

Statement of John Stefanko, Deputy Secretary of the Office of Active and Abandoned Mine Operations within the Pennsylvania Department of Environmental Protection on behalf of the Interstate Mining Compact Commission (IMCC) Re. a Legislative Hearing on “Restoring Abandoned Mine Lands, Local Economies, and the Environment” before the House Subcommittee on Energy and Mineral Resources – March 18, 2021

Introduction

Good afternoon Mr. Chairman and Members of the Committee. My name is John Stefanko and I serve as Deputy Secretary of the Office of Active and Abandoned Mine Operations within the Pennsylvania Department of Environmental Protection. I am appearing today on behalf of the Interstate Mining Compact Commission (IMCC). IMCC is a multi-state governmental organization that represents the natural resource and environmental protection interests of its 26 member states. We work jointly with the member States and Tribes of the National Association of Abandoned Mine Land Programs (NAAML) and, as such, we endorse the testimony presented by my colleague Susan Kozak of Iowa on behalf of NAAML. As state agencies with primary responsibility for implementing the Surface Mining Control and Reclamation Act (SMCRA) Title IV Abandoned Mine Land (AML) Program within their respective borders, we appreciate the opportunity to appear before the Subcommittee to discuss critical legislation regarding this vital program.

The introduction and consideration of The Surface Mining Control and Reclamation Act Amendments of 2021 (H.R. 1734) comes at a critical junction for the SMCRA AML program. As we noted in testimony presented before this Subcommittee at two hearings in 2019, the fee on which the program relies is set to expire on September 30. And yet much work remains to be done to address the legacy of past mining. This includes protecting those whose health and safety are threatened, restoring the environment, and creating opportunities for economic revitalization in coal country. H.R. 1734 will ensure that this critical work continues by extending fee collection authority for an additional 15 years at current rates. The bill also addresses several other important funding elements of the program, which we discuss below.

Making Reauthorization of the AML Fee a Priority

Reauthorization of SMCRA Title IV fee collection authority is the top AML legislative priority for IMCC. (See attached resolution) Without this stable and consistent source of funding, the AML programs will be unable to continue their vital work, which includes addressing the 250-300 AML emergencies that occur across the nation’s coalfields each year. In essence, to extend the AML fee is to extend the AML program itself. As expiration of Title IV fee collection authority approaches, one thing is abundantly clear: the AML programs have made great progress, but our work is not done; and the remaining work far exceeds available resources.

Based on expected AML fee collections between now and the end of 2021, added to the amounts currently remaining in the AML Fund, we project that, without reauthorization, approximately \$2.33 billion in AML grants will be distributed to the States and Tribes in total over the remaining life of the program. That amount represents only about one-quarter of what is needed as compared to the current OSMRE estimate of roughly \$10.8 billion in construction costs for remaining AML work. This means that without reauthorization of the AML fee, over \$8 billion in construction costs currently listed in the AML inventory will remain. And taking into consideration the additional non-construction costs necessary to plan and design these projects and the currently unaccounted for impact of annual inflation, the funding shortfall is much wider. Further information regarding the AML inventory is discussed below.

With the expiration of fee collection authority quickly closing in, expedited action is required. It is for this reason that we greatly appreciate the leadership of Rep. Cartwright and Rep. Thompson in co-sponsoring H.R. 1734 and the Subcommittee's consideration of the bill. It is our hope that the bill will be approved in the coming months, which will pave the way for any regulatory or program adjustments that may be required prior to the September 30, 2021 expiration date.

Specific Provisions in H.R. 1734

There are several key provisions in H.R. 1734 that we believe are critical elements of reauthorization.

- Section 2 – The Abandoned Mine Land Reclamation Fund – would adjust how the unappropriated balance in the AML Trust Fund (which currently stands at \$2.214 billion¹) would be drawn down following the new expiration date for fee collection authority in the bill (September 30, 2036). Current language would dispense the remaining State/Tribal share moneys in the Fund at a constant rate starting in FY 2023, which is meant to provide some level of continued funding in the event the fee is not reauthorized. Section 2 would provide a similar protocol for how any unappropriated balance is handled following expiration of fee collection authority in 2036.
- Section 3 – Emergency Powers – would provide for the reimbursement of States and Tribes for moneys they spend on emergency projects, which represents a return to the pre-2010 system for handling emergency funding when OSMRE paid for these projects. This is necessary so that States and Tribes can continue to focus their annual AML grant funding on priority 1 – 3 projects within their borders. Without this reimbursement mechanism, entire annual AML grants in some States could be expended on a single AML emergency project, thereby delaying work on other, critical AML projects. This is particularly true for Minimum Program States (of which there are 13 as of FY 2021). As part of this reimbursement protocol, States and Tribes would submit an AML Emergency

¹ The unappropriated balance shown is as of 2/15/21 as reported in OSMRE's 2021 AML Grant Distribution posted on OSMRE's website at <https://www.osmre.gov/resources/grants.shtm>

Program for approval by the Secretary as part of the already approved State/Tribal reclamation plan under Section 405 of SMCRA.

- Section 4 – Reclamation Fee – would extend fee collection authority from September 30, 2021 to September 30, 2036 at current rates. We believe this 15-year extension is the minimum number of years required to address the inventory of remaining AML problems. This section would also increase funding for Minimum Program States from \$3 million to \$5 million. This is necessary for these States to address their inventory of high priority AML sites in a more expeditious fashion. The section would also authorize Minimum Program States to set aside 30% of their full AML grant for their acid mine drainage (AMD) accounts.
- Section 5 – Exempt Programs and Activities – would exempt future payments from the AML Trust Fund from sequestration under the Balanced Budget and Emergency Deficit Control Act, as well as payments to certified states and tribes under section 402(i)(2) of SMCRA. It would also authorize and require OSMRE to distribute to States and Tribes all funding that was withheld due to sequestration from Fiscal Years 2013 to 2021. This amount currently stands at \$144.7 million.

Taken together, these amendments to Title IV of SMCRA will ensure that the AML program continues to serve the vital purposes intended by Congress. At the same time that we endorse these changes, we recommend that other key provisions in Title IV remain intact, including the priority system in Section 403, the current fee structure in Section 402, the mandatory funding distributions required under Sections 401(f) and 411(h) (for both uncertified and certified states and tribes), and the inventory system in Section 403(c). A resolution adopted by IMCC in support of reauthorization is attached to our testimony.

Progress with Abandoned Mine Land Reclamation under SMCRA Title IV

Throughout our country's history and up until the passage of SMCRA in 1977, coal mining was not comprehensively regulated at the federal level. As a result, some coal mining operations were left inadequately reclaimed, particularly prior to modern advancements in responsible mining techniques and the adoption of robust state and federal regulatory programs. Legacy coal mining sites spanning over two hundred years of our country's history have enduring impacts today; but because the mining occurred so long ago and the coal companies that conducted that mining are long since defunct, no known party exists with reclamation obligations for these sites under any state or federal law. Put simply: abandoned mines are everyone's problem but no one's responsibility.

Over the forty plus years since the passage of SMCRA, the AML fee paid by the modern coal mining industry has made a significant contribution in enabling the State and Tribal AML programs to address the impacts of past mining. As data regarding completed projects reported in OSMRE's AML inventory clearly show, great strides have been made in addressing AML-related public health and safety hazards and environmental impacts. Examples of common types of AML projects include:

- Closing mine openings to prevent accidental injuries and deaths
- Extinguishing underground coal mine fires and coal refuse pile fires, thereby improving air quality and eliminating safety hazards
- Backfilling dangerous highwalls and returning lands to productive condition
- Stabilizing underground mines to prevent mine subsidence from further impacting homes, businesses, and community infrastructure affected by these unforeseen events
- Restoring water quality and aquatic life to mine-drainage impacted streams, stimulating environmental health and economic opportunities
- Providing potable water supplies to coalfield residents whose individual water supplies were impacted by past mining

In the course of this work, the equivalent of over 896,900 acres² have been reclaimed and restored; that's more acreage than is contained in the entirety of Yosemite National Park or nearly 20 times the footprint of Washington, D.C.

All of the States and Tribes involved in the AML program, spanning from East to West, have an ongoing need for the AML program. Due to regional circumstances throughout the country and the variety of AML impacts, States and Tribes are uniquely qualified to adapt their AML programs to serve their citizens and best meet their needs. In order to demonstrate the impacts of the AML program in different parts of the country, the State and Tribal AML programs have come together, led by Wyoming and Pennsylvania, to develop a website that showcases the real and personal effect that the AML programs have on the lives of their respective citizens. The <https://ourworksnotdone.org/> website now contains information from twenty-three AML programs scattered across the east, mid-west, and western coal regions. It includes statistics from those programs on the accomplishments that have had the greatest positive and practical impacts in each State or Tribe, as well as a collection of news articles, video documentaries and testimonials showing the first-hand results of AML work and what it means to their communities.

The OurWorksNotDone project helps tell the story from the perspective of citizens and communities whose lives are shaped by the presence of abandoned mines, for instance:

- A woman whose home is repaired after facing a desperate situation as the mine beneath her home collapses, cracking the foundation;
- The former coal miner finding a new career as an AML contractor sealing abandoned historic mines after the mine for which he worked shut down;

² According to OSMRE's national e-AMLIS summary, as of September 30, 2020. In accordance with the Government Performance and Results Modernization Act of 2010 (GPRA), the value is reported in GPRA acres. "GPRA acres" are a measure whereby things that are not measured in true acres, such as a mine shaft or an acid mine drainage discharge, are converted to an acreage value.

- A group of local fishermen fighting back tears as they behold their local stream, which had been orange and lifeless as long as they could remember, now clean and full of fish.

From these stories and many others like them, it is clear what a difference the AML program is making – and all of this made possible by the state and tribal grant funding derived from the AML fee.

How States and Tribes Use AML Grant Funding

According to a pie chart on AML grant funding produced by OSMRE, approximately \$5.935 billion was distributed in grants derived from the AML fee to State and Tribal AML programs between FY1977 and FY 2019. Of that amount, \$3.817 billion has been spent directly on construction of AML projects.

Wise and efficient management of program funds requires careful planning of each AML project. AML projects are designed by engineers with the assistance of other technical personnel with special expertise to ensure that the projects achieve their intended benefit. OSMRE reports that \$1 billion has been spent by State and Tribal AML programs on planning, designing, permitting and managing the construction of AML reclamation projects.³ In combination with the construction dollars mentioned above, these project planning, design and management expenses represent \$4.817 billion that has been spent directly on statutorily-authorized AML projects. This equates to 81% of the funding granted to the States and Tribes going directly to the reclamation of AML sites.

While the AML programs take great care in their work, the process of identifying, designing and completing projects has been well honed over time. AML programs pay careful attention to efficiency in order to ensure that their limited funding provides maximum benefit. According to OSMRE information, administrative costs for State and Tribal AML programs, (which includes staffing as well as inventorying AML sites and coordinating with federal agencies) has been held to a mere 7% of total costs⁴. The OSMRE pie chart referenced here, along with a background information document explanation of how AML grant funding is used and managed, is available on OSMRE’s website at <https://www.osmre.gov/programs/aml.shtm>

The AML programs are proud of their good stewardship of AML funding⁵ and the enormous social and economic benefits that have been leveraged through its efficient, effective use. The fact remains however, that the funding resources and time provided to the AML

³ In OSMRE’s budget justification documents, only figures for “on-the-ground” construction costs for high priority coal sites were included. Design costs and project management, which are an essential element of the cost of a successful construction project, are not included in these figures.

⁴ \$0.430 billion of the total \$5.935 billion distributed to State and Tribal AML programs

⁵ Of the remaining \$0.688 billion of the total \$5.935 billion in state and tribal grant funding not noted as being spent on construction, design, or administration: \$0.401 billion has been spent on acid mine drainage (AMD) set-aside for the future operation and maintenance needs of water treatment systems; and \$0.287 billion is accounted for as “undelivered orders,” funding that remains available for the states and tribes but has not yet been drawn from federal accounts with regard to already approved projects.

programs in SMCRA's first forty-three years do not approach the scale of the two-centuries-in-the-making coal AML problem.

How Much Work is Left to be Done – The AML Inventory

While significant progress has been made since the passage of SMCRA in 1977, it is clear that our work is not done: approximately 839,000⁶ acres of high-priority AML sites remain throughout the country. According to OSMRE's federal Abandoned Mine Land Inventory System (e-AMLIS), these sites represent \$10.8 billion in remaining construction costs. Costs to administer, plan, design, permit, inspect and monitor these construction projects would increase the total unfunded costs by an additional 25-30%.

It is widely believed that the true remaining construction costs of completing AML work are greater than currently indicated by the AML inventory. The primary purpose of the AML inventory system is to track the location, classification, and priority level of known AML sites as well as their reclamation status, and it serves these purposes very well. The cost estimate information in the inventory is also helpful in that it provides a general picture of the construction resources required for a given site, but there are a variety of reasons that maintaining comprehensively up-to-date, accurate cost estimates in the inventory is impractical, meaning that true construction costs are typically higher than what is recorded in the AML inventory.⁷

Identifying and categorizing AML sites was among the first objectives for the AML program at its outset, and many of the cost estimates contained in the federal e-AMLIS inventory were developed when the sites were initially inventoried in the early to mid-1980s. With time, the scale and depth of the AML problem has become better understood. However, it is in the nature of AML work that previously unknown sites will continue to manifest (particularly those associated with abandoned underground mines) and that known sites will continue to degrade, both of which increase the number of sites and the total cost to complete remaining AML reclamation work. With advancements in technology, the collection of more complete maps and mining records, and increased awareness and identification of these sites by local residents, many additional AML hazards have been and will continue to be identified and added to the AML inventory.

As communities in AML-impacted regions expand outward, once isolated AML sites become higher priority as the danger they pose to public health and safety increases. Additionally, as remaining unreclaimed AML sites are periodically surveyed, cost estimates will generally increase due to inflation and updated understanding of reclamation requirements. Furthermore, estimating costs for water treatment projects is especially problematic due to the long-term requirements for the operation and maintenance of treatment systems constructed by AML programs. For all of these

⁶ As of September 30, 2020

⁷ A methodologically-sound analysis of potential remaining construction costs prepared by IMCC and NAAMLPL using current e-AMLIS estimated costs for unfunded high priority problem types indicates that the \$10.6 billion figure would increase to \$12.6 billion. A copy of the report is available from IMCC.

reasons, the AML inventory must be understood as a dynamic account of the AML problem in America. Based on the AML programs' experience with the AML inventory, we estimate that the true cost of remaining AML work may be higher than what is currently indicated. Based on Pennsylvania's own inventory of AML sites within our borders, we estimate that the cost of reclamation in Pennsylvania alone will be over \$5 billion.

The bottom line is that the impacts of AML are still extensive despite the progress that has been made. As a result, additional funding is required for the AML programs' ongoing effort to contend with the wide variety of AML impacts and the adverse effect they have on coalfield communities. And we believe this funding is best focused on-the-ground, as opposed to expanding enhanced inventory efforts that will likely pay limited dividends given what we already know about the existing \$10 billion inventory.

Types of AML work

Health and safety hazards and water pollution from abandoned mines continue to be a part of life for coalfield citizens through the country. Congress intended that AML programs be equipped to contend with the full range of land and water impacts from abandoned mines, and accordingly, the AML programs are engaged in many different types of reclamation and restoration work. And often times, AML sites are brought to the attention of State AML programs by local citizens and watershed groups to whom the States reach out for input and advice.

The first priority for AML programs is to protect local citizens from direct threats to their health and safety. Safety hazards associated with abandoned mines account for numerous injuries and deaths each year. These sites are designated as "priority 1" or "priority 2" based on the immediacy of the danger represented by the hazard. That designation carries the requirement that AML programs focus their attention and funding on these sites first and foremost, and this system has worked well. Over three quarters of the existing AML inventory, representing over \$8.1 billion in estimated reclamation costs, is classified as priority 1 or 2.

The AML programs also engage in a significant amount of important "priority 3" work, which is generally defined to include any environmentally impacted site without a particularly high risk to public health and safety. The most prominent environmental impact of abandoned mines is by far water pollution. Hundreds of miles of streams and wetlands have been restored due to the AML programs' efforts. While current law designates these types of projects to be of "lower priority" than immediate dangers to human health and safety, this is not an indication that these projects are unimportant. On the contrary, restoring the health of watersheds in the historic coalfields, some of which have been impaired as long as anyone living there can remember, is among the most impactful of the AML programs' contributions – and of highest importance to local citizens given the environmental and economic benefits.

Health and Safety Hazards at Abandoned Mines

The most common types of high priority AML health and safety projects are dangerous highwalls, mine shafts and portals, and subsidence events:

Highwalls: the most prominent remnant of abandoned surface mines is vertical or near vertical rock faces created as the surface is excavated. These hazards cause deaths and injuries each year, generally as a result of citizens falling from or driving over the highwall or being struck by falling debris. Reclamation of highwalls enhances economic opportunity by returning sites to a more productive condition. To date, the AML Programs have reclaimed more than 990 miles of highwall (more than the straight-line distance from Washington, DC to Miami).

Mine shafts and portals: left over from underground mining, these hazards dot the countryside throughout historic coal mining regions. Shafts and portals are often difficult to see and can be quite lethal, especially where there is risk of unsuspecting or overly adventurous citizens falling into deep underground chasms. Adventurous people or children entering abandoned mines via these openings can encounter explosive methane gas or an equally lethal deficiency of oxygen that has resulted in death. Hazards associated with more than 45,000 open mine shafts and portals have been abated by the AML programs.

Mine subsidence events: these are the hidden dangers that remain from the vast legacy of underground mining throughout the country. Collapse of the unsupported underground voids results in openings or depressions that form at the surface which can buckle streets and sidewalks, damage underground utilities, or damage or destroy homes and other structures built above the abandoned mine. In Pennsylvania, over 9% of the state's total land area is underlain by abandoned underground coal mines impacting 43 of the state's 67 counties. A recent GIS analysis done in Allegheny County, Pennsylvania (where the City of Pittsburgh is located) found that there were 537,668 buildings within the county boundary, of which, 229,025 buildings (42.6%) are at risk of mine subsidence due to their location over confirmed underground mining sites. In the City of Pittsburgh alone, there are 114,517 buildings within the city boundary, of which, 41,841 buildings (36.5%) are at risk of mine subsidence. To date the AML Program has reclaimed more than 10,000 acres of subsidence prone areas stabilizing many thousands of homes, buildings and other infrastructure. These concealed hazards are often un-inventoried until a problem emerges, at which point they become either a "new" high priority site, or an "AML emergency".

Emergencies at Abandoned Mines

Addressing AML emergencies is one of the AML Programs' most important functions. These suddenly occurring problems pose an extreme danger to citizens' health, safety and general welfare. For example, these sites may include mine subsidence that damages homes, roads, utilities, or other improved property; burning coal refuse or

underground mine fires; mine shafts and portals which have become accessible to the public; mine gas migration into homes; mine water blow outs and other mine drainage problems; or AML-related landslides.

For instance, a November 2018 mine subsidence event in Pennsylvania resulted in severe damage to a home, the street and underground utilities located in Belle Vernon Borough, some 50 miles south of Pittsburgh. As a result of this mine subsidence event, gas service had to be shut off to this home and several adjacent homes resulting in the owners being evacuated. The home suffered significant structural damage including the complete collapse of the covered front porch and severe damage to the home's front foundation wall. The PA AML Program acted quickly to issue an emergency contract to drill and grout the mine to stabilize the area and allow the homeowner and utility company to make repairs, allowing the owner to reoccupy their home. While homeowners can purchase mine subsidence insurance to pay for the value of the damage to their home, the insurance does not pay to stabilize the mine. Without the AML Program, and even with repairs to the home, the owners would have been faced with the continued threat of a future mine subsidence, further damaging their home and property. Fortunately, in such cases, the AML program is able to stabilize the ground, halting the immediate threat, protecting adjacent homes, and providing homeowners with some assurance that they can safely rebuild. The PA AML Program developed a short video about this project which can be viewed here:

<https://www.youtube.com/watch?v=plJPrXPQBIE&feature=youtu.be>.

An emergency in Shenango Township, Lawrence County, approximately 45 miles northwest of Pittsburgh shows how local communities and local governments benefit from AML work, especially where emergencies are concerned. In July of 2019, the Shenango Township Emergency Management and Department of Public Works notified the PA AML Program that a possible abandoned mine related landslide had shutdown Old Pittsburgh Road to one lane and less than a 10 ton weight limit. This effectively shut down the road to most emergency response vehicles and school buses causing a 4 mile detour and 10 to 15 minute delay of services to as many as four thousand residents. A drainage drift tunnel to an unmapped underground mine had subsided, became blocked, and trapped millions of gallons of water in the hillside that saturated the coal and clay soils beneath the coal. The saturated slope culminated in a large landslide, causing approximately 100 linear feet of Old Pittsburgh Road to separate and slide downslope. Mining at this location took place prior to 1950. PA's AML Program partnered with Shenango Township to abate the hazard and repair the roadway. The PA AML Program developed a short video about this project which can be viewed here:

<https://youtu.be/s T-3Y4uJxs>

Emergencies like these are a common occurrence for communities that live nearby abandoned mines. The impact is felt especially deeply in the historic coalfields of Appalachia in the states of Pennsylvania, West Virginia, and Kentucky, each of which spends between \$4-5 million per year on AML emergencies alone. However, the problem is not confined to these states – a fairly recent informal survey conducted by IMCC of the Title IV AML programs indicates that approximately 250-300 emergency projects are

conducted each year throughout the country, with an annual total cost of roughly \$15-20 million. The SMCRA Title IV AML Program is generally the only source of significant funding available to protect coalfield citizens when devastating events occur. The AML emergency programs, funded by the AML fees, are critical to bringing coalfield communities the security and peace of mind they deserve.

Impacts to Water Resources from Abandoned Mines

Water pollution caused by abandoned mines is perhaps the costliest of the impacts coalfield communities experience. In Pennsylvania alone, there are over 5,500 documented miles of streams impaired by acid mine drainage (AMD)⁸, representing a severe impediment not only to the environment but to intricately-related health and economic conditions. Clean water is a fundamental resource needed for human health and for the support of any kind of economic activity. Its absence is a great hardship for coalfield residents and constrains redevelopment in coalfield communities. Despite its designation as Priority 3 in the AML inventory, AMD is very much a high priority for these impacted communities.

Streams that run orange from mine drainage are commonplace for citizens of historic coalfields. When water flowing through abandoned underground mines or runoff from abandoned coal refuse and spoil piles comes into contact with pyritic or acid-forming materials associated with coal seams and the overlying strata, it often results in the formation of iron-laden, highly acidic water known more commonly as acid mine drainage, abandoned mine drainage, or AMD. This AMD can mobilize other minerals such as aluminum and/or manganese which can further degrade the AMD discharge. AMD often finds its way into the local groundwater or flows into nearby streams and waterways. In these instances, water resources are commonly polluted to the point that they no longer support aquatic life and are unsuitable for recreation, drinking water supplies, or industrial and agricultural uses.

SMCRA Title IV provides that State and Tribal AML programs may designate a certain percentage of their annual AML grants for application to these types of long-term water treatment projects.⁹ A single mine drainage treatment system constructed by an AML program can have a very real impact for local ecosystems and communities; and the aggregate impact of many such treatment systems can bring entire watersheds back to life. For instance, the network of pollution-reducing treatment systems constructed by watershed groups and the Pennsylvania AML Program under this program has achieved great strides in restoring AMD-impacted watersheds, as well as watershed-dependent community health and livelihoods. The communities that now have clear streams that once flowed orange with AMD are extremely grateful for the AML program and the funding authorized by Congress.

⁸ 2018 Pennsylvania Integrated Water Quality Monitoring and Assessment Report

⁹ These set-aside accounts are not accounted for by e-AMLIS until those moneys are actually spent on completion or treatment of a specific AML or AMD project.

Due to the impact AMD pollution often has on drinking water supplies, AML programs are authorized to undertake “water supply replacement projects”, which are another key source of assistance to coalfield citizens provided through the AML program. The States and Tribes often utilize Title IV AML funding to provide access to water for communities and households whose water sources have been diminished, lost or polluted due to pre-SMCRA coal mining operations. In economically depressed regions of the country, AML water supply replacement projects are often the only available economically viable source of potable water, meaning that these communities are quite literally dependent on the AML program to maintain basic standards of living. Through waterline replacement projects in Pennsylvania, over 3,600 households have gained access to potable water.

With Title IV AML funding as a base, AML programs are making real progress in battling the impacts of AMD water pollution. Hundreds of miles of streams have been restored nationwide by the states and tribes through AML funding, but without the support of the AML fee, the substantial gains derived from these remediation efforts and treatment systems would be very quickly lost. Unfortunately, AMD water pollution is among the least likely environmental problems to be addressed via extra-governmental work due the difficulties in taking responsibility for the care and maintenance of the sites.¹⁰ The Title IV AML programs are therefore generally a primary source of meaningful assistance for AMD water treatment, and in many states, they are the only source. The AML fee is foundational to the States’ and Tribes’ mine drainage treatment efforts and to leveraging the efforts of third-party groups - and every source of help is needed to contend with the great challenge AMD water pollution presents.¹¹

The Community Reclamation Partnerships Act (H.R. 1146)

In recognition of the need to garner as much assistance as possible for AML reclamation efforts, there has been much public and Congressional discussion about how to enhance cooperation between government and non-governmental organizations. This is especially true with respect to the massive and severely intractable problem of water pollution associated with acid mine drainage (AMD). With the difficult work needed to address this issue and the relatively limited funding, there has been widespread acknowledgement that resources from third-party groups like watershed and wildlife conservation NGOs could be extremely beneficial in extending the impact and progress of existing AML program efforts.

Pennsylvania is a prime example of a place with extensive opportunities for partnerships between the state and charitable third-parties, often called “Good Samaritans”, which include individuals, advocacy groups, private philanthropic

¹⁰ This is the impetus for H.R. 1146, The Community Reclamation Partnerships Act (CRPA) introduced by Rep. LaHood. We strongly support this bill.

¹¹ States who operate acid mine drainage treatment systems such as lime dosers indicate that were these systems terminated due to lack of funding, the streams and tributaries that benefit from such treatment would return to their debilitated condition within weeks. Hence the need for and value of the AMD set-aside program authorized under Section 402(g)(6) of SMCRA.

foundations, and even businesses, In fact, Pennsylvania provides an excellent demonstration of the good that has already been achieved through these types of partnership efforts. Pennsylvania NGOs operate over 300 mine drainage treatment systems and have undertaken thousands of other environmental conservation efforts, often with significant coordination with state personnel. Still, there is much more that could be done both by the state and by their potential Good Samaritan partners were it not for significant legal impediments to their work.

IMCC believes that allowing the State AML programs to more effectively fulfill their role in treating water impacted by abandoned mines, as well as enabling the resources and passion available from potential partners, is critical for the future of coalfield communities. To achieve this end, it is widely accepted that some form of legislative solution is necessary.

In an attempt to provide a solution for coal AML sites, Representative LaHood has once again introduced the Community Reclamation Partnerships Act (H.R. 1146), which would work through the existing SMCRA Title IV AML program to institute a new approach for cooperation between States and their reclamation partners. Our organizations commend Rep. LaHood for his ongoing commitment to facilitate AML water treatment and for his willingness to consider novel approaches for providing the necessary relief from the legal complications that unfortunately make that work more difficult than it need be.

Federal environmental laws, particularly the Clean Water Act, are intentionally very strict in the restrictions placed on and the penalties assessed against those who impact our Nation's water resources. As an unintended consequence of that strict design, and in particular its purposefully stringent and inflexible standards for water treatment, Clean Water Act requirements do not comport well with the realities of AMD treatment, and ironically, do significant harm to water treatment efforts.

The crux of the problem is that the federal statutory paradigm for treating AMD-impacted water is not well-suited to the unique characteristics of AMD sites as compared to more typical instances of water pollution. The fundamental difference with AMD treatment is that impacted waterways are by definition already impaired, and in the case of abandoned mines, the originators of the pollution have long since gone out of business. Even so, due to potential liability under the Clean Water Act, any party who re-affects an AMD-impacted site risks being held *permanently* responsible for fully eliminating the *entire* pollutional load from the existing discharge as if they were the original polluter of the site. This is true even where the pollution is the result of legacy coal mining, the project is significantly improving water quality, the party in question has no connection to the original creation of the pollution, and no recklessness or negligence is exhibited.

These unintended obstacles to improvement of AMD-impacted water have significantly slowed progress with such projects throughout the country. Efforts to rectify the issue have been underway for over 20 years, but have so far failed to achieve success. While the need for resolution of this issue has been widely agreed upon for some time,

the specifics of the ideal solution have long been debated - and it is clear that debate is stalling water treatment work that our coalfield communities desperately need.

The solution put forward by H.R. 1146 would build on the proven success of the SMCRA Title IV program and the lessons learned from the successful State-level Environmental Good Samaritan Program in Pennsylvania. States would responsibly confer with relevant federal authorities to establish a distinct process for these innocent, well-intentioned Good Samaritan groups to work with the State AML programs as partners. Most importantly, this approach would put clear, achievable expectations for water treatment at AML sites into place, allowing States and their partners to undertake these projects without the fear of undeserved liability for pre-existing pollution. Our organizations believe that this approach displays merit and should be seriously considered as a possible approach to Good Samaritan relief for coal AM.

The bottom-line is that if the lingering effects of abandoned coal mines are to be eliminated, and in particular the impairment of our communities' water resources, every available tool and every source of help is needed. Congress clearly intended the mission of the SMCRA AML program to encompass mine drainage-impacted water treatment work¹², but under current circumstances, many potential projects are left sitting on the shelf, and many of the States' potential partners are left sitting on the sideline. With congressional attention to this issue, the overall goals of federal environmental law can be more effectively achieved; and with it, real gains could be made in coalfield water quality. AMD impaired streams and associated aquatic ecosystems can be restored, creating a healthier environment and more opportunities for economic development.

Creating Healthy Economic Conditions through AML Work

While the AML program's primary mission is reclamation, that work has other far-reaching benefits, some of which are not always obvious. The AML program has become a central part of discussions around improving economic conditions in historic coalfields, and for good reason. The degradation of public health and safety as well as environmental resources caused by abandoned mines greatly suppresses economic opportunities in these regions. Such communities are often under more general economic distress, and AML work has emerged as an important means of relief.

The AML program's vital role in improving economic well-being in AML impacted communities is most directly realized by reducing the drag on economic development caused by the AML hazards and environmental impacts. Economic benefits accrue from the AML program's conventional work, for example responding to and constraining constant damage to infrastructure stability caused by subsidence events and landslides. The availability of clean water is the most fundamental infrastructure necessary for development. Accordingly, the water treatment work conducted by the AML programs is particularly impactful on economic conditions by providing access to clean water and restoring opportunities for tourism and recreation. AML projects make

¹² Surface Mining Control and Reclamation Act of 1977, Section 101(h)

fundamental contributions to establishing the conditions needed for AML-impacted communities to thrive and to attract economic investment.

The AML programs' work also results in thousands of direct as well as indirect jobs. AML projects spur additional economic activity in turn, providing support for other industries. In a time when coal mining job losses are being felt more than ever, the employment opportunities stemming from AML work have become all the more important, especially where AML work requires similarly-skilled workers. AML projects typically utilize construction contractors who were very often former mine operators themselves and who in turn employ many former miners and other local workers in depressed coalfield communities.

The contribution the AML Program makes to building up economic value and employment is further multiplied when newly reclaimed sites once again become suitable for development. AML sites can be prime locations for new business ventures and/or tourist attractions, creating new space for communities to grow economically. Restored water resources also breed new opportunities and growth, for example by restoring recreational value to streams and lakes and ensuring access to clean water for human and industrial uses. It is estimated that through the effects of AML work, every dollar of AML funding spent returns \$1.61 to local economies¹³; and for every mile of stream improved, there is a net gain of \$106,000 per year to local economies¹⁴.

The RECLAIM Act (H.R. 1733)

Clearly, the AML programs are key contributors to economic conditions. It is no surprise that the AML program has taken on such importance in discussions around facilitating economic revitalization in depressed coalfield regions, indicated by the introduction and passage of H.R. 2156, the Revitalizing the Economy of Coal Communities by Leveraging Local Activities and Investing More Act (RECLAIM) in the last Congress. Given the ongoing interest in enhancing the economic benefits of AML work, the RECLAIM Act has been re-introduced in the 117th Congress by Representatives Cartwright and Thompson as H.R. 1733. IMCC appreciates the opportunity provided by the bill's sponsors to provide our perspectives on implementation concerns associated with the legislation.

The RECLAIM Act would bring an unprecedented level of accelerated AML funding to bear on the massive inventory of legacy coal AML-impacted sites remaining throughout the country. This funding is critically important in protecting and restoring the health and safety of our historic coalfield citizens and their environment, as well as improving their too-long-distressed economies and quality of life. The AML programs commend the supporters of the RECLAIM Act for their recognition of the fundamental connection between the traditional AML program and economic revitalization, and we

¹³ Trout Unlimited, "Cleaning Up Abandoned Mine Drainage in the West Branch Susquehanna Watershed." July 2009

¹⁴ Pennsylvania Fish and Boat Commission, "Recreational Use Loss Estimates for Pennsylvania Streams Degraded by AMD for base year 1989 adjusted to 2015"

will gladly continue to discuss how reauthorization of fee collection can enhance the AML program's impact for local economies.

It is important to note, however, that drawing \$1 billion from the AML Fund over the next 5 years (as anticipated by the RECLAIM Act) will have a pronounced impact on the future course of the AML Program as originally envisioned by Congress in 2006. To accelerate funding from the AML Trust Fund now means that less funding will be available for future reclamation needs. With the AML fee set to expire in 2021, the future of AML funding is currently unclear. Whatever the future holds, the preservation and continuation of the AML program's contributions, including to economic revitalization efforts, cannot be sustained without the AML fee. IMCC therefore recommends that, in order for the RECLAIM Act to achieve its goals in the long-term, the continuation of the AML program through extension of the AML fee must be considered the highest priority.

Conclusion

In an era of increasing economic hardship for coalfield communities, the State and Tribal AML programs' work has become more important than ever. This fact is evidenced by the widespread discussions in recent years surrounding innovative approaches to accomplishing AML such as H.R. 315 and H.R. 2156 from the last Congress. Significant AML and associated economic development work have also been undertaken by the States and Tribes pursuant to the AML Reclamation Economic Revitalization Pilot Program, which is in its sixth year of operation. And the bill the Subcommittee has before it today, H.R. 1734, is the linchpin that holds many of these efforts together and is thus critical to fulfilling Congress' goals. All of these legislative measures have enjoyed significant bi-partisan support – showing recognition on both sides of the aisle of the fundamental role AML work plays in protecting human and environmental health and creating conditions for economic growth.

The legacy of abandoned mines still looms large in historic coalfield communities throughout the country, and their well-being remains deeply reliant on funding from the AML Program. Unfortunately, these storied communities whose generations of courageous, hardworking coal miners contributed so much to the development of our country are left with the debilitating health and economic impacts of historic mining. Innovative approaches to enhancing the benefits of AML work by building partnerships and facilitating economic growth hold great promise for the AML program's place in the future of coalfield communities. In view of the clear continuing role for the AML programs, and the immense remaining AML inventory, it must be recognized that if the long-term health, safety, environment, and economic livelihoods of these most deserving communities are truly to be protected and restored, it is imperative that the continuing need for AML work be kept firmly in mind. In order to bring a bright economic future back to coal country, a future for the AML programs must be ensured.

We appreciate the opportunity to testify today and the Subcommittee's attention to this critical legislative initiative.