

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA

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Current and Proposed Bonding Requirements on
Coal Mining

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Environmental Resources and Energy Committee

Ryan Office Building
Room 205, Main Capitol
Harrisburg, Pennsylvania

Tuesday, December 14, 1999 - 10:00 a.m.

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BEFORE:

Honorable Arthur D. Hershey, Chairperson
Honorable Samuel Smith, Acting Chairperson
Honorable David Argall
Honorable Brett Feese
Honorable Eugene McGill
Honorable Ron Miller
Honorable Chris Ross
Honorable Carole Rubley
Honorable Jerry Stern
Honorable Camille George, Chairperson
Honorable Peter Daley
Honorable Robert Freeman
Honorable Jennifer Mann
Honorable Steve Samuelson
Honorable Gregory Vitali

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ALSO PRESENT:

Shelly Lipscomb,
Majority Administrative Assistant

Wayne Crawford,
Majority Research Analyst

Fred Taylor, Esquire
Majority Council

David Calhoun,
Administrative Assistant to
Representative Daley

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33	PG & E Generating, Northampton	
34	(The following written testimony was	
35	submitted:	
36	Terry Morrow, PA Trout)	

1 CHAIRPERSON HERSHEY: Good morning. I am
2 going to call the meeting to order. I am
3 Representative Art Hershey, Chairman of the
4 Environmental Committee.

5 I want to welcome everybody today to this
6 hearing of the Environmental Resources and Energy
7 Committee on the subject of Full Cost Land
8 Reclamation Program involving Full Cost Bonding
9 for Mining Operations.

10 This issue can be a complex, technical
11 problem with one hand and a very simple problem on
12 the other hand.

13 Hopefully by the end of the hearing
14 today, we will cover three primary areas of
15 importance. The first being, what would be the
16 effects of the work we do to clean up the
17 environmental after 200 years of mining
18 operations?

19 Secondly, the impact this will have on
20 the economy, jobs in rural coal fields of
21 Pennsylvania; and, thirdly, how Pennsylvania
22 develops, generates, provides for its future
23 energy needs.

24 The department has announced its
25 intention to implement a new system of bonding,

1 which will contain elements that are new to
2 Pennsylvania, which I feel this committee should
3 have a complete understanding so that it can
4 exercise its legislative oversight in an
5 appropriate manner.

6 It's my intention as Chairman by calling
7 this meeting to give the committee members
8 adequate information on the subject so that we can
9 act accordingly.

10 I would like to take this opportunity to
11 allow the members that are present to introduce
12 themselves. We will start over here with Wayne.

13 MR. CRAWFORD: Wayne Crawford, staff.

14 MR. CALHOUN: David Calhoun,
15 Representative Daley's Staff.

16 REPRESENTATIVE MANN: Jennifer Mann,
17 House Member from the 132nd District.

18 ACTING CHAIRPERSON SMITH: Sam Smith,
19 House Member from Jefferson/Indiana/Clearfield
20 Counties.

21 MR. TAYLOR: Fred Taylor, committee
22 staff.

23 CHAIRPERSON HERSHEY: Art Hershey,
24 Chairman, Chester County.

25 REPRESENTATIVE ARGALL: Dave Argall,

1 Schuylkill and Berks.

2 REPRESENTATIVE FEESE: Brett Feese,
3 Lycoming County.

4 REPRESENTATIVE MILLER: Ron Miller, York
5 County.

6 REPRESENTATIVE ROSS: Chris Ross
7 representing Chester County.

8 REPRESENTATIVE RUBLEY: Carole Rubley,
9 Chester County.

10 CHAIRPERSON HERSHEY: Thank you, Carole.
11 I am glad you made it. Thank you. Now, I would
12 like to introduce the first panel of witnesses.
13 We will start with Robert Dolence, Deputy
14 Secretary, Mineral Resources Management.

15 He will introduce the rest of his staff.
16 Since this committee has a subcommittee on mining,
17 the vice-chairman and chairman of the subcommittee
18 is our expert on this subject, and I am very happy
19 to turn the rest of the meeting over to
20 Representative Smith to conduct the proceedings
21 and lead the questions.

22 Representative Smith, after the panel
23 takes over, you take over.

24 ACTING CHAIRPERSON SMITH: Thank you, Mr.
25 Chairman.

1 MR. DOLENCE: Thank you, Mr. Chairman,
2 and members of the committee for providing the
3 opportunity to DEP to discuss this very important
4 issue of full cost bonding.

5 With me today are three dedicated DEP
6 employees who have contributed significantly, not
7 only to the mine and regulatory program, but also
8 to protecting and restoring the environment as it
9 relates to the past practices of mining.

10 They are Rod Fletcher, Director of the
11 Bureau of Mining and Reclamation; Jeffrey Jarrett,
12 Director of District Mining Operations; and Scott
13 Roberts, Permits Chief for the Greensburg District
14 Mining Office.

15 Mr. Roberts is responsible for permitting
16 reviews, approvals, and denials in the Greensburg
17 District Office. He has most recently been under
18 a special assignment to develop the Full Cost
19 Bonding program details that will guide the
20 implementation of this program.

21 Mr. Jarrett is responsible for the
22 day-to-day statewide implementation of the
23 Commonwealth's environmental regulatory program
24 for permitting, inspections, compliance, and
25 enforcement for bituminous and anthracite coal,

1 and industrial minerals operations.

2 Jeff brings to the table a thorough
3 knowledge of the current practices in
4 Pennsylvania, the Office of Surface Mining's
5 programs, and details of the site-specific water
6 treatment trust fund developments.

7 Mr. Fletcher's duties are primarily the
8 development of regulations, policies, and guidance
9 that are utilized in the implementation of the
10 regulatory program administered by District Mining
11 Operation.

12 Statewide, Rod's activities also include
13 Small Operator Assistance Program, technical and
14 program support as needed to District Mining and
15 statewide contracting efforts in support of the
16 program's missions.

17 Over the last few months, Rod has
18 supervised our assessment of Pennsylvania's
19 current Alternative Bonding System program.

20 We are here this morning to explain what
21 full cost bonding is, how it is different from the
22 current alternative bonding system and why we fell
23 it is necessary to implement this change to full
24 cost bonding.

25 My comments this morning will be brief to

1 allow the opportunity for questions and answers
2 that the committee deems appropriate.

3 Simply stated, a reclamation bond is
4 required by the Pennsylvania Surface Mining
5 Conservation and Reclamation Act in order to
6 obtain a mining permit.

7 The purpose of the bond is to assure that
8 the Commonwealth can complete site reclamation
9 should an operator walk away from his or her
10 reclamation responsibilities.

11 This is a minimum standard requirement
12 under every state with primacy as reflected in
13 federal OSM guidelines.

14 Pennsylvania's mining related statutes
15 were amended in the early 1980s for the purpose of
16 obtaining primacy pursuant to the federal SMCRA.
17 The general theme of the amendments as they
18 related to bonding was to establish a minimum bond
19 amounts for permits and to provide for bond
20 amounts to be based on the Commonwealth's cost to
21 reclaim the land. I emphasize Commonwealth's
22 cost.

23 If the Committee desires, we can provide
24 additional details on the amendments that were
25 made.

1 During the development of these
2 amendments, concern was expressed in many quarters
3 that the mining industry would likely experience
4 difficulty obtaining surety bonds under the new
5 regulatory scheme.

6 Without a bond, there will be no permit.
7 With no permit, there is no coal produced. And
8 with no coal, there is no cash flow. This would
9 likely lead to bankruptcies and abandoned mines
10 with no means of reclaiming them and, thus,
11 creating the very scenario the law intended to
12 prevent.

13 To avoid this situation, Pennsylvania
14 provided in its laws and subsequently in its
15 regulatory framework, the flexibility of utilizing
16 a bonding system similar to the federal system of
17 full cost bonding or an Alternative Bonding
18 System.

19 The ABS provided for a flat bonding rate
20 and a one time per acre reclamation fee. This fee
21 was deposited into an account that supplemented
22 shortfalls of reclamation bonds on forfeited
23 sites.

24 The Pennsylvania ABS was well intended.
25 It was a good faith attempt to address a very real

1 problem. When it was implemented in 1981, it was
2 a wise decision for that time.

3 It should be noted that during the
4 debates on this issue, there was no indication
5 that we have been able to find that the ABS
6 program was intended to meet financial
7 responsibilities associated with water liabilities
8 from bond forfeiture sites.

9 In fact, the early OSM record focused on
10 land reclamation and it apparently did not
11 contemplate water liabilities being covered under
12 the land reclamation bonds.

13 The realization that the bond should also
14 cover water liabilities occurred later at both
15 state and federal levels.

16 The impact of post mining discharges
17 cannot be discussed without also recognizing
18 Pennsylvania's success in virtually eliminating
19 Acid Mine Drainage or AMD discharges from new
20 permits.

21 Specific attention is given to recent
22 successes in predicting and avoiding post mining
23 pollutional discharges through the permit review
24 process.

25 A report was completed in March of this

1 year by a joint work group of federal and state
2 professionals entitled Evaluation of Mining
3 Permits Resulting in Acid Mine Drainage: A Post
4 Mortem Study. That study is a yellow covered book
5 that has been handed out to the committee.

6 Their efforts demonstrated that less than
7 1 percent of permits issued from 1993 through 1996
8 resulted in non-compliant post mining water
9 discharges.

10 Further, those discharges that did not
11 meet compliance standards were evaluated as mild
12 to moderate and in most cases amenable to passive
13 treatment.

14 The point is that the water pollutional
15 problems are primarily a result of past
16 pre-primacy and early primacy practices. Science
17 and technology has advanced to where pollution is
18 prevented in over 99 percent of the permits issued
19 since 1993.

20 Unfortunately, the resulting early
21 primacy pollutional discharges combined with
22 interpretations that bonding covers land and water
23 liabilities created the environment where the ABS
24 is insolvent.

25 Even though the Department implemented

1 the program as approved by the federal OSM, we
2 have identified shortfalls in the bond pool that
3 are attributable to land reclamation obligations.

4 An insolvency, or perhaps better
5 described as a bankruptcy, is created by costs
6 associated with water treatment. In the course of
7 assessing the financial solvency, it is projected
8 the fund would run up to a \$1.4 million per year
9 deficit for land reclamation.

10 Realizing the situation, the department
11 looked to the other states and OSM for how they
12 address bonding. We concluded the best option was
13 to implement full cost bonding determined on a
14 site by site basis rather than a flat per acre fee
15 and generic bonding rates.

16 The full cost program is designed to
17 address all environmental and legal obligations on
18 a site by site basis.

19 The bonding costs and obligations are
20 then fully internalized by industry and each
21 company is held accountable for their respective
22 operations.

23 The FCB program is aimed in making sure
24 the Pennsylvania Coal Mining Industry is not put
25 at a competitive disadvantage with producers in

1 other states.

2 Parity was a concern intrastate as well
3 as interstate. Full cost bonding will match the
4 liabilities with the respective categories of
5 operations within Pennsylvania.

6 It will also remove the inherent
7 characteristics of the alternative system where
8 sites with larger liabilities are massed by the
9 bond pool, which is subsidized by those operations
10 were liabilities are kept to a minimum.

11 Regarding the less than 1 percent permits
12 which result in post mining populational
13 discharges, we are proceeding with the site
14 specific trust fund concept to complement the full
15 cost bonding program.

16 We have advanced and refined this revenue
17 generating mechanism to the point it is a
18 practical tool. This is evidenced by three trust
19 funds covering eleven permits recently executed
20 with PBS Coals, Florence Mining, and Antrim
21 Mining. These trusts will assure that water
22 treatment on the respective site will be
23 maintained well beyond the next fifty years.

24 Our goal has and continues to be not only
25 protecting the environment, but also restoring the

1 mining legacy by using the best we can, a healthy,
2 active mining industry.

3 If the department took an ill-conceived
4 action that for the sake of argument drives the
5 coal mining industry out of Pennsylvania, the
6 environment would lose in excess of 3,300 acres of
7 free reclamation on abandoned mine sites each and
8 every year that is currently accomplished by
9 industry through re-mining.

10 Such a result would be completely
11 opposite to our objectives of public policy
12 regarding the environment.

13 Thank you for this opportunity. And we
14 would gladly entertain your questions and
15 comments.

16 ACTING CHAIRPERSON SMITH: Thank you, Mr.
17 Dolence. When we originally set up the hearing,
18 we were thinking we were going to have a panel.
19 But due to the configuration of the room, we are
20 probably going to go ahead with questions for you
21 and then we will move to the individuals from OSM
22 that were on the agenda listed as part of the
23 panel.

24 Chairman George, Chairman Hershey made a
25 couple of remarks at the onset of the meeting.

1 Chairman, I would offer you the opportunity to
2 make any opening remarks that you might have, if
3 you are inclined to.

4 CHAIRPERSON GEORGE: I thank the
5 gentleman, Mr. Smith. I apologize that I am a
6 couple minutes late here. I didn't hear the
7 contents. I am trying to read what the gentleman
8 Mr. Dolence offered this committee.

9 It has been my contention that over the
10 years that we have spent millions and millions of
11 dollars in the effort to treat acid mine
12 discharge.

13 And my greatest concern is that we are
14 burdening the coal operators to treat waters even
15 though that the receding stream is ten times worse
16 than what was coming out of the discharge.

17 And then at the final or the conclusion
18 of the mining, there's no one left to treat. So
19 here we are, we spend all of these dollars in
20 treating the discharge while the operation is
21 ongoing, then we find for some reason that either
22 the taxpayers are going to have to underwrite this
23 or there will be nothing done.

24 You know, Mr. Dolence, for a couple years
25 I proposed a bonding increment where monies could

1 go into a bonding reserve where we could hopefully
2 attend to these discharges and daylight them.

3 As I read your figures of only 1 percent
4 of the 1,693 wind up being those that are
5 derelict, I dare say that if it's only one
6 percent, sometimes it's more than what we can
7 afford to treat and in some instances, they never
8 get completed in the treatment.

9 I am going to reserve, Mr. Smith,
10 anything that I should say that would either be
11 contingent enough in any way familiar with what
12 you are proposing.

13 But I think the time has come when we are
14 going to have to work hand in hand. When I read
15 your presentation that we were doing everything we
16 can to protect the waters of the Commonwealth, I
17 want to say to you that we have been derelict, all
18 of us, in that we haven't done what we should have
19 done for the waters of the Commonwealth.

20 We have got streams grown in. We have
21 acid mine discharges that have in some way have
22 caused us a lot of great deal of volume of
23 portable water supplies.

24 There is things we have to do to
25 eliminate these discharges or at least disseminate

1 them from our path of destroying good water on
2 down the streams.

3 I am hopeful that the Chairman and Mr.
4 Smith will be not only reasonable and willing to
5 work with me in the very near future because I
6 intend to insist that we need mining.

7 If, in fact, we don't have mining, then
8 you won't have that 35 cents a ton going in. And
9 if you don't have 35 cents of ton going in, you
10 won't have money coming back to deplete or to care
11 for all the damage that had taken place over the
12 years.

13 I am not really interested in what
14 happened between 1960 and 1983. I am interested
15 in what is going to take place right now. And I
16 will reserve any more that I say to tell you that
17 I am going to be around because I believe that we
18 have ruined too much water.

19 And in some cases, it's not the
20 operator's fault. In some cases, it's the fault
21 of the department.

22 I say that. I say that some of our
23 treatment, Mr. Dolence, regretfully have been
24 excessive and not workable. I am not going to put
25 you or anybody else on the spot at this time, but

1 I am hopeful that you are going to work with the
2 minority side too because we are interested in
3 keep the economy going in Pennsylvania.

4 We are also interested in making sure
5 that we just put an absolute stop on the
6 deterioration of water in the Commonwealth of
7 Pennsylvania, this drought that we have gone
8 through. I insist it.

9 We shouldn't have had to go through.
10 Every time we mine, we pollute water. We have
11 been doing an injustice to people of Pennsylvania.

12 And I say that your department -- if I
13 may say this in this manner -- is as responsible
14 for the protection of the air and water in the
15 Commonwealth as we are in that it was this General
16 Assembly that placed you into format.

17 As far from what I know about you and
18 your assistants, you have tried to do a good job.
19 But I am going to insist that even though you may
20 not be fault, your job hasn't been good enough,
21 even though you want to hinge on that one percent.

22 So at this time, I'll say that if you
23 want to work with us, we intend to work with you
24 people, but we are not going to let the
25 environment take anymore hits.

1 And we are still not going to let any
2 more coal operators go out of business that
3 shouldn't go out of business. It's a matter where
4 we have to have a cohesive style in an operation
5 where we both understand where we are coming.

6 Thank you for the opportunity, Mr.
7 Speaker.

8 ACTING CHAIRPERSON SMITH: Thank you,
9 Chairman George. I recognize Representative
10 Argall for questions.

11 REPRESENTATIVE ARGALL: Bob, as you know
12 the difference between the anthracite mining and
13 bituminous is the like the difference between
14 apples and watermelons and rutabagas. I mean,
15 it's extraordinary.

16 And in the anthracite field, we are very
17 concerned that we are now at 2 percent of our 1917
18 production. I am very interested, as a
19 Representative from that region, what the impact
20 of the new requirements will be on the industry
21 and the region and see is there going to be any
22 kind of flexibility in the new requirements that
23 recognizes the extraordinary differences between
24 those two very different kinds of mining?

25 MR. DOLENCE: Thank you, Representative.

1 I am familiar with the differences between
2 bituminous and anthracite. In previous
3 employment, I worked both of those fields.

4 And I would like to add that the
5 anthracite industry is probably over 95 percent
6 remaining operations. Meaning that when they go in
7 and actively mine coal and reclaim the site, the
8 Commonwealth benefits from reclamation 95 percent
9 of the time on those operations.

10 We are sensitive to that and what the
11 impacts of full cost bonding would be to that
12 industry. We have already had preliminary
13 discussions with the Pennsylvania Anthracite
14 Council and some of its members.

15 We have had discussions with individual
16 companies to get their input in preliminary
17 drafting of the guidance that will be utilized in
18 full cost bonding.

19 Our plan is to go before the Mining and
20 Reclamation Advisory Board, which Representative
21 Smith plays a very active role on. We have a
22 meeting scheduled the first week of January in the
23 year 2000.

24 And we are confident to have a draft
25 policy and implementing guidelines for that

1 meeting for discussion. It will be public. The
2 copies of that document will be made public beyond
3 the MRAB.

4 I would like to also add, Representative
5 Argall that -- and you and I have discussed this
6 -- that comparative to the anthracite industry and
7 performing that free reclamation that benefits the
8 environment, there needs to be a market for that
9 coal.

10 And without a market, there is not going
11 to be remining. Without the remining, we do not
12 have reclamation.

13 And not by anthracite by bituminous, but
14 there is a fact sheet that's included in the
15 packet of information. And it depicts the
16 reclamation that is achieved by industry as well
17 as all other efforts in Pennsylvania. This one is
18 for the year 1998.

19 And you will note that industry accounts
20 for over 3,300 acres of reclamation where the
21 government financed subtotal or total for the
22 Commonwealth wide -- and that includes federal as
23 well as statewide efforts in 1998 -- was just a
24 little over 2000 acres.

25 If we are here for the environment, that

1 is an important factor that we need to keep in the
2 forefront.

3 REPRESENTATIVE ARGALL: If I may, is it
4 my understanding that the authority for the new
5 requirements will be done solely at the department
6 regulatory level with no need to come before the
7 General Assembly for additional legislation?

8 MR. DOLENCE: From our interpretation of
9 the statutes and for the objective of obtaining
10 primacy from the federal office of surface mining,
11 the Pennsylvania legislature enacted statutes or
12 language within the amendments that allowed for
13 full cost bonding or an alternative bonding
14 system.

15 Likewise, our regulations reflect that as
16 well, which we see as giving flexibility to move
17 this program forward without statutory change.
18 Now, in the process of fleshing out the program,
19 if something is identified that is in need of a
20 legislative fix, we will certainly entertain that
21 and communicate that.

22 ACTING CHAIRPERSON SMITH: Thank you.
23 Any other questions down at that end? I have a
24 couple of questions, probably a couple hundred to
25 be more honest.

1 I am going to start off by making one
2 comment very directly about the process. I am
3 concerned that the department has chosen to
4 proceed without going through the regulatory
5 review process, without doing this through
6 regulations.

7 I recall the very first meeting that the
8 committee had with Secretary Seif when he was
9 first named the secretary of DEP. And we had
10 discussed with him some legislation that had been
11 hanging around for a couple of years where we were
12 going to suggest to the department that they
13 should have to publish all of their policies,
14 guidelines, volumes of materials.

15 And we were given assurances that the
16 department would not make any major changes in the
17 way the regulatory process would be handled
18 without coming through the regulatory review
19 process.

20 So, I want to put that on the record. I
21 am concerned. I think that that's a mistake. I
22 would hope that when it was announced, the
23 department indicated they would form a working
24 group.

25 You were going to go through MRAB with

1 some review. And I want to put that on the record
2 with you so that you can follow where I am coming
3 from.

4 I realize that's probably not your
5 decision to make or not make that. That is most
6 likely the secretary. So I am going to let that
7 sit on the record.

8 Would you suggest that this is a pretty
9 significant change to the bonding program?

10 MR. DOLENCE: I believe it is a different
11 option that's provided for, Representative, and
12 significant in that we will be holding individual
13 operators at individual operations accountable on
14 a site by site basis so that the bonds reflect the
15 liabilities at that site.

16 That is a departure from the bond pool
17 concept, yes.

18 ACTING CHAIRPERSON SMITH: We get into
19 some of the details of this issue, there are a lot
20 of questions that focus on how you come about this
21 idea or how did you come to this judgment.

22 And one of the keys ones is, how did the
23 department come to the conclusion or how did they
24 derive the \$1.4 million annual shortfall that the
25 bond pool reportedly has?

1 Do you have any information you can share
2 with us that would help to substantiate how that
3 number was derived?

4 MR. DOLENCE: Yes, sir. We are
5 finalizing the assessment that Rod Fletcher's
6 bureau had put together to come to that
7 determination.

8 And we plan on releasing that in the next
9 couple of weeks to give that in detail.

10 ACTING CHAIRPERSON SMITH: That will be
11 made public along with the -- not just the
12 numbers, but the thought process, the way it was
13 extrapolated?

14 MR. DOLENCE: Yes, sir. It gives a full
15 rational and approach and looking at the different
16 programs and delineates the shortfalls of the
17 different categories of mining.

18 I would like to emphasize that in that
19 study, we have determined a shortfall for land
20 reclamation liability. When you overlay the water
21 liability, that is what makes the bond pool
22 concept bankrupt. And I want to emphasize that
23 difference.

24 ACTING CHAIRPERSON SMITH: Hopefully we
25 are going to get into that a little bit here one

1 way or the another in the course of the day. And
2 if not, I would probably be asking to come back
3 and do it again.

4 What's your department's time frame for
5 this full cost bonding program in terms of
6 implementation timing?

7 MR. DOLENCE: What we want to do is go
8 before the MRAB, which will also put the program
9 up for public comment, receive the input like we
10 would normally do for a policy change and then
11 develop a final policy, which I would hope would
12 occur in the beginning of the next calendar year.

13 It's hard to give a definitive target
14 date because if we are inundated with comments of
15 substantial nature that are viable comments that
16 we need to address, that will require further
17 study.

18 If the comments are not of a substantial
19 departure of what we have proposed, then that
20 target date can be moved up.

21 ACTING CHAIRPERSON SMITH: Would it go
22 through EQB?

23 MR. DOLENCE: No. Policy does not go
24 through the EQB. That would be an internal
25 process.

1 ACTING CHAIRPERSON SMITH: I am going to
2 shift gears a little bit to a couple other areas
3 of this. Act 4396 made it easier for sureties to
4 reclaim abandoned mine sites as opposed to having
5 them go through the bureau of abandoned mine
6 reclamation process.

7 What impact do you foresee this full cost
8 bonding having on that process of a bond
9 forfeiture site?

10 MR. DOLENCE: If I may, I would like to
11 back up a step and talk a little bit about the
12 approach of full cost and that will address your
13 answer.

14 The full cost bonding method will take
15 unit costs that are shown and demonstrated for the
16 department to contract for reclamation work per
17 yard, per lineal foot of creating a ditch,
18 building a diversion channel, sedimentation pond.

19 Taking those unit costs and applying it
20 to the coal mine operator's reclamation plan as
21 proposed.

22 We will look at the maximum liability at
23 that site to determine the required bond needed so
24 the Commonwealth can complete the reclamation as
25 laid out in the statutes.

1 With the inefficiencies associated with
2 contracting and requirements of prevailing wage,
3 there is a likely scenario that in the
4 overwhelming majority of cases that would come to
5 forfeiture under a full cost bonding program, that
6 the surety will have more money available to
7 complete the reclamation than what the
8 Commonwealth would require.

9 Therefore, we would expect to see an
10 increase, not only in surety reclamation, but we
11 anticipate that we would see fewer forfeitures.
12 Historically, we have a forfeiture rate of around
13 10 percent.

14 And with cost full bonding, we project or
15 anticipate that that forfeiture rate would go
16 down. To answer your question, full cost would be
17 better utilized by the surety reclamation
18 provision.

19 ACTING CHAIRPERSON SMITH: You recognize
20 or seem to acknowledge that there would be some
21 debate at least over what these units costs will
22 be, and that that, specifically, there's a
23 difference between the unit cost for BAMR under a
24 government contract versus that coal operator's
25 costs for putting the dirt back in the hole, if

1 you will.

2 MR. DOLENCE: Yes, sir. I am highly
3 sensitized to the lack of complements on the BAMR
4 costs.

5 ACTING CHAIRPERSON SMITH: I am not
6 suggesting -- I am not going there. Clearly the
7 BAMR could operate more efficiently. And I think
8 we have seen some success in that arena. And
9 certainly as they complement the remaining
10 activities and tie them together, we have seen
11 some progress.

12 I am not going to go back on the BAMR
13 deal. But I just want you to acknowledge that
14 there is a difference in cost between those two
15 types of unit costs and that how we go about -- or
16 how you go about, as the department, in
17 establishing those unit costs is going to have a
18 very significant effect on the cost of the bond in
19 the bond market.

20 MR. DOLENCE: We are very sensitized to
21 that criticism, Representative. The unit costs
22 reflect the cost that the Commonwealth, not is
23 making up, but have been received in bids.

24 And I would like to underscore that over
25 50 percent of the proposals received by the

1 department come from active coal operators. So
2 when there is a criticism of the costs, it's
3 interesting because we are mandated through
4 contract and procedures to go for the least cost
5 option.

6 ACTING CHAIRPERSON SMITH: I have just
7 one other question. I apologize to the committee
8 for having a lot there right off the top.

9 Under the full cost bonding scheme, how
10 will you deal with surface structures or other
11 areas of support for underground mining
12 activities, storage buildings, temples?

13 What about some of these other mining
14 related issues that show up in terms of our
15 shortfall in the bond pool, but are not directly
16 related to mining in some cases in the sense that
17 they are not the open pit?

18 How are you going to deal with those
19 extraneous components?

20 MR. DOLENCE: Very good question. I am
21 going to ask Jeffrey Jarrett to respond to that.

22 MR. JARRETT: First of all, our deep
23 mining program is not in Pennsylvania part of the
24 alternative bonding system. Pennsylvania has,
25 since the early '80s, operated a full cost bonding

1 program for the deep mining operations.

2 Under that program and those surface
3 facilities associated with operations covered
4 under our surface mining programming alternative
5 bonding program, we have bonded rate guidelines
6 that specify bond amounts for demolition,
7 structures such as temples, and preparation plants
8 and associated buildings.

9 Those bond rate guidelines have unit
10 costs already developed for sealing of shafts and
11 taking care of all of the extraneous facilities
12 that you are talking about.

13 We have found through the actuarial
14 assessment of our bonding program that those bond
15 rate guidelines currently need to be revised
16 upwards.

17 ACTING CHAIRPERSON SMITH: Thank you. I
18 bring that up because I think it's a useful
19 question I don't know the answer to. I recognize
20 Chairman George for a follow-up.

21 CHAIRPERSON GEORGE: Mr. Dolence, what
22 concerns me -- and, again, I apologize, I haven't
23 read your complete dissertation. But if, in fact,
24 you have already got several of these permits that
25 you have made a decision what the size of the bond

1 will be and things of that nature, that gives me a
2 little bit of concern over the discrimination on
3 the matter in that you and your staff making the
4 decision how big, how small.

5 All I am asking is, are you going to put
6 something down where these members will be able to
7 understand just what criteria you use? Because I
8 don't want to get into the semantics of it because
9 I can.

10 You know I can. Because I have seen what
11 can happen to somebody who doesn't have a friend
12 some place. And we are just here for the
13 environmental protection is what you are all
14 about.

15 It concerns me if you are going to be at
16 your own discretion and say, well, this site here
17 is going to be insisted upon that we provide so
18 much bonding, I worry.

19 I know a coal company in the middle of
20 the state there that has 8 or 9 million dollars
21 worth of bonding. And every time they need
22 another 10 acres, they have to put up 10 more
23 acres of bond because you have them on a prior
24 discharge.

25 And I insist that that discharge was

1 there -- I understand. I am not sticking up for
2 the coal operator. But when they are right, they
3 are right. Now, we have companies that are
4 willing to work with us.

5 I don't want the bond to be any heavier.
6 But you know yourself it appears to me that you
7 are making this one company put up so much bond
8 that when he does go broke, it doesn't matter.
9 You are going to have enough money on the site to
10 take care of it.

11 And by the other token, if you are going
12 to be able to make this decision on your own,
13 don't you think it would be better if you let us
14 know what criteria you are going to use in making
15 that?

16 I understand you are the experts. But we
17 have a right to take issue with that, unless you
18 put it down in writing where we can understand it.
19 I believe that can be somewhat difficult.

20 I would as soon Mr. Smith do something by
21 legislation -- not that I trust him anymore than I
22 trust you.

23 ACTING CHAIRPERSON SMITH: Thank you, Mr.
24 Chairman.

25 CHAIRPERSON GEORGE: But I trust the

1 initiative that he will go through and say that he
2 is elected by 59,000 people to do what he is
3 doing. And you were hired.

4 I am not getting personal, but you know
5 what I am trying -- is there going to be a
6 specific criteria you are going to utilize in
7 letting one of these poor coal guys, coal company
8 know?

9 Are you going to make this decision on
10 scene? Are you going to make this decision on
11 overburden? Are you going to make this decision
12 on cost factor?

13 Right now the top of the ground people
14 are selling coal for 23, \$22 a ton. It doesn't
15 matter to me whether they are selling at 22 or 23
16 or 50.

17 If they are doing damage, they shouldn't
18 do it. We have to worry about that guy that's
19 only getting 22 or \$23 a ton today.

20 The overburden can be destroyed the same
21 as \$23 a ton as \$43 a ton. We have just gone
22 through deregulation. And you know what that
23 means.

24 That means these guys aren't going to be
25 able competitively to get the kind of money they

1 need for a ton of coal. But, again, we shouldn't
2 be ruining the environmental regardless of what it
3 is.

4 You are going to come up with a criteria
5 -- it's the third time I am asking -- that's going
6 to let us know because some us fellows don't know
7 as much as you.

8 MR. DOLENCE: Thank you, Representative
9 --

10 CHAIRPERSON GEORGE: George.

11 MR. DOLENCE: -- George.

12 CHAIRPERSON GEORGE: He's my air
13 conditioning expert and my friend.

14 MR. DOLENCE: We will be coming out with
15 guidelines that will publish the unit costs and
16 the procedure for applying those unit costs to the
17 reclamation plan that's provided by the mining
18 company.

19 I am a bit perplexed though,
20 Representative. I hear you are concerned that we
21 would arbitrarily over bond when last week when we
22 spoke you communicated to me that we didn't have
23 enough bonds out there on --

24 CHAIRPERSON GEORGE: Listen, Mr. Dolence,
25 let's not make this personal. I brought you to

1 task that you made someone put a pass system in.

2 And we told you that that pass system was
3 on all prior mining and that the hydrology
4 shouldn't work. Let's not get personal with this.
5 You know I was right.

6 You spend a million dollars on this pass
7 system, and you have closed it up because it
8 wasn't working. If we are going to make it
9 personal, well, then you found somebody that can
10 fight just as much as you.

11 I didn't bring it personal. I asked you
12 a question. And you brought up the fact that I
13 just asked you last week about this pass system.

14 MR. DOLENCE: I was referring to another
15 permit, Representative.

16 CHAIRPERSON GEORGE: I am going to refer
17 to any permit because you are under law to protect
18 the environment. Not to put coal operators out of
19 business, but to protect the environmental.

20 And that's what I want to do, and you
21 know that. But as a legislator, I have of a right
22 to defend the coal operators. I have a right to
23 defend the environment.

24 And I am going to defend both when they
25 are both right. You don't have any qualm with

1 that, do you?

2 MR. DOLENCE: I have nothing wrong with
3 doing the right thing, sir.

4 CHAIRPERSON GEORGE: I apologize if I
5 took you out of context. But you know you guys
6 can go over the board. You make the decisions.
7 We now have an operator who is bankrupt and you
8 had better pray there is enough money to take care
9 of the environmental and the damage.

10 And you know incidentally, since George
11 got involved, you know you are not going to be
12 holding the bag as bad as you would if I wouldn't
13 have been involved.

14 Would you admit to that?

15 MR. DOLENCE: We have been involved --

16 CHAIRPERSON GEORGE: Will you admit to
17 that? What kind of man with 8 or 9 million
18 dollars in arrears right now is pretty well caught
19 up?

20 MR. DOLENCE: To that fact, yes, sir.

21 CHAIRPERSON GEORGE: Thank you. If you
22 do what you are insisting, I'll be very happy and
23 so will the committee. We want to do what
24 criteria you are going to use so we can better
25 understand.

1 MR. DOLENCE: And it will be published in
2 a couple weeks.

3 CHAIRPERSON GEORGE: We know that you are
4 not going to do anything with purpose or intent to
5 hurt the environment. But we do know that
6 sometimes these things happen.

7 MR. DOLENCE: And we will publish those,
8 Representative, so that a fair application applies
9 equally regardless of both --

10 CHAIRPERSON GEORGE: I hope you would
11 give those to this committee, Bob Dolence, prior
12 to you even attempting to publish them or going
13 before the quality board so that people like Mr.
14 Smith and I can make a decision on whether or not
15 he feels it should be in by statute.

16 ACTING CHAIRPERSON SMITH: He indicated
17 they would not go before the environmental quality
18 board. That was the point of my initial line of
19 questions, Chairman George.

20 MR. DOLENCE: Anything that does need
21 adjustment by regulation will go through the
22 environmental quality board procedures.

23 ACTING CHAIRPERSON SMITH: Thank you.
24 Are we concluded with questions? I just need to
25 recognize a few members that have joined us. I

1 apologize. Bob Freeman was here and had to leave.
2 But he was in attendance.

3 Representative Gene McGill from
4 Montgomery County and Pete Daley, who is from the
5 southwest and the chairman of the Pennsylvania
6 Coal Caucus have joined us.

7 REPRESENTATIVE DALEY: Mr. Chairman, I
8 have a couple questions.

9 ACTING CHAIRPERSON SMITH: Go ahead.

10 REPRESENTATIVE DALEY: My first question,
11 Bob -- it's nice to see this morning. If I ask
12 you a question that may have been asked, please
13 tell me.

14 MR. DOLENCE: I'll answer to my benefit.

15 REPRESENTATIVE DALEY: Thank you very
16 much, Bob. How would the prevention of back
17 pending permits -- I don't know if that question
18 has been asked. How will it effect pending
19 permits?

20 MR. DOLENCE: The discussions that we
21 have had with both bituminous and anthracite
22 associations as well as individual companies has
23 been on the transition from existing permits into
24 the full cost bonding program.

25 When we put the procedures out, we are

1 expecting a thorough debate and discussion on
2 that, the best achieved transition in the full
3 cost bonding.

4 So to layout the exact how we are going
5 to do it, I think would be speculative on my part.
6 We need to have good input and discussions and
7 debate on that to make sure that we don't
8 inadvertently create a situation that torpedoed
9 somebody who is out there right now with an active
10 permit.

11 REPRESENTATIVE DALEY: So you are not
12 sure what type of bonding scheme for these
13 particular permits would be subject to?

14 MR. DOLENCE: Not in detail. We had
15 looked at future bonding increments and future
16 renewals and revisions of permits. But, again,
17 that whole program will be laid out in the
18 material that's going to be published shortly.

19 REPRESENTATIVE DALEY: Will an operator
20 be able to appeal the determination of a bond
21 necessary for reclamation in the bill process?

22 MR. DOLENCE: Two scenarios. If we state
23 the amount of the bond and a company does not feel
24 that it's fair, first of all, we would encourage a
25 discussion at the district mining office level to

1 identify the discrepancy of what the operator or
2 applicant and the department would have.

3 Hopefully, those would be resolved.
4 Because this is going to be a straightforward
5 process. If the operator ends up saying, no, I
6 don't agree and does not post the bond, it is
7 essentially denied, that is an appealable decision
8 to the environmental hearing board.

9 And we also believe that if the operator
10 does not feel that the calculations were done
11 appropriately, but posts the bond any way and
12 the permit is issued, the operator would have the
13 ability to appeal that as well before the
14 environmental hearing board.

15 But what we would like to do is have the
16 discussion at the local level if there is a
17 difference between what the applicant perceives
18 what the bonding amount will be and what the
19 department has calculated.

20 Because we are going to publish the unit
21 costs and apply it to the reclamation plan that is
22 supplied by the applicant so there should not be
23 surprises there.

24 REPRESENTATIVE DALEY: Do you believe
25 that DEP has the resources that are necessary to

1 view permits and make permits basically without
2 delaying the issuance of those permits?

3 MR. DOLENCE: Yes. There will certainly
4 be a start up phase, education internally as well
5 as externally to the program. Scott Roberts has
6 contemplated that and does not feel that it would
7 be a major problem.

8 And we would apply overtime where
9 appropriate to make sure that there were not
10 unnecessary delays in any decisions on that
11 regard.

12 REPRESENTATIVE DALEY: Do you have
13 anything to add?

14 MR. JARRETT: Under the full cost bonding
15 program, we believe that once we make it over the
16 learning curve that Bob talked about that the
17 resources required by both industry and DEP will
18 be less than what it is currently under the
19 alternative bonding system mostly because of the
20 way we plan on implementing the full cost bonding
21 program.

22 Once a bond is posted on site, that bond
23 will be a viable bond for a determined permit,
24 which is five years. So we will be eliminating
25 the need to do bond rollovers and completion

1 reports for bond releases on a regular basis.

2 REPRESENTATIVE DALEY: I am assuming that
3 there is going to be some type of flexibility and
4 timing that would be afforded to operators that
5 would be reconfiguring their proposed plan
6 during this transition to full cost bonding; is
7 that correct?

8 MR. JARRETT: Yes.

9 MR. DOLENCE: In addition,
10 Representative, I would like to add that focusing
11 on minimizing the required bond also results in
12 minimizing the exposed liability at a site.

13 And in the long term operationally, we
14 hope will not be a burden to the industry but will
15 be a benefit to the environmental by having less
16 exposed high wall, less exposed oils.

17 It will be an incentive to keep
18 reclamation as concurrent as practical on the
19 mining site.

20 REPRESENTATIVE DALEY: Under this bonding
21 scheme, the new bonding plan, will surface
22 structures or areas basically support the
23 underground mining activity be bonded also other
24 than just what is happening underground?

25 MR. DOLENCE: As we indicated -- it might

1 have been prior to you arriving here,
2 Representative, the surface support facilities of
3 deeps mines are already under full costs bonding
4 scenario.

5 And we have identified some adjustments
6 that need to be made there. But that program will
7 not fundamentally change.

8 REPRESENTATIVE DALEY: Thank you, Mr.
9 Chairman.

10 ACTING CHAIRPERSON SMITH: Thank you. I
11 have a lot more questions. But seeing how we are
12 way behind, I think we will conclude with that
13 right now.

14 Secretary Dolence, if you wouldn't mind
15 staying close by. We would like to now call up
16 Allen Klein, Director of Appalachian Region,
17 Office of Surface Mine, Federal Agency, along with
18 Bob Biggi, who is the Field Office Director out of
19 Pittsburgh for the federal ASLM program.

20 Gentlemen, would you please identify
21 yourselves for the other members? And if you have
22 any written or any comments, please proceed.

23 MR. KLEIN: Thank you, Mr. Chairman. I
24 am Allen Klein, Regional director for the
25 Office of Surface Mining, Appalachian Region. I

1 would like to introduce Mr. Bob Biggi, Field
2 Office Director here in Harrisburg, Pennsylvania.

3 Mr. Biggi has responsibilities for daily
4 operations on behalf of the Office of Surface
5 Mining and working with the state of Pennsylvania
6 in administering its mining program. My
7 responsibilities extend to the Appalachian Region.

8 By way of a few short comments on the
9 activities associated with the committee hearing
10 today, I would like to first thank the committee
11 for inviting the Office of Surface Mining to take
12 part in these important discussions about
13 considerations on bonding changes under the mining
14 program in Pennsylvania.

15 As has already been stated today, the
16 current program for administering bonding under
17 the mining permit system provides an alternative
18 bonding approach for surface mines.

19 This alternative program involves a
20 reduced level of conventional bond along with a
21 bond pool guaranteed for ensuring the remainder of
22 any reclamation costs that might accrue on the
23 site.

24 In 1991, the Office of Surface Mining
25 issued a formal notice to Pennsylvania DEP

1 regarding the bonding system and the inability to
2 address all forfeiture liabilities including
3 treatment of pollutional discharges on forfeited
4 sites.

5 This concern expressed in what we refer
6 to as a 732 letter was also based on the fact that
7 there are, in addition to forfeited sites,
8 additional sites where long-term treatment of acid
9 mine drainage may become a future problem in the
10 form of bond forfeiture accruing to the bond pool
11 system.

12 OSM recognizes the complexity of the
13 issue. As has been mentioned, the letter was sent
14 in 1991. The office has worked with the state of
15 Pennsylvania routinely on this issue.

16 And it has been brought up in the sense
17 of formal reminders and informal attention to the
18 issue.

19 The Office of Surface Mining agrees with
20 the statements made earlier today by Mr. Dolence
21 on the science being applied to permit decisions
22 today versus those permits that might have been
23 issued in the early '80s.

24 I referred to the magnitude of the
25 program as a legacy that has been created not just

1 in Pennsylvania, but in some other states that
2 accrued early on in the regulatory program, early
3 1980's when permitting was moving at a very rapid
4 pace in order to get compliance under the new
5 federal statute.

6 And, of course, as Mr. Dolence says,
7 there's been improved science and technology
8 brought to the permit review process. So we have
9 a legacy that includes a serious acid mine
10 drainage problem that is addressed in the
11 corrective actions that OSM has requested that
12 need to be addressed.

13 In the sense of change, we have been
14 working with the office of recent infrequent
15 meetings to discuss the proposed shift to full
16 cost bonding.

17 We -- OSM -- are interested in
18 considering any and all options that are available
19 for doing business in a different way under the
20 course of limitations of the federal Surface
21 Mining Act.

22 And as we proceed, we are more than
23 willing to provide any technical assistance to
24 further develop options and consider how business
25 should be carried forward.

1 And in closing on my comments, I am just
2 going to read a paragraph from the 1991 letter
3 that refers to the concerns in relationship to the
4 bonding program overall.

5 It states as follows: Section 509(c) of
6 the Surface Mining Control and Reclamation Act
7 authorizes as secretary to improve an alternative
8 bonding system if it will achieve the objectives
9 and purposes of the otherwise mandatory
10 conventional bonding program.

11 As set forth in federal regulation 30 CFR
12 part 800.11, this provision means that the
13 alternative bonding system must (1) show that
14 sufficient funds are available to complete the
15 reclamation plan for any areas in default at any
16 time and (2) provide a substantial economic
17 incentive for the operators to comply with all
18 reclamation requirements.

19 And it is in that context that the Office
20 of Surface Mining has been trying to work with the
21 state of Pennsylvania to work on all possible
22 options.

23 With that, I will be happy to consider
24 any questions.

25 ACTING CHAIRPERSON SMITH: Thank you, Mr.

1 Klein. And I, indeed, appreciate you folks taking
2 the time to share with us on this important issue.
3 Certainly beyond the specific issue of full cost
4 bonding, the whole issue of acid mine drainage
5 treatment and how we go about it is a big one for
6 us in Pennsylvania and elsewhere.

7 You mentioned that 732 notification.
8 Have any other states with AMD received that same
9 notification?

10 MR. KLEIN: Yes, sir, we have sent them
11 out, a letter of the same nature in the state of
12 West Virginia.

13 ACTING CHAIRPERSON SMITH: But other
14 states have AMD but haven't received that
15 notification?

16 MR. KLEIN: That's correct.

17 ACTING CHAIRPERSON SMITH: It's my
18 understanding -- and correct me if I'm wrong --
19 that most of the states with mining have achieved
20 primacy or took it upon themselves to take primacy
21 and run their regulatory program within the state;
22 however, Tennessee is one state that does not.

23 And that's a state that the Office of
24 Surface Mining actually runs the permitting and
25 regulatory review process; is that correct?

1 MR. KLEIN: That's correct.

2 ACTING CHAIRPERSON SMITH: How does
3 Tennessee, under OSM, handle the bonding process?

4 MR. KLEIN: Representative Smith, the
5 Tennessee program administered by OSM has used
6 full cost bonding as the mechanism for addressing
7 all bonding issues.

8 As part of the acid mine drainage issue,
9 we also have had on some sites the accrual of
10 unanticipated long-term drainage problems. Our
11 inventory at time projects eight sites that have
12 this long-term problem.

13 And in addition to the bond that is
14 available on the site, we also are in the process
15 of addressing the option of some type of treatment
16 trust fund approach on these eight sites.

17 ACTING CHAIRPERSON SMITH: So the full
18 cost bonds that OSM would require on a permit that
19 came about in Tennessee two or three years ago,
20 let's say, would not have projected covering a
21 potential acid mine drainage problem.

22 It would have been specifically for the
23 land reclamation?

24 MR. KLEIN: The bond as calculated on a
25 permit at the time that the permit is constructed

1 for award or decision making, is a cost
2 calculation of all known reclamation
3 responsibilities.

4 As I mentioned, on some sites you have
5 the development of an unanticipated problem in the
6 sense of acid mine drainage and long-term
7 treatment.

8 That requires the bond to then be
9 adjusted some time in the future when the
10 unanticipated event occurs.

11 ACTING CHAIRPERSON SMITH: I'll take that
12 as somewhat of a yes. But it doesn't specifically
13 cover bond --

14 MR. KLEIN: At the time when we issue a
15 permit, we are not to be issuing -- and there are
16 specific findings under SMACR to be issuing a
17 permit that acknowledge we're creating pollutional
18 discharge.

19 So the bond cannot have that --

20 ACTING CHAIRPERSON SMITH: I follow that.
21 As the federal government, do you folks have any
22 guidance on how to calculate the bonds in terms of
23 do you have guidance documents in terms of how
24 those are calculated?

25 MR. KLEIN: The Office of Surface Mining

1 does have a guidance manual that's been issued
2 years ago through the states on calculations of
3 site specific bonds.

4 And we are presently updating that now.

5 ACTING CHAIRPERSON SMITH: Do you use
6 cost units such as what was discussed with
7 Secretary Dolence?

8 MR. KLEIN: Yes, sir.

9 ACTING CHAIRPERSON SMITH: A few years
10 ago, the Pennsylvania legislature passed
11 legislation that authorized operators to establish
12 trust funds to provide for the treatment of post
13 mining discharge.

14 Has that provision been approved by OSM?

15 MR. KLEIN: That provision has not at
16 this time been approved by OSM. We took
17 consideration of that issue, I believe it was in
18 1994, and asked the state to further submit
19 operating details on all policies, directives, and
20 procedures for implementing that treatment trust
21 fund approach.

22 That has now been done. And we are in
23 the midst of an exchange of the issues associated
24 with that program at this time.

25 ACTING CHAIRPERSON SMITH: Thank you. I

1 appreciate your responses to my questions. Any
2 questions down to my left here? Chairman George
3 is recognized.

4 CHAIRPERSON GEORGE: Just one question,
5 what is your purpose? Do you oversee the
6 Department of Environmental Protection?

7 MR. KLEIN: The Office of Surface
8 Mining's responsibility, once a state mining
9 program is approved as being a primary, regulatory
10 authority, our responsibility in the federal
11 government is to conduct oversight on the state's
12 industrial --

13 CHAIRPERSON GEORGE: Is there any other
14 function? As a matter of conformance, in other
15 words, if somebody calls you and says there's a
16 problem, do you people come in?

17 MR. KLEIN: Yes, Representative George,
18 we do provide technical assistance to the states
19 on a routine basis on problems that require
20 attention.

21 We are also, by statute, responsible for
22 responding to citizen complaints if they are filed
23 with the Office of Service Management. We do that
24 in concert with the state department of --

25 CHAIRPERSON GEORGE: What you are saying

1 is, I should call you and say, hey, there is a
2 problem, that you will dispatch somebody to come
3 in and look at that problem?

4 MR. KLEIN: Yes, Representative George,
5 we will be doing that. We have inspectors located
6 --

7 CHAIRPERSON GEORGE: Has there been a
8 change in policy?

9 MR. KLEIN: With respect to?

10 CHAIRPERSON GEORGE: Well, I remember
11 calling Mr. Biggi years ago and he told me he
12 couldn't come in unless DER asked him.

13 That reminded me of the fox looking at
14 the chicken coupe. I am glad to see now there is
15 a change in policy. If you want him to answer it,
16 you can.

17 Because my memory is a little bit wider
18 than a gnat's ear. And I can remember him telling
19 me that. I want to know if that is still the way
20 it is or not.

21 Now if call or anybody else calls, you
22 will come in and look?

23 MR. KLEIN: Representative George, the
24 Office of Surface Mining does have a very explicit
25 policy on how we work with the state on citizen

1 complaints that may be filed.

2 And we take every opportunity to give the
3 state the opportunity to deal with the issue
4 first.

5 CHAIRPERSON GEORGE: If they don't deal
6 with the issue.

7 MR. KLEIN: Then we have --

8 CHAIRPERSON GEORGE: Somebody wouldn't be
9 calling you if they were dealing with the issue,
10 right, wrong or indifferent. So, if you have a
11 policy -- and that's what Mr. Smith hears about.
12 Policy kills a lot of roosters.

13 We want something that you have to follow
14 the same as us.

15 MR. KLEIN: We have that --

16 CHAIRPERSON GEORGE: If I call you and
17 say, well, DEP didn't tell us there is a problem,
18 we are not coming in?

19 MR. KLEIN: No, sir. What we have, sir,
20 is a process that by statute is set up as a 10 day
21 notice process. And to give a very general
22 description, when we receive a citizen complaint,
23 by statute and regulation we are required to
24 forward that complaint to the state and have the
25 state conduct an investigation and respond to the

1 federal government within 10 days.

2 CHAIRPERSON GEORGE: Do you authority
3 over the department in any way?

4 MR. KLEIN: We do oversight. Yes, Mr.
5 George, we do in the sense of our oversight
6 responsibilities.

7 CHAIRPERSON GEORGE: What kind of
8 authority do you have over the department?

9 MR. KLEIN: Our authorities lie with
10 respect to approval of the state program and any
11 amendments thereto as well as to review the
12 oversight.

13 And in an oversight capacity, their
14 performance in administering the program on a
15 day-to-day basis.

16 CHAIRPERSON GEORGE: Sir, my big
17 contention today is and it will always be water.
18 Nobody can look up a dead horse's ear any further
19 than you I am sure.

20 Whenever somebody calls me and tells me
21 they lost their water and DEP sends in good
22 people, they seem like they have a telegraphic eye
23 sight where they can remember what they see and
24 say, well, this didn't happen.

25 Well, you know, my answer is if, in fact,

1 mining didn't cause it -- and sometimes it didn't
2 -- but can you explain why it didn't cause it?

3 That's all I need to know. If somebody
4 says, no, this didn't happen, can you tell me that
5 you have the authority to tell me what did happen?

6 MR. KLEIN: Yes, sir, Chairman George, we
7 do have the ability to be involved in those
8 citizen complaints.

9 CHAIRPERSON GEORGE: You have the
10 authority to do that?

11 MR. KLEIN: Yes, we do. And we would be
12 happy to provide technical assistance to the state
13 and to be involved in the issues that are brought
14 to our attention through the citizen complaint
15 process.

16 CHAIRPERSON GEORGE: Thank you very much.

17 ACTING CHAIRPERSON SMITH: Thank you
18 again, if there are no other questions, Mr. Klein
19 and Mr. Biggi, we appreciate you being here.

20 MR. KLEIN: Thank you for the
21 opportunity.

22 ACTING CHAIRPERSON SMITH: I would point
23 out and recognize that Representative Vitali has
24 joined us from Delaware County.

25 I would call on Mr. John Hanger, Citizens

1 for Pennsylvania's Future, to offer his
2 perspective on the full cost bonding proposal.
3 Mr. Hanger, if you would, if you have someone with
4 you, please introduce them.

5 MR. HANGER: Certainly. Thank you very
6 much, Mr. Chairman. It is a pleasure to be here.
7 With me is Kurt Weist, who is senior attorney at
8 PennFuture.

9 He and I will available to answer any
10 questions that you may have. As an expert in this
11 area, I think it would be another resource for
12 this hearing.

13 I appreciate the interest in the subject.
14 It's, obviously, an important one, both to the
15 coal industry, to jobs both in industry and
16 outside industry and also to citizens who are
17 concerned about water.

18 Is it all right if I just wait to
19 continue until the testimony is passed out?

20 ACTING CHAIRPERSON SMITH: As long as you
21 promise not to read 25 pages.

22 MR. HANGER: I have 10 pages double
23 spaced. In addition to the 10 page piece of
24 testimony, we have provided for the committee
25 three attachments which I am not going to read,

1 but which are available to look at.

2 One is the 1993 actuarial study that was
3 contracted for by DEP, which I think is the most
4 comprehensive present document we have about the
5 status of the fund that we are talking about
6 today.

7 The second attachment is a letter from
8 DEP dated 1998 where there is, I think, a
9 revealing discussion of this issue.

10 The third is PennFuture's notice of
11 inquiry letter -- notice of intent to sue letter
12 that was filed on behalf of five clients
13 PennFuture is now representing in federal court
14 around this matter.

15 With that, let me say I am John Hanger.
16 I am president and CEO of Citizens for
17 Pennsylvania's Future. PennFuture is a state-wide
18 public interest organization, which advances
19 policies to protect and improve the state's
20 environment and economy.

21 PennFuture is involved in public
22 education and advocacy on the great choices facing
23 us as we try to improve both our quality of life
24 and our standard of living.

25 We assist citizens to become advocates

1 for policies that preserve our natural resources
2 and promote prosperity. Finally, to assure that
3 those policies are implemented and enforce,
4 PennFuture litigates cases before regulatory
5 bodies and in the state and federal courts.

6 One of those case which we filed in
7 federal court here in Harrisburg on October 13
8 addresses the bonding program adopted by
9 Pennsylvania that is supposed to protect our
10 environment, our economy, and, yes, importantly
11 Pennsylvania's taxpayers from the potentially
12 damaging effects of coal mining.

13 In that lawsuit, we represent five
14 organizations profoundly effected by the
15 environmental damage of coal mining: the
16 Pennsylvania Federation of Sportsmen's Clubs,
17 Pennsylvania Trout, the Pennsylvania Chapter of
18 the Sierra Club, the Mountain Watershed
19 Association, and the Tri-State Citizens Mining
20 Network.

21 I should note that the Pennsylvania
22 Federation of Sportsmen's Clubs and Pennsylvania
23 Trout wanted to participate in this hearing, but
24 were told that it was unlikely that time would be
25 available at the end of this morning's agenda.

1 Both organizations have instead submitted
2 written testimony, which I understand will be
3 included in the official record of today's
4 hearing.

5 Pennsylvania's coal mine bonding system
6 is supposed to do two things. First, it is
7 supposed to require mining companies to post bonds
8 that are sufficient to give them an economic
9 incentive to reclaim their mines fully rather than
10 to abandon them.

11 Second, if operators fail to fulfill
12 their responsibilities, the bonding system is
13 supposed to have adequate funds on hand to assure
14 prompt and complete reclamation of mine sites and
15 treatment of any post-mining discharges without
16 resorting to taxpayer money.

17 In its simplest terms, the bonding system
18 is supposed to require that mine operators bear
19 all of the costs of their operations and to ensure
20 that those costs are not foisted upon nearby
21 residents, tourists, or taxpayers in the form of
22 unclaimed mines, untreated discharges or higher
23 taxes.

24 At least that is the way the bonding
25 system was supposed to work once the state took

1 over primacy in the regulation of mining
2 operations from the federal government in 1982.

3 It is important to understand that this
4 is not simply a matter of bureaucratic choice.
5 The law requires under the federal Surface Mining
6 Control and Reclamation Act of 1977, the
7 Department of Environmental Protection is required
8 to "assure that it will have available sufficient
9 money to complete reclamation and must provide a
10 substantial economic incentive" for mine operators
11 to comply with reclamation regulations.

12 Failure to fulfill this responsibility
13 constitutes a failure to perform a duty under
14 federal law.

15 The more PennFuture and its lead attorney
16 on the issue, Kurt Weist, looked into the matter,
17 the clearer it became that the bonding system had
18 not been in compliance with these requirements for
19 a long time. And I think today there will be no
20 contest to that basic fact.

21 Now, this isn't just our opinion.
22 Government documents show that regulators were
23 well aware of the fact that the bonding program
24 did not satisfy the requirements of the law.

25 Beginning in 1990, DEP's own studies made

1 it clear that the bonding system was in trouble.
2 In 1991 and again in 1995, the federal Office of
3 Surface Mining, which is responsible for
4 overseeing state coal mining regulatory programs,
5 formally notified DEP that its bonding system did
6 not meet federal standards.

7 The language in the studies, memos, and
8 letters found in the files of DEP and OSM ought to
9 send a chill through anyone charged with
10 protecting the public purse.

11 For example, in 1991, OSM required DEP to
12 submit proof of "the soundness or financial
13 solvency" of the bond fund. That was a clear sign
14 that people weren't sure the bond system could pay
15 for its liabilities.

16 Also in 1991, a DEP memorandum reported
17 that "evaluations of the fund's solvency have
18 indicated an existing as well as a projected
19 long-term shortage of revenues."

20 In early 1993, DEP increased the per acre
21 reclamation fee to check the growth of the bond
22 fund's deficit - a move OSM approved as "an
23 intermediate step to keep the shortage in the fund
24 from further deteriorating."

25 In the summer of 1995, a team of

1 actuaries was brought in to analyze the fund. It
2 determined that the shortfall between the bonding
3 system's assets and its potential liabilities was
4 so great that the fund was technically insolvent.

5 The low end estimate -- and I emphasize
6 the low end estimate -- of the shortfall in this
7 actuarial study was \$1 billion.

8 In 1995, OSM chided the state because "no
9 action had been taken in response" to the studies
10 documenting the bond fund's insolvency, but OSM
11 itself failed to take further action against the
12 state.

13 If the regulatory and bonding program had
14 worked properly, and mine operators had been
15 required to cover the full costs of their
16 operations, the bond fund should not have
17 developed a shortfall.

18 But perhaps the greater tragedy in this
19 story is that if government regulators had acted
20 quickly and decisively when the evidence of the
21 growing deficit first appeared, we would not be
22 here today.

23 And OSM's and DEP's own documents show
24 that evidence was certainly apparent beginning in
25 1991.

1 But instead they allowed the problem to
2 grow. And as a result, Pennsylvania now has a
3 huge problem to tackle.

4 It was against this background of agency
5 inaction that on June 3, 1999 PennFuture sent DEP
6 and OSM a notice of intent to file a lawsuit on
7 behalf of its clients.

8 As required by law, the letter provided
9 formal notification that PennFuture, acting of
10 behalf of five client organizations I mentioned
11 earlier, would file suit in court to compel the
12 agencies' compliance with the laws governing the
13 bonding program.

14 The notice of intent should not have come
15 as a surprise. Eight months earlier, a DEP
16 official had warned the Pennsylvania Coal
17 Association that "the risk, and I believe certain
18 consequence, of not dealing with this problem now
19 and in earnest is the real possibility that some
20 court will eventually decide the issue for us.
21 The dog is no longer sleeping."

22 He was right. And we provided the letter
23 to you. The letter is one of the attachments.

24 When we sent out the letter of intent, our
25 hope was that DEP would dust off its actuarial

1 study, dig out the reports of an OSM states
2 workgroup and two internal DEP reviews of
3 mechanisms for restoring the bond fund to solvency
4 and sit down to negotiate a comprehensive solution
5 to the problem.

6 Then we waited. We waited more than
7 twice the 60 days that the law requires between
8 sending a letter of intent and formally filing a
9 lawsuit.

10 Over those four months, we asked DEP
11 repeatedly to explain the changes to the bonding
12 system it intended to make or propose in order to
13 solve the insolvency problem.

14 We heard about more studies, but we saw
15 no proposal of strategies for tackling the
16 staggering deficit.

17 When we indicated that our patience was
18 wearing thin, DEP said that it was working on a
19 letter that would present a concrete step that we
20 would be wise to consider before filing any suit.

21 Despite the fact that the legal clock was
22 ticking, we still waited. Then on October 6, 1999
23 DEP announced to the news media that it was
24 initiating a full cost bonding program that would
25 apply to all mining operations issued permits

1 after the new program went into effect.

2 We heard about this new DEP program the
3 same way everybody else did. We heard it on the
4 news. DEP later provided a letter and a briefing
5 in which it outlined how the proposed full costs
6 program would differ from the current alternative
7 bonding system.

8 Pennsylvania's current bonding system is
9 called an alternative system because it
10 supplements site-specific bonds posted by the mine
11 operator with a bond pool that can be used at any
12 surface mine in the Commonwealth.

13 Today, the source of revenues for the
14 bond pool is a non-refundable, \$100 per acre
15 reclamation fee that is collected when a permit is
16 issued.

17 The rates for the site-specific bonds,
18 which start at \$3,000 per acre for coal extraction
19 areas are established in a schedule based on the
20 use of the area and the depth of excavation.

21 As it has been explained to us, DEP's
22 full cost bonding program would set the required
23 bond amount at the actual cost of reclaiming the
24 bonded area, which will be calculated on a
25 site-by-site basis.

1 It also would require operators to
2 increase the bonds to guarantee long-term
3 treatment of any discharge from the bonded area.
4 But there is one critical caveat. The new full
5 cost program would apply only to areas that are
6 bonded after the program takes effect. And it
7 would not apply to the re-permitting of existing
8 sites.

9 At least that's what was explained to us.
10 And I have to say Mr. Dolence's testimony today
11 throws some of that explanation into doubt.
12 Currently the issue of transition is still up for
13 grabs.

14 That point bears repetition. As DEP has
15 explained the full cost bonding program to us, it
16 only applies to mines that are permitted and
17 bonded in the future, not to existing sites.

18 The main problems with the bonding
19 system, however, relate to areas that already have
20 been bonded. The system fails to treat existing
21 discharges from bond forfeiture sites and it has a
22 staggering projected deficit relating to hundreds
23 more discharges that also exist today.

24 Right now there are reportedly 60 or more
25 untreated discharges on dozens on primacy mine

1 sites where operators have forfeited their bonds
2 and left cleanup to the state.

3 When one company alone, Glacial Minerals,
4 went bankrupt in the early 1990's, it left behind
5 28 mine sites with post-mining discharges in
6 western Pennsylvania.

7 But the bonds posted by Glacial were so
8 deficient that the reclamation plan ultimately
9 accepted by DEP called for treating discharges
10 from only 3 of the 28 sites.

11 Government reports say that an additional
12 300 or more bonded sites have significant acid
13 discharges that, for the moment, are being
14 treated.

15 If the operators cease treatment, those
16 sites would dump up to five million pounds of acid
17 per day into Pennsylvania's streams. There is no
18 way the bond fund, in its current condition, could
19 prevent more than a fraction of the degradation
20 and destruction those figures represent.

21 That is why the actuaries concluded in
22 1993 that "the existing bonds provide relatively
23 little protection to the public."

24 This is the awful possibility that looms
25 over Pennsylvania Coal Country. This is what

1 PennFuture and its clients want to assure never
2 happens.

3 Full cost bonding of future mining
4 operations may be necessary in order to prevent
5 the bonding system's existing deficit from
6 growing.

7 If you hear from the witnesses following
8 me that insurance companies will not write bonds
9 at full cost amounts or that coal companies cannot
10 afford to post full cost bonds, you must ask what
11 that says about the true risks of the activity and
12 who is bearing them today.

13 Such claims certainly provide no reason
14 to continue sweeping the bonding program's
15 problems under the rug.

16 When it comes to those longstanding
17 problems, it is crucial to understand that by
18 itself, DEP's full cost bonding proposal cannot
19 fix them. It does not raise a penny to cover the
20 \$1 billion shortfall already identified in the
21 bond fund.

22 In contrast, the existing authority to
23 use an alternative bonding system gives DEP -- or
24 technically the Environmental Quality Board -- the
25 power to address the existing deficit by taking

1 steps to increase the revenues flowing into the
2 statewide bond pool.

3 DEP already has broad authority under the
4 law to use a number of mechanisms to fund its bond
5 system. Those methods include increasing the \$100
6 per acre permit fee or like West Virginia, Ohio,
7 and Maryland using severance fees to augment the
8 fund.

9 West Virginia raises about four and
10 one-half million dollars per year for its
11 state-wide reclamation fund through an assessment
12 of just three cents per ton of coal produced.

13 DEP has proposed to address just one
14 piece of a much larger puzzle that must be solved
15 if we are to avert another environmental and
16 economic calamity in Pennsylvania.

17 What Pennsylvania needs is a
18 comprehensive plan to assure that the entire --
19 emphasize the entire -- bonding system governing
20 both future sites and the many existing sites with
21 long-term liability meets the law's requirements.

22 DEP's full cost bonding proposal may
23 rightfully be part of that plan, but it cannot be
24 the entire plan. Solving bonding crises will
25 require much more.

1 The sportsmen and citizens in our
2 coalition want DEP to use all means at its
3 disposal to make sure the bond fund is made
4 solvent again and remains so in the future.

5 We make this demand because the price of
6 DEP's dereliction is very real, not an
7 abstraction. The damage is there to be seen in
8 lifeless streams, in hulking mountains of coal
9 waste, in landscapes buckling above subsiding
10 mines and in unreclaimed craters that pock the
11 countryside.

12 But that's not all of the story. You
13 don't often hear about the economic damage acid
14 mine pollution and mine abandonment cause. The
15 economic cost is the final, cruel twist in the
16 fate of Coal Country and its people.

17 They bear the brunt of the environmental
18 destruction. And then because their environment
19 is damaged, economic development passes them by.

20 Consider the second largest industry in
21 Pennsylvania today -- tourism. According to
22 Lieutenant Governor Schweiker, the tourism
23 industry has an economic impact of more than \$27
24 billion in Pennsylvania and creates 465,000 jobs
25 with a yearly payroll of more than \$9.5 billion.

1 But counties with ravaged landscapes and
2 dead streams don't share fully in the tourism
3 economy. The differences are so real that in
4 1994, the Fish and Boat Commission set out to
5 measure the impact of acid mine pollution of
6 fishing and boating, just fishing and boating.

7 It studied 2,167 miles of streams and
8 rivers impaired by mine drainage and determined
9 that each year the surrounding communities lost
10 \$68.5 million in revenue - money that would have
11 been spent by fishermen and boaters.

12 When that money passes through the
13 multipliers -- the number of goods purchased, jobs
14 created, taxes paid -- the impact soars several
15 fold.

16 The Mill Creek watershed in Clarion and
17 Jefferson Counties is one example of the way
18 untreated, unreclaimed mines despoil the land and
19 water and stunt economic hopes.

20 In the words of a report prepared for a
21 development grant from the U.S. Department of
22 Agriculture, "the area is economically, socially,
23 and environmentally disadvantaged due in large
24 part to past mining activity and the declining
25 coal mining industry".

1 For the past decade, the residents of
2 Mill Creek have been struggling to reclaim their
3 watershed. More than \$600,000 in state, federal,
4 and foundation money has gone into reclamation
5 projects. The sweat equity invested by residents
6 is incalculable.

7 Now there is a master plan to be funded
8 in large part by the federal Agriculture
9 Department that will invest \$7.3 million in a
10 comprehensive program to clean up the Mill Creek
11 watershed.

12 That's a lot of money - equal to nearly
13 half of the federal funds spent on all acid mining
14 drainage projects in Pennsylvania between 1995 and
15 1998.

16 Despite the hefty price tag, the USDA
17 estimates that the economic benefits of restoring
18 the watershed will far exceed its costs.

19 Much of the progress and the investment
20 that has occurred in the Mill Creek watershed --
21 and the hope for a brighter economic future --
22 could be undone if treatment of two mine
23 discharges in the headwaters of the Mill Creek
24 watershed is not guaranteed.

25 The operator of one of the sites,

1 Doverspike Brothers Coal Company, recently went
2 bankrupt, leaving behind a bond of only \$35,000 to
3 guarantee perpetual treatment of a discharge that
4 fortunately has abated during this year's drought.

5 The other site poses a much greater
6 threat. There, several discharges have to be
7 collected and pumped to treatment facilities by
8 the mine operator.

9 But the \$60,000 bond posted by the
10 operator, which is supposed to guarantee perpetual
11 treatment of the discharges, is insufficient to
12 pay for one full year's worth of treatment
13 according to an OSM estimate.

14 Unfortunately, this mine has been labeled
15 by OSM as a major impact site, one where "a
16 significant adverse impact would occur if
17 treatment were ceased."

18 For the people of the Mill Creek
19 watershed who are well aware of what happened with
20 Glacial Minerals, those are chilling words.

21 This scenario, with one variation or
22 another, could be repeated over and over
23 throughout the coal-producing counties. DEP has
24 forfeited the bonds at dozens of primacy sites
25 with untreated post-mining discharges.

1 Another 300 mines have the potential to
2 pour sulfuric acid into rivers and streams if they
3 go untreated.

4 The bonds posted for several huge open
5 pit mines are millions of dollars below the amount
6 the state would need to fill and regrade the pits.
7 And the statewide bond pool can barely begin to
8 make up the difference.

9 And when it comes to surface subsidence
10 from underground mining, DEP recently proposed a
11 policy that inexplicably departs from the full
12 cost approach it plans to take from surface mines.

13 Among other defects, DEP's proposal for
14 calculation of subsidence bonds overlooks the need
15 to provide a financial guarantee for restoring
16 streams that are damaged or dewatered by mine
17 subsidence.

18 PennFuture and its clients will invoke
19 the full power of the law to assure that the
20 bonding program does what it is supposed to do:
21 prevent mines and mine discharges from being
22 abandoned, unreclaimed, or untreated and the costs
23 transferred to the taxpayers of this Commonwealth.

24 We hope that the General Assembly and the
25 members of the committee will work with us toward

1 this goal.

2 We again appreciate this opportunity to
3 testify today.

4 ACTING CHAIRPERSON SMITH: Thank you, Mr.
5 Hanger. I certainly appreciate the time and
6 effort that you put into the presentation. You
7 have covered a lot of ground.

8 I just wanted to preface my questions
9 with one statement. I think most of the members
10 of this committee and speaking certainly for
11 myself, our interest is in seeing that
12 Pennsylvania develops a program to address the
13 past mining problems as well as one that will not
14 create additional problems into the future.

15 Once we get into that, of course we also
16 have to balance it with other economic and energy
17 related issues. And I know with your history at
18 the PUC, you are very familiar with some of those
19 components of what we are dealing with here.

20 And it's very complex and something
21 that's not easy to resolve. One of the things
22 that I tend to do to try to deal with this subject
23 and one that I hope that we will be able to make
24 some headway on is, I tend to divide the issue
25 into three segments: one is pre-Act, pre '77,

1 let's say to draw a line, to pick a date roughly.

2 The second would be the area between then
3 and, say, 1991. And that date is kind of a little
4 bit gray. At that period of time or around that
5 period in time is when the technology in terms of
6 being able to predict what the effects of mining
7 might do in terms of when it turned the corner.

8 And since that date -- and I am referring
9 to the Post Mortem Study, which I am sure you are
10 familiar with -- since that date, the problems
11 into the future have been significantly reduced.

12 I would first ask you to comment on that
13 characterization somewhat and to see if we have
14 some mutual terminology or view of where the
15 problems lie.

16 MR. HANGER: Sure. Well, first let me
17 say that we certainly agree with you that this is
18 (A) an important subject. I think you are doing
19 the right thing by having a hearing, (B) we think
20 it is a complex subject.

21 And I think today that you have touched
22 on the interest and values that are part of this
23 conversation.

24 And I have no disagreement with that
25 introduction you made before you laid out the

1 three parts or the three pieces of the chronology.

2 In terms of also your view that it's
3 important to make sure that the future mining
4 operations don't add to the existing problem, we
5 also agree with that 100 percent.

6 We are certainly very interested in
7 ensuring that any future permits, both with
8 improved technology for prediction and hopefully
9 with perhaps improved regulatory processes for
10 bonding, ensure that we don't add to the existing
11 inventory.

12 Our suit -- and I am not going to get
13 into all of the crux of the suit today -- I think
14 we will be well beyond the scope of this hearing
15 and probably somewhat inappropriate.

16 But our suit is primarily concerned about
17 many mine sites that have discharges or could have
18 untreated discharges still being treated today
19 that started that were identified post primacy,
20 not all of them.

21 But most of the problem that we have
22 identified is a post-primacy 1982 problem. Mr.
23 Weist would like to follow that up.

24 MR. WEIST: Very briefly. The dates that
25 you gave, I think in general terms are accurate,

1 you know, rough terms. That's when the corner
2 began to be turned.

3 And, although, we are adversaries with
4 DEP in a lawsuit, we recognize that the technical
5 personnel, the managerial personnel of OSM and DEP
6 have been part of the forefront nationwide in
7 advancing mine drainage prediction technology.

8 The mine drainage problems that our
9 lawsuit addresses comes from both pre-primacy and
10 primacy sites. But there are a lot of primacy
11 sites out there where the mine drainage prediction
12 at the time said there would be no discharge,
13 there's now discharge, and there's virtually no
14 bond to deal with a perpetual liability.

15 ACTING CHAIRPERSON SMITH: Of course, you
16 recognize, I am sure, that one of the catch 22s of
17 this situation is that -- the gentleman from OSM
18 was walking around the edge of this. I think can
19 I probably say it more directly.

20 The regulator doesn't have to require a
21 posted bond to treat water because they can't
22 issue a permit if they know there's going to be
23 bad water coming off of it.

24 MR. WEIST: Absolutely.

25 ACTING CHAIRPERSON Smith: Now, at one

1 time, science wasn't very good, and it was a
2 guess. Prior to that, there was no science at
3 all. It was just go where you want to go.

4 Today -- and that's why I used the '91
5 date. And I appreciate that you more or less
6 accept that from this day forward or from '91,
7 say, forward the predictability was much more
8 quality and, therefore, we run into that this
9 catch 22.

10 So when you look at the fact that the
11 permit was issued, the permit was issued. It was
12 not supposed to have bad water on it. It was
13 going to have bad water on it, the permit should
14 not have been issued.

15 Do we agree on that?

16 MR. WEIST: Yes.

17 ACTING CHAIRPERSON SMITH: Then all of
18 the sudden, you have the water that came off those
19 permits that were rightly or wrongly issued --
20 maybe the best science in the world wouldn't have
21 predicted it -- plus the pre-primacy or the
22 pre-Act sites, the old stuff from going back to
23 World War II, whenever the federal government
24 didn't allow you to backfill a mine during World
25 War II because it took too much energy.

1 Some of this stuff goes way, way back.
2 Although I agree that the bulk of it is a little
3 more new than that. We have a cost that we now
4 have to deal with, a cost to the Commonwealth of
5 Pennsylvania and to whomever, users of energy,
6 industry, whomever.

7 I guess what I would like to next figure
8 out is those costs that were unforeseen, those
9 pre-Act, pre-'77 problems, would you view those as
10 a form of -- I guess the term I have heard in the
11 past was environmental externality?

12 Is that an external costs?

13 MR. HANGER: First, not all of the
14 discharges that were unforeseen occurred after
15 1977. I mean, not all of them were pre-Act. In
16 fact, many of the ones that were identified as a
17 problem right now were post-1977.

18 I want to make sure --

19 ACTING CHAIRPERSON SMITH: I believe I
20 stated that, yes.

21 MR. HANGER: And we believe that the law
22 establishes that the purpose of the bonding
23 program is to try to, in the first instance,
24 internalize all costs of mining to the operator.

25 This is the basic principle of doing

1 business. It certainly, when I was on the Public
2 Utility Committee, how we tried to set rates.
3 Those who caused costs, paid for them.

4 And you only shift costs when it was
5 absolutely impossible to attribute those costs to
6 those who caused them or for some overriding
7 public policy reason.

8 The shifting of costs is something that
9 concerns us. We are interested in trying to find
10 resolutions to this. And it probably is the case
11 that there are certainly costs right now that
12 there is no operator around to pay for them.

13 It has to be dealt with. And that
14 further complicates the problem. I think it is
15 correct to the extent we probably agree that not
16 all of these dollars -- and they are huge -- are
17 going to be recoverable solely from those who
18 caused the costs.

19 ACTING CHAIRPERSON SMITH: I appreciate
20 that you acknowledge that. Because I was doing a
21 little digging around and looking at some past
22 comments.

23 And I came across one when you were with
24 the PUC dealing with energy issues, obviously.
25 You were actually warning that some are pressuring

1 the agency to enact regulations to raise
2 electricity bills to reflect the cost of
3 environmental externalities.

4 And that's why I was inquiring as to
5 whether or not that was then, and this is now.

6 MR. HANGER: No. Again, in our view,
7 these are costs that are internalized to the costs
8 of operation. Indeed, the law expects that the
9 costs of mining and reclamation must be included
10 in the bonding program. The law itself has
11 internalized those costs.

12 So in terms of the future energy costs of
13 the Commonwealth, I think that's an interesting
14 question. I certainly could talk at length about
15 that.

16 I think ultimately the market is going to
17 decide, frankly, which fuels have dominance in the
18 marketplace.

19 And those fuels that can be competitive
20 will do well. Those fuels that are not
21 competitive, are not going to do well.

22 ACTING CHAIRPERSON SMITH: Do you agree
23 that coal is still a critical element -- and
24 what's it generate half --

25 MR. HANGER: About fifty-five percent.

1 ACTING CHAIRPERSON SMITH: -- of our
2 energy?

3 MR. HANGER: Yes.

4 ACTING CHAIRPERSON SMITH: Do you still
5 agree that coal is a viable and necessary
6 component of our energy needs in Pennsylvania?

7 MR. HANGER: Today, it provides
8 fifty-five percent, which I think certainly
9 establishes that as a critical element of
10 providing energy today.

11 And I think it is a benefit to this
12 Commonwealth that going forward, the proportion in
13 the electiveness of any particular fuel is going
14 to be determined, frankly, not by me or you, but
15 the marketplace.

16 It's going to be consumers and their
17 decisions in the marketplace are going to decide
18 whether natural gas, coal, wind, nuclear, or other
19 fuels have dominance in the marketplace.

20 ACTING CHAIRPERSON SMITH: I appreciate
21 that. Certainly one of the keys -- as I mentioned
22 in my statement right prior to talking with you --
23 is that we must have a balance here.

24 And while we are going to address these
25 environmental problems, we are going to deal with

1 them from this day forward. How we deal with some
2 of the past problems is a financial problem
3 almost.

4 And we need to do it -- for those of us
5 that come from the coals fields, we need to do it
6 in a way that keeps the environmental clean, but
7 doesn't put everybody out of work.

8 And you add to that all of the benefits
9 that we had over the last few years with remining
10 where you have an existing coal industry people
11 actually providing the energy and expertise and
12 efficient operation of reclamation, I mean, they
13 are often a part of these watershed.

14 I mean, I am involved with some of them
15 myself. I am very familiar with the Mill Creek
16 operation. It is partly in my district.

17 So I hope that we can find some balance
18 in terms of how we protect the environment without
19 having the economic devastation that that could
20 also be and on top of that maybe changing
21 Pennsylvania's entire energy needs structure.

22 MR. HANGER: I mean, I certainly don't
23 disagree with the sentiments expressed there.
24 There are important issues here. I am the last
25 person in the world to say that they shouldn't be

1 considered and be balanced.

2 But that balancing must be done
3 consistent with federal law. And the bottom line
4 is there has to be money to protect the
5 environment, particularly the water that we talked
6 about.

7 ACTING CHAIRPERSON SMITH: Thank you. I
8 am going to move on and let some others ask some
9 questions. Representative Miller.

10 REPRESENTATIVE MILLER: I would just ask
11 for a brief explanation of what a severance fee
12 is?

13 MR. HANGER: I guess another word is --
14 another phrase word is a tax or it's a charge
15 imposed on every ton of coal mined. Typically,
16 that's how it is defined.

17 So that every mine operator who mines a
18 ton of coal, would pay a certain amount. I think
19 in West Virginia it's 3 cent per ton for the
20 purpose of reclamation.

21 In other states, it a different amount.

22 REPRESENTATIVE MILLER: Thank you.

23 ACTING CHAIRPERSON SMITH: Since the
24 others didn't have too much else to ask, I would
25 like to maybe touch on one or two other things.

1 You had mentioned in your opening remarks that
2 there were others that wanted to testify that are
3 your clients.

4 I would like to comment on that. We are
5 more than interested in their comments. Part of
6 our problem at this point is we don't have enough
7 details about the full cost bonding program itself
8 from the department that we really wanted to try
9 to look at that component first.

10 We certainly wanted to involve you since
11 you were kind of the umbrella of those groups.
12 And there was no intent to shortchange anyone. If
13 this issue continues to move as it currently is, I
14 suspect we will be back talking about this in the
15 future.

16 MR. HANGER: Could I just say, we
17 appreciate those comments. The two clients in
18 particular spent a lot of time writing testimony.
19 If they had been assured a time to speak, they
20 would have traveled here.

21 But given the failure to guarantee time
22 to speak, they didn't feel like they could travel
23 from western Pennsylvania and then get here and be
24 told there wasn't time.

25 So we appreciate your understanding of

1 that.

2 ACTING CHAIRPERSON SMITH: Absolutely.
3 We will be more than happy to make sure their
4 comments and testimony are shared with the members
5 of the committee and any other interested party.
6 I am speaking on behalf of Chairman Hershey at
7 this second.

8 MR. HANGER: I think also I would
9 encourage members to talk with them because I
10 think they can round out this discussion
11 importantly in a critical way.

12 They can also talk about the economic
13 impact from failing to deal with this problem. I
14 mean, there are revenues certainly in the coal
15 industry where I understand why you and others are
16 concerned about it.

17 I am not criticising that at all. But
18 there are also, again, clear revenues lost when we
19 don't deal with this program.

20 Particularly, I think the Federation of
21 Sportsmen can talk about hunting and fishing
22 revenues that are lost when we don't deal with
23 this.

24 ACTING CHAIRPERSON SMITH: Along with those
25 groups, when you were preparing to initiate this

1 litigation, did you solicit those groups to come
2 in with our organization?

3 MR. HANGER: No. Mr. Weist can talk with
4 you about that. Mr. Weist worked at the Widener
5 Law Clinic. And he had these groups as clients
6 before I even hired him.

7 So, if you want further explanation, we
8 will be glad to provide that.

9 ACTING CHAIRPERSON SMITH: I would be
10 interested, if you are willing to talk.

11 MR. WEIST: Well, we shared information
12 with a number of groups and got responses from
13 these five and some other groups. Some groups
14 decided for various reasons not to participate in
15 litigation activity.

16 Some groups have policies about not
17 participating in litigation. Most of these groups
18 -- four of the five or at least three of the five
19 -- have been named Plaintiffs, named Petitioners,
20 in some litigation that took place in the 1980's
21 in the Commonwealth Court of Pennsylvania.

22 Pennsylvania Federation of Sportsmen
23 Clubs, the Sierra Club, the Predecessor of
24 Pennsylvania Trout, Pennsylvania Trout Unlimited
25 had all been participants.

1 So for them, this is just really
2 following up on an issue that they had followed
3 very closely and also had participated in
4 litigation.

5 ACTING CHAIRPERSON SMITH: I happen to be
6 on a small watershed group where I am on a
7 steering committee.

8 MR. WEIST: Red Bank Creek.

9 ACTING CHAIRPERSON SMITH: And as I am
10 sure you are aware, being up on all of these
11 issues, I happen to get exposed to a different
12 side of this approach to resolving problems.

13 Would you mind explaining how your fees
14 are paid, the attorney's fees are paid in a case
15 like this, the one that PennFuture has undertaken?

16 MR. HANGER: I would certainly be glad to
17 talk about that. I hope this line of questions
18 doesn't indicate that you believe in a sense that
19 this litigation is anything other than serious and
20 important.

21 But I'll assume that is not where this
22 line of questions are going. We charge no fees to
23 the clients. Our services are provided pro bono.
24 In the event that we prevail in court, we will
25 make an attorney's fees claim under applicable law

1 and legal statutes for compensation fees at that
2 point.

3 But our clients do not provide hourly
4 fees. They do provide some court costs. And
5 indeed have gone out and raised some money for
6 expert witnesses on their own.

7 And, again, I think what today's
8 testimony indicates is that this is a very serious
9 problem and that PennFuture and its clients have
10 acted with a great deal of restraint frankly,
11 Representative.

12 And I would hope that you would accept
13 that. I would hope that you would appreciate that
14 we are coming to the table in good faith. We
15 would much prefer that this Commonwealth wasn't
16 facing a \$1 billion shortfall on these funds.

17 Believe us, these clients have been
18 trying to deal with this issue since 1981. And,
19 frankly, this problem has incurred on the watch of
20 different governors, different legislators.

21 It's not our clients' fault that we have
22 this problem. I want that understood. And we
23 would much prefer this problem didn't exist. Our
24 clients are the victims here.

25 They are not the perpetrators of harm

1 here. And we are going to get to the table
2 representing those clients forth rightfully within
3 the law, Representative. And we stand ready to
4 work with you, if you are want to do that.

5 ACTING CHAIRPERSON SMITH: I appreciate
6 that very much because that's precisely where I
7 have been. I guess why I am a little sensitive to
8 that -- and I understand your tone.

9 Why I am personally a little sensitive is
10 because of the situation I was involved in where
11 no one even came and said, you know, you guys need
12 to do more or something else.

13 And I really find that offensive.
14 Because whenever somebody starts threatening and
15 then takes you into federal court, that's a
16 serious matter in and of itself.

17 For that to not follow the full process,
18 which the 60 day notice provides for -- and maybe
19 somebody can say, well, the 60 day notices, that's
20 what it's for.

21 But in my way of thinking, somebody needs
22 to be talking before that and say, look, -- and
23 you have a good argument. This problem has been
24 going on a long time. I don't disagree. I just
25 want to --

1 MR. HANGER: And that's not how we do
2 business. We would love to never file a lawsuit.
3 And we try to negotiate beforehand. And I know
4 Mr. Weist was negotiating and looking into this
5 even before he was a member of PennFuture's staff.

6 It's our incentive at any time to try and
7 talk with him people and try to resolve things
8 through negotiation.

9 ACTING CHAIRPERSON SMITH: Well,
10 hopefully the course of this hearing and the
11 dealing with the department as they unfold their
12 full cost bonding proposal, we will be able to
13 have more dialogue in a manner which will be
14 constructive.

15 I guess I am just someone who doesn't
16 like to see a lot of money going out the tubes --
17 and no offense, Mr. Weist -- but attorney's fees.
18 So I apologize for having that perspective, I
19 guess.

20 Do you want to put that on the record,
21 Mr. Chairman?

22 CHAIRPERSON HERSHEY: I told him he
23 didn't have to apologize.

24 ACTING CHAIRPERSON SMITH: Are there any
25 other questions from the members? Thank you. I

1 appreciate your testimony.

2 MR. HANGER: We appreciate the
3 opportunity and look forward to working with you.

4 ACTING CHAIRPERSON SMITH: I would take a
5 moment to recognize Representative Samuelson has
6 joined us.

7 Next we will be inviting the Pennsylvania
8 Coal Association, George Ellis, along with Duane
9 Feagley, Executive Director of the Pennsylvania
10 Anthracite Council, and Billie Ramsey, Executive
11 Director of ARIPPA.

12 MR. ELLIS: Good morning. My name is
13 George Ellis, and I am President of the
14 Pennsylvania Coal Association. With me this
15 morning is John Blaschak, President and CEO of
16 Fisher Mining Company, and John Stilley, President
17 of the Amerikohl Mining Company, two of PCA's
18 surface coal producers who will assist me in
19 answering the committee's questions.

20 PCA is a trade association representing
21 producers of bituminous coal in the Commonwealth.
22 We produce over 75 percent of the bituminous coal
23 annually mined, which in 1998 exceeded 78 million
24 tons.

25 Pennsylvania coal operators directly

1 employ 8,000 people who are among the highest paid
2 industry workers in Pennsylvania. In addition and
3 according to a Penn State study, we have a 1 to 10
4 multiplier between direct and indirect mining jobs
5 and many of these employees work for PCA's
6 associate members.

7 We appreciate this opportunity to provide
8 comments on DEP's recent announcement that it was
9 substantially altering its coal mine bonding
10 program by proposing to implement prospectively
11 what DEP refers to as a full cost bonding program.

12 Since the proposal represents a
13 fundamental change to the bonding scheme and could
14 significantly effect surface coal mine operations,
15 our interest in this evident.

16 On October the 6th, DEP Secretary Seif
17 announced the department's intention to overhaul
18 the Commonwealth's surface coal mine bonding
19 program.

20 The current program referred to by
21 regulatory agencies as an Alternative Bonding
22 System, requires an operator to post a bond as a
23 means to guarantee performance of reclamation
24 obligations.

25 The department currently uses a sliding

1 scale per acre fee in setting that bond amount.
2 In addition, the site specific bond is
3 supplemented by a \$100 per acre reclamation fee
4 assessed against the operator.

5 According to the Secretary, the ABS may
6 be accumulating a projected deficit at the rate of
7 \$1.4 million per year based on an internal agency
8 evaluation.

9 To address the deficit, Secretary Seif
10 announced that the agency will revise its bonding
11 program by converting from the existing ABS to the
12 new full cost bonding program.

13 Under the full cost bonding program, bond
14 amounts would be set on a site-specific basis in
15 an amount that would be determined by calculating
16 the cost to the Commonwealth if it had to complete
17 the various components of reclamation work.

18 As we understand the proposal, the full
19 cost bonding will apply to all new permits and to
20 requests for bonding increments. Two points need
21 to be mentioned before I identify potential
22 industry concerns with the proposal.

23 First, in 1993 DEP commissioned an
24 independent actuarial study of Pennsylvania's coal
25 mine bonding program. Ironically, it's that same

1 study that the preceding speaker distributed to
2 the panel.

3 The study conducted by Milliman and
4 Robertson concluded that the combination of per
5 acre bonds and an increase in the reclamation fee
6 to \$100 per acre -- which the department
7 subsequently did -- was projected to provide for
8 adequate financial assurance on a prospective
9 basis for surface mines.

10 And I think this contrast between the
11 former speaker and us using the actuarial study
12 bears in mind what the authors of that study said
13 at the outset.

14 They took great pains to say that the
15 assumptions made in this report were fluent, and
16 that what they were making were just projections.

17 And they cautioned against making any
18 hard conclusions, unless the reader read the whole
19 report and presented it in the context of the
20 study.

21 For example, the former speakers were
22 talking about bonding for potential treatment
23 liability. The one thing the study conclusively
24 says is that the current surety type bonds should
25 not be used for perpetual treatment liability.

1 They refer to it as an inappropriate mechanism.

2 The stat that I was using was for the
3 year 1993, the time that that study was conducted.

4 So this is a very complex issue. And
5 there are a lot of terms that are being loosely
6 thrown around here. So we are glad the committee
7 has taken the time to take a look at this in
8 detail.

9 And we do agree with the comments of
10 former legislators who said this is going to take
11 an action of everybody working together instead of
12 confrontation like litigation.

13 Let me return to my testimony. Second,
14 our understanding of the full cost bonding program
15 is based on our interpretation of a two page press
16 release issued by the department and from informal
17 discussions that we had with DEP officials.

18 According to the department, the proposal
19 is still evolving and DEP is currently in the
20 process of developing a framework. I think we
21 heard that from Secretary Dolence this morning.

22 So, we reserve our final comments and
23 judgment on this full cost bonding proposal until
24 we have had the opportunity to examine these
25 details in depth and assess its full impacts on

1 our members' association.

2 That being said, we offer the following
3 observations on what we know right now of the full
4 cost bonding component. During our discussions
5 with the department, they provided us with draft
6 formulas that may be used to calculate bond
7 amounts.

8 The formula contains a number of per unit
9 costs for different components of the reclamation
10 work. These costs are based on the average of low
11 bids taken from contracts used by BAMR over the
12 past three years.

13 Since BAMR's costs estimates are
14 invariably higher than operators' own estimates
15 and actual experiences, the per unit costs are
16 higher.

17 Based upon an informal sampling of PCA
18 surface operators, the formula with these per unit
19 costs will in most cases increase bond rates.
20 Most members attributed the increase to the per
21 unit redesigned and mobilization costs, which they
22 contend are excessive even by BAMR standards.

23 The impact of the proposal will also vary
24 depending upon the mining technique used. For
25 example, there may not be much of a difference in

1 bond amounts between an ABS or a full cost bond if
2 an operator is using the block stripping method
3 where just one pit area is exposed.

4 This may not be the case though for area
5 stripping or contour mining.

6 Also, the formula does not account for
7 the cost efficiencies such as using a dragline to
8 perform reclamation work. Instead, it uses a less
9 efficient means to keep the cost of performing the
10 work even when a dragline may be available. This
11 could triple or quadruple the cost.

12 And the bottom line is the formula needs
13 to be tested under different scenarios using
14 various mining techniques and a variety of mine
15 plant configurations to determine its true cost
16 impacts and potential and practical effects.

17 Unlike the current bonding system, in
18 which bonds are generally based on standardized
19 rates, calculating a bond under a full cost
20 bonding system is a more subjective process that
21 could lead to different interpretations and wide
22 variations in what the final amount of the bond
23 should be.

24 This uncertainty over the actual amount
25 of bond that would need to be posted on a given

1 site will make it difficult for operators to
2 design mining plans for new operations or
3 additional acreage.

4 Therefore, procedures should be in place
5 to minimize subjective judgements over
6 calculations that could vary from mining office to
7 mining office or individual to individual despite
8 similar plans being proposed for similar sites to
9 be mined.

10 The time commitment required to review
11 applications and calculate bond amounts will be
12 significant. There is a concern that this will
13 lead to permit delays and create a bottleneck in
14 the permit process.

15 We are also concerned about the
16 procedures for appealing a bond determination.
17 This new method is a complex problem that could
18 result in major disagreements over bond amounts.

19 There needs to be a mechanism to ensure
20 that these disputes are promptly resolved.
21 Operators don't want to be faced with the option
22 of either accepting an excessive bond amount or
23 having a permit issue delayed because of a lengthy
24 appeal process.

25 The department has not yet developed an

1 implementation strategy to mesh its proposal with
2 pending permits and permit renewals. For obvious
3 reasons, especially those permits that have
4 already been configured, submitted and are
5 pending, there are certain sites that should be
6 grandfathered if the full cost bonding is
7 implemented.

8 We also have a real concern that higher
9 bonding levels could further contract an already
10 tight bond market and strain the bond capacities
11 of our member companies under policies currently
12 followed by surety companies.

13 Surety companies limit bond amounts based
14 on the collateral and financial condition of the
15 bonded company. Higher bond amounts that would be
16 needed under a full cost bond might be available
17 for many mining companies and could restrict the
18 ability of others to obtain additional bonds for
19 further mining.

20 The impact of this proposal on the surety
21 industry and its ability and inclination to
22 continue to write coal mining bonds in
23 Pennsylvania also needs to be fully assessed.

24 Also under a full cost bonding program,
25 the current \$100 per acre reclamation fee would no

1 longer be necessary to supplement the financial
2 assurance provided by the reclamation bond.

3 The question is whether this fee will be
4 eliminated under the new program needs to be
5 addressed.

6 The full cost bonding program must be
7 carefully reviewed to determine its impact on the
8 private sector's remining and reclamation
9 activities. Such activities have been publicly
10 promoted since at least 1984.

11 A major of component of the Governor's
12 Reclaim Pennsylvania Initiative is to spur
13 reclamation and remediation efforts by the current
14 surface mining industry.

15 This committee in particular over the
16 years has been in the vanguard for producing
17 legislation that provides incentives for industry
18 to remine and reclaim.

19 Everyone recognizes that where private
20 industry is able to reclaim abandoned sites,
21 the work is done more quickly and efficiently
22 without spending reclamation funds or tax dollars.

23 For example, over the past two years,
24 industry sponsored remining projects have resulted
25 in the reclamation of 6,780 acres of land and the

1 improvement of 75 miles of stream.

2 The monetary value of these projects
3 exceeded \$38 million. And it was attained at no
4 cost to the Commonwealth. In addition, projects
5 like those sponsored in Act 43, which was prime
6 sponsored by Representative Smith and which allows
7 surety companies to reclaim forfeited abandoned
8 sites through private agreements with the
9 department, have also lead to the reclamation of
10 thousands of acres and improvement of miles of
11 streams all at a reduced cost to the Commonwealth.

12 At a time when industry is being
13 encouraged to pursue remining and reclamation
14 initiatives, it will be counter-productive to
15 saddle it with higher costs in pursuit of such
16 activities.

17 And changing its bonding guidelines we
18 have urged the department to carefully weigh any
19 impact on remining and reclamation efforts and to
20 guard against creating any impediments that would
21 inhibit such activities. We also ask this
22 committee to be cautious about this.

23 In the final analysis, a viable, healthy
24 surface mining industry is best equipped to
25 maximize the environmental gain that would accrue

1 to the Commonwealth for increased private sector
2 reclamation.

3 Finally, as part of this announcement of
4 full cost bonding proposal, Secretary Seif also
5 said that the department will convene a
6 stakeholders group to develop strategies that
7 would address historical and environmental
8 problems created by past mining activities.

9 PCA supports such a process and would be
10 a willing participant to such a work group.

11 Before I conclude, could I make one other remark
12 to something that was said but that was addressed
13 real quick?

14 ACTING CHAIRPERSON SMITH: You have the
15 floor.

16 MR. ELLIS: I think it was Representative
17 Miller who asked about the severance tax. I don't
18 know what context those handouts described it in,
19 but I just want to say that the severance tax has
20 been a reoccurring proposal in Pennsylvania.

21 It last surfaced in the last '80s and the
22 early '90s and most often arose during periods of
23 revenue shortfall or when special projects have
24 found the need for funding.

25 One of the justifications commonly sited

1 for a severance tax was that Pennsylvania does not
2 have such a tax while many other coal producing
3 states do.

4 It makes sense. By implication, it is
5 suggested that the coal industry in Pennsylvania
6 is not paying its fair share of taxes relative to
7 taxes paid by the industry in other states.

8 What you have to consider and what you
9 have to remember is that there are numerous tax
10 bases upon which a state can levy a tax.

11 Among the typical taxes are income taxes,
12 employment taxes, real and property taxes,
13 transaction taxes, and franchise taxes. Each
14 state uses some or all of these taxes for raising
15 revenue.

16 What is important then to industry is not
17 so much what type of taxes are leveled but what is
18 the total tax liability.

19 So when you try to compare the tax burden
20 of one industry and one state with another
21 industry in another state, you just can't look at
22 one component and say, okay, it has a severance
23 tax, we don't. Okay.

24 The last time we -- the coal association
25 -- did a study was the last time a severance issue

1 was raised. And we used the -- essentially
2 protected the same coal mine operating in
3 Kentucky, West Virginia, and Pennsylvania.

4 Those are the other two neighboring
5 states with a severance tax. And what we found at
6 the comparative tax burden of an operator in
7 Pennsylvania was comparable to and exceeded the
8 tax liability of operators in Kentucky and West
9 Virginia where they had a surcharge.

10 Again, that was back in the late '80s,
11 early '90s when this tax first was last raised.
12 But I just wanted to put that into context for
13 you.

14 That concludes my testimony. We will be
15 happy to try and answer any questions.

16 ACTING CHAIRPERSON SMITH: Thank you. Do
17 we have any questions down the road here?
18 Representative Daley is recognized.

19 REPRESENTATIVE DALEY: Mr. Ellis, I think
20 you testified that the only information that was
21 provided to you was a two page press release
22 regarding the plan, new bonding scheme.

23 How would you suggest that this
24 information be better shared in the future?
25 Obviously, the two page --

1 MR. ELLIS: I think the point I was
2 trying to make, Representative Daley, is not so
3 much on how -- we still haven't seen anything in
4 writing.

5 And I take testifying before standing
6 committees very serious. And we are establishing
7 a record. And I just want to make a point that we
8 haven't seen anything in writing.

9 What we have heard so far essentially was
10 through conversations that we have had which,
11 frankly, the department has been very cooperative
12 in trying to discuss this proposal with us.

13 But the fact of the matter is, I want to
14 reserve final comments and final judgment until we
15 have actually seen something in writing and had
16 been able to fully access it.

17 That was the plan I was trying to make.
18 Thank you.

19 REPRESENTATIVE DALEY: Have you been
20 assured by the department that any information
21 that you are going to be able to provide or
22 members of your organization may provide may, in
23 essence, be utilized in the preparation of the
24 final document?

25 MR. ELLIS: We will have that -- it's my

1 understanding we will have that opportunity
2 through the policy guidance process to submit
3 comments.

4 Generally speaking, when you go the
5 formal rule making process, the department also is
6 responsible to have a written document that
7 actually responds to your comments.

8 I don't know what the process is for
9 policy guidance. But we will have a chance to
10 submit comments.

11 REPRESENTATIVE DALEY: Thank you, Mr.
12 Chairman.

13 ACTING CHAIRPERSON SMITH: Thank you.
14 The availability of bonding is something that has
15 been discussed and hopefully we will be able to
16 get some more information on that as we continue
17 to discuss this issue.

18 But what is your assessment in terms of
19 the availability of bonding under a full cost
20 bonding program versus the existing program?

21 MR. STILLEY: The bonding right now in
22 Pennsylvania is at a scarcity for quite a few of
23 the operators that are left operating in
24 Pennsylvania.

25 If the bond amounts would go up

1 considerably over and above what they are today, I
2 think it probably would make bonding availability
3 a lot tougher for quite a few of the operators
4 left in Pennsylvania.

5 ACTING CHAIRPERSON SMITH: One of the
6 things that I don't know that I understand about
7 that issue is that it seems to me that if you had
8 a full cost bond, it would provide the bond surety
9 company, the bond company, with a more defined
10 risk and that I would almost think that that might
11 make it available.

12 You know, you deal with it. How do you
13 respond to that?

14 MR. STILLEY: I think the bonding
15 companies actually look more at the balance sheet
16 of a particular company making application for
17 that bond as compared to what the actual liability
18 exists out in the field may be at any give time.

19 ACTING CHAIRPERSON SMITH: We are going
20 to discuss that with some other folks hopefully,
21 if not today, in the future that come from the
22 bonding side of the world.

23 Perhaps since you are the microphone, Mr.
24 Stilley, could you give us a little bit of -- give
25 the committee a little bit of information as to

1 how some of the remaining projects that you have
2 been involved with, how they are financed and how
3 they are packaged together.

4 Because one of the things that I think we
5 have to balance out on this whole matter is that
6 we continue to take advantage of the remaining
7 incentives that recently been put into law over
8 the last few years.

9 And I think that's an important aspect.
10 And I would appreciate it if you would shed some
11 light on the pros and cons of this proposal as it
12 would effect the remaining side of the world.

13 MR. STILLEY: I would be happy to. In
14 fact, if I may, I would like to expand on that
15 also. Just sitting here and listening to most of
16 the testimony this morning, the issue that seems
17 to be missing in most of what I have heard is
18 probably what I would call accountability for
19 problems that exist today in Pennsylvania
20 vis-a-vis reclamation.

21 Although, we may acknowledge that
22 problems currently exist, once again the coal
23 industry is being expected to bear the brunt of
24 what all parties to the deal, since the federal
25 laws have been passed and DEP is promising, should

1 bear responsibility for, but apparently aren't
2 willing to do so.

3 Although, I have to say DEP is doing a
4 much better job today than what they may have done
5 in the past, DEP has had the authority to enforce
6 current reclamation since 1971.

7 A lot of the problems we see today,
8 insufficient bonds are a result of DEP's inability
9 or lack thereof to enforce the current
10 reclamation. And if the bonds were not adequate
11 to complete the reclamation, a company did fail.

12 Additionally, it's the association's
13 contention that the mechanism that DEP has used
14 over the past 20 plus years to reclaim lands that
15 were abandoned and bonds forfeited goes to the
16 Bureau of Abandoned Mine Reclamation, which is
17 very simply is not an efficient way to reclaim
18 abandoned mine lands in Pennsylvania.

19 Senator Smith a number of years ago was a
20 very big part of passing Act 43, which would have
21 encouraged private reclamation on bonds forfeited
22 and collected and bypassing the necessary
23 bureaucracy imposed by BAMR.

24 But due to the program guidance that was
25 established as part of that adoption of that

1 legislation, I believe only 1 or 2 of those sites
2 have been done under Act 43.

3 Last but not least, we are paying a
4 severance tax of sorts in the Pennsylvania, which
5 amounts to 35 cents a ton reclamation fee. And we
6 have been doing so since 1971.

7 I don't know what the number is that
8 currently exists within the confines of the
9 federal coffers, but a very small percentage of
10 that is coming back to Pennsylvania to reclaim
11 lands that were to be reclaimed based on its
12 intended use.

13 Somehow, all of us in Pennsylvania must
14 campaign to get some of those federal dollars back
15 into Pennsylvania and the states that have
16 contributed to that reclamation fee.

17 I think although we agree that full cost
18 bonding is a great concept, I think to a large
19 extent it exists today if both DEP and the
20 operators do the job that they should be doing in
21 the field.

22 And the requirements for additional bonds
23 to satisfy various environmental groups to give
24 them a larger comfort level, I don't really
25 believe are really necessary.

1 ACTING CHAIRPERSON SMITH: Thank you. I
2 do know how much money is in that federal AML
3 money right to the penny. It's a lot.

4 And I appreciate you mentioning that
5 because it's something that really hasn't come up
6 in the course of the hearing. And it should
7 probably be reflected on the record that there is
8 quite a pile of money that has been collected over
9 the last many years that has been retained in
10 Washington in an abandoned mine lands fund.

11 Certainly, if it were all out here being
12 used would have significantly helped us with that
13 past problem, past mine problems. And so it's
14 worthy of being recognized.

15 Any other questions? We will procedure
16 on. Thank you. Do you have anything else?

17 MR. ELLIS: No. Thank you.

18 ACTING CHAIRPERSON SMITH: I realize
19 because of the room, the panel isn't really the
20 full panel. So, I apologize for that
21 inconvenience.

22 MR. ELLIS: Thank you for the
23 opportunity.

24 ACTING CHAIRPERSON SMITH: We appreciate
25 your input. We will move to Duane Feagley,

1 Executive Director of the Pennsylvania Anthracite
2 Council.

3 MR. FEAGLEY: My name is Duane Feagley.
4 I am the executive director of the Pennsylvania
5 Anthracite Council. Seated with me is Charlie
6 Gutshall, our attorney, Rhoads and Sinon, and
7 George Elias, the Garrett Group.

8 I would like to thank the members of the
9 House Environmental Committee for this opportunity
10 to testify. As I mentioned, my name is Duane
11 Feagley, and I am the Executive Director of the
12 Pennsylvania Anthracite Council.

13 Pennsylvania Anthracite Council is
14 located in northeastern Pennsylvania and
15 represents numerous small mining operators,
16 suppliers, and financial institutions employing
17 over 2,000 people.

18 I am here this morning to express our
19 organization's concerns over the proposed
20 implementation of the full cost bonding by the
21 Department of Environmental Protection.

22 Anthracite, commonly known as hard coal,
23 has been commercially mined and prepared in the
24 northeast region of Pennsylvania for more than 150
25 years.

1 Anthracite is a naturally high carbon,
2 clean burning solid fuel with a typical sulfur
3 content of less than 0.7 percent. In fact,
4 because of its low sulfur content, anthracite is
5 among the cleanest burning solid fuels on the
6 commercial market today.

7 It has a lower sulfur content than some
8 heavy fuel oils and coking coal. Most anthracite
9 reserves are found in a very small pocket of
10 northeastern Pennsylvania in the five counties of
11 Schuylkill, Carbon, Northumberland, Lackawanna,
12 and Luzerne.

13 The anthracite coal fields extend 50
14 miles east and west and 100 miles north and south
15 covering approximately 484 square miles. Current
16 estimates show 4 to 6 billion tons of reserves of
17 anthracite left in the region.

18 In addition, anthracite mining and usage
19 has a long history in America. It fueled our
20 nation's insatiable demand for energy during the
21 industrial revolution and helped meet the
22 tremendous energy and production demands of two
23 world wars.

24 At its peak in 1917, the anthracite
25 industry employed over 150,000 miners and produced

1 100 million tons of coal.

2 Anthracite is a uniquely Pennsylvania
3 product. Its uses range from residential and
4 commercial heating to industrial carbon for steel
5 production and water filtration media.

6 In fact, much of our product is prepared
7 for use outside the country in Canada, Mexico, and
8 South America.

9 In addition to its clean air qualities,
10 the mining and use of anthracite provides the
11 added benefit of cleaning the region's surface and
12 subsurface water systems.

13 In the past, prior to the enactment of
14 any mining regulations, anthracite deep mines were
15 designed to drain the water infiltrating the
16 tunnel system by means of simple gravity to
17 receiving streams outside the mine workings.

18 In addition, war time needs required that
19 the coal be mined as quickly and as cheaply as
20 possible. As a result, U.S. law discouraged the
21 backfilling and reclamation of surface coal and
22 deep mine tunnels.

23 Thus, many of those scarred pits and
24 tunnels remain a hazard today. Water seeps into
25 the open voids and abandoned highwalls interacting

1 with the exposed materials creating a chemical
2 reaction that results in acid mine drainage.

3 Today, a vast and extensive abandoned
4 underground tunnel network still exists in the
5 anthracite coal region, discharging abandoned mine
6 drainage into the region's water systems.

7 A complete cessation of anthracite mining
8 would not improve this condition. In fact, it
9 would prevent the ongoing remediation of this
10 problem through reining.

11 Since 1977, all surface mining operators
12 are required to reclaim the land once they are
13 done extracting the mineral. In fact, more than
14 90 percent of all mining being done in the
15 anthracite coal region is the reining of coal
16 left behind in previously mined areas.

17 Today's reining entities perform true
18 earth healing reclamation. Unlike government
19 contracted companies who come in and close the
20 wound without cutting out the infection,
21 anthracite operators are actually abating acid
22 mine drainage and cleaning the environment by
23 mining from the surface and exposing the coal in a
24 process known as daylighting.

25 The mineral is extracted and the old

1 abandoned deep mines and surface highwalls are
2 closed off. They then reclaim the landscape by
3 backfilling and re-seeding the affected area,
4 restoring surface drainage flows and reducing
5 infiltration into the remaining deep mine voids.
6 They do this as a part of their normal business
7 operations.

8 In fact, according to the DEP's
9 Pottsville office, since 1990 the anthracite
10 industry has reclaimed over 4,000 acres of surface
11 lands in the region.

12 At an estimated cost of \$12,000 per acre,
13 the anthracite industry has produced nearly \$50
14 million in reclamation at no cost to the taxpayer.

15 Remining reclamation does not require the
16 use of a single tax dollar and is done completely
17 by the mining operator. This reclaims the
18 environment and saves taxpayers millions of
19 dollars annually, a win/win situation for
20 everybody.

21 However, as mining costs continue to rise
22 and markets diminish, the responsibility will
23 shift from the mining operator to the taxpayer to
24 clean up these environmental hazards of the past.

25 We are concerned that the full cost

1 bonding program being considered by the DEP could
2 actually discourage and prevent remining in the
3 anthracite region.

4 If anthracite mining were to cease today,
5 it will eliminate all the positive effects
6 remining has on the region's environment. That's
7 because the gravity created discharges caused by
8 rainwater will continue to enter into the mine
9 pool and exit as acid mine drainage. The mine
10 discharges will continue unabated.

11 If I may, I would like to give you some
12 examples through visuals of somewhat of what I am
13 talking about. Right there in front of you is an
14 abandoned highwall located in Shamokin, PA. It is
15 located just outside of the city.

16 It is approximately 1500 feet long and 65
17 feet high and 100 feet wide at its widest point.
18 Over the years, this abandoned mine site has
19 become a dumping ground for trash, abandoned cars,
20 and other garbage.

21 The next site we are going to see is a
22 Blaschak coal burring reclamation area. The
23 picture is a little bit fuzzy. But these two
24 pictures, you can see in direct contrast the
25 abandoned highwall that once existed here is now

1 landscaped.

2 You can see the contour of the land and
3 growth that has been re-established on this site.
4 The Blaschak coal burring site was undertaken on a
5 pre-Act abandoned site that would remain an
6 abandoned hazard today if not for industry
7 remining.

8 Also, I should mention that this site did
9 receive an Honorable Mention Award from the
10 Interstate Mining Compact Commission in 1994 for
11 industry excellence in reclamation.

12 The next picture we are going to look at
13 is the Reading Anthracite Buck Run Reclamation
14 Area.

15 In the foreground of this photo, you can
16 see the reclamation that's been accomplished while
17 in the background you can see the abandoned
18 highwalls that still exist.

19 In the next picture, you can continue to
20 see the reclamation work that's been done on the
21 right-hand side. While on the left-hand side, you
22 can see an active mining area.

23 This mining is being done in a pre-Act
24 area as well. And, again, let me emphasize, if
25 active remining were not taking place in these

1 areas, this reclamation would not take place.

2 This would still look like those
3 abandoned pits like we first saw in that first
4 picture.

5 And the final picture I would like to
6 share with you, you will see a completed back bone
7 of an abandoned highwall using flyash from a
8 co-generation plant.

9 The flyash is capped and seeded. You can
10 see for yourself the benefits to the environment.
11 This picture was taken near Mahanoy City in
12 Schuylkill County.

13 As I mentioned a moment ago, anthracite
14 mining and preparation is unique to Pennsylvania
15 and an important economic force in the
16 Commonwealth and the region's local economies.

17 In addition, like all other coal
18 industries employees, anthracite miners are among
19 the best trained and highest paid industrial
20 workers nationwide.

21 According to the Pennsylvania Department
22 of Labor and Industry, the average mining employee
23 earns \$35,000 a year. This provides a direct
24 payroll of more than \$50 million annually to the
25 regions local economies.

1 However, when you factor in employment
2 and services from support industries, this number
3 swells to nearly 200 to 300 million dollars
4 annually.

5 Further, this employment occurs in an
6 area typically affiliated with higher unemployment
7 than the more urban areas of the state.

8 In early October of this year, the DEP
9 announced its intention to enact sweeping policy
10 changes to its coal mine bonding program. It is
11 important to note than an actuarial study done by
12 Milliman and Robertson in 1993 and apparently
13 relied upon by PennFuture in a lawsuit against the
14 department is conclusive concerning DEP's bond
15 program for surface mining.

16 For example, with respect to surface
17 mining reclamation, the report actually
18 acknowledges that with the implementation of a
19 \$100 per acre fee along with reclamation bonds,
20 the assets available actually exceed the
21 liabilities for surface mining reclamation.

22 In addition, we are concerned by the lack
23 of detail associated with the changes made
24 available by the DEP. In fact, like George Ellis
25 mentioned, we still have not received any official

1 written positions to which we can respond.

2 However, during the course of our
3 conversations with the department, they did
4 present us with an unofficial draft formula
5 showing how the new full cost bonding would be
6 calculated.

7 Pennsylvania Anthracite Council presented
8 this formula to its mining members for their
9 assessment of its impact on their operations. The
10 results were startling.

11 Operators reported bonding requirements
12 beyond their ability to obtain them. Further, the
13 mining companies, which would be impacted by the
14 proposed changes, are not large operations.

15 In fact, every mining operation in the
16 anthracite region qualifies as a small business
17 under federal small business guidelines. This
18 change to the mining program could result in the
19 cessation of these operations along with the jobs
20 and the environmental improvements they are
21 achieving.

22 In light of the potential catastrophic
23 effect of such a program to the environment, jobs,
24 the local economy, and the industry, the
25 Pennsylvania Anthracite Council recommends the

1 following actions:

2 First, the Department of Environmental
3 Protection should undertake to do a complete
4 economic analysis of their proposal before
5 adopting any implementation strategy.

6 The information gathered will give both
7 the department and industry a better understanding
8 of the magnitude of the issue and lead to
9 solutions that will be beneficial to all parties,
10 with fair consideration of the reclamation already
11 being completed by industry.

12 Secondly, the DEP should utilize the Mine
13 Reclamation Advisory Board more effectively. The
14 MRAB is an advisory board made up of mining
15 operators, legislators.

16 And the citizens advisory council was
17 established by you, the legislature, to advise the
18 department in critical areas like this.

19 To date, communication between the
20 department and the MRAB on this issue has been
21 minimal. But I was encouraged to hear Secretary
22 Dolence testify today that the MRAB would be
23 concluded very shortly on some of these
24 discussions that are going on.

25 So I am very happy to hear that Secretary

1 Dolence has suggested that will happen.

2 Finally, we recommend to the legislature
3 and the Pennsylvania Congressional delegation to
4 increase its efforts to collect its portion of the
5 Federal Abandoned Mine Land funds that belong to
6 the state.

7 Like all other coal mine operators around
8 the nation, Pennsylvania surface mine operators
9 pay 35 cents per ton into the federal AML program.
10 Currently, the fund holds over \$1.3 billion.

11 Approximately, 35 percent of those funds
12 are earmarked for Pennsylvania abandoned mine
13 lands. We suggest that Pennsylvania could better
14 direct those funds than the federal Office of
15 Surface Mining.

16 In conclusion, we recommend to PennFuture
17 that they withdraw their lawsuit and engage the
18 DEP and industry in finding a long-term solution
19 to the challenge of AMD.

20 Driving remaining companies out of
21 business and throwing people out of work does not
22 constitute a long-term solution to the historic
23 environmental problem that PennFuture claims it is
24 trying to help.

25 This is a complex issue, one that has

1 existed for well over 100 years and will not be
2 resolved in a court of law.

3 The lawsuit initiated by PennFuture has
4 had and will continue to have a stifling effect on
5 communications among the effected parties. We
6 believe that its withdrawal will be taken as a
7 sign of good faith by all parties of PennFuture's
8 intention to seek a solution of the problem.

9 We wish to thank the members of the House
10 Environmental Committee for hosting these hearings
11 and providing us with the opportunity to tell our
12 side of the story.

13 We believe that with industry and
14 government working in cooperation, the anthracite
15 industry will continue to reclaim the past and
16 fuel the future of northeastern Pennsylvania.

17 We will be happy to address any questions
18 that you may have.

19 ACTING CHAIRPERSON SMITH: Representative
20 Argall, this is your neck of the woods.

21 REPRESENTATIVE ARGALL: Thank you,
22 Representative. I think back home people want
23 more and more reclamation, but they want to do it
24 without killing off the final survivors of what
25 was once an immense industry.

1 You make me very nervous when you talk
2 about the potential for full cost bonding program
3 to prevent remining. That's 90 to 95 percent of
4 the industry.

5 And it sounds to me like if that
6 provision were to come true, we would be looking
7 at the loss of thousands of jobs and millions of
8 dollars in direct payroll and all of the
9 succeeding impacts that that would have because
10 that would reverberate through the local economy.

11 Have you had the opportunity to share
12 those kinds of concerns with DEP? And if you
13 have, I am curious to see what kind of response
14 you got back from them.

15 MR. FEAGLEY: We have had some side
16 conversations with the Department. I have shared
17 my concerns with them. They acknowledge that this
18 is a legitimate concern.

19 And they are also acknowledging that they
20 are doing their best to mitigate these concerns.
21 I do not believe it is the department's contention
22 to drive anybody out of business.

23 I don't think that's their intention with
24 this full cost bonding. I think that they are
25 going to do the best they can to see that that

1 doesn't happen.

2 However, there is still a great concern
3 on the part of the industry that it could have
4 that unintended effect.

5 REPRESENTATIVE ARGALL: And in your
6 discussions with the Department -- I understand
7 the clock is ticking -- do you have any feel for
8 when this new system will actually be implemented?

9 MR. FEAGLEY: Well, as Secretary Dolence
10 testified earlier today, they expect they have
11 something for the Mine Reclamation Advisory Board
12 to look at after the first of the year.

13 The Mine Reclamation Advisory Board will
14 meet in January, I believe it is on January the
15 6th. So we will have our first chance to really
16 look at something official right around that time.

17 So it is really difficult for me to
18 comment on where the department is at on it until
19 we actually see it.

20 REPRESENTATIVE ARGALL: Thank you. Thank
21 you, Mr. Chairman.

22 ACTING CHAIRPERSON SMITH: Any other
23 questions? Thank you very much. I appreciate you
24 taking the time to provide us with your testimony.

25 MR. FEAGLEY: Thank you very much.

1 ACTING CHAIRPERSON SMITH: Billie Ramsey,
2 Executive Director, ARIPPA. Again, I apologize
3 for being set up in the meeting room. I was
4 hoping that we would have been able to have some
5 of these folks on one panel to consolidate some of
6 it.

7 With that in mind, you may proceed and
8 maybe not read every word on the paper.

9 MS. RAMSEY: Understood. Thank you very
10 much. Good morning. My name is Billie Ramsey. I
11 am the Executive Director of ARIPPA. With me is
12 Bruce DeCoskey. He is the fuels manager for PG &
13 E Generating's Northhampton generating facility.

14 ARIPPA is a trade association of 12 of
15 the 14 waste coal power plants in Pennsylvania. I
16 would like to thank the members of the committee
17 for your attention this morning.

18 I appreciate the opportunity to talk with
19 you about the full cost bonding program that has
20 been announced by DEP.

21 The potential impact of this program on
22 the costs of bonding reclamations sites is of
23 concern to our members.

24 At this point, we cannot assess the full
25 impact of the announced program because the

1 program has not been reduced to a written
2 proposal, at least one that has been shared with
3 members of the public.

4 However, we do understand that the costs
5 of bonding reclamation sites may increase
6 substantially. An increase to the cost of bonding
7 reclamation sites will serve as a disincentive to
8 the reclamation work that is being performed at no
9 cost to taxpayers or support from the AML fund.

10 ARIPPA's members for the most part are
11 obligated to sell their power output under
12 fixed-priced, long-term contracts with no ability
13 to pass through cost increases to their customers.

14 Because we believe that we are
15 contributing significantly to the solution of
16 Pennsylvania's extensive AML problems, our hope is
17 that DEP's program will include bonding protocols
18 that will encourage re-mining.

19 A full cost bonding program without any
20 recognition of the benefits of re-mining and
21 reclamation would serve as a serious disincentive
22 for reclamation - the very goal that a bonding
23 program is intended to achieve.

24 It is ARIPPA's hope that DEP will
25 establish a stakeholder process before

1 implementing a full cost bonding program without
2 meaningful input from interested parties.

3 As part of this process, stakeholders
4 should be provided detailed documentation of
5 Pennsylvania's current bonding program forfeiture
6 rate and the apparent shortfall in the bonding
7 pool.

8 Such a process would allow for meaningful
9 input from interested parties and hopefully would
10 result in a carefully considered program that
11 would avoid problems inherent in a proposal
12 developed without stakeholder involvement.

13 I'll summarize some of the next material
14 on the next several pages very briefly.

15 The 14 waste coal plants in Pennsylvania
16 use coal refuse that is left over from past
17 decades of unregulated mining. To date, the
18 industry has used and removed 56 million tons of
19 this material.

20 And the ash that results is an output
21 material because of the use of limestone in the
22 combustion process that makes it ideal for use in
23 mine reclamation.

24 That material goes back to fill in, for
25 the most part, previously abandoned strip pits.

1 To date, 37 million tons of the ash has been used
2 for reclamation.

3 Through the end of '98, our industry has
4 reclaimed at no costs to the taxpayers 2300 acres
5 of abandoned mine lands.

6 And if we continue in operation, we
7 expect to, over the year, reclaim an additional
8 400 acres of AML lands.

9 If you are new to the bonding program or
10 if you wouldn't know much about it, you might
11 assume that reclamation sites such as ours would
12 not have to be bonded.

13 Since a halt in reclaiming, for example,
14 a refuse pile halfway through its removal, still
15 you have half of the pile removed. And so
16 arguably you are better off than where you
17 started.

18 Similarly, if you are filling in a strip
19 pit with the ash, if you are halfway finished with
20 filling in a strip pit and something untoward
21 would happen to your business, the Commonwealth is
22 still 50 percent better off than when it was when
23 it started.

24 But we are, in fact, required to bond
25 both the sites where the refuse piles are located

1 and the abandoned strip pits that we are
2 reclaiming.

3 Roughly or generally, our bonding rate is
4 \$1,000 per acre. That cost was known into some
5 extent measurable when our projects were planned.
6 So it was included as projected costs of doing
7 business when the projects were financed.

8 However, as I said earlier, any
9 substantial increase to bonding cost is one that
10 wasn't foreseen and wasn't taken into account and
11 one that can't be passed on to our customers.

12 As the other panelists had mentioned, we
13 were not informed in advance of the announcement
14 of the full cost bonding program nor have we seen
15 the reduction of the proposal to one in writing.

16 Deputy Secretary Dolence announced this
17 morning that that proposal would be available to
18 the public sometime in early January when it's
19 shared with the members of the MRAB and that there
20 would then be a public comment period for written
21 comment and a comment and response document would
22 be prepared.

23 That's a step, I think, in the right
24 direction. I would go a little bit further and
25 suggest that a stakeholder process where all the

1 parties could sit around the table and discuss
2 this face-to-face might be one that could yield
3 some productive results; otherwise, at least in
4 our case, you may end up with the result that
5 could discourage the remaining reclamation that
6 industry is currently providing and accomplishing.

7 Thank you.

8 ACTING CHAIRPERSON SMITH: Thank you.

9 Mr. Chairman.

10 CHAIRPERSON HERSHEY: Thank you, Billie
11 Jo. I was happy to tour some of those fields this
12 summer and really appreciated the work your
13 organization is doing, Prime Enterprise, cleaning
14 up abandoned mine fields.

15 My question was, how many sites are
16 cleaned up and we restored back to either parks or
17 forest land or whatever the use is determined?

18 MS. RAMSEY: I don't know. Through the
19 end of '98 collectively the industry has reclaimed
20 2300 acres. The size of those individual sites
21 varies.

22 So I am not sure how many individual
23 sites there are associated with that, with the
24 2300 acres.

25 CHAIRPERSON HERSHEY: I know the one site

1 that we visited in the northeast, they had
2 reclaimed two and were finishing up a third one
3 and preparing to go to the fourth one.

4 MS. RAMSEY: It varies. I know one of
5 our members is filling in a huge strip pit, and
6 they have been working on essentially the same
7 area from day one. And it's miles long.

8 And other members are working on smaller
9 sites that are reclaimed in a year or two or
10 three. And then they move on to another area.

11 CHAIRPERSON HERSHEY: Thank you. That's
12 all I have.

13 ACTING CHAIRPERSON SMITH: Thank you, Mr.
14 Chairman. Any other questions? Representative
15 Argall.

16 REPRESENTATIVE ARGALL: Not a question,
17 but I think along the same lines as the Chairman.
18 It is note, any of the members or any of the folks
19 in the audience with an interest in this that have
20 never seen one of these sites, it truly is a
21 worthwhile side trip.

22 And just describing it or even these
23 pictures, as wonderful as they are, does not
24 really do it justice of seeing a site where
25 nothing has grown for a hundred years.

1 And one spring, after a lot of work and a
2 lot investment, it begins to turn green. I have
3 seen that happen in my own district. And it is a
4 truly a very worthwhile visit for any of you with
5 those kinds of visit.

6 MS. RAMSEY: We would be happy to host a
7 visit, if anybody is interested. I know most of
8 you have already been to some of our sites.

9 ACTING CHAIRPERSON SMITH: If there is
10 nothing else, we thank you for your presentation.
11 Clearly as was mentioned earlier, the interaction
12 of the remaining side of this issue is one that I
13 hope to keep us focused on as we try to balance
14 out the problem of future liability relative to
15 coal mining and appreciate you bringing that up
16 and putting that on the record.

17 MS. RAMSEY: Thank you.

18 ACTING CHAIRPERSON SMITH: I was told --
19 I am just going to double check -- I was told that
20 the other two individuals who are maybe the most
21 important group to hear from in some regards
22 certainly they are, a Mr. Ross Fisher and Kurt
23 Tipton, that they are not able to be here.

24 Is that information accurate? They are
25 not here? Given the length of the hearing, maybe

1 that's just as well too.

2 Obviously, we need to hear from the
3 individuals from the insurance side of this world
4 as it relates to the full cost bonding program.
5 And, Mr. Chairman, I would ask that at such time
6 that we can pull them together, that we might
7 revisit this issue.

8 Obviously, I think from the interest and
9 attention that this has brought, it's clear that
10 this is a critical issue facing Pennsylvania in
11 the broad sense of treating acid mine drainage and
12 mine reclamation and all of those issues and the
13 specific issue dealing with the full cost bonding
14 proposal.

15 And I would ask the Chairman if he would
16 certainly consider us coming back with another
17 hearing at some point in time when we can hear
18 from the insurance industry side of this issue as
19 well as others who have expressed an interest?

20 CHAIRPERSON HERSHEY: Representative
21 Smith, we will be happy to do that as soon after
22 the first of the year as possible because there's
23 more testimony to be gathered.

24 And I am happy to present testimony from
25 Trout Unlimited, from Terry Morrow. And these

1 comments will be put upon the record.

2 And, again, thank everybody for coming.

3 And we will have another hearing after the first
4 of the year when we get through the Farm Show and
5 get settled back into the routine of things.

6 And we hope to get these other people to
7 the table. And thank everyone for participating
8 and Happy Holidays. This meeting is adjourned.

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CERTIFICATE

I, Michelle S. Parke, Reporter, Notary
for the County of Lancaster, Commonwealth of
Pennsylvania, hereby Certify that the foregoing is
a true and accurate transcript of my stenotype
notes taken by me and subsequently reduced to
computer printout under my supervision, and that
this copy is a correct record of the same.

This certification does not apply to any
reproduction of the same by any means unless under
my direct control and/or supervision.

Dated this 27th day of December, 1999.

Michelle S. Parke

Michelle S. Parke - Reporter
Notary Public