 community, basically everyone involved with mine
14 reclamation and we used those folks as our experts to
15 try to help us to select among the projects that we
16 received which are the best projects to do.

17 Each of those partners, we will call them -
18 - no person has anymore authority than anyone else on
19 that group, so all our projects are chosen by
20 consensus on their technical merit, basically on the
21 local involvement that's involved, we look at that,
22 we feel that basically is a key to a successful
23 program is to have local involvement in these
24 projects, because the local people will be there long
25 after the program is done.

1 So over the past three years our program
2 has funded sixteen mine drainage remediation
3 projects. Thirteen of those projects have been in
4 what are called high priority water sheds, water
5 sheds that are extremely degraded by AMD as outlined
6 in the state's 305b report. The other projects that
7 aren't high priority are actually in areas that are
8 highly degraded, however, because AMD is only one
9 portion of the criteria used in non-point source
10 assessment, those areas weren't considered high
11 priority.

12 Of those 16 projects, seven are completed,
13 two are presently under construction, four should
14 begin construction by the year's end. The remainder
15 should be completed by next year at this time.

16 You should have received a status report on
17 our projects, and I do apologize because it is a
18 little out of date, it was just done in May, however,
19 a project has been completed, the Hayes Rune Mine
20 Seal project in Elk County has recently been
21 completed.

22 The report also outlines where our projects
23 are located, the sponsors that are involved, the cost
24 per project, the treatment design, just to give you
25 an idea of I think looking at the projects once will

1 give you an idea of how these folks have when you
2 depend on the local people how they can bring more
3 resources to bear on these projects.

4 The educational component is tied to many
5 of these projects and some of the projects that
6 aren't outlined in detail do have an educational
7 component to them, we feel that that's a very
8 important part that we like to promote to get the
9 colleges and universities, high schools, any school
10 really, if we can get an educational component tied
11 to that project, we feel that it's well worth doing.

12 On our projects we require a 30% match for
13 each of the projects. When we looked at our numbers,
14 we crunched our numbers and what we actually got back
15 was a 75% match. In other words, our project
16 amounted to about \$579,000 for the total of 16
17 projects, and we got back \$1,016,000 from that
18 \$579,000, because the local sponsors were able to
19 bring in more funding.

20 I'd like to call your attention to the fact
21 that of the 16 projects, 10 projects were in areas
22 that had no previous AMD remediation going on in
23 them.

24 When I talked about trying to bring hope to
25 people that's what I'm speaking about. Prior to

1 these projects the folks in those areas had very
2 little hope for their streams, now I believe we can
3 show them that there is hope, that they now have some
4 success to build upon, and I think that is a key,
5 really, to getting more remediation projects and more
6 money from the AML fund is really to get more people
7 involved.

8 So our point is a little bit different than
9 DEP's in that they are concentrating on specific
10 water sheds and what we would like to do is create a
11 more regional approach and to actually go out into
12 more water sheds, because if you look at our map of
13 where our projects are located you can see that there
14 are many, many areas really that don't have anything
15 happening in them and I believe that if we can get a
16 grass roots swell by showing those folks there is
17 something that can be done that the outcry would be
18 tremendous to have those funds that everyone has been
19 talking about, AML funds released.

20 There is one final issue that I would like
21 to bring to your attention, it was touched upon
22 earlier and that is the issue of landowner liability
23 and it's derailed several of our projects.

24 Many times the landowners are actually
25 willing to give up a piece of their property to build

1 these treatment systems, and perhaps it may mean
2 acres, but then when we tell them that we are going
3 to build treatment ponds or perhaps wetlands they
4 start thinking of their liabilities involved and then
5 they back away. So a good project basically dies
6 because the landowner is worried about his
7 liabilities.

8 And I'm talking about landowners that
9 really had no responsibilities in the creation of
10 these mine drainage discharges that perhaps bought
11 the property afterwards or perhaps during the time
12 when mining practices were such that creating these
13 discharges wasn't a problem, ended up with the
14 problem on their property.

15 What we have been doing is talking to
16 Senator Kasunic and Senator Mellow's office and they
17 are working with us to come up with a viable
18 solution, a legislative solution to this.

19 I've also spoke with Senator Stout and
20 Representative Stairs and Lescovitz and they've
21 expressed an interest in supporting this type of
22 legislation.

23 I hope that and I think that we can raise a
24 lot more support for legislation like this and I hope
25 that when that legislation comes before you in the

1 future that you will give it serious consideration
2 because it is something that it desperately needed, I
3 feel. We have a whole lot of work to do and it's one
4 issue that needs to be resolved to help us on our
5 way.

6 REPRESENTATIVE REBER: Bob, do you have
7 anything additional?

8 MR. HUGHES: I would just like to give you,
9 we are really in our infancy stage, he's from the
10 Eastern Pa. Coalition has just got up and running, as
11 far as a month ago. I was hired as mutual
12 coordinator in May. It's been about a two year
13 process that we've gone through to get ourselves
14 aligned with Western coalition and we are
15 representing 16 counties, our coverage area
16 represents 16 counties in the Northeast. And we are
17 really working to do the same thing that Mark is out
18 in the western part of the state doing, but we have
19 to take a little bit of a different approach as to
20 our flows that are in the eastern part because the
21 voluminous amounts of water that we have at some of
22 our discharge sites in the anthracite region.

23 And with the acreage that we do have it
24 doesn't allow us to do some of the treatment systems
25 that are being performed in the western part of the

1 state.

2 I have some brief things I could go over.
3 I would like to just briefly communicate the position
4 of our coalition -- largely the protection
5 organizations that are out there now are implement
6 programs at a lower level that are addressing
7 fundamental in connections between water fall, water
8 supply, mine drainage, air quality, and wildlife
9 habitat using the water shed approach.

10 This means basically educating some
11 decision makers on these regional issues and figuring
12 out innovative ways to adapt to governmental
13 boundaries. To change them over to drainage basins
14 in multiple jurisdictions, so we're trying to build
15 that relationship at the local level and to inform
16 people about this type of approach. So far I've only
17 been on board a few months, but we are really working
18 with watershed associations at the local level to
19 push them to get organized and to help them in their
20 efforts to do that so that they can get some projects
21 off the ground in the communities to actually make a
22 better improvement in the quality of life surrounding
23 themselves.

24 I'm out there trying to help them do that
25 and I'm actually working with all 16 counties to

1 rejuvenate or start new organizations that will take
2 the watershed approach to get projects started.

3 We've been lucky enough in the Schuylkill
4 area, where I am located, we have conservation
5 district to work within our basin, and some of the
6 watersheds in some of the southern counties are
7 really getting projects done at a cost that are
8 really opening my eyes. They are getting some
9 limestone and -- you know, that would usually cost
10 \$12.00 a ton, and they are getting it for \$2.00 a
11 ton, so that kind of in kind match in that service
12 being provided at a local level is really stirring
13 projects up and it's really getting the ball rolling
14 behind some of these efforts.

15 So, if you take that around to each of
16 these watershed associations that are just trying to
17 get off the ground, try to act as a catalyst towards
18 that, looking towards these new techniques that are
19 being used in the new treatment technologies and the
20 relatively low cost and when we do get the community
21 behind us, and the support our business and
22 industries at the local level, we're finding that
23 we're getting things done a lot quicker and a lot
24 cheaper than maybe having public monies. With that
25 effort that's what we're going to be trying to do in

1 the Eastern part of the state as well is to reach out
2 to these watershed associations in this first year
3 and just educate them on the watershed approach and
4 to go ahead and try to get some projects off the
5 ground. Thank you.

6 CHAIRMAN REBER: Representative Steelman.

7 REPRESENTATIVE STEELMAN: Thank you, Mr.
8 Chairman. Looking at the report and the summary in
9 projects in Western Pennsylvania, I am very impressed
10 especially since one of them is in Greene Township,
11 which is kind of distracting to me in Indiana County,
12 and that's one that's getting under way I guess, but
13 also looking at a little bit of the jargon, in
14 descriptions, could you tell us, you know, we've been
15 hearing this morning about using wetlands as a
16 treatment system, could you explain to us a little
17 bit more, how a wetland works and why it works and I
18 noticed that another treatment system that you're
19 using is something that is called SAPS, and that one
20 I'm not calling anything up from my memory that would
21 explain this to me at all.

22 MR. STILLEY: I'll try to keep it as simple
23 as I can. First of all, you have to realize that
24 each mine discharge is quite different. Every site
25 is different from the next, so you have to look at

1 the chemical parameters of each discharge to design
2 the proper treatment system. When passive treatment
3 system came into being, everybody heard wetlands,
4 they went out and built wetlands, but just building
5 wetlands many times does not work, and sometimes
6 actually makes the problem worse.

7 If a discharge is alkaline in nature, which
8 in Western Pennsylvania we do have alkaline
9 discharges with the PH in the 6's, basically all you
10 have to do is get some oxygen into the water by
11 aerating it, running it over some limestone in a
12 tumbling effect, and then putting that water into a
13 settling basin to try to drop the iron out, because
14 iron basically is the major pollutant and aluminum.
15 So you get most of the iron falling out in a settling
16 pond, and then you run the water through a wetland
17 which basically acts as a filter. The wetland does
18 not, the plants do not up take any of the metal, the
19 plants basically in their root system slow the water
20 down enough that you get more retention time within
21 the system and just give more time for the iron and
22 pollutants that are in the water to fall out in the
23 wetlands. Now, that is a system that has certain
24 neutral PH water, just a metals problem.

25 Acid water is treated a little bit

1 different in that you have to get rid of the acidity
2 first before you take the metals out, and so you can
3 do that a number of ways, you can use what's called
4 agnostic (sic) limestone drain, which is basically a
5 bed of buried limestone that the acid water flows
6 through underground. What you're trying to is keep
7 the oxygen away from the limestone, because once
8 oxygen comes in contact with mine water and then in
9 contact with limestone, the iron coats over the
10 limestone so basically you render that limestone
11 useless for it's neutralizing effect. So by burying
12 the limestone and looking at the water first to make
13 sure there is no oxygen actually in the water already
14 you can create some alkalinity generation as the acid
15 water flows through this buried limestone and
16 increases your alkalinity and normally what happens
17 is it comes up to the surface then, you try to get
18 rid of as much acidity as you can and then you run it
19 through again a pond and a wetland to drop the metals
20 out now that you've increased the Ph.

21 Now, the SAP system that you've talked
22 about. One other thing, if there's aluminum in the
23 water then you can't use an agnostic (sic) limestone
24 drain, because what happens is the aluminum falls out
25 in the drain and it plugs up underground.

1 So aluminum acid mine drainage, with
2 aluminum in it, is a different scenario, you can't
3 use the anausik drain, you have to use the SAP
4 system.

5 Now, what a SAP system is basically is an
6 alkalinity generating system that is a wetland pond
7 combination that actually flows downward instead of
8 vertically, and what's done in this case is that you
9 create a pond, you put a drainage system on the
10 bottom of the pond, you fill that with limestone part
11 way, you put a small layer of compost on top of the
12 limestone and then you pond about three feet of water
13 above that. And the hydraulic pressure from the
14 water ponded above it drives the system downward and
15 you get this alkalinity generation in your limestone.
16 Now, the big thing with these types of systems is
17 that before as I mentioned when an anausik limestone
18 drain was used you could only treat the water one
19 time.

20 So if you had a lot of acidity in the
21 water, you could get as much alkalinity as you could
22 get, perhaps they say 300 mg per liter is about the
23 maximum that you could get. If you had 500 mg per
24 liter of acidity you could only get it down to 200 mg
25 of acidity when you were done.

1 So, the SAP, what it allows you to do is
2 treat that water again, because you can remove the
3 oxygen from the water again, because as the water
4 flows downward, it flows through that compost and the
5 microbial action within that compost keeps the oxygen
6 up.

7 So it removes the oxygen from the water, it
8 goes into the limestone, where it gets neutralized
9 and comes out again. If you still acidity, you run
10 it through your pond, through your wetland and then
11 you run it through another SAP system, which is,
12 hence the name, Successive Alkalinity Producing
13 system. You can run them in succession to neutralize
14 as much acidity as you have.

15 So these kind of systems have developed
16 over the years and they continue to develop and I
17 think basically we're kind of in the infancy really
18 of passive treatment systems. I hope that explained
19 it.

20 REPRESENTATIVE STEELMAN: That was very
21 helpful. Thank you.

22 One more question, you mentioned at the
23 very end of your presentation the concern that some
24 landowners have with liabilities as a consequence in
25 permitting these treatment systems being put in on

1 their properties to try to correct the acid mine
2 drainage that's already on the property.

3 What kinds of liabilities are causing them
4 anxiety?

5 MR. STILLEY: I guess there are two main
6 liabilities that they are concerned with, first of
7 all people coming into their properties and getting
8 hurt, someone coming on their land and falling in the
9 pond and drowning or getting hurt in some other way.
10 So they have that concern that once they create this
11 pond they may be liable for someone getting hurt.

12 Then they have a second liability, in that,
13 right now say a discharge is entering the stream and
14 it's polluting the stream. The landowner allows this
15 treatment system to be built on his property, in
16 essence he cleans the stream up with his treatment
17 system, now at a later date, perhaps some muskrats
18 come in there and bore a hole through the dike that's
19 holding the water, the stream becomes polluted again,
20 his concerns are now is he going to be nailed
21 basically for polluting the stream, when in the
22 beginning, I guess in actuality he is responsible for
23 everything coming off his property, but in abandoned
24 sites, the DEP has taken the stance that they realize
25 that these landowners weren't responsible for the

1 pollution and so they haven't really come back on
2 those landowners.

3 But they're worried that if they do clean
4 it up and all of a sudden something happens and the
5 stream is polluted again, the landowner is going to
6 now be responsible for that.

7 CHAIRMAN REBER: Representative Smith.

8 REPRESENTATIVE SMITH: Just to expand on
9 that previous question relative to the landowner
10 liability, I think there is probably some concern on
11 their part that if they came in and reused their land
12 in some manner too that they might make an
13 adjustment, then are they required to maintain that
14 pond, are there any maintenance requirements.

15 I think there are some legitimate concerns
16 on their part no doubt, and it is a problem we do
17 need to deal with.

18 I've been following the activities of the
19 western Pennsylvania coalition probably since it was
20 created because of the local conservation district
21 people in my area were interested and were a part of
22 that. So I am kind of familiar with some of your
23 activities.

24 One of the things that I wasn't real sure
25 about, I was wondering if you could explain it is,

1 the Act that Section 319 grant that was kind of part
2 of getting you off the ground, where did that money
3 come from and what role does that play in today's
4 operation?

5 MR. STILLEY: Actually the Section 319
6 grant we received is basically why I'm here today.

7 That's what was used to create our program.

8 What we did was we apply to the Bureau of
9 Land and Water Conservation and the grant money
10 actually comes out of the clean water act. So it is
11 EPA administered money that comes through the state
12 and it is specifically to deal with non point source
13 pollution, of which AMD is considered non point
14 source pollution.

15 So the state of bureau land and water
16 conservation has a grant program that they request
17 projects to do remediation types of work on all types
18 of non point source pollution. And so what our
19 organization did was basically applied for that grant
20 and we were awarded the grant to actually show that
21 we could create a program that's grass roots oriented
22 that can work.

23 REPRESENTATIVE SMITH: Is that an ongoing
24 source of funding, or, you know, like to pay for like
25 your administrative function?

1 MR. STILLEY: Right now we had money in
2 that grant for administration and for construction.

3 The construction part of that funding has
4 run out but we have been granted administrative money
5 to continue what we have been doing.

6 Now, I'm not sure how long that will last
7 but for the time being we have been assured that the
8 money will exist until we get all of our projects on
9 the ground.

10 REPRESENTATIVE SMITH: Well, I would like
11 to see that continue as well because I think that you
12 do kind of fill in some of the holes in our overall
13 program in terms of helping to coordinate with the
14 local grass roots organizations whether the
15 conservation districts or the watershed association.

16 I know that there is getting to be so many
17 of these groups that there has to be almost a
18 clearing house or somewhere to centrally control or
19 at least identify where they all are and what kind of
20 projects they are operating on.

21 One of the questions that was brought up in
22 discussions was relative to fly ash and sludge and
23 things of that nature, off site materials that might
24 be brought into a reclamation project. Have any of
25 the projects that you folks have been involved with

1 used materials that were brought in off site of that
2 nature?

3 MR. STILLEY: None of our projects to date
4 have used those materials. However we would like to
5 do something to test that to see exactly what kinds
6 of benefits can be received from those materials.

7 I think that it's been shown in other areas
8 that they can successfully be used. I have
9 personally seen areas that have had sludge applied to
10 them and I know that's a bio-solvent. In the
11 adjacent sites that did receive the application it
12 was just tremendous the amount of growth that came
13 from those sites that were applied with bio-solvents.

14 So I think that they may work, and work
15 quite well. I think, of course, you have to be
16 careful because of the public's perception of what
17 those materials are. But we are open to the use of
18 those types of products depending on what's in them
19 basically. And I think that you will find that most
20 of the problems with the public, at least as what
21 we've seen, is when they are kept in the dark too
22 long about what is going on.

23 I think if you bring them in right up front
24 and tell them what is happening and involve them
25 right from the beginning, you have a lot better time

1 with it than just bringing them in as an afterthought
2 so to speak.

3 REPRESENTATIVE SMITH: I appreciate that
4 comment, I think especially there is some discussion
5 about the fly ash. Clearly the fly ash comes a coal
6 generated waste coal facility is significantly
7 different than fly ash that might be accumulated
8 municipal waste incinerator. And I suspect the same
9 holds true with other materials that are byproducts
10 or waste materials of some nature. I think that your
11 organization can help with that public, educational
12 process.

13 CHAIRMAN REBER: Representative Argall.

14 REPRESENTATIVE ARGALL: I'm especially
15 interested in the map you provided. I've spent a
16 fair amount of time on conservation issues and I've
17 never seen a map like this. This is really
18 interesting to me.

19 Are there any earlier versions of it that
20 we can compare to see what kind of progress we've
21 made over time?

22 MR. HUGHES: Not that I'm aware of. About
23 the only source that I can think of that would have
24 mapped Pennsylvania waters would have been reports
25 done in the 70's but that would not have included any

1 of the problems that were created after that time.
2 So this is probably the best source that we have and
3 as far as a past map, I'm not aware of any that
4 exist.

5 REPRESENTATIVE ARGALL: And this shows the
6 major streams and rivers in Pennsylvania, and you've
7 mentioned some of the smaller ones.

8 MR. HUGHES: Right.

9 REPRESENTATIVE ARGALL: I'm struck by the
10 very fact that the rivers in downtown Philadelphia
11 and Pittsburgh are so much cleaner than in much of
12 rural Pennsylvania. I suspect if legislators or the
13 general public were asked that question on a test,
14 many of us would have failed.

15 The impact of acid mine drainage in
16 Pennsylvania, the no fish streams and rivers, the
17 some fish streams and rivers, is that due solely to
18 the acid mine drainage problem or are there other
19 problems contributing as well?

20 For instance, I have some communities where
21 raw sewers still empty into a creek, and I can't
22 imagine that's good for the fish, either.

23 MR. HUGHES: No, I don't imagine it is
24 either. Actually when you have an acid stream the
25 sewage acts as a buffer, so I think as some of these

1 streams get cleaned up, you are going to see more
2 problems. But I believe those in particular are due
3 specifically to mine drainage.

4 REPRESENTATIVE ARGALL: So the ones we are
5 looking at then are simply mining problems, the
6 industry. I thought we would have made some more
7 progress. I've seen some considerable progress in
8 some of the rivers back home, but it's obvious to me
9 that much of the rural Pennsylvania, I mean, there
10 are some counties that it looks to me like there is
11 nowhere to fish in the whole county. I would think
12 that would be rather difficult for the tourism and
13 marketing people, which is now supposed to be our
14 second largest industry and I guess number one in a
15 couple years, and I think perhaps this is the bad
16 news. And the good news is what I'm hearing you say
17 also is that a fifteen billion dollar problem the
18 impact of volunteer organizations make all the
19 difference in trying to stretch some of those
20 dollars, I've seen that work at home. I visited a
21 site just last week.

22 If you do come across any earlier maps, any
23 earlier versions it would be helpful for me, because
24 I'm curious to see, hopefully we're moving in the
25 right direction. From what you have indicated maybe

1 in some parts of the state we are, and in some parts
2 of the state it is status quo at best.

3 CHAIRMAN REBER: Okay, as we follow our
4 agenda today, we have Mr. Walter Heine, of Heine
5 Associates.

6 MR. HEINE: Good Afternoon. I thank you
7 for the opportunity to present information to your
8 Committee which will give you a perspective of a
9 person who has a long history of regulating the
10 mining history, dealing with the abandoned mine
11 problems, providing consulting engineering advice to
12 mining operators, managing operations of two large
13 mine drainage treatment plants, and participating on
14 a third of the advisory boards of the state.

15 On the last page I have a listing of some
16 things I have been involved in, in the past.

17 Although I am a member of the Citizens
18 Advisory Council for the DEP, the Mining Reclamation
19 Advisory Board and the Environmental Quality Board my
20 testimony is my own and has not been reviewed by any
21 of those bodies.

22 I am sure you are already aware of the
23 enormous array of abandoned mine problems which our
24 Commonwealth faces as a result of 150 years of coal
25 and other mineral mining. You are also aware of the

1 Operation Scarlift program which I was partially
2 involved back in the 1960's where a 200 million
3 dollar bond issue began the task of identifying and
4 categorizing all of the problems, to begin the
5 necessary planning for their amelioration and the
6 successful but limited measures to abate underground
7 mine fires to prevent mine subsidence and to
8 extinguish burning refuse banks.

9 In the late 1970's, the National abandoned
10 mine lands programs began with a fund established by
11 fees imposed by mine operators. Of course, you have
12 heard that today a number of times.

13 Incidentally, about five weeks from now will
14 mark the twentieth anniversary of the passage of the
15 Federal Surface Mining Conservation Act, signed in
16 the rose garden by then President Carter back on
17 August 3, 1977.

18 As you have already heard today, much has
19 been accomplished in Pennsylvania with the State's
20 share of that federal fund, but a great deal remains
21 to be accomplished.

22 Having been a witness to and a participant
23 in the advancement in our technical know how during
24 the last 35 years, I am pleased to hear from the
25 department that our ability to plan for coal mining

1 operations in such a manner to essentially eliminate
2 the risk of post-mining pollution, is now quite
3 successful.

4 It was extremely difficult in the 1960's
5 and 1970's as a then young engineer charged with the
6 responsibility of protecting the waters of the
7 Commonwealth to have no force of law to backup those
8 efforts.

9 In the late 1960's we implemented the first
10 regulations requiring deep mines to be designed so
11 mining would be to the dip thereby assuring the mine
12 workings would be inundated with water after
13 completion of mining.

14 This precludes oxygen from the mine
15 workings, thereby reducing the "make" of polluted
16 water. About the same time we began to improve
17 surface mine operations by requiring the proper
18 handling of acidic constituents in the strata so as
19 to minimize the possibility of creation of acid mine
20 drainage.

21 After passage of the federal law, the
22 technology of overburden analysis to determine its
23 pollution potential was initiated and has now
24 acquired some sophistication. It allows the State
25 Regulatory Authorities throughout the nation to more

1 accurately determine whether permits for mining
2 certain coals in specific physical settings should be
3 allowed.

4 Although the coal mining industry was
5 generally resistant to these advances in technology
6 because of the costs involved and the reality of
7 losing some coal reserves, the industry is now more
8 comfortable with the knowledge that if operated
9 properly, its mines will not create a liability to
10 their companies or leave a pollutional legacy to the
11 Commonwealth's citizens.

12 What more can we do to erase the mining
13 scars of the past and start to reclaim the water
14 quality in those many miles of streams which have
15 been rendered useless for many decades?

16 Incidentally, I do recall a map. I think
17 we created one back in the 60's perhaps the 70's it's
18 probably in the archives somewhere, but there were
19 certainly maps showing acid mine drainage streams.

20 One way to address this is to continue with
21 the abandoned mine lands reclamation programs that
22 are presently funded by fees from active operations.

23 This is essential to assure that we retain
24 the long-term funding sources that will allow for
25 long-term planning and implementation of reclamation

1 and pollution abatement projects.

2 The continuation of this program, however,
3 must be removed from the political arena. You've
4 heard some of that already today. As disheartening
5 as it was for the mining industry to pay thirty five
6 cents a ton for surface mined coal or fifteen cents a
7 ton for deep mined coal to the federal government,
8 another tax, at least the industry anticipated that
9 the money would make a real positive impact towards
10 eliminating those mining problems so obvious to the
11 public.

12 It was hoped this would reduce the public's
13 disdain for mining and its resistance to planned
14 mining operations.

15 Instead, the industry, the environmental
16 community, and the states have seen the federal
17 reclamation fund, that is appropriated to the states,
18 far below the income of the fund.

19 I understand the fund presently has a
20 surplus of about 1.2 billion dollars.

21 Irrespective of which political party
22 controls the white house or the congress, this fund
23 has been used to lessen the apparent size of the
24 national debt and bail out deficient funds of the
25 United Mine Workers of America. Neither of these

1 were expressed purposes of the fund, which was
2 created in such an atmosphere of hope in 1977.

3 Today many of you have constituents who are
4 suffering the adverse affects of old pre-act mining
5 while the solutions to many of these problems lie in
6 an unappropriated fund in Washington.

7 As previous testifiers have told you today,
8 even if the fund is fully allocated and utilized the
9 rate at which old mining problems would be corrected
10 would be very slow. That is why the Department of
11 Environmental Protection, for at least two decades,
12 has been working with the mining industry to
13 encourage it to remine those areas where previous
14 mining problems exist.

15 In so doing, mining operations will correct
16 some of those problems as part of their normal
17 reclamation processes.

18 Many more acres of scarred lands and points
19 of acid mine drainage have been corrected by remining
20 than all of government's efforts through various
21 abandoned mine lands reclamation funds. That is why
22 the Pennsylvania legislature is to be commended for
23 its passage of Act 173 in 1992, which is intend to
24 provide regulatory mechanisms and incentives to
25 industry to reaffect old mining problems as part of

1 their active mining operations.

2 I am encouraged by recent discussions with
3 Deputy Secretary Dolence and the federal office of
4 surface mining, that the no-cost contract mechanism
5 that you established in the act is getting closer to
6 acceptance as a legitimate tool for the DEP and
7 industry to use in combating old mining problems.

8 There is a broad acceptance actually
9 enthusiasm for the continuation and broadening of all
10 programs which will accelerate AML reclamation.

11 The citizens advisory council and the
12 mining reclamation advisory board provided a
13 reclamation blueprint to the department through a
14 report entitled a Pennsylvania comprehensive mine
15 reclamation strategy. This proposes the combining
16 the talents and resources of various governmental
17 agencies such as the county conservation districts,
18 local government the dept and the mining industry to
19 coordinate their efforts to maximize the clout of the
20 abandoned mine lands fund. You've seen a number of
21 documents and heard a lot about that today also.

22 I would like to relate to you a case
23 history which typifies the abandoned mine land
24 problems faced by our citizens which can be solved
25 with greatly reduced public expenditure if our laws

1 and regulations are structured to allow common sense
2 to prevail.

3 In Greene County, the village of Mather has
4 endured for 50 years the presence of a black mountain
5 of coal refuse immediately adjacent to the village.
6 In addition to its unsightliness and the acid mine
7 drainage and silt which emanates from its surface and
8 core, the pile is now on fire resulting in a cloud of
9 noxious fumes covering the village and nearby
10 countryside.

11 I am sure all of us would agree that this
12 village suffered enough when in 1928, 195 of it men
13 died in a mine explosion, almost one fourth of the
14 town's male population.

15 Now, almost seventy years later, those
16 men's descendants must continue to suffer the after-
17 effects of mining.

18 Incidentally, there is some even larger
19 piles in Greene County which are also on fire, and I
20 am sure that some of you could relate similar stories
21 of dangerous high priority abandoned mine problems in
22 your districts.

23 The good news for Greene County is that its
24 Industrial Development Authority has acquired the
25 Mather refuse pile, and has two mining and coal

1 processing companies interested in removing much of
2 the refuse before it ignites.

3 Unfortunately, there is also bad news.
4 Present regulations would assign complete
5 responsibility to those mine operators for the
6 adverse environmental effects of the entire pile,
7 including the mine fire.

8 The project presently is in limbo, although
9 many of us are hard at work attempting to overcome
10 the regulatory problems. Any mining company, of
11 course, would be foolish to legally assume the
12 responsibility for existing old environmental
13 problems which it did not create and is trying to
14 abate.

15 The DEP has estimated that the cost to the
16 AML fund for extinguishing this fire would be about
17 five million dollars, yet if the operators were
18 allowed to remove substantial portions of the non-
19 burning refuse, the costs would obviously be
20 significantly reduced.

21 The threat to the people of Mather will
22 only increase as the mine spreads as will the costs
23 to the State for abatement and extinguishment
24 increase, so time is of the essence. Efforts to
25 establish a partnership of state, county and private

1 resources to develop a common-sense mine abatement
2 plan for this pile has been unsuccessful.

3 I want to emphasize that this is just one
4 of dozens of similar cases throughout the
5 Commonwealth where the logical association and
6 coordination of state, local and private enterprise
7 is still being thwarted by archaic laws, regulations
8 and lack of governmental ingenuity.

9 What can your committee do now? I suggest
10 the following:

11 Request the department of environmental
12 protection to apprise you of the remaining barriers
13 to implementation of programs which allow
14 coordination among the state, private enterprise,
15 local government and citizens groups. And which will
16 allow problems such as the one I described to be
17 attacked promptly and vigorously.

18 No oversight or budget hearing should go by
19 without the department having an opportunity to
20 report to you on the successes and setbacks of the
21 abandoned mine lands program, and on any legislative
22 needs to encourage remaining of abandoned mine lands.

23 I strongly urge that our congressional
24 delegation be apprised again that it is necessary to
25 release of the 1.2 billion dollars now harbored in

1 the abandoned mine lands reclamation fund in
2 Washington.

3 An MRAB report, our mining board,
4 indicates that beyond the health/safety/general
5 welfare and environmental benefits of AML
6 reclamation, every one million dollars in contracts
7 creates twenty-seven jobs in supporting construction
8 work and most go to Pennsylvania companies. Ten to
9 twelve thousand jobs have been created in
10 Pennsylvania by this program since its inception.
11 And, of course, a lot of those jobs are in the rural
12 areas of Pennsylvania where jobs are needed.

13 All of our citizens and the remaining
14 industry deserve to see that this specifically
15 earmarked fund is utilized promptly for its intended
16 use. The further deterioration of the environment
17 from many of these mining problems and the increased
18 costs of abatement erode at the value of that fund
19 every day. We must act promptly and forcefully
20 before congress and the white house discover other
21 uses for this fund.

22 Closing thought, you heard about Park Camp
23 Run and some of the work the department and others
24 are doing up there throughout -- Representative Smith
25 has already apprised you that there is an inspection

1 by the mining reclamation advisory board and some
2 members of the assistant advisory council scheduled
3 for July 9th up there. So, perhaps, some of your
4 committee members would be interested to see what is
5 going on. Thank you very much.

6 CHAIRMAN REBER: Thank you, very much. Any
7 questions. Representative Smith.

8 REPRESENTATIVE SMITH: I certainly
9 appreciate you coming. I had a little bit of
10 influence over who was all invited and I wanted to
11 personally suggest to you that you were not last on
12 the list for any reason other than that's how it
13 shook out.

14 I thought you would be a good presenter
15 because of your history and your background and I, of
16 course, know you from MRAB primarily.

17 If anyone questions your general sincerity
18 and objectivity and fairness in dealing with any
19 issue, I think you probably can put yourself in the
20 category of being fair when you noted on Page 2 of
21 your testimony that the coal mining industry was
22 generally resistant to the advances of technology. I
23 think that understatement will speak to your
24 objectivity anyhow.

25 The other thing that on the hearing today,

1 I've mentioned that although we weren't focusing
2 strictly on any one particular piece of legislation,
3 I recognize that Representative George's bill, which
4 I don't know if you are familiar with it, has to do
5 with, it would be like a scar lift type proposal,
6 something along the those lines, and in sight of the
7 fact that he's not present, I thought I would run
8 that by you, you've seen a lot of things come and go
9 in Pennsylvania and across the nation in mine
10 reclamation activities and mining in general. I'm
11 curious as to what your view is of that kind of
12 approach to helping to finance reclamation and
13 treatment projects?

14 MR. HEINE: I would support that type of
15 legislation, that kind of bonding initiative. I'd
16 like to add though that I think it should not be just
17 about a batch of money thrown into the same hopper to
18 be used without using a little more ingenuity.

19 I think there's a lot of ~~available~~ available,
20 if you will, for better utilization for the money
21 that we have now.

22 I know the department is doing its best,
23 but if this money could be used with the proper
24 coordination with the local folks, conservation
25 districts, private enterprise, it will go a long way.

1 I would hope there would be some language
2 in there that would encourage that.

3 REPRESENTATIVE SMITH: Thank you, Walter, I
4 appreciate that.

5 CHAIRMAN REBER: Representative Steelman.

6 REPRESENTATIVE STEELMAN: Thank you, Mr.
7 Chairman. All morning, from all of our presenters
8 we've heard complaints about the way the federal
9 government is administering the mine reclamation
10 fund. And, as you pointed out, the estimates of the
11 amount of money that is in that fund now are a
12 billion dollars or higher.

13 If in the unlikely event, that the federal
14 government decided to take heave of our memorializing
15 them to release that money as it was originally
16 designed to be released, could you give us an
17 estimate as to how much money might come back to
18 Pennsylvania for mine reclamation given our
19 historical mining record?

20 MR. HEINE: Probably the department could
21 answer that a little bit better. I heard them say
22 today, I haven't heard the latest statistics but they
23 said that for every dollar that is put into the fund
24 that's from mining operations throughout the nation.
25 For example, Wyoming has put a lot into that kitty,

1 they mine a lot of coal. They don't like the fund
2 much, because they get little or none of it back, and
3 again I believe we get \$1.80 for every dollar that
4 goes into that funds.

5 So, I really can't answer you directly, but
6 before they started to accumulate this fund, the way
7 they have now, my recollection is the department
8 received more like 40-50 million dollars a year,
9 where now it's down to 20 million, I believe. So it
10 would certainly be significant.

11 CHAIRMAN REBER: Thank you very much.

12 I am just going to take the liberty, as the
13 Chairman, to ask a few questions after being
14 uncharacteristically relatively quiet and silent
15 during the major portion of the hearing.

16 With your experience on the EQB, I couldn't
17 help but think as you were testifying and some other
18 people were testifying, concerns on some of the
19 issues relative to liability, relative to barriers
20 and limitations of the programs, to use some of your
21 language, set forth in your testimony.

22 I couldn't help but think that it seems to
23 me that we ought to be thinking in a more direct
24 fashion of promoting reclamation through a program
25 somewhat similar to the industrial sites Act that we

1 passed last session, where in fact we got involved in
2 certain standards, not necessarily coming back to a
3 background type standard, where it became site
4 specific, where it became health based, things of
5 that nature.

6 It was also seen where we took a look at
7 some forms of limited immunity or shield some of
8 these people who came in, in good faith, where we
9 also provided some opportunities where the standard,
10 or I should say, the type of discharge was quantified
11 up front and remediation plans looked at and
12 improved, and with various standards being met
13 liability would not attach in some of those
14 directions.

15 Do you think we should be looking in a
16 somewhat similar direction as we took when we enacted
17 Senate Bill 1 for industrial sites reclamation to
18 possibly be somewhat creative in our legislative
19 pronouncement and the reclamation -- or don't you
20 think we need that in light of existing statutory and
21 regulatory authority?

22 MR. HEINE: There is, of course, some
23 difference in the two situations, in that under Act 1
24 we are talking about old industrial sites.

25 Often there is somebody who owns that land,

1 it might be a redevelopment, or some old industry.
2 There is still some entity to come that might want
3 relief. They might say, this is an area we want to
4 clean up because we want to use it for industrial
5 purposes. So there is a real use there.

6 As you probably know most places where mine
7 drainage is coming out might be owned by farmers,
8 independent land owners, people who just purchased
9 this land and didn't know there was an old seep
10 coming out of the corner of the place.

11 I don't think it will intend to ever try to
12 put that liability for these discharges on those
13 private landowners.

14 This State has never done that since 1937
15 when the law was passed, the law in its own language
16 always said that the landowner is responsible for the
17 pollution coming off their land, yet we have never
18 had a program in this state, nor should we, that goes
19 chasing after individual landowners because they
20 happen to buy a piece of land where there's an old
21 shed or pollution coming from it.

22 However, there are some aspects of the
23 remediation act that you mentioned wherein some
24 certain standards can be set, and should be set, that
25 recognizes that we are never going to get some of

1 those mine sites back to discharging christine water.

2 Some of them will never be used for
3 agricultural purposes again, because the topsoil has
4 been destroyed.

5 Recognizing that we are never going to get
6 the growth on those areas of vegetation that meets
7 the required standards of a virgin strip mine if you
8 will, we have to have different standards for what is
9 considered now a reclaimed site.

10 And I think we can do that pretty well
11 around some of the home based standards and the uses
12 of those standards.

13 CHAIRMAN REBER: Thank you, that was my
14 only area, really, of concern -- any other questions
15 from any other members of the committee? Seeing
16 none, you are excused. Thanks.

17 At this time I would like to adjourn the
18 Departmental Resources and Energy Committee.
19 Hopefully, we will be in a position to meet again in
20 the future. Thank you. This meeting stands in
21 recess.

22 (Whereupon, at 12:50 p.m. the hearing was
23 adjourned.)

REPORTER'S CERTIFICATE

I, DONNA K. EVANS, Court Reporter, do
hereby certify;

That the foregoing proceedings were taken
before me at the time and place therein set forth.

That the testimony of the witnesses made at
the time of the hearing were recorded
stenographically and electronically by me and were
thereafter transcribed;

I further certify that I am not a relative
or employee of any attorney or of any of the parties,
nor financially interested in the action.

I declare under penalty of perjury under
the laws of Maryland that the foregoing is true and
correct.

Dated this 18 day of July, 1997

A handwritten signature in cursive script that reads "Donna Kay Evans". The signature is written in black ink and is positioned above a solid horizontal line.

Donna Kay Evans