

**STATEMENT OF
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U.S. DEPARTMENT OF THE INTERIOR
BEFORE THE
COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES
*OVERSIGHT HEARING ON THE OFFICE OF SURFACE MINING RECLAMATION
AND ENFORCEMENT'S ABANDONED MINE LAND PROGRAM***

JUNE 7, 2017

Introduction and Background

Chairman Gosar, Ranking Member Lowenthal, and Members of the Subcommittee, thank you for the invitation to testify on behalf of the Office of Surface Mining Reclamation and Enforcement (OSMRE) regarding OSMRE's Abandoned Mine Land program that is administered under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

Through SMCRA, Congress established OSMRE for two basic purposes. First, to ensure that the Nation's coal mines operate in a manner that protects citizens and the environment during mining operations and to restore the land to beneficial use following mining. Second, to implement an Abandoned Mine Land (AML) program to address the hazards and environmental degradation resulting from two centuries of coal mining activities that occurred before the law was passed in 1977.

Since SMCRA's enactment nearly 40 years ago, OSMRE, through the Abandoned Mine Land Program, has accomplished the following:

- Closure of over 43,000 abandoned underground mine shafts and openings;
- Eliminated over 950 miles of dangerous highwalls;
- Abated over 3,700 dangerous water bodies;
- Eliminated over 129,000 acres of dangerous spoils and embankments;
- Restored 35,000 acres of streams and land;
- Replaced infrastructure for over 53,000 polluted water supplies.

AML Program

AML Fund

Title IV of SMCRA created the AML reclamation program funded by a reclamation fee assessed on each ton of coal produced. Section 402(a) of SMCRA fixed the reclamation fee for the period before September 30, 2007, at 35 cents per ton (or 10 percent of the value of the coal, whichever is less) for surface-mined coal other than lignite, 15 cents per ton (or 10 percent of the value of the coal, whichever is less) for coal from underground mines, and 10 cents per ton (or 2 percent of the value of the coal, whichever is less) for lignite. As originally enacted, section 402(b) of SMCRA authorized collection of reclamation fees for 15 years following the date of enactment (August 3, 1977). Subsequent legislation extended the fee collection authority seven times and lowered the fee rate.

The fees collected are placed in the Abandoned Mine Land Fund (Fund) and are used to reclaim eligible lands and waters. Eligible lands and waters are those which were mined for coal or affected by coal mining or coal processing, and were abandoned or left inadequately reclaimed prior to the enactment of SMCRA on August 3, 1977, and for which there was no continuing reclamation responsibility under State or other Federal laws.

Reclamation Priorities

SMCRA established a priority system for reclaiming coal problems. Since the 2006 amendments to SMCRA, reclamation of eligible lands and waters conducted under the AML program has reflected three priorities. The first priority is "the protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices." The second priority is "the protection of public health, safety, and general welfare from adverse effects of coal mining practices." The third priority is "the restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices." Besides those three coal AML priorities, SMCRA continues to allow States and Tribes to expend money on other projects, such as the restoration of water supplies adversely affected by past coal mining activities, non-coal reclamation priorities, and placement of a portion of state AML grants in an interest bearing account for the purpose of abating acid mine drainage.

SMCRA also provides for the use of AML funds for other non-coal reclamation projects related to minerals development or mineral industries. For example, reclamation projects involving the protection, repair, replacement construction or enhancement of utilities related to water supply, roads, and other utilities in communities impacted by minerals development are eligible AML expenditures. A Governor or head of a Tribe may also determine the need for activities or construction of specific public facilities related to mineral industries within their jurisdiction. In addition, the Fund can earn interest. Since FY1996, an amount equal to the interest earned by, and paid into the Fund has been available for direct transfer to the United Mine Workers of America Combined Benefit Fund to defray the costs of providing health care benefits for certain retired coal miners and their dependents.

Certification

One of the primary mechanisms used by OSMRE's AML Program to restore abandoned mine lands and polluted waters is to provide grants to States and Tribes so that they may oversee the reclamation of the sites within their jurisdiction. Currently twenty-five (25) coal-producing States and three (3) Tribes receive AML grants annually. They are classified as follows:

Uncertified States – Those AML program States that have not certified complete reclamation of all the priority coal problems. Currently, 20 States are uncertified (Alabama, Alaska, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Missouri, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, Tennessee, Utah, Virginia, West Virginia);

Certified States and Tribes – Those AML program States and Tribes that have certified that all their coal reclamation priorities have been completed. Currently five states are certified (Louisiana, Montana, Mississippi, Texas, Wyoming) and three Tribes have certified (Crow Tribe, Hopi Tribe, Navajo Nation).

SMCRA Amendments

As originally established in 1977, the Fund was divided into State Share, Tribal Share, and Federal Share. Each State or Tribe with an approved reclamation plan was entitled to receive 50 percent of the reclamation fees collected annually from coal operations conducted within its borders. The "Secretary's share" of the Fund consisted of the remaining 50 percent of the reclamation fees collected annually and all other receipts to the Fund and was allocated into three shares as required by the 1990 amendments to SMCRA.

First, subject to annual Congressional appropriation, OSMRE allocated 40 percent of the Secretary's share to "historic coal" funds to increase reclamation grants to States and Indian tribes for coal reclamation. Second, OSMRE allocated 20 percent of the Secretary's share to the Rural Abandoned Mine Program (RAMP), operated by the Department of Agriculture. RAMP, however, had not been appropriated AML funds since the mid-1990s. The remaining 40 percent was allocated to the Federal Expense Share for OSMRE to use to administer the program, including programs such as the Watershed Cooperative Agreement Program and a Federal reclamation program for states without an approved AML Program. Because the entirety of the allocation was not always appropriated, the Fund developed a large "unappropriated balance."

On December 20, 2006, amendments to SMCRA were signed into law as part of the Tax Relief and Health Care Act of 2006 (Public Law 109-432). The 2006 amendments revised Title IV of SMCRA to make significant changes to the AML Program, including a reduction of the reclamation fee rates. The fees are currently at 28 cents per ton of coal produced by surface mining; 12 cents per ton for coal from underground mining, or 10 percent of the value of the coal at the mine, as determined by the Secretary, whichever is less, and the fee for lignite coal shall be at a rate of 2 percent of the value of the coal at the mine, or 8 cents per ton, whichever is less.

The 2006 amendments also changed the Fund allocation formula. The reclamation fees collected in the AML Fund are allocated as follows: 50 percent is designated as State and Tribal share; 30 percent is designated as Historic Coal share; and 20 percent is designated as Federal Expense

share. In addition, beginning on October 1, 2007, certified States and Tribes were no longer eligible to receive State or Tribal Share funds. Instead, amounts that would have been distributed as State or Tribal share to certified States and Indian tribes from the Fund are distributed as Historic Coal Share to uncertified States. The RAMP share was eliminated, and the historic coal allocation was further increased by the amount that previously was allocated to RAMP. In addition, the amount that uncertified States could set aside for acid mine drainage abatement and treatment was increased to 30 percent of a State's State Share and Historic Coal Share funds.

The 2006 amendments also created two new types of payments from the General Treasury under section 411(h). Both certified and uncertified States and Tribes received payments equal to their portion of the unappropriated balance of the AML fund that existed at the time the amendments were passed, known as "prior balance replacement funds". Certified States and Tribes also receive a payment, known as the "certified in lieu" payment, equal to 50 percent of the fees collected in their borders.

Further, the 2006 amendments provided certified States and Tribes greater latitude for the expenditure of AML grants, authorized the use of U.S. Treasury funds for distribution to certified States and Tribes, increased the funding threshold for minimum program states, and provided for the permanent distribution of AML funds. As a result of the 2006 amendments, AML distributions were no longer subject to annual Congressional appropriations. Finally, the amendments extended OSMRE's reclamation fee collection authority through September 30, 2021.

AML Fund Collections and Distributions

As of November 30, 2016, OSMRE has collected \$10.9 billion in the AML Fund. Of that amount, \$8.5 billion is the appropriated amount that OSMRE was authorized to distribute; \$2.4 billion is the unappropriated balance which is not currently available for disbursement.

OSMRE has distributed \$5.5 billion of the \$8.5 billion appropriated from the Fund as AML grants to States and Tribes. The remaining \$3 billion was allocated as follows - since 1996, \$1.4 billion in interest was transferred to the UMWA Health and Retirement Funds; and \$1.6 billion was transferred or used for SMCRA authorized expenditures which included: OSMRE's operating expense; oversight of the Federal reclamation projects; construction costs for emergency and high priority projects in non-AML programs; AML emergencies in AML program states and tribes; and earlier initiatives.

Opportunities

While OSMRE is proud of the many accomplishments highlighted above, we strive to constantly improve the programs managed under the auspices of SMCRA, and acknowledge there remains a significant inventory of AML problems.

OSMRE is developing plans to implement recommendations contained in the recent Department of the Interior Office of Inspector General's report entitled: Final Evaluation Report – Office of Surface Mining Reclamation and Enforcement's Oversight of the Abandoned Mine Lands

Program, issued on March 30, 2017. The report recommended that OSMRE take action to ensure that certified States give coal reclamation projects priority over non-coal reclamation projects. We will be implementing recommendations contained in the report to improve oversight and data management for AML grants provided to certified States, and to ensure that coal-related hazards are given reclamation priority.

Conclusion

OSMRE's goal is to ensure that as much of the coal AML reclamation problems as possible are adequately addressed. We will continue to work with States and Tribes, the Interstate Mining Compact Commission (IMCC), the National Association of Abandoned Mine Land Program (NAAML), local watershed groups and other stakeholders to identify opportunities to address the SMCRA priorities. OSMRE is fully committed to the success of the AML program.

Thank you for the opportunity to present this testimony. I would be happy to answer any questions you may have at this time.