HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1321 Phosphate Mining Restoration, Reclamation, and Cleanup
SPONSOR(S): Spratt
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Natural Resources		Camechis	Lotspeich
2) Finance & Tax			
3) Appropriations			
4)			
5)			

SUMMARY ANALYSIS

This bill redistributes phosphate severance tax revenues for FY2005-06 through FY2011-12 in order to specifically allocate $36 million to the closing of the Piney Point and Mulberry Phosphate facilities. With the exception of the Conservation and Recreation Lands Trust Fund, the bill negatively impacts other recipients of phosphate severance tax revenues including counties where phosphate is mined, counties of critical economic concern where phosphate is mined, the Minerals Trust Fund, and the Phosphate Research Trust Fund.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[]	No[]	N/A[x]
2. Lower taxes?	Yes[]	No[]	N/A[x]
3. Expand individual freedom?	Yes[]	No[]	N/A[x]
4. Increase personal responsibility?	Yes[]	No[]	N/A[x]
5. Empower families?	Yes[]	No[]	N/A[x]

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Phosphate Mining Generally

Florida has a rich phosphate deposit that was formed millions of years ago when seas covered the state. This phosphate is 20 to 25 feet underground and is one of the world’s more accessible deposits. As such, Florida supplies 25 percent of the world and 75 percent of the U.S. demand for phosphate.[1] Florida continued to lead the nation in phosphate rock mining in 2002, producing about seven times as much as the next highest producing state.[2] In 2003, more than 30 million metric tons of phosphate rock was extracted from 1,968 hectares (ha) of land.[3] Approximately 90% of the phosphate produced is used to make fertilizer to increase the quality and yield of crops, 5% is used to make animal feed, and 5% is used to make various products such as Coca-Cola, chemicals, toothpaste and light bulbs.[4]

The largest economic phosphate deposits and production facilities in the United States are located in the Bone Valley formation in the central part of the State, in the counties of Hardee, Hillsborough, Manatee, and Polk. Most of the mined phosphate is used to make the phosphoric acid that provides the phosphorus in fertilizer. However, before the phosphate can be processed into the phosphoric acid it must be mined and go through a process known as “beneficiation.” This process uses chemicals, energy, and water to separate the phosphate from the clay and sand that is found in the matrix that is mined. A by-product of the beneficiation process is settling ponds where the clay is stored. These ponds cover approximately 120,000 Florida acres, and take years to dry. Even then, the instability of the clay makes them difficult to reclaim for most purposes.[5] Phosphate operations also produce gypsum, a sandy mineral by-product of phosphate fertilizer manufacturing. Gypsum is stored in stacks, commonly referred to as “gypstacks,” which can be up to 200 feet tall. The gypsum goes on to the stack and mixes with water. Rain also adds water to the stacks. Because the water in the stacks is acidic, it must be contained on the site or recycled into the plant for cooling, and the stacks must be continuously monitored to ensure that the water does not seep into the environment. There are currently 25 stacks in Florida, located in Polk, Hillsborough, Manatee, and Hamilton Counties.

Mulberry and Piney Point Phosphate Facilites

In 2001, DEP assumed financial responsibility for stabilizing and closing the Mulberry and Piney Point Phosphate facilities after being notified by the owner of its intent to file bankruptcy and abandon both sites. At that time, 2.4 billion gallons of acidic wastewater were stored on the Mulberry site in 100-foot gypstacks. In May 2002, the DEP and Cargill Fertilizer, Inc., entered into an agreement whereby Cargill will manage and close the Mulberry facility. The DEP will reimburse Cargill up to $25 million for the Mulberry closure work, and Cargill will provide the labor and expertise. Closure of the stack system at the Mulberry facility is expected to be complete by 2008, after which Cargill will continue long-term

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[1] Florida Institute of Phosphate Research, 1997-1999, Annual Report, http://www.fipr.state.fl.us/ar99/miningandbeneficiation.htm; Accessed October 19, 2003.
[2] USGS, 2002 Minerals Yearbook (Volume II. -- Area Reports: Domestic), http://minerals.er.usgs.gov/minerals/pubs/state/2002/flstmyb02.pdf; Accessed October 19, 2003.
[3] USGS, 2002 Minerals Yearbook (Volume II. -- Area Reports: Domestic).
[4] Florida Institute of Phosphate Research, 1997-1999, Annual Report, http://www.fipr.state.fl.us/ar99/miningandbeneficiation.htm; Accessed October 19, 2003.
[5] Florida Institute of Phosphate Research, 1997-1999, Annual Report, http://www.fipr.state.fl.us/ar99/miningandbeneficiation.htm; Accessed October 19, 2003.

care for approximately 50 years. Cargill is the only operating phosphate company that has successfully closed a phosphogypsum stack.

Prior to 2000, Piney Point Phosphates operated as a phosphate fertilizer-manufacturing complex ("Piney Point") along U.S. Highway 41, approximately six miles north of the city of Palmetto in Manatee County, Florida. The complex includes a phosphoric acid plant with an associated old and new phosphogypsum stack system, each incorporating two 50-70 foot high stacks with deep impoundments on top, process water ponds, and a network of seepage and storm water runoff collection ditches encompassing a watershed of approximately 452 acres.[6]

In 2001, DEP assumed financial responsibility for stabilizing and closing the Piney Point facility. At that time, 1.2 billion gallons of acidic wastewater were stored on site in seven 70-foot gypstacks. Since February 2001, the DEP and the court appointed receiver have maintained the Piney Point gypsum stack system. The primary problem that is being addressed, in addition to ongoing maintenance of the system, is treatment, movement and disposal of hundreds of millions of gallons of water from the stack system. The existing inventory to be disposed of is approximately 295 million gallons, including treatment sludges (or 166 million gallons of ponded water excluding the treatment sludges). In addition there are approximately 400-500 million gallons of process wastewater, or "pore water", saturating the stacks themselves.

Since 2001, DEP has utilized various methods in an attempt to reduce the amount of wastewater on the Piney Point site, including: treatment by reverse osmosis; trucking to other phosphate companies for processing; trucking to stormwater treatment facilities for reuse; and barging water 120 to 190 miles offshore for slow dispersal after treatment to remove arsenic, heavy metals, radioactive material and nitrogen. On April 9, 2003, the United States Environmental Protection Agency (USEPA) issued an emergency permit to DEP to disperse up to 534.7 million gallons of treated wastewater from the Piney Point facility into the Gulf of Mexico via barges.[7] DEP disposed of 248 million gallons under the permit.

To date, the DEP has successfully treated and removed over 1 billion gallons of water from the defunct facility. Since last December, engineers have drained one of four holding ponds and are lining the containment area. Drainage of two other ponds is well underway to close as much of the site as possible before the next hurricane season.

Estimated cost of closure and reclamation

As of March 1, 2004, approximately $69 million had been spent from the Nonmandatory Land Reclamation Trust Fund (NLRTF) to stabilize and close both sites, including $39 million dedicated to Piney Point and $30 million to Mulberry.

The Legislature appropriated $45 million for maintenance and closure costs in FY2003-04, of which approximately $40 million will be dedicated to closure efforts at Piney Point and $7.5 million to Mulberry. DEP's FY2004-05 legislative budget request of $42.7 million will fund approximately $33 million for closure of and site maintenance at Piney Poin,t and $5.5 million in closure work at Mulberry (~10 contingency).

The DEP estimates future closure and reclamation costs of the Piney Point and Mulberry sites to be as follows:

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[6]EPA PROCESS OF ISSUING AN EMERGENCY PERMIT FOR OCEAN DISPOSAL OF TREATED WASTEWATER IN THE GULF OF MEXICO FROM THE PINEY POINT PHOSPHATE FACILITY IN MANATEE COUNTY, FLORIDA, FACT SHEET, April 3, 2003.

[7] USEPA, April 2, 2003 Notification and Assessment of Emergency Situation in accordance with the Interim Procedures and Criteria for Determining Emergency Situations adopted in 1980 under the London Convention 1972.

Estimated Future Costs of Closure/Reclamation of Piney Point and Mulberry (in millions of dollars)			
Fiscal Year	**Piney Point**	**Mulberry**	**Total**
05/06	$16.0	$3.5	$19.5
06/07	16.0	3.0	19.0
07/08	7.1	0	7.1
08/09	3.5	0	3.5
09/10	2.3	0	2.3
10/11	1.5	0	1.5
11/12	1.3	0	1.3
TOTAL COST	**47.7**	**6.5**	**54.2**

The following illustrates the costs to date, the DEP's legislative budget request for FY2004-05, and estimated future closure/reclamation costs:

TOTAL ESTIMATED COSTS OF CLOSURE/RECLAMATION OF PINEY POINT AND MULBERRY (in millions of dollars)	
Expenditures as March 1, 2004	$69 million
DEP LBR for FY 2004-05	$45 million
FY2005-06 through FY2011-12	$54.2 million
TOTAL COST	**$168 million**

Nonmandatory Land Reclamation Trust Fund
The Nonmandatory Land Reclamation Trust Fund ("NMLRTF") was established by the Legislature to fund the reclamation of land mined before 1975, while reclamation of lands disturbed by phosphate mining after 1975 must be reclaimed by the landowner. However, in 2003, the Legislature expanded the purpose of the NMLRTF to include abatement of imminent hazards from, and closure of, any abandoned phosphogypsum stack system.

The NMLRTF receives approximately $1.4M annually through phosphogypsum stack registration fees, approximately as well as annual interest earnings. In addition, beginning in FY 2004-05, 10.4 percent of tax proceeds remaining after the CARL distribution are allocated to the NMLRTF. Based upon the 2003 allocation, DEP estimates that the NMLRTF will receive $12.54 million in FY2004-05 and $3.65 million in FY2006-07.

The projected unreserved balance in the NMLRTF as of June 30, 2004 is approximately $37.5 million. However, the FY2004-05 ending unreserved balance will be zero, accounting for trust fund interest, severance tax revenues, stack registration fee revenues, and the DEP's FY04-05 legislative budget request of $42.7 million.

Mineral Trust Fund
Section 211.31, F.S., creates the Minerals Trust Fund and states that its purpose is to fund the administrative costs of programs of this state established to reclaim those lands disturbed by the severance of minerals; to fund the geological survey of the state; to fund the regulation of oil and gas exploration and production; to serve as a repository for funds that will enable the DEP to respond without delay to incidents that affect safety or threaten to cause environmental damage or contamination as a result of incidents involving petroleum exploration and production activities; and to make available immediately to the DEP funds sufficient to correct violations such as an operator's failure to adequately plug, abandon, or restore production sites or other test sites and facilities after operations cease, if the permittee or operator does not correct the violation within a reasonable time.

According to DEP, this trust fund supports the operations of the DEP's Bureau of Mine Reclamation, including more than 30 FTEs. In addition, the trust fund supports the Florida Geological Survey, including approximately 37 FTEs. The Minerals Trust Fund's primary source of funding is the 10.7% of the phosphate severance tax proceeds remaining after the distribution to the CARL trust fund as allocated by s. 211.3103, F.S.

The Phosphate Research Trust Fund

Section 378.201, F.S., creates the Florida Phosphate Research Institute for the purpose of conducting research regarding the impacts of phosphate mining on the environment; reclamation of mined lands; more efficient methods of mining and processing; and disposal and utilization of phosphatic clay. The Institute administers the Phosphate Research Trust Fund, which funds administration costs of the Institute and research activities required by s. 378.201, F.S. This trust fund is supported by a 9.3% distribution of phosphate severance tax proceeds remaining after the distribution to the CARL trust fund as allocated by s. 211.3103, F.S.

Phosphate Severance Tax Distribution Formula

Section 211.3103, F.S., levies a tax on every person engaged in the business of severing phosphate rock from the soils or waters of this state for commercial use based upon the tonnage of phosphate rock mined. In 2003, the phosphate severance tax rate was $1.31 per ton with 30.7 million tons of rock mined, resulting in phosphate severance tax revenues of $40 million distributed in accordance with the formula set forth in s. 211.3103, F.S. As of January 1, 2004, the phosphate severance tax base rate increased from $1.31 to $1.62 per ton severed, and proceeds of the phosphate severance tax will be distributed as follows in FY2004-05:

RECIPIENT	Allocation[8]	Estimated FY04-05 Distribution[9] (in millions)
CARL Trust Fund	$10 million	$10 million
Counties where phosphate is mined	16.50%	$5.03
Counties of Critical Economic Concern where phosphate is mined (in addition to the 16.5% above)	13.0%	$3.96
Phosphate Research Trust Fund	9.30%	$2.63
Minerals Trust Fund	10.70%	$3.02
General Revenue	40.10%	$12.22
NMLRTF	10.40%	$2.94 (less $2 million for surety bond if purchased)

EFFECT OF PROPOSED CHANGES

The bill amends s. 211.3103, F.S., to revise the allocation formula for phosphate severance tax proceeds in order to allocate funds to the NMLRTF for use in closing the Piney Point and Mulberry facilities. Specifically, for each fiscal year from FY2005-06 through FY2011-12, the bill dedicates a fixed amount to the NMLRTF to be distributed after the $10 million distribution to the CARL trust fund but before other distributions required by this section. The annual allocations to the NMLRTF for purposes of closing the Piney Point and Mulberry facilities are as follows:

Fiscal Year	Fixed Distribution
FY 05-06	$10.2 million
FY 06-07	$12.2 million
FY 07-08	$6.2 million
FY 08-09	$3.0 million
FY 09-10	$2.0 million
FY 10-11	$1.3 million
FY 11-12	$1.1 million
TOTAL	**$36.0 million**

[8] After distribution to the CARL TF, remaining revenues are allocated based upon the indicated percentages.
[9] Trust fund service charges are assessed but not included on this table.

To illustrate the impact of the proposed allocation formula on the other entities receiving distributions of phosphate severance tax proceeds, the following hypothetical assumes that 25 million tons of phosphate rock will be mined in FY2005-06, with a base tax rate of $1.62 per ton mined:

RECIPIENT	Current Distributions (in millions)	HB 1321 Distributions (in millions)
CARL Trust Fund	$10	$10
NMLRTF for Piney Point/Mulberry		$10.2
	Total Revenues of $40.5[10] million less $10 million leaves a remainder of $30.5 million allocated as follows:	Total Revenues of $40.5 million less $22.2 million leaves a remainder of $20.3 million allocated as follows:
Counties where phosphate is mined	5.03 (16.5%)	3.35(16.5%)
Counties of Critical Economic Concern where phosphate is mined (in addition to 16.5%)	3.96 (13.0%)	2.64(13.0%)
Phosphate Research Trust Fund	2.83 (9.3%)	1.89(9.3%)
Minerals Trust Fund	3.26 (10.7%)	2.17(10.7%)
General Revenue	12.2 (40.1%)	8.14(40.1%)
NMLRTF	3.17 (10.4%)	2.11(10.4%)

According to the DEP *Draft Bill Analysis*, the proposed amount and timing of the distribution of additional severance tax revenues is inadequate to timely close the Piney Point and Mulberry facilities. In addition, DEP asserts that the revenue distribution approach will have a negative impact on the Minerals Trust Fund, would reduce revenue streams to counties in which mining occurs and to the Florida Institute of Phosphate Research, and would preclude the reclamation of 27,000-30,000 acres of remaining non-mandatory mined lands expected to cost approximately $85 million. In addition, funding shortfalls in FY2005-06 and FY2006-07 would delay closure of the Piney Point site by perhaps two years, requiring the expenditure of $12 million in each of those years for basic site operations, maintenance, and process wastewater management, exclusive of any closure costs. (Refer to the Comments Section of this analysis for a more detailed account of the DEP's concerns.)

C. SECTION DIRECTORY:

Section 1. Amends s. 211.3103, F.S., to revise the allocation formula for phosphate severance tax proceeds.

Section 2. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

[10] (25 million tons mined)($1.62 base rate)=$40.5 million in severance tax revenues

2. Expenditures:

The bill amends s. 211.3103, F.S., to revise the allocation formula for phosphate severance tax proceeds in order to allocate funds to the NMLRTF for use in closing the Piney Point and Mulberry facilities. Specifically, for each fiscal year from FY2005-06 through FY2011-12, the bill dedicates a fixed amount to the NMLRTF to be distributed after the $10 million distribution to the CARL trust fund but before other distributions required by this section. The annual allocations to the NMLRTF for purposes of closing the Piney Point and Mulberry facilities are as follows:

Fiscal Year	**Fixed Distribution**
FY 05-06	$10.2 million
FY 06-07	$12.2 million
FY 07-08	$6.2 million
FY 08-09	$3.0 million
FY 09-10	$2.0 million
FY 10-11	$1.3 million
FY 11-12	$1.1 million
TOTAL	**$36.0 million**

During FY2005-05 through FY2011-12, the bill will reduce revenues to the Minerals Trust Fund and the Phosphate Research Trust Fund. DEP estimates that the reallocation may result in a $5 million negative impact on the Phosphate Research Trust Fund. In addition, DEP estimates that the Minerals Trust Fund distribution will be decreased by $1.35 million in FY2005-06, resulting in an $800,000-$900,000 deficit with continuing deficits in subsequent years.

The DEP provided the following fiscal comments in its *Draft Bill Analysis:*

> The funding level and distribution to the NMLRTF in the bill are not sufficient for DEP to manage and close the Mulberry and Piney Point facilities on schedule. This circumstance will result in a substantial increase in total expenditures, perhaps as much as $24 million, by extending the time period required to complete work by two years. As previously noted, ongoing maintenance and water management on site must continue each year the facilities remain open, to assure site safety and security, which cost about $12 million per year at Piney Point. Failure to close the sites on time will mean extending the risk of environmental catastrophe and creating an even longer-term drain on state funds.
>
> It must be noted that DEP's cost estimates for managing and closing Piney Point and Mulberry are based on the best available information and constantly updated. They include a marginal contingency to account for changing circumstances and the normal uncertainties associated with large-scale construction work. However, they cannot account for all exigent circumstances, especially those related to weather. Rainfall slows closure work; above-average rainfall can delay it extensively. This suggests the importance of maintaining some build-up of cash in the NMLRTF, which cannot happen under the proposed funding distribution in HB 1321.
>
> The off-the-top distribution of severance tax revenues to the NMLRTF for FY 05-06 through FY 11-12 would reduce the remaining tax revenues from which other distributions are made. The MTF percentage distribution would be decreased in FY 05-06 by $1.35 million, driving the fund into an $800,000 - $900,000 deficit that year, with continuing deficits in subsequent years.
>
> The MTF pays for the operations of the department's Bureau of Mine Reclamation including the salaries of more than 30 people and the Florida Geological Survey including the salaries of 37 people. The department will not be able to support the statutorily required regulatory and technical services provided by these programs, including the oversight of mining in Florida, given the revenue reductions that would result from the bill as drafted. The department cannot absorb the loss of millions of dollars in the MTF.

3. Long Run Effects Other Than Normal Growth: While the bill provides resources for the department to address the Mulberry and Piney Point facilities, closure would be delayed two years longer than scheduled and the cost would be increased, by perhaps $24 million, over the long term. Delaying the infusion of additional revenues to the NMLRTF and not adequately funding it, especially in the early years, would force DEP to spend the majority of available funds on maintenance and water management to prevent spills, with only incremental progress on closure. Beyond the additional costs, the risk to the environment of a catastrophic spill and the possibility of continuing undesirable discharges to surface waters in the Tampa Bay area would continue two years longer. Furthermore, there would be no money available to reclaim any of the remaining 27,000 – 30,000 acres of non-mandatory mined lands. The long term impact on the MTF is explained in A.2., immediately above.

4. Total Revenues and Expenditures: See section II-C for the projected additional revenues for the NMLRTF. DEP would obligate and spend all of these each year as they were appropriated and the expenditures would have be focused on maintenance rather than closure activities, extending the time and cost of closure and the continuing risk to the environment two years longer than a prudent schedule would allow. There would be no margin to cover exigent circumstances, including abnormal rainfall.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

From FY2005-06 through FY2011-12, all counties currently receiving distributions from phosphate severance tax revenues will receive less than the current allocation due to "off the top" payment to the NMLRTF prior to the distribution to counties in which phosphate is mined and to counties of critical economic concern in which phosphate is mined. The reduction will be greatest in FYs 2005-06 and 2007-08, approximately 35%, and tapering off through FY2011-12. DEP calculates that the total reduction in revenues to the counties over time will exceed $20 million.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: See Drafting Issues and Other Comments for DEP remarks, which include fiscal comments.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties on February 1, 1989.

2. Other: None.

B. RULE-MAKING AUTHORITY: This bill does not appear to impact the rulemaking authority of any state agency.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It appears that the following drafting issues require correction in order for the statutes to properly apply:

On lines 137-139: Reinsert stricken language.

On line 140:	Delete underlined words "each year".
On lines 147 and 148:	Reinsert stricken language.
On line 148:	Delete underlined words "each year".

The DEP provided the following comments in a *Draft Bill Analysis* provided to the Committee on Natural Resources*:*

> It is state policy, and a department mandate, under s. 403.4154, F.S., to prevent and, as necessary, resolve hazards created by the physical condition, maintenance, operation, closure, or abandonment of phosphogypsum stack systems. It also is state policy, in chapter 378, F.S., that phosphate mined lands be reclaimed to a beneficial use in a timely manner and, for lands mined before July 1975, to provide funds for that reclamation. Given the financial resources provided in existing s. 211.3103, F.S., the department will not be able to accomplish either of these objectives. The Nonmandatory Land Reclamation Trust Fund will be bankrupt, for all intents and purposes, at the end of FY 2004-05. The environmental hazard posed by Piney Point and Mulberry will not be resolved and none of the 27,000 – 30,000 acres of unreclaimed mined lands remaining at that time will be reclaimed.
>
> While HB 1321 increases revenues to the NMLRTF, the timing and amount are inadequate to timely resolve the risk-laden situation that still exists at Mulberry and, especially, Piney Point. Delaying the infusion of revenues until FY 05-06 means the unencumbered balance in the NMLRTF will be zero at the end of FY 04-05. The proposed timing and amounts of revenues provided in future years are insufficient to continue the scheduled closure of the Piney Point and Mulberry facilities. In addition, the source of supplemental funding for the NMLRTF—revenues off the top of the phosphate severance tax—will bankrupt the Minerals Trust Fund in FY 05-06 and, at the same time, reduce the revenue streams to the counties where phosphate mining occurs and to FIPR. Additional land reclamation will be impossible, leaving at least 27,000 acres of barren mined lands in Florida.
>
> The department estimates that to manage and timely close the Piney Point and Mulberry facilities, it will have to spend the following amounts beyond the $42.7 million appropriation requested for FY 04-05:

05-06	06-07	07-08	08-09	09-10	10-11	11-12
$19.5	$19.0	$7.1	$3.5	$2.3	$1.5	$1.3

> If the remaining mined lands are to be reclaimed, the expenditures referenced above would be significantly higher, with an additional $85 million being required over the next several years. Existing law requires all reclamation applications to be submitted by July 1, 2005, which compresses the timeframe for obligating funds and completing reclamation to the next four or five years.
>
> If the state intends to sustain the policy of resolving the hazardous situations associated with Mulberry and Piney Point, consideration should be given to increasing the revenues for closure of these facilities directly from GR, effective July 1, 2004. This approach would eliminate the fiscal impact to the Minerals Trust Fund and to the counties where mining occurs (as well as FIPR). It also would provide adequate funds at the right time to keep closure work on schedule, insure against exigent circumstances (like abnormal rain), reduce the exposure time to hazardous circumstances, and substantially cut long-term costs. Accomplishing this would involve diverting the GR percentage of severance tax revenues (40.1% of revenues remaining after the CARL distribution) and adding it to the 10.4% distribution to the NMLRTF. The new formula distribution to the NMLRTF of 50.5% of severance tax revenues after CARL, through FY 2011-12, would allow timely management and closure of Piney Point and Mulberry along with the reclamation of all remaining mined lands. (The time restrictions imposed on reclaiming mined lands in current statute would also have to be reconsidered.) The distribution to the NMLRTF could be reduced

(and distribution to GR resumed) after the closure of Piney Point and Mulberry and the accumulation of adequate reserves to fund reclamation of remaining eligible non-mandatory lands.

It is possible that adequate revenues in the first years, starting with FY 04-05—assuming favorable weather conditions and other optimal circumstances—would reduce future costs below current estimates. However, it is certain that inadequate revenues in the early years will increase the long-term costs.

There are other revenue alternatives that would fall short of maintaining the current state policy and mandates regarding stack closure and mine reclamation embedded in state law. Any alternative being considered should take account of at least three facts:

- Failure to inject sufficient revenues into the NMLRTF on the schedule identified previously in this analysis would extend the life of the environmental hazard and increase the long-term cost to the state by more than $20 million (20-25% above the current remaining cost estimate).
- Creating revenues for the NMLRTF by transferring severance tax revenues immediately after the annual $10 million CARL distribution automatically reduces revenues to the other entities receiving after-the-fact percentage distributions of severance tax revenues. The more severance tax revenues diverted to the NMLRTF up-front, the greater the reduction in revenues to the Minerals Trust Fund, counties in which mining occurs, and FIPR. As an example, a $10 million annual diversion to the NMLRTF reduces revenues to other entities by more than 30% each. Any level of reduction off-the-top has a significant to disastrous impact on the Minerals Trust Fund because, as with the NMLRTF, severance taxes represent the bulk of its revenue stream.
- If only enough revenues are injected into the NMLRTF to fund the management and closure of Mulberry and Piney Point, as many as 30,000 acres of barren mined lands will remain unreclaimed.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

N/A