

# AML MANAGEMENT IS EQUALLY INEFFICIENT AND INEFFECTIVE

The historic structure and management of the AML program has resulted in squandering billions of tax dollars on projects and activities unrelated to the AML Fund's primary purpose of environmental restoration of abandoned mine sites.

## Fast Facts

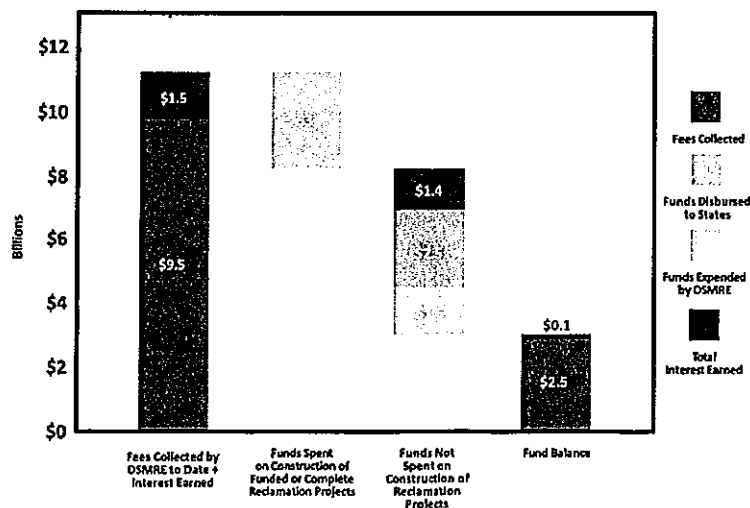
- The coal industry has paid more than \$9.5 billion into the AML Fund. Adding interest earned to the coal company contributions it brings the total receipts to almost \$11 billion.<sup>1</sup>
- Approximately \$8.5 billion has been spent from the Fund.<sup>1</sup> Yet to date 45 percent of the distributed money has been spent on projects other than high priority (P1 & P2) sites.<sup>2</sup>
- The administration of the AML Fund has left most of the high priority AML sites unaddressed with only \$2.8 billion of the high priority (P1 & P2) and low priority (P3) abandoned coal mined lands reclaimed as of Sept. 30, 2016.<sup>1</sup>
- The \$5.7 billion gap between spending and actual reclamation of priority coal AMLs reveals that only one of every three dollars has reached the priority remediation sites for which they were intended, as attested by Acting OSM Director Glenda Owens.<sup>2</sup>
- The cost of the remaining high priority sites is now estimated at \$6.5 billion.<sup>3</sup>

## Proposals to Enable the Continued Diversion of AML Tax Dollars

The AML fund has been subject to several diversionary expenditures and the RECLAIM Act is the most recent proposal to spend tax dollars intended for environmental remediation on extraneous purposes already better served by specific federal programs. The RECLAIM Act would accelerate the misuse of AML tax dollars for economic revitalization and diversification while priority AML sites go unaddressed. According to West Virginia Office of Abandoned Mine Lands and Reclamation Chief Robert Rice, "RECLAIM is a gamble, whereas the AML program is a guarantee."<sup>2</sup>

The RECLAIM Act fails to fix a broken process that diverts more than half of AML tax dollars to non-high priority sites and inflates administrative expenses at enormous expense to the federal treasury. In effect, the RECLAIM Act continues the diversion of AML tax dollars ensuring the program never achieves its purpose while extending a tax intended to expire decades ago.

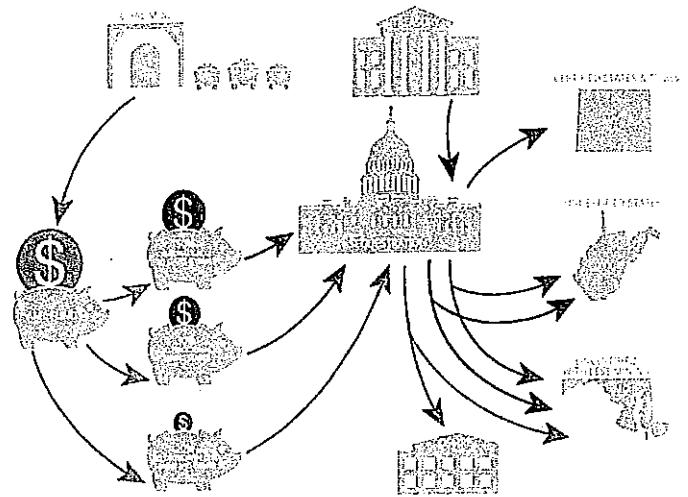
The industry supports the goal of providing assistance for distressed coal communities, but the funding for such help should not come from AML, a program not designed for this purpose.



## Structural and Administrative Impediments to Success

The AML Fund is financed by fees levied under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Its purpose is to finance restoration for land abandoned or inadequately restored by mining companies before Aug. 3, 1977. The AML Fund is supported by fees levied per ton of domestically produced coal. The fee is \$0.28/ton for surface-mined coal, \$0.14/ton for underground-mined coal, and \$0.08/ton for lignite. The fees have been extended eight times and is scheduled to expire in 2021.

The original allocation formula for AML fund distributions was not aligned properly with the core purpose of the program. Only 20 percent of the funds were allocated to states based upon historic production (pre-1977), which is the best proxy for measuring the need in terms of high priority coal projects. The other 80 percent was split among three other accounts (state share based upon post-1977 production; federal operations; rural abandoned mine program).



Graphic by E&E Publishing.

The structural mismatch between the source of AML fees and the need for high priority coal projects became apparent when more coal production shifted to the west. Over time, large portions of the AML receipts originated and remained in states where fewer or no priority coal AMLs exist. Several of these structural flaws have been partially remedied through the 2006 amendments. But as the recent investigations by the Inspector General as well as AML program data reveal, loose administration and lack of discipline continue to plague the program with states' failure to adhere to the priorities, the continuation of set aside programs that divert money from the priorities, and the inability to deliver accurate or useful cost accounting for AML projects.<sup>4</sup>

This is not only a financial gap for the program but a credibility gap for the program managers. Accounting for the \$5.7 billion gap is difficult, if not impossible, from the information OSMRE makes publicly available. OSMRE admits that "there is no consistency" with respect to how these costs are accounted for.<sup>2</sup>

## NMA Position

Congress should provide the AML program with the necessary oversight and reform to return it to the original purpose and bring it to a successful conclusion by 2021. In the interim, since, as some suggest, the AML Fund balance reflects a large excess of revenues currently, the AML tax on coal production should be suspended.

A plan should be developed now for the distribution of AML funds to non-certified states accompanied by firm conditions on their use for actual remediation of P1 and P1 coal AMLs. A plan designed to deliver the remaining AML funds received through 2021 should consider the following framework:

- All AML funds would be distributed to uncertified states according to the historic production formula that serves as the best proxy for actual need in terms of high priority coal AMLs. The state and federal share accounts would be eliminated.
- Each state would be directed to account for AML funds they received and sequestered in state set-aside accounts and those funds, with the earned interest, deployed to P1 and P2 coal lands.
- OSMRE administrative costs would be reduced and capped to align with a more limited federal role of collecting the AML fees and distributing them under the simplified historic production formula.

<sup>1</sup> AML Reclamation Accomplishments, *DOI Budget Justifications FY 2018*, OSMRE, (Appendix p. 155).

<sup>2</sup> U.S. House, Committee on Natural Resources Subcommittee on Energy and Mineral Resources.

*Oversight Hearing on the OSMRE's Abandoned Mine Lands Program*, June 7, 2017.

<sup>3</sup> U.S. House, Committee on Appropriations Interior Subcommittee. *Department of the Interior FY18 Budget Hearing*, June 8, 2017.

<sup>4</sup> DOI Inspector General, *OSMRE Oversight of Abandoned Mine Lands Program* (Rep. No. 2016-EAU-007, March 2017).