

## CHAPTER 4-100 AML ACTIVITIES FOR UNCERTIFIED PROGRAMS

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### **4-100-00 What does this chapter do?**

This chapter discusses Abandoned Mine Land (AML) grants to uncertified states and tribes awarded by us, the Office of Surface Mining Reclamation and Enforcement (OSMRE). Your program is uncertified if your state or tribe has not certified that all the coal priorities on eligible lands and waters within your borders or jurisdiction are completed. If you have certified completion of these priorities, this chapter does not apply to you, and you should use Chapter [4-300](#) instead.

### **4-100-10 Where does this information come from?**

Title IV of the Surface Mining Control and Reclamation Act (SMCRA), P.L. 95-87, as amended, established the AML program. It also established the AML Fund, supported by reclamation fees paid by current coal mining operations. It authorizes OSMRE to use funds from the AML Fund and Treasury to provide financial assistance to states and tribes to carry out their approved reclamation plans. Rules governing this program are found in our regulations at [30 CFR, Parts 870 through 887](#). In 2006, amendments to SMCRA substantively changed the AML program (see *Federal Register* Vol. 73, No. 221, November 14, 2008).

### **4-100-20 What types of AML funds are available to you and how can you use them?**

- A. State or Tribal Share (abbreviated in our accounting system as SS) is authorized in section 402(g)(1) of SMCRA; you may use these funds for the following purposes:
1. Coal reclamation following the priorities of section 403(a) of SMCRA.
  2. Water supply restoration projects.
  3. Noncoal reclamation requested under section 409(c) of SMCRA.

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4. Deposit into an acid mine drainage (AMD) set-aside account.
  5. Land acquisition under section 407 of SMCRA.
  6. Maintenance of the AML Inventory.
  7. General AML program administration.
- B. Historic Coal Funds (HC) are authorized in section 402(g)(5) of SMCRA. You may use Historic Coal Funds for the same purposes as State Share Funds.
- C. Minimum Program Make Up Funds (FE) are authorized in section 402(g)(8) of SMCRA. You may only use minimum program make up funds for the following purposes.
1. Priority 1 and 2 coal reclamation.
  2. Priority 3 coal reclamation that is part of Priority 1 of 2 coal reclamation under our regulations.
  3. General AML program administration in proportion to program expenditures allowable with minimum program make up funds.
- D. Prior Balance Replacement Funds (HU) are authorized in section 411(h)(1) of SMCRA. You may only use Prior Balance Replacement Funds for the purposes in section 403 of SMCRA, which include coal reclamation of any prior, water supply restoration, and maintenance of the AML inventory. You may also use Prior Balance Replacement funds for general AML program administration in proportion to program expenditures allowable with these funds.
- E. Federal Expense Funds (FE) are authorized in section 402(g)(3) of SMCRA. These include emergency funds, which can only be used for your state AML emergency program. You must use Federal expense funds for the specific purpose authorized by Congress if appropriated.

### **4-100-30 What lands and waters are eligible for reclamation with AML funds?**

- A. Lands and waters are eligible for reclamation with AML funds if they meet all of the following conditions.
1. They were mined for coal or affected by coal mining or processing.
  2. They were mined prior to August 3, 1977, and left in an unreclaimed or inadequately reclaimed state.

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3. There is no continuing responsibility for reclamation by the operator or any other party under state or Federal laws.
- B. Other lands and waters may be eligible in the following circumstances. In each of these cases, the site must be a Priority 1 or 2, or an emergency.
1. Lands and waters are also eligible if they were mined between August 3, 1977 and the date on which the Secretary approved your state's regulatory program.
  2. Lands and waters that were mined and abandoned between August 3, 1977 and November 5, 1990, that the surety of the mining operator became insolvent during this period, and that, as of November 5, 1990, funds immediately available from proceedings relating to the insolvency, or from any financial guarantee, or other source are not sufficient to provide for adequate reclamation, or abatement at the site.
  3. Federal lands managed by the U.S. Forest Service are only eligible if they were mined and abandoned before August 28, 1974. Federal lands managed by the Bureau of Land Management are eligible if they were mined, and abandoned before November 26, 1980.
- C. Lands are also eligible if they were mined or processed for minerals other than coal and abandoned before August 3, 1977, if there is no continuing reclamation responsibility under state or other Federal laws. They must meet the requirements of section 409.
- D. Bond forfeiture sites are considered eligible if the amount forfeited, and any other funds or form of financial guarantee is not enough to pay the total cost of reclamation. If the bond funds and other designated funding for forfeited sites are not adequate to reclaim the site, you may expend AML funds to complete reclamation. Any money available from other sources, or ultimately recovered from responsible parties must be used to cover the cost of reclamation, or transferred to the appropriate AML account.
- E. If a site which otherwise meets the eligibility criteria in SMCRA was re-affected by mining after August 3, 1977, the site will remain eligible for AML funding despite the post-SMCRA mining if the following conditions are met.
1. The post-SMCRA mining did not substantially increase or alter the safety issues or environmental damage presented by the pre-SMCRA mining.
  2. The total costs of the reclamation activities are not increased by the post-SMCRA mining.
  3. There is no known responsible party or, if the responsible party is known, available funds are insufficient to pay the total cost of reclamation.

If these conditions are not met, only parts of the site not affected by the post-SMCRA mining activities will be eligible for AML funding. If this situation occurs, you may alter the project to

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include only the eligible part of the project, or you may use non-AML funds to pay for the ineligible part.

- F. Multi-use sites, adversely affected by mining prior to August 3, 1977, but subsequently used for some non-mining activity, remain eligible for AML funding. However, they are eligible only to the extent that mining-related problems still exist, and create a safety or environmental issue at the site. When the non-mining activity is the primary cause of the problem, the reclamation responsibility may shift away from the AML program.

### **4-100-40 How should you determine and document site eligibility?**

- A. You are responsible to make eligibility determinations under your approved AML Plan. Eligibility determinations must be signed by your Attorney General's Office or by your legal counsel. You must include the eligibility determination in your request for our "Authorization to Proceed (ATP)" with reclamation of the project. You must keep eligibility determinations in the project files.
- B. OSMRE may review your project files and eligibility determinations as part of our oversight. If we determine that you funded an ineligible project, we will take appropriate procedures to recover expended funds.

### **4-100-50 Can you spend AML funds on a site which is not eligible?**

You may need to affect property which is not eligible in order to access an eligible site or complete reclamation on an eligible site. You must limit reclamation on these affected sites to repairing the damage caused by using them for AML reclamation activities. If reclamation activities on ineligible property are needed to repair damages caused by accessing an eligible site, you must fully document and justify these activities in the project narrative before you request an ATP from us.

### **4-100-60 What are the priorities for coal reclamation?**

Expenditures of State and Tribal Share and Historic Coal Funds for coal reclamation must reflect the following priorities in order.

- A. Priority 1 is the protection of public health, safety and property from extreme danger from the adverse effects of coal mining practices, including the restoration of adjacent land, and water resources, and the environment. We define adjacent as geographically contiguous, or touching the Priority 1 site at a boundary or point.
- B. Priority 2 is the protection of public health and safety from the adverse effects of coal mining practices, including the restoration of adjacent land, and water resources and the environment.
- C. Priority 3 is the restoration of land and water resources, and the environment previously degraded by adverse effects of coal mining practices. You may expend State or Tribal Share or Historic Coal Funds for Priority 3 lands and waters if any of the following conditions applies.

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1. You have completed all the Priority 1 and Priority 2 reclamation within the jurisdiction of your state or tribe.
2. The expenditure for Priority 3 reclamation is made in conjunction with the expenditure of funds for past, present, or future Priority 1 or Priority 2 reclamation projects. Also, one of the following conditions must apply.
  - a. The expenditure must facilitate the Priority 1 or Priority 2 reclamation.
  - b. The expenditure must provide reasonable savings towards the objective of reclaiming all Priority 3 land, and water problems within the jurisdiction of your state or tribe.
3. The expenditure for Priority 3 reclamation is being made as part of an Appalachian Clean Streams project, a Watershed Cooperative Agreement project, a project authorized under the Enhancing AML Rule, or any AML sites reclaimed under the re-mining incentives provided under section 415 of SMCRA, as revised by the 2006 amendments.

### **4-100-70 What water supply restoration work is eligible for AML funding?**

- A. Section 403(b) of SMCRA allows you to expend funds to protect, repair, replace, construct, or enhance facilities related to water supply, including water distribution facilities and treatment plants, in order to replace water supplies adversely affected by coal mining practices.
- B. You may use State or Tribal Share, Historic Coal Funds, and/or Prior Balance Replacement funds for water supply restoration projects.
- C. Projects eligible for funding as water supply projects include the following:
  1. Sites impacted by coal mining prior to August 3, 1977.
  2. Sites impacted by coal mining during the period beginning on August 3, 1977, and ending on or before the date on which the Secretary approved a state program pursuant to section 503 of SMCRA.
  3. Sites impacted by coal mining during the period beginning on August 3, 1977, and ending on or before November 5, 1990, if the surety of the mining operator became insolvent during this period.

The adverse effects of coal mining practices need not have occurred entirely within these periods as long as the state or tribe determines that they occurred predominantly in these periods.

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### 4-100-80 What noncoal reclamation work is eligible for AML funding?

- A. You may request funds to reclaim eligible noncoal problems as provided in section 409 of SMCRA and [30 CFR 875](#). Noncoal projects must protect public health, safety, and property from extreme danger of adverse effects of mining practices. Lands and waters which are adjacent to sites with extreme dangers are not eligible for AML funding.
- B. The request must be made by the governor of the state or the governing body of the tribe, using the following procedures.
  - 1. The state or tribe must submit a letter request signed by the governor or tribal governing body to the appropriate OSMRE office. You must include it in your complete grant application, even though the letter may be addressed to the Secretary of the Interior or the Director of OSMRE.
  - 2. Since our approval or disapproval of the grant application is our response to your request, we will not send a separate letter response.
  - 3. If you are adding a noncoal project to an existing grant, you must send the letter request signed by the governor or tribal governing body to our awarding office as soon as you identify the need for the project. Your request and our written approval will follow the letter approval process for making a scope change described in Chapter [4-220](#).
- C. You may only use State or Tribal Share or Historic Coal Funds for noncoal reclamation.

### 4-100-90 What are examples of reclamation expenses eligible for AML funding?

You may use AML funds for activities which are necessary to reclaim eligible lands. The following OSMRE decisions on the use of AML funds for specific types of reclamation activities are provided as examples for determining whether an activity is allowable.

- A. Repairs to structures. Costs of repairs to structures damaged by subsidence or other adverse effects of past mining are generally not eligible. Section 407(h) of SMCRA prohibits the use of Title IV funds to pay housing construction costs. AML funds may be used to repair structures only if the repairs are a direct and necessary part of the project reclamation. For example, foundation reinforcement may be funded only as needed to support the foundation during reclamation activities, preventing damage to the structure and harm to the workers (see SMCRA section 412).
- B. Asbestos removal from structures. AML funds may not be used to remove asbestos insulation from hot water pipes in houses that were originally built by a mining company for its employees. Houses built for company employees were not directly connected to coal mining or processing, so removing asbestos insulation from the houses is not part of AML reclamation.

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- C. Moving or relocating structures. Subsidence or other hazards may occasionally make it necessary to move a structure in order to prevent further damage, or conduct effective reclamation at the site. In such situations, you should do the following:
1. Take all necessary steps to prevent the structures from sustaining further damage, including shoring up the structure, and restoring the site so as to achieve the previous load bearing capacity. Some minimal corrective action in the foundation may be appropriate if the damage is not attributable to other problems. The objective is to leave the site in as safe a condition as possible, given the circumstances.
  2. Advise occupants that the structure may be unsafe or borderline, and inform local authorities of the conditions. Do not order occupants to vacate.
  3. Make all reasonable efforts to reclaim the site without moving the structure. If there is no other way to reclaim the site, the structure may be moved, but only after the OSMRE awarding office approves your written justification. You should move structures only as a last resort and only if the option is cost-effective.
- D. Temporary lodging expenses. Reclamation activities are limited to abating, preventing or controlling the primary cause of the hazard. The costs to treat secondary effects of past coal mining go beyond the scope of Title IV. Temporary lodging expenses may be funded only if the residents must be removed to reclaim the site, and only for a limited time. The OSMRE awarding office must approve payment of temporary lodging expenses on a case-by-case basis.
- E. Claims for damages resulting from AML reclamation. Where damages occur to adjacent property as a result of AML reclamation, or where claims are made for loss of business or damages to personal property, or where there are other claims relating to the negligence of parties involved in the AML reclamation, you may not settle the claims. You must make a summary report of your investigation of the claim and send it to the OSMRE office which awarded your grant. Our office must immediately send your report to the Department of the Interior, Office of the Solicitor, Division of Mineral Resources, Branch of Surface Mining, for definitive advice or action. The solicitor can determine whether claims may be covered under the Tort Claims Act, contractor liability insurance, subsidence insurance, or other means and could therefore result in litigation.

### **4-100-100 What special rules apply to an AML project funded by coal extraction?**

If a Title IV AML reclamation project will use government financing for less than 50% of the total cost because of planned coal extraction, the following rules apply. See our regulations at [30 CFR 874.17](#) for more information.

- A. You must consult with the Title V regulatory authority to make the following determinations.

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1. Determine the likelihood of coal being mined on the site under a Title V permit.
  2. Determine the likelihood that nearby mining activities might create new environmental problems or adversely affect existing environmental problems at the site.
  3. Determine the likelihood that reclamation activities at the site might adversely affect nearby or adjacent mining activities.
- B. If you decide to proceed with the reclamation project after this consultation, you and the regulatory authority must concur in the following determinations.
1. Determine the limits on any coal refuse, waste or deposits which can be extracted under the Federal and state regulations.
  2. Delineate the boundaries of the AML project
- C. You must keep the determinations made in sections A and B above in the project file. You must document who made the determinations and the information they considered.
- D. You must complete the following special requirements for each project.
1. Characterize the site in terms of mine drainage, active slides and slide-prone areas, erosion and sedimentation, vegetation, toxic materials and hydrologic balance.
  2. Ensure that the reclamation project is conducted in accordance with the requirements for AML reclamation projects in [30 CFR Part 874](#).
  3. Develop site-specific reclamation requirements, including performance bonds when appropriate.
  4. Require the contractor to provide documents that clearly authorize the extraction of coal and the payment of royalties before reclamation begins.
- E. If the reclamation contractor extracts coal beyond the limits of the incidental coal as specified in the determinations, they must obtain a permit under Title V of SMCRA.

### **4-100-110 What happens to AML funds that you don't use?**

- A. Generally, unused funds remain available for award to your state or tribe for a future grant. Unused funds include funds distributed to you but not awarded in a grant, and funds awarded to you in a grant but not spent.

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- B. However, there are two exceptions to this general rule. In the following situations, we will recover funds and redistribute them to other states and tribes.
1. We will move unused state or tribal Share Funds in accordance with section 402(g)(1)(D) of SMCRA. If any State or Tribal Share Funds are not expended within three years after the date they are first awarded in a grant, or within five years for grants during fiscal years 2008, 2009, and 2010, we will move them to historic coal funds. Similarly, we will move any State or Tribal Share Funds which have not been awarded in a grant within five years of their distribution, or within five years for 2008, 2009, and 2010 funds, to historic coal funds. We will distribute funds moved to historic coal to eligible states at the next annual distribution.
  2. We will move unused state emergency program funds to a central pool. We may distribute funds from that central pool on request to any minimum program state with a specific emergency need. At our discretion, we may use unused funds in this pool for other purposes.