

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 will 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 (OSM) administers the AMRF and the SMCRA program.

From 2008 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 \$30 million in 2008, will generally increase until funding reaches about \$130 million in 2018.
- ◆ **The total of amount these annual grants PA will receive from 2008 to 2022 are estimated around \$1.4 billion.**
- ◆ During years 2008 to 2014, the annual grants to states will be supplemented with money due to them from the AMRF that that already existed prior to 2008.

After the collection of the reclamation fee has expired (2023 and beyond), annual state grants may still be available by drawing down funds already accumulated in the AMRF. (Roughly \$1.5 billion is estimated to be in the AMRF in 2023 from previously un-distributed reclamation fees.) If a state is still eligible to receive its annual grant (*i.e.*, not certified) *and* while money remains in the AMRF, its annual grant will be **at least the 2022 level**. Current estimates place Pennsylvania's 2023 grant at about \$125 million.

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.
- ◆ About 180,000 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 \$1 billion to fix. However, this estimate was made in the 1980s; much has changed since then, so this is a very rough estimate at best.

"Priority 3" Acid Mine Drainage (AMD)

- ◆ also known as Abandoned Mine Drainage
- ◆ AMD is Pennsylvania's largest source of water pollution, degrading almost 5,000 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. However, using current technologies, the costs to address these problems is likely to be in the \$5 – \$10 billion range.

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.

Certification

A state receives annual grants until all of its P1 and P2 problems are resolved. A state that attains this status is said to be **"certified."** Upon certification, **annual grants cease**.

- ◆ The amount of money spent on AMD or on water supply projects plays no part in helping the state become certified. Only the P1 and P2 (health and safety) reclamation projects contribute toward certification.
- ◆ Spending annual grants on AMD or water supply projects will tend to delay certification by decreasing the annual funding available to P1 and P2 projects. In other words, funds spent on *non-* P1 and P2 projects will increase both the time and the total amount of funding needed to certify.

New features and implications of SMCRA Title IV

In December 2006, Congress passed sweeping legislation to amend SMCRA and its Title IV reclamation program:

Reclamation funding will increase roughly 3 to 4 times over what would have been expected had prior legislation been in effect. The amendments, as a whole, surpassed the most optimistic expectations.

A built in **ramp-up period** in annual grants means DEP's Bureau of Abandoned Mine Reclamation (**BAMR**) will **not experience significant funding changes** in its reclamation program for at least the first **couple of years**. Beyond the ramp-up period, the influx of increased funding will place **many more demands on BAMR** to put reclamation projects on the ground. Adequate planning is a must.

The annual reclamation grants that Pennsylvania actually receives may vary significantly from projections, due to numerous uncertain variables that ultimately determine grant amounts. **All projections** should be viewed as **extremely rough estimates**.

Not only will Pennsylvania receive substantially more reclamation funds, it will now have new **flexibility** to direct a significantly greater proportion of those funds **to address AMD problems**. Before the latest SMCRA amendments, a maximum of 10% of annual reclamation grants could be directed to AMD projects; a revised Title IV provision now allows a state to direct a maximum of 30% of annual grants to remediate AMD projects.

Many of the nuts-and-bolts **details** about the amended SMCRA program will have to wait until **OSM's rule-making** process is complete. That process will be largely complete by the beginning of the 2008 federal fiscal year (October 1, 2007). All rule-making requires public input.

The latest amendment to SMCRA is intended to be the last. If so, funding through the ongoing **collection of reclamation fees will end in 2021** with grant payout in 2022. Grants for reclamation activities in 2023 and beyond can last only as long as existing reserves in the AMRF hold out: **perhaps another 5+ years**.

Annual reclamation grants continue only to states that have not certified... *i.e.* states that still have unresolved P1 and/or P2 problems.

For additional information about Title IV go to
<http://amlcampaign.wpcamr.org>
and

<http://www.wpcamr.org>

Subscribe to free email newsletter
Abandoned Mine Posts:
<http://amp.wpcamr.org>

The 30% Set-aside for AMD

PA has more flexibility to direct funding to AMD projects than ever before with the new 30% AMD Set-aside provision:

Up to 30% of a state's annual grant may be "set aside" specifically to implement projects that eliminate sources of AMD or treat waters degraded by AMD. A state chooses annually what percentage (0%–30%) of its grant it will set aside to address AMD problems during that year.

- ◆ Set-aside funds are placed in an interest-bearing account; both principle and interest are available for AMD projects.
- ◆ Unlike P1 and P2 funding, which must be spent within 3–5 years, AMD Set-aside funding has no time restrictions.

Considerations in choosing the annual Set-aside amount

A state cannot shift its entire emphasis to AMD. Even if a state takes the full 30%, the funding going to P1s and P2s will still be considerably greater than the funding going to AMD.

A state's annual grant amount is unaffected by the AMD Set-aside it takes. As a result, money set aside for AMD decreases the funding available to address P1 and P2 projects in that year. The more Set-aside a state takes for AMD, the longer it will take to certify; a state will require additional years in the Title IV program as its Set-aside goes up.

If the state takes the full or a substantial portion of the allowed AMD Set-aside year after year,

- ◆ Certification would be delayed. The number of years to complete all P1s and P2s would increase because of lower *annual* P1 and P2 funding.
- ◆ The P1/P2 shortfall created by taking the AMD Set-aside (because Set-aside spending doesn't count toward certification) will be made up with additional years of funding. Viewed over the life of the program, Set-aside-funds are additional money supplementing the normal P1/P2 funding.

An example: **If Pennsylvania's certification is delayed by four years as a consequence of taking the AMD Set-aside, Pennsylvania would collect an additional \$500 million over and above the estimated \$1.4 billion it will receive through 2022** (assuming \$125 million annual grants).

Choosing a strategy of how much of Set-aside a state should take depends on the priorities within the state. Here are two hypothetical goals that represent opposite extremes:

- ◆ If a state's goal is to certify as quickly as possible, it should take little or no AMD Set-aside and refrain from using Title IV funding for water supply restoration. Reclamation money would be entirely directed to P1 and P2 problems.
- ◆ If a state's goal is to maximize the total amount of money it receives through Title IV and maximize funding for AMD, it should opt to take the entire 30% Set-aside year after year. Note: If this path is taken, it is possible that Title IV funding from the AMRF could run out before certification takes place, leaving some P1s and/or P2s unreclaimed.

One possible use of Set-aside funds is to place a portion in an interest-bearing "Operations & Maintenance" account. The hope is to use just the interest to sustainably fund the ongoing operations and maintenance needs of AMD treatment systems for as long as needed.