

Basics of SMCRA Title IV

May 2007

The **Surface Mining Control and Reclamation Act (SMCRA)** is sweeping federal legislation regulating coal mining in the U.S. Prior to its original passage in 1977, the coal mining industry was largely unregulated, especially with regard to the environment. Over a century of environmentally insensitive mining practices took a huge toll on the land and water where mining occurred. But SMCRA changed the face of the coal mining industry into one that is vastly safer with a significantly smaller environmental impact. Over the years, SMCRA has been amended several times, most recently in December 2006, where a number of changes accelerate reclamation of mine-scarred lands and waters in the coal regions of the U.S.

Title IV is the section of SMCRA that addresses problems associated with the poor coal mining practices of the past. Most importantly, Title IV contains the **funding mechanism** to reclaim land and water that was degraded by mining done before SMCRA's passage in 1977.

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 Reclamation Fund (AMRF)**.

- ◆ Reclamation fees will be collected through 2021, then cease.
- ◆ The federal Office of Surface Mining Reclamation Enforcement (OSMRE) administers the AMRF and the SMCRA program.

Now through 2022, funding for abandoned mine reclamation will be **distributed to states as annual grants**. The money comes from the reclamation fees in the AMRF having been collected during the prior year.

- ◆ These grants for reclamation is called **Title IV funding**.
- ◆ Only states impacted by past coal mining receive Title IV funding.
- ◆ A complex formula that considers a state's current coal production level *and* the state "historic" production level is used in determining each state's annual grant.
- ◆ According to current projections, Pennsylvania's annual grant, starting with \$47.5 Million in 2016, will generally increase until funding reaches about \$450 Million in 2021.
- ◆ **PA's remaining AML inventory is \$4.6 Billion!**
- ◆ Due to inflation, sequestration, declining coal production, increasing AML inventory, and other factors, annual grants to states have been much lower than expected and reclamation efforts will not be complete when the fee collection is set to expire in 2021. **Legislative 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.
- ◆ Nearly 950,000 acres remain degraded in Pennsylvania.
- ◆ The mainstream of the annual grants is intended to repair these problems (P1s and P2s).
- ◆ 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" Acid Mine Drainage (AMD)

- ◆ also known as Abandoned Mine Drainage
- ◆ AMD is Pennsylvania's largest source of water pollution, degrading over 5,500 miles of streams and waterways with acidity and heavy metals.
- ◆ **Funding to address AMD is limited** to situations where the problem is
 - α. **connected with a P1 or P2 project**, or
 - β. using funding from a Title IV provision known as the **"30% AMD Set-aside."**
- ◆ The **30% AMD Set-aside** provision allows a state, at its discretion, to use **up to 30% of its annual grant** to address AMD problems. This gives each state flexibility to tailor its reclamation program for its own particular mix of problems.
- ◆ The inventory of AMD problems in Pennsylvania is not completely characterized.

Drinking Water Supplies

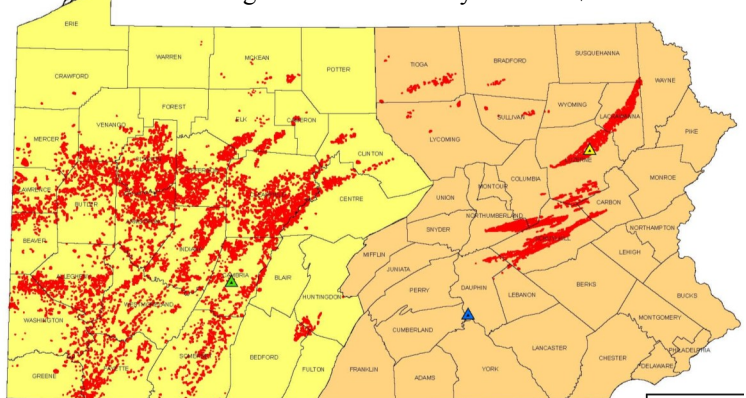
Drinking water supplies substantially damaged by coal mining before 1977 are also eligible for funding. A state may use all or some of its annual grant to build or fix water supply facilities.

Administration

Each state 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!



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Reauthorization of AMRF Fee Collection

The AMRF Fee Collection is Set to End in 2021

The Fee Collection must be reauthorized through an amendment to SMCRA for our valuable work to continue. Proposed legislation includes the following key points:

Reauthorization of the AMRF Fee collection until year 2036. Based on requested funding levels, projected future production, and estimated costs of cleaning up inventoried sites, it will take 15 years to address most of the abandoned mine problems.

Restructuring 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. We propose that the reclamation fee should be restructured to 35 cents per ton of coal produced by surface coal mining and underground mining, except that the reclamation fee for lignite coal shall be at a rate of 2 per centum of the value of the coal at the mine, or 10 cents per ton, whichever is less.

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 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 annual allotment to mitigate AML emergencies. Increasing this amount would help make up for past underfunding 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 AML Trust Fund collected through SMCRA Title IV are not taxpayer funds, they are dedicated funds which can only be sued 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 the AML Fund grants continue to be subject to sequestration, States will lose upwards of \$188 Million and Pennsylvania alone stands to lose upwards of \$37 million over the remaining seven 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, retroactive to FY 2013.

The PA AML Campaign also Supports:

Establishment of a Direct Line Item in OSM 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. The result of this shift is that states must utilize a portion of their P1/P2 AML funding to address emergency projects. We urge congress to restore emergency funding and allow states to use their limited resources to address high priority inventories.

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

Maintaining Mandatory Distributions. With the 2006 amendments to SMCRA, distributions to the states 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 AMRF 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.

Continuing OSMRE's Watershed Cooperative Agreement Program (WCAP). Since 1996, WCAP has distributed \$15.2 Million to 178 reclamation project constructed by non-profit watershed organizations. WCAP has helped to leverage Millions of dollars of additional state, private and foundation funding to projects implemented by non-profit groups.

Continued Focus on Abandoned Mine Drainage Remediation. Over 5,500 miles of Pennsylvania's streams are impaired by AMD and many are considered to be Priority 3, placing less emphasis on their remediation. It is widely accepted that the reclamation of impaired streams improves property values and brings much needed revenue to impoverished communities.

Encouraging the Redevelopment of Abandoned Mine Lands. As abandoned mine lands are reclaimed, they offer potential locations for economic development projects. By developing and marketing abandoned mine lands that would normally struggle to attract new investment, these "grayfields" can be turned into regional assets by creating economic opportunities, preventing sprawl, and conserving open space and natural resources.

For additional information about Title IV go to

<http://amlcampaign.wpcamr.org>

and

<http://www.wpcamr.org>

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