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The Abandoned Mine Reclamation Fund: Issues and Legislation in the 116th Congress

Coal mining and production in the United States in the 20th century contributed to the nation meeting its energy requirements and left a legacy of unreclaimed lands. As amended, Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) authorized federal funding to reclaim coal mining sites that operated prior to enactment to which no other federal or state laws applied. Sites that remain unreclaimed may continue to pose hazards to public health, safety, and the environment. The Abandoned Mine Reclamation Fund, established under Section 401 of SMCRA, provides funding to eligible states and tribes for the reclamation of surface mining impacts associated with historical mining of coal. Title IV of SMCRA authorized the collection of fees on the production of coal. The use of this funding is limited to the reclamation of coal mining sites abandoned or unreclaimed as of August 3, 1977 (date of SMCRA enactment). Title V of SMCRA authorized the regulation of coal mining sites operating after the law's enactment. Coal mining sites regulated under Title V are ineligible for grants from the Abandoned Mine Reclamation Fund. SMCRA mandated that coal mine operators regulated under Title V are responsible for providing financial assurance for completing site reclamation. The Office of Surface Mining Reclamation and Enforcement (OSMRE) within the Department of the Interior is the federal office responsible for administering SMCRA in coordination with eligible states and tribes.

The coal reclamation fee collection authorization in Title IV expires at the end of FY2021. If Congress does not reauthorize the collection of reclamation fees, SMCRA directs the remaining balance of the Abandoned Mine Reclamation Fund to be distributed among states and tribes receiving grants from the fund until the balance is expended. The following sections describe the eligibility of sites for reclamation, estimated reclamation costs, grants to states and tribes, reauthorization issues and proposed legislation. This In Focus does not discuss the regulation of coal mining sites under Title V.

Reclamation Eligibility

Title IV of SMCRA limits funding eligibility to sites where lands and waters have been affected by coal mining sites abandoned or unreclaimed prior to the enactment of SMCRA and for which there is no continuing reclamation responsibility under other federal or state laws. The scope of reclamation broadly includes activities to address public health and safety issues and environmental restoration of affected lands and waters that have been degraded by coal mining activities. Section 403 prioritizes reclamation according to public health, safety, and environmental hazards. For example, safety hazards may include unstable embankments or damaged infrastructure due to land

subsidence. The geographic scope of the site may be larger than where the coal was mined, because it includes the affected lands and waters.

Unfunded Reclamation Costs

States and tribes report incurred and estimated future reclamation costs to OSMRE for Abandoned Mine Land projects. Estimates of unfunded reclamation costs may vary by the problem types among sites and the severity of hazards. According to OSMRE, the states and tribes have estimated total unfunded costs for the reclamation of eligible sites of approximately \$10.7 billion to date. States and tribes periodically update estimates of unfunded reclamation costs as site conditions or the understandings of these conditions may change and as new sites may be identified.

State and Tribal Reclamation Programs

Pursuant to Section 405 of SMCRA, states and tribes must first obtain OSMRE approval of their reclamation programs to be eligible for grants from the Abandoned Mine Reclamation Fund. The grants are distributed among eligible states and tribes based on a statutory formula to calculate their respective shares of annual coal reclamation fee receipts based on current and historical coal production. States with greater historical coal production generally have more reclamation needs to address affected lands and waters. A total of 25 coal production states and three tribes with federally approved mine reclamation programs are eligible for these grants.

Certification

Section 411 of SMCRA authorizes OSMRE to certify a state or tribe once it demonstrates that it has reclaimed all of its priority abandoned coal mining sites. Five states and three tribes are certified: Crow Tribe, Hopi Tribe, Louisiana, Mississippi, Montana, Navajo Nation, Texas, and Wyoming. Since FY2008, certified states and tribes receive state and tribal share payments from the General Fund in lieu of the Abandoned Mine Reclamation Fund.

States with OSMRE-approved coal reclamation programs that have not reclaimed all of their priority abandoned coal mining sites are uncertified states. Twenty states are uncertified: Alabama, Alaska, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Missouri, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, Tennessee, Utah, Virginia, and West Virginia. The remaining states either did not have historical coal production or have not established an OSMRE-approved state program.

UMWA Health and Pension Benefit Plans

In addition to employer contributions, Title IV of SMCRA authorizes two sources of federal financial assistance for three United Mine Workers of America (UMWA) plans that provide health benefits for coal mine worker retirees: interest transfers from the Abandoned Mine Reclamation Fund and payments from the General Fund of the U.S. Treasury, which supplement the interest transfers. None of the coal reclamation fees credited to the Abandoned Mine Reclamation Fund fund the UMWA plans.

In the 116th Congress, the Bipartisan American Miners Act (P.L. 116-94; Further Consolidated Appropriations Act, 2020, Division M) amended Section 402 of SMCRA to expand the eligibility of the UMWA health plans to receive federal funding and authorizes General Fund payments to the UMWA pension plan. Under that act, the aggregate amount of General Fund payments to certified states and tribes, UMWA health plans, and the UMWA pension plan are subject to a \$750 million cap annually. Annual payments to certified states and tribes are provided first, then supplemental payments to UMWA health plans, and any remaining funds amount up to \$750 million annually are to be transferred to the UMWA pension plan.

Receipts and Appropriations

As authorized in Section 402 of SMCRA, the Abandoned Mine Reclamation Fund is financed by fees collected from operators of coal mining sites based on the volume or value of coal produced, whichever is less. Prior to the enactment of the 2006 amendments to SMCRA (P.L. 109-432, Division C, Title II), OSMRE distributed grants to both certified and uncertified states and tribes from the Abandoned Mine Reclamation Fund subject to annual appropriations. Annual appropriations were generally lower than annual coal reclamation fees collected prior to the 2006 amendments, resulting in an accumulation in the unappropriated balance of the Abandoned Mine Reclamation Fund. The 2006 amendments to SMCRA authorized permanent appropriations to OSMRE to administer grants to eligible states and tribes beginning in FY2008.

For uncertified states, OSMRE administers state share grants, historic coal grants (based on coal production prior to SMCRA's enactment), and minimum program make up funds (grants to ensure uncertified states receive at least \$3 million each annually) from the Abandoned Mine Reclamation Fund. Other appropriations from the Abandoned Mine Reclamation Fund include interest transfers to UMWA plans and OSMRE program funding. OSMRE program funding is subject to annual appropriations.

Reauthorization Policy Issues

The coal reclamation fee collection authorization expires at the end of FY2021. If the authority to collect reclamation fees is not reauthorized, SMCRA directs the remaining balance of the Abandoned Mine Reclamation Fund to be distributed among states and tribes receiving grants from the Abandoned Mine Reclamation Fund until the balance is expended. Those grants would begin in FY2023 at the

levels paid out during FY2022 and continue at the same amount each year thereafter until the fund is fully expended. As of November 11, 2018, OSMRE reported that the unappropriated balance of the Abandoned Mine Reclamation Fund was approximately \$2.3 billion. Reclamation grants to eligible states and tribes receiving grants from the Abandoned Mine Reclamation Fund would continue for some years until the balance is expended if coal reclamation fees were not reauthorized.

Given that the balance of the Abandoned Mine Reclamation Fund is several times less than the estimated unfunded reclamation costs, whether and how to fund the remaining coal reclamation needs presents a policy question for Congress. If the fees were reauthorized, the adequacy of those receipts to pay the remaining unfunded reclamation costs would depend on decisions made by Congress (e.g., source of funds, duration of the fee extension, and fee rate). Additional factors include the status of domestic coal production and the potential emergence of additional reclamation needs.

Should Congress not reauthorize the coal reclamation fees, as the balance from the Abandoned Mine Reclamation Fund is paid down after FY2023, the interest transfers from the Abandoned Mine Reclamation Fund would have a relatively smaller contribution to the UMWA plans. Less interest available for UMWA plans may place a greater demand on supplemental payments from the General Fund to ensure benefit coverage. Supplemental payments to UMWA plans and grants to certified states and tribes from the General Fund are limited by the statutory cap.

Reauthorizing Legislation

Multiple bills introduced in the 116th Congress would reauthorize the coal reclamation fees. As introduced, H.R. 4248 and S. 1193 would amend SMCRA to extend the fee collection authorization at the current fee rates until September 30, 2036. The Senate bill would distribute annual grants to states receiving monies from the Abandoned Mine Reclamation Fund in a fixed amount—based on what the state received in FY2022—starting in FY2023 and thereafter. The House bill would continue to provide annual grants to eligible states based on annual shares of fee collections described previously. The House bill would also increase the minimum program make-up funds to uncertified states from \$3 million to \$5 million each annually.

Other Title IV SMCRA Legislation

In the 116th Congress, House and Senate versions of the RECLAIM Act (H.R. 2156 and S. 1232) would authorize \$1 billion over five years from the unappropriated balance of the Abandoned Mine Reclamation Fund for the reclamation of abandoned coal mining sites as a means to facilitate economic and community development in coal production states. RECLAIM grants to eligible states and tribes would be in addition to the annual grants paid to states and tribes. Neither of these bills would reauthorize coal reclamation fee collections beyond FY2021.

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