

WV's Abandoned Mine Lands Problem & the Federal AML Program: Background & WV State Plan Summary

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The Federal AML Program

When Congress enacted the Surface Mining Control and Reclamation Act (SMCRA) in 1977, it not only set up a regulatory regimen for future surface mining projects, it also sought to address the environmental, health, and safety impacts of pre-1977 mining by companies that were no longer in the coal mining business, or which had gone out of business altogether. The Abandoned Mine Reclamation Fund (more commonly referred to as the Abandoned Mine Land Fund, or just AML), was established to allow states to clean up the literally thousands of abandoned mine sites around the country, and the untold number of adverse post-mining impacts associated with them.

Traditional coal mining states in Appalachia had the most AML sites – West Virginia had more than 1,000 sites by itself - but they were also found in states that had seen their last coal reserves play out years, or even decades, before 1977.

The AML program is administered by the U.S. Department of the Interior's Office of Surface Mining (OSM), and is funded by fees levied on each ton of domestically produced coal. Until the reauthorization accomplished in the closing hours of the 109th Congress changed the fee structure and extended the program, the AML Fund fees were levied as follows:

- \$.35 per ton from a surface mine;
- \$.15 per ton from an underground mine; and
- \$.10 per ton of lignite, regardless of source.

The 1977 Act called for fees to expire in 1992, but Congress extended them seven times before December 2006, most recently by the FY 2006 Emergency Supplemental Appropriations bill, which

extended fee payments into the Fund through the end of the current fiscal year.

109th Congress Reauthorization

The latest AML Reauthorization was made a part of H.R. 6111, the Tax Relief and Health Care Act of 2006, which was signed into law on December 20, 2006. The AML provisions of that legislation extended the program for 15 years and reduced the fees as follows:

- In FY 2008-12, total fees were reduced by 10 percent;
 - \$.31.5 per ton from a surface mine;
 - \$.13.5 per ton from an underground mine; and
 - \$.09 per ton of lignite.
- In FY 2013-21, total fees are to be reduced by 20 percent;
 - \$.28 per ton from a surface mine;
 - \$.12 per ton from an underground mine; and
 - \$.08 per ton of lignite.

The 2006 Reauthorization modifies the system of direct payments to states:

- Provides historic production states that have the most serious reclamation problems – including West Virginia, Pennsylvania, Kentucky, Ohio, and Virginia - with higher annual AML allocations;
- Mandates that minimum program states receive at least \$3 million;
- Phases in distributions so that states will receive 50 percent of annual allocations in FY 2008-09; 75 percent in FY 2010-11; and 100 percent thereafter, through FY 2021;
- States will be paid their unappropriated balances out of the general fund, with total annual allocations capped at \$490 million, over 7 years.
- The general fund cap is based on coal royalties and revenues paid by coal companies;

- “Certified” states, or those states with no remaining AML sites to clean-up, but which are due money under the program, will receive future allocations from the general fund monies, also subject to the \$490 million per year cap.

Problems eligible for AML Program Remediation

Since the enactment of SMCRA, Congress and OSM have designated a number of problems associated with pre-1977 mining as eligible for AML program funding. These are designated as Priority 1 or Priority 2 problem sites, and generally reflect the wisdom of mining experts about the types of mining-related issues that constitute the greatest risk to human health or safety. Sites may receive remediation funding for single problems, multiple occurrences of the same problem, or multiple problems. It is conceivable that a single mine site may have multiple examples of each of the following Priority 1 and 2 abandoned mine problems. The problems listed below are in alphabetical order, not in order of their prevalence or relative risk to human health or safety.

West Virginia Situation

OSM lists in its on-line AML database only the most serious potential human health and safety problems associated with pre-1977 mining. These are known as Priority 1 and 2 (or P1 and P2) sites.

The OSM map attached indicates the pervasiveness of the problem in West Virginia. Since 1977, the State of West Virginia and OSM have identified 1,069 sites. Only 323 sites had been completely remediated by mid-2006. Prior to the December reauthorization, funding for only thirteen additional sites was secured.

It is theoretically possible for a single abandoned mine site in West Virginia to have multiple instances of each of the P1 and P2 problems. In 2003, OSM and DEP estimated:

- 265,758 West Virginia residents are “at risk” from one or more P1 or P2 AML problems one-half mile or less from their homes.

- 693,161 West Virginians are within 1 mile of one or more P1 or P2 problems.

State Reclamation Plan

The State Reclamation Plan sets out the criteria DEP uses to determine the scope of the problem statewide, as well as the process by which individual AML site remediation projects are prioritized and funded. DEP can only use AML funding for site remediation projects approved of by OSM, and the state agency uses the following priority categories to determine which potential projects will be submitted to OSM:

- Protection of public health, safety, general welfare, and property from extreme danger resulting from the adverse effects of past coal mining practices.
- Protection of public health, safety and general welfare from adverse effects of past coal mining practices which do not constitute an extreme danger.
- Restoration of eligible land and water and the environment previously degraded by adverse effects of past coal mining practices, including measures for the conservation and development of soil (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity.
- Protection, repair, replacement, construction, or enhancement of public facilities such as utilities, roads, recreation, and conservation facilities adversely affected by past coal mining practices.
- Development of publicly owned land adversely affected by past coal mining practices for recreation and historic purposes, conservation, and reclamation purposes and open space benefits.

Additionally, in determining the viability of specific projects, DEP considers the following factors:

- The availability of technology to accomplish the reclamation work with reasonable assurance of success.
- The specific benefits of reclamation to the locality:
 - Protection of human life, health, and safety;
 - Protection of the environment, historic or cultural resources, and recreation resources;
 - Protection of public or private property;
 - Abatement of adverse social and economic impacts of past mining;
 - Improvement of environmental conditions;
 - Improvement of the use of natural resources, including post reclamation use;
 - Demonstration of methods and technologies that could be used to reclaim areas disturbed by mining;
- The acceptability of additional adverse impacts that will occur during or after reclamation and of any uncorrected conditions that will continue to exist after reclamation.
- The costs of reclamation.
- The availability of additional coal or other mineral resources within the project area.
- Remining or secondary recovery in conjunction with reclamation projects.