

**Statement of Robert F. Scott, Director, Division of Abandoned Mine Lands,
Kentucky Department of Natural Resources, on behalf of the National Association
of Abandoned Mine Land Programs and the Interstate Mining Compact
Commission re Legislative Hearing on H.R. 1731, Revitalizing the Economy of Coal
Communities by Leveraging Local Activities and Investing More Act (RECLAIM
Act) before the Energy and Mineral Resources Subcommittee of the House Natural
Resources Committee – April 5, 2017**

Good morning, Mr. Chairman and members of the Committee. My name is Bob Scott and I am the Director of the Division of Abandoned Mine Lands within the Kentucky Department of Natural Resources. I am appearing here today on behalf of the National Association of Abandoned Mine Land Programs (NAAML) and the Interstate Mining Compact Commission (IMCC).

IMCC and NAAML are multi-state governmental organizations that together represent over 30 mineral-producing states and Indian tribes, 28 of which implement federally-approved abandoned mine land reclamation programs authorized under Title IV of the Surface Mining Control and Reclamation Act (SMCRA).

Introduction

The topics featured in today's hearing are of great interest and importance to the Commonwealth of Kentucky and the many states and tribes represented by IMCC and NAAML. My comments today will provide our perspectives on H.R.1731, the "Revitalizing the Economy of Coal Communities by Leveraging Local Activities and Investing More Act" or "RECLAIM Act", as well on the future of the abandoned mine land (AML) program. As the state and tribal agencies with primary responsibility for implementing SMCRA AML programs within their respective borders, we appreciate the opportunity to share our perspectives, particularly on the immense potential to promote economic development and community revitalization represented by the AML programs, as indicated by the bill before the Committee today.

Speaking for a moment from my own state's perspective: Kentucky is in support of H.R. 1731. It presents the prospect of bringing unprecedented levels of accelerated funding to bear on the massive inventory of legacy coal AML-impacted sites remaining in Kentucky. This funding is critically important in protecting and restoring the health and safety of our historic coalfield citizens and their environment, as well as improving their too-long-distressed economies and quality of life.

As the 115th Congress commences, the SMCRA AML Program approaches a significant crossroads. IMCC and NAAML intend in this testimony to identify the most significant challenges facing the AML program as its course for the future is determined, particularly with regard to the pending need for reauthorization of AML fee collection authority in 2021. Whatever the future holds, the preservation and continuation of the

AML Program's contributions, including to economic revitalization efforts, cannot be sustained without the AML fee. IMCC and NAAMLPLP therefore recommend that the long-term continuation of the AML program be considered an utmost priority as Congress proceeds with efforts to aid economic revitalization in coal country through consideration of legislation such as H.R. 1731.

RECLAIM and the Future of the AML Program

As IMCC and NAAMLPLP consider adjustments to Title IV of SMCRA such as H.R. 1731, our main priority must be to ensure our AML programs are equipped with the funding and administrative tools necessary for the AML Program to complete its mission. We have endeavored to bring our experience to bear in equipping Congress with the information necessary to effectively maintain and promote the AML Program and its multi-faceted benefits, now and into the future.

Thorough consideration of the AML Program's existing structure and contribution in restoring AML-impacted lands, waters, and communities is necessary to protect the program's ongoing contribution to economic revitalization, especially in Appalachia, and therefore to fully realize the goals of the RECLAIM Act.

The RECLAIM Act is a clear good-faith effort to promote and enhance the AML Program's economic contribution, which is noted and appreciated. For the bill to be most effective, however, it is critical that the funding eligibility requirements provide the states the latitude to balance their more fundamental health and safety obligations with opportunities for enhanced economic impact based on each of their own circumstances. While Kentucky supports H.R. 1731, we share the ongoing concerns held by the many states and tribes represented by IMCC and NAAMLPLP regarding certain aspects of the bill, which are more thoroughly discussed in the statement provided by my colleague Ms. Coleman.

We are particularly concerned with the bill's proposed funding formula. While the "boost" in AML funding that H.R. 1731 provides will significantly advance AML reclamation and improve conditions for hard-hit coal communities, we have reservations about further ramifications to Kentucky's AML program and AML programs nationwide.

Drawing \$1 billion from the AML Fund over the next 5 years will have a game-changing impact on the future course of the AML Program as originally envisioned by Congress in 2006. To accelerate funding from the AML Fund, as H.R. 1731 anticipates, is in a sense to borrow against future reclamation funding. Generally speaking, to borrow against the future can be sensible in cases where immediate needs arise and the future can be clearly counted upon. In the present situation however, with the AML fee set to expire a mere four years from now in 2021 and the uncertain appetite for reauthorization, the future of the AML Program is not at all clear, much less secure. From the AML programs' perspectives, any major AML-policy initiative, with H.R. 1731 being no exception, must therefore be very carefully considered in the context of the paramount need for reauthorization.

As we look toward the future and seek the best course for the AML Program, we must remain committed to addressing the remaining impacts of both coal and non-coal abandoned mines and improving the health and safety, environment, and economies of the countless AML-impacted communities throughout the Country.

The following section will discuss the operation, accomplishments, and multi-faceted contributions of the AML Program in further detail.

Role and Contributions of the AML program

The AML program is a vital component of the balance between natural resource production and environmental protection and restoration established by Congress through the passage of SMCRA in 1977. The mining of coal, precious metals, and other important industrial materials has been integral to our country's development. However, the remnants of mining conducted prior to the advent of national environmental laws like SMCRA endure and continue to beset the health, safety, environment, and economies of communities impacted by these abandoned mine lands.

While much has been accomplished since 1977, much remains to be done. The legacy of abandoned mine lands looms large in countless communities throughout the country. Safety hazards associated with remaining abandoned mines account for numerous injuries and deaths each year and impaired land and water resources continue to impede economic opportunity.

Under the state-lead, cooperative federalism approach utilized under SMCRA, the states and tribes exercise primary responsibility for identification, monitoring, and restoration of mined lands left abandoned or inadequately reclaimed prior to the advent of modern mining regulation. Since the passage of SMCRA in 1977, the state and tribal AML programs have worked to address AML-related public health and safety hazards such as mine fires, mine subsidence, dangerous highwalls, open shafts and portals, and mining-impacted water; and to remediate the environmental impacts of AML sites, including: acid mine drainage, surface and ground water contamination, erosion, sedimentation, and inadequate revegetation.

According to a recent report obtained from AMLIS, the federal Office of Surface Mining Reclamation and Enforcement's online Abandoned Mine Land Inventory System (www.osmre.gov/programs/AMLIS.shtm), approximately \$4.5 billion has been spent to reclaim over 900,000 acres of AML. Even with this tremendous accomplishment, over 800,000 acres of high-priority AML sites remain with an estimated construction cost of over \$10 billion.

Perry County is one of 44 counties in Kentucky suffering the effects of AML. In Perry County alone, there are approximately 300 documented abandoned mine sites, some of which date back to the early 1800's. Approximately 95 percent of the county's population lives within one mile of an AML site, making the entire county vulnerable to

these hazards. In a region starved for suitable residential and commercial building sites, the AML Program's ability to return AML sites to productive use is particularly useful.

As is evidenced by the bill before the Committee today, citizens in places like Perry County, Kentucky, not only have their lives, health, and environment threatened by AML, but also their economic futures. The coal mined in these regions over the past two hundred years fueled the development of our Country. Now, the coal mining communities who supported the nation through industrialization are prevented from taking part fully in the American economic prosperity they did so much to bring about, in significant part due to the drag on economic development caused by the health, safety, and environmental AML hazards that pervade their communities. The SMCRA AML Program plays a vital role in efforts to correct those grievous circumstances and restore the well-being of AML-impacted communities.

Funding for state and tribal AML programs has supported thousands of jobs for AML contractors and suppliers. AML projects employ construction contractors who were very often former mine operators themselves and who in turn employ many former miners and other local workers from our coalfield communities. By restoring mining-scarred lands to productive uses, AML programs often accomplish the following: restore water quality and aquatic life to mine-drainage impacted streams; provide potable water supplies to many coalfield residents whose individual water supplies were impacted by past mining; extinguish coal mine fires and coal refuse pile fires and thereby improve air quality and eliminate the safety hazards associated with these fires; close mine openings to prevent access; backfill dangerous highwalls and restore strip-mined lands to productive use; and stabilize underground mines to prevent mine subsidence. Each of these efforts provides fundamental contributions to establishing the basic conditions needed for AML-impacted communities to thrive and create further economic opportunities both for themselves and their progeny.

AML Emergencies

One of the most important functions of the AML Program is to address AML emergencies, which occur every year in every region of the Country. These suddenly-occurring problems pose an extreme danger to the our citizen's health, safety and general welfare and may involve mine subsidence that damages homes, roads, utilities, or other improved property; coal refuse or underground mine fires; mine shafts and portals which have become accessible; mine gas migration into homes; mine water blow outs and other mine drainage problems; or AML related landslides.

Beginning in 2010, OSMRE shifted responsibility for funding AML emergency projects to the states and tribes. This critical function of the AML programs must now be funded out of a portion of the states and tribes' regular AML grant funding, which has made it all the more difficult to maintain adequate emergency funding and has constrained progress in addressing other long-waiting AML problems.

Kentucky has completed 49 emergency projects in the past two year, typical examples of which include landslides that destroy county roads or threaten residences and buildings, mine blowouts, mine subsidence, and mine fires. 2015 proved to be a horrific year for landslides in Kentucky as unusual amounts of snow and rainfall allowed the old underground mine works to fill beyond capacity, saturating hillsides and initiating numerous landslides. One such event, the Ratliff Church Slide in Pike County, came with full force down a steep Appalachian hillside and moved the entire single story church building 30 feet off of its foundation, completely destroying the building. Kentucky's AML Program was able to stabilize the landslide.

This past fall, Kentucky experienced the other end of the meteorological spectrum, as an unusually dry fall led to a record number of forest fires. The same set of circumstances led to the much publicized wild fires that wreaked havoc on the tourist town of Gatlinburg in neighboring Tennessee. When the rains had finally extinguished the Kentucky forest fires, our AML division began to receive calls of abandoned refuse fires in numerous areas. These refuse piles remained hidden beneath the forest floor for many decades, but were ignited by the forest fires and soon became a severe threat, spewing noxious fumes into nearby communities. Kentucky AML has extinguished 15 refuse fires since that time, some as large as 5 acres. Two underground coal seams were ignited and are still being fought by the AML program.

Similar scenarios unfold on a regular basis in other states. For instance, in Pennsylvania a mine subsidence event resulted in the complete destruction of a home in Latrobe, some 40 miles east of Pittsburgh. The event occurred during the night while the owner slept. She awoke to find the shifting of her home so severe she could not escape her bedroom. Rescue services were luckily able to assist the homeowner in this case. While she was fortunate to have mine subsidence insurance to pay the value of the damage to her home, the insurance does not pay to stabilize the mine, meaning she could not rebuild on her property. Fortunately, in such cases, the AML Program is able undertake a project to stabilize the mine, protecting adjacent homes and providing the owners with some assurance that they can safely rebuild.

The Jeanesville Mine fire in Pennsylvania is another example of a common type of AML emergency. This underground mine fire was discovered in 2015 and threatened to burn under the villages of Jeanesville and Tresckow. These areas could have faced a similar fate to those affected by the most famous Pennsylvania mine fire in Centralia, where the entire town had to be evacuated and relocated due to the hazards associated with this still burning underground mine fire. Through an AML emergency project, Pennsylvania has been working to isolate the Jeanesville mine fire first with a cutoff trench and to then fully excavate and extinguish the fire. The project began in the spring of 2015 and should be completed sometime this year, successfully protecting all of the residences in both villages.

In West Virginia over the past six years, the emergency program has investigated 1,740 complaints and abated 177 emergency projects at a cost exceeding \$23.3 million. An example is the Scotch Hill (Jennings) Underground Mine Fire located in Preston County. This underground mine fire produced enough smoke to make a county road impassable at times and inundated nearby homes with smoke and noxious fumes. Temperature at the surface exceeded 600 degrees and ignited multiple forest fires. Large trees were left without root systems because of the underground temperatures. All combustible material was removed from the surface and a foam and grout slurry is currently being placed by borehole injection to suppress the fire. While West Virginia's annual emergency program budget is set at \$4 million, this project alone will exceed \$5 million.

Other examples abound throughout the country. Without AML funds, there would be no other source of funding available to address this situation or the other emergencies described. It is difficult to imagine the devastating consequences these communities would face were the means not available to address these landslides, subsidence, mine fires, or other AML emergencies.

Mine Drainage-Impacted Water Treatment

In addition to AML emergencies, the AML programs have also constructed many mine drainage treatment facilities (both active chemical treatment plants and passive mine drainage treatment systems), which treat mine drainage discharges and restore water quality in our nation's impacted streams. These mine drainage treatment facilities are significantly improving water quality in hundreds of miles of streams throughout the Country. All of these treatment facilities rely on AML funds to some degree to ensure the continued operation, monitoring, and maintenance of these systems so that all of the very beneficial gains are not lost.

Contributing to Economic Revitalization

The AML Program has proven its extensive economic benefits over its now 40-year history, which are achieved primarily by removing obstacles to and creating opportunities for economic development. In the past year alone, Kentucky's AML program has engaged in a variety of opportunities and unique partnerships for addressing and/or repurposing AML sites with significant community and economic benefits, which serve to demonstrate what can be accomplished through the RECLAIM Act if appropriately structured. One such project is the Appalachian Wildlife and Elk Viewing Center, which will be built on a reclaimed abandoned mine site and bring jobs and tourism to Bell County.

According to a report completed in 2015 by the Appalachian Citizen's Law Center, "In FY2013, the AML program made a total economic impact of \$778 million, a net impact of \$450 million on US GDP, and supported 4,761 jobs through AML reclamation work. Central Appalachian states saw a total economic impact of \$182

million, a value added impact of \$102 million, and 1,317 jobs supported by the AML Program. As demonstrated by a national FY2013 value-added (net) impact of nearly half a billion dollars, the program delivers a substantial contribution to the American economy on an annual basis. For its environmental and economic impacts, the AML Program demonstrates a forty-year long, highly successful proof of concept and is absolutely crucial to the future of coalfield communities in the United States.”¹

Outlook for the AML Program

The progress made by the states and tribes in reclaiming their respective inventories of AML sites since the enactment of SMCRA has been substantial, but maintaining consistent, adequate funding and the state-lead approach anticipated by SMCRA has been a perennial struggle. The work of the state and tribal AML programs is made possible by the AML Trust Fund, which receives revenue through a fee on current coal production.

As coal production declines, receipts from the AML fee leveraged on each ton of coal mined decline in equal measure, which in turn reduces AML grant funding available to the states and tribes. With many power plants closing or switching to natural gas, the decline in coal production has begun more quickly and at a steeper rate than many predicted.

According to OSMRE’s AML grant distribution reports², AML fee collections dropped from \$194,227,382 in FY2015 to only \$151,823,987 in FY2016, which equates to a reduction of 21.8%. The programmatic effects of less-than-expected AML grant funding are exacerbated by reductions in severance tax and other coal production revenue, on which many states rely to a significant extent to support both regulatory and AML program costs. To the extent that reduced coal production is expected to continue, a looming funding crisis for the AML programs is apparent.

Regardless of whether funding is accelerated from the Trust Fund through H.R. 1731, we expect significantly reduced AML funding due simply to the decline in coal production. Even if coal production stabilizes, funding currently available or which would become available based on the program’s current end date (without AML reauthorization), would not be enough to complete the AML Program’s mission of restoring our communities impacted by AML. It will be incumbent on AML policymakers throughout the country to realign the future of the AML Program with the new reality of coal’s lesser share in energy production. Finding ways to compensate for declines in AML funding and maintain adequate, consistent funding into the future will require innovative thinking and effective cooperation. Most of all, success will require

¹ Dixon, Eric and Kendall Bilbrey, Abandoned Mine Land Program: A Policy Analysis for Central Appalachia and the Nation. Report: AML Policy Priorities Group, Appalachian Citizens’ Law Center, The Alliance for Appalachia. 8 July 2015.

² www.osmre.gov/resources/grants.shtm

recognition of the AML Program's enduring importance and the amount of much-needed AML work that remains.

Implications of H.R. 1731 for the AML Fund

It is important to keep in mind, both with respect to H.R. 1736 and with current AML policy priorities in general, the reasons that the current AML funding arrangement exists as it does. The 2006 SMCRA amendments, which took over 10 years to complete, exhaustively considered the most effective, equitable way for AML funding to be apportioned. This effort established the understanding that each of the approved AML program states and tribes have communities whose health and livelihoods are compromised by the effects of AML sites, and that each of these states and tribes and their respective AML-impacted communities deserve fairly apportioned funding.

The bill before the Committee today would impact the overall allocation of AML funding as designed by the 2006 Amendments by augmenting the formula by which RECLAIM funding would otherwise be paid out were the bill not enacted (specifically by distributing 20% of these accelerated funds based on an average of AML fees paid by a given state over a 5-year period, rather than 100% based on historical levels of coal production in that state). Given the complexity of the 2006 amendments and the funding formula therein, IMCC and NAAMLPLP recommend caution in alterations of relative AML funding levels.

The potential for reallocation of a state's portion of its funding, especially where a result of difficulty in implementing overly prescriptive or otherwise impracticable aspects of the bill, is a related concern. If the reallocation provision is not intended to result in further redistribution of the AML Trust Fund, it is important that the requirements for RECLAIM funding be fairly structured and interpreted such that each state has the opportunity to bring its accelerated funding to bear on its own inventory of AML projects and its citizens' economic well-being.

It is important to note that the funding to be tapped by the RECLAIM Act ("the unappropriated balance"), is being *accelerated*, as opposed to newly provided, meaning that this bill does not represent an increased opportunity for additional AML work so much as a shift in the types of projects, and potentially the states, to which the funding is allocated. The 2006 SMCRA amendments intentionally created the "unappropriated balance" (the funds that would be tapped by H.R. 1731) in a decided effort to maintain some amount of steady funding following the end of AML fee collection in 2021. Under current law, that funding would be parsed out in manageable, annual portions to eligible states in the years following 2021. Should the AML fee fail to be reauthorized before that time, and no new AML funding was therefore being generated, the currently authorized, post-2021 funding was intended to provide one last shot of program funding to help restore the health and livelihoods of AML-impacted communities in the uncertified states.

This concern is broadly shared among IMCC and NAAMLPLP members. Various estimates suggest that RECLAIM would cut 9 to 12 years of annual grants to uncertified

states from the life of the program. This impact could be eliminated or reduced by either extending fee collection in the RECLAIM Act by a similar number of years or by initiating independent Congressional action to extend fee collection through reauthorization of SMCRA

It is also important to note that NAAML P and IMCC remain particularly concerned with regard to any federal budget off-sets potentially necessary to enact H.R. 1731 and how those off-sets could reduce or eliminate existing sources of AML funding, including payments to certified states and tribes.

The bottom-line is that each of the state and tribal AML programs has an interest in conserving what resources have or will be made available to them and in using those resources in the most responsible, impactful way possible, to make the best of their limited, respective AML funding. It is absolutely vital therefore, from IMCC and NAAML P's perspective, that as the Committee considers the bill before us today, and especially as it considers means to aid struggling, economically-depressed communities in historic coal country, it also considers the unfunded AML-related work and economic obstacles that will remain regardless of whether RECLAIM is enacted.

Whatever new approaches for AML programs that might be considered and whatever other avenues of AML work that might become available, it must be kept in mind that losing the AML fee will be a massive, perhaps insurmountable blow to the progress of AML work. It is therefore imperative that any new legislative initiatives are mindful of reauthorization.

The Need for Reauthorization

Reauthorization of SMCRA Title IV fee collection authority is a top AML legislative priority for IMCC and NAAML P (see attached NAAML P and IMCC resolutions). The AML fee, on which the federal, state, and tribal AML programs rely for the vast majority of funding, is set to expire in 2021. Without this source of funding, the AML programs will be unable to continue operating for long.

In essence, to extend the AML fee is to extend the AML Program itself. As expiration of Title IV fee collection authority approaches, there are many issues yet to be resolved, but one thing is abundantly clear: while the AML programs have made great progress, the remaining AML work far outweighs the resources available. The states estimate that complete reclamation of all known unreclaimed AML sites and mine-drainage water discharges will conservatively require more than \$10 billion for construction costs alone, \$7.5 billion more than is currently residing in the AML Fund or which is expected to be generated between now and the end of fee collection authority in 2021. Taking into consideration the additional costs beyond construction necessary to plan and design these projects and the currently unaccounted for impact of annual inflation, the funding shortfall is much wider. If the AML programs are to complete their work, reauthorization of the AML fee will be necessary.

Without reauthorization, an unacceptable amount of AML work will remain undone. Mine hazards will fester and unforeseen AML emergencies will continue to occur, risking property damage, injury, and death for local citizens. The deep environmental impacts and visible scars on the lands and watersheds so loved by citizens of and visitors to historic coal country will go unrepaired. Mine drainage treatment systems serving to restore the quality of water resources in mine drainage impacted watersheds will go defunct without funding for operation and maintenance. In many cases, the advances already made in restoration would be lost. If AML fee collection authority is allowed to lapse, when limited remaining AML funds are depleted, there would likely be no other available source of assistance with regard to these vital activities. The AML Program's contribution is necessary for the fundamental stability these communities need to thrive, which we understand to be the purpose of the RECLAIM Act.

While 2021 is still a few years away, legislative deliberations of this scale take a significant amount of time (the process leading up to the 2006 SMCRA amendments took more than ten years to complete). Historically, reauthorization has been the most appropriate time to consider significant changes to the program's design and implementation. Preparing for reauthorization therefore means assessing the current state of the AML work nationwide, including, among other things, how and where AML funds are being generated, how they are most fairly and sensibly distributed, how they are used, and how they should best be used in the future. NAAMLPL recently completed the process of finalizing preliminary recommendations on policy priorities for reauthorization of the AML fee. NAAMLPL is prepared to contribute to the reauthorization discussion and inform public debate, and looks forward to working closely with the Committee on the matter.

Keeping in mind all of the inter-connected considerations raised in this and my colleague Ms. Coleman's testimony, IMCC and NAAMLPL recommend the Committee's consideration of a simple extension of fee collection authority as part of the RECLAIM Act. A relatively simple amendment to the statute extending fee collection for 7 years at current levels, (and foregoing other potentially desirable modifications that would be considered as part of a "full" reauthorization effort) would serve to mitigate concerns with affecting the distribution and use of the limited amount of funding that would be left available without reauthorization.

Conclusion

The SMCRA AML programs have made significant progress, but much remains to be done. Remaining AML funding is limited, and the prospect of reauthorization in 2021, and thus the future of the entire AML Program, remains unclear.

The balanced approach in H.R. 1731, if carefully implemented, offers the potential to accelerate progress with reclamation, and in turn, to accelerate the economic

and community benefits that progress brings. If, as discussed by my Colleague's and my statements today, steps are taken to ensure that H.R. 1731 is properly implemented, it should successfully further overall AML progress.

AML-impacted communities in historic coal mining regions are deeply reliant on funding from the AML Program. Unfortunately, historic coal communities throughout the country, and especially in Appalachia, whose generations of courageous, hardworking coal miners contributed so much to the development of our country, are left with the debilitating health and economic impacts of mining conducted prior to the advent of modern environmental regulation. As coal production continues to decline, particularly in the Appalachian region, the circumstances in these communities worsen. If the health, safety, environment, and economic livelihoods of these most deserving communities are to be protected and restored, continued AML funding is critical.

We therefore urge Congress to allow the AML Program to complete its mission by reauthorizing AML fee collection authority as part of H.R. 1731. If we are to bring a bright economic future back to coal country, we must ensure a future for the AML Program.

Thank you for the opportunity to submit this testimony. Should you have any questions or require additional information, please contact us.