

Statement for the Record
Office of Surface Mining Reclamation and Enforcement
U.S. Department of the Interior
Committee on Natural Resources
Subcommittee on Energy and Mineral Resources
U.S. House of Representatives
H.R. 4248, the Surface Mining Control and Reclamation Act Amendments of 2019
November 14, 2019

Thank you for the opportunity to provide a written statement on behalf of the Office of Surface Mining Reclamation and Enforcement (OSMRE) on the AML program and on H.R. 4248, the Surface Mining Control and Reclamation Act Amendments of 2019.

Background

Through the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Congress established OSMRE for two basic purposes:

- **First**, to ensure that the Nation's coal mines operate in a manner that protects citizens and the environment during mining, and to restore the land affected to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses following mining.
- **Second**, to implement an Abandoned Mine Land (AML) program to address the hazards and environmental degradation resulting from two centuries of coal mining activities that occurred before the law was passed in 1977.

Title IV of SMCRA created the AML program funded by a reclamation fee assessed on each ton of coal produced. Section 402(a) of SMCRA fixed the reclamation fee for the period before September 30, 2007, at 35 cents per ton (or 10 percent of the value of the coal, whichever is less) for surface-mined coal other than lignite; 15 cents per ton (or 10 percent of the value of the coal, whichever is less) for coal from underground mines; and 10 cents per ton (or 2 percent of the value of the coal, whichever is less) for lignite. The authority to collect AML reclamation fees is slated to expire on September 30, 2021.

As originally enacted, Section 402(b) of SMCRA authorized collection of reclamation fees for 15 years following the date of enactment (August 3, 1977). Subsequent legislation extended the fee collection authority seven times and lowered the fee rate. The fees collected are placed in the Abandoned Mine Reclamation Fund (Fund) and are used to reclaim eligible lands and waters. With few exceptions, eligible lands and waters are those which were mined for coal, or affected by coal mining or coal processing, and were abandoned or left inadequately reclaimed prior to the enactment of SMCRA on August 3, 1977, and for which there was no continuing reclamation responsibility under state or other Federal laws.

Status of AML Fund

Since 1977, the Fund has collected \$11.3 billion in fees and interest earned.

From that amount:

- **\$5.7 billion** in AML grants have been distributed by OSMRE to states and tribes
- **\$1.5 billion** was transferred to the United Mine Workers of America (UMWA) Health and Retirement Funds
- **\$1.8 billion** was used for OSMRE operating expenses and AML emergencies
- **\$2.3 billion** of the Fund remains unappropriated

AML grants to states and tribes are used for construction (\$3.7 billion), project design (\$1 billion), administrative costs (\$407 million), acid mine drainage (\$374 million), and undelivered orders (\$242 million), which include any orders for which advance payment has been made but for which delivery or performance has not yet occurred. Administrative cost for the program amount to approximately 7 percent of the total funds allocated for construction.

In these projects, funds are used on the state and local level to develop plans to address the AML problem, and complete the reclamation utilizing private contractors. There is a measurable effect on local economies from AML funding, not just in the work on the projects themselves, but also in associated services to support that construction. *See the attachment for more information.*

Since the Fund's initiation, OSMRE and its state and tribal partners have worked together, as Congress envisioned, to address the hazards associated with abandoned mine areas that occurred prior to SMCRA's passage. OSMRE, states, and tribes are continuing to see the impacts of abandoned mine lands on communities across the country. Millions of Americans live within a mile of an AML issue, and as communities expand into more remote areas, once minor AML issues are now posing greater public risks.

SMCRA established a priority system for expenditures of moneys from the fund on reclaiming eligible coal problems. The priorities are:

- **First priority** - "the protection of public health, safety, and property from extreme danger of adverse effects of coal mining practices."
- **Second priority** - "the protection of public health, and safety from adverse effects of coal mining practices."
- **Third priority** - "the restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices."

SMCRA also provides funding for states and tribes to expend money on replacement of water supplies adversely affected by past coal mining activities and on non-coal reclamation projects related to minerals development and extraction. Examples of non-coal reclamation projects on which states can expend AML funds include remediation of dangerous highwalls, stabilization of subsidence events associated with underground mineral mining, water supply replacement, and road repair. States can also place a portion of their AML grants in an interest bearing account for the purpose of abating acid mine drainage.

Congress authorized the Fund to earn interest in Fiscal Year (FY) 1990. Since 1992, interest earned on the Fund has been available for direct transfer to the UMWA Combined Benefit Fund and, since 2006, this interest has been available for the direct transfer to two additional plans within the UMWA Health and Retirement Funds. In each instance, the interest is available to defray the costs of providing health care benefits to eligible retired coal miners and their dependents.

Accomplishments

AML reclamation over the past 42 years has become more effective because OSMRE and its state and tribal partners have developed, demonstrated, and promoted innovative mine reclamation technology, techniques, and best practices in collaboration with industry and universities. When Congress created OSMRE, legislators contemplated that OSMRE's and the state/tribal partnership would embody cooperative federalism. These relationships are built on federal and state governments and stakeholders working together to benefit communities and American workers.

The development of these best practices and techniques, have proven to be effective:

- In Montana, the State's AML program overcame multiple obstacles, including weather and engineering challenges, to provide safe and abundant drinking water to a historic mining town.
- On Navajo Nation land, the Tribe's AML program addressed a coal seam fire that burned for more than 50 years, causing air pollution and threatening both wildlife and livestock grazing lands.
- In Pennsylvania, the AML program eliminated the threat of old mine pits that, prior to reclamation, took the lives of six people when their vehicle fell into a water-filled pit in an AML hazard area.
- In Kentucky, the AML program dealt with mine subsidence near a local elementary school that placed students, parents, and staff in danger as they arrived at or left the school's parking lot.

Since SMCRA's enactment examples of accomplishments of the Abandoned Mine Land Program include:

- Closure of over 45,000 underground mine shafts and openings;
- Elimination of over 960 miles of dangerous highwalls;
- Elimination of nearly 131,000 acres of dangerous spoils and embankments; and
- Restoration of nearly 859,000 acres of streams and land.

H.R. 4248

H.R. 4248, the Surface Mining Control and Reclamation Act Amendments of 2019, would reauthorize the AML fee, extend fee collection for another 15 years to FY 2036 (with the last normal distribution occurring in FY 2037), and increase mandatory minimum program annual payments from \$3 million to \$5 million from the Federal Share of the AML Fund.

In addition, H.R. 4248 contains new provisions that would:

- Fund AML emergency programs as a mandatory expenditure from the Federal Share of the AML Fund.

- Allow all states and tribes (including certified AML programs) to use a full 30 percent of their AML grants to address acid mine drainage (AMD) by establishing AMD set aside accounts.
- Exempt AML grants from future sequestrations.
- Authorize the release of previously sequestered AML monies to all states and tribes.

The provisions that increase minimum program payments and fund AML emergency programs as mandatory expenditures from the Federal Expense Share of the AML Fund would significantly reduce OSMRE's annual AML operational appropriations.

As Congress considers the future of the AML Fund reauthorization, OSMRE stands ready to assist in understanding these and other issues related to SMCRA. We will continue to work with states and tribes, the Interstate Mining Compact Commission (IMCC), the National Association of Abandoned Mine Land Programs (NAAML), local watershed groups, industry and other stakeholders to identify opportunities to address SMCRA priorities. OSMRE is fully committed to the success of the AML program.

Thank you for the opportunity to present this testimony.