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Abandoned Mine Reclamation Fee on Coal

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Summary

The Abandoned Mine Reclamation Fund, also known as the Abandoned Mine Land (AML) Fund, is financed by fees levied per ton of domestically produced coal. The fee is 35 cents per ton for surface-mined coal, 15 cents per ton for underground-mined coal, and 10 cents per ton for lignite. The fund and the fees were established by the Surface Mining Control and Reclamation Act of 1977 (SMCRA) to finance restoration of land abandoned or inadequately restored by mining companies before August 3, 1977. The fees were originally scheduled to expire in 1992, but Congress has extended them five times. The three extensions since 2004 have been for periods of under one year. The authorization to collect the fees is set to expire on September 30, 2005. The version of the FY2006 Interior, Environment, and Related Agencies appropriations bill (H.R. 2361) passed by the Senate on June 29, 2005, would extend the fees for nine months, until June 30, 2006.

The AML Fund has an unappropriated balance of \$1.6 billion which earns interest. Since FY1996, most of the annual interest earnings of the fund have been transferred to the United Mine Workers of America (UMWA) Combined Benefit Fund (CBF) to help pay the medical expenses of “orphan” retirees, their spouses, and dependents. From FY1996 through FY2004, \$679 million in interest was transferred. The law provides that if the regular AML fees sunset, special fees should be established solely to provide for the annual transfer to the CBF.

Under current law, 50% of the AML fees collected are allocated back to the state or Indian tribe that collected them (known as the state share). Since 1977, when SMCRA was enacted, the production of coal has shifted westward, mostly to Wyoming, while most of the remaining high priority reclamation sites are in eastern states, the location of historic (pre-1978) coal production. The Office of Surface Mining estimates that at least \$3 billion in additional reclamation expenditures is needed to clean up remaining Priority 1 and 2 sites. AML fees could be lower, or collected for fewer years, if the state share allocation were eliminated and the AML Fund focused on reclaiming these high priority sites. However, western states would have less interest in supporting the AML Fund if they received nothing in return for their producers’ contributions.

In its FY2005 budget, the Bush Administration proposed returning unobligated state share balances to the states and eliminating the state share allocation so that more of future AML fee collections could be spent on the reclamation of high priority sites. It proposed to reduce the AML fees in three stages, by 15%, 20%, and finally 25%, over the period FY2005-FY2018. In contrast, in its FY2006 budget, the Administration proposed extending the AML fees at their current rates.

In the 109th Congress, there are proposals to extend the AML fees longer term as part of bills to reauthorize the abandoned mine reclamation program. H.R. 2721 (John Peterson) and S. 961 (Rockefeller) would extend the fees at their current rates through FY2019. H.R. 1600 (Cubin) would lower all of the fees by 20% and extend them through FY2020. This report will be updated when legislative events warrant.

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Abandoned Mine Reclamation Fee on Coal

History of Authorizations

The Abandoned Mine Reclamation Fund — also known as the Abandoned Mine Land or AML Fund — was established by the Surface Mining Control and Reclamation Act of 1977 (SMCRA).¹ Its purpose is to finance restoration for land abandoned or inadequately restored by mining companies before August 3, 1977. The AML Fund is supported by fees levied per ton of domestically produced coal. The AML fees were originally scheduled to expire in 1992, but Congress has extended them five times.² The Omnibus Budget Reconciliation Act of 1990 extended the fees from 1992 through FY1995.³ The Energy Policy Act of 1992 (EPACT) extended the fees from 1995 through FY2004.⁴ The Continuing Resolution for FY2005 extended the fees for 51 days until November 20, 2004.⁵ The Consolidated Appropriations Act for 2005 extended the authorization to collect the fees for nine months, until June 30, 2005.⁶ And, most recently, the Emergency Supplemental Appropriations Act for FY2005 extended the fees for three months, until September 30, 2005.⁷

The version of the FY2006 Interior, Environment, and Related Agencies appropriations bill passed by the Senate on June 29, 2005, would extend the AML fees for nine months, until June 30, 2006.⁸ The counterpart bill approved by the

¹ P.L. 95-87, Title IV; 30 U.S.C. 1231 et seq.

² The expiration date of the fees is specified in Sec. 402(b) of SMCRA; 25 U.S.C. 1232(b).

³ P.L. 101-508, Sec. 6003(a).

⁴ P.L. 102-486, Sec. 2515.

⁵ P.L. 108-309, Making continuing appropriations for the fiscal year 2005, and for other purposes, enacted Sept. 30, 2004, Sec. 125.

⁶ P.L. 108-447, enacted Dec. 8, 2004, Division E, Title I, Sec. 135. This provision originated in S. 2084, Sec. 123. See U.S. Congress, Senate, *Department of the Interior and Related Agencies Appropriations Bill, 2005, Report to accompany S. 2084*, Report 108-341, Calendar No. 695, 108th Cong., 2nd Sess., Sept. 14, 2004, p. 47.

⁷ P.L. 109-13, An act making Emergency Supplemental Appropriations for Defense, the Global War on Terror and Tsunami Relief, for the fiscal year ending September 30, 2005, and for other purposes, enacted May 11, 2005, Sec. 6035.

⁸ H.R. 2361(Public Print). The AML fee extension is included in Title I — Department of (continued...)

House (H.R. 2136) did not contain a similar provision. The issue remains for the conference committee to resolve.

A longer-term extension of the AML fees is likely to be linked to the reauthorization of the abandoned mine reclamation program⁹ and to plans for federal assistance to the United Mine Workers of America (UMWA) Combined Benefit Fund (CBF).

Fee Levels and Collections

Under section 402(a) of SMCRA¹⁰ the AML fees were set at the rate of 35 cents per ton for surface-mined coal and 15 cents per ton for underground-mined coal (or 10% of the value of the coal at the mine, whichever is less). The fee was set at 10 cents per ton for lignite (or 2% of the value of coal at the mine, whichever is less).¹¹ These same rates continued each time the fees were extended.

According to the legislative history of section 402(a) of SMCRA, the lower fee set for underground mining compared with surface mining reflects the "...disproportionately high social costs incurred by underground coal mine operators in meeting responsibilities under the Coal Mine Safety and Health Act of 1969, as amended."¹² The fee for lignite coal was agreed to by the conference committee. "The compromise reached on the reclamation fee for lignite reflects the conferees balancing two factors. First, lignite generally has had a lower value than coal and thus a 10 percent fee could be onerous. Second, many recent long term contracts for lignite have had prices in the same range as subbituminous coal."¹³ Thus the

⁸ (...continued)

the Interior; General Provisions, Department of the Interior, Sec. 127 of the appropriations bill as passed by the Senate. See CRS Report RL32893, *Interior, Environment, and Related Agencies: FY2006 Appropriations*, by Carol Hardy Vincent and Susan Boren.

⁹ For further discussion, see CRS Report RL32373, *Abandoned Mine Land Fund Reauthorization: Selected Issues*, by Robert L. Bamberger.

¹⁰ 30 U.S.C. 1232.

¹¹ There is also a federal excise tax on coal that funds the Black Lung Disability Trust Fund. The black lung tax is currently levied at the rate of \$1.10 per ton of underground-mined coal and \$.55 per ton of surface-mined coal, not to exceed 4.4% of the price at which the ton is sold by the producer. There is no black lung tax on lignite, or on imported or exported coal. See Section 4121 of the Internal Revenue Code and CRS Report RS21935, *The Black Lung Excise Tax on Coal*, by Salvatore Lazzari. For more information on the expenditures financed by this tax on coal, see CRS Report RS21239, *The Black Lung Benefits Program*, by Edward Rappaport.

¹² U.S. Congress, House, *Surface Mining Control and Reclamation Act of 1976*, Report of the Committee on Interior and Insular Affairs, to accompany H.R. 13950, 94th Cong., 2d Sess., H.Rept. 94-1445, (Washington: GPO, Aug. 31, 1976), p. 85. Cited in 69 *Federal Register* 56912, Sept. 22, 2004.

¹³ U.S. Congress, *Joint Explanatory Statement of the Committee of Conference [To (continued...)]*

disparity in rates was not linked to differences in the estimated cost of repairing damage done to the environment by the alternative methods of coal removal.

The AML reclamation fee is collected quarterly from coal operators, commonly referred to as producers. It is levied on each ton of coal produced domestically. From its outset in 1977, the fee was not levied on imported coal. Recently the issue of whether the fee applies to exported coal has been in litigation. In an April 2005 decision, the Federal Claims Court ruled that applying the fee to exported coal is unconstitutional. The government still has the option to appeal the decision. Approximately \$100 million in refunds of AML fees are at stake.¹⁴

The fee is administered and collected by the Office of Surface Mining (OSM) in the Interior Department.¹⁵ OSM was successful in collecting an estimated 99.6% of AML fees due in FY2004.¹⁶ In FY2004 AML fee collections were \$287 million while total distributions for AML programs were \$159 million.¹⁷ Cumulatively over the life of the fund, from January 30, 1978, when the first AML fees were paid, through March 31, 2005, the AML Fund has collected \$7.4 billion. Appropriations from the fund were \$5.7 billion. As of March 31, 2005, the unappropriated balance of the fund was \$1.6 billion.¹⁸ This balance represented 22% of cumulative collections.

OSM estimates that at least \$3 billion in additional reclamation expenditures is needed to clean up remaining Priority 1 and 2 sites. Under the current SMCRA law, 50% of the fees collected are allocated back to the state or Indian tribe that collected

¹³ (...continued)

accompany H.R. 2], 95th Cong., 1st Sess., House Conference Report No. 95-493, July 12, 1977, p. 98.

¹⁴ The application of the AML fee to coal destined for export was declared to be unconstitutional in *Consolidation Coal Company, et al. v. U. S.*, 54 Fed. Cl. 14 (2002), *reversed*, 351 F.3d 1374 (Fed. Cir. 2003), *remanded*, (Fed. Cl. Apr. 4, 2005). The *Consolidation Coal* case followed in the wake of a 1998 federal district court ruling in *Ranger Fuel* (33 F. Supp. 2d at 468) which found that levying the black lung excise tax on the sale of coal for export was unconstitutional under the Export Clause of the U.S. Constitution. The IRS accepted that decision in Notice 2000-28, issued May 20, 2000. See CRS Report RS21935, *The Black Lung Excise Tax on Coal*, by Salvatore Lazzari, pp. 4-5.

¹⁵ The Bush Administration has advanced a proposal that the black lung excise tax, currently collected by the IRS, also be collected by OSM. In the 108th Congress, this provision was included in H.R. 3778 and S. 2049, in proposed amendments to section 414(b) of SMCRA. In the 109th Congress, this proposal is included in H.R. 2721.

¹⁶ Calculated by CRS from data on collections presented in U.S. Office of Surface Mining, *Annual Report 2004: Financial Management*, Table 14, Collections Management, p. 68. Available online at [<http://www.osmre.gov/annualreports/04fin.pdf>].

¹⁷ U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement, *Abandoned Mine Land Fee Collections and Funding: 2004*, updated Dec. 8, 2004. Available at [<http://www.osmre.gov/amlfunding04.htm>].

¹⁸ U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement, *Abandoned Mine Land Fund Status*, updated May 4, 2005. Available at [<http://www.osmre.gov/fundstat.htm>].

them (known as the state share). Ten percent are allocated to the Rural Abandoned Mine Land Program (RAMP) which has received no appropriation since FY1995. Twenty percent are allocated to sites ranked Priority 1 and 2 for reclamation, based on historic coal production. And 20% go to other reclamation projects and administrative costs. Since 1977 when SMCRA was enacted, the production of coal has shifted westward, primarily to Wyoming, while most (94%) of the remaining high priority reclamation sites are in eastern states, the location of historic (pre-1978) production. Consequently, the state share program now results in high allocations to western states while the greater reclamation needs are in eastern states.

AML fees could be lower, or collected for fewer years, if the state share allocation were eliminated and the AML Fund focused on reclaiming high priority sites. However, western states would have less interest in supporting the AML Fund if they received nothing in return for their producers' contributions.

Relationship to the UMWA Combined Benefit Fund

The AML Fund first began to earn interest on its unappropriated balance in FY1992, as the result of legislation enacted in 1990.¹⁹ Under provisions of the Coal Industry Retiree Health Benefit Act (the Coal Act, part of EPACT of 1992), up to \$70 million of the interest earned on the balance in the AML Fund may be transferred each year to the UMWA CBF. This is to help pay for the health care expenses of certain "orphan" or "unassigned" retirees whose former employers have gone out of business, and of their spouses and dependents. The total amount of interest earnings transferred from the AML Fund to the CBF from FY1996 through FY2004 was \$679 million.²⁰

To guarantee this funding source, EPACT contained a proviso that after the regular AML fees sunset on September 30, 2004, the AML fee should be established at a rate to continue to provide for the deposit of funds to the CBF.²¹ In preparation for this possibility, on September 17, 2004, OSM published a final rule to permit the collection of a special AML fee in the event that Congress allowed the regular fee to expire.²² OSM noted that Section 402(b) of SMCRA did not address whether the same differences in rates should continue to apply to coal produced after the regular fees expired.²³ In its September 17, 2004 rule, OSM stated its intention to maintain the same ratios among the per ton fees that were originally established by SMCRA.

¹⁹ P.L. 101-508, Omnibus Budget Reconciliation Act of 1990, Sec. 6002(c). 30 U.S.C. 1231(e).

²⁰ OSM, *Annual Report 2004*, p. 79. This includes interest earned by the AML Fund during fiscal years 1992-1995, but transferred in subsequent years.

²¹ P.L. 102-486, Sec. 2515.

²² 30 CFR Parts 870 and 872, Coal Production Fees and Fee Allocations, 69 *Federal Register* 56122-56131 (final rule), 56132-56144 (proposed rule) Sept. 17, 2004. The proposed rule was republished at 69 FR 56908-56920, Sept. 22, 2004, because of a blank page printing error in the Sept. 17 print edition.

²³ 69 *Federal Register* 56126, Sept. 17, 2004.

The fee per ton of coal produced by underground methods would be 43% of the fee per ton of coal produced by surface methods. The fee per ton of lignite coal produced would be 29% of the fee per ton of coal produced by surface methods.²⁴ OSM proposed AML fees for FY2005 of 8.8 cents per ton for surface-mined coal, 3.8 cents per ton for underground-mined coal, and 2.5 cents per ton for lignite coal.²⁵ These fees were based on estimates of coal production by type of mining and were set with the intention of raising \$69 million, the estimated interest earnings of the AML Fund in FY2005. The exact level of the fees was projected to change each year from FY2006 through FY2015 in relation to estimated interest earnings and coal production, but the ratios among the fees were to remain the same.

Economic Burden of the Fee

For some time, the dollar-denominated AML fees have been below the statutory percent-of-price limits of 10% of value for surface- and underground-mined coal and 2% for lignite.²⁶ Steep increases in coal prices in the last few years have reduced the relative burden of the AML fee. The relative burden is higher on surface-mined coal than on lignite, and higher on lignite than on underground-mined coal. For example, the AML fee of \$0.35 equaled 0.63% of the average price of Northern Appalachian surface-mined bituminous coal in mid-2005 compared with 1.35% in 2003. For Wyoming surface-mined bituminous coal (which has a lower heat content and hence lower price than most other bituminous coals), the \$0.35 fee equaled 4.06% of price in mid-2005 compared with 5.19% in 2003. The AML fee of \$0.15 equaled 0.25% of the average U.S. price of underground-mined bituminous coal in mid-2005 compared with 0.56% in 2003. The fee of \$0.10 equaled 0.89% of the average U.S. price of lignite in 2003.²⁷ (See **Table 1**.)

²⁴ Referring to 30 CFR Paragraph 870.13(b)(3)(ii). 69 *Federal Register* 56126, Sept. 17, 2004.

²⁵ 69 *Federal Register* 56124, Sept. 17, 2004, Table 1. Because the regular AML fees were extended through FY2005, these special rates did not take effect.

²⁶ For the AML fees to surpass these limits, the average U.S. price of surface-mined coal would need to be less than \$3.50 per ton, underground-mined coal less than \$1.50 per ton, and lignite less than \$5.00 per ton.

²⁷ In contrast, the black lung excise tax (BLET) runs closer to its 4.4% of price limit, and exceeds it for low-priced Wyoming coal. The BLET of \$0.55 per ton of surface-mined coal equals 0.98% of the mid-2005 average price of Northern Appalachian bituminous coal and would be 6.39% of the price of Wyoming coal. The tax of \$1.10 per ton equals 1.86% of the mid-2005 U.S. average price of underground-mined coal. There is no BLET on lignite.

Table 1. AML Fees as a Percent of the Price of Coal, by Mine Type

Mine Type or Coal Rank	AML Fee per Ton	Price per Ton		AML Fee as % of Price	
		2003	Mid-2005 ^a	2003	Mid-2005
Surface (bituminous)	\$0.35	Northern Appalachia \$25.98 ^b \$56.00		1.35	0.63
		Wyoming \$6.74 \$8.61		5.19	4.06
		Total United States \$13.42 \$30.00 ^c		2.61	1.17
Underground (bituminous), total U.S.	\$0.15	\$26.71	\$59.00 ^c	0.56	0.25
Lignite, total U.S.	\$0.10	\$11.20	n.a.	0.89	n.a.

Sources: U.S. Department of Energy, Energy Information Administration. *Coal News and Markets*, Week of June 12, 2005, [<http://www.eia.doe.gov/cneaf/coal/page/coalnews/coalmar.html>], visited June 16, 2005; "Annual Energy Outlook 2005, Market Trends — Coal Production," [<http://www.eia.doe.gov/oiaf/aeo/coal.html>], visited June 16, 2005; 2003 Annual Coal Report. Percentage of price calculated by CRS.

Note: Price data are per short ton — at mine mouth for 2003, spot prices for 2005.

- a. Spot prices.
- b. Pennsylvania.
- c. Estimated by CRS.

Proposals to Extend the Fees

In its FY2005 budget, the Bush Administration proposed returning unobligated state share balances to the states and henceforth eliminating the state share allocation so that more of future AML fee collections could be spent on the reclamation of high priority sites. AML fees could also then be lowered. The Administration proposed to reduce the fees in three stages, by 15%, 20%, and finally 25%, over the period FY2005-FY2018.²⁸ In contrast, in its FY2006 budget, the Administration proposed extending the AML fees at their current rates. The Administration again proposed to allocate more of the AML receipts to the restoration of the most serious abandoned

²⁸ The Administration's FY2005 proposal was included in H.R. 3778 (John Peterson) and S. 2049 (Specter) in the 108th Congress.

mine land. The Administration also expressed its commitment to addressing the financial viability of the UMWA CBF.²⁹ In the 109th Congress the Administration's position on the AML program reauthorization and the extension of the AML fees is represented by H.R. 2721 (John Peterson).

Also in the 109th Congress, H.R. 2361, the FY2006 Interior Department appropriations bill, as passed by the Senate, would extend the current fees for nine months, until June 30, 2006. Other proposals would extend the fees longer term as part of bills to reauthorize the abandoned mine reclamation program H.R. 2721 (John Peterson) and S. 961 (Rockefeller) would extend the fees at their current rates through FY2019. H.R. 1600 (Cubin) would lower all of the fees by 20% and extend them through FY2020; the new rates would be 28 cents per ton on surface-mined coal, 12 cents per ton of underground-mined coal, and 8 cents per ton for lignite.

Bills Introduced in the 109th Congress

The following descriptions of bills introduced in the 109th Congress concentrate on the positions each takes regarding the extension of the abandoned mine reclamation fees. The descriptions also note when a bill largely replicates a bill introduced in the 108th Congress or contains provisions similar to another bill introduced in the 109th Congress.

Three of the bills also address the reauthorization of the abandoned mine reclamation program and two address the transfer of interest earned by the AML Fund to three UMWA retiree health benefit plans. Both of these topics are beyond the scope of this report.³⁰

House

H.R. 1600 (Cubin). Abandoned Mine Lands Reclamation Reform Act of 2005. H.R. 1600 would lower all of the AML fees by 20% and extend them through FY2020.

H.R. 1600 would amend SMCRA to reauthorize and reform the abandoned mine reclamation program. H.R. 1600 replicates H.R. 3796 (Cubin and Rahall) introduced in the 108th Congress, with one exception. H.R. 1600 contains a new Section 3 which gives detailed instructions for the transfers of interest earned by the AML Fund to three UMWA health benefit plans. This is in place of Section 2(b)(10) of H.R. 3796.

²⁹ U.S. Executive Office of the President, Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2006* (Washington: GPO, 2005), *Analytical Perspectives*, p. 296; *Appendix*, pp. 597-598.

³⁰ For further discussion of these issues, see CRS Report RL32373, *Abandoned Mine Land Fund Reauthorization: Selected Issues*, by Robert L. Bamberger.

H.R. 1600 shares many elements in common with S. 961 (Rockefeller) but has some differences. H.R. 1600 would lower the AML fees by 20% while S. 961 would leave them at current levels. H.R. 1600 would extend the fees through FY2020 while S. 961 would extend them through FY2019. H.R. 1600 includes provisions regarding the payment of state shares to qualified states not found in S. 961. H.R. 1600 differs slightly from S. 961 in the provisions regarding the transfer of the interest earnings of the AML Fund to the three UMWA retiree health benefit plans.

Introduced April 13, 2005; referred to the Committee on Resources; referred to the Subcommittee on Energy and Mineral Resources on April 22, 2005.

H.R. 2721 (John Peterson). Abandoned Mine Reclamation Program Extension and Reform Act of 2005. H.R. 2721 would extend the AML fees at their current rates through FY2019. H.R. 2721 would amend SMCRA to reauthorize the collection of the reclamation fees, revise the abandoned mine reclamation program, promote remining, authorize the Office of Surface Mining to collect the black lung excise tax, and make sundry other changes. The bill does not make any changes to the transfer of AML interest earnings to the CBF.

H.R. 2721 represents the Bush Administration's proposal. It replicates the Administration's bills introduced in the 108th Congress — H.R. 3778 (John Peterson) and S. 2049 (Specter) — with just a few differences. The Administration's bills in the 108th Congress had proposed lowering the fees in three stages, by 15%, 20%, and finally 25%. H.R. 2721 would raise the proposed minimum allocation to a state or Indian tribe from \$2 million to \$3 million. It also includes a new provision that Tennessee receive an allocation of not less than \$3 million. It includes another new provision regarding the priority to be given by the Secretary of the Interior in awarding certain grants. Introduced May 26, 2005; referred to the Committee on Resources; referred to the Subcommittee on Energy and Mineral Resources on May 31, 2005.

Senate

H.R. 2361 (Public Print). Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006. Would extend the AML fees for nine months, until June 30, 2006. The bill passed by the Senate on June 29, 2005, was a Senate amendment in the nature of a substitute for H.R. 2361 as passed by the House.³¹ The AML fee extension is included in Title I — Department of the Interior; General Provisions, Department of the Interior, Sec. 127 of the bill. The House-passed version of H.R. 2361 does not include any provision regarding the AML fees.

S. 961 (Rockefeller). Abandoned Mine Land Reclamation Reform Act of 2005. S. 961 would extend the AML fees at their current rates through FY2019. S. 961 would amend SMCRA to reauthorize and reform the abandoned mine reclamation program.

³¹ For additional information on H.R. 2361, see CRS Report RL32893, *Interior, Environment, and Related Agencies: FY2006 Appropriations*, by Carol Hardy Vincent and Susan Boren.

S. 961 shares many elements in common with H.R. 1600 but has some differences as noted in the description of H.R. 1600 above. S. 961 is identical to S. 2211 (Rockefeller) in the 108th Congress, with two exceptions. S. 2211 would have lowered the AML fees by 20%, as H.R. 1600 now does. S. 2211 included the provisions now found in H.R. 1600 but absent from S. 961 regarding the state share for qualified states. Introduced April 28, 2005; referred to the Committee on Energy and Natural Resources.