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STATEMENT OF
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RESOURCES, COMMUNITY, AND ECONOMIC DEVELOPMENT DIVISION
BEFORE THE
SUBCOMMITTEE ON ENVIRONMENT, ENERGY
AND NATURAL RESOURCES
HOUSE COMMITTEE ON GOVERNMENT OPERATIONS
ON THE
BONDING SYSTEMS FOR RECLAMATION
OF STRIP-MINED LANDS IN PENNSYLVANIA AND WEST VIRGINIA

Mr. Chairman and Members of the Subcommittee:

We are glad to be here today to discuss our ongoing work and tentative observations in response to your request that we review the bonding systems used for funding the reclamation of strip-mined land in Pennsylvania and West Virginia. We plan to complete our work and report our findings to you within the next several months. We selected these states, with your agreement, because they have a large number of sites on which the bonds have been forfeited and because they are two of the largest coal-producing states. Also, as you know we issued a report addressing the Oklahoma bonding system on August 8, 1985. Our findings in Oklahoma are described briefly in the attachment.

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The three major bonding issues that we addressed in the two states are (1) reclamation procedures after bond forfeiture, (2) the adequacy of the funds provided by the bonding systems, and (3) the appropriateness of bond releases. Our review of these issues covered the period from the passage of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) through December 1985.

In addressing each of the issues it is important to understand that under SMCRA, two time periods prevail. The first period--known as the interim program period--covered the time from passage of SMCRA up to the time the states obtained primary regulatory authority. During this period, bonding for coal mine operations were controlled by existing state law. There was no federal bonding requirement imposed by the Office of Surface Mining Reclamation and Enforcement (OSMRE). The latter period--known as the permanent program period--started when the states received primary responsibility for carrying out the provisions of SMCRA.¹ At this point, the bonding systems were required to be approved by OSMRE and the role of OSMRE became one of overseeing the approved state programs.

Our work to date shows that, in Pennsylvania and to a lesser extent in West Virginia, large acreages of unreclaimed mined land exist. Most of this land was mined under the provisions of each state's interim program. We found that the land remains unreclaimed, in part, because of the lengthy reclamation process. The average time from bond forfeiture to completed reclamation averaged 4 years in Pennsylvania and 2 years in West Virginia.

¹Pennsylvania obtained primacy on July 31, 1982; West Virginia on January 21, 1981.

In addition, existing bonds have not been adequate to reclaim all of the interim program forfeiture lands. State estimates to reclaim these lands exceed presently available funding by nearly \$100 million in Pennsylvania and about \$3 million in West Virginia. OSMRE's involvement in getting these lands reclaimed has been limited since they believe that interim period forfeitures are the states' responsibility. OSMRE believes that it is only responsible for assuring reclamation of permanent program mined lands. However, the adequacy of the permanent program bonding systems in both Pennsylvania and West Virginia is not known because no formal criteria or methodology currently exists within OSMRE for assessing their adequacy. As a result, it is not known at this time whether these bonding systems will be adequate to reclaim all future forfeiture sites.

Lastly, both states generally complied with the procedural requirements for releasing bonds. However, in our visits to selected bond release sites with OSMRE inspectors, the inspectors identified 3 sites with reclamation deficiencies which raised questions about the appropriateness of the bond release.

HAVE BOND FORFEITURE LANDS BEEN
RECLAIMED AND, IF SO, HOW MUCH?

Reclamation of mined coal lands is one of the major aims of SMCRA. In Pennsylvania, reclamation has been slow. West Virginia has been more successful than Pennsylvania; but overall, unreclaimed land exists in both states.

First, I would like to discuss reclamation of bond forfeiture lands in Pennsylvania. We found that, since SMCRA

was passed, the bonds on 22,450 acres--22,381 from the interim period--have been forfeited in Pennsylvania and over 67 percent of the total acreage (15,134 acres) has not been reclaimed or has not been awarded a contract for reclamation.² A number of reasons account for the unreclaimed land. These include a time-consuming appeal process, slowness in collecting the bonds, and time lags in getting the reclamation done once the bonds are collected.

Perhaps the major factor is that 14,838 acres, or over 66 percent of the acres involved in bond forfeiture proceedings, have been appealed to the Environmental Hearing Board (EHB) by the bond company and/or the operator.³ An EHB ruling has been made on only 6,352 acres, and in each case, the Board ruled in favor of the state regulatory authority. The other 8,486 acres remain under appeal and some cases have not been scheduled to be heard even though some of them were appealed as far back as 1984. The average amount of time from bond forfeiture to an EHB ruling has been over 16 months.

State regulatory officials see the high rate of appeals to the EHB as a delaying tactic used by the holder of the bonds to collect several years of additional interest. According to state regulatory officials, some consideration is being given to having the bond money held in escrow pending the EHB ruling; but, they say, surety companies have indicated an unwillingness to bond coal companies if this practice is instituted.

²Of the remaining 7,316 acres, 2,347 acres have been or are being reclaimed; and 4,969 acres are in project design, have been re-permitted for re-mining, or are scheduled to be reclaimed by the mine operator as a result of an agreement with the state regulatory authority.

³The EHB is an independent panel consisting of three members to whom surety companies and operators may appeal state regulatory authority actions.

Another factor contributing to the lengthy reclamation process is the time needed for collecting the bond. Specifically, bonds totalling \$10.87 million have not been collected for 10,250 of the 15,134 unreclaimed acres. Most of the 10,250 acres are still under appeal, but the bonds on 1,915 acres have not been collected because either the surety company is involved in bankruptcy or the state regulatory authority has failed to complete collection action despite the authorization to do so. The average amount of time to collect a bond for both appealed and nonappealed cases has been about 8 months.

Getting the reclamation performed after the bonds are collected also adds time to the overall reclamation process. For the acreage on which the state regulatory authority has completed reclamation, it took an average of 41 months to reclaim the land after the bonds were collected. Most of this time can be attributed to the state's efforts to design the reclamation projects and to solicit bids for doing the reclamation.

Overall, it took an average of about 4 years to complete reclamation after forfeiting the bond. However, this figure does not fully reflect the impact of the 16 months required for the EHB appeal because about 94 percent of the reclaimed lands in Pennsylvania to date have not been appealed.

Without timely reclamation, environmental damage results. The sites we visited, as shown in the slides, provide evidence of environmental damage from unreclaimed coal-mined lands. Soil erosion, water pollution, hazards to public health and safety, and reduction in property values are some of the more obvious problems.

In addition, our work in Pennsylvania shows that the state has reclaimed some lower priority sites before reclaiming all of the sites ranked as high-priority.⁴ Over 1,800 high-priority acres currently remain unreclaimed while about 400 low-priority acres were reclaimed by the state regulatory authority. A state regulatory authority official acknowledged that this occurred in earlier years because reclamation was controlled more by citizen complaints and political pressure than by environmental damage. The official stated that the current policy is to concentrate on high-priority sites.

In West Virginia, reclamation of bond forfeiture lands is better than in Pennsylvania but still not problem free. Over 72 percent, or 4,849, of the 6,713 acres involved in bond forfeiture proceedings have been reclaimed or have been awarded contracts for reclamation.⁵ Several reasons for this success rate can be cited.

In general, reclamation after bond forfeiture in West Virginia is more timely than in Pennsylvania, in part, because of the low rate of appeals filed by mine operators in the state. Unlike Pennsylvania, where bond forfeiture actions on over 66 percent of the acres are appealed, about 4 percent are appealed in West Virginia. Although no firm reason for this

⁴After bond collection, the state regulatory authority assesses the risk of environmental damage from the sites and ranks them in order of reclamation priority. Sites which present a significant and continuing hazard to human life or a significant threat to health and safety are to receive the highest priority ranking.

⁵Of the remaining 1,864 acres, 1,789 acres have not begun the reclamation process; and 75 acres have either been re-permitted for remaining or the state regulatory authority has reached an agreement with the mine operator to reclaim the land. Interim period bond forfeiture acres account for 5,777 of the 6,713 acres.

difference exists, one explanation offered by West Virginia state regulatory officials is that surety companies in West Virginia are not permitted to appeal the state's bond forfeiture actions. Only mine operators can file an appeal, but they seldom do so. (As noted earlier, in Pennsylvania both the surety company and operator may appeal a forfeiture action). Also, state regulatory authority officials said that they are able to reclaim bond forfeiture sites as they occur. Reclamation generally begins within 8 months after bond collection and, in some cases, before the entire bond has been collected. The average time from bond forfeiture to reclamation completion has averaged less than 2 years.

Although West Virginia's track record for reclaiming bond forfeiture sites is better than Pennsylvania's, West Virginia still has 1,789 unreclaimed acres. Like all unreclaimed areas, the potential for extensive damage to the environment exists. The pictures we took of selected unreclaimed sites in West Virginia show cases of soil erosion, water pollution, hazards to public health and safety, and reduction in property values.

OSMRE involvement in getting the interim program bond forfeiture sites in either state reclaimed has been limited. OSMRE's position is that interim program forfeitures are the states' responsibility. Specifically, they say that bond requirements established under SMCRA apply only to permits issued under the permanent regulatory programs; thus, they believe that OSMRE has no authority to address inadequacies in the interim period bond forfeiture program.

OSMRE officials further stated that their role is to oversee the states' programs for active mining operations and to get the permanent program bond forfeiture sites reclaimed. However, we found that OSMRE, in approving the permanent

programs, did not study the interim program problems and use this experience to prevent similar problems under the permanent program. The same lengthy process for achieving reclamation of interim program bond forfeiture sites is now being applied to permanent program bond forfeiture sites.

OSMRE initiated its first study of Pennsylvania's reclamation process in January 1986--almost 9 years after the act's passage and over 3 years since the state obtained primacy. Results of this study are expected by mid July. OSMRE initiated a similar study in West Virginia in March 1986. Results are also expected by mid July.

OSMRE officials also told us that with respect to reclaiming bond forfeiture sites, permanent program forfeitures take priority over interim forfeitures. The lack of federal bonding requirements during the interim period is, again, cited as the reason. However, the OSMRE officials acknowledged that this may result in states reclaiming lower priority permanent program acres before reclaiming higher priority interim program lands.

ARE BONDS ADEQUATE?

SMCRA, in addition to requiring mine operators to file performance bonds sufficient to cover the actual cost of reclamation, also permits states to adopt an alternative bonding system. Under such a system, the operator's bond is supplemented through a fund which provides moneys to assist in reclamation of lands affected by coal mining. Both Pennsylvania and West Virginia--along with four other states--have opted for

alternative bonding systems under their permanent programs.⁶ The remaining 18 states with primacy (including Oklahoma) set bond amounts using a predetermined dollar amount per acre. As noted previously, there were no federal bonding requirements during the interim period. Bonds, if any, were required by the existing state laws.

The state bonds covering the interim program bond forfeiture sites have not been adequate to cover the costs of state reclamation in either Pennsylvania or West Virginia. Both states have used moneys from the OSMRE approved permanent program supplemental funds to reclaim some of these sites. However, there are extensive shortfalls in funding for the remaining interim program bond forfeiture acres, particularly in Pennsylvania.

Specifically, the bonds on 521 mine sites covering 22,450 acres have been forfeited in Pennsylvania as of December 31, 1985. Of this acreage, 1,278 acres have either been reclaimed (733 acres) or have been awarded reclamation contracts by the state regulatory authority (545 acres).⁷ Another 1,049 acres were reclaimed by the surety companies. All of the reclaimed land is from interim program mined sites.

⁶Pennsylvania's alternative bonding system consists of a minimum \$3,000 per acre bond plus a \$50 per acre permit fee. West Virginia's system requires a \$1,000 per acre bond supplemented by a tax of one cent per ton of coal produced. Other moneys that go into both states' reclamation funds include penalties, fines and fund interest.

⁷Although Pennsylvania has reclaimed or awarded reclamation contracts for 1,298 acres, 20 of these acres were eliminated from the bond adequacy analysis because they were reclaimed under the Abandoned Mine Land Reclamation (AML) program. The AML program is designed to cover the costs of reclamation for lands abandoned before SMCRA.

For the acreage either under contract or reclaimed by the regulatory authority, the average reclamation cost per acre has been \$6,243 while the average bond amount per acre has been \$728. Therefore, the amount of bond forfeited has equaled about 12 percent of the cost of reclamation.

The amount of bond money available to reclaim these acres was approximately \$1 million. The reclamation costs, however, totalled about \$8 million, requiring over \$7 million in supplemental moneys to be used from the state's permanent program reclamation fund.

We found that Pennsylvania's permanent program supplemental reclamation fund is not presently sufficient to reclaim the nearly 15,000 remaining interim program unreclaimed acres. An internal study prepared by the Pennsylvania state regulatory authority in October 1985 showed that, by its own estimate, over \$110 million would be needed to reclaim all of its existing forfeited sites. Furthermore, in 1984 the state estimated that at the current expenditure rate of \$2 million/year, it would take over 45 years to clean up the interim program problem. As of January 16, 1986, the fund had a balance of \$12.1 million. Approximately \$1.2 million a year in revenues have been generated by the supplemental reclamation permit fee.

In addition, the adequacy of the Pennsylvania permanent program bonding system to reclaim bond forfeiture sites permitted and subsequently abandoned under the state's permanent program is unknown because OSMRE has not developed any criteria or a methodology for assessing adequacy of an "alternative" bonding system. None of the permanent program bond forfeiture acres in the state have been reclaimed so the ratio of the bond amount to the cost of reclamation on these lands is not known.

West Virginia, in comparison, has forfeited the bonds on 269 mine sites involving 6,713 acres since the passage of SMCRA. Our analyses show that of the 6,713 acres, 2,931 have either been awarded contracts (333 acres) or reclaimed by the state regulatory authority (2,598 acres). Another 1,918 were reclaimed by the surety companies. With the exception of 411 acres, all of the reclaimed land is from interim program mined lands.

Compared with Pennsylvania, where the amount of bond forfeited under the interim program has equaled about 12 percent of the cost of reclamation, the percentage in West Virginia has equaled 45 percent--46 percent on interim program reclaimed sites and 40 percent on permanent program sites. The average reclamation cost per acre for the reclaimed/under contract acres has been \$2,483 while the average bond amount has been \$1,124. Like Pennsylvania, a substantial amount of the money needed to reclaim these sites--\$3.9 million--came from the permanent program supplemental fund.

In November 1985, West Virginia estimated that \$8.9 million will be needed to reclaim the interim program lands that remain unreclaimed. As of December 1985, the state reclamation fund had a balance of \$5.7 million. The average annual income generated by the supplemental coal tax over the past 3 years (1983-1985) was \$800,000. On the basis of their analysis of the fund, state regulatory authority officials believe that the fund will generate enough money to reclaim all interim program mined lands, but they could not tell us how many years this would take.

As in Pennsylvania, what is not known is whether the permanent program bonding system is adequate to reclaim all future permanent program bond forfeiture sites. A preliminary

actuarial study of this fund was made by an independent actuary in 1982 at the request of the state regulatory authority. This assessment concluded that the fund was sufficient to cover expected costs for the next year, but it did not address the fund sufficiency beyond that. Also, according to this report, much of the data needed to make a conclusive study simply did not exist. For example, the net assets in the reclamation fund were indeterminate at the time. A final actuarial study of the fund was not made.

OSMRE's involvement in assessing the adequacy of the alternative bonding systems in Pennsylvania and West Virginia has been limited. Bonding system adequacy has not been addressed by OSMRE in any of its annual oversight reviews of either state's regulatory program although adequacy of the states' supplemental funds to cover the reclamation cost of current permanent program bond forfeiture sites has been included as an objective for the 1986 review. The 1986 review is ongoing and results are not expected until later this year.

In West Virginia, the Morgantown OSMRE Area Office conducted a special forfeiture study during 1985. This study showed that for 18 reclaimed sites, only 2 had adequate bonds. However, the study did not include an analysis of the ability of West Virginia's supplemental fund to cover costs of reclamation above the bond amount. Pennsylvania OSMRE officials have not conducted any bond forfeiture special studies.

The OSMRE Assistant Director for Operations told us that alternative bonding systems, if properly designed, are an excellent idea. He acknowledged, however, that proper design has not been agreed upon within OSMRE nor has a methodology been developed for assessing fund adequacy. Consequently, although OSMRE approved the alternative bonding systems in both

Pennsylvania and West Virginia these systems have never been "modeled" to assure fund adequacy for reclamation of future potential bond forfeiture lands.

ARE BOND RELEASES APPROPRIATE?

SMCRA provides for the release of a bond by the regulatory authority if the authority is satisfied that the reclamation covered by the bond has been accomplished. Our review of state bond release files showed that both states generally complied with the requirements for releasing bonds. However, at three bond release sites that we visited, the OSMRE inspector(s) accompanying us identified reclamation deficiencies which, they believed, raised questions about the appropriateness of the bond release.

Specifically, we reviewed a statistically valid sample of 222 bond releases made in 1985 at two district offices in Pennsylvania--Greensburg and Pottsville. (Results of this review are projectable to the two district offices.) We checked to see if the major bond release procedures were followed, including (1) if the site was inspected by the state regulatory authority before the release was approved, (2) if proper public notice was given, and (3) if citizen/landowner complaints were addressed. We found documentation in the state records which showed that the regulatory authority had generally followed the required bond release procedures.

However, during our on-site visits to eight of the 1985 bond release sites included in our sample, the accompanying OSMRE inspector identified two sites with reclamation deficiencies. On the first site, the deficiencies noted included inadequate sediment ponds and erosion problems, and the fact that it had not been restored to its approximate original

contour as required by SMCRA. Reclamation on the second site, according to the OSMRE inspector, was generally good. However, the sediment pond had been removed but not reseeded--a requirement for a revegetation bond release. The OSMRE inspectors stated that the remaining six sites were adequately reclaimed. Pennsylvania officials told us that these sites were probably in compliance at the time of release--approximately 3 months before our visit. Because of the lapse in time, this difference of opinion could not be resolved.

In West Virginia, we reviewed a statistically valid sample of 74 bond releases made during 1984 or 1985 at one district office--Philippi. (Results of this review are projectable to the district office.) Our review of the bond release files for these cases showed that the state generally complied with the requirements for releasing bonds. However, during our on-site visits to seven of the 1984 or 1985 bond release sites included in our sample, the OSMRE inspector(s) accompanying us identified one site where he questioned the appropriateness of the bond release. Poor sediment controls, acid water run-off and substantial erosion were the reclamation deficiencies identified at the time of the visit. As in Pennsylvania, West Virginia officials told us that the site was probably in compliance at the time of release which was also 3 months before our visit.

The OSMRE field offices in both states have conducted studies of bond releases. Few problems were cited in Pennsylvania, but numerous violations of reclamation performance standards were noted in West Virginia. In Pennsylvania, OSMRE conducted a special 1985 study of 75 bond releases. The study concluded that the state is assuring that the applicable performance standards are being met before approving releases. The West Virginia study, conducted during 1984, found violations of program standards at approximately 31 percent of the 68 sites

given bond release by the state regulatory authority. These violations ranged from inadequate signs and markers to backfilling, regrading, and revegetation requirements.

SUMMARY

I would like to now recap our tentative observations on the problems associated with the bonding and reclamation processes in Pennsylvania and West Virginia

- Both Pennsylvania and West Virginia have unreclaimed land which needs to be dealt with. In Pennsylvania, it amounts to over 15,000 acres, and in West Virginia to about 2,000 acres. These lands are primarily from the interim period.
- It has taken a significant amount of time for reclaiming bond forfeiture land--4 years in Pennsylvania and 2 years in West Virginia.
- The bonds and funds have not been adequate to cover the costs for completing reclamation of interim program lands. In Pennsylvania, for example, the fund presently stands at about \$12 million while state officials project that about \$110 million could be needed to complete reclamation of these lands.
- OSMRE has not done an analysis or applied criteria to assure that the permanent program alternative bonding systems will be adequate. Consequently, the systems are continuing to operate without clear evidence that the methods to replenish the supplemental funds are adequate to assure reclamation of all permanent program bond forfeiture lands.

--OSMRE's position to reclaim permanent program bond forfeiture lands first may result in less hazardous sites being reclaimed before more hazardous interim programs unreclaimed lands.

As evidenced by the slides and the statistics presented today, adverse effects of surface coal mining continue to exist. Unreclaimed land from the interim period is a serious problem. Our work to date suggests that OSMRE, as the lead federal agency in the area, is the logical focal point to develop an approach for resolving this problem.

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This concludes my statement Mr. Chairman. We will be glad to answer any questions.

FINDINGS FROM OUR REVIEW OF THE BONDING SYSTEM
FOR RECLAMATION OF STRIP-MINED LAND IN OKLAHOMA

In our August 8, 1985, report--Surface Coal Mining Operations in Two Oklahoma Counties Raise Questions About Prime Farmland Reclamation and Bond Adequacy (GAO/RCED-85-147)--we reported on the same bonding issues that we are currently addressing in our on-going review of the Pennsylvania and West Virginia bonding systems. These issues include reclamation procedures after bond forfeiture, the adequacy of the funds provided by the bonding system, and the appropriateness of bond releases.

We reported that in the two counties included in our review--Okmulgee and Muskogee--19 sites (1,470 acres) had been abandoned since passage of the Surface Mining Control and Reclamation Act of 1977. Since abandonment, no reclamation had occurred on 12 of these sites. The major reason for lack of reclamation was the inability of the state regulatory authority to collect the bond money. For example, four of the sites were bonded by letters of credit with expiration dates. In each of these cases, the state regulatory authority allowed the letters of credit--totalling \$425,300--to expire.

With respect to the adequacy of bond amounts, we reported that of the 19 post-SMCRA abandoned sites in Okmulgee and Muskogee counties, 7 had been reclaimed by the surety company. Because a surety company does not usually opt to do the reclamation unless it believes that the bond is adequate, the bond amount, in our opinion, was probably adequate in these instances. The adequacy of the bond money for the remaining 12 abandoned sites was not known since the state regulatory authority has not been successful in collecting the funds. However, even though the bond money had not been collected, OSMRE officials questioned the adequacy of the \$1000-per-acre bond on these and other interim sites bonded at the same level. Bond adequacy for permanent program permitted areas could not be

assessed at that time because no forfeitures had occurred on any of these areas.

We also reported that coal operators were concerned with bonding requirements because they found it difficult to obtain bonds--bonding companies generally require a mine operator to have collateral of three to five times a bond's face value. Mining and bonding company officials stated that this situation had resulted in a number of mine operators going bankrupt or leaving the industry. Furthermore, bonding company officials in the state told us that they were reluctant to bond operators in this environment. We did not, however, identify any examples of improper or inappropriate bond release based on our review of the citizens complaint file for the two counties included in our review.

Finally, we reported that both OSMRE and state regulatory authority officials believed that the key to adequate reclamation is inspection and enforcement--unless inspectors cite reclamation plan violations as they occur and order operators to cease operations immediately if the violations are not corrected, future reclamation problems could occur.