



To: House Committee on Natural Resources Republican Members
From: Subcommittee on Energy and Mineral Resources; Ashley Nichols (Ashley.Nichols@mail.house.gov) (251-656-8498) and Rebecca Konolige (Rebecca.Konolige@mail.house.gov) (914-217-8728)
Date: March 15, 2021
Subject: Legislative Hearing on 3 Bills: “Restoring Abandoned Mine Lands, Local Economies, and the Environment”

The Subcommittee on Energy and Mineral Resources will hold a legislative hearing titled “Restoring Abandoned Mine Lands, Local Economies, and the Environment” on three bills on Thursday, March 18, 2021, at 12:00pm. This is a virtual hearing.

Member offices are requested to notify Ashley Nichols by 4:30pm EST on Wednesday, March 17, if their Member intends to participate. Submissions for the hearing record must be submitted through the Committee’s electronic repository at HNRCDocs@mail.house.gov. Please contact David DeMarco (David.DeMarco@mail.house.gov) or Everett Winnick (Everett.Winnick@mail.house.gov) should any technical difficulties arise.

I. KEY MESSAGES

- Thousands of inactive coal mines, abandoned before the era of modern regulation, exist across the country. Over \$10.4 billion worth of abandoned sites with no living responsible party remain.¹ Many of these sites pose health and safety risks or environmental hazards, burdening landowners and inhibiting opportunities for development.
- The Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1231 et seq., SMCRA) established the Abandoned Mine Lands (AML) Program for the reclamation of abandoned coal mines, as well as a regulatory program for active surface mines. This law authorizes a fee, paid by industry, on every ton of coal produced to fund the cleanup of historic AML sites which is set to expire in September 30, 2021. H.R. 1734 would reauthorize the fee for another 15 years at the current levels.
- As the Committee debates reauthorization of the fee, the health of the domestic coal industry should be considered. The industry is producing significantly less coal than when the AML program was established and previously reauthorized.

¹ National Association of Abandoned Mine Land Programs. “SMCRA Title IV Abandoned Mine Lands Program Fee Reauthorization.” Briefing book.



- H.R. 1146 and H.R. 1733 seek to aid in remediation efforts by allowing non-governmental organizations (NGOs) to reclaim AML sites and by accelerating the release of \$1 billion of the AML Fund’s unappropriated balance, respectively.

II. WITNESSES

Panel I:

- Rep. Darin LaHood (R-IL-18) on H.R. 1146
- Rep. Matt Cartwright (D-PA-8) on H.R. 1733 and 1734

Panel 2:

- Todd Parfitt, Director, Wyoming Department of Environmental Quality, Cheyenne, WY [Republican witness]
- Marissa Lautzenheiser, Program Director, Rural Action, Mineral City, OH
- Bobby Hughes, Executive Director, Eastern Pennsylvania Coalition for Abandoned Mine Reclamation, Ashley, PA
- Susan Kozak, AML Division Director, Iowa Department of Agriculture and Land Stewardship, President, National Association of Abandoned Mine Land Programs, Des Moines, IA
- John Stefanko, Deputy Secretary, Office of Active and Abandoned Mine Operations, Pennsylvania Department of Environmental Protection; *On behalf of* Interstate Mining Compact Coalition, Harrisburg, PA

III. BACKGROUND

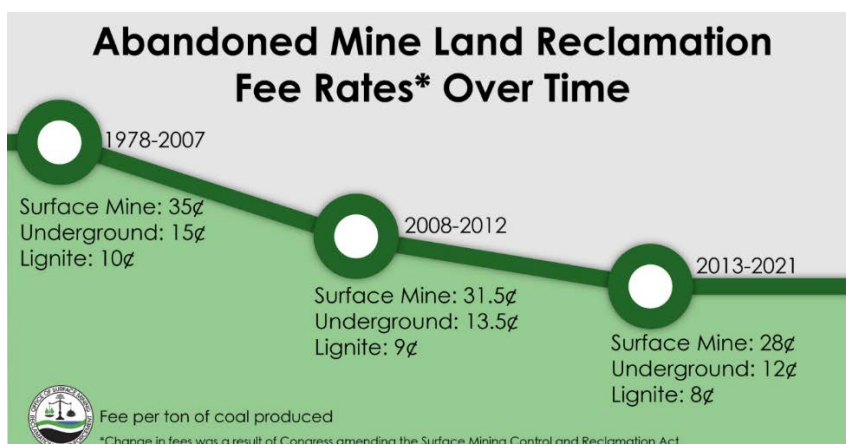
H.R. 1146 (LaHood) – Given the significant inventory of un-reclaimed AML sites, there is a need to identify new funding streams for reclamation efforts. The states are responsible for reclaiming abandoned mine sites and state AML programs undertake numerous cleanup projects every year. The need for reclamation in coal communities has encouraged third-party NGOs to participate in cleanup projects as well. Pennsylvania, for example, has a so-called “Good Samaritan” law allowing these NGOs to participate in cleanup without fear of becoming liable for abandoned sites they reclaim in the future, should conditions deteriorate through no fault of their own.² However, there is no such federal protection. H.R. 1146 would grant this liability protection to NGOs that wish to contribute their resources to the problem of abandoned mine lands and reduce the burden on the taxpayers and the states.

H.R. 1733 (Cartwright-Rogers) – This bill seeks to address outstanding AML issues while also encouraging the revitalization of depressed coal communities. This bill would accelerate the release of \$200 million annually for five years from the remaining unappropriated balance in the AML Fund for AML reclamation. This legislation requires states to identify AML projects that will provide the opportunity for community development on the impacted lands, but states are allowed to opt out of this requirement in

² <https://www.dep.pa.gov/Business/Land/Mining/BureauofMiningPrograms/Pages/GoodSamaritanAct.aspx>

certain cases to prioritize projects for which community development projects are not feasible. Funds authorized by this bill are limited to reclamation work alone; community partnerships and other sources of funding must be leveraged for the economic after-projects.

H.R. 1734 (Cartwright-Thompson) – This bill reauthorizes the AML fee at the current level for 15 years. The fee has been reauthorized seven times since it was established in 1977 and has been lowered several times as well. As previously stated, the AML Fund is supported by fees paid by coal operators on each ton of coal produced. These funds are then reallocated to states and tribes based on a complex distribution formula, enabling them to operate their respective programs and reclaim abandoned mines.³ Due to historic coal mining trends, most of these sites exist in the Eastern U.S., but many abandoned mines remain in Western states as well. Should the fee not be reauthorized by September 2021, the remaining unappropriated balance in the AML Fund will be distributed every fiscal year until depleted.⁴



Presently, 24 states, known as Primacy States, regulate surface mining operations within the state, manage their own AML programs, and receive disbursements from the AML Fund.⁵ Eleven (11) states and 14 Indian tribes are classified as non-Primacy.⁶ Primacy States are classified as either “certified” states, which have certified that they have reclaimed all abandoned coal mines within their borders, or “uncertified” states, which have remaining sites to reclaim. However, it is important to note that not all existing AML sites are catalogued. Low priority or previously unknown sites may become priorities as new residential and commercial areas are developed nearby, or as the mines’ conditions continue to deteriorate. For this reason, certified states often utilize their AML funds to clean up newly identified abandoned coal mines.

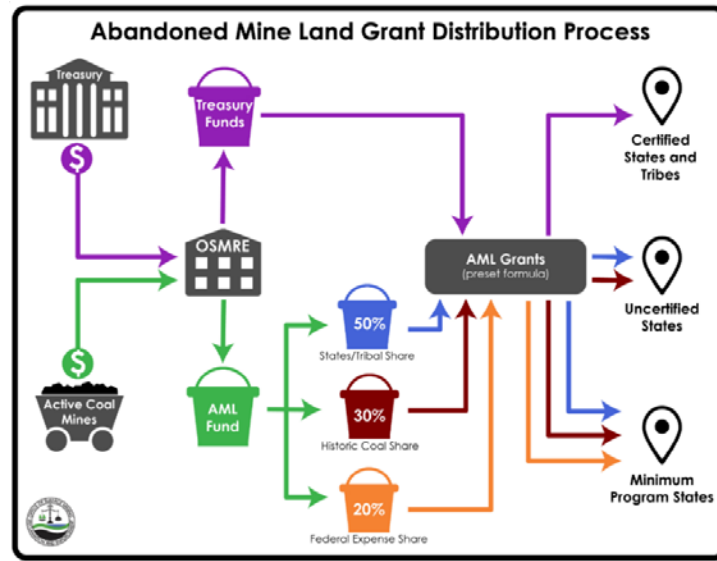
³ U.S. Department of the Interior. Office of Surface Mining Reclamation and Enforcement. “Grants Resources.” <https://www.osmre.gov/resources/grants.shtm>.

⁴ U.S. Department of the Interior. Office of Surface Mining Reclamation and Enforcement. “Reclaiming Abandoned Mine Lands.” <https://www.osmre.gov/programs/AML.shtm>.

⁵ U.S. Department of the Interior. Office of Surface Mining Reclamation and Enforcement. “Regulating Coal Mines.” <https://www.osmre.gov/programs/RCM.shtm>

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

Additionally, many abandoned mine projects include the unique complication of acid mine drainage (AMD), requiring ongoing mitigation. As a result, many state AML programs must conduct water treatment projects at AML sites, which must be continually maintained to prevent future contamination.



As of September 30, 2019, the AML Fund has collected a total of \$11.496 billion through the reclamation fee, including interest earned.⁷ Approximately \$9.262 billion has been distributed from the AML Fund for the reclamation of abandoned mine lands, the administration of state and tribal grants, and distributions to United Mine Workers of America retiree healthcare and pension plans (see OSM’s [Status of the AML Fund](#) document for a detailed breakdown of expenses since 1977).⁸ For fiscal year (FY)2021, \$152.22 million has been allocated for eligible states and tribes through the AML grant program, with the largest amounts going to Pennsylvania (about \$27.403 million) and Wyoming (around \$33 million).⁹ Approximately \$2.233 billion in the AML Fund remains unappropriated.¹⁰

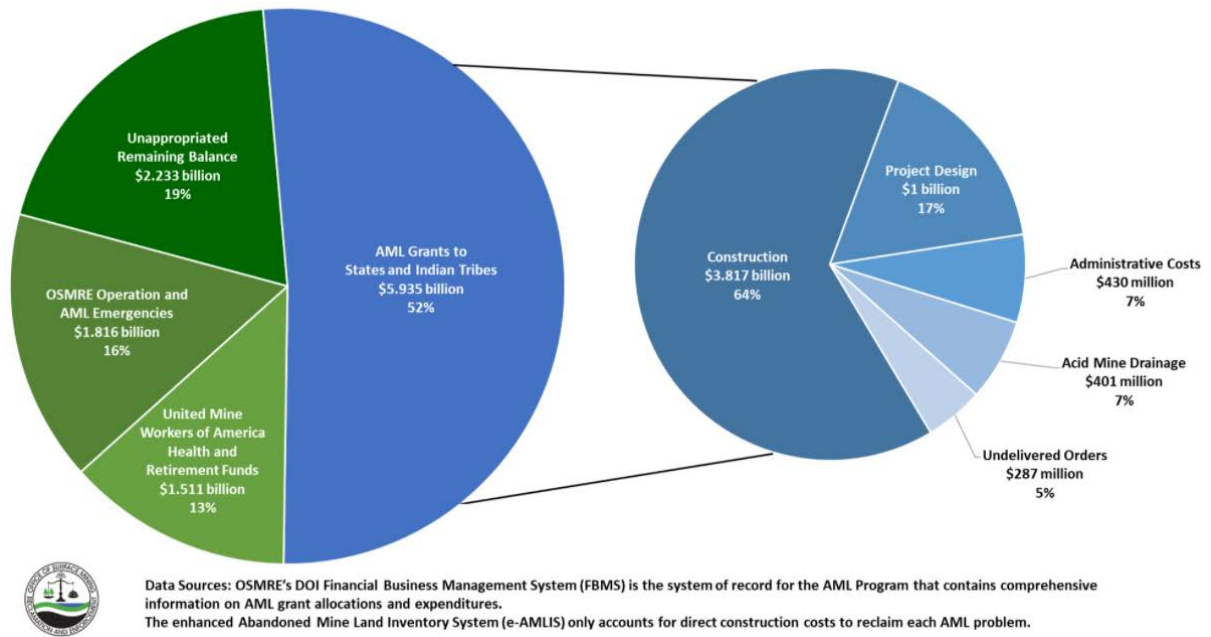
⁷ U.S. Department of the Interior. Office of Surface Mining Reclamation and Enforcement. “Reclaiming Abandoned Mine Lands.” <https://www.osmre.gov/programs/AML.shtm>.

⁸ Id.

⁹ U.S. Department of the Interior. Press release. March 1, 2021. “Interior Investing Over \$260 Million to Help Create Jobs and Revitalize Land in Coal Communities.” <https://www.doi.gov/pressreleases/interior-investing-over-260-million-help-create-jobs-and-revitalize-land-coal>

¹⁰ U.S. Department of the Interior. Office of Surface Mining Reclamation and Enforcement. “Reclaiming Abandoned Mine Lands.” <https://www.osmre.gov/programs/AML.shtm>.

Figure 1: Abandoned Mine Land (AML) Reclamation Fund
 FY 1977 – FY 2019
 Total \$11.496 Billion including Interest Earned, as of September 30, 2019



IV. MAJOR PROVISIONS & ANALYSIS

H.R. 1146

- Authorizes Memoranda of Understanding (MOU) between relevant state and federal agencies for the remediation of acid mine drainage and abandoned mine sites. State MOUs must be approved by the Secretary of the Interior and the Administrator of the Environmental Protection Agency and are subject to public review and comment.
- Authorizes eligible “Community Reclaimers” to participate in abandoned mine land cleanup projects for states that have an approved MOU. Under this program, Community Reclaimers are shielded from liability by enabling the states to formally assume liability and compliance responsibility on their behalf. This subsection also details requirements for: 1) Community Reclaimer qualifications; 2) projects applications; and 3) Secretarial approval.
- Clarifies that any control or treatment for AMD must comply with the Clean Water Act, unless there exists an approved MOU. This only applies where projects address mine drainage from abandoned mine lands.
- Requires states to include a list of proposed Community Reclaimer Partnership projects in their annual applications to the Secretary of the Interior requesting support for their respective State Reclamation Programs.

H.R. 1733

- Authorizes the Secretary of the Interior (the Secretary) to distribute \$200 million annually from FY2022 through FY2026 to states and tribes for reclamation and remediation projects identified as priority sites under SMCRA.

- Projects to reclaim Priority 1 and 2 sites may have an economic development follow-on project, but states may also opt out of this requirement. Projects to reclaim Priority 3 sites must be intended to create favorable conditions for economic development in the surrounding area (any economic development follow-on projects must use funds not provided under this bill).
- Projects must be conducted in areas that have been adversely affected by a recent reduction in coal mining-related activity or in communities that have traditionally relied on coal mining for a substantial portion of their economy. Projects may be exempted from this requirement at the request of the state.
- Each project applicant must engage in project planning and must collaborate with outside stakeholders as necessary. The public must be notified during the project planning process and be given the opportunity to comment at public meetings near proposed project sites.
- Specifies eligible project applicants and allows project-related activities to be sub-contracted out to nongovernmental organizations.
- From FY2022 through FY2026, \$195 million will be distributed to uncertified states and tribes with approved AML programs each year. Four-fifths of the allocations shall be based on historic coal mining in the state, and one-fifth shall be based on reclamation fees paid during FY2012 through FY2016.
- An additional \$5 million will be available each year to certified states, to be distributed by the Secretary through a grant application process.
- In FY2026, the Secretary shall reallocate any funds not committed to eligible projects to states and tribes that have fully committed their funds to projects in previous years. Reallocations will be based on the amount of unmet reclamation needs, the amount the state or tribe paid into the Fund, and the proportion of recent coal mining employment loss incurred in the state or tribe.
- Requires the Secretary to engage with the relevant state or tribe if it determines that a selected project does not meet the criteria specified under this Act. This process will take place before a project is rejected by the Secretary and can take no longer than 45 days from when problems are identified with the project in question. If a project must be rejected, the Secretary will provide Congress with an explanation for the rejection.
- Authorizes states and Indian tribes to use up to 30% of the funds received to be used for the treatment of acid mine drainage problems. A state or tribe may use funding from this program to remedy existing acid mine drainage problems, but only if they can demonstrate that its current acid mine drainage funding allocation is insufficient.
- Allows states and tribes to designate up to 10% of their distribution for project planning and administrative purposes; the Secretary can spend no more than \$3 million annually on staffing and other administrative purposes to carry out project planning.
- Requires the Secretary to issue rules or guidelines within 90 days to implement this Act. Funds must begin distribution within 60 days of issuing final rules or guidelines.
- The Office of Surface Mining Reclamation and Enforcement (OSMRE) field office shall approve or disapprove each project proposal, and issue authorizations if applicable, within 45 days.
- Requires the Secretary to report to the Committees on Natural Resources and Appropriations of the House of Representatives and the Committees on Energy and

Natural Resources and Appropriations of the Senate about the projects they have undertaken and the resulting economic and community benefits.

- Prohibits the use of funds distributed under this Act for purposes other than reclamation or acid mine drainage abatement; any state or tribe that does not comply with this will be barred from receiving subsequent funds from this program.
- Minimum state payments are raised from \$3 million annually to \$5 million annually.
- Requires GAO to issue a report to Congress no later than two years after enactment on the solvency of the Abandoned Mine Reclamation Fund and the impact of this Act on the payments issued to certified and uncertified states under SMCRA and transfers to the United Mine Workers of America Combined Benefit Fund.
- Clarifies that nothing in this Act shall be construed to reduce or otherwise affect payments made to certified states.

H.R. 1734

- Reauthorizes the coal AML fee at the current levels for 15 years.
- Allows OSMRE to provide reimbursements to states and tribes for money spent on emergency projects (covered by the agency before 2010).
- Increases funding for minimum program States from \$3 million per year to \$5 million.
- Requires OSMRE to retroactively provide to the states the funds withheld due to budget sequestration from FY2013 through FY2021, and exempts payments from the Fund from future sequestration.

V. COST

These bills have not been scored this Congress, but CBO calculated the costs over a ten-year period of the corresponding bills in the 116th Congress as follows:

H.R. 1146 – Negligible

H.R. 1733 – \$1.2 billion in direct spending plus \$18 million subject to appropriation

H.R. 1734 – \$395 million in deficit reduction

VI. ADMINISTRATION POSITION

Unknown.

VII. EFFECT ON CURRENT LAW (RAMSEYER)

H.R. 1146 (LaHood)

[Link to Ramsayer.](#)

H.R. 1733 (Cartwright-Rogers)

[Link to Ramsayer.](#)

H.R. 1734 (Cartwright-Thompson)

[Link to Ramsayer.](#)