US Department of the Interior
Office of Surface Mining and Enforcement

White Paper

"The Job's Not Finished"

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The Job's Not Finished

Structural imbalance in mine cleanup fund
diverts money from where it's needed most

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When President Bush released his FY 2004 budget proposal earlier this year he called for the reauthorization of OSM's authority to collect the fees that make up the Abandoned Mine Land fund. Our current fee collection authority under the Surface Mining Control and Reclamation Act expires in September 2004, and will have to be renewed if we are to finish the job Congress gave us in 1977.

Despite remarkable achievements in the past 25 years, the job is far from being done. More than $3 billion worth of listed health and safety coal problems remain, as well as another $3.6 billion worth of identified high priority coal problems affecting the general welfare of individuals in the coalfields and numerous environmental coal-related problems. Using all collections received between now and September 30, 2004, when the fee will expire, as well as the unappropriated balance of $1.5 billion, approximately $1.8 billion worth of health and safety related problems will remain along with other general welfare and environmental coal related problems.

The need to reauthorize the AML fee is an opportunity to take a good, hard look at our program and ask if the program is optimally structured to complete the job in an efficient and effective manner. If it is not, we need to address those problems in the drafting of new authorizing legislation.

Over the past several months, OSM has commenced a dialogue with many of the people that have an interest in how the AML fee is reauthorized. The goal of these discussions is to get stakeholders thinking about what has changed since the program was started more than 25 years ago and how to make sure we fashion a program that's going to help us finish the job.

In taking that hard look at the AML program and discussing it with government officials, congresspeople, industry representatives and citizens' advocates, I've come to the conclusion that while we have made significant achievements towards reclaiming mine sites abandoned prior to the enactment of SMCRA, various factors have changed considerably since 1977, creating a fundamental imbalance in the way funds from the AML Program are allocated.

In fact, I'm convinced that the ability of the AML Program to meet its primary objective of abating AML problems on a priority basis is being hindered by the statutory allocation formula that results in a progressive distribution of resources away from the most serious AML problems.

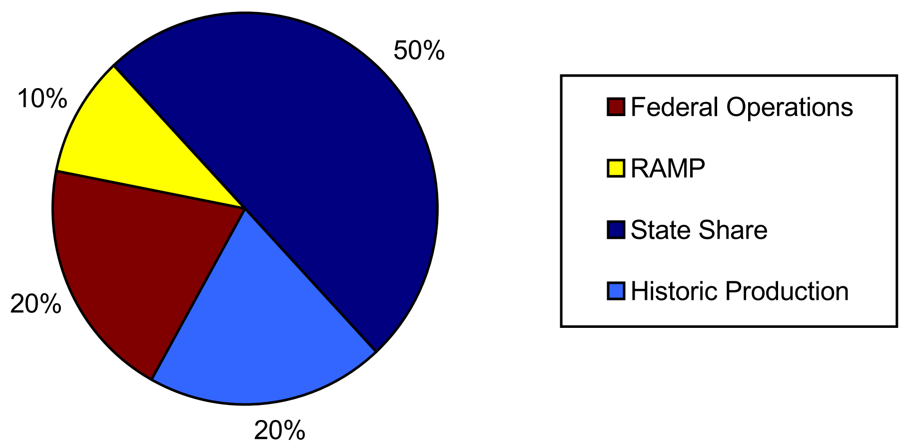
Before we can start talking about solutions, I believe we need for everyone to have a good understanding of the problem.

Makeup of the AML Fund

THE STATUTORY ALLOCATION FORMULA

All money collected from tonnage fees assessed against industry on current coal production ($0.35/surface mined ton and $0.15/deep mined ton) is deposited into one of several accounts established within the AML fund. Money in each of these accounts can be used only to accomplish the statutory purpose for which that account was established. Account funds not spent in any one year must remain in that account. Typically, money in one account cannot be transferred to another account or be used for any other purpose. The four accounts are depicted in Chart A and are described more fully below.

Chart A



STATE SHARE ACCOUNTS

A full 50% of the fee income generated from current coal production in any one state is allocated to an account established for that state. Likewise, 50% of the fee income generated from current coal production with respect to Indian lands is allocated to an account established for the tribe having jurisdiction over such Indian lands. *Current* coal production means all coal produced after 1977. The funds in these individual "state share" accounts can only be used to provide AML grant money to the state or tribe for which the account is established. The state/tribe must generally follow the priorities established by SMCRA in making spending decisions. First, they must concentrate on AML sites that pose a significant risk to human health and safety, then on the priority three environmental problems. Once a state or tribe certifies that it has completed remediation on all the abandoned coalmine sites, it is free to spend its state share money on other authorized projects.

HISTORIC PRODUCTION ACCOUNT

Twenty percent (20%) of the total fee income is allocated to the "Historic Production Account." Funds in this account are also used to provide AML grant money to the states and tribes. Each is entitled to a percentage of the annual outlays from this account in an amount equal to its percentage of the nation's total historic coal production -- that is, coal produced prior to 1977. Thus, the proportional entitlement for each state or tribe from this account is fixed. As is the case with state share money, each state or tribe must follow the priorities established in SMCRA in making spending decisions using money from the historic production account. However, unlike the allocation of state share money, once the state or tribe certifies that all abandoned coalmine sites have been reclaimed, it is no longer entitled to further allocations from the historic production account.

RAMP ACCOUNT

Ten percent (10%) of the total fee income is allocated to an account for use by the Department of Agriculture for administration and operation of its Rural Abandoned Mine Program (RAMP).
FEDERAL OPERATIONS ACCOUNT

The remaining 20% of the total fee income is allocated to cover federal operations including the Federal Emergency Program, the Federal High-Priority Program, the Clean Streams Program, the Fee Compliance Program, and overall program administrative costs. Residual money in this account can be transferred to the federal historic production account.

Distribution of grants

The AML programs operated by states and tribes are financed by the annual AML grants from OSM. The grants in total are made up from all the money in the state share accounts and all the money in the historic production account. On a national average, 71% of the total grant money distributed to states and tribes comes from the state share accounts and 29% comes from the historic production account, or a ratio of 2.5 to 1.

The grant amount awarded to each program is determined by two independent formulas. Twenty-nine percent (29%) of the total national grant amount is distributed among the states and tribes based on historic production. Seventy-one percent (71%) of the total national grant amount is distributed among the states and tribes based on income generated from each by current production. Because the total grant for each program is determined by these two independent formulas, the ratio of state share money to historic production money for any one state or tribe may be substantially different from the national ratio. This statutory schedule for allocation of

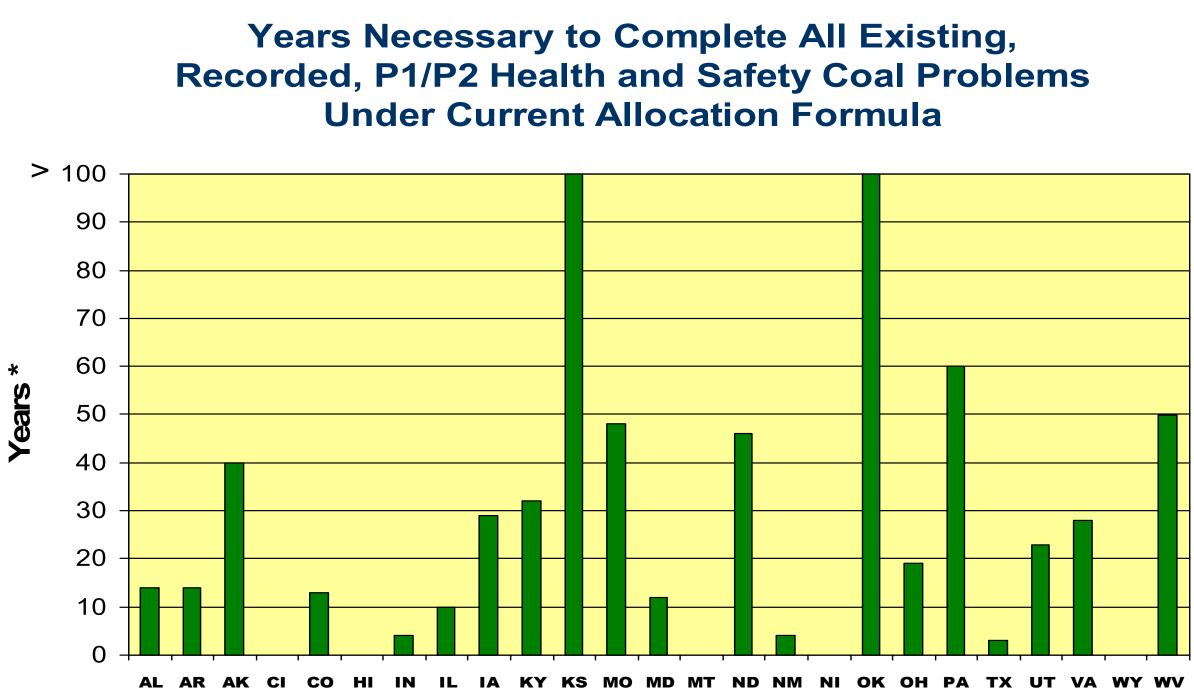


Chart B

The number of years are determined by dividing a state or tribes' recorded inventory of high priority sites by the amount of its annual AML grant spent on high priority reclamation. Thus, while other states' inventories are larger, having little or no current coal production and receiving a "minimum program" AML grant of only $1.5 M per year, Kansas and Oklahoma will require in excess of 100 years to complete its high priority problems.

AML resources has some significant consequences to the overall program's primary objective of abating AML problems on a priority basis.

There is a direct correlation between a state or tribe's historic production and the magnitude of its AML problem. Therefore, grant dollars from the historic production account are distributed to each in an amount proportional to the magnitude of its AML problem. Another way to look at it is that if the sole basis for grant distribution was historic production, each state or tribe would complete the task of abating all AML sites on the same date. In realty, however, only 29% of the grant dollars are allocated on the basis of historic production.

The majority of the grant dollars -- 71% -- are distributed to the states and tribes on the basis of current production. But, there is *no* relationship between the current production state share portion of the grant and the magnitude of the AML problem in that state or tribe. Consequently, there is no parity among the states and tribes in terms of the rate of AML reclamation.

Today, some programs have completed reclamation on all of the abandoned coalmine sites or are working on low priority sites while others are still decades away from completing the most critical high-priority sites.

This reality is dramatically illustrated in Chart B, above, which shows OSM's projection of how many years it will take for each state and tribe to complete its high-priority projects under the current allocation formula. (Note that that the years needed for an individual state or tribe to complete its reclamation is derived by dividing its recorded high priority coal inventory by the amount spent on construction in its annual grant. Kansas and Oklahoma each receive only $1.5 million per year, and thus the large number of years necessary to complete their reclamation). It is also clear that even though states and tribes substantially comply with the priority reclamation system established in SMCRA within the their borders, there is no semblance to adherence to that priority system from state to state.

To gain the clearest picture of the impact of the allocation system on the AML program one must also understand the demographics of the AML problems and the changing demographics of AML fee income. Based on historic production records we know that 94% of the AML problems are in

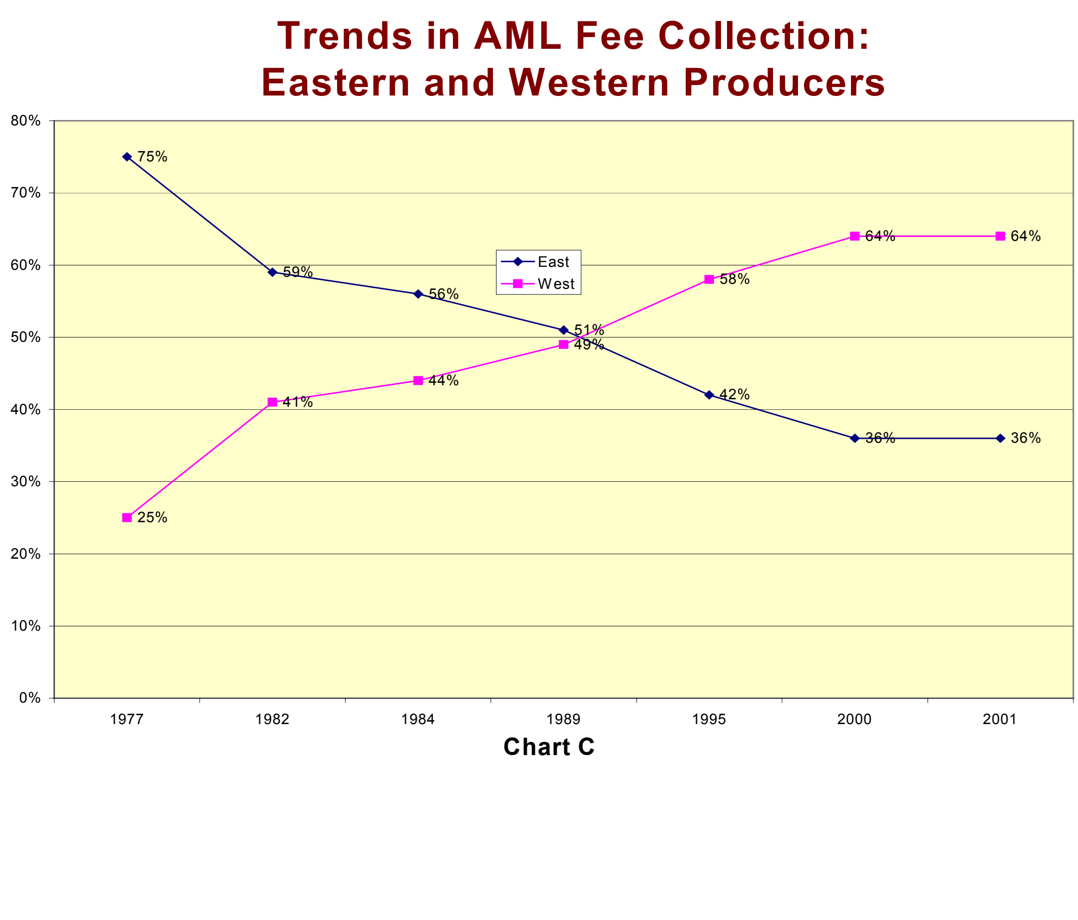


Chart C

the eastern United States. Chart C shows how the fee income demographics have changed over time. The chart reflects the general shift in coal production from the east to the west, and more significantly a shift in the east from surface mine production to deep mine production which is assessed at the lower AML fee of fifteen cents per ton.

We can see that in the early years of the AML program, the fee income was generally aligned with the magnitude of AML problems – 75% of the income was in the east where 94% of the AML problems existed, and 25% of the income was in the west where 6% of the AML problems existed. Correspondingly, the state share portion of the grants was generally, but coincidentally being distributed in amounts roughly proportional to the AML problem, much like the historic production portion of the grants is intentionally distributed. Much was accomplished during those early years of the AML program. Over the past 25 years, fee income has shifted away from the areas with high historic production and into the areas where there are fewer or no remaining AML problems. Because 71% of the total grant dollars is based on current production, there has been a corresponding shift of AML resources away from the areas with the most significant AML problems.

The following illustration gives a clear picture of how all of these factors come together to impact the AML program's ability to accomplish its primary objective.

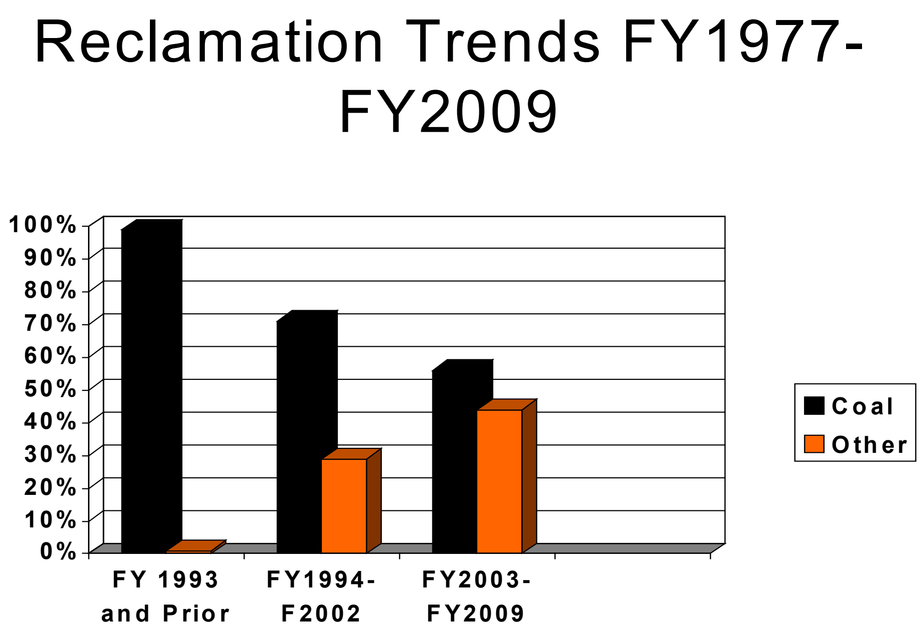


Exhibit D

From the program's inception in 1977 through 1993, about 99% of the state grant dollars was used to reclaim abandoned coalmine sites. Ninety-five percent (95%) of that money was used for high-priority AML reclamation. From 1994 through 2002, as current production shifted to regions with fewer AML problems, only 71% of the state grant dollars was used to reclaim abandoned coalmine sites, and only 64% was used for high-priority AML reclamation. This trend will continue into the future as more states, which are entitled to 71% of the total grant dollars, complete their high-priority AML work but continue working on low-priority sites and other authorized projects.

Before and after photo showing a dramatic example of the results that have been achieved under SMRCA.

The job's not finished

Congress passed Title IV of the Surface Mining Control and Reclamation Act of 1977 to clean up billions of dollars worth of lands and water damaged by the adverse affects of mining activities that took place before August 3, 1977.

If the reclamation fee is allowed to expire September 30, 2004, millions of citizens in the coalfields will still face a future that includes hazards created by unreclaimed highwalls, dangerous water impoundments, mine fires and other problems that continue to exist nearly three decades after the Act was passed.

If we hope to achieve the primary objective of abating AML problems on a priority basis, and in an efficient and effective manner, we must reauthorize AML fee collection authority and address the current statutory allocation formula that results in a progressive distribution of resources away from the most serious AML problems.

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More information on the AML Reclamation Program can be found online at www.osmre.gov.