

# Recent SMCRA Title IV Amendments

*Abandoned Mine Posts*

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New federal legislation, which will provide much-needed funding for abandoned mine reclamation (AMR), came as good news for Pennsylvania and other historic coal-producing states. The legislation is actually a revamp of the existing Surface Mining Control and Reclamation Act of 1977 (SMCRA). The section of SMCRA that pertains to AMR is often referred to as “Title IV.” December’s amendments to Title IV were part of a much larger bill, the [Tax Relief and Health Care Act of 2006](#), one of the very last acts passed by the outgoing 109th Congress.

Here we present a somewhat simplified synopsis of the changes made to Title IV.

## **Reclamation Fees & State Funding**

### **Extend but decrease reclamation fees from coal mining**

The authority to collect a reclamation fee on each ton of coal mined in the United States was extended another 14 years, but with a two-tiered decrease over the next six years to 80% of the current levels (35¢ → 28¢ per ton of surface-mined coal; 15¢ → 12¢ per ton of deep mined coal). After 14 years (2021), collection of reclamation fees ends, and funding to states will extend to 2022. The 20% reduction and 14-year limit of fees were compromises in getting the law passed.

### **Mandate full funding from reclamation fees to states**

The full amount of money collected from reclamation fees (minus the portion allocated to OSM) will now go to the states, rather than be appropriated by Congress. In past years, Congress was stingy with their appropriations, resulting in an unspent balance of \$1.8 billion in the Abandoned Mine Reclamation Fund. This change was almost a miraculous accomplishment!

### **Distribute funds according to reclamation need**

The formula that determines how much funding goes to each of the various states has changed to generally direct future fees to states based on reclamation need.

### **Funding ramp-up period**

States will receive partial amounts of the reclamation funding (relative to fees collected) during the first four years, allowing them time gear up to the higher grant levels. Monies initially withheld will be paid in later years to states that are still not finished (“non-certified”) with their reclamation projects.

### **Payout to certified states**

Over a ten year period, “certified states”—those that have completed all Priority 1 & 2 projects—will receive the amounts due from unappropriated funds accumulated in the Abandoned Mine Reclamation Fund. Wyoming is the prime example of a certified state. It will receive about \$1.6 billion in installments of \$160 million, with few limitations on how the monies are spent. This was a compromise to help pass the law.

### **\$3 million annually to “minimum program” states**

Non-certified states’ minimum annual grant is now \$3 million, up from \$2 million.

## **Water Quality**

### **Allow 30% set-aside for acid mine drainage**

The maximum percentage of a state’s annual grant that can be used to address acid mine drainage has increased from 10% to 30%. As before, a state choose a lesser percentage at its discretion. The monies placed to this set-aside program do not have a time limit on spending, and may draw interest.

### **Strike the “general welfare” provision from Priority 2**

Funding is and has been generally reserved for Priority 1 & 2 projects (dealing with health & safety issues). Striking the “general welfare” provision from Priority 1 & 2 projects blocks the ability to fund acid mine drainage (AMD) projects. AMD is usually designated as Priority 3, which now can only be funded by the above set-aside program, unless the Priority 3 AMD project can be combined with a higher priority project.

### **No restrictions on amount of state grant used for Water Supply Restoration**

A state may use any portion (up from a previous 30% cap) of its annual grant to repair, replace, or construct water supply facilities, including water distribution facilities and treatment plants, in order to replace water supplies adversely affected by pre-1977 coal mining practices. West Virginia purportedly will make extensive use of this provision.

## **Other Provisions**

### **Allow remining incentives**

Federal incentives may be given to industry for remining abandoned mine sites that would not likely be reclaimed by industry without them.

### **Eliminate RAMP**

The law formally eliminated the Rural Abandoned Mine Program (RAMP). Once an important reclamation program, RAMP has not received any appropriations in the past six years and was effectively defunct anyway.

### **Health insurance for retired coal miners**

The law funds health insurance benefits for coal miners (and their families) whose companies have gone bankrupt and are no longer able to provide the benefits.

# Pennsylvania AMR Funding Under New SMCRA Amendments

*Abandoned Mine Posts*

January 15th, 2007

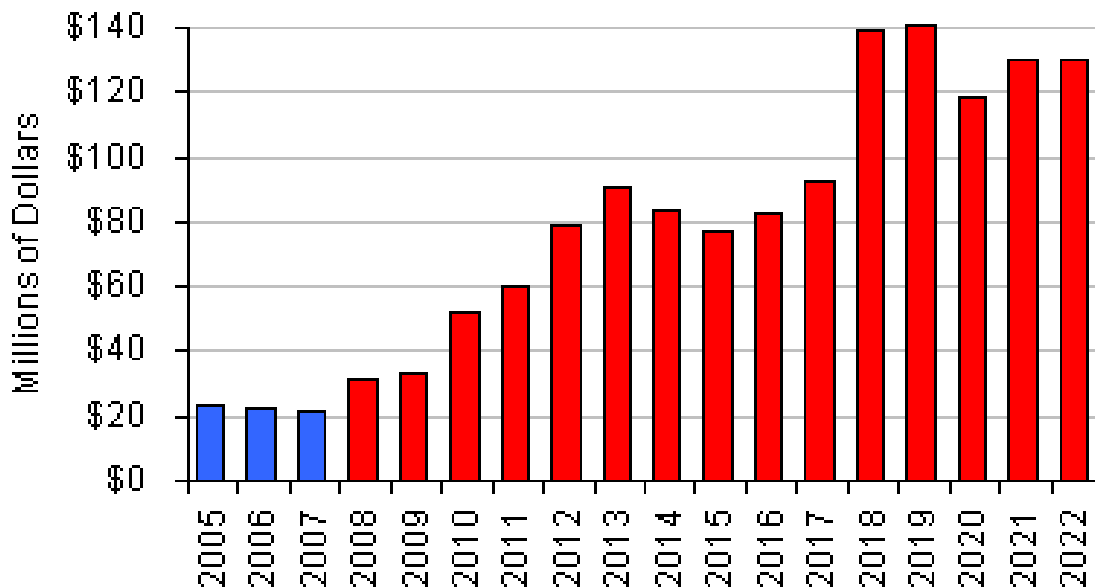
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*Western PA Coalition for Abandoned Mine Reclamation (WPCAMR)*

New federal legislation will provide much-needed funding for abandoned mine reclamation (AMR) in Pennsylvania and other historic coal-mining states. Last week, *Abandoned Mine Posts* summarized the key points of the Title IV revisions, which pertain to abandoned mine reclamation. Today, we look at what the law means for reclamation of Pennsylvania's mine-scarred lands and polluted waters.

The Commonwealth of Pennsylvania will receive a very substantial increase in the annual grant it receives through Title IV for abandoned mine reclamation. The following chart projects Pennsylvania's estimated annual funding, which will result in a cumulative total of nearly **\$1.4 billion** over the life of the legislation.

## **Pennsylvania's Estimated Annual Title IV Grants**



From the current funding level of \$21.4 million—before the new law kicks in—the annual grant will rise steadily but modestly in the first few years, allowing Pennsylvania time to gear up for the higher grant levels. In the outgoing years, annual grants over \$120 million are expected.

This latest reauthorization is intended to be the **final** reauthorization on the ability to collect per ton reclamation fees on coal production. The final collection year is 2021.

Congress has enabled enough fee collection to complete the existing **estimates** of all Priority 1 and Priority 2 projects for each state over this time period. In Title IV lingo, there's enough funding to have all states "certified". Pennsylvania will surely be one of the last states to certify.

However, whether or not all states actually certify in this time period can't yet be known. The inventories of P1 & P2 projects are out of date, both in the actual sites needing to be reclaimed and actual costs. It's anticipated that some sites will be able to be taken off the inventory because they've been reclaimed outside the program or no longer pose a threat.. Sites not previously known may be placed on the inventory. A "best guess" places Pennsylvania's P1 & P2 inventory at about \$1 billion.

Another factor in how fast a state is able to certify depends on a state's choice to use provisions which divert funding from P1 & P2 projects, namely the 30% AMD set-aside program or the Water Supply Restoration program. This will necessarily slow the pace of P1 & P2 reclamation, and may even prevent a state from certifying before the money runs out.

Yet another consideration is what happens once the reclamation fees cease after 2021. In 2022 the fees collected in 2021 will be dispersed. Following that, states not yet certified may not be completely out of luck. Whatever remains as a balance in the Abandoned Mine Reclamation Fund will – we hope – be available for reclamation needs. Possibly another few years or more worth of reclamation funding will be available through this mechanism.

At this point we don't yet know how much of these monies can go to on-the-ground projects, or what the mix of projects will be. Some of the funding will necessarily pay administrative overhead, mostly through DEP's Bureau of Abandoned Mine Reclamation. Thus far, DEP has not developed a policy regarding the law's provision that allows 30% of the funding to be set-aside for acid mine drainage remediation. However, the total amount of funding Pennsylvania receives is essentially fixed, so if an emphasis is placed on Priority 1 & 2 (health & safety) projects, the amounts available for acid mine drainage would suffer, and vice-versa.

DEP Secretary Katie McGinty announced that a number of roundtable forums will be scheduled around the state to gain input from various stakeholders, including the public, about how to best manage this funding over the next 15 years.