

Background Information Regarding the Use of AML Funds With Accompanying OSMRE Data

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The Abandoned Mine Lands (AML) Program under Title IV of the Surface Mining Control and Reclamation Act (SMCRA) is the primary means by which state, tribal and federal government agencies contend with the impacts of historic coal mining. Modern coal mines are required to contribute to fixing the damage caused before modern regulation, such as open mine shafts, dangerous cliffs known as highwalls, the collapse of underground mines known as subsidence events, and pollution of streams and rivers with toxic mine waste known as acid mine drainage (or “AMD”). The AML fee established under SMCRA Title IV for this purpose is set to expire in 2021, at which time the future of the AML program will become unclear.

With the need for reauthorization of the AML fee approaching, there is growing interest in Congress and the general public in understanding how the AML Program works and what has been accomplished with the funding that has been provided so far. The following will provide information on how AML funding has been utilized under SMCRA Title IV and add clarity as to how data on the use of AML funding is managed and the types of reclamation and restoration work conducted by the AML programs.

Data on the Use of AML Funding

Based on information from the Office of Surface Mining Reclamation and Enforcement (OSMRE), of the roughly \$10.9 billion total generated in AML fee receipts between FY1977-FY 2016:

- **OSMRE Operation** - \$1.6 billion has been used by OSMRE to administer the AML program and satisfy their obligations under Title IV, which include conducting reclamation projects in non-program states and providing important supplementary grants to state and tribal AML programs
- **UMWA Funds** - \$1.4 billion has been provided to the United Mine Workers of America (UMWA) health and retirement funds. Funding for UMWA provided through Title IV has come entirely from interest generated by the AML Fund or from moneys provided through the U.S. treasury.
- **Unappropriated Balance** - \$2.4 billion remains unappropriated, but will be distributed as dictated by SMCRA Title IV over roughly the next ten years. This money was purposefully allowed to accrue in the AML Trust Fund in order to generate interest to be used in supporting the needs of UMWA health and

retirement funds. The amount in the unappropriated balance is only a fraction of what is needed to complete remaining AML reclamation throughout the Country.

- **Grants to States and Indian Tribes** - \$5.5 billion has been distributed directly to the state and tribal AML programs to fund reclamation and support their programs. Of the \$5.5 billion distributed in grants to states and tribes:
 - **Construction** - \$3.48 billion has been spent directly on construction of AML projects. Construction costs are generally the only type of cost included in OSMRE budget justification reports, but conducting AML reclamation projects requires more than just construction funding.
 - **Project Design** - \$1.02 billion has been spent on designing and engineering AML reclamation projects. These projects require careful planning by personnel with special expertise to ensure that they achieve their intended benefit.
 - **Administrative Costs** - \$0.48 billion has been spent on administration, representing 8% of the total funding distributed to the states and tribes. This includes the funding necessary for staffing the state AML programs as well as management and oversight of reclamation projects.
 - **Acid Mine Drainage** - \$0.29 billion has been spent on AMD set-aside. This funding is held in trusts for the future operation and maintenance needs of water treatment systems. If long-term operation and maintenance funding runs out, the systems must be shut off and the streams will return to their previous polluted and often lifeless state.
 - **Undelivered Orders** - \$0.26 billion remains available for the states and tribes but has not been drawn from federal accounts yet. This funding has often already been committed to pending reclamation projects.

Contextual Information on OSMRE Data Related to the Use of AML Funding

Contextual understanding of the way that OSMRE manages and reports data related to the use of AML funds is critical to achieving clear, widespread understanding of AML funding under SMCRA Title IV. There are multiple sources of information available from OSMRE related to this funding, each of which has different purposes and therefore includes somewhat different information.

For example, misunderstanding of how AML fee moneys have been utilized can arise from the limited set of information included in OSMRE budget justification reports. This information typically includes *only construction costs* and only for certain classes of AML projects, which leaves out a variety of other important uses of AML funding.

Other, more complete sources of information produced by OSMRE, such as that provided above, show the complete range of activities to which AML funding has been directed.

As review of the accompanying OSMRE data and the requirements of Title IV regarding AML funding will show, all AML funding has been utilized in accordance with the law and oversight from OSMRE. The OSMRE data shows that the majority of AML funding is directed toward facilitating coal AML reclamation projects – either directly for constructing projects, designing and overseeing the projects, or staffing and managing AML agencies, all of which are necessary aspects of the AML program.

In some cases, Congress has also provided that funding be made available for activities other than facilitating coal AML reclamation, but those cases are relatively limited. With these exceptional cases noted below, it should be clear that the overwhelming majority of AML funding has been spent on coal AML projects as outlined by Title IV of SMCRA.

- Funding is provided to the UMWA for health and retirement funds, but this money comes from the interest generated by the AML Fund and from general treasury funding rather than from AML fee money itself.
- Certain states and tribes (the “certified” AML programs, which have already completed most of the coal AML work within their borders) are authorized to spend AML funding provided through the U.S. Treasury on noncoal/hardrock AML reclamation and mitigating the impacts of mineral development more generally, as well contending with remaining coal AML emergencies as they periodically arise. However, it should be noted that all funding for certified programs comes from the U.S. Treasury, whereas the funding generated by the AML fee itself is distributed only to uncertified states.
- In some cases, uncertified states can use AML fee money on noncoal/hardrock AML reclamation, but only where dire need arises and the Governor requests special permission. Due to the lack of a noncoal/hardrock AML fee, SMCRA Title IV funding is often the only source available for protecting citizens from imminent dangers associated with abandoned noncoal/hardrock mines.

Contextual Information on the Types of AML Work Conducted By the AML Program

AML hazards cause a wide array of public health and safety as well as environmental problems. They directly threaten the lives of nearby citizens, cause damage to private and public property, and pollute water supplies to the point of affecting the availability of drinking water and rendering streams unable to support life. Congress designed the AML program to contend with the full range of these negative impacts from AML hazards, and has given the AML programs the authority to engage in a variety of types of AML projects. Under the priority system in Title IV, the vast majority of AML

funding has been used to address high-danger safety and health risks such as sealing mine shafts, putting out coal fires, and responding to subsidence events, but a significant amount of funding has also been used for important purposes such as restoring drinking water supplies and bringing AMD polluted streams back to life.

Misunderstanding of how AML projects are classified and chosen sometimes arises regarding discussion of the “priority” levels of AML sites. While there are important differences between the priority levels assigned to AML hazards, it should be noted that any AML hazard that has received a priority designation and has been listed in the AML inventory is considered to be a “priority” in the sense of its importance to protecting public health and safety and the environment. The priority levels assigned to AML hazards as outlined in Title IV are meant to guide the sequence in which the AML programs select which project to do next. In this way, priority levels indicate the immediacy of the danger posed by a site relative to other hazards, but should not be taken as an indication of whether a certain site is worthy of attention by the AML program. All AML sites listed on the inventory are a priority.

Conclusion

The AML Programs has made great progress with reclamation in the roughly forty years since the passage of SMCRA. It is clear from the information available from OSMRE that AML funding is very well accounted for and understood, and clear from Title IV of SMCRA that the types of AML work conducted are in line with Congressional intent and understanding of the vast and varied nature of AML hazards.

It is also clear that the time and funding provided to the AML Program so far has not been enough to address the impacts from over two hundred years of unregulated coal mining from before the passage of SMCRA. The AML program is a model for the good that can be achieved by cooperation between government and industry, and if it is reauthorized, it will continue to make progress toward a day when the mistakes of the unregulated historical mining era can be left in the past. Until then, the AML programs remain committed to addressing the multi-faceted challenges posed by abandoned mine lands, and with more than \$10 billion in reclamation work remaining in the AML inventory, it is clear that our work is not done.

For more information on the SMCRA Title IV AML program, please contact Ryan Ellis at the Interstate Mining Compact Commission (IMCC) at rellis@imcc.isa.us or visit OurWorksNotDone.org