



**Eastern PA Coalition for
Abandoned Mine Reclamation**

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RE: *Legislative Hearing on HR 1734, HR 1733, HR 1146- “Restoring Abandoned Mine Lands, Local Economies, and the Environment” before the Subcommittee on Energy and Mineral Resources*

Chairman Raul M. Grijalva of Arizona

Ranking Member Bruce Westerman of Arkansas

Representative Alan S. Lowenthal-Chairman of the Subcommittee on Energy and Mineral Resources

Members of the US House of Representatives Committee on Natural Resources

Thank you for allowing me to provide my testimony before all of you on March 18th on behalf of EPCAMR. Below I've tried my best to give my honest assessment and response to the additional questions that were asked of me by Representative Lowenthal and the Honorable Congressman G.T. Thompson.

Questions from Rep. Lowenthal for Mr. Hughes:

**1. What has been the experience of the states in implementing the AMLER Pilot Program?
What challenges have you faced?**

I can only speak on behalf of the working partnership that I have with the PA Department of Environmental Protection's Bureau of Abandoned Mine Reclamation (PA DEP BAMR). EPCAMR currently has an AMLER grant from Fiscal Year 2017 to implement the reclamation and removal of waste culm material, silts, and fines, from the Swoyersville Project that was previously referenced in my testimony. Due to the pandemic, we have had a temporary slowdown on the removal of the waste coal material to the Co-Generation Plants by our reclamation partners, due to the lack of demand and temporary shutdowns that had occurred due to the market conditions and COVID-19. Work is just starting to pick up this month and material is starting to move again from the site to continue the reclamation.

I've seen a transition of job responsibilities and or assignments by the PA DEP BAMR Staff to take on Project Management and increased Administrative roles as grant administrators as a part of our project and other AMLER Projects around the State. The PA DEP BAMR Staff have also become more involved in the community outreach and public information meetings process to maintain a high level of transparency with the communities where the project was developed. They listened to the community leaders and made many accommodations and changes to the project scope related to truck traffic patterns, time of operations, requests to have truck drivers and haulers use extreme caution around the intersections and school zone areas, an 800 number to call for any complaints that need to be addressed, coordination with PA Department of Transportation (PA DOT) for area road improvements, and dust suppression, to give you some examples.

There are some minor obstacles that should be considered like the permitting review and timing sequence between determining which areas on an AML site would fall under a Surface Mine Permit (SMP) or a Government Financed Construction Contract (GFCC). There could be improved Inter-Agency Coordination between State and Federal Agencies when it comes to Highway Occupancy Permits and alternative traffic routing when hauling of material in and out of a reclamation site is necessitated. There also may need to be more time given to complete projects and the ability to amend agreements, contracts, or grants to allow for

some flexibility and unforeseen circumstances, should they arise within a project's course of redevelopment and reclamation.

There are more than enough projects that have been proposed for funding that have made it a competitive program across the Commonwealth and I am sure that there were projects that were not funded that PA DEP BAMR could provide statistics on to show the need versus the availability of funds from the AMLER Program.

A challenge that we have faced is that there appears to be only a small percentage of the funds that are limited to the Administrative portion of the grants that a regional non-profit group like ours needs to have to in order to properly manage, administer, oversee, coordinate with the community leaders, and work with the reclamation partners to see that the sites are properly reclaimed and redeveloped. Funding limitations have us dedicating less hours in total to the project, when we would like to have additional funds allocated to our Staff time to administer the grants and be able to consistently be involved with the community and the State as a liaison for the project. We currently are doing our best and stay on top of the work as the project progresses.

In 2019, EPCAMR had applied in partnership with Tetra-Tech for a Rare Earth Elements AMLER Project Proposal to sample abandoned mine drainage (AMD) discharges across PA at pre-determined locations, along with our counterpart, in Western PA, the Western PA Coalition for Abandoned Mine Reclamation (WPCAMR), where EPCAMR was again the applicant. In early September of 2020, due to unresolved issues related to complying with both federal and state regulations and requirements governing these types of federal grant funds including *2CFR200 – the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*; *PA's Management Directive on Grant Administration*; and *PA's Procurement Code*, we were informed that the PA DEP BAMR was unable to award the AMLER funds through grants. As a result, all of the effort that was put in to developing a public-private partnership with Tetra-Tech, our proposed 2019 AMLER Project was not funded at that time and we lost an opportunity to move forward with sampling dozens of AMD discharges for rare earth element constituents. PA DEP BAMR anticipated some resolutions to these issues during the last quarter of 2020. The PA DEP BAMR decided to move forward with projects that met the Office of Surface Mining Reclamation and Enforcement's (OSMRE) project eligibility guidelines and which can be directly bid out by the Department. This decision was made after months of preparing the documents and proposal ahead of the application due date by myself and my Staff. All projects, we were informed of were evaluated on merit, but some projects could not be awarded due in part to the extenuating circumstances raised above. We were informed that once the current issues were resolved and the Bureau established procedures to comply with the Federal and State requirements, we would be able to resubmit our proposal under the 2020 or future AMLER Program applications. To date, we have no guidance on these issues and therefore have not been able to reapply to the AMLER Program since we aren't an eligible organization, and they are not grants.

If an organization like EPCAMR, as a regional, environmental non-profit, with over 25 years of experience in the Northern Appalachian Coal Region, isn't able to apply for these AMLER funds and can't be recognized in future rounds of funding, as eligible to receive a portion of those funds to administer the project funds, we lose the ability to leverage private investment dollars in our coalfield community projects and the ability to spend valuable time directly with the community leaders, the public, and to serve as a liaison to the State and Federal partners like the PA DEP BAMR and the Federal OSMRE. We feel strongly that this needs to change to allow for an organization such as ours and other eligible non-profits, Conservation Districts, or community watershed organizations, to remain vital partner in the reclamation, AMD remediation, watershed assessment, watershed restoration, and economic development of our coalfield communities.

2. Do you believe the program is accomplishing the goals and objectives Congress set forth for the program?

I believe the program is accomplishing the goals and objectives that Congress set forth for the Program. It has many successes across PA and in other States in Appalachia that I am aware of. PA has done a great job of highlighting those projects. EPCAMR has been a partner in many of them and have played a minor role in our Anthracite Region communities through either technical assistance or providing references, resources, water quality data, mapping services, and outreach to our regional partners as time has allowed and funding from

other sources gave us the opportunity to assist our communities in need. They are creating jobs, reclaiming landscapes, creating outdoor trail networks, outdoor recreational opportunities, ecotourism, community athletic areas and greenspaces, and large facility centers and warehouse distribution areas in some parts of Appalachia, like our region, in Northeastern PA.

Some examples of the jobs created are:

Heavy Equipment Operators, Fuels Managers, Project Managers, Geographic Information System (GIS Specialists), Truck Drivers, Co-Generation Facility Plant Managers, Material Processors, Equipment Operators, Mechanics, Industrial Boiler Union Boilermakers, Engineers, Mechanics, Job Johnny Companies, Fence Companies Installers, Rock Screen Equipment Operators, Water Quality Monitors, Design Engineers.

Seed Companies for grass mixes or wildflowers for vegetative cover and erosion control, quarry companies for stone for rock entrance constructions, conveyance of water, and swales to control runoff and surface water diversions, straw and silt fence companies for erosion and sediment control, concrete and macadam companies for road construction entrances into the sites, diesel delivery services, utility workers to establish power to site trailers.

Some of these jobs are off-site and ancillary as well as jobs that are retained.

3. How has your experience with the pilot program informed what we can anticipate under RECLAIM?

I would expect very similar projects to be successful. I would hope that a group like EPCAMR can become eligible to receive a grant and that the legal interpretations on the Federal level and the PA Procurement Code can be looked at more closely and an opinion or decision made that would be favorable to groups such as ours to be able to play even larger roles that we have in RECLAIM projects.

We want to have the ability to leverage Federal dollars with private investment and economic developers who are constantly wanting to partner with us on alternative clean energy projects that center around abandoned mine lands, solar development, geothermal potential of the underground mine pools in our region, consumptive use, low-flow augmentation, pump hydro storage, rare earth elements recovery, and the resource recovery of metals such as iron oxides, that are most commonly found in our AMD watersheds and local streams and tributaries that otherwise should be native brook trout streams.

The ability to have non-profits administer grants under RECLAIM could lessen the burden on State government to have to administer those funds and manage them when non-profits could perform those tasks and have sub-contracts in place with vendors, consultants, engineering, and design firms, and can work with local construction companies for the needed labor, machinery, trades, and unions that could provide those services and lead to the same jobs that we are trying to create. Funding from the program can be granted to non-profits and placed in restricted fund accounts specifically for the project and drawn down as the project proceeds as opposed to having to make requests for reimbursements at periodic intervals from the State. Working capital is essential for non-profits to have to draw down from at the beginning of projects otherwise short-term loans might need to be applied for to have a revolving cash flow to keep a project moving forward with a direct cash infusion that otherwise would lead to a delayed reimbursement of funds and an acknowledgement or stipulation in a sub-contract agreement that there will be a waiting period for payment that may be longer than expected.

Questions from Rep. Thompson for Mr. Hughes:

1. How will AML reclamation in general, and your organization's work in particular, be impacted in if the program is not reauthorized prior to September 30th?

The AML work that would remain unfinished if the Program is not authorized prior to September 30th of this year would leave hundreds of coalfield communities, including many in your District, faced with coming up with

other discretionary funds or potentially taxpayer dollars to fund those reclamation projects and I am not even confident that there is enough money to even consider treating the amount of AMD that remains in our 5000 miles of streams across the Commonwealth. Economic growth would be stifled. Piles would remain as signs of a lack of progress and vision in our communities. The disparity, environmental justice, and pollution problems would continue to plague our communities and the sense of pride that we want to encourage would be futile and hopeless, when what we really want is to instill hope and continued hard work in the hearts and minds of our coalfield communities, my friends, colleagues, partners, community leaders, and volunteers. AMD will continue to form and leach into our underground mines causing additional pollution problems. Sedimentation issues will remain and continue to clog our streams and impact our aquatic life and or lead to stream blockages, culvert blockages, and flooding issues.

We will have failed to be able to continue to become innovators and capitalize on these abandoned mine lands as landscapes that could reinvigorate and revitalize our local economies by making them the destination areas to locate businesses and other outdoor recreational opportunity areas, instead of deforesting pristine mountainsides in our headwater streams that often contain native trout fisheries.

If funding is discontinued and the law sunsets, PA will have to scramble in the long run to figure out how they are going to fund the continued operation and maintenance of the **8** Active AMD Treatment facilities across PA.

- Around **111** stream miles that have been improved could be potentially lost as well as the trout fisheries and around **25MGD** of AMD would go untreated once the funds run out.
- **46** Passive AMD Treatment Systems constructed by PA DEP-BAMR that are routinely monitored by PA DEP and Community Reclamation Partners could no longer utilize the funds
- **8** Other planned Active AMD Treatment Facilities that are in either the Design Completion or Conceptual Design Development could be shelved that would continue to allow an average of **51MGD** of AMD to go untreated into our watersheds and another **142** miles of streams would remain unrestored
- Without the Set-Aside Funds, under Title IV of SMRCA, that comes from the AML Trust Fund, we might as well not even consider looking into the development of qualified hydrologic unit plans (QHUPs) for remediation of thousands of other sites to become eligible for funding and our hopes to treat some of our largest Anthracite Region AMD discharges will be just that...wishful thinking.
- Funding would have to come from another source or general funds, and I would imagine that those employees that are running the Treatment Plants could lose their jobs and the burden of treatment and keeping the downstream watershed areas restored would fall upon the citizens of the Commonwealth.

We will not be able to leverage other sources of grant funds against private investment dollars that might otherwise come to these sites with investments to reduce to overall costs of reclamation or remediation. Ultimately, we will not be able to secure and create jobs that are necessary to uplift these communities that in some areas, have not been able to completely remove themselves from a coal economy. The current transitioning away from coal that we are seeing across the Country has happened already in Northeastern PA and across much of Pennsylvania, where the active coal industry is much smaller and having a hard time competing against the natural gas industry prices and other market conditions, in addition to seeing more and more coal-fired plants shut down.

If electric power coal sold for **\$38.53/ton** in 2019 and the AML fee is **\$0.28/ton**, that is a **0.7%** fee. In my opinion, it more than likely gets passed on to the end-user. The fee was higher in the past when coal production was higher. I do not believe this fee is crippling the coal industry. It is a narrative and one that I am not buying honestly, on a National level. I agree that something will need to be done to keep the AML Trust Fund solvent beyond the 15-year extension into the future as thermal coal production sales feel the market pressure. Possibly a supplement with US Treasury Funds as a stopgap measure, but nevertheless, there needs to be a restructuring of the fees to represent not only how or what type of coal was mined, but also, it's saleable end-use sector. Coke coal sells for **\$145/ton**. Commercial/institutional coal sells for **\$83/ton**. Other industrial coal sells for **\$61/ton**. In comparison, the current fees are a small pittance. What are the categories? [Ask the EIA](#). The long and the short of the discussion is that coal still exists and if it cannot be

sold to be burned for electricity, it will still be mined and sold at higher costs for another purpose to another market of higher value.

I will continue to see our streams run orange for another 25 years well into my hopeful retirement and my biggest fear will be realized if the AML Fund isn't reauthorized. My children and grandchildren are going to have to live with the same legacy that I grew up with that I have been fighting so hard my entire career to not have to have them experience. I want them to experience clean water, greenspaces, trails, recovered fisheries, and have opportunities for jobs that will allow them to live a healthy life in the coalfields, should they decide to stay and raise their families. At this point, I wouldn't be disappointed if they decided to leave and take a shot elsewhere and find a place that is much healthier, viable, and sustainable than having to live constantly in the shadows of culm banks and polluted mine water.

2. In your view, what can we do to help foster more public-private partnerships to help encourage more and better reclamation efforts?

We first need to work to develop comprehensive watershed restoration assessments and plans to make recommendations and to inform the private partners, communities, municipalities, public groups, non-profit and community groups in the watersheds of a menu of proposed projects that might be able to move forward with. Community support, further landowner identification, design, and construction projects, including AMD remediation, land reclamation, and stream restoration to improve fish, wildlife, and waterfowl habitat projects are all ways to invest in our communities and seeking the financial support from the larger employers and private interests who either want to come into our communities or are already there should be a priority. We can then determine whether or not the sites that we've identified are designated as Priority 1, Priority 2, Priority 3, or even Undetermined AML sites under the Federal e-AMLIS database to ensure that they could qualify for Federal funding under SMCRA Title IV and or the Set-Aside Program. We have our own Reclaimed Abandoned Mine Land Inventory System (RAMLIS) GIS Community Tool to help us do that. The Federal OSMRE electronic Abandoned Mine Land Inventory (e-AMLIS) database is incomplete.

We need to present our plans to the communities through invitations to public information meetings either in person or more recently virtually to highlight what work was completed in the plans and seek their public comment to incorporate into the plans before they are finalized. Community members could then provide us with additional details and historical context on the sites and locations that we tend to identify. Some sites are not AML site and are a part of either active mine permits that are idle or have ceased temporary operation. Other sites can be owned by coal operators and still are designated as AML sites under SMCRA. Some sites are on lands where Co-Generation facility plants are located and are doing reclamation as well that we have supported for over 2.5 decades. We then need to identify the property owners and facilitate discussions and introductions to those landowners with potential private investment or corporate entities that are looking to build on those properties or bring their industries to landscapes to create jobs and locate their operations, headquarters, or regional distribution centers, in the case of industrial park concepts. Ultimately, it does take a willing landowner who has qualified AML features, culm banks, mine fires, or AMD discharges to move a project forward and their interests and liability concerns have to be taken into great consideration.

Other factors to consider are community support. We have the interest of the communities at heart. Our organization was founded by movers, shakers, and community leaders from the conservation community, the Anthracite Industry, the Co-Gen Industry, and a Resource & Development Council (the Pocono NE Resource & Development Council). Our board members all live in the communities that we are serving and want to improve them so their children, my children, and our grandchildren to come, can prosper in those same communities in years to come. Looking at the transportation infrastructure and capacity of roads to handle truck transport and traffic. Traffic calming and alternative routes through communities should be considered. Noise levels and times of operations. Transparency. Workforce development and training opportunities. Partnerships with local community colleges for training and certification opportunities that could lead to jobs are other ways that we can work with private partners to invest in our communities for the common good. Support from our local

Chambers of Commerces, Industrial Development Authorities, or Community and Economic Development Corporations, and Business and Manufacturing Alliances will be vital. Often times, it is difficult to get a seat at the table with some of these entities because we can't afford a membership to multiple ones to be able to network with them and look for partnership opportunities. Communications and partnerships with the local unions and trades will go a long way too. Finally, funding opportunities that could be put towards the project as leverage to reduce the costs on the State, County, Local, or Federal contributions by private investors and development companies or industries such as solar developers, geothermal companies, manufacturing companies, big box warehouse distribution companies, recreational outfitters are just some examples of the direction we really need to go in to once we see Reauthorization extended and RECLAIM passed. EPCAMR has worked with our PA AML Campaign and have a Jobs Proposal Outline that we would be more than willing to discuss and share with all of you, should it be requested.

Lastly, I'd like to add on a more personal level, my volunteer work with Trout Unlimited for many years and in the capacity of the current Eastern Vice President of the PA Council of Trout Unlimited. National Trout Unlimited's President, Chris Wood, who has previously testified and submitted comments for the record has worked with our State Council and Chapters from across the Country to gain widespread support for AML Reauthorization and he is an esteemed colleague and friend of mine. I want to leave you with some of the impacts of AMD that we still have in our watersheds across PA and where I was born and raised, and how the AML Trust Fund and reclamation of our abandoned mine lands ultimately benefit our fisheries, outdoor recreation, and our local communities, beyond the jobs and economic development that has been the focus of RECLAIM.

- The impacts are severe. Iron and aluminum-laden water. Stream bottoms that are completely devoid of aquatic life leaving very little food for the fisheries if they could survive in the water quality conditions that they need to navigate through. I've never once found a redd in an orange stream, however, I've found orange streams that also were red.
- I've electroshocked fish that have contained aluminum hydroxide in their gill slits because as they are trying to osmo-regulate the low pH mine water through their bodies, as it becomes oxygenated, the metals drop out right in their mouths basically either suffocating them over time or forcing them to move to other areas of the watershed and unimpacted tributaries.
- The communities in urban areas where I live have to contend with the constant smell of hydrogen sulfide (rotten egg) smell that gases off when AMD comes to the surface and is aerated. Depending on the wind and the humidity, it can linger and smell quite disgusting.
- During storm events and with more and more flash flooding episodes, you can see slugs of metal sediments continuing to move through the watersheds downstream, eroding stream banks, former silt basins, and toe of spoil culm banks that become undercut and send additional culm waste and coal fines downstream that eventually either coat the bottoms of the streams or end up behind a dam on the River, as a legacy sediment, like the Conowingo Dam, in Maryland.
- The AMD can cause aquatic connectivity disconnects throughout our watersheds from the confluences with the larger river systems up to the headwaters where some of our more sensitive native brook and brown trout populations are more commonly found.
- Cleanup of the AMD will allow for the restoration of our watersheds that turn around fairly quickly with the return of macro-invertebrates for fish food and adjustments in pH, reduction in the levels of acid in the water, generation of alkalinity in the water, stream bottoms that can once again support the redds that are so desperately needed during spawning season to increase the populations and further

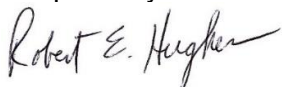
migration of the native species, and even an increase in the diversity of other fish species, minnows, and or warm water species in those same watersheds.

- Loyalsock Creek in Sullivan County, PA is a great example of a watershed where just the removal of a few milligrams/liter of metals, in this case, aluminum, that is quite toxic to trout at low concentrations, makes a huge difference in the fishery potential and recovery. 3 AMD Treatment Systems in that watershed have made the improvement such that the trout fishery is viable, thriving, and partners of ours and one of our TU Chapters, the Susquehanna Chapter of TU, wants to ensure that it stays that way, along with the landowners, the White Ash Land Association, the Sullivan County Conservation District, Loyalsock Creek Watershed Association, Sullivan County Commissioners, and other partners that we coordinate with very frequently and have done so for over 2 decades
- AMD Treatment Sites like the Earth Conservancy's Askam Maelstrom Oxidizer System has doubled as an outdoor environmental education center that EPCAMR has used for decades where we have taken thousands of area school children to learn about AMD and how we are working with community reclaimers like the Earth Conservancy to treat the polluted water.
- We hope that the Quakake Tunnel AMD Treatment System and Weatherly Borough Trail Project is going to be built as designed so that it can open up 8 miles of wild trout streams and provide more public access to the newly restored fishery at the western edge of the Pocono Region. We've partnered with many community organizations in that area like the Weather Borough Planning Commission, Weatherly Borough, Wildlands Conservancy, Cabot Corporation, and the PA DEP Bureau of Abandoned Mine Reclamation. The acid mine water in this area is impacted by aluminum that tends to turn the water a grayish-white color once it reached a certain pH. This is not the kind of "white water" that rafters and the on the water and Delaware & Lehigh Heritage Corridor trail recreational economies along the Upper Lehigh River want to enjoy.
- As for the communities, that must deal with the pollution problem, like I have had to deal with for nearly 4 decades of my life...I for one am tired of looking at orange water polluted with iron and white water polluted with aluminum. I am not the only one. It is why we have hundreds of volunteers across the coalfields that are ready to join us in our efforts to restore our communities and see our lands reclaimed. We want to be able to swim in our creeks, take our kids fishing, kayak or canoe down a river that is not polluted. We do not want to be disconnected by culm banks in our communities. We do not want our houses, cars, and siding to have to be constantly wiped down due to fugitive culm dust that blows from these AML sites.
- We want what Article 1. Section 27 affords us in our PA Constitution. *Natural resources and the public estate.*

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. PA's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people

Thank you again for the opportunity to share with you the importance of the passage of these 3 bills on behalf of many of our coalfield communities, the PA AML Campaign, and national partners in reclamation.

Respectfully submitted,



Robert "Bobby" E. Hughes, EPCAMR Executive Director