HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA

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Current and Proposed Bonding Requirements on Coal Mining

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House Environmental Resources and Energy Committee

Room 60, East Wing
Main Capitol Building
Harrisburg, Pennsylvania

Wednesday, February 16, 2000 - 10:04 a.m.

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BEFORE:

Honorable Arthur Hershey, Majority Chairperson
Honorable David Argall
Honorable Thomas Armstrong
Honorable Brett Feese
Honorable Eugene McGill
Honorable Ron Miller
Honorable Chris Ross
Honorable Carole Rubley
Honorable Samuel Smith
Honorable Camille George, Minority Chairperson
Honorable Peter Daley
Honorable Robert Freeman
Honorable Jennifer Mann
Honorable Steve Samuelson
Honorable Sara Steelman
Honorable Curtis Thomas

ALSO PRESENT:

Wayne Crawford
Majority Research Analyst

Shelly Lipscomb
Majority Administrative Assistant

Frederick Taylor, Esquire
Majority Counsel to Committee

C O N T E N T S

1 CHAIRPERSON HERSHEY: I'm going to call the
2 meeting to order at this time. Welcome everybody. Welcome
3 everybody today to the continued hearing of Environmental
4 Resources and Energy Committee on the subject of full-cost
5 land reclamation program involving full-cost funding for
6 mining operations.
7 This hearing is a continuation of the hearing
8 that we held on December 14 of 1999 when we heard from the
9 Department of Environmental Protection, the US Office of
10 Surface Mining, Citizens of Pennsylvania's Future, the
11 Pennsylvania Coal Association, Pennsylvania Anthracite
12 Council, and ARRIPPA.
13 Unfortunately, time did not permit us to get
14 through the agenda. An important segment of this issue
15 which we did not cover was the insurance industry and the
16 industry response to the proposal. Also, we had requests
17 from several groups to appear at the first hearing, which
18 we're going to accommodate today.
19 I'm going to repeat the introduction I made at
20 the first hearing. The full-cost bonding can be a very
21 complex, technical issue on one hand and a simple problem
22 to resolve on the other. The Committee has several things
23 to work on: Number one, what we can do to clean up the
24 environment; and number two, the impact the cleanup program
25 will have on the economy and jobs in the coal fields; and

1 third, how Pennsylvania can prepare -- plans to prepare for
2 the future energy needs.
3 This is an important issue to the Commonwealth
4 of Pennsylvania; therefore, I feel that the Committee
5 should have a complete understanding of this issue. And
6 that's why I have agreed to hold the Committee hearing
7 today.
8 At this time, I'm -- I am the Chairman, Art
9 Hershey, from Chester County. I want to ask the members to
10 introduce themselves, and we'll start with Representative
11 Freeman at the far end.
12 REPRESENTATIVE FREEMAN: Representative
13 Freeman, 136th District, Northampton County.
14 REPRESENTATIVE MANN: Jennifer Mann. I
15 represent the 132nd District, Lehigh County, specifically
16 the City of Allentown.
17 REPRESENTATIVE FEESE: Brett Feese, Lycoming
18 County, 84th District.
19 REPRESENTATIVE ROSS: Chris Ross from Chester
20 County.
21 MR. CRAWFORD: Wayne Crawford, Committee
22 Staff.
23 REPRESENTATIVE SMITH: Sam Smith, State
24 Representative, Jefferson, Clearfield and Indiana Counties.
25 REPRESENTATIVE DALEY: Pete Daley, 49th

1 District, Washington and Fayette Counties.

2 REPRESENTATIVE McGILL: Gene McGill, 151st

3 District, Montgomery County.

4 REPRESENTATIVE RUBLEY: Carole Rubley, Chester

5 County.

6 CHAIRPERSON HERSHEY: Thank you. We have

7 Chief Counsel Fred Taylor in the corner and my staff

8 Shelly. Come on up, Chairman. We're glad to have Chairman

9 Camille George from Clearfield County.

10 I'd like to introduce the first panel of

11 witnesses. That would be Joseph Imler, President of

12 Evergreen Insurance Associates; and Carlton Ketchum, Vice

13 President of Morrell, Butz and Junker, Incorporated. Once

14 again, as we did in the previous meeting, I'd like to

15 recognize Representative Sam Smith to my left with the

16 purpose of conducting the procedure and questioning.

17 Sam comes from the coal area, and I appreciate

18 his knowledge and experience on this. I'm going to let him

19 to continue the meeting from here on.

20 REPRESENTATIVE SMITH: Thank you, Mr.

21 Chairman. I appreciate the courtesy of running the

22 hearing. We'll proceed with the testimony. If you

23 gentlemen would identify yourselves for the record and

24 proceed with your comments.

25 I believe that you did not -- you have a

1 handout to go along with your verbal testimony. Is
2 that -- go ahead then.
3 MR. IMLER: My name is Joe Imler. I'm
4 President of Evergreen Insurance Associates with offices in
5 Greensburg and Ebensburg. We're a brokerage firm that have
6 been involved in surety and insurance for the coal industry
7 for over 20 years.
8 I'm a lifelong Pennsylvania resident, born and
9 raised in Bedford County. I'm a graduate of Mercersburg
10 Academy and Duquesne University. I would like to take this
11 opportunity to voice my concern on full-cost bonding very
12 seriously. It does establish a record. And I appreciate
13 the opportunity, Chairman Hershey, to present my testimony.
14 I did not bring voluminous written testimony.
15 I prefer to do this verbally. I'll try to be as concise as
16 possible. I'm going to touch on five major points of the
17 way I view full-cost bonding, how it relates to the coal
18 industry, and also to the surety carriers.
19 My first area of discussion will be the
20 conceptual thought of surety versus insurance. Surety is
21 an advance of credit for a premium to be paid. There is an
22 indemnity attached to surety, which means if there is a
23 loss/default, the indemnitors; i.e., the coal carrier, will
24 have to make full restitution, including cost to the surety
25 carrier.

1 Relative to insurance where individuals pay a
2 premium, they receive protection if there is a loss. There
3 is no restitution back to the insurance carrier. There's a
4 substantial difference between surety and insurance. I
5 just wanted to clarify that point.
6 The second topic I would like to discuss is
7 the conceptual understanding of surety underwriting.
8 Surety underwriting as it relates to the coal industry is
9 based upon the financial strength, the character, and the
10 proven track record of the operator.
11 Surety also, in theory, should not have a
12 loss. The surety evaluates the potential exposures, will
13 charge a premium based upon that exposure, will most likely
14 require a form of collateral to limit or buffer that
15 exposure to the carrier, and will expect an adequate rate
16 of return or they will leave the marketplace.
17 As I stated in the concept of surety versus
18 insurance, part of the surety extension that a surety
19 carrier gives to an operator requires an indemnity; in
20 other terms, a promise to pay. If a default does occur or
21 forfeiture, the surety carrier is going to look to that
22 operator for full restitution, including all costs.
23 The vast majority of the time, this indemnity
24 also includes personal signatures, including spousing. So
25 there is great burdens placed on the operator from that

1 standpoint to make sure that the reclamation is done. The
2 surety industry has a tremendous amount of interest and
3 focus on what causes a forfeiture because this is the
4 trigger that obligates them to pay. What criteria is based
5 upon is used on basing the decision of a forfeiture.
6 The third thing I would like to discuss is
7 just the current status of surety carriers in the coal
8 industry, surface coal industry. As I stated previously,
9 I've been involved in over 20 years as a surety broker. We
10 have seen players come into the market, players leave the
11 market. I'll give some examples.
12 Utica Mutual, a long-term solid player in the
13 industry, has now pulled out of the market due to lack of
14 adequate return. Van-America Insurance Company has now
15 pulled out of the market and is out of business.
16 Mid-Contin Insurance Company is a very, very small player
17 in it and requires 100 percent collateral in order to post
18 the bond.
19 Aetna Insurance Company has pulled out of the
20 market. Travelers Insurance Company, for all intents and
21 purposes, has pulled out of the market. Firemen's Fund
22 Insurance Company, extremely rigid, essentially has pulled
23 out of the market.
24 Lincoln General, extremely rigid, will do
25 bonds, will usually take 100 percent collateral in order to

1 post the bond. Rockwood Insurance Company will issue bonds
2 on a very selective basis. As to where the surety carriers
3 are going to be coming into the state into the future, I
4 see that due to the potential size and length of the
5 exposure and the uncertainty of the full-cost bonding and
6 the lack of adequate return, that there will be very, very
7 few, if any, new players come into the surety marketplace
8 in Pennsylvania regarding the surface coal industry.
9 The fourth thing that I would like to talk
10 about is the implementation of full-cost bonding and the
11 financial impact that it will have on the surface
12 operators. In theory, the surety carriers view full-cost
13 bonding conceptually positive.
14 And this is by linking the site-specific bond
15 reclamation to the mine operator who assumes the liability.
16 This does allow for proper determination of the exposure
17 and the bond valuation. Full-cost bonding is going to
18 increase the degree of planning and documentation it's
19 going to require for a permit to be issued.
20 This also allows for some better underwriting
21 decisions that a surety carrier will have to make. One of
22 the issues I know that the surety carriers that do -- or
23 that are still in the industry have a great deal of concern
24 is the potential degradation of water treatment for
25 postmining discharges and will this exposure be separate

1 from the land reclamation bond?

2 It's a very critical point that the surety

3 carriers are thinking about right now. The question

4 remains, Can the surety industry and the surface operators

5 absorb the cost of full-cost bonding? I feel it's going to

6 be extremely difficult.

7 Any increase cost the full-cost bonding is

8 going to impose upon the surface operators are going to

9 lower their expected margins and limit their excess

10 capital. Since the surety carrier views the expected

11 margins and the excess capital as key underwriting

12 components, any further cost passed on to the operator is

13 going to lead to further tighter surety restrictions.

14 If bond rates increase, any collateral

15 requirement or premium exposure that an operator has is

16 going to increase at the same rate. This also further

17 reduces the margins and the excess capital in the industry.

18 For a surety carrier to stay in the marketplace, it will

19 most likely be necessary to increase collateral

20 requirements, increase bond premiums, or refuse to write

21 any additional bonds.

22 Some other questions that I would like to

23 address today regarding full-cost bonding is how will

24 full-cost bonding be implemented via policy change and not

25 regulatory change? Will water degradation be separate from

1 land reclamation regarding the Clean Streams Act
2 requirement?
3 And what will the effects of a judicial review
4 or a change in political administration have on policy
5 determination? Those are key items that the surety
6 industry is taking under consideration right now. Since
7 there is this uncertainty with full-cost bonding at
8 present, the surety views this as an increase risk.
9 The surety carrier needs to make a reasonable
10 determination of the exposure of full-cost bonding and,
11 most importantly, rely on a consistent view of the exposure
12 over an extended period of time.
13 The fifth thing I would just like to make some
14 comments on is the current state of the surface industry.
15 Pricing for coal is at a 15-year low. There's tremendous
16 difficulty in entering or exit strategies in the market.
17 This leads to more strain on the financial conditions of
18 the operator and their margins and their excess capital.
19 The last thing that I would like to discuss is
20 I have had the privilege to review the testimony of the
21 December 14th, 1999 hearing. I think that as everybody
22 would probably agree, full-cost bonding is a very complex
23 issue. And I think that if rational people sat down to
24 make rational decisions, we can come to a long-term
25 approach that will be to everybody's best interests.

1 I feel that the coal industry has shown its
2 commitment due to the tremendous gains that have been done
3 through remining over the last few years. That's a tribute
4 to Chairman Smith and Act 43. The number of acres that has
5 been done through private industry and remining is
6 substantially more than any government-funded program.
7 A question that I would like to throw
8 out -- and I apologize because I'm ignorant of this. And
9 I'm not sure anybody here can answer this. But since I
10 feel that a long-term approach that's to solve this problem
11 will require the abandoned mine reclamation funds,
12 continuation of remining incentives and probably the
13 balance of -- to restore the water problems in the state is
14 going to have to be broad based over a large number of
15 people and not just the surface industry.
16 My question is, How does the Public Utility
17 Commission view electrical generation from, say, the new
18 green effects such as wind and that? And if there is an
19 increased cost in the kilowatt hour of these alternate
20 forms of energy relative to the coal industry, there seems
21 to be a way that we can broad spectrum, you know, these
22 additional costs to make the degradation of water -- to get
23 rid of that, we can broad base this over a large spectrum
24 of people.
25 I know I would have no problem in seeing my

1 electric bill go up a little bit if we're all working to
2 the same common goal of getting rid of the postmining
3 discharges in the state. I've been -- I've had benefit of
4 relatively inexpensive use of electricity all my life.
5 I feel that's one of the key components for
6 the increased business development in the state. And I
7 personally have no problem in paying for that to a small
8 portion. I'll pass the testimony over to a competitor of
9 mine, Carlton Ketchum. And he will provide his testimony.
10 And when we're finished, we'll be glad to
11 answer any questions or concerns that we can.
12 MR. KETCHUM: Thank you. Good morning. My
13 name is Carlton Ketchum. I'm Vice President with the
14 Brokerage Firm of Morrell, Butz and Junker. We have
15 offices in Pittsburgh and Westmoreland County. I've been
16 involved with the surface coal-mining industry for over 20
17 years as a broker. I'm a competitor of Joe's.
18 I'm glad we're here today because as
19 competitors, it's our responsibility to find the best deal
20 for our clients. So I feel that we are giving you a very
21 accurate representation of the current state of the surety
22 market. It is important for the panel to understand how
23 surety operates.
24 As Joe mentioned, it is a credit instrument.
25 And this is a major mindshare for many people. Disregard

1 the fact that surety bonds are provided by insurance
2 companies. In other nations, letters of credit issued by
3 banks, not surety bonds, are used to guarantee performance
4 obligations. Surety bond is a recourse contract.
5 Most mining companies are privately owned and
6 provide both corporate and personal guarantees. The
7 difference between a bond and a bank loan -- and this is a
8 major one -- is that in absence of collateral, a surety
9 bond is an unsecured form of credit, whereas bank loans are
10 typically secured.
11 Sureties may require partial or complete
12 collateral on the bond, on the amount of the bond, which
13 creates an additional strain on the miner's working
14 capital. But whether or not collateral is required, the
15 surety does price their product with the expectation that
16 there will not be any losses.
17 The premium charged for a surety bond does not
18 include a loss component. The premiums generated by
19 reclamation bonds in the state of Pennsylvania is
20 relatively small. According to the Surety Association of
21 America, a trade association representing the majority of
22 surety companies, total premium in Pennsylvania for
23 reclamation bonds in 1998 was $3,236,000. This includes
24 all reclamation bonds, not just coal bonds.
25 The Surety Association does not provide a

1 breakout between coal and noncoal reclamation bonds. Let's
2 work with some numbers here. How much risk does the surety
3 receive for their premium? Let's look at what the premium
4 charges are. New reclamation bonds must be written for a
5 minimum of five years.
6 And a typical surety rate is 1.25 percent per
7 annum. It can be reduced to one percent if the bond is
8 prepaid for five years. So depending on the payment terms,
9 the aggregate exposure from bonds written in 1998 are
10 somewhere between $65 million and $324 million.
11 And I arrive at this range by dividing the
12 premium by the -- that 1 percent or that 5 percent. But
13 for the sake of today's discussion, let's say the aggregate
14 exposure is $100 million. To gain some understanding of
15 the difficulty obtaining reclamation bonds, I urge the
16 panel to contact the bank acquaintances and ask them the
17 following question:
18 If I were a business person whose business
19 operations are strictly regulated by state agencies and I'm
20 selling my product in an extremely competitive deregulated
21 marketplace, what would you charge me today to provide a
22 $100 million unsecured letter of credit that must be in
23 force for a minimum of five years?
24 Most bankers would laugh at that. But some
25 sureties will take that risk. And let's talk about some of

1 the factors they consider when underwriting an account.
2 They're looking at financial history of the operator;
3 they're looking at management talent; they're looking at
4 the environmental compliance history; they're looking at
5 the regulatory climate in the state as compared to other
6 states; they're looking at the long-term industry outlook.
7 Sure you can raise endless questions. They
8 all have the same intent. Surety wants to be sure that in
9 exchange for their one percent premium, they will not have
10 to pay a loss because of mismanagement, economic
11 conditions, or political risk. When you put all this
12 together, few sureties are willing to write reclamation
13 bonds.
14 Joe mentioned a number of the companies that
15 have come and gone. I can add to that list a few more.
16 But suffice it to say, there are no -- no surety has
17 announced their plan to come into Pennsylvania to write
18 reclamation bonds.
19 Let's talk about market conditions affecting
20 the coal industry. When primacy began in 1982, there were
21 over 38 million tons of surface bituminous coal produced in
22 the state of Pennsylvania. In 1998, there were 18,260,000
23 tons produced. Less coal mined means less premium to the
24 sureties.
25 Now throw in electricity -- electrical

1 deregulation and changes in the Clean Air Act, and
2 companies are required -- receiving less for their product
3 today than in 1983. According to the Energy Information
4 Administration, the average price for surface coal in
5 Pennsylvania in 1983 was $32.74.
6 It is not uncommon today to hear of prices in
7 the low $20 range. Nevertheless, increased expenditures by
8 coal companies on engineering have paid off for the
9 Commonwealth. Through the permitting process, there has
10 been a great success preventing postmining discharges.
11 In summary, surety looks at the situation.
12 And they say, there's less profit for them because of less
13 business. There's less premium for them, less profit for
14 the coal mines and actually less risk to the Commonwealth.
15 And now the DEP wishes to raise bond limits.
16 Let's get down to it. How will the sureties
17 react? Simply put, I think the sureties are going to say
18 there's -- as the program is currently proposed, the
19 sureties are going to say there's not enough premium to put
20 up with the aggravation. You will see sureties exiting
21 this state.
22 Second, those sureties that do stay in
23 business will be looking at an increased cost of doing
24 business through things such as increased field
25 inspections. You've got to admit a one percent rate

1 doesn't cover a lot.

2 And the sureties will look at the cost of

3 doing business and have to make an economic decision if

4 they can't afford to write more cost. Now, I urge the

5 panel to not accept the -- I call it the fuzzy logic that

6 increased bond amounts and resulting increased premium are

7 any sort of inducement for a surety to write bonds.

8 Full-cost bonding as proposed does not improve

9 the surety's risk/reward ratio. It only increases the

10 risk. Increasing the bond limit, as I mentioned earlier,

11 increases net worth requirements imposed on the coal miner

12 by the surety.

13 In a depressed coal market, sureties are going

14 to have to choose between writing bonds on weak financial

15 statements or declining bonds -- declining to provide bonds

16 and risk forfeiture to their existing clients. And I

17 believe there is a real chance that sureties will risk

18 forfeiture.

19 The impact of any increase in bond amount will

20 be hardest on privately held companies. The global

21 publicly traded integrated energy companies either own

22 surety companies or reinsure surety companies. Getting

23 bonds is not an issue for them. The global companies will

24 actually benefit from any reduction of competition.

25 I find the DEP's portrayal of the full-cost

1 bonding program as a necessity to be premature. There has
2 been a delay in public scrutiny of its actuarial basis and
3 the methodology arrived -- used to arrive at their
4 conclusions. And there has not been any input at this
5 point from the surety industry.
6 As a result, I believe the plan is without
7 credibility. Business needs credibility to operate. Any
8 revision in the bonding amounts should not occur behind
9 closed doors but include input from all stakeholders. Now,
10 the ultimate irony of the program as proposed is that I
11 think it will result in increased forfeiture and decreased
12 reclamation by surety companies.
13 Thank you for allowing me to testify. And I
14 welcome your questions.
15 REPRESENTATIVE SMITH: Thank you. Before we
16 go to questions, I just wanted to identify a few of the
17 other members that have joined us. I believe
18 Representative McGill from Montgomery County,
19 Representative Armstrong from Lancaster County,
20 Representative Steelman from Indiana County was in and out,
21 Representative Curt Thomas from Philadelphia,
22 Representative Argall from Schuylkill, and Representative
23 Ron Miller from York have joined us.
24 I'll proceed then. We'll start with
25 questions. I think I'll start at the far end here to the

1 right. Do we have any questions down at this side? I know
2 this is kind of a difficult subject. But I think you folks
3 represent an important element of this debate and
4 discussion.
5 Go down to this side. Gene? Representative
6 McGill is recognized for questions.
7 REPRESENTATIVE McGILL: I have several
8 questions. And bear with me because I'm -- I'm picking
9 this up on the fly. But do you intend to continue to write
10 in Pennsylvania if -- if we go to full-cost bonding?
11 MR. IMLER: A lot of that is going to be based
12 upon the financial strength of the operator that's going to
13 require the bonds.
14 REPRESENTATIVE SMITH: Please turn your mike
15 on so we can make sure they hear in the back.
16 MR. IMLER: A lot of that is going to depend
17 upon the financial impact that full-cost bonding is going
18 to have on the independent operator on whether the surety
19 is going to want to continue to extend credit. Those costs
20 I don't think have been determined to date.
21 At least the surety carriers do not know what
22 the cost of the full-cost bonding will have on the
23 operator.
24 REPRESENTATIVE McGILL: Do you expect the
25 premium to go up once -- if full-cost bonding were to go

1 into effect?

2 MR. IMLER: Any time when the surety carrier

3 views increased risk due to less than adequate returns by

4 an operator, whether it's margins or their capital, one of

5 the ways that -- is to increase the premium.

6 REPRESENTATIVE McGILL: Simple answer is yes?

7 MR. IMLER: Yes.

8 REPRESENTATIVE McGILL: One and a quarter

9 percent over five years isn't enough to do it?

10 MR. IMLER: No.

11 MR. KETCHUM: I think what you will also see

12 is increased collateral requirements to mitigate risk.

13 MR. IMLER: And Representative McGill --

14 REPRESENTATIVE McGILL: But let me get

15 something straight here. Increased collateral means that

16 they're putting up more for something that has the

17 potential to be a disaster waiting to happen that you're

18 writing a bond for.

19 So I think what I'm hearing is increased risk.

20 But I'm not so sure I agree with an increased collateral if

21 you're going to be responsible in the long run for

22 reclamation of a -- of a problem. So --

23 MR. IMLER: Well, Representative McGill, I

24 think what Carlton is alluding to is the surety carrier

25 will increase the collateral requirements of the operator

1 that they're posting bond for. The surety carrier is on
2 the hook for the whole bond.
3 But they're going to want increased protection
4 from the operator that they're posting the bond for, and
5 increase that collateral requirement. Any time you do
6 that, the state of the surface industry today is going to
7 put more pressure, less expected margins back from that
8 operator, lower the amount of working capital he has, and
9 put a huge financial strain on that carrier.
10 I truly don't think it's a question of whether
11 the bond premium itself increased is going to hurt the
12 operator. It's going to be the increased collateral
13 requirements that will be imposed. It's not a question of
14 whether they will be imposed. They will be imposed. And I
15 think that is the largest burden on the operator.
16 REPRESENTATIVE McGILL: What -- what kinds of
17 collateral are you talking about, money or part of the
18 operation or -- or the land or --
19 MR. IMLER: There is nobody -- there is no
20 surety that will use the land. There is no surety that's
21 going to use somebody's equipment. They're going to ask
22 for an irrevocable letter of credit or a certificate of
23 deposit that is assigned to them.
24 So it is liquid collateral. So if forfeiture
25 occurs, they don't go into court whether they can receive

1 that collateral. They're going to cash that collateral.
2 REPRESENTATIVE McGILL: How do you get an
3 irrevocable letter of credit from somebody who has most of
4 their assets tied up in the business that they're
5 operating? Or how -- excuse me. I think I'm dense because
6 I'm missing something.
7 MR. IMLER: That's the $24 question. How do
8 you get that?
9 REPRESENTATIVE McGILL: Well, that comes
10 back -- that comes back to my first question then: Will
11 you or will you not bond in Pennsylvania if we go to
12 full-cost bonding?
13 MR. IMLER: Well, as I stated previously, we
14 don't know at this time what the increased costs of
15 full-cost bonding are going to be on the operator.
16 REPRESENTATIVE McGILL: But we're left
17 with -- we're left with -- and I might get -- I might get
18 my numbers wrong. We're left with somewhere in the
19 neighborhood of $15 billion worth of acid mine runoff. And
20 believe me, I don't have a problem with private industry
21 making a buck. I really don't. I never have.
22 But the fact of the matter is private industry
23 made a heck of a lot of bucks in this state over the last
24 100 years or so, and they left us a garbage pit that we
25 have to clean up. Now, if I'm hearing that -- that what we

1 shouldn't be doing is putting someone on the hook that's in
2 business to be responsible for what they're doing to both
3 you, as someone who's underwriting, and the state, you got
4 to tell me -- because, you know, this is a group up here
5 that's going to recommend decisions on -- on these
6 things -- but you got to tell me why you shouldn't be on
7 the hook when -- when somebody can write a -- can write a
8 bond and not be responsible for the full cost of a
9 reclamation if somebody that they're bonding allows that
10 problem to happen.
11 MR. IMLER: If an operator and his financial
12 condition warrants the bond, the surety carrier will step
13 up to the plate. The surety does not view issuing bonds at
14 the present time to a surface operator to heal or solve the
15 problems as you stated that happen -- has happened over the
16 past 100 years.
17 There needs to be a distinct, you know,
18 realization of that. Nothing that full-cost bonding is
19 going to do is going to cure all those ills.
20 REPRESENTATIVE McGILL: But I wasn't trying to
21 mix the two. I wasn't trying to mix the two at all. I
22 simply was saying that we have a history. We all -- I
23 believe everyone in this room knows what that history is.
24 And the history is a mess.
25 And one of the reasons that the history is a

1 mess is because we have allowed for virtually no insurance
2 to cover the cost of companies that aren't doing it
3 properly. If companies that you're -- if your cost is
4 going to go up, they darn well better get in line with the
5 way that they should be currently mining.
6 And not -- so my question is going to, you
7 know, are the changes that we're pushing going to drive you
8 out of business and going to drive them out of business?
9 If they are, we need to know about them. But by the same
10 token, we also need to establish protection for the
11 Commonwealth.
12 I mentioned earlier my county is Montgomery
13 County. We don't have any coal mines, but what we do have
14 is a tremendous amount of debt that we try and work out
15 ways to reclaim mines from the past. So it's a statewide
16 issue. And I'm not -- I'm not trying to go after you.
17 I'm trying to get you to tell me honestly what
18 you think is going to happen if we do this because if you
19 don't and you don't lay it out for us, we are going to do
20 it. And if we drive everyone out of business, that's
21 not -- that's not the goal.
22 So, you know, that's -- that's kind of the
23 direction I was trying to go with that.
24 MR. KETCHUM: I would point out to
25 Representative McGill that according to some DEP

1 statistics, the number of seeps since -- when is
2 it? -- 1993 is minimum. So I would argue then that the
3 current program is working. Okay. The sins of the past we
4 cannot change.
5 But as the engineering and technology have
6 improved significantly, the miners that are in operation
7 today are experiencing very few acid mine drainage
8 instances. So in that context, I would say the
9 problem -- the program is currently working in terms of
10 qualifying miners and qualifying job -- mining jobs, mine
11 sites as not posing a threat to the Commonwealth.
12 MR. IMLER: Also, Representative McGill, and
13 it's a tribute to DEP. In over the last six to seven
14 years, their track record of predicting whether acid mine
15 drainage, postwater problems will occur, they've done a
16 tremendous job in predicting whether or whether or not that
17 will occur.
18 And if there's a potential that it will, the
19 permit isn't issued. So over the last six to seven years,
20 I guess in response to your question, we don't see the acid
21 mine drainage problems occurring as they have over the
22 previous 80 to 90 years.
23 REPRESENTATIVE McGILL: Well, I'll pass it on.
24 But I would leave it with one thought then. If -- if the
25 industry and the people who do the bonding of the industry

1 do not see the potential since '92 or whatever the date
2 that you used, since that point, if you don't see the
3 potential problems out there, then maybe -- maybe the
4 full-cost bonding is -- is not a horrible way to go.
5 If -- if you're comfortable that the people
6 that you're doing business with and are doing mining in
7 Pennsylvania are doing a good enough job, then we don't
8 have to worry about that because you -- that comes into the
9 factors that you laid out as what goes into the -- what
10 goes into the premium cost.
11 MR. IMLER: Well, I'll allude to the fact that
12 surety is going to be extended based upon the financial
13 wherewithal of the operator, the track record of the
14 operator, and his character. So it's not a question of
15 maybe whether the surety wants to extend credit based upon
16 the good track record over the last six or seven years of
17 postmining discharge.
18 It's any increase in cost that's passed on to
19 the operator is going to be viewed as increased risk by the
20 surety carrier because the operator is going to have lower
21 expected returns, and he's going to have a limited excess
22 capital. That's what will lead to a forfeiture.
23 I truly do not believe the operators in the
24 state today wish to have forfeitures. I think the
25 operators are left with holes in their blood. They want to

1 reclaim the land, but anything that's going to put a
2 financial strain on that will lead to forfeitures.
3 That's the question that we're here for today,
4 to hopefully determine what cost full-cost bonding will be
5 placed on the operators.
6 REPRESENTATIVE McGILL: Thank you. Thank you,
7 Mr. Chairman.
8 REPRESENTATIVE SMITH: Thank you.
9 Representative Argall, any questions? Chairman George?
10 REPRESENTATIVE GEORGE: Just a couple
11 questions. I'd like to take off a little on what my
12 colleague asked. Would you, under this plan, continue to
13 insure, if I can use that word? Now, the truth is that
14 there are some under the plan we have now that you won't
15 pick up; isn't that true?
16 MR. IMLER: That's correct.
17 MR. KETCHUM: Oh, yeah.
18 REPRESENTATIVE GEORGE: With that in mind, do
19 you believe when there is a grab on the bond, that it ought
20 to be site specific; in other words, if you're going to
21 release $250,000 worth of bond, that it ought to be applied
22 on that area where the infraction occurred?
23 MR. IMLER: As a surety carrier -- and I'm a
24 broker. Speaking for the carrier, they don't want to see
25 the $250,000 bond pulled irregardless. As a surety --

1 REPRESENTATIVE GEORGE: That isn't what I
2 asked you. That isn't what I asked you.
3 MR. IMLER: But as a resident of the state, I
4 personally feel that the bond money should be put right
5 back into that site-specific location and fix that problem.
6 REPRESENTATIVE GEORGE: I would assume as a
7 good financial man that if in fact the reclamation had only
8 cost half that, you'd be a damn fool to want to take it
9 someplace else, wouldn't you?
10 MR. IMLER: Exactly.
11 REPRESENTATIVE GEORGE: Well, that's the
12 answer I'm looking for. So you would insist on site
13 specific?
14 MR. IMLER: I don't have a problem with the
15 bonds being site specific.
16 REPRESENTATIVE GEORGE: Let me ask you.
17 You've been in this business a long time, I assume.
18 MR. IMLER: Over 20 years.
19 REPRESENTATIVE GEORGE: Well, you sound like
20 you're pretty well of an expert on it. I apologize in that
21 I'm not. So if I say something that is inaccurate, you can
22 certainly overlook it. Are you aware that there's probably
23 $90 million setting over in the vaults in the Treasurer's
24 office that have been in some way related as cash
25 bond -- and I think you do know what I'm talking

1 about -- where even after you have insured someone and then
2 they take on additional acreage and you don't feel that
3 it's a good investment, that they're allowed to put up a
4 specific amount of cash bond and that cash bond might
5 be -- permit me -- whether it be a certificate of
6 deposit --
7 MR. IMLER: Ordinarily, a letter of credit.
8 REPRESENTATIVE GEORGE: Well, let's assume
9 it's a certificate of deposit. And here's the question I
10 want to ask you because I'm not trying to put you on the
11 spot, and I'm not trying to put the Department on the spot.
12 But I want to know why those of us that are in the
13 Legislature can't help all of you at the same time.
14 For example, supposing I put $100,000 up as
15 a -- in a certificate of deposit. Fifteen years ago,
16 whenever, the interest kept spiraling. One day you'd look,
17 it would be at six; and the next day it would be eight; the
18 next day would be nine. This gentleman's already nodding.
19 He knows what I'm going to say.
20 MR. KETCHUM: I wish I had some of those.
21 REPRESENTATIVE GEORGE: If you lend the money
22 you claim you do, you probably do have that kind of money.
23 Nevertheless -- nevertheless, wouldn't you agree that
24 whenever that certificate of deposit came due, that it
25 ought to be allowed to be taken out with the guarantee that

1 it's paid to whoever is due it and allow there to be
2 reinvestment in the highest interest rather than to sit
3 there stagnant for 25 years and do no one any good?
4 MR. IMLER: I think that just makes good
5 business sense.
6 REPRESENTATIVE GEORGE: Pardon me?
7 MR. IMLER: That just makes good business
8 sense.
9 REPRESENTATIVE GEORGE: Well, then why is it
10 nobody has said anything about all these millions of
11 dollars that sit over there in the Treasurer's office
12 that's got 14 foot of steel? But it isn't the steel that
13 keeps them safe. It's the idea the Department doesn't
14 allow you to get into them.
15 Shouldn't we be allowed to take this type of
16 money to be invested and secure it for the Department in
17 order to guarantee but yet allow them to creatively let
18 that money turn into more money so that we can protect the
19 environment?
20 MR. KETCHUM: I'd like to know more about that
21 program. That could be part of the solution.
22 REPRESENTATIVE GEORGE: Let me ask you one
23 more thing that I'm not aware of. Do you make a
24 determination of whether or not you're going to provide the
25 security strictly on an individual operator's worth, or do

1 you sometimes gear that determination on the area that's to
2 be mined?
3 MR. IMLER: Both.
4 MR. KETCHUM: Yeah, both.
5 REPRESENTATIVE GEORGE: Both. So when in fact
6 the area demands special attention and causes a greater
7 amount of concern, that gives you guys greater concern?
8 MR. IMLER: Correct.
9 MR. KETCHUM: Absolutely.
10 REPRESENTATIVE GEORGE: Now, does it give you
11 greater concern as they attempt to place additional acreage
12 in or do things like blasting and that where normally maybe
13 there was a -- part of the job didn't allow that blasting?
14 Does that give you another feeling of insecurity your money
15 might be going down the drain?
16 MR. IMLER: The blasting exposure is covered
17 not by a surety instrument but by an insurance policy.
18 REPRESENTATIVE GEORGE: But while we're at it,
19 should blasting be on an additional thing? Should it be on
20 a performance bond rather than the security bond? You know
21 the old adage. I can ask Mr. Dolence back there to tell me
22 about blasting. And if you dropped below 1.5, what good is
23 it?
24 But the truth is that I don't know how far you
25 can look up a dead horse's rear end. But I don't know how

1 in the hell you guys can make a determination on blasting,
2 whether or not it's going to affect the water supply. Even
3 God doesn't do that.
4 I don't know how you or DEP can do that, but
5 maybe you can tell me how you do that.
6 MR. IMLER: Well, in that instance, since
7 we're here representing the surety industry, that's a
8 general liability and/or pollution liability situation.
9 That question would most likely have to be addressed to the
10 blasting companies themselves. I do know if a bad blast
11 occurs --
12 REPRESENTATIVE GEORGE: I'm not talking about
13 the financial responsibility if a bad blast occurs and it
14 does damage physically to something around it. I'm talking
15 about the progression and what it might do to water
16 supplies. That's what I'm talking about.
17 I'm not talking about whether a lump that
18 weighs 200 pounds comes up and hits you on the head. I'm
19 talking about what it will do in equation of the fact that
20 it might in some way provide the loss of water,
21 degradation, change of quality, whatever.
22 MR. IMLER: You can be rest assured that if
23 that happens and there is negligence on the blaster that
24 caused the water problem, the blasting company is going to
25 be drawn into litigation by the surety carrier.

1 REPRESENTATIVE GEORGE: My young friend, I put
2 rebuttable presumption in the law. I'm almost as old as
3 you. And you know that's another thing about rebuttable
4 presumption. Rebuttable presumption will not be worth a
5 damn until the Department starts to protect those that live
6 around the site, not just you or the site.
7 I put rebuttable presumption there. I will
8 live 100 years. I'll try to make it even stronger. That
9 isn't what I asked you. I asked you, Do you determine the
10 amount of your charge on the fact that the area itself
11 might be acclimated to be problematic? Do you charge them
12 more?
13 MR. IMLER: The surety carrier doesn't
14 contemplate that because we truly --
15 REPRESENTATIVE GEORGE: So you lend a dollar
16 on a dollar?
17 MR. IMLER: That's correct.
18 REPRESENTATIVE GEORGE: Whether -- so if an
19 individual has worth, you lend a dollar on the dollar?
20 MR. IMLER: We are ignorant of the blasting
21 plan.
22 REPRESENTATIVE GEORGE: So then would they
23 turn around and if an individual has a bond that's been
24 around for 24 years and they've been fighting to be able to
25 get within the Department to say, Now, what is it you need

1 for us to be able to address this problem, and all at once
2 they pull the bar, is that the way it should be done?
3 MR. KETCHUM: I don't believe so. I'm not
4 familiar with the facts of this situation. But in a
5 24-year -- I would need to know more about that.
6 REPRESENTATIVE GEORGE: Well, see, my problem
7 is, I've had calls from people saying they pulled my bond.
8 A small job, you know, only had 10 acres, had 21,000. They
9 pulled my bond, and I don't know why. They told me that I
10 had a little bit of erosion. I addressed it. I planted it
11 with seed, had a big rainfall that washed the seed away. I
12 planted it again. Now they're telling me they're going to
13 pull my bond. And I'm not blaming them. Their job is to
14 take care of the environment. But is there something
15 wrong?
16 MR. IMLER: There's something wrong if a bond
17 is still in place for 24 years once reclamation has been
18 achieved. I mean, either the bond should be released or
19 why isn't it? And if it hasn't been released, the
20 situation should be addressed.
21 REPRESENTATIVE GEORGE: Shouldn't it be put in
22 a fund? Like, I mean, in other words, if it's not going to
23 be site specific, shouldn't it be into a revolving fund
24 where maybe there isn't enough bond, contrary to what I
25 said, to treat the problem area?

1 Should it be put into a fund where when you
2 get enough money, you can come back and place a priority on
3 that problem area? Is that the way it should be done?
4 MR. KETCHUM: That can occur. There are also
5 initiatives to encourage remining of those areas by active
6 operators to minimize their -- or remove the problem.
7 REPRESENTATIVE GEORGE: Years ago, we created
8 Subchapter F. And that isn't working, you know. Thanks,
9 Mr. Smith. Thank you, gentlemen. Thank you.
10 REPRESENTATIVE SMITH: Thank you, Mr.
11 Chairman. I would recognize Representative Samuelson has
12 also joined us. I just want to pick up on a couple of the
13 lines of questioning. When the concept of full-cost
14 bonding was first announced, that the Department was
15 looking into it, the -- the argument came forth -- and one
16 that I was trying to wrestle with in my own mind -- the
17 argument that because the Department was going to analyze a
18 site-specific permit, you know, the actual mining pit, that
19 the predictability of the cost of reclamation would be more
20 precise and that, therefore, you, as the company writing
21 the bond for that site, would have a more, you know, more
22 quantified prediction of what you were faced with.
23 Therefore, the cost of the bond actually might
24 go down because the Department was going to make that
25 operator keep that pit and under a more controlled, you

1 know, opening. You weren't going to let -- you weren't
2 going to let some reclamation get behind as he mined on
3 ahead. And that's where some of these guys get in trouble,
4 I think.
5 Would you expand on that? Or tell me what's
6 wrong or right about that -- that thing because you're
7 looking at a -- this cost of reclamation at this pit at
8 this given moment is X number of dollars, why that
9 predictability doesn't affect the cost to you.
10 MR. IMLER: Well, the surety has always been
11 under the assumption that reclamation is kept current.
12 That's an assumption they make. They're not out in the
13 field. They can't -- they can't monitor that themselves
14 unless they send an engineer out.
15 But that assumption has always been there in
16 either bonding program, is that the reclamation will be
17 kept current and that the reclamation will be completed. I
18 mean, eventually, Representative Smith, if an operator
19 would project out their future 2- to 5-year mining plans
20 and as to what permits they might acquire and what that
21 amount of bond would be under full-cost bonding, that would
22 give the surety some comfort in at least saying, Hey, over
23 the next five years, we're going to -- if we -- I mean, if
24 we wish we're going to extend X amount of credit to this
25 person, then we have an idea right now what that potential

1 liability is going to be.

2 So under that instance, I mean, a surety would

3 have some comfort level. But right now, that goes on

4 anyway. I mean, we try to know what a surface operator is

5 going to -- going to require over the next two to five

6 years in his mining plans.

7 REPRESENTATIVE SMITH: So the actual cost of

8 the reclamation isn't really what concerns you as much as

9 the amount of bond you're posting?

10 MR. IMLER: Well, anything that would lead to

11 reduced cost in reclamation would only improve that

12 operator's rate of return, which would make -- which would

13 give the surety more comfort. Any increased cost would be

14 the inverse.

15 REPRESENTATIVE SMITH: Okay. The second thing

16 I want to touch into is probably the most critical element

17 of this whole debate or this whole discussion; and that is,

18 if you are being asked to write a bond strictly for the

19 land reclamation and one of the early implications was that

20 we were going to separate the water liability which

21 has -- you know, as you mentioned appropriately, the

22 permits that have been issued over the last several years

23 have yielded significantly fewer, you know, water discharge

24 problems than what happened 10 or 15 years ago and

25 certainly pre -- pre-primacy era.

1 If there was a separation of water from the
2 land reclamation, does that make it a lot more comfortable
3 for the bond industry to -- to function in Pennsylvania?
4 MR. IMLER: Absolutely without question.
5 MR. KETCHUM: I would like to ask you to
6 elaborate on that separation, the concept that you're
7 proposing.
8 REPRESENTATIVE SMITH: I'm not proposing that.
9 That's what the Department has been suggesting. Mr.
10 Dolence will be following you. And he's going to elaborate
11 on how -- no. Seriously, that is the problem, though, is
12 that, A, the Department isn't going to issue a permit where
13 they know there's going to be bad water. Okay?
14 MR. KETCHUM: Correct.
15 REPRESENTATIVE SMITH: Occasionally -- and
16 it's down to one, you know, roughly one to maybe one and a
17 half percent of the times now, there is a small discharge
18 that comes out of a permitted site.
19 MR. KETCHUM: Correct.
20 REPRESENTATIVE SMITH: And if -- when this was
21 first proposed, the suggestion was that -- that this
22 full-cost bonding will only apply to the land reclamation
23 and water is a separate problem. But the fact is, if they
24 can't release that reclamation bond because there happened
25 to be a discharge there, no matter what -- how we're going

1 to deal with that side of the problem, if the bond isn't
2 released, the bond isn't released.
3 And I think that's what Representative George
4 was getting at. The site he's talking about, I have a
5 feeling -- I don't know it any more than you do. But I
6 have a feeling it's a case where the guy reclaimed it.
7 Everything was seeded, but there was maybe a discharge and
8 either hasn't been treated or addressed.
9 And they're not going to release the bond on
10 that for, you know, because there is no site-specific fund
11 or whatever they're going to look at.
12 MR. KETCHUM: The -- what you are proposing,
13 bonding between reclamation and water, changing that would
14 be very beneficial to the surety industry. The standards
15 have to be -- I would urge that the standards have to be
16 tied to -- that there be a distinct delineation between the
17 reclamation and the water so that the surety has certainty
18 of their guarantee.
19 MR. IMLER: The problem, Representative Smith,
20 with the postmining discharge is a surety -- where they
21 have concern is they're posting credit for something that
22 has a long-term tail irregardless of whether the land
23 reclamation has been completed.
24 So let's just, for argument's sake, say that
25 that is a $250,000 reclamation bond on a site. The

1 operator reclaimed the land back to original contour,
2 seeded that land. The farmer two to three years later is
3 cutting hay on that land.
4 But for instance, we have a small manganese
5 problem. And that $250,000 bond has not been released and
6 most likely will not be released. What that does to the
7 operator is, yes, maybe there's not a forfeiture at that
8 present time because it's just kind of on dry ice, which is
9 a problem.
10 But what that does is that $250,000 of work
11 that the operator has done has now been kind of used
12 against him in his bonding line. So his bonding line
13 capacity is now reduced by $250,000 irregardless of whether
14 he's already -- I mean, given that he's already done the
15 reclamation.
16 REPRESENTATIVE SMITH: And the --
17 MR. IMLER: And that's a problem because I've
18 run into many of those, and it does put great strains on
19 the operator.
20 REPRESENTATIVE SMITH: Far be it for me to
21 suggest that I understand what Chairman George may or may
22 not have been talking about, but I think that's where he
23 was going is a situation like that. That's -- and
24 I'm -- seriously, I just kind of guessed at that. But I
25 think that's where he was heading.

1 MR. IMLER: And the problem with the surety
2 when there's long-term tails and let's say reclamation is
3 done but there is a seed and, okay, is the bond -- or is it
4 not going to be forfeited? That's a substantial bond.
5 What happens in that long-term tail due to the judicial
6 review process, possible changes in administration, the way
7 that they view that causes great concern to the surety.
8 I mean, if the reclamation is done, then a
9 determination has to be made. But to just put it on dry
10 ice does not help the operator. In essence, that's held
11 against him as a forfeiture even though it hasn't happened
12 because his surety line is being used up by that much.
13 I was under the impression initially in the
14 fall that the postmining discharges would not be part of
15 the full-cost bonding. I am aware that maybe that has
16 changed.
17 REPRESENTATIVE SMITH: And that is one of the
18 problems. It's been a little bit fluid here in terms of,
19 you know, just what is being proposed. But to me, that is
20 the critical element. And arguably, one of the things that
21 I've been trying to promote is that a lot of this problem
22 really -- the water problems really are from either
23 pre-primacy sites that were repermitted or just, you know,
24 the old, old sites that -- before we had any real laws
25 that, you know, that protected against, you know, the

1 discharges and required reclamation.

2 MR. IMLER: That's why I view that given

3 whatever the total amount of that postmining discharge is

4 in the state, that it can't be placed upon the current

5 operators. It has to be a broad base spectrum that almost

6 everybody contributes to.

7 REPRESENTATIVE SMITH: Just one little

8 follow-up question. Then I'm going to wrap it up, and

9 we'll go on to the next testifier. Has the Department been

10 in contact with either of your companies to officially walk

11 through this or go through, you know, the pros and cons and

12 seek out some advice from you folks?

13 MR. IMLER: Well, I'll speak on behalf

14 of -- Carlton, I'm sure he will, too. We're surety

15 brokers. So we're kind of frontline soldiers in the

16 industry. And we're between the operator and the surety.

17 But I personally haven't been contacted.

18 But by the DEP, through one of my clients,

19 they asked me to sit in on a presentation of -- of Mr.

20 Roberts in the fall. But that was my only --

21 MR. KETCHUM: Same.

22 REPRESENTATIVE SMITH: Thank you. Are there

23 any other questions or comments from the members here of

24 these gentlemen?

25 (No response.)

1 REPRESENTATIVE SMITH: Well, thank you very
2 much. We certainly appreciate your taking the time to be
3 with us because your, you know, component of this problem
4 is significant. And we appreciate the insight you've
5 shared with us.
6 MR. IMLER: We'd like to, you know, just thank
7 the Committee for having us here. We would be more than
8 happy to participate in any future hearings.
9 REPRESENTATIVE SMITH: Thank you. Next, we'll
10 call up Deputy Secretary of Mineral Resources Management,
11 Robert Dolence. If you would just identify yourselves for
12 the record and proceed.
13 MR. ROBERTS: My name is Scott Roberts. I'm
14 the newly appointed Director of Bureau of Mining
15 Reclamation.
16 MR. DOLENCE: Bob Dolence, Deputy Secretary
17 for Mineral Resources Management.
18 MR. JARRETT: Jeff Jarrett. I'm the Director
19 of the Bureau of District Mining Operations.
20 MR. FLETCHER: I'm Rod Fletcher. I'm the old
21 Director of Bureau of Mining and Reclamation, newly
22 appointed Director of Bureau of Abandoned Mine Reclamation.
23 MR. DOLENCE: Thank you, Mr. Chairman. Thank
24 you, Committee, for giving us the opportunity to be here
25 again today. I do not have all the answers, and I don't

1 claim to be the most knowledgeable. But I do take pride in
2 recognizing talent and bringing on board those who do have
3 a lot of the answers. And that's why you see me
4 accompanied with the Bureau of Directors this morning.
5 By law, we are required to require bonds from
6 coal companies who want to mine. Prior to issuing a
7 permit, they must post a bond. The bond is not limited to
8 just sureties. I appreciate the efforts of the two brokers
9 who sat here this morning explaining a lot of the -- their
10 business to you.
11 We are going to have a meeting one week from
12 today with surety companies, not brokers. There will be a
13 couple brokers involved with that meeting. We're going to
14 be meeting with the surety companies themselves to find out
15 whether our policies and decisions would have an impact on
16 how they establish their policies and how they write bonds.
17 Additionally, bonds in the state need not be
18 surety or just letter of credit. There are other avenues
19 that can be pursued for bonding. And through the
20 Legislature on remining incentives, we do have bond credit
21 capability in the Department.
22 We have the financial guarantee program.
23 These are avenues that the operators can pursue to
24 supplement their bonds. One of the -- there's several
25 points that I want to put in context before I answer your

1 questions. Our decision-making process over the last
2 decade has advanced incredibly.
3 Less than one percent of the permits issued
4 today result in a postmining pollutional discharge. That
5 has to have an effect on risk assessment by the sureties.
6 The ones that do end up with the discharge are relatively
7 minor to moderate in nature.
8 What that means is they are amenable to
9 passive treatment, wetland technology, a much less onerous
10 treatment scenario on operating and maintenance. That has
11 great ramifications on keeping the AMD problem from getting
12 worse in the Commonwealth.
13 We do have a -- an incredible heritage of
14 mining in the state, a heritage that we should be proud of.
15 Everyone knows the industrial revolutions in World War II
16 and World War I were fueled by the lives given by -- by
17 miners in this state.
18 But we don't want to see the AMD impact on
19 2,400 miles of stream in this Commonwealth to get worse.
20 In fact, we want to see it get better. We want to see more
21 remining. Industry is reclaiming more abandoned acres in
22 this Commonwealth than the collective effort of government
23 up through last year.
24 And I think they're going to have a run for
25 their money, which we appreciate from the Chairman. But we

1 want to leverage that. And we want to keep a bible
2 industry in the Commonwealth because they are helping us to
3 address many of these problems at no or little cost to the
4 taxpayer.
5 So our proposal for traditional bonding, also
6 known as full-cost bonding, is not to put the
7 business -- put the coal-mining industry out of business.
8 It is to focus the liabilities of operations on that
9 operation. The current system masks problems at one
10 particular operation.
11 You heard it from the surety brokers. They
12 don't send inspectors out to see what the site conditions
13 are. The current system unfortunately taxes, if you will,
14 those operators who keep their reclamation tight, their
15 reclamation on mark.
16 They pay into a fund that allows other
17 operators to slip. And we think that that does not present
18 parity within the industry. We're trying to create parity
19 not only within the industry but outside of the
20 Commonwealth. Traditional bonding is used elsewhere in the
21 country.
22 And we have not seen a mass exitus of the
23 coal-mining industry in those states. With laying that
24 little bit of a framework, we'll gladly try to answer any
25 questions you may have.

1 REPRESENTATIVE SMITH: Go ahead, Brett.
2 Representative Feese is recognized.
3 REPRESENTATIVE FEESE: Thank you, Mr.
4 Chairman. Mr. Dolence, I'm confused. On October 6th of
5 1999, Secretary Seif announces full-cost bonding. And next
6 week, you're meeting with sureties. So we went October,
7 November, December, January.
8 And now you're finally going to meet with
9 sureties for input. Is that my understanding?
10 MR. DOLENCE: May I clarify that?
11 REPRESENTATIVE FEESE: Oh, please do.
12 MR. DOLENCE: We have had discussions with
13 sureties. We have had discussions with brokers of
14 sureties. We have been trying to schedule a meeting, a
15 broad meeting with both industry and the sureties for quite
16 some time.
17 REPRESENTATIVE FEESE: Okay. When did you
18 start trying to schedule that meeting?
19 MR. JARRETT: The large meeting with the
20 surety --
21 REPRESENTATIVE SMITH: Turn your mike on,
22 please.
23 MR. JARRETT: I'm sorry. The larger meeting
24 with the surety industry itself we proposed approximately
25 six months ago.

1 REPRESENTATIVE FEESE: You proposed. So
2 there's a letter to sureties from DEP somewhere that says
3 we'd like to have a meeting?
4 MR. JARRETT: No, there's -- there's no
5 letter. We -- we believe that we've got a responsibility
6 under the law to make sure that we have a bonding system
7 that is adequate to take care of whatever forfeitures leave
8 us with.
9 REPRESENTATIVE FEESE: So there's no letter.
10 Is there a memo? Is there some record that I could
11 see -- I don't care if it's long distance telephone
12 records -- which indicates DEP tried to get the different
13 groups together -- and we'll start with sureties -- before
14 October the 6th to talk about it?
15 MR. JARRETT: There is no letter. We -- we
16 believe that the issue was -- should be of more concern to
17 the mining industry than to us. I mean, we've got a legal
18 obligation to meet. And we proposed that -- we proposed
19 that meeting to the mining industry six months ago.
20 REPRESENTATIVE FEESE: So there's a letter
21 from you going to which organizations prior to October the
22 6th asking for a meeting to discuss this?
23 MR. JARRETT: Those were phone calls. Now,
24 with respect to the bonding issue itself, there are letters
25 from me and from the Department to the Pennsylvania Coal

1 Association explaining the gravity of the bonding situation
2 in Pennsylvania -- those letters date back over a year
3 ago -- requesting, okay, we've requested at numerous
4 meetings that we sit down and try to figure out how to deal
5 with this problem.
6 REPRESENTATIVE FEESE: So we have that
7 history, and you did that before October the 6th?
8 MR. JARRETT: That's correct.
9 REPRESENTATIVE FEESE: And you probably
10 contacted the United Mine Workers before October the 6th,
11 too, to sit down and discuss the impact on those workers,
12 did you not?
13 MR. JARRETT: I did not.
14 REPRESENTATIVE FEESE: Who did? Mr. Dolence?
15 MR. DOLENCE: No, I did not contact the United
16 Mine Workers over the surety issue.
17 REPRESENTATIVE FEESE: Gentlemen, isn't it
18 fair to state -- and I know I don't have a judge here to
19 direct you to answer the questions, which I'm accustomed
20 to. So you might dodge it. But isn't it fair to state
21 that everything you're doing right now, your meeting next
22 week, your testimony here is all after the fact to cover up
23 a decision that you made on October the 6th without
24 basically any input from the organizations involved who had
25 an impact? Is that fair?

1 MR. DOLENCE: No, sir.

2 REPRESENTATIVE FEESE: No? Okay. So you can
3 present -- could you present to me and make it part of this
4 record -- it's up to the Chairman if he would allow it to
5 be part of this record -- a chronology of every
6 organization you tried to contact to get input on this
7 issue, to get input from on this issue prior to October the
8 6th? Could you do that for me?

9 MR. DOLENCE: Yes, sir. We can try to put
10 that together for you.

11 REPRESENTATIVE FEESE: Could we make that part
12 of the record, Mr. Chairman?

13 REPRESENTATIVE SMITH: I'll defer that to
14 Chairman Hershey.

15 CHAIRPERSON HERSHEY: If they can, you know,
16 pull together their comments and thoughts and records, we
17 would -- we'd accept that as part of the record.

18 REPRESENTATIVE FEESE: Thank you. I'll look
19 forward to all those contacts. Then I want to contact
20 those groups and -- to see what follow-through the
21 Department did to make sure they got input from every
22 organization that you're going to impact on, including
23 environmental groups, prior to October the 6th. Thank you.

24 MR. DOLENCE: You're welcome.

25 REPRESENTATIVE SMITH: Thank you.

1 Representative Ross.

2 REPRESENTATIVE ROSS: Thank you, Mr. Chairman.

3 I picked up on a comment. And forgive me because I'm not

4 very knowledgeable in this area at all, even less

5 knowledgeable than the Chairperson. But you mentioned

6 something, that the Department has its own bonding program

7 as an alternative to people who are having difficulty

8 finding bonds in the private market?

9 MR. DOLENCE: Well, the purpose for our

10 remining bonding program, which was authorized

11 under -- from the State Legislature, is to provide bond

12 credits and financial guarantees that encourage remining.

13 The remining portion of the mining operation, we will back

14 the bonds and also give bond credits, if you will, a carrot

15 to encourage operators who go into these abandoned sites

16 and reclaim them versus picking an area that has previously

17 not been disturbed.

18 REPRESENTATIVE ROSS: But if a person is

19 coming in to start mining in a new location, let's say, and

20 they are having difficulty getting a bond in the private

21 sector, then that would not be -- you don't offer an

22 alternative to them if they fail to be able to get it in

23 the private sector?

24 MR. DOLENCE: Most of the -- the operations

25 have some component that is not remining. And they would

1 be -- the operator would be required to post the bond for
2 those areas other than through the Department's remining
3 program. So if they have a risk -- if they have a
4 difficulty in paying the bond, we would not be backing that
5 piece of --
6 REPRESENTATIVE SMITH: Excuse me. I think his
7 *questioning is if you were looking for workers'*
8 compensation insurance, you'd go out to a whole bunch of
9 private insurers. But if none of them will take you,
10 there's the State Workers' Insurance Fund that will take
11 you in.
12 Does the state have some form of bonding
13 program that would provide, you know, where the -- where
14 the operator can come in for bond through the state as
15 opposed to through the private industry? Is that what you
16 were getting at, Representative?
17 REPRESENTATIVE ROSS: That was what I was
18 wondering because what the prior testimony was was that the
19 two options are: One, obviously to raise the premium or
20 increase the level of collateral; and the other option
21 would be for the company to just get out of the market
22 entirely.
23 And if we're -- and I guess we've got a
24 question here of how much increased risk and how people are
25 going to assess that increased risk and how they're going

1 to react. But if one of the reactions is for more and more
2 companies to get out of the market as a whole, then we
3 could obviously be seriously damaging the coal industry in
4 the Commonwealth.
5 And so if you had a fallback position, I was
6 curious to learn more about that. But basically, what
7 you're telling me is you don't really.
8 MR. FLETCHER: Representative, I might add
9 that -- I don't have all the details -- but I believe that
10 some of the states do have small programs. But
11 essentially, the objective is not to act as a fallback if
12 the operator doesn't get a bond.
13 It is actually more of a reward. The reward:
14 Those operators will have a good history of mine
15 reclamation and so on. And those are the operators who are
16 permitted in the state's bond programs.
17 REPRESENTATIVE ROSS: I think I understand. I
18 would make one other general comment. Again, I'm not
19 knowledgeable of this particular industry. But when you
20 compare from one state to another and say that this method
21 is being used in other states, that from a business
22 person's point of view, they're looking at their current
23 cost today.
24 And they're obviously rather site specific in
25 terms of their operating conditions, the cost that they're

1 going to have on the individual location. And because
2 something might work well in Montana, it doesn't
3 necessarily mean that it's going to, from a marginal point
4 of view, be tolerable here in Pennsylvania.
5 So increased costs that you impose could very
6 well have a critical effect on the individual businesses
7 that are having to bear those costs in terms of their being
8 able to continue in operation. So I just wanted to point
9 that out.
10 MR. DOLENCE: That's a very fair observation.
11 And being familiar with Potter River Basin, we did not even
12 look at Wyoming, Colorado, Montana as mining programs. We
13 focused in the Appalachian area that have mining very
14 similar to Pennsylvania.
15 And they also have competing markets because
16 it would be comparing apples and oranges. And if we went
17 to Montana to look at their programs, completely different
18 ball game.
19 MR. JARRETT: I think it's also important that
20 everyone keep in mind as we evaluate the full-cost bonding
21 program that we shouldn't be comparing that proposal with
22 the current system. It's only a question of what kind of a
23 new system we develop out here because the status quo is
24 badly broken and it has to be fixed.
25 And our bond fund is insolvent. It has to be

1 fixed. It's only a question of what's the most appropriate
2 way to fix that program? We hear a lot of people talking
3 about just leave it the way it is. Your new proposal is
4 going to cost us more.
5 And that may very well be right, but that's
6 only if you compare it with the system that can no longer
7 stand.
8 REPRESENTATIVE SMITH: All right.
9 Representative Argall for questions.
10 REPRESENTATIVE ARGALL: Thank you,
11 Representative Smith. It's been my experience that any
12 kind of change frightens people. And this certainly falls
13 into that category. I'm hearing from coal-mining companies
14 in my district that are afraid that they simply cannot
15 afford this.
16 I'm hearing from workers who are afraid
17 they'll lose their job, some of the best paying jobs in my
18 district. And I'm hearing from conservation districts that
19 understand that, you know, if something bad happens to
20 these companies, something bad happens to our environment.
21 We've learned in my experience that these
22 aren't the kind of companies that can just turn off the
23 lights and walk away. When a pump stopped operating, we
24 saw what happened from -- in my largest town, 60 -- I guess
25 60 years' worth of deep mining.

1 Water just flowed across the largest highway
2 in -- going into that town, and you couldn't get there from
3 here until that pump was fixed. Some of the estimates I'm
4 getting on the anthracite region is that the cost could
5 double, the cost could triple.
6 Certainly, you folks have crunched some
7 numbers. What kind of numbers can we really rely on at
8 this stage of the game?
9 MR. DOLENCE: I'll ask Scott Roberts to
10 specifically answer. A broad answer to you,
11 Representative, is we have applied this traditional-type of
12 approach, full-cost bonding, to different permits that are
13 on file. And we have seen reductions for operators. In
14 some instances, 35 plus percent.
15 And we have seen some instances where the
16 liability, due to the type of operation, would increase
17 significantly.
18 MR. ROBERTS: I have looked at and crunched
19 numbers, if you will, at operations. And I think in
20 general, you can safely say that a fair percentage, I would
21 estimate probably a third or more of the sites will end up
22 with less bonds or nearly the same bonds that they
23 currently have.
24 Perhaps another third -- and again, these are
25 rough -- rough numbers -- would experience some type of

1 increase that would be noticeable. And the final third are
2 going to experience a large increase. And by large, I mean
3 perhaps a doubling and in some cases a 200 percent increase
4 in bonding.
5 The way it breaks out is on what type and
6 style of mine operation is being done. Operators in the
7 bituminous coal fields that are utilizing some type of
8 mining method that incorporates haulbacks have smaller
9 pits, smaller sizes.
10 Those bonding -- bonding on those sites will
11 be less in almost every case. Operators who are using long
12 pits with large draglines will probably see some type of
13 increase. The anthracite coal fields became a -- an area
14 that -- of particular concern based upon the geology of the
15 area as well as the style of mining and mining operations.
16 To get a better handle on that, I went with
17 the Chairman of the MRAB, Mr. Wolfe, myself, to get a
18 helicopter overview of the anthracite coal fields. And
19 then I went to Pottsville to meet with Mr. Wolfe to discuss
20 those sites themselves.
21 And there are provisions that need to be
22 considered on a lot of the long-term, large-scale mining
23 operations that are down there. And I think that the
24 program allows us the flexibility to deal with those sites.
25 REPRESENTATIVE ARGALL: Just -- does a number

1 exist for the anthracite fields?

2 MR. ROBERTS: I think on -- again, a lot of

3 those smaller operations out there -- and I'm hoping to

4 have a better idea of that here in the near future. But I

5 suggest that a lot of the smaller operations will

6 experience the same no increase/slight increase scenario.

7 Certainly, the long-term, larger-scale

8 operations are a different matter.

9 REPRESENTATIVE ARGALL: And is it then your

10 read that the larger operations -- I can think of two or

11 three hit pretty close to home -- are they the ones looking

12 at the 200 to 300 percent increases?

13 MR. ROBERTS: I haven't gotten the increases

14 on those sites, primarily because I think we need to look

15 at -- at what reclamation we would expect to occur on those

16 sites if they left the site during the term of the permit.

17 MR. DOLENCE: Representative, if I may, in

18 discussing this, some people raised, How much is the

19 remining incentives, remining operator assistance program,

20 the bond credit program, as well as the financial

21 guarantees? How much have they been used?

22 And when we look at anthracite, the use or

23 applications to use any one of these three tools which

24 would help operators today as well as under the proposed

25 full-cost mining is zero. No operators have taken

1 advantage of those programs, which we really don't
2 understand that.
3 There are ways for them currently to help
4 themselves with the bond, and they have not taken advantage
5 of those programs.
6 REPRESENTATIVE ARGALL: As Representative
7 Feese seemed to indicate, I think you folks need to talk
8 more and maybe when we're not in the room. Just -- and
9 Deputy Secretary Dolence and I have exchanged some letters
10 based on his earlier testimony.
11 When you -- you talk about the less stringent
12 standards that apply to the remined areas. And I
13 understand that anthracite is 99 percent remining. Is
14 that -- are those standards -- are those evolving? Are
15 those somewhere that you can point to and say these are the
16 standards that we're going to be dealing with?
17 Do the operators know what they are? Are they
18 afraid they're going to change next month? I'm trying
19 to --
20 MR. ROBERTS: Part of it are in the law, and
21 the rest are in regulation. They are very relaxed
22 standards for both backdoor configuration and revegetation.
23 REPRESENTATIVE ARGALL: And that's something
24 that they count on -- that they can now count on? They
25 don't have to worry about that changing?

1 MR. ROBERTS: Well, they should be able to.
2 REPRESENTATIVE ARGALL: Unless of
3 course -- yeah --
4 MR. ROBERTS: My experience in the
5 southwestern corner of the state before I came here to
6 Harrisburg is that no one was availing themselves to those
7 opportunities either.
8 MR. DOLENCE: Knowing the regulatory process,
9 they can count on 18 to 24 months of no change.
10 REPRESENTATIVE ARGALL: I also understand
11 that, you know, that you break down the bond in phases;
12 that, you know, they get back 60 percent immediately; they
13 get back 25 percent after three years; they get back 15
14 percent after five years.
15 And some of the operators are asking for more
16 flexibility in that way. And I guess you've turned them
17 down in the past. Is that something that's still
18 under -- under consideration; that as they complete various
19 phases of their work, that they might be able to get some
20 of their money back sooner?
21 MR. ROBERTS: Yes. One of the provisions in
22 federal law is to do bond adjustments. And there are two
23 criteria for doing the bond adjustment. One is to adjust
24 the amount of bond if you are eliminating acres that you're
25 not proposing to mine, or if your cost to reclaim the site

1 changed. And that's an either upward or downward
2 adjustment.
3 What we're proposing through the full-cost
4 bonding for bond release is that we do the bond adjustment
5 first so that you get the amount down to what it should be
6 for the financial areas of mining and reclamation, then you
7 do the 60 percent bond release.
8 With the regulatory basics initiative several
9 years ago, we did change the bond release regulations. And
10 currently, there is no 25 to 15. It's 60 percent and that
11 at the stage two release, we would retain the amount of
12 money necessary to revegetate the site. And that would be
13 held for the 5-year period.
14 REPRESENTATIVE ARGALL: Thank you. As I had
15 said earlier, I think this dialogue really needs to
16 continue because there's a lot of people on -- edge is
17 probably not putting it in the right words. But they're
18 very, very nervous on this.
19 MR. ROBERTS: And I understand that. And I've
20 been offering to meet and discuss this with any -- anybody
21 who -- who showed an interest.
22 REPRESENTATIVE ARGALL: Thank you.
23 REPRESENTATIVE SMITH: Representative McGill.
24 REPRESENTATIVE McGILL: Thank you, Mr.
25 Chairman. I guess, Mr. Roberts, this is for you. Again, I

1 sit here and wonder. But I do have the opportunity to look
2 out in the audience while you're speaking. And you're
3 making comments, and there's a whole lot of heads going
4 different directions when you make these comments.
5 So I'm a little perplexed at either the surety
6 people are making a killing on a third of the mines out
7 there or they're not. What I would really like you to do
8 is come up with a list of 15 to 20 permits across the
9 state, and you show us exactly what that's going to cost
10 and why it's going to cost that way and how it's going to
11 cost that way.
12 And we need to lay them out on the table. And
13 we need to let the people in the industry see where you're
14 coming from with these numbers because right now there's a
15 whole lot of panic out there. And there's a lot of people
16 that do not believe the numbers will go down.
17 They think that they're going to go to 2-, 300
18 percent increases. And I have no intention of having it
19 stay this way because the Department wants to go through
20 with a full-cost bond simply because it might be the right
21 thing to do.
22 MR. ROBERTS: I can appreciate that.
23 REPRESENTATIVE McGILL: So we need to come up
24 with a number, whether it be 15 or 20, we need to go with
25 smaller, larger and across the board. And you need to

1 present to us so that we can evaluate and also have the
2 industry evaluate what the impact of this is going to be
3 because we don't see it right now.
4 MR. DOLENCE: Representative, we will do that.
5 We have -- we -- Scott has met with some specific
6 individuals from the industry and calculated what their
7 bonds would be on existing permits so they can say this is
8 what I have under the current program. This is what it
9 would be in the future.
10 We can document some of those that were done,
11 and we will give a broad array of operations. We'll take a
12 little bit of time to do the rest, but we can submit that
13 to the Committee.
14 MR. ROBERTS: I would like to add that I did
15 meet with one of the previous witness's, Mr. Imler's,
16 clients. Mr. Imler was there. When we worked through the
17 mine site for that individual, it was a reduction in the
18 amount. So we have done it but not on a systematic basis I
19 guess is --
20 REPRESENTATIVE McGILL: We need -- obviously
21 need the tools because the people that we represent need to
22 have -- need to have answers available to them. And my
23 concern -- and I'm probably going to hit on a couple other
24 things -- but my concern is the intent of legislation isn't
25 always the way that the regulation winds up on the books.

1 And it is a concern. So I'll go into the next
2 question. Do you expect, if you get full-cost bonding,
3 that this is going to be for new permits only? Or are you
4 going to go back and revisit all the permits that are
5 currently issued?
6 MR. DOLENCE: What we have on the table right
7 now is applying it to the new ones coming in the door and,
8 through a period of time, going back and applying it to the
9 existing permits as well.
10 REPRESENTATIVE McGILL: How do we answer the
11 question that came up earlier with, I guess, bond
12 adjustments or bond releases that are being held and then
13 going back and reevaluating existing permits and telling
14 them to bring them up to a -- a new level of -- of bond?
15 Explain to me the process that we can go back
16 to a -- to a company running a mine and say, You followed
17 all the procedures, but we're going to make this
18 retroactive and now, you know, come up with -- come up with
19 a new -- the new premium?
20 MR. DOLENCE: The -- what would happen is, is
21 we would meet with the company, knowing that this would be
22 coming down the pike to them. We would like to meet with
23 them as soon as possible and look at their operation and do
24 a calculation based on the snapshot, if you will, of their
25 operation and give them the opportunity to adjust.

1 I think one of the sureties -- I couldn't tell
2 which person was talking at the time -- said that
3 traditional bonding does require additional planning. That
4 it does. There's no doubt about that. The planning is at
5 the advantage of the operator as well as the environment.
6 And giving an operator an opportunity to
7 adjust an operating plan and then apply full-cost bonding,
8 if there would be an increase, it gives them the
9 opportunity to minimize that increase.
10 REPRESENTATIVE McGILL: When do you expect
11 these guidelines or these -- this new proposal to be
12 effective? What kind of a date are you looking for for
13 that?
14 MR. DOLENCE: We put a draft out prior to the
15 last Mining Reclamation Advisory Board meeting, which I
16 believe was the first week of January, 4th or 6th,
17 something like that. And we have received comments, and we
18 are taking discussions on that.
19 We plan on putting that out as a draft policy
20 document requesting input. We have a procedure putting
21 policy documents out for -- we publicize it in the
22 Pennsylvania Bulletin as well as on our web site. We will
23 take direct comments from any stakeholder who's interested
24 in participating in that debate.
25 We also have a meeting scheduled. It was

1 scheduled for January and ended up getting postponed until
2 tomorrow from the Committee on the Mining Reclamation
3 Advisory Board on this specific topic. Our plans are to
4 engage -- continue our engagement with the MRAB.
5 We take their input very seriously. And with
6 the policy, we're putting it out for comment. And the MRAB
7 will dictate the time frame as to when we would finalize
8 it.
9 REPRESENTATIVE McGILL: I'm assuming regs are
10 going to have to be changed for full implementation of
11 this?
12 MR. DOLENCE: We have reviewed that. And we
13 are looking -- right now, we think that we can move
14 forward. We have the authority to move forward under
15 existing law and existing regulation.
16 REPRESENTATIVE McGILL: So you won't need any
17 change to the law either?
18 MR. DOLENCE: No, sir. Our law allows for
19 full-cost traditional bonding or an alternative bonding
20 system.
21 REPRESENTATIVE SMITH: That's one of the
22 reasons we're here. I would just point out, to just kind
23 of take the Chairman's prerogative, in light of your
24 question as to the retroactivity of this, when the
25 Department released its original news release on this

1 subject, it read, "Once the full-cost bonding program is
2 implemented, it will apply to all new permits. For
3 existing mining operations, the new program will be applied
4 to all new mining areas under existing permits."
5 I don't know that that's exactly consistent
6 with what you said just now.
7 MR. JARRETT: I think that's an accurate
8 representation of what our thinking was at the time. But
9 when we evaluated the impact of applying a traditional bond
10 to a new bonding increment, when that permit was already
11 bonded under the current alternative bonding system, we
12 were going to end up with much more money in the form of
13 bonding than what we need.
14 So it looked like the only fair way to do that
15 instead of applying it only to a new bonding increment, it
16 would be much more advantageous just to replace the
17 existing bond because, quite frankly, when we look at the
18 new traditional bonding proposal, that is a -- some sort of
19 amount of money that applies to the entire program based on
20 some maximum exposure of the flow around that permit.
21 So it would be the same calculation for yet
22 another bonding increment as it would be for the entire
23 permit.
24 MR. DOLENCE: Mr. Standing Chairman or Acting
25 Chairman, I think someone up there -- I'm not sure who on

1 the Committee mentioned it -- but they did say this was
2 fluid. And it is a little bit fluid. And we are taking
3 input from people, and we are trying to make it a better
4 program based on that input.
5 REPRESENTATIVE SMITH: Thank you.
6 Representative Rubley is recognized.
7 REPRESENTATIVE RUBLEY: Thank you, Mr.
8 Chairman. And my comment is more of a historical one. And
9 seeing that Pennsylvania assumed primacy for regulation of
10 mining back in the early '80s and your comment on the fact
11 that the bond program is insolvent, this obviously hasn't
12 happened overnight.
13 This has been going on. Has it been insolvent
14 right from day one? How long has this been a problem? Why
15 have we waited this long? And I know you're not
16 responsible for the deficiencies of, say, past
17 administrations.
18 But when something goes on this long,
19 obviously the problem becomes exacerbated. And the impact
20 is much greater than treating the problem when it initially
21 exists or it's brought to your attention.
22 MR. DOLENCE: That's a very fair comment,
23 Representative. And it has been known to be a problem for
24 quite some time. In the early '90s, the Federal Office of
25 Surface Mining did perform an actuarial study. And

1 frankly, we are either the first brave enough people to do
2 this or the most foolish to stand up and try and fix it.
3 I'm not sure which one that is yet. But we
4 said this is a problem and we have to get our arms around
5 it, and we have taken the steps to address it.
6 REPRESENTATIVE RUBLEY: And I know in terms of
7 looking at other states, we can't always compare apples to
8 apples. But take a state like West Virginia or other
9 states with anthracite mining. Are their funds more
10 solvent? Do they not have the problems that we have with
11 bonds that, you know, no longer are there and we have
12 streams that are being destroyed because of discharges?
13 MR. JARRETT: West Virginia also has a huge
14 problem; however, primarily to acid mine drainage like we
15 have here in Pennsylvania. One of the problems is that
16 when Pennsylvania's current alternative bonding program was
17 developed and approved by US Department of Interior, the
18 operable federal regulation under which it was developed
19 and approved specifically excluded from the bonds coverage
20 for acid mine discharges.
21 So our current program was never designed to
22 deal with acid mine discharges. That sort of evolved over
23 time after that. Since then, no adjustments have been made
24 substantial enough to deal with the acid mine drainage
25 problem. But for that problem, the last actuarial study, I

1 think, in '94 projected that an alternative bonding program
2 would be solvent through 1999 for land reclamation.
3 We've recently updated that and found that we
4 do in fact have some shortfalls for land reclamation, I
5 think $5.5 million, which is really a drop in the bucket
6 in the grand scheme of things. But the problem, again,
7 is -- is the law.
8 And that's the very issue that, at least for
9 the past four and a half years, we've been trying
10 desperately to get somebody to work with to figure out a
11 solution to that problem.
12 MR. DOLENCE: Representative, if I may, we
13 submitted for the record the actuarial study that you
14 should have up there that updates that information.
15 REPRESENTATIVE RUBLEY: Very good. Thank you
16 so much.
17 REPRESENTATIVE SMITH: Representative Rubley,
18 just to make one clarification, at the first hearing when
19 the gentlemen from the Office of Surface Mining were here,
20 I inquired about, you know, other states. And Pennsylvania
21 was in receipt of a letter.
22 I guess it's referred to as a 732 Notification
23 Letter. West Virginia has likewise received a letter of
24 that nature. And he indicated, I think, that there were
25 other states that, you know, are having similar problems;

1 although, they may not have all been officially notified of
2 that problem from OSM.
3 So we're kind of on the front end of
4 that as far as reacting to the problem. Representative
5 Steelman's recognized for questions.
6 REPRESENTATIVE STEELMAN: Thank you, Mr.
7 Chairman. I had two questions. First, we were having a
8 little bit of a sidebar down here when you were talking
9 about the proportions of operators who would be affected.
10 And we were wondering what are the numbers of operators
11 that fall into each of these groups?
12 I mean, we all know that there have been
13 severe shake-outs in the coal industry. But how many
14 companies are we talking about overall being affected by
15 this change in bonding requirements?
16 MR. ROBERTS: I did try to preface those
17 proportions by saying that they're my feelings and I don't
18 have a quantification of that and will try to get that.
19 REPRESENTATIVE STEELMAN: Great. I think that
20 would be helpful. And perhaps if you could even break that
21 down since there seemed to be some distinctions that were
22 drawn between the bituminous and the anthracite operators.
23 It might be useful to know how many there are in each of
24 those classes so that we would have, perhaps, six classes
25 of affected entities.

1 And my second question is to try and follow up
2 a little bit more on this question of retroactivity because
3 when you first said that you were going to go back and
4 impose the full-cost bonding retroactively on the existing
5 permits, my immediate reaction to that was extremely
6 negative.
7 If we've already -- these companies have
8 already factored in the cost of their bonding on the basis
9 of the regulations that existed when they got that first
10 permit, and then to go back and say no, we changed the
11 rules, it strikes me as being inappropriate.
12 But now you're telling me that, if I
13 understood correctly, what you actually intend to do is to
14 impose the new proposed full-cost bonding only onto new
15 permits to extend the work in a given area but that because
16 in issuing that new permit for the extension you would have
17 to consider the entire operation, that it would somehow be
18 more economical to do it retroactively before they even ask
19 for an extension.
20 I'm not understanding at all what's going on
21 here.
22 MR. ROBERTS: The traditional bonding proposal
23 that's on the table uses a formula that takes into account
24 the maximum disturbed area from the highwall to where
25 they've got grass growing. Whatever the size of that what

1 we call floating pit area is determines the amount of the
2 bond regardless of where that is on the permit.
3 As long as the reclamation keeps up with the
4 highwall, it can sort of float all around the permit. So
5 if we were using that formula, calculating a traditional
6 bond for another increment, it would be the same amount of
7 bondage that we had calculated for the entire permit
8 because it's based on this floating pit area out there.
9 So it doesn't matter how big your permit is.
10 The only thing that really matters is the size of that
11 floating pit. So the bond would be the same for a 50-acre
12 permit as a 250-acre permit. The problem with the
13 conversion is that if you then apply that to just the next
14 bonding increment, you would have not only enough money for
15 the next bonding increment but it would be enough money for
16 the entire permit.
17 Yet we're already holding, you know, for the
18 most part, $3,000 an acre on the part of the permit that's
19 already been mined. So it would be double-dipping, and we
20 want to avoid that.
21 REPRESENTATIVE STEELMAN: What in your
22 regulation would prevent you from giving the operators
23 credit for the bonds that they already have on the existing
24 part of the pit?
25 MR. ROBERTS: In practice, it would be the

1 same as doing that. In other words, if we calculated the
2 full-cost bond for the next increment, it would be offset
3 by the current amount of bond that we're already holding.
4 MR. DOLENCE: It would roll over into the new
5 program.
6 REPRESENTATIVE STEELMAN: Okay. But in that
7 case, it would not be double-dipping if you are allowed to
8 use that offset?
9 MR. ROBERTS: That would be correct.
10 MR. DOLENCE: Yes. When we first developed
11 this, Representative, our thought process was exactly where
12 your question was headed. Someone who has laid out their
13 operation, they have a bond up, they're mining coal. To go
14 back and say we're going to apply this back there would be
15 changing rules in midstream.
16 So we said, Okay. We're going to do it for
17 new permits, and we're going to do it for new bonding
18 increments within existing permits. After we were fleshing
19 it out, as Mr. Jarrett just described, we found out that by
20 doing it that way, we would actually be unfair to the
21 operator by requiring much -- the next increment would
22 cover the full-cost element. The existing bond would be
23 more in addition to.
24 So we would provide then the opportunity to
25 roll that over.

1 MR. ROBERTS: And the bigger
2 consideration -- we've not yet decided whether or not we
3 will apply this to the existing permits during the
4 transition. But the bigger consideration is that many
5 operators have designed their operation plans based on the
6 economics and their ability to get certain bonds.
7 That's a whole different matter to ask an
8 operator to either come up with an enormous amount of bond
9 or change his operation plan sort of in the middle of the
10 operation. That's different than planning it that way up
11 front.
12 So we're not willing to jump into making that
13 decision until we have a better handle on what kind of an
14 impact from an operation standpoint that would have on
15 current permit holders.
16 REPRESENTATIVE STEELMAN: But I think then
17 what I'm hearing -- what I'm hearing you tell me is that
18 you do not intend to go back and treat these existing
19 workings -- now wait. You are telling me that eventually,
20 if the operator applies for any new permit as part of that
21 operation, that they are going to wind up getting hit
22 with -- they are going to wind up in a situation where they
23 will have to have full-bond coverage on the entire
24 operation whether or not they started excavations prior to
25 your adoption of the regulation?

1 MR. ROBERTS: Yes. And what we have proposed
2 is that there is a phase-in period that would be a minimum
3 of one year, a maximum of two and a half years after the
4 effective date for the operator of the Department to come
5 to an agreement, not for that operator to have a bond
6 posted, but to come to an agreement on how that bond will
7 be posted and over what period of time.
8 And there will just be one style of bonding on
9 that permit once that agreement will be completed and the
10 steps. There wouldn't be two different systems of bonding
11 in place on one site.
12 REPRESENTATIVE STEELMAN: And unfortunately,
13 it sounds to me as what you're doing here is providing a
14 very strong incentive for the operators just to shut that
15 particular operation down and to get out of the coal
16 business as fast as possible because if they stayed at that
17 pit, they're going to wind up getting hit with costs that
18 they were not aware were going to fall on them when they
19 began to plan for that. And I -- I think there are some
20 real problems in that approach.
21 MR. FLETCHER: I think one of the things
22 that's worth noting is that during the transition period,
23 the operator would have the opportunity to reevaluate his
24 approach to that operation and may be able to make
25 adjustments to the operation that then could reduce his

1 bond obligation.

2 And that's one of the objectives of the

3 transition here is to provide time for that kind of

4 evaluation to be done.

5 REPRESENTATIVE STEELMAN: Well, I appreciate

6 your wanting to look at the best possible case. But I

7 think part of our job as policymakers is also to consider

8 the worst possible cases, that I think you see a number of

9 worst possible which is arising from.

10 Oh, one final question. Then what about the

11 operator who has the permit who actually does not intend

12 any extension to that permit? They are working out of a

13 particular section, and they plan to close that down. But

14 they also intend to be in there mining for another year,

15 year and a half after the plan goes into effect.

16 Are you going to come back to them and tell

17 them -- even if they're not applying for an increased

18 permit, they're not planning to dig any more coal than they

19 asked for in their original permit, are they still going to

20 have to come up with full-cost bonds?

21 MR. DOLENCE: One of the things that would

22 dictate that answer, Representative, is where they are in

23 their 5-year permit. If they are winding down and they are

24 in their last year of their 5-year permit, they are going

25 to have to repermit, which would trigger the new

1 application.

2 If someone came to us and said we're going to

3 wind this up and button this up, I think we would be

4 amenable to listen to that plan. And that goes to what

5 Scott was talking about, working out the details of that

6 operation.

7 MR. ROBERTS: In my mind, the simplest

8 agreement that would be reached at the end of that phase-in

9 period would be just that. If the operator says, In

10 another year I'm going to be finished, and we say that's

11 good, that's the agreement. So those type of sites would

12 not be.

13 REPRESENTATIVE STEELMAN: Thank you.

14 REPRESENTATIVE SMITH: Representative Feese

15 for a follow-up question or comment.

16 REPRESENTATIVE FEESE: Thank you, Mr.

17 Chairman. Mr. Dolence, can you tell me when Secretary Seif

18 announced that this full-cost bonding would be retroactive

19 and -- when was that announced?

20 MR. DOLENCE: I don't think we made a formal

21 announcement. We've been having discussions. As it was

22 discussed, this has been fluid. This was our intention of

23 where we're going and through discussions with industry and

24 other stakeholders of trying to develop the best plan.

25 REPRESENTATIVE FEESE: So this -- and who

1 would be the stakeholders?

2 MR. DOLENCE: Stakeholders would be -- we

3 utilized the Mining Reclamation Advisory Board because they

4 have a cross-representation, discussions with industry

5 representatives, and we did have discussions with surety

6 brokers.

7 REPRESENTATIVE FEESE: So all those

8 stakeholders knew prior to today that we would have this

9 retroactive bonding, possibly phase-in, and all the details

10 you just provided here today? They were all aware of this

11 prior to today?

12 MR. DOLENCE: If they read the release of the

13 plan, they would be aware of it. But I can't -- I can't

14 testify as to whether or not everyone knew it.

15 REPRESENTATIVE FEESE: But you did get

16 information then to those stakeholders that you in fact

17 would be doing this?

18 MR. DOLENCE: Yes. I believe we mailed the

19 draft plan which included that portion which Mr. Roberts

20 just discussed. The last week of December, we mailed that

21 out to the MRAB members and made it publicly available.

22 REPRESENTATIVE FEESE: I see some heads

23 shaking no. But thank you anyway.

24 MR. FLETCHER: Representative, I believe that

25 that plan is also available at the Department's web site,

1 as most documents.

2 REPRESENTATIVE FEESE: I'm still a cyber slug

3 working on computers.

4 REPRESENTATIVE SMITH: Thank you. Just let me

5 clarify a couple things about the current system. If I

6 have a permit, I would have a minimum bond -- I'm looking

7 at this report that you provided us. And I did want you to

8 clarify it, if that was a supplement to your testimony or

9 how that was being presented because you didn't really

10 reference it in your comments.

11 So maybe we'll just do that housekeeping

12 matter first. And tell us what this is, if you would.

13 MR. DOLENCE: This is the actuarial study that

14 we are required to perform under regulation of 86.145. And

15 it's completed and is being submitted as part of the

16 record.

17 REPRESENTATIVE SMITH: Thank you. I

18 appreciate that. You know, I've been harping about getting

19 my hands on it for a while. And I haven't had a chance to

20 fully digest it yet. But just so I understand where we

21 stand today, I would be putting -- for a surface mine, I

22 would have a $10,000 minimum bond, the basic bond, then the

23 $3,000 per acre or whatever it might, depending on the

24 highwall and all that, $100 per acre fee. Those would be

25 the amounts of bond that I would have on a permit?

1 MR. DOLENCE: Today?

2 REPRESENTATIVE SMITH: Today, now.

3 MR. DOLENCE: Yes.

4 REPRESENTATIVE SMITH: And in addition to

5 that, I would also be paying, as a surface mine operator,

6 the 35 cents to the federal AML fund tax or acid mine

7 drainage --

8 MR. DOLENCE: As every other surface coal

9 mining operator in the country.

10 REPRESENTATIVE SMITH: Correct. Okay. One of

11 the things that was noted in here was -- was mentioned

12 about the collection of the forfeited funds. I'm curious.

13 You referenced that some of the surety companies were

14 banking established instead of written bonds have gone

15 bankrupt.

16 To what degree have those bankruptcies

17 contributed to the now reported shortfall in the bond

18 pool? Is that significant?

19 MR. FLETCHER: Not significantly. And in

20 fact, just as a historical note, I believe in the early

21 '90s, the federal government passed a law or amended a law

22 to allow the use of Title IV Funds, the AML funds, to

23 supplement the need for reclamation on sites like those.

24 Unfortunately, Pennsylvania had already spent

25 the money. But it's not a significant fund.

1 REPRESENTATIVE SMITH: I was -- as I was
2 skimming through that, I was just curious if that was any
3 significant factor. As I mentioned to the gentlemen from
4 the surety industry, you know, the key thing here really is
5 how you deal with water. Or I think that's a critical
6 element, separating of water.
7 Granted, we don't have very many on permits
8 that are issued today. But a lot of permits that are out
9 there operating today are permits that have been around for
10 many, many years. Is that a fair assessment? And do you
11 know how many? I mean --
12 MR. ROBERTS: Yeah. We're -- we're currently
13 holding about $89 million in bond for permits that have
14 been totally reclaimed but they haven't discharged.
15 REPRESENTATIVE SMITH: Okay. And that
16 obviously is one of the challenges how to, you know, maybe
17 bring that money into play where it's being used to clean
18 up the environment as opposed to being held as a, you know,
19 a penalty over the industry or whatever. If we were able
20 to --
21 MR. DOLENCE: Representative, may I interject
22 something there?
23 REPRESENTATIVE SMITH: Please. Feel free.
24 MR. DOLENCE: We have many sites that we're
25 holding a bond on. And there's entities out there, some of

1 them active operators, many of them not, who are continuing
2 to treat their discharges.
3 And that has been the challenge for us and our
4 predecessors of how do we assure financial long-term
5 assurance that we will have treatment of those discharges?
6 When you have an entity out there that is not a viable
7 operating entity but small assets of a company left or
8 sometimes the company is gone and it's just the owner who's
9 treating, we go to that person and say give us a trust
10 fund.
11 That person is going to say, I don't have that
12 money, and walk away from it. Then the Commonwealth
13 doesn't face that challenge. And that has been one of the
14 difficulties with the water issue as to we look at these as
15 pre-primacy sites.
16 We have the interim sites. We had the early
17 primacy sites that had a lot of water problems because the
18 science -- quite frankly, the science and technology was
19 not there to predict the AMD. Then you have the later
20 primacy ones where we have pretty good predicting
21 capability.
22 And we feel that under traditional or
23 full-cost bonding, those issues can be overcome with the
24 current operators. And the surety representative, one of
25 them mentioned that taxing the existing industry with those

1 problems of the past would be a burden that was put on this
2 industry and put this industry out of Pennsylvania.
3 REPRESENTATIVE SMITH: And that's really what
4 this is all about. I mean, isn't the bigger part of the
5 problem in terms of the shortfall in the bond pool that's
6 triggered the Department saying we're going to go to
7 full-cost bonding because the implication being that we're
8 not holding enough bond to cover the liability that's
9 out -- that, you know, that someone's responsible for,
10 isn't the bulk of that due to the water problems from those
11 early primacy permits?
12 MR. DOLENCE: Applying an alternative bond
13 system to an operator who applies today, the costs to
14 forfeit and walk away from that site are not directly
15 linked to the cost that that operator has. It is masked by
16 a bond pool.
17 And regardless of the problems that face us
18 from the past, operators out there who -- who do not have
19 tight operations are masked by the bond pool. Their
20 liabilities are masked. And that is regardless of the
21 preexisting situation and pre and early primacy.
22 And going to a traditional bonding where an
23 operator comes in and says this is what I want to do,
24 having that operator put -- post the bond for that
25 operation, that operator will not be hiding behind -- or

1 behind a bond pool.

2 MR. FLETCHER: And one of the implications of

3 that is that on a daily basis, for the Department to assess

4 what the current obligation is is extremely difficult

5 simply because we can't correlate the reclamation

6 obligations with the money that is being posted for that

7 particular site.

8 REPRESENTATIVE SMITH: I guess what I'm -- I

9 understand some of what you're saying. I guess what I'm

10 trying to differentiate, though, is the actual land

11 reclamation versus water treatment. And if you can

12 separate those two, doesn't the current alternative bonding

13 system, doesn't it -- wouldn't it be providing enough money

14 for land reclamation if you'd separate the water problem

15 away?

16 MR. JARRETT: Not without some adjustments to

17 it. But again, the shortfall is pretty small, currently

18 about $5.5 million. And we anticipate $1.2 million

19 increasing deficit per year. We could make adjustments to

20 the current alternative bonding system if we were only

21 dealing with land reclamation.

22 But there's bigger fundamental problems with

23 the current system because under the alternative bonding

24 system, we get a site-specific bond from the operator that

25 we know is not enough; and it's backed up by a bond pool.

1 And the way the current system is structured, that bond
2 pool is responsible for all exceedances.
3 And when you throw water into the problem and
4 the perpetual -- perpetual need for money to treat a
5 discharge forever and a bond pool responsible for that on
6 each of the sites, you know, that all of a sudden makes the
7 bond fund in the hundreds of millions of dollars short.
8 So the problem -- or the fundamental
9 difference between an alternative bonding system and the
10 traditional bonding system is that a traditional bonding
11 system is some certain amount of money. Hopefully, it's
12 enough to meet all the environmental obligations on the
13 site if there's a forfeiture.
14 But if there is not sufficient money, there's
15 a cap on how much money you can -- you can spend. And
16 that's the, you know, that's the amount of the bond with no
17 other liability. So I mean, the reality is if the surety
18 industry -- they would never run their business the way
19 we're running our bond fund.
20 Quite frankly, the state wouldn't let us.
21 They would have us all locked up in jail somewhere right
22 now because we would exceed the single risk limit on many,
23 many, many, many, many permits.
24 REPRESENTATIVE SMITH: All right. Well, I'm
25 pretty well confused. I don't mean that disrespectful. I

1 didn't mean that disrespectfully towards anyone. It's a
2 complicated issue. I'd recognize Chairman Hershey for one
3 other matter.
4 CHAIRPERSON HERSHEY: Thank you, Deputy
5 Secretary Dolence. I intend to keep the record open for
6 ten days of this hearing. So I would appreciate you
7 responding to Representative Feese's requests during that
8 time. It will give you time to get that information back
9 to him. Thank you.
10 REPRESENTATIVE SMITH: With that then,
11 we'll -- you gentlemen can step down. Thank you very much
12 for your time here today. We'll be calling up Jay Berger,
13 but let's just take two minutes for the stenographer to
14 stretch her fingers in a different direction.
15 (A recess was taken.)
16 REPRESENTATIVE SMITH: If I could call the
17 meeting back to order. I apologize for the length and the
18 fact that we're off the schedule. Obviously, it's a
19 difficult issue to get a grasp on. There are no real
20 cut-and-dried answers.
21 However, it also shed some light on the
22 importance of this subject to the coal industry in
23 Pennsylvania. Next, we'll have testimony from Jay Berger,
24 who's the District 2 representative from the United Mine
25 Workers of America. Mr. Berger.

1 MR. BERGER: Thank you. I guess I better
2 change my opening statement. I said, "Good morning. My
3 name is Jay Berger." Good afternoon. My name is Jay
4 Berger. I am an executive board member of the United Mine
5 Workers of America, District 2.
6 And I represent Sub-District 1, which is the
7 anthracite area of United Mine Workers District 2. And
8 with me is Matt Miller. He is our trustee on the pension
9 fund up in the anthracite area.
10 The UMWA is an unincorporated labor
11 organization representing employees who work for anthracite
12 and bituminous coal industry employers as well as noncoal
13 industry employers across Pennsylvania. Thousands of UMWA
14 members are employed in the mining industry and are among
15 the highest paid workers in Pennsylvania.
16 Additionally, tens of thousands of other
17 workers are indirectly employed to support the mining
18 industry. Many of these indirect employees are also
19 members of the United Mine Workers of America. The UMWA
20 appreciates this opportunity to provide comments on DEP's
21 recent bonding proposal which will substantially alter its
22 coal-mine bonding program by proposing to implement a
23 full-cost bonding program.
24 DEP's proposal represents a fundamental change
25 to the bonding scheme and could significantly affect

1 surface coal-mining operations. The UMWA's interest in
2 this matter is evident.
3 On October 6, 1999, DEP Secretary James Seif
4 announced the Department's intention to overhaul the
5 Commonwealth's surface coal-mining bonding program.
6 Pennsylvania's current bonding program, referred to by
7 regulatory authorities as an alternative bonding system,
8 ABS, requires an operator to post a bond as a means to
9 guarantee performance of reclamation obligations.
10 The Department currently uses a sliding scale
11 per acre fee in setting the bond amount. In addition, the
12 site-specific bond is supplemented by a $100 per acre fee
13 assessed against the operator. The ABS, according to
14 Secretary Seif, may be accumulating a projected deficit of
15 1.4 million per year based upon an internal Department
16 evaluation.
17 To address this potential deficit, the
18 Department announced through Secretary Seif it will revise
19 its bonding program by replacing the existing ABS with a
20 new full-cost land reclamation bonding program, premised on
21 site-specific estimates of the cost to the Commonwealth to
22 perform reclamation in the event an operator were to
23 default on his obligations.
24 Under the FCB program as we understand it,
25 bond amounts would be set on a site-specific basis in an

1 amount that would be determined by calculating the cost to
2 the Commonwealth if it had to complete the reclamation
3 work, backfilling, reguarding and revegetating.
4 The new FCB amounts would apply to all new
5 permits and to requests for bond increments, a request for
6 authorization to mine additional areas within the
7 boundaries of an existing permit. There are two points I
8 would like to mention before I identify UMWA's concerns
9 with the proposal.
10 First, the present ABS was established by DEP
11 after it commissioned an independent actuarial study of
12 Pennsylvania's coal-mining program in 1993. That study
13 conducted by Milliman and Robertson, Incorporated concluded
14 that the combination of per acre bonds and an increase in
15 the reclamation fee to $100 per acre was projected to
16 provide adequate financial assurances on a prospective
17 basis for surface mines.
18 Subsequently, DEP adopted those findings by
19 creating the present ABS. The UMWA would like to examine
20 the most recent study used by the Department in determining
21 a potential deficit in the bond pool to scrutinize its
22 causes.
23 Second, our assessment of the impact of the
24 FCB program is based on our interpretation of the
25 Department's two-page press release and information

1 received from employers who have had informal discussions
2 with DEP officials.
3 It is our understanding the Department is in
4 the process of developing the framework to implement the
5 program. Therefore, the UMWA reserves its final comments
6 and judgment on the FCB program until we have had the
7 opportunity to examine these details in depth and access
8 its full impacts on operators who employ our membership.
9 With that being said, based on our
10 understanding of the FCB concept and how DEP intends to
11 implement it, the UMWA offers the following observations:
12 One, full-cost bonding proposal. The Committee has
13 previously received testimony detailing various aspects of
14 the FCB program from the Pennsylvania Coal Association on
15 12/14/99.
16 I, therefore, will not be redundant by
17 reiterating information previously provided to the
18 Committee. I do, however, wish to reference a point the
19 PCA in section one of its testimony titled "Cost factors
20 are not reflective of actual reclamation cost."
21 In that section, the PCA pointed out it found
22 bond costs would increase from 14 percent to 285 percent
23 using the Department's draft formula to calculate bond
24 amounts. I wish to point out in the anthracite mining
25 industry, the increases in bond rates in most cases would

1 range at or near the 285 percent. The high increase is the
2 result of the mining technique required to extract
3 anthracite coal.
4 Two. It is our belief the change from the
5 present ABS to the proposed FCB program would adversely
6 impact the Pennsylvania coal industry which provides
7 thousands of Pennsylvanians with high paying jobs directly
8 and tens of thousands of indirect jobs.
9 In particularly, the anthracite coal industry
10 would be dramatically impacted based on our understanding
11 of the proposed changes to the FCB program. As anthracite
12 mining companies complete mining operations under existing
13 bonds and require a new bond, they will be forced to cease
14 mining operations because the FCB program will be
15 cost-prohibitive.
16 The loss of these high paying jobs will cause
17 a ripple effect throughout the state's economy, affecting
18 almost every aspect of it. The anthracite area of
19 Pennsylvania already lags behind the rest of the state in
20 the present economic recovery.
21 The loss of high paying mining jobs would
22 negatively impact the region's economic growth even more.
23 A worker would have to hold down three full-time minimum
24 wage jobs simultaneously to contribute the same amount to
25 the tax base of a community as the average working miner

1 does.

2 Local, county, and school district governing

3 bodies would see their wage tax base shrink. Pressure

4 would be put on governing bodies to make up the loss wage

5 tax through property tax increases, which in turn would

6 adversely affect those living on fixed incomes such as the

7 retired, disabled, and low income families.

8 Additionally, the loss of anthracite coal

9 production would economically impact thousands of retired

10 miners who receive pensions from the Anthracite Health and

11 Welfare Fund. The Anthracite Health and Welfare Fund is

12 funded through a royalty on each ton of anthracite coal

13 mined.

14 The anthracite industry could not stand a 285

15 percent increase in bonding costs. Subsequently, without

16 regular payments to the Anthracite Health and Welfare, the

17 fund would cease payments of pensions to thousands of

18 anthracite retirees who depend on it to supplement their

19 Social Security Benefits.

20 As you can see, the loss of high paying mining

21 jobs would result in the loss of millions of dollars to the

22 Pennsylvania economy, which would well cost the state

23 additional millions in tax dollars for community

24 assistance. This doesn't take into consideration what the

25 economic impact would be on the state and national economy

1 if anthracite coal were no longer available.

2 Home and industrial energy costs would rise

3 for the users of anthracite coal since they would have to

4 switch to a more expensive fuel source. The Department's

5 projected deficit of 1.4 million per year is less than one

6 percent of the present balance in the state's Rainy Day

7 Fund.

8 If the FCB is implemented as proposed, it will

9 cause a thunderstorm in the anthracite mining industry. A

10 couple issues I heard here today -- and this isn't in my

11 part that I passed out -- is I keep hearing the mining

12 industry and strip mining.

13 There's a great deal of difference between the

14 bituminous and anthracite as far as their deep pits. When

15 our operators mine a pit, you're looking at a pit that

16 might be going down several hundred feet, Lord knows how

17 wide. When you're talking bituminous, you're looking at a

18 different type of vein that runs flat.

19 DEP here today, they didn't have any answers

20 on the anthracite. I believe we're the ones going to be

21 impacted harder than anybody on this change. As far as DEP

22 telling mine workers what was going on here, we never

23 received anything.

24 We heard it through the grapevine. So I mean,

25 that was the reason I asked to come here and give our point

1 of view. And I thank the Committee.

2 REPRESENTATIVE SMITH: Yeah. I would just

3 like to respond to your comment relative to the anthracite

4 surface. I come from Western Pennsylvania. So obviously,

5 I'm a little more familiar with the smaller surface mines,

6 you know, in that region.

7 I have -- through the Mine Reclamation

8 Advisory Board, I have visited a few of the anthracite's

9 big pits. I personally have seen them. But I think that

10 your basic statement that a lot of the focus has been more

11 on the typical surface bituminous mines in the western part

12 of the state, you know, the interest can be focused there a

13 little more than on the anthracite.

14 And we are attempting -- part of the reason

15 we're having, you know, these two hearings was to try to

16 make sure that all sides and all affected parties, you

17 know, are being heard. Fundamentally, the concern of mine

18 that asked for the Committee to have these hearings

19 originally was that the Department was proposing to do this

20 without going through the normal regulatory review process

21 or without being subject to even the review of the

22 Environmental Quality Board.

23 And I think just the discussion that has

24 ensued from these hearings -- the Mine Reclamation Advisory

25 Board has been very active with this subject -- I think has

1 raised that there are a lot of questions and concerns,
2 unanswered questions.
3 And I certainly appreciate your taking time to
4 help emphasize that point, especially as it relates to the
5 mining employees in the anthracite region. So are there
6 any comments or other questions, Mr. Chairman?
7 CHAIRPERSON HERSHEY: I have a question. And
8 I always -- ever since I came -- I mean I have a comment.
9 Ever since I came here in 1983, I tried to support
10 Representative Lloyd's mining interest to keep the jobs and
11 sustain the jobs because I know when you close down a large
12 industry, you -- you almost shut down the livelihood of a
13 whole community.
14 Do you know in Pennsylvania how many coal
15 operators there are at this time?
16 MR. BERGER: Not in Pennsylvania. Under the
17 Mine Workers up in the anthracite, I have four major
18 companies that represent our miners.
19 CHAIRPERSON HERSHEY: Four major. Then
20 there's a lot of small ones --
21 MR. BERGER: Yes.
22 CHAIRPERSON HERSHEY: -- that are just
23 independent?
24 MR. BERGER: Yes.
25 CHAIRPERSON HERSHEY: Thank you.

1 REPRESENTATIVE SMITH: Any other comments?
2 (No response.)
3 REPRESENTATIVE SMITH: Thank you again. I
4 appreciate your taking the time to make the point. Next,
5 we will have testimony from Terry Morrow, who's the
6 Co-Chairman of the Environmental Committee for Pennsylvania
7 Trout; and Peter Dalby, who is the First Vice President,
8 Pennsylvania Federation of Sportsmen's Clubs, Incorporated.
9 Gentlemen, you may proceed.
10 MR. MORROW: Thank you. My name is Terry
11 Morrow. I'm the Co-Chairman of the Environmental Committee
12 of Pennsylvania Trout. Thank you very much for providing
13 the opportunity for PA Trout to provide testimony to be
14 included in the official record of the House Environmental
15 Resources and Energy Committee's hearings on current and
16 proposed bonding requirements on coal mining.
17 PA Trout has nearly 9,000 members in 56
18 chapters statewide. The mission of PA Trout is to protect,
19 restore, and enhance the cold-water fishery resources of
20 Pennsylvania and their watersheds. PA Trout first adopted
21 an official policy statement on mining in the 1980's.
22 The most recent revision of that policy
23 occurred in April of 1999. And I've attached it to this
24 testimony. I will not read that policy today, but you can
25 see that it makes clear that PA Trout is not opposed to

1 mining but insists that mining be done in an
2 environmentally sound way.
3 PA Trout has had a long-standing interest and
4 involvement in the regulation of coal mines in Pennsylvania
5 and specifically the reclamation bonding program. One of
6 our former presidents, William Kodrich, was on the ad hoc
7 committee that developed the document that eventually
8 became Pennsylvania's primacy law in 1980.
9 We were one of the plaintiffs in the lawsuit
10 brought against the predecessor of the Department of
11 Environmental Protection in 1981 that attempted to force
12 the Department to ensure that bonds posted for coal mines
13 were sufficient to guarantee full reclamation.
14 That 1981 lawsuit ended with the filing of a
15 consent decree in 1988. In the consent decree, the
16 Department agreed to perform an annual evaluation of the
17 alternative bonding system, to send PA Trout and the other
18 parties a report of that annual evaluation for five years,
19 and to publish bonding guidelines annually.
20 Virtually none of those things have happened.
21 DEP never published bond rate guidelines. In fact, the
22 full bonding proposal is the first reevaluation of bonding
23 guidelines since 1981. Mr. Hanger's testimony given at the
24 December 14th, 1999 hearing before this Committee outlined
25 well the long history of the problems with Pennsylvania's

1 bonding system.

2 Despite clear evidence of a growing shortfall,
3 state and federal officials failed to take timely action to
4 prevent the bonding program from falling into an enormous
5 deficit. Actuaries hired by the state in 1993 produced a
6 report that should have shocked everyone into action.

7 It said that the alternative bonding system
8 was insolvent and had to be revamped in a hurry.
9 Unfortunately, that did not happen. Because the Department
10 failed to fix a bonding system that its own experts said
11 was broken, PA Trout is once again one of the plaintiffs in
12 a lawsuit.

13 This time the suit is against officials of
14 both DEP and OSM. PA Trout and four other organizations
15 are seeking to force the agencies to fulfill the
16 requirement of the Surface Mining Control and Reclamation
17 Act of 1977 that the state have a bonding program that
18 ensures complete reclamation of coal mines.

19 Pennsylvania's program falls far short of that
20 requirement. How do we know this? Two months ago, Deputy
21 Secretary Dolence told this Committee what the actuaries
22 had said in 1993; and you heard it again today. The
23 alternate bonding system is insolvent or bankrupt.

24 But the proof that matters more is in the
25 field where OSM recently verified that there are dozens of

1 untreated discharges coming from coal mines for which DEP
2 has forfeited the operator's reclamation bond. Mr. Dolence
3 is right, an insurance fund that cannot cover its
4 liabilities is insolvent.
5 Why does PA Trout care whether the bond fund
6 is insolvent? Because we care about Pennsylvania streams
7 and what they mean to our members, to millions more
8 Pennsylvanians and visitors and to future generations. The
9 discharges from bond forfeiture sites that are going
10 untreated today are reason enough to be involved.
11 OSM has estimated that those discharges add
12 179,000 pounds of acid to Pennsylvania streams every day.
13 But what motivates us even more is the threat that is
14 looming on the horizon. DEP has admitted that its bonding
15 program is not capable of providing long-term treatment for
16 more than 300 additional postprimacy postmining discharges
17 that exist today.
18 OSM estimates that these discharges would add
19 5 million pounds of acid to Pennsylvania streams each day
20 if they are not treated. We are plaintiffs in the lawsuit
21 and we are here today because we want to make sure that the
22 treatment of all of those discharges is guaranteed.
23 The full-cost bonding program recently
24 announced by Secretary Seif is one step in the repair of a
25 bonding system that clearly does not meet the requirements

1 of SMCRA. But our support for this program comes with very
2 important qualifications.
3 First, full-cost bonding must really mean
4 full-cost bonding when the principle is applied in the
5 field. Our concern here comes from 20 frustrating years in
6 which regulators failed to enforce laws requiring adequate
7 bonding while the bond fund developed an enormous deficit.
8 Second, in order to make a significant
9 difference, the full-cost bonding program must apply to
10 guaranteeing the treatment of postmining discharges. As
11 Mr. Dolence stated in his testimony before this Committee
12 last December, the main problem that has driven the
13 existing alternate bonding system into bankruptcy has been
14 the obligation to treat mine drainage from bond forfeiture
15 sites. And that was reemphasized today.
16 We have gotten conflicting signals whether
17 DEP's new full bonding program will apply only to new
18 discharges from newly permitted areas or will also apply to
19 existing postmining discharges. If full-cost bonding will
20 not apply to postmining discharges at all or will apply
21 only to discharges that first appear after the date the
22 program takes effect, our third qualification becomes even
23 more important.
24 Third qualification, everyone knows that even
25 if full-cost bonding is implemented perfectly, it cannot

1 fix all the problems with Pennsylvania's current bonding
2 program. For a site that has already been forfeited but
3 has an untreated discharge, there is no operator and no
4 hope of getting a full-cost bond.
5 DEP acknowledges that full-cost bonding cannot
6 by itself salvage the alternative bonding system and that
7 full-cost bonding will not guarantee long-term treatment of
8 all of those discharges I mentioned earlier. What DEP has
9 not done is to explain how it intends to solve the enormous
10 problems with the alternate bonding system that exists
11 today.
12 Full-cost bonding has the potential to prevent
13 new mining activities from becoming future liabilities,
14 environmental liabilities for the citizens of the
15 Commonwealth. Obviously, that is a good result. But we
16 also have to fix the enormous problems that already exist
17 today.
18 Unless Pennsylvania solves the bigger problems
19 of the existing insolvency of the bond fund, the existing
20 discharges that are going untreated and the greater number
21 of existing discharges that the bonding program will not be
22 able to treat, full-cost bonding will do nothing more than
23 prevent a very bad situation from getting worse.
24 The insolvency of the bond fund imposes a new
25 kind of tax on the people who live in the large number of

1 counties with coal mining. The tax comes in the form of
2 polluted water discharged from inadequately bonded sites.
3 It is a tax that will increase as more operators decide it
4 is cheaper to forfeit their bonds than to continue treating
5 postmining discharges.
6 Every time DEP forfeits a bond but is unable
7 to treat a postmining discharge from the site, a real cost,
8 a tax increase, has been imposed on local residents. The
9 entities escaping this tax, which is the cost of cleaning
10 up the mess made by mining, are the mining companies and
11 the millions of people who enjoyed the cheaper electricity
12 produced from this coal.
13 While many others have benefitted from this
14 mining, including residents of other states and countries,
15 those of us who live in Pennsylvania's coal fields have
16 paid dearly and will continue to pay. What are the
17 ramifications of this situation for the sportsmen and
18 citizens of Pennsylvania?
19 Unless we act quickly to shore up the bonding
20 program by adding significant amounts to the bond fund, we
21 will be -- we will -- there will be even more waterways in
22 Pennsylvania that will be degraded by mine drainage. This
23 will mean more cold-water fisheries will be destroyed and
24 many thousands of Pennsylvanians will be denied
25 recreational opportunities that bring both personal rewards

1 and economic stimulation.

2 More Pennsylvanians will be faced with

3 increased water treatment costs, both for in-home treatment

4 systems and for municipal water supplies. More road

5 culverts will be corroded and have to be replaced at

6 taxpayer expense. And tourism will not be able to provide

7 an economic base for many parts of rural Pennsylvania.

8 SMCRA was supposed to stop the process of

9 allowing mining activity to degrade the waters of the

10 United States. But the political and regulatory will was

11 not there in Pennsylvania, and we are now in a very sorry

12 state. Recent droughts have only increased our collective

13 sensitivity to the importance and value of water and to the

14 folly of our unwillingness to meet this problem head-on.

15 The problems with Pennsylvania's coal-mine

16 bonding program did not first arise during the current

17 administration or the current session of the General

18 Assembly. Nevertheless, it is up to you and your

19 Committee, along with many other officials, to begin to

20 find a solution to the deficit in the alternate bonding

21 program.

22 Full-cost bonding should prevent the creation

23 of new liabilities, but it does not address the existing

24 problems that have mushroomed during more than a decade of

25 neglect. Our citizens deserve and demand clean water.

1 They can have that and at the same time have productive
2 coal mines and affordable energy.
3 Business interests and consumers may raise the
4 usual objections to paying for environmental protection,
5 but it is time for the true costs of these activities to be
6 borne by the people making the profits and the people
7 benefiting from the burning of the coal.
8 We must face up to the bonding system's
9 problems and address them now so that we do not pass a huge
10 financial and environmental debt to future generations. We
11 thank you for this opportunity to provide testimony on this
12 extremely important issue.
13 PA Trout looks forward to working
14 constructively with the members of this Committee and any
15 entity that's interested in improving the watersheds of
16 Pennsylvania. Thank you.
17 CHAIRPERSON HERSHEY: Thank you. Mr. Dalby,
18 if you would like to go ahead.
19 MR. DALBY: Thank you very much. Thank you
20 for giving the opportunity to the Pennsylvania Federation
21 of Sportsmen's Clubs, Incorporated to testify at this
22 February 16th hearing on current and proposed bonding
23 requirements on coal mining.
24 My name is Peter Dalby. And I am First Vice
25 President of the Pennsylvania Federation of Sportsmen's

1 Clubs, Incorporated. Presently, its membership totals over
2 107,000 members in 376 clubs distributed over 52 counties
3 in the Commonwealth.
4 Since 1932, the PFSC has been an aggressive
5 advocate of Pennsylvania's environment and the sportsmen of
6 the Commonwealth. Headquartered in Harrisburg, the
7 Federation is the dominant voice of sportsmen on Capitol
8 Hill. Its proud tradition of legislative accomplishments
9 can be traced back to 1937 when the PFSC was the driving
10 force behind the passage of Pennsylvania's Clean Streams
11 Act.
12 The PFSC mission reflects our concern about
13 the environment. The mission of the Pennsylvania
14 Federation of Sportsmen's Club, Incorporated is to provide
15 a statewide united voice for the concerns of all sportsmen
16 and conservationists to ensure their rights and interests
17 are protected and to protect and enhance the environment
18 and our natural resources, quote.
19 With regard to mining in general, PFSC has as
20 one of its goals eliminate and treat all mine drainage from
21 active and completed operations. Nearly 20 years ago, in
22 July 1981, the Federation and a number of other concerned
23 groups, including Trout Unlimited and the Pennsylvania
24 Chapter of the Sierra Club, filed suit in Commonwealth
25 Court to compel the state to modify the existing program to

1 sufficiently guarantee complete reclamation.

2 The petitioners entered into a settlement

3 stipulation and consent decree with the Department in the

4 Commonwealth Court action. About 10 years later, in a

5 letter dated October 1, 1991, OSM found DEP well short of

6 meeting its obligations. Substantive improvements as of

7 this date are still wanting.

8 Early last summer, the Board of Directors of

9 PFSC voted unanimously to become one of the lead

10 organizations to ask PennFuture to file suit in court to

11 compel DEP and OSM to comply with the laws governing the

12 bonding system.

13 When the PFSC held its fall statewide

14 convention in September, the Environmental Affairs

15 Committee received an update on the suit. To affirm the

16 action of the Board of Directors, the Committee asked the

17 county delegates to support the suit. The response was a

18 resounding vote of affirmation.

19 The Federal Surface Mining Control and

20 Reclamation Act of 1977 provides that Pennsylvania's

21 bonding program for coal mines must assure that the state

22 will have sufficient funds available to complete the

23 reclamation of bond forfeiture sites and must provide a

24 substantial economic incentive for mine operators to comply

25 with reclamation obligations.

1 That is the way the bonding system was
2 supposed to work once the state accepted primacy in the
3 regulation of coal mining in 1982. As John Hanger
4 explained in his testimony before this Committee in
5 December, the Pennsylvania Department of Environmental
6 Protection and the Federal Office of Surface Mining have
7 not carried out their responsibilities to ensure that the
8 state's bonding program meets these standards.
9 Their failure to maintain an adequate bonding
10 system is clear on paper, and it also is clearly evident to
11 sportsmen visiting Penn's Woods and the streams of
12 Pennsylvania. As Mr. Hanger testified at your December
13 hearing, the records show that DEP knew at the beginning of
14 the 1990's that the bonding system was in trouble.
15 Administrations came and they passed, but DEP
16 refused to honestly address a shortfall in the bonding
17 program that experts hired by DEP put at $1 billion or
18 more. OSM has documented several dozen untreated
19 discharges from primacy sites where bonds have been
20 forfeited and cleanup is the responsibility of the state.
21 It is my personal experience that this number
22 could be higher because some discharges appear off the
23 bonded area of the sites and may be unknown to the agencies
24 or may not be linked by them to a particular mine. What
25 the agencies have clearly documented is an additional 300

1 bonding sites that have significant acid discharges.

2 Those additional discharges are being treated

3 today, but DEP has openly stated that its bonding system

4 does not have nearly enough resources to provide long-term

5 treatment. So the clock is ticking and ticking faster each

6 day as mining companies go into bankruptcy.

7 Just in the past few years, Glacial Minerals,

8 Doverspike Brothers, Stanford Mining, and Power Operating

9 have left behind mines and coal refuse disposal areas with

10 liabilities that are far greater than the bonds posted and,

11 I might add onto that, acid mine drainage.

12 In several instances, DEP has been forced to

13 write off mining sites, particularly those with discharges

14 because the bonding system does not have the money it is

15 supposed to have to provide treatment. In October, DEP

16 announced its new full-cost bonding system.

17 It did not discuss the proposal with PFSC, the

18 other four members of our coalition, or PennFuture before

19 making the announcement. Perhaps that was because the

20 proposal as outlined by DEP does not fix the problems with

21 the current bonding system that are the focus of our

22 lawsuit.

23 If fully and properly implemented, full-cost

24 bonding should stop the bonding system's existing deficit

25 from growing. Full-cost bonding does not appear, however,

1 to address the existing insolvency of the bonding system.
2 It is good to prevent the problem from getting worse, but
3 we also have to fix the existing problem.
4 What the Federation and the other members of
5 our coalition want is a bonding system that meets the
6 requirements of the law, a bonding system that is not
7 forced to write off sites because of insufficient funds.
8 All the citizens of Pennsylvania deserve to have the best
9 possible reclamation on each and every site.
10 All discharges from bond forfeiture sites
11 should be treated. Adults and sportsmen tend to focus on
12 larger streams or fishing creeks; but our children deserve
13 the right to go to the smallest stream anywhere in the
14 Commonwealth to catch frogs, crayfish, or to fish for
15 minnows.
16 And any degradation of our precious streams
17 and our other water bodies result in the loss of a
18 diversified fisheries and wildlife base. The Federation's
19 main concern is with the loss of tremendous outdoor
20 recreational resources and opportunities in Pennsylvania,
21 the loss that has already occurred, and the enormous
22 additional loss that would occur if the bonding programs
23 remain insolvent.
24 But this Committee should also consider the
25 interests of property owners who relied upon the bonding

1 system to guarantee the restoration of their lands and the
2 protection of their waters. A property owner may end up
3 with devalued or undervalued land that is not appropriate
4 for agriculture, forestry, or recreation.
5 Who wants to purchase or build a camp on a
6 stream that has been killed by mine drainage? Those
7 property owners, who provide wildlife habitat and
8 recreational resources that are enjoyed by tens of
9 thousands of Pennsylvania sportsmen, also lose out when DEP
10 is forced to practice triage by picking a few sites to
11 reclaim and treat because it does not have enough bond
12 money to fix all the problems a company left behind.
13 We all lose in that situation. And we lose
14 because the state and federal governments have neglected
15 their duty to maintain an adequate bonding system. The
16 shortfall in the existing bonding system is so serious that
17 elected officials are going to have to work with DEP to
18 pull the system out of its financial quagmire.
19 While DEP implemented full-cost bonding to
20 prevent the deficit from growing, it also must initiate
21 solutions to the bonding system's existing shortfall. We
22 hope that DEP will move quickly and with the support of
23 this Committee and the General Assembly to fix
24 Pennsylvania's bonding program.
25 The PFSC thanks you for your interest in the

1 Commonwealth's bonding program and this opportunity to
2 provide testimony. The PFSC wishes to work constructively
3 with any and all parties who are committed to improving the
4 quality of the land and waters of the Commonwealth.
5 Its members are willing to take interested
6 political leaders on one or more field trips so they too
7 can gain firsthand experience on the seriousness and
8 immensity of the impacts of bonding shortfall. I might add
9 on that I recognize that a number of you already have had
10 enough firsthand experiences, more than what you'd like to
11 see, perhaps. Respectfully submitted, Pete Dalby. Thank
12 you.
13 REPRESENTATIVE SMITH: Thank you. I
14 appreciate that last comment in that a lot of us have had
15 our share of field trips. And not that they aren't
16 helpful; but at some point, we get the picture. Do we have
17 any questions here? Representative Ross.
18 REPRESENTATIVE ROSS: I appreciate your
19 testimony. I certainly understand your sense of
20 frustration given the amount of time that you all have
21 spent on this problem and essentially been raising red
22 flags and concerns about it.
23 I'd appreciate at least your estimation of the
24 correct way to fix the bonding program.
25 MR. MORROW: Well, it's not our decision, of

1 course, to fix it. There are agencies that are obligated
2 to do that. We have some ideas. And Mr. Imler made a
3 suggestion this morning that fundamentally what we have is
4 a shortage of money, which the Legislature deals with
5 constantly in all areas.
6 And at some point, we're going to have to find
7 a way to get that money into the system. And as I said in
8 our testimony, a lot of people benefit from coal, not just
9 the companies, not just the miners who mine that coal. All
10 of us who flip on our light switch benefit from the coal
11 that's mined in Pennsylvania.
12 And additionally, at least in Clarion County
13 where I live, a lot of that coal over the years has been
14 shipped in New York State. So consumers in New York State
15 are benefiting. A lot of Pennsylvania coal goes to Europe.
16 And so those consumers benefit from the cost of our coal
17 making.
18 Apparently mine it here, ship it there, and
19 it's cheaper than buying it in Europe. So somewhere along
20 the line, those costs have to be amortized among the
21 individuals who are benefiting from this. And that
22 includes the consumer, it includes the miners, the
23 operator, and maybe the taxpayers.
24 You know, we may be to the point where it may
25 be money that has to come out of the general coffer because

1 we've all benefitted. And it's the old tragedy of the
2 commons it's called in biology where a smaller group gets
3 pounded because they happen to live where all the acid mine
4 drainage is.
5 And the larger group, they get a tremendous
6 hit. And the rest of the individuals get a small benefit.
7 But there are a lot more.
8 REPRESENTATIVE ROSS: I guess I was really
9 trying to get at the question of whether you felt that the
10 fund could be restored to a sense of solvency by charges
11 against the industries that were currently operated or
12 whether or not you were counting on general revenues.
13 And I would love to be able to tax New York
14 State residents and people in Europe. I haven't figured
15 out how to do that yet.
16 MR. MORROW: Well, you can do that by putting
17 a tax on that coal one way or another when it's exported
18 perhaps. It may be federal, whatever, the fair trade laws
19 or whatever. The Constitution has something to say about
20 that, I believe, the Federal Constitution.
21 But at some point, it might be a series of
22 things that are coupled together to come up with the funds
23 that are necessary.
24 REPRESENTATIVE ROSS: I guess the one thing I
25 would be anxious about is that we don't get into a downward

1 spiral. We have fewer and fewer people paying into the
2 fund because as we raise the costs associated, that we
3 essentially put more people out of business and have more
4 abandoned sites basically to come back on us.
5 That was the issue that I was raising a little
6 bit and I'm concerned about, that obviously we want to do
7 what we can do to repair streams. But we're going to have
8 to do it with some sense that if we know that there are
9 companies going out of business right now, we don't want to
10 create an environment where we put the remainder out.
11 And then the whole problem becomes that of the
12 Commonwealth and the general fund.
13 MR. DALBY: If I might make two comments here
14 that address your concerns. One is that we're, as
15 litigants, concerned that the total picture is addressed,
16 that it just doesn't -- obviously, we recognize there's a
17 lot of problems out there. And we want to make sure that
18 everything is addressed as a package.
19 And philosophically, I guess that one could
20 find an easy fix or what you think is an easy fix and
21 behoove that up to the world of how wonderful it is. But I
22 think a lot of us have the philosophy that we like to look
23 at things in a total package as we all recognize here.
24 Certain parts are going to be easy. Certain
25 parts are going to be very, very difficult. But I think we

1 like to look at it as a total package to see how well
2 everything fits together. In concern for those people that
3 have their jobs associated in the coal industry, we
4 recognize that there's also opportunities out there
5 for -- to do a heck of a lot of remining.
6 And we've heard a little bit about that
7 through remining initiatives. But we got a lot of acid
8 mine drainage water. We got a lot of sites that were
9 horribly reclaimed back prior to primacy. And I think
10 industry has to look at that.
11 I think the coal miners are going to have to
12 look at that. I think DEP is going to have to look at it.
13 I think you as legislators and us as -- for those of us in
14 environmental organizations are going to have to examine
15 that.
16 REPRESENTATIVE ROSS: So the sense from both
17 you is that this is going to be a combination of some work
18 on the existing lines to make sure that they're being
19 managed correctly and not contributing any additional
20 problems but then also looking down at the industry more
21 broadly toward some solutions to try and resolve the orphan
22 sites and the sites that are -- that are -- where we don't
23 have some obvious place to go for money out of the
24 industry.
25 MR. MORROW: Suggesting looking beyond the

1 industry.

2 REPRESENTATIVE ROSS: Thank you.

3 REPRESENTATIVE SMITH: I recognize Chairman

4 Hershey.

5 CHAIRPERSON HERSHEY: Thank you, Sam. Mr.

6 Dalby, you mentioned that in recent years, four major

7 companies closed down and left their sites?

8 MR. DALBY: Yes, sir.

9 CHAIRPERSON HERSHEY: Do you know if the DEP

10 processed or redeemed their bonds and did partial cleanup?

11 MR. DALBY: Yes. In the one site that I'm

12 very familiar with, there was some partial addressing of

13 the issues of the problems based upon the bonding money

14 that they had. And you're talking about something in the

15 neighborhood of two dozen sites, and monies went towards

16 three of the worst sites. And it's -- you see triage in

17 action.

18 CHAIRPERSON HERSHEY: The one mining company

19 had approximately 20 sites you're saying?

20 MR. DALBY: That they left in various stages

21 of reclamation, some with acid mine discharges.

22 CHAIRPERSON HERSHEY: I had heard comments of

23 bond monies laying here in Harrisburg not being invested.

24 And I didn't know how soon after a company leaves an area

25 that their bonds are redeemed and put to work. I would

1 hope that the ones that had bonds, that they are used to
2 the best benefit.
3 I didn't know if they -- if they were being
4 processed. But apparently, they are being processed.
5 MR. DALBY: They are being processed, but it
6 takes forever and a day. And you're opening up another can
7 of worms here, is that when a company goes bankrupt, very,
8 very often, all treatment stops for a year or two until
9 appropriate discussions between the bonding company and DEP
10 continue and they come up with some sort of a solution or
11 nonsolution.
12 Unfortunately, streams take a serious hit at
13 those particular times, as does -- as does the fact that
14 you and I may be property owners and we got some gullies
15 forming in the back or improper plantings, grass cover, and
16 so on and so forth. Just everything comes to a stop, but
17 that's another problem.
18 CHAIRPERSON HERSHEY: So it -- the bond money
19 isn't used as this other process goes through the courts.
20 Is that what you're saying?
21 MR. DALBY: It's just held. The bonding
22 companies, I imagine, do -- maybe do a little bit of
23 investment of that money during that time. But that's
24 something I know nothing about.
25 CHAIRPERSON HERSHEY: Thank you.

1 MR. MORROW: Chairman Hershey, could I comment
2 just a second on that?
3 CHAIRPERSON HERSHEY: Yes.
4 MR. MORROW: We have a specific example from
5 our activity in the Mill Creek Watershed in Jefferson and
6 Clarion Counties. We've spent about $700,000 of -- of
7 federal and state and foundation money on reclamation so
8 far on this watershed. We're going to be spending over $7
9 million when we're done.
10 We have a PL-566 plan approved through the
11 federal government. So we have a decade-long effort in our
12 watershed. And one of the concerns on our watershed is
13 that there's a coal company that is currently solvent that
14 is treating the site that's in the very headwaters of our
15 watershed.
16 And we're concerned about if that coal company
17 were to go bankrupt, the amount of bond on that site is
18 $60,000. And we know from our experience in building past
19 treatment systems, that's grossly inadequate for what's
20 going to have to be done on that site.
21 And in fact, OSM has picked that site as a
22 site of major concern. And if that company goes bankrupt,
23 the very headwaters of the stream system that we just spent
24 $700,000 of public money on is going to be wiped out by the
25 AMD. So we corresponded with our local mining office and

1 asked that if they have developed contingency plans for
2 what might happen.
3 And we asked how quickly things would happen
4 if there is a forfeiture of that site. And the response
5 that we received from the district mining manager -- I'll
6 just read the last paragraph -- he said, "If operators
7 should fail to meet their obligations, normal enforcement
8 procedures take from several months to a year from the
9 initial violation to when a bond can be collected. Once
10 the bond is collected, remediation responsibilities are
11 transferred to BAMR."
12 And we are working with BAMR in anticipation
13 of possibilities. So essentially, we're looking at a year
14 or more till something happens. So if you're on the ground
15 looking at a stream and it's a stream that has trout in it
16 right now, in a year's time, with that kind of discharge,
17 you know, what they do a year later is going to be somewhat
18 irrelevant because it's going to be wiped out.
19 So one of the things we'd like to have
20 discussed is to have some kind of an emergency response
21 system developed as part of this bonding revamping or
22 consideration of the bonding program. There are sites that
23 are special in that they are survivor streams.
24 And if we have a -- a system in place that can
25 accelerate these kinds of activities, perhaps use the money

1 to keep the active treatment going that's there until
2 something else can be put in rather than just, you know,
3 doing nothing and allowing the stream to be killed.
4 So there's a tremendous number of anguishes,
5 but that's just one of our experiences that relates to what
6 you just asked.
7 CHAIRPERSON HERSHEY: Thank you.
8 REPRESENTATIVE SMITH: I appreciate both of
9 you taking the time to provide your testimony regarding
10 this issue. And it's certainly one that I have put a great
11 deal of my time into in the context of this Committee and
12 just other interests with the mining industry.
13 One of the things that we have to deal with
14 here is that in a real world sense, no matter what we do
15 today, we don't have enough money to address the problems
16 that existed in whichever category back through time we
17 want to look at, pre -- you know, the World War II era
18 mining problems versus the -- the early primacy era
19 problems.
20 And fortunately, you know, we've had
21 diminishing problems in terms of what the active industry
22 today is creating. And I'm curious if you would, you know,
23 respond. You mentioned remining a little bit. But I'd
24 like you to expand on that thought a little bit as to
25 the -- how you folks believe or what you believe in

1 relative to the impact of remining as a contributor to
2 cleaning up some of these older sites or some of the, you
3 know, whatever, take your pick.
4 Do you value that -- that component of how
5 we're currently addressing the problems of acid mine
6 drainage and abandoned mine lands in Pennsylvania?
7 MR. DALBY: We don't have any figures on that.
8 Certainly, it's -- it's an option if there's coal that can
9 be extracted and if there's a market for it. But I think
10 we're looking at a small percentage of all the total sites
11 out there. But what -- the question you're raising is part
12 of our concern in developing a total package that addresses
13 all the questions out there in correct perspective.
14 So your question is very well-taken. It's
15 better than not having any reclaiming at all. But is that
16 going to be the panacea here? Not at all. It's -- it's
17 worth a chuckle at most. But it's worth as part of the
18 total package.
19 REPRESENTATIVE SMITH: You don't believe that
20 remining is making a significant contribution to cleaning
21 up in terms of, like, an abatement or daylighting of a mine
22 where you're going to separate the water from percolating
23 down through, you know, a bad hot spot? You don't see that
24 it's a significant contributor today?
25 MR. DALBY: As I understand it -- I may be

1 wrong. But first of all, I don't have any data to
2 determine whether there's any extractable coal from those
3 sources that are worth doing reclaiming on.
4 REPRESENTATIVE SMITH: That's interesting
5 because some of the conversations I've had with the folks
6 from the Department would -- would indicate that -- that
7 that has made, you know, a significant impact. And I think
8 in the anthracite region in particular -- and Dave, you can
9 kind of correct me if I'm wrong -- when those old mines
10 were initiated there, they were just these little, you
11 know, guys like literally going in there with a pick and a
12 shovel themselves and, you know, cutting these little holes
13 out of the mountainside.
14 And now when they come through, they're like
15 cleaning out those so you don't have all these kind
16 of -- this kind of mismatch of drainage pipes, if you will,
17 all through the region. I mean, so the remining there is
18 clearly separating where the water gets out of the coal or
19 that acid rock that obviously creates the acid mine
20 drainage.
21 I think seeing that -- I see remining as a,
22 you know, a significant component to helping us get our
23 arms around this problem.
24 MR. DALBY: I think we'd all be interested in
25 seeing the numbers and the acreage that would be fixed by

1 this particular --

2 MR. MORROW: We're not personally involved in

3 much remining where we are. So we don't have personal

4 experience of it. I'd be -- you know, DEP testified today

5 that it's an important part of the program. So I wouldn't

6 dispute that at all.

7 REPRESENTATIVE SMITH: Just kind of move to a

8 separate area. Whether we're talking about the bond money

9 that gets tied up, like, once a company would go bankrupt

10 and it's that period of time where it's, you know, you

11 can't get your hands on it in essence, the process of going

12 through BAMR, those are some concerns that I've had.

13 One of my first encounters with this entire

14 issue is a company went bankrupt; and the discharge that

15 they had been treating ceased to be treated today, you

16 know, boom. And a few of the people in the coal industry

17 were the ones who said it's interesting that whenever, you

18 know, the coal industry was permitted and running, we were

19 required to keep treating that.

20 But now that that miner went bankrupt, the

21 Commonwealth, the state, you -- they can point right at me

22 in that sense -- say you guys don't feel it's so critical

23 to treat that discharge all of a sudden. And that thought

24 has always stuck with me, you know, as we try to find a

25 solution to this -- to this problem.

1 And one of the things that occurs is that
2 today, we don't have enough money to cover treatment of
3 these discharges. And I'd put my usual commercial in. Of
4 course, if the federal government were releasing more of
5 the AML monies that have been collected at 35 cents a ton
6 on the surface mine coal in the United States for the last
7 whatever, 30 years or 20 years or whatever it's been, you
8 know, we would be -- we would be dealing with some of those
9 problems more effectively.
10 Nevertheless, given that we don't have that
11 money today at our access, do you -- do you agree that
12 there's some need to -- to be a little bit creative? And
13 you mentioned triage in action. And I'm not sure -- I
14 think that's what you said.
15 I don't see how we go about without taking
16 some priority in terms of -- of, you know, trying to apply
17 the money we do have to where a discharge is a little more
18 critical. I'm sure when you evaluated the Mill Creek, when
19 you started figuring up the projects, you're looking at
20 where you need to do what.
21 Don't you assess, like, what's the one that's
22 got the worst, you know, the worst manganese in it or
23 where, you know -- don't you do that? I mean, that's what
24 I see happening. I'm just curious. If you'd expand on
25 that a little bit.

1 MR. MORROW: We do do that. We have done that
2 in the Mill Creek. We basically start at the top and work
3 down. And there were several critical sites on one step,
4 and we did those first. And then we started on the parts
5 of the watershed that were in the worst condition and
6 started our way down from the top.
7 And we've had success in improving things
8 moving down. And ultimately, in another decade or less,
9 we'll be to the bottom. It's been a long effort, and it
10 works. For the short haul, I guess triage is something to
11 consider, particularly in the site I just mentioned.
12 You know, when you have situations like that,
13 it's important to not lose another stream. You know, but
14 ultimately, I guess we -- we would hope that every primacy
15 site at least will eventually be taken care of one way or
16 the other. And it's going to take a while.
17 We're not expecting the lawsuit really to have
18 this happen overnight, you know. We expect there's going
19 to have to be funding sources found eventually. And that
20 will take some time to accumulate the funds that are needed
21 to fix the problem.
22 I mean, we have a lot of good things going on
23 in Pennsylvania now in the abandoned sites, the old sites.
24 And so, you know, as all this comes together, maybe my
25 kids' kids will see a situation that we don't have all

1 those --

2 REPRESENTATIVE SMITH: Well, it's not a

3 problem that occurred overnight. That's for sure. And

4 obviously, we're not going to resolve it overnight. I just

5 wanted to add one other comment. In your testimony, you

6 had referenced that one of the important qualifications for

7 full-cost bonding is that it must really mean full-cost

8 bonding.

9 And I wanted to share this with you, that in

10 the discussions that I've had with this -- and as an active

11 member of the Mining Reclamation Advisory Board, I've been

12 involved in a fair number of discussions on this issue. I

13 don't think anyone is denying that -- that the bond postage

14 should cover the cost of -- of reclamation, in particularly

15 as far as the land reclamation elements go.

16 The water becomes, you know, that becomes a

17 catch point. And that's, you know, that is part of

18 the -- but a lot of the concerns that have been raised have

19 been, How do you assess what that cost is? And

20 unfortunately, for a mining company that's in their cost of

21 reclamation is sometimes significantly different than what

22 goes through the pipeline and comes out an MRAB contract

23 for reclamation.

24 And that is one of the areas that there's been

25 some fair and honest debate as to just what is the real

1 cost of -- of reclaiming this. You know, one of the newer
2 programs that we initiated -- that the Department
3 initiated, you know, was involving the surety companies who
4 can sometimes come in and contract to reclaim that in a
5 more efficient manner than BAMR forfeiting that bond.
6 And I, you know, I think that's another
7 creative mechanism that we have tried to employ over the
8 last couple of years to try to deal with some of these
9 problems. So just, you know, it is frustrating. I think
10 your comments are correct in that those of us that live in
11 those areas, we live with a direct impact.
12 Others don't see it, but they benefit. We've
13 all benefited from the low cost of energy. You know,
14 unfortunately, when you say you could apply a tax to
15 Pennsylvania's coal to, you know, to tax New York or -- or
16 Europe, the fundamental problem there is we can't keep
17 making them keep buying our coal.
18 We can tax it. But if that makes it more
19 expensive than Wyoming coal or one of those countries -- I
20 don't know if it's Argentina or somewhere I guess where
21 they're making a lot of coal these days -- you know,
22 they'll buy the coal there. They won't buy it from us.
23 So there is a, you know, there is a limit to
24 the marketplace there. With that, I thank you again for
25 your time and your testimony. And thank you, Mr. Chairman.

1 I certainly appreciate your allowing us to have these
2 hearings to get some more public discussion on this issue
3 that I think is very important both from a -- an
4 environmental impact on the Commonwealth but also has an
5 economic impact.
6 CHAIRPERSON HERSHEY: I want to thank everyone
7 that came today, including the audience, thank our
8 stenographer. Anyone that has more information to submit,
9 we will have an open period to submit that to our staff.
10 And please feel free to do that because we have a big job
11 ahead of us.
12 And that's just the start so -- ten days will
13 be the time period to submit additional testimony. So
14 thank you very much.
15 (Whereupon, at 1:08 p.m., the hearing
adjourned.)
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1 I hereby certify that the proceedings and
2 evidence are contained fully and accurately in the notes
3 taken by me during the hearing of the within cause and that
4 this is a true and correct transcript of the same.
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