COALEX STATE INQUIRY REPORT - 71
July 22, 1986

Mike Pearigen
Assistant Attorney General
750 James Robertson Parkway
Nashville, Tennessee 37219

TOPIC: AML DISCRETIONARY FUND

INQUIRY: Research the legislative history of Sec. 402(g) of SMCRA. What sort of guidelines are imposed on the Secretary's expenditures from the discretionary fund?

SEARCH RESULTS: Sec. 402(g) of the Surface Mining Control and Reclamation Act (SMCRA) provides for the allocation of funds collected under Title IV. Sec. 402(g)(1) requires that "the geographic allocation of expenditures from the fund reflect both the area from which the revenue was derived as well as the National program needs for the funds." (30 USC Sec. 1232(g) (1977))

Secs. 402(g)(2) & (3) provide for the division of AML funds. Fifty percent of the funds collected annually in a state or Indian reservation are to be allocated to that state or Indian reservation by the Secretary pursuant to any approved abandoned mine reclamation program. The balance of the funds collected "may be expanded in any state at the discretion of the Secretary in order to meet the purposes of [Title IV]." (Id.)

Given this language, questions arise as to which part of the AML fund Section 402(g)(1) pertains. This Report discusses the legislative history of the Secretary's discretionary fund, and what, if any, Congressional constraints were placed on the expenditures by the Secretary.

In the early versions of the Act, no provision was made for reclamation of abandoned mine lands by the states. The 1973 Senate version called for the Secretary to manage all the fund money and oversee reclamation. States were encouraged to acquire abandoned lands within their borders and donate them to the Secretary. In return, the Secretary was authorized to make grants for land acquisition to the states on a matching basis. Discussing the states in the decision making process, the Senate noted: "States are invited to participate in the AML program for the same reasons they are given the primary regulatory role in the Act. They are more sensitive to local conditions and local needs. Thus, presumably their selection of lands to be acquired would more closely approximate the wishes and priorities of local citizens and governments." (S. Rep. No. 402. 93rd Cong.. 1st Sess. 72(1973))

The 1973 Senate version mandated that the Secretary give priority to certain lands in choosing projects for fund expenditures. The bill stated that in selecting lands to be acquired and in formulating regulations, "the Secretary shall give priority (1) to lands which, in their unreclaimed

state, he deems to have the greatest adverse effect on the environment or threat to life, health or safety or (2) to lands which he deems suitable for public use." (Id. at 23)

In 1974, the House passed its version of the surface mining law. As in the Senate version, the fund was to be administered by the Secretary. However, the House bill included the first provision for mandatory allocation of fund monies. H.R. 11500 required that forty percent of the fund revenues derived from a county school district or reservation be returned to that area for schools, roads and public health care centers. The remainder of the fund was to be used by the Secretary for acquisition and reclamation of abandoned lands. While the primary authority for the selection and acquisition of lands rested with the Secretary, states were also encouraged to acquire lands for the Secretary to reclaim. Matching grants of up to 90% of the purchase price were available to the states for this purpose. (H.R. Rep. No. 1072, 93rd Cong., 2d Sess. 146 (1974))

Like the Senate bill, the House bill listed certain priorities for the use of AML funds:

"Section 202. Objectives for the obligation of funds for the stabilization of previously mined areas shall reflect the following priorities in the order stated:
(1) The protection of health or safety of the public;
(2) Protection of the environment from continued degradation and the conservation of land and water resources;
(3) The protection, construction, or enhancement of public facilities such as utilities, roads, recreation, and conservation facilities and their use;
(4) The improvement of land and waters to a suitable condition useful in the economic and social development of the area affected; and
(5) Research and demonstration projects relating to the development of surface mining reclamation and water quality control program methods and techniques in all areas of the United States." (Id.)

The 1974 Conference version combined the House and Senate approaches and retained the priorities found in the House bill. The committee specifically stated that lands which posed a danger to public health and safety were to be given top priority. "It is intended that projects to correct such hazards to the public as the stabilization of mine waste embankments or waste piles are to be included among the first projects undertaken." (H.R. Rep. No. 1522. 93rd Cong., 2d Sess. 83 (1974))

The Conference bill gave control of all fund expenditures to the Secretary, with fifty percent of the funds collected annually in any state or Indian reservation to be expended by the Secretary in that area. The balance of funds was to be expended in any area at the discretion of the Secretary to meet the purposes of Title IV. This bill was the first to include the geographic allocation language found in SMCRA; however, in this version, this language is all in one paragraph:

"(e) The geographic allocation of expenditures from the fund shall reflect both the area from which the revenue was derived as well as the program needs for the funds. Fifty per centum of the funds collected annually in any State or Indian reservation shall be expended in that State or

Indian reservation by the Secretary to accomplish the purpose of this title: Provided, however, that if such funds have not been expended within three years after being paid into the fund, they shall be available for expenditure in any area. The balance of funds collected on an annual basis may be expended in any area at the discretion of the Secretary in order to meet the purposes of this title." (Id.)

The bill passed by the 93rd Congress was "pocket vetoed" by President Ford. Surface mining bills which were similar to the vetoed bill were reintroduced in both houses. Title IV was retained in the same form by both houses with a few changes. The House version made no changes in the allocation of AML funds. The Senate bill contained two amendments to the prior version. The first called for the Secretary to consult the Governor of a state before choosing lands for the expenditure of the state's fifty percent share of the fund. Senator Huddleston explained the amendment:

"Mr. President, the amendment I am offering merely gives the Governors of the various States some additional input into the program of expenditures of the reclamation funds which are provided in this act. Under the legislation, as reported, the Secretary of the Interior has the authority to spend these funds and fifty percent must be spent within the State where they originated.

"My amendment simply insures that the Governors shall submit recommendations and the Secretary receive and consider them prior to determining how these funds are to be spent, of course, within the guidelines that are already set out within the Act. The Secretary will still have the final authority as to which project shall be approved. But, under the amendment, the Governors will have additional input." (121 Cong. Rec. 6127 (1975))

The second Senate amendment added a new priority to the fund objectives. The reclamation of previously mined areas was put at the top of the list of priorities. This amendment was largely designed to allow AHL funds to be spent in Western states with little or no abandoned mine lands by removing the restrictions placed on spending by the earlier versions of the bill. (See 121 Cong. Rec. 6178 (1975).)

The Conference Committee bill retained the first amendment, but modified the second. Reclamation of previously mined areas was deleted as the first priority, but the syntax of the introductory phrase was changed to reflect the concerns addressed by the Senate amendment: "The primary objective for the obligation of funds is the reclamation of areas affected by previous mining; but other objectives shall reflect the following priorities in the order stated...." These priorities were the same as those found in the bill passed by the 93rd Congress. (S. Rep. No. 101, 94th Cong., 1st Sess. (1975))

President Ford, again, vetoed the surface mining legislation, and the House failed to override the veto. In 1976, Congress began to work on the version which would be enacted by President Carter in 1977.

H.R. 2, the House bill which was sent to the Conference Committee, was the first bill to provide that a state could not receive its share of the AML fund unless it had an approved state reclamation program. It is unclear exactly from where this language came, but it was probably added after urging from the Carter Administration. In a letter to the House committee, Secretary Andrus stated the administration's position:

"We support provisions to establish State managed abandoned land programs. We recommend that until a State's full regulatory program is approved, allocation of its 50 percent share of funds not be made and that there be no funding of any State abandoned land program. Until such approval is given, the Secretary should also have authority to withhold expenditures for the Federal abandoned land program for a State under section 406. This would encourage the States to obtain approval for a strong State regulatory program rather than allowing a Federal program to be established for that State. The Secretary should not be prevented, however, from expending unearmarked funds within a State where there was not an approved regulatory program; thus, in cases where reclamation work would be urgently needed, it could be accomplished." (H.R. Rep. 2 No. 218, 95th Cong., 1st Sess. 154 (1977))

Another major modification to Title IV made by H.R. 2 was the amount of AML funding allocated to the states. Instead of receiving a mandatory fifty percent of funds derived from the state. the language was changed to read: "Up to 50 per centum of the funds on an annual basis derived from coal production in a State or Indian reservation may be allocated to the State from which the reclamation funds are derived by the Secretary of Interior for the implementation of an approved state program...." (Id. at 10)

The balance of the funds were to be expended at the discretion of the Secretary on a priority basis. The priorities listed in H.R. 2 were identical to those found in earlier versions of the bill. Furthermore, the geographic allocation language found in other versions was deleted. The following colloquy between Congressman Michel and Congressman Udall helps explain Congressman's Udall's thinking at the time:

"Rep. Michel: The balance of 50% would go to what - a national trust fund?

"Rep. Udall: It is a national fund, and the Secretary looks around the country and says, here is the worst damage, and here is what we're going to do.

"Rep. Michel: Who makes the specific determination of which state's damage is worse than another's, and how can they be absolutely sure that some of our really blighted mines of 15 or 20 years ago will qualify for their fair share of the national trust fund?

"Rep. Udall: The Secretary, I assume, would do like they do with the land and water conservation fund .... Each community or area that thinks they have bad damage comes in with an application, and someone in the Secretary's office will sit down...and look over the list of applications and say, Here are the worst ones.'" (123 Cong. Rec. H3726 (daily ed., April 28, 1977))

The Senate received the same administration recommendations as did the House, but did not adopt them initially. S. 7's provisions concerning AML fund allocation and priorities were essentially identical to those found in the earlier Senate versions. The only change made was that the states' fifty percent share could be expended by either the Secretary or by the state regulatory authority pursuant to an approved state program. (S. Rep. No. 128. 95th Cong., 1st Sess. 6 (1977))

Senator Baker of Tennessee introduced the amendments which brought the Senate bill in line with the language requested by the administration. The major provisions of this amendment, including the allocation to approved state programs and the geographic allocation language, were eventually included in the bill signed by President Carter. Interestingly, this amendment was passed by the Senate with little discussion and almost no dissent. (123 Cong. Rec. S8136 (daily ed., May 20, 1977))

The 1977 Conference Committee adopted the Senate language concerning allocation of AML funds. The Committee noted:

"The Conferees intend that 50 percent of the reclamation fee must be allocated to the State or Indian reservation in which the coal was mined, if there is an approved State or reservation reclamation program. Once all the eligible lands in a State or reservation have been reclaimed, all voids filled, and all tunnels sealed, the Secretary has discretionary authority to allow use of all or part of this 50 percent for construction of public facilities in communities impacted by coal development. This can only be done if certain specified Federal payments are inadequate to meet the needs.

"The additional 50 percent is to be spent by the Secretary through the State program if he determines that is the best means of achieving the purpose or, on his own, or by other Federal agency, after consultation with the State." (S. Rep. No. 337, 95th Cong., Sess. 99 (1977))

The 1977 Conference Committee version of SMCRA was passed by both houses and signed by President Carter on August 3, 1977.

ATTACHMENTS

A. S. Rep. No. 402, 93rd Cong., 1st Sess. 72 (1973).
B. H.R. Rep. No. 1072, 93rd Cong., 2d Sess. 146 (1974).
C. H.R. Rep. No. 1522, 93rd Cong., 2d Sess. 83 (1974).
D. H.R. Rep No. 45, 94th Cong., 1st Sess. (1975).
E. 121 Cong. Rec. 6127 (1975).
F. 121 Cong. Rec. 6178 (1975).
G. S. Rep. No. 101, 94th Cong., 1st Sess. (1975); 121 Cong. Rec. 12936 (1975).
H. S. Rep. No. 896, 94th Cong., 2d Sess. (1976).
I. H.R. Rep. No. 218, 95th Cong., 1st Sess. 154 (1977).
J. 123 Cong. Rec. H3726 (daily ed., April 28, 1977).
K. S. Rep. No. 128, 95th Cong., 1st Sess. 6 (1977).

Research conducted by: S. Michele Manning

L. 123 Cong. Rec. S8136 (daily ed., May 20. (1977).
M. S. Rep. No. 337, 95th Cong., 1st Sess. 99 (1977).