

Subcommittee on Energy and Mineral Resources

Paul Gosar, Chairman
Hearing Memorandum

June 5, 2017

To: All Subcommittee on Energy and Mineral Resource Subcommittee Members

From: Majority Committee Staff, Josh Hoffman (x5-9297)
Subcommittee on Energy and Mineral Resources

Hearing: Oversight Hearing on the “*Oversight Hearing on the Office of Surface Mining Reclamation and Enforcement’s Abandoned Mine Lands Program.*”

The Subcommittee will hold an oversight hearing on **June 7, 2017, at 10:00 a.m., in 1324 Longworth House Office Building.** This hearing will focus on the Office of Surface Mining Reclamation and Enforcement’s Abandoned Mine Lands Program.

Policy Overview:

- Since 1977, the coal industry has paid over \$10.5 billion into the Abandoned Mine Land (AML) fund.
- Over the lifetime of the Abandoned Mine Land program, roughly \$6.8 billion dollars have been disbursed to states. Of that, roughly \$4.3 billion was spent on AML reclamation construction.
- There are different classifications for Abandoned Coal Mine Sites and the remaining sites represent more than \$10.5 billion in outstanding reclamation work, including \$4 billion worth of high priority sites.
- The U.S. Department of the Interior Office of Inspector General report “Office of Surface Mining Reclamation and Enforcement’s Oversight of the Abandoned Mine Lands Program” (Report No.: 2016-EAU-007) was released in March 2017.¹ The report highlighted the need for additional oversight of the Abandoned Mine Lands Program.

Invited Witnesses (in alphabetical order):

Mr. R. John Dawes
Executive Director
Foundation for Pennsylvania Watersheds
Alexandria, Pennsylvania

¹ The U.S. Department of the Interior Office of Inspector General. “Office of Surface Mining Reclamation and Enforcement’s Oversight of the Abandoned Mine Lands Program” (Report No.: 2016-EAU-007).
https://www.doi.gov/sites/doi.gov/files/FinalEvaluationReport%20OSMRE%20AML_033017_Public.pdf Accessed May 2017

Ms. Glenda Owens
Acting Director
Office of Surface Mining Reclamation and Enforcement
Washington, D.C.

Mr. Todd Parfitt
Director
Wyoming Department of Environmental Quality
Cheyenne, Wyoming

Mr. Hal Quinn
President and Chief Executive Officer
National Mining Association
Washington, D.C.

Mr. Rob Rice
Chief, West Virginia Office of Abandoned Mine Lands & Reclamation
Charleston, West Virginia
(on behalf of the Interstate Mining Compact Commission and National Association of
Abandoned Mine Land Programs)

Background

For over 200 years, from the time the first commercial coal mine was operated in the 1740s until the 1970s, there were no regulations governing environmental standards for mined areas once they were no longer in service.² As a result, many of these mines were abandoned without being properly reclaimed.

Thousands of inactive coal mines, abandoned before the era of modern regulation, can be found in communities across the U.S. Today, an estimated \$10.5 billion worth of abandoned mine sites remain, each of which has no living responsible party.³ Many of these abandoned mines pose health and safety risks or environmental hazards to the surrounding communities, burdening landowners and inhibiting opportunities for further development.

To address the multitude of abandoned mine sites across the country, Congress enacted the Surface Mining Reclamation and Enforcement Act of 1977 (SMCRA). SMCRA is the primary federal law regulating the environmental effects of coal mining in the United States. Title IV of SMCRA created an abandoned mine land (AML) reclamation program. The AML program is funded by fees that coal mine operators pay on each ton of coal produced to reclaim land and water resources adversely affected by coal mines abandoned before August 3, 1977. SMCRA also created the Office of Surface Mining Reclamation and Enforcement (OSM), an

² U.S. Department of Energy. "A Brief History of Coal Use." Fossil Energy Office of Communications. https://fossil.energy.gov/education/energylessons/coal/coal_history.html Accessed May 16, 2017.

³ U.S. Department of the Interior. Office of Surface Mining Reclamation and Enforcement. "Cost Summary National." Abandoned Mine Land Inventory System (AMLIS). <https://amlis.osmre.gov/CannedReport.aspx> Accessed May 16, 2017.

agency within the Department of the Interior, to promulgate regulations, fund state regulatory and reclamation programs, and ensure consistency among state regulatory programs.

OSM is the federal agency responsible for implementing the AML program and administering the AML Fund. States and Tribes receive grants and disbursements from the AML Fund to operate their respective AML programs, maintain an inventory of existing AML sites, and reclaim abandoned mines that pose threats to the surrounding communities. The AML Fund is supported by fees paid by coal operators on each ton of coal produced, which are then reallocated to states and tribes based on a complex distribution formula.⁴ This reclamation fee is currently set to expire in 2021.⁵ Presently, 24 states and tribes, known as Primacy States, regulate surface mining operations within the state, manage their own AML programs and receive disbursements from the AML Fund. There are currently 12 states and 14 Indian tribes classified as non-Primacy.⁶

AML Fee and Production Shifts

Reclamation of abandoned mines is conducted under the authority of Title IV of SMCRA using a fee levied on coal production. These funds are distributed to the States and Tribes through annual grants through mandatory appropriations. The amount of funding given to a state is a formula dependent upon current and past coal production levels.

In 2006, President Bush signed legislation that reauthorized the AML fees through 2021 and set the fees as follows:

- September 30, 2007:
 - Surface-mined coal – 35 cents per ton
 - Underground-mined coal – 15 cents per ton
 - Lignite – 10 cents per ton
- October 1, 2007 through September 30, 2012:
 - Surface-mined coal – 31.5 cents per ton
 - Underground-mined coal – 13.5 cents per ton
 - Lignite – 9 cents per ton
- October 1, 2012 through September 30, 2021:
 - Surface-mined coal – 28 cents per ton
 - Underground-mined coal – 12 cents per ton
 - Lignite – 8 cents per ton

Since SMCRA became law, the location from which coal is mined has changed. Currently the majority of coal production is from western states. This has largely shifted how

⁴ U.S. Department of the Interior. Office of Surface Mining Reclamation and Enforcement. “Grants Resources.” <https://www.osmre.gov/resources/grants.shtm> Accessed May 16, 2017.

⁵ U.S. Department of the Interior. Office of Surface Mining Reclamation and Enforcement. “Chronology of Major SMCRA-Related Events.” <https://www.osmre.gov/lrg/chronlisting.shtm> Accessed May 16, 2017.

⁶ U.S. Department of the Interior. Office of Surface Mining Reclamation and Enforcement. “Non-Primacy State and Tribes.” <https://www.osmre.gov/programs/AMLIS/nonPrimacyST.shtm> Accessed May 17, 2017.

much the mining operators in these states are paying into the AML Funds (Appendix A). In FY 2016 coal operators in Wyoming paid in 56% of all AML fees.⁷

AML Priorities and Tracking

AML sites have varying levels of severity and are prioritized depending on the hazard the site poses. The most serious sites are those which pose a threat to the health and safety of people. These sites are called Priority 1 and 2 (P1 & P2) or “high priority.” Environmental problems arising from AML sites are labeled Priority 3 (P3). SMCRA only requires states to inventory P1 and P2 sites whereas P3 sites are voluntarily entered into the inventory system.

The Abandoned Mine Land Inventory System (e-AMLIS) is an online database used by OSM to categorize and track unfunded, funded, and completed AML sites. It is important to note that not all existing AML sites are catalogued in the inventory systems managed by the states and OSM. While some unlisted sites are simply unknown to the AML programs, additional sites are deliberately not listed in the inventory because they do not pose threats to nearby communities. These low priority or previously unknown sites may become reclamation priorities as new residential and commercial developments are constructed in their vicinity, or as the conditions of the mines continue to deteriorate.

Certification

A state is able to become certified when it formally declares that it has reclaimed all known coal AML sites within their borders. States are theoretically incentivized to become certified as they are allowed greater flexibility on how they are permitted to spend AML grants, however, they are still required to give any subsequently discovered coal AML sites top priority. To date, Louisiana, Mississippi, Montana, Texas, and Wyoming have gained certification. Despite being certified these states still have AML sites in their inventories. This is due to the dynamic nature of these hazards. Previous reclamation efforts may have failed or require maintenance, or a remote site may be discovered as communities expand and people move near them prompting them to be categorized as a P1 or P2 site.

AML Grant Distribution Formula

The amount of the AML grant that a state is eligible for is determined by an iterative funding formula (Figure 1). A state’s AML grants are calculated in the following manner: Of the amounts that are paid in from a state, the state is eligible to receive 50% directly back. Where this State Share comes from is contingent on the states status as certified or uncertified. Uncertified states receive their State Share from the AML Fund. Certified states receive their State Share from the general fund of the treasury and their portion paid into the AML fund is redistributed to uncertified states based on the percentage of coal mined in those states before 1977. The other 50% is divided into a Historic Fund and the Secretary’s Share; 30% and 20% respectively. The Historic Fund is paid out to uncertified states based on the percentage of coal

⁷ U.S. Department of the Interior. Office of Surface Mining Reclamation and Enforcement. “Fiscal Year 2017 Grant Distribution.” <https://www.osmre.gov/resources/grants/docs/FY17GrantDist.pdf> Accessed June 2017.

mined in those states before 1977. If a state does not receive at least \$3 million, then payments are made from the Secretary’s Share, known as the minimum program payment.

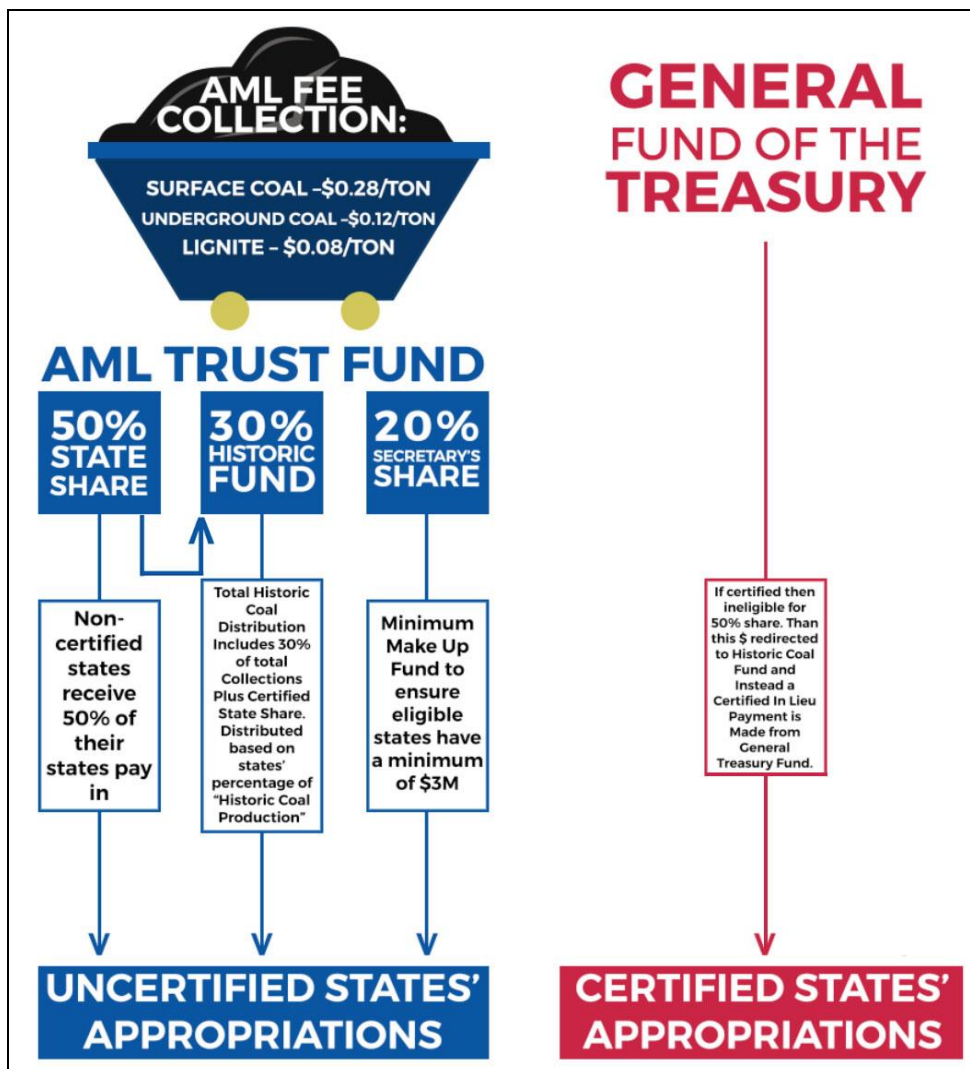


Figure 1: AML Fee Distribution

AML Trust Fund Disbursements

From 1977 to 2016, over \$9.2 billion in mining fees were deposited into the AML fund. The Department of the Interior has distributed \$8.2 billion from the AML fund for the reclamation of abandoned mine lands, the administration of grants to states and tribes, and distributions to United Mine Workers of America retiree healthcare and pension plans (Figure 2).⁸ To date, almost \$4 billion has been spent completing over 11,000 mine reclamation projects. Over 4,200 reclamation projects are currently being conducted and 6,650 sites have yet to be

⁸ U.S. Department of the Interior. Office of Surface Mining Reclamation and Enforcement. “Reclaiming Abandoned Mine Lands.” <https://www.osmre.gov/programs/AML.shtm> Accessed May 16, 2017.

reclaimed.⁹ These remaining sites represent more than \$10.5 billion in outstanding reclamation work, including \$4 billion worth of high priority sites.¹⁰

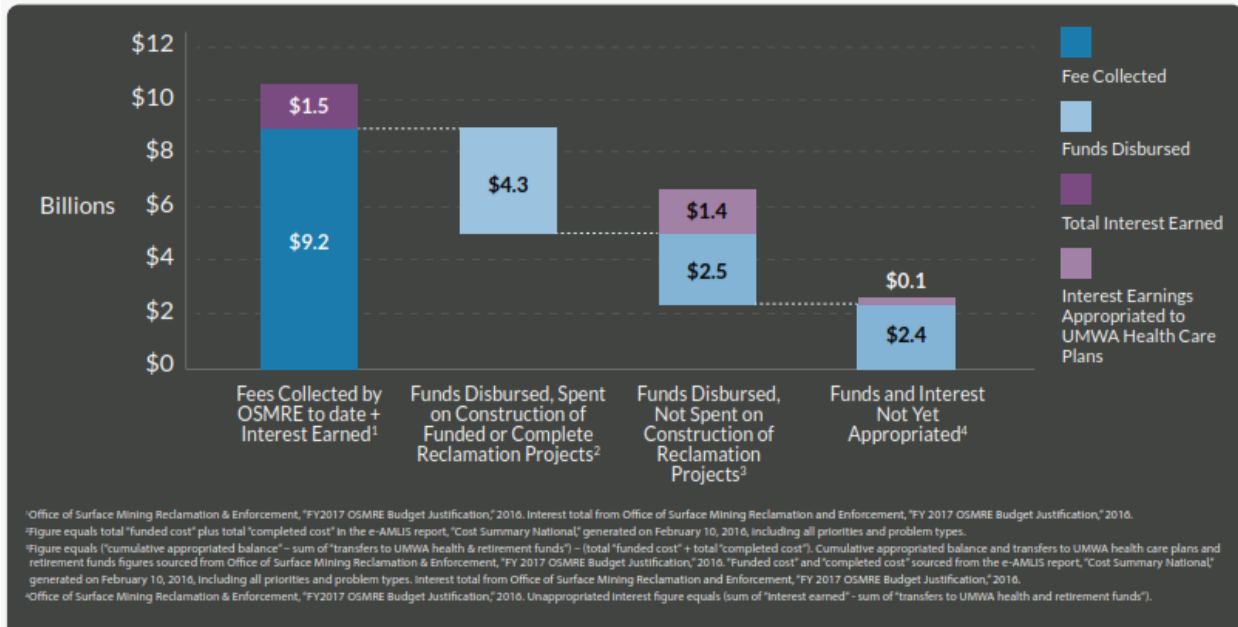


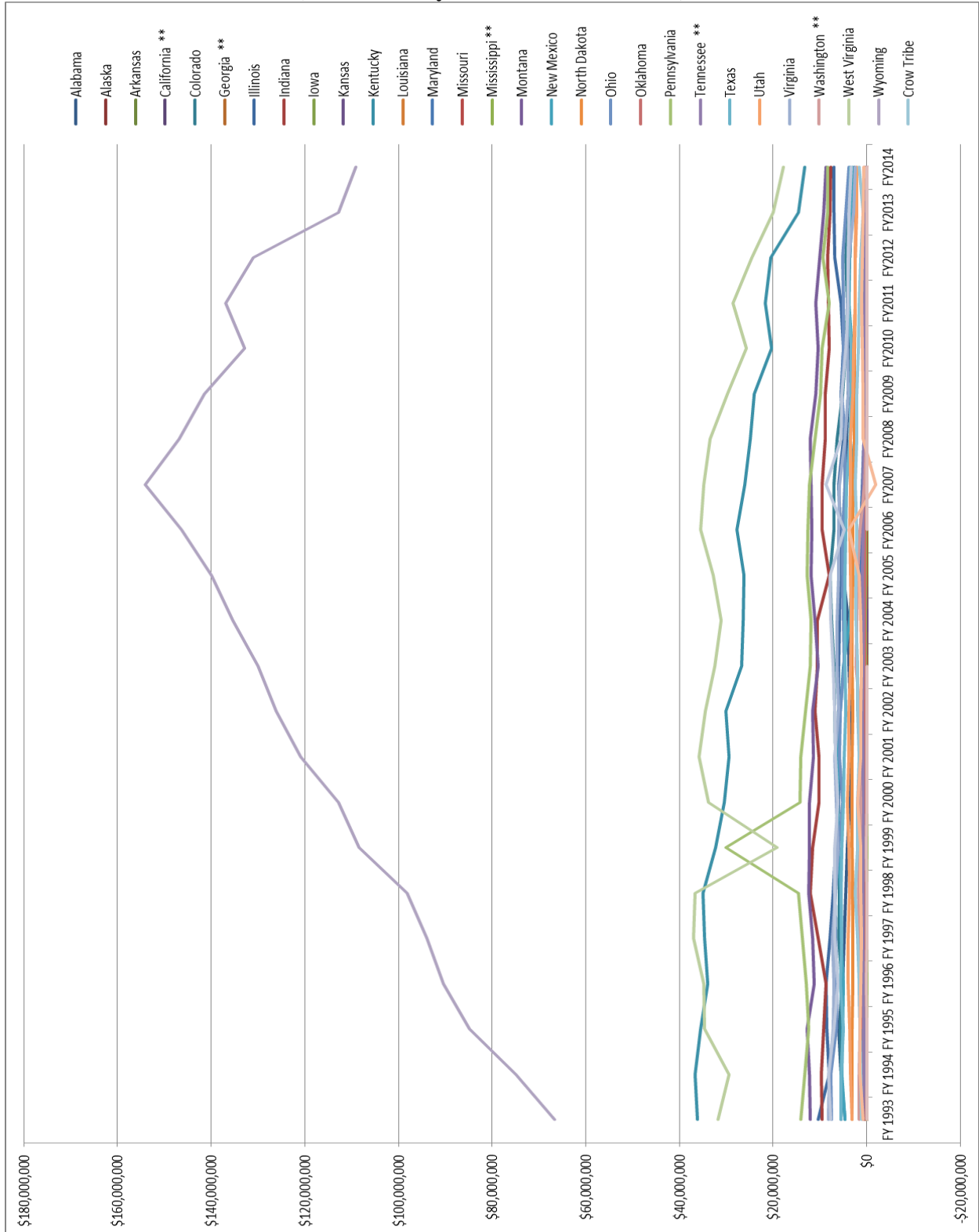
Figure 2: AML Disbursements¹¹

⁹ Office of Surface Mining Reclamation and Enforcement. Abandoned Mine Land Inventory System (AMLIS). "Site Status National." <https://amlis.osmre.gov/CannedReport.aspx> Accessed May 17, 2017.

¹⁰ Office of Surface Mining Reclamation and Enforcement. Abandoned Mine Land Inventory System (AMLIS). "Cost Summary National." <https://amlis.osmre.gov/CannedReport.aspx> Accessed May 17, 2017.

¹¹ The United States Extractive Industries Transparency Initiative. "USEITI AML Visualization." https://www.doi.gov/sites/doi.gov/files/uploads/useiti_aml_visualization_20160607_vsend.pdf Accessed June 2017.

Appendix A (AML Fees by State in True Dollars)



**Non-Program States