

QFR response from John J. Stefanko, Deputy Secretary, Pennsylvania Department of Environmental Protection, Office of Active and Abandoned Mine Operations, on behalf of the Interstate Mining Compact Commission, the National Association of Abandoned Mine Land Programs, and the Commonwealth of Pennsylvania, re. Legislative Hearing on H.R. 4248 entitled "Surface Mining Control and Reclamation Act Amendments of 2019 " before the Subcommittee on Energy and Mineral Resources of the House Natural Resources Committee – November 14, 2019

Questions from Chair Alan Lowenthal (D-CA):

Question 1: Over the past several years, has the total annual cost of AML emergency mine subsidence events in Pennsylvania increased, decreased, or stayed the same? If the number has changed, please explain why.

Response: An AML emergency is defined by SMCRA as a sudden danger or impairment that presents a high probability of substantial physical harm to health, or safety before the danger can be abated under normal AML Program operation procedures. Typical AML emergencies include mine subsidence (which can include open subsidence holes in yards and on streets or which can affect homes, businesses, roads, and other infrastructure); mine drainage (including mine blow-outs); mine gas problems, mining related landslides, mine and mine refuse fires; and mine openings. In Pennsylvania, about 85% of AML emergencies are the result of mine subsidence.

The number and construction cost of AML emergencies varies year to year. No one can predict when or where the roof over an abandoned deep mine may collapse causing an unknown or unanticipated mine subsidence impact on the surface. However, the number of AML emergencies does seem to correlate to the amount of precipitation the state receives and the number of freeze-thaw cycles that occur in any given year. Generally, the higher the precipitation amount or the more freeze-thaw cycles, the higher the number of AML emergencies. The following table summarizes the total number and total construction cost of AML emergencies that occurred in Pennsylvania by calendar year since 2012.

Pennsylvania AML Emergency Statistics (Calendar Years 2012-2019)		
Calendar Year	AML Emergencies	Total Construction Cost
2012	46	\$ 957,179
2013	62	\$ 2,167,588
2014	87	\$ 3,482,323
2015	66	\$ 10,936,246
2016	67	\$ 3,711,409
2017	86	\$ 1,715,490
2018	127	\$ 4,423,860
2019 (thru 11/13/19)	80	\$ 2,290,460
Totals	621	\$ 27,394,095

Question 2: During the hearing we discussed coal mines in Pennsylvania that have been reclaimed under Government Financed Construction Contracts (GFCCs) at minimal cost to the state. How many acres of AML in Pennsylvania have been reclaimed using GFCCs?

Answer: Pennsylvania’s long history of mining has left numerous abandoned mine lands. Many of these sites provide opportunities for AML reclamation or water pollution abatement through a government-financed construction contract (GFCC) where all or a majority of the cost of reclamation or abatement can be offset by the value of the coal and coal refuse that must be removed to complete the reclamation project.

Under the Federal AML Enhancement Rule, Pennsylvania’s Government-Financed Reclamation Construction Contracts (GFCC) program benefits the public and the mining operators by establishing contracts for mining companies to conduct operations that will reclaim AML sites at no cost to the public. Between January 1991 and December 31, 2018, there were 286 contracts issued, with an estimated total reclamation value of approximately \$30.7 million.

Question 3: Does Pennsylvania have re-mining regulations? If so, how many acres of AML have been reclaimed by coal mine operators under those regulations, and at what cost to the state?

Yes, Pennsylvania has re-mining regulations. The traditional re-mining regulations are focused on liability protection for pre-existing polluttional discharges. In addition, Pennsylvania has developed a series of incentives focused on re-mining.

Pollution Liability Protection

Pennsylvania's re-mining program (Fact sheet attached) is implemented through Chapter 87, Subchapter F, Chapter 88, Subchapter G and Chapter 90, Subchapter F of Pennsylvania's mining regulations, as well as through technical guidance documents and individual permits. This program allows for liability protection for re-mining operations conducted on AML with existing pollutional discharges by enabling the PA Department of Environmental Protection (DEP) to determine the pollution baseline at a site and set effluent limitations accordingly. It is estimated that about 25,000 AML acres have been reclaimed under this program since the early 1980's, with a reclamation value over \$200,000,000.

Other incentives

Since its inception, Pennsylvania's reclamation and re-mining incentives programs have been very successful. Coal mine operators using these programs have reclaimed nearly 8,400 AML acres equivalent to an estimated \$80 million in reclamation value. Current reclamation costs for grading and revegetation of abandoned mine sites average about \$9,500 per acre.

The most commonly used incentive is the Re-mining Financial Guarantee program. Under the Financial Guarantees program, DEP provides low cost bonding of re-mining areas. As of December 31, 2018, 155 coal mine operators used financial guarantees to bond 747 mining permit increments. When completed, those operations will have reclaimed 4,630 acres of AML, saving the Commonwealth an estimated \$43.9 million.

Another program, the Bond Credits program provides an incentive for operators to reclaim an AML area by earning a bond credit. Five mine operators have completed six bond credit projects. The projects that have been completed under this program reclaimed 50.1 acres and represent a reclamation value of \$475,950.00. A pending project was executed in 2013. The project will result in reclamation of 50.6 acres and the reconstruction of 3,600 feet of stream channel.

Question from Rep. Cartwright (D-PA): The National Mining Association (NMA) claims in its letter that of the "almost \$9 billion" that has been spent from the AML Trust Fund, "only \$2.7 billion" was spent on reclamation of "priority coal AMLs". NMA alleges that there is thus a "\$6.3 billion gap" that needs to be accounted for, though the letter acknowledges that \$1.5 billion of this "gap" was interest transferred to miners' health plans. In your testimony, you noted that, of the \$5.747 billion of AML grants distributed so far, 79% of grant dollars went directly to reclamation, and administrative costs accounted for only 7% of total spending. Can you explain the ostensible discrepancies between your numbers and NMA's, and clarify why you believe the AML Trust Fund program has been cost-effective? How do reclamation of priority 3 sites, emergency response, and economic development of abandoned mine lands serve the purpose of the AML program? Why do you believe that these expenditures are important and appropriate uses of the AML Trust Fund?

Answer: The National Mining Association (NMA) continues to rely on an incomplete source of information (the annual OSMRE budget justification document) to support its claims. That document does not include information on a number of essential AML program activities,

including but not limited to: engineering design, permitting, and management of reclamation projects by state and tribal AML programs, administration of those programs, and OSMRE program oversight and inventory management, all of which are essential to effective program management and successful AML projects. Data is available from the Office of Surface Mining Reclamation and Enforcement (OSMRE) that show the full range of activities to which AML funding has been directed. See <https://www.osmre.gov/programs/aml.shtm> and OSMRE's statement for the record in the November 14th hearing on H.R. 4248. That data is drawn from the Financial Business Management System (FBMS), which is OSMRE's official system of record containing comprehensive information on AML grant allocations and expenditures for the AML program.

In terms of cost-effectiveness, OSMRE reports that administrative costs for state and tribal AML programs (which includes some staffing, grants management, equipment and supplies, as well as inventorying AML sites and coordinating with federal agencies) has been held to a mere 7% of total costs. We believe this compares favorably with the administrative costs of any federal grant program. AML programs pay careful attention to efficiency in order to ensure that their limited funding provides maximum benefit by committing as much funding as possible to the elimination of AML hazards on-the-ground including AML emergencies.

Emergency projects are often the most critical undertaken by state and tribal AML programs, as they are suddenly occurring, often unknown, and potentially debilitating to public health and safety, especially where landslides and subsidence are concerned. Hence, these projects have elevated priority and were treated in a category all their own by the framers of SMCRA in Section 410.

Environmental projects, especially the restoration of water resources polluted by AML sites, are a vital part of the AML program's mission. As indicated in the IMCC/NAAMLPP statement for the hearing on H. R. 4248, Pennsylvania has over 5,500 miles of streams which are impaired due to abandoned mine drainage (AMD). There are also hundreds of watershed, NGO and other grass roots organizations within Pennsylvania that the AML Program partners with to help restore these streams. These groups often leverage other funding, both public and private, to significantly increase this important environmental restoration work. Restoration of these streams is a high priority for these groups as well as local citizens and sportsman and is essential in attracting new business and industry to these areas which traditionally relied on coal for their local economy. This fact has been reiterated by Congress through each extension of the AML program. Water treatment projects, in particular, are critically important to protecting coalfield communities and rebuilding economic opportunities. In fact, many AML projects have an economic development component to them given the improvements they make to infrastructure, water quality, land restoration and the environment.

All of these expenditures are anticipated by current law and are authorized pursuant to OSMRE regulation, policy and oversight. They accomplish the intent of Congress in terms of how the AML Trust Fund was originally designed and how the program has been adjusted to fit new circumstances over time. Most importantly, the AML program ensures that the long-term health, safety and economic livelihood of historic coalfield communities are restored and protected. Hence the need for reauthorization as set forth in H.R. 4248 be completed expeditiously.