

# Basics of SMCRA Title IV

August 18, 2020

## What is the Surface Mining Control and Reclamation Act (SMCRA)?

Prior to 1977, coal mining activities throughout the U.S. were not federally regulated, thus creating a legacy of scarred lands, open pits, and degraded waterways. That changed with the passage of SMCRA in 1977, which set-forth federal guidelines requiring reclamation activities concurrent with coal mining activities, by setting enforceable standards, and created the Office of Surface Mining Reclamation and Enforcement (OSMRE) as the agency to oversee the program. Since the passage of SMCRA, many of the legacy impacts have been mitigated. Over the years, SMCRA has been amended several times, most recently in December 2006, where a number of changes accelerated reclamation of mine-scarred lands and waters in the coal regions of the U.S.

## How is Reclamation Funded?

Title IV is the section of SMCRA that contains the funding mechanism to reclaim land and water that was degraded by mining prior to SMCRA's passage.

Funding for reclamation activities is derived from a reclamation fee on every ton of coal mined in the U.S. since 1977. Those fees are placed into an account known as the Abandoned Mine Land Fund (AMLF).

- ◆ Reclamation fees will be collected through 2021, then cease.
- ◆ OSMRE administers the AMLF and the SMCRA program.

Now through 2022, funding for AML reclamation will be distributed to states and tribes as annual grants. The money comes from the reclamation fees in the AMLF having been collected during the prior year.

- ◆ These grants for reclamation are called **Title IV funding**.
- ◆ Only states and tribes impacted by past coal mining receive Title IV funding.
- ◆ A complex formula that considers a state's or tribe's current coal production level *and* the historic production level is used in determining each state's or tribe's annual grant.
- ◆ According to OSMRE, Pennsylvania's annual grants from 2007 to 2020 plus projected grants from 2021 and 2022 will total \$680.2 million.
- ◆ Due to inflation, sequestration, declining coal production, increasing AML inventory, and other factors, annual grants to states and tribes have been much lower than expected and do not go as far as 2006 projections expected. Thus reclamation efforts will not be complete when the fee collection is set to expire in 2021.
  - ◆ \$26 million was sequestered from Pennsylvania annual grants from 2007 to 2020\*, with another \$5.1 million projected to be withheld through 2022 if sequestration continues.
  - ◆ Emergencies are now the un-funded responsibility of the States and tribes and the frequency of emergencies has drastically increased in Pennsylvania in recent years.
- ◆ **PA's remaining high-priority Abandoned Mine Land (AML) inventory exceeds \$4.6 billion!**
- ◆ **Congressional action is required to continue this good work.**

## Only certain types of reclamation projects are eligible for Title IV funding:

### Priority 1 & 2 Health and Safety Problems

- ◆ Priority 1 problems represent "extreme" danger.
- ◆ They are mostly land-based hazards, including open mine shafts and portals, dangerous highwalls (man-made cliffs), open pits, mine fires, unstable waste piles, abandoned buildings and equipment, subsidence.
- ◆ Pennsylvania has inventoried over 287,000 acres of land in need of reclamation.
- ◆ Between 2008 and 2017, 71% of Pennsylvania's annual grant went to AML hazard project sites. Only 3% of PA annual grants went to administration.\*\*
- ◆ The official federal inventory of Pennsylvania's P1 and P2 problems estimates that they will cost \$4.6 billion to fix. Nationwide, that amount could exceed \$7.2 billion.

### Priority 3 Abandoned Mine Drainage (AMD)

- ◆ AMD is Pennsylvania's largest source of water pollution, degrading over 5,500 miles of streams and waterways with acidity, heavy metals, and sediment.
- ◆ **Funding to address AMD is limited** to situations where the problem is:
  - connected with a P1 or P2 project, or
  - using funding from a Title IV provision known as the **30% AMD Set-Aside**. This gives states and tribes flexibility to tailor reclamation programs for their own particular mix of problems.
- ◆ The inventory of AMD problems in Pennsylvania is not completely characterized. As subsidence and other emergencies occur and development accelerates, the inventory is constantly changing.

### Drinking Water Supplies

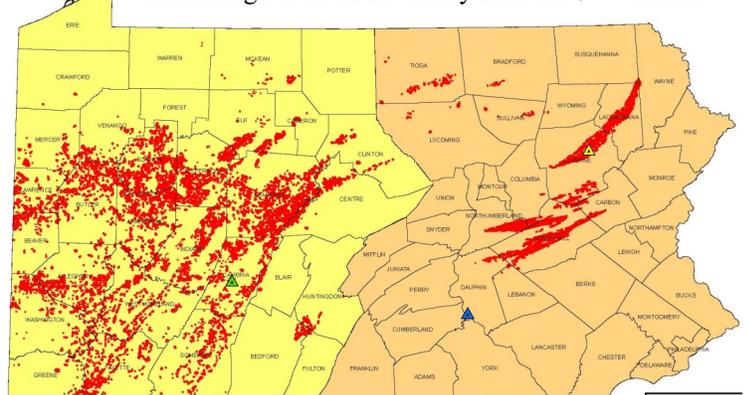
Drinking water supplies substantially damaged by coal mining before 1977 are also eligible for funding. A state may use all or some of its annual grant to build or fix water supply facilities.

### Administration

Each state and tribe may use a portion of its annual grant to administer its reclamation program.

- ◆ In Pennsylvania, the Department of Environmental Protection's Bureau of Abandoned Mine Reclamation (BAMR) administers the Title IV program.

Remaining PA AML Inventory Exceeds \$4.6 billion!



# Reauthorization of AMLF Fee Collection

August 2020

**Amendment to SMCRA.** The Fee Collection must be reauthorized through an amendment to SMCRA for our valuable work to continue. Advocates would like proposed legislation to include the following key points:

**Reauthorization of the AMLF Fee collection until year 2036.** Based on requested funding levels, projected future production, and estimated costs of cleaning up inventoried sites, it will take decades to address most of the abandoned mine problems.

**Restoring of the Fees.** Since the enactment of SMCRA in 1977, the per ton reclamation fees have never accounted for inflation while the cost of reclamation continues to rise. As a result of the 2006 Amendments to SMCRA, the fees were reduced. We propose restoring the fees to the 1977 levels so that progress may be made.

**Increasing Minimum Program State Funding to \$5 Million Annually.** Since 2006, this funding has been set at \$3 million. In recent years, minimum program states and tribes have received significantly less due to sequestration. Additionally, in recent years, OSMRE has discontinued support to states and tribes with AML emergencies forcing states and tribes to use their annual allotment to mitigate AML emergencies. Increasing this amount would help make up for past under-funding and ensure that states and tribes with significant AML problems but low production would be able to continue running effective programs. This potentially affects ten states.

**Exempting of SMCRA Title IV Grants from Sequestration.** Funds in the AMLF collected through SMCRA Title IV are not taxpayer funds, they are dedicated funds which can only be used for AML reclamation, and thus will not accomplish deficit reduction. The only way to exempt these funds from sequestration is to include it in legislation. If AMLF grants continue to be subject to sequestration, states and tribes will lose upwards of \$188 million and Pennsylvania alone stands to lose upwards of \$37 million over the remaining years of the current AML program. The SMCRA Title IV grants should be exempt from sequestration and all Title IV sequestered funds should be given back to the states and tribes, retroactive to FY 2013.

**Establishment of a Direct Line Item in OSMRE Budget for Emergency Projects.** Section 410 of SMCRA requires OSMRE to fund the emergency AML program using OSMRE's "discretionary share" under Section (402)(g)(3)(B), which is entirely separate from state and tribal non-emergency AML grant funding under Sections (402)(g)(1), (g)(2), and (g)(5). In FY 2011, OSMRE issued guidance to the states that the agency "will no longer declare emergencies." OSMRE has shifted responsibility for emergencies to the states and tribes with the expectation that they will utilize non-emergency AML funding to address them. No additional funding is provided for emergency projects. The result of this shift is that states and tribes must utilize a portion of their P1/P2 AML funding to address emergency projects. Pennsylvania has spent an average of \$4 million annually since 2012 on emergency projects. We urge congress to restore emergency funding and allow states and tribes to use their limited resources to address their existing inventories.

**Maintaining the Current Priority Ranking Criteria of Priorities 1, 2, and 3.** States and tribes have the discretion to use their allocations from the AMLF for projects falling into any of the three priorities.

**Maintaining Mandatory Distributions.** With the 2006 amendments to SMCRA, distributions to the states and tribes were no longer subject to Congressional appropriation and the distributions were made mandatory. Mandatory distribution should continue so Pennsylvania can receive the most funding possible in a given year.

**Maintaining the 30% Set-Aside Option for states and tribes.** Pennsylvania has taken advantage of this provision to construct and maintain AMD treatment systems. It is important to maintain the 30% Set-Aside provision to maintain flexibility for use of funds.

**Maintaining a Transfer of Interest to the Combined Benefit Fund (CBF).** Interest generated on the AMLF is currently transferred to the CBF to defray health care costs for retired miners and their dependents whose companies have gone bankrupt or are no longer in business. The CBF pays for health care expenses remaining after Medicare and Medicaid reimbursement and pays for prescription drugs. There are approximately 60,000 beneficiaries, whose average age is 78 years old.

## National AML Program Successes

**\$5.5 billion in grant funds distributed to states and tribes since 1977 has increased safety for millions of Americans\*\*\*:**

- More than 875,000 acres of high priority AML reclaimed
- Hazards associated with more than 46,000 open mine shaft eliminated
- Over 1,000 miles of dangerous highwalls reclaimed
- Over 29,000 acres of waste coal piles eliminated
- \$616 million spent on water hazards
- For every dollar spent on reclamation construction, \$1.59 was returned to the local economy
- For every mile of stream improved, there is a net gain of \$80,000/year to the local economy
- More than 7.2 million people nationwide protected from abandoned mine hazards

\*Values provided by Eric Cavazza, Director of PA DEP BAMR

\*\*Values provided by OSMRE's AML Mandatory Grant Status FY08-FY17 (FBMS) as of February 22, 2018.

\*\*\*Values provided by OSMRE's AML Closed Grant 2006-2012 (FMBS)

## PA AML Program Successes

Since 1977, the federal eAMLIS database reports Pennsylvania has reclaimed more than 167 square miles of abandoned coal mine sites, with a construction industry benefit of \$713.6 million. But much is left to be done.

*This is a Publication of the*

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