

Frequently Asked Questions (FAQ) re. The SMCRA Title IV AML Program

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- General Questions -

Basic information regarding AML and the AML program

What is an Abandoned Mine Land (AML) site?

Answer: AML sites are lands that contain AML hazards (landslides, mine openings, etc.) where the land containing the AML problems was mined for coal prior to August 3, 1977 and left inadequately reclaimed. The AML Program is tasked with the responsibility of abating hazards (i.e. fixing AML problems) on lands affected by AML-eligible coal mining.

Additional Information: Coal mining today is subject to federal and state regulation to prevent impacts to communities and the environment, but this was generally not the case prior to the passage of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Over the course of three hundred years of unregulated pre-SMCRA coal mining, untold thousands of acres of land and water resources were impacted. With no legally responsible party in existence to clean up pre-SMCRA (also known as “pre-law”) coal mining sites, AML impacts and hazards have compounded over the years into a nationwide problem that requires significant resources, time, and effort to abate.

What is the AML Program? How was it created, and what is its purpose?

Answer: The AML Program is a federally funded service that enables 28 States and Indian Tribes to abate AML hazards on lands mined for coal prior to August 3, 1977 (including certain exceptions). Congress created the AML Program in 1977 via the enactment of Title IV of the Surface Mining Control and Reclamation Act (SMCRA). The AML Program was designed to equip states and tribes with the resources and authority they need to contend with the massive and pervasive challenge left behind by unregulated, pre-SMCRA coal mining.

Additional Information: State and tribal AML Programs receive funding through the U.S. Department of the Interior to conduct “reclamation” projects that protect citizens from the dangers of AML sites and to restore degraded water and other environmental resources.

Why should anyone be concerned about AML sites?

Answer: The public should be concerned about AML sites because AML sites exist in most regions of the country and they are a significant detriment to public health, safety, the environment, and economic well-being in the communities they impact.

Additional Information: Dangers posed by AML sites to community health and safety (for example: abandoned coal mine shafts, unstable high-walls, landslides, and the collapse of underground coal mines - known as “subsidence” events) are the AML Program’s primary concern. AML Programs are also engaged in treating water resources polluted by past coal mining, typically known as acid mine drainage or “AMD”. AMD affects public drinking supplies as well as the health of nearby streams, lakes, and rivers. The ongoing threat from AML to health, safety, and the environment in turn suppresses economic opportunities in these regions, such as the coalfields of Appalachia, which are often already struggling economically.

What is the relationship between modern mines and abandoned mines?

Answer: Modern mines are governed under Title V of the Surface Mining Control and Reclamation Act (SMCRA). SMCRA established rules and regulations under which modern mining must be conducted, including requirements for reclamation and restoration of mines once mining has ceased. Abandoned mines are governed under Title IV of SMCRA, which established the AML reclamation fee paid by the modern mining industry on current coal production. This reclamation fee is the primary source of revenue to address the lingering impacts of pre-SMCRA unregulated coal mining. Thus, the AML Program established under Title IV of SMCRA is a vital component of the balance between natural resource production and public health, safety, and environmental protection and restoration that Congress sought to establish through Title V of SMCRA.

Additional Information: Historic coal mining conducted prior to the enactment of SMCRA fueled the industrial development of the United States, but was conducted without modern knowledge or regard for mining’s potential negative impacts. The establishment of the SMCRA Title IV AML Program represents an accord between the modern coal mining industry, government regulators, and environmental advocates that requires coal companies that mine new sites to contribute to fixing the damage from previous unregulated coal mining. This relationship between the coal mining industry and the communities in and around which they operate is one of the key ways that the modern coal mining industry mitigates impacts on the people who live among, or near, their

mines. As conditions in historic coal communities have continued to deteriorate over the past decade, AML work has proven essential to coal economies and the restoration of a healthy and prosperous way of life for their citizens. The AML Program is an example of the good that can be achieved when government, industry, and citizens work together.

Can AML funds be used to reclaim modern mines?

Answer: AML grant funds provided through the AML Program are typically only eligible to be used on problems associated with abandoned coal mines (i.e. lands and waters affected by coal mining that occurred prior to August 3, 1977).

Additional Information: Pursuant to section 404 of SMCRA, there are rarely used exceptions to this rule that allow for AML expenditures on lands and waters impacted by mining that occurred *after* August 3, of 1977. These exceptions include: 1) AML expenditures on lands affected by coal mining that occurred during the period beginning on August 4, 1977, and ending on, or before, the date on which the Secretary of the Interior approved a State AML Reclamation Program; 2) AML expenditures on lands affected by coal mining that occurred during the period beginning on August 4, 1977, and ending on, or before, November 5, 1990, where the surety of such mining operator became insolvent during such period, and funds immediately available from proceedings relating to such insolvency, or from any financial guarantee, or other source, are not sufficient to provide for adequate reclamation or abatement at the site; and 3) when Congress declares that voids, and open and abandoned tunnels, shafts, and entryways resulting from any previous mining operation constitute a hazard to the public health or safety and that surface impacts of any underground or surface mining operation may degrade the environment. Congressional declarations for the problems mentioned in exception 3 above are only subject to abatement if the Governor of any state, or the governing body of an Indian tribe, makes a request of such action to the Secretary of the Interior.

- The Operation of the AML Program - Information on how the AML program works

How does the AML program operate?

Answer: The SMCRA AML Program operates through a cooperative federalism approach. States and Indian Tribes impacted by AML may apply for a delegated state or tribal AML reclamation program, which is approved by and subject to oversight from the U.S. Department of the Interior through the Office of Surface Mining Reclamation and Enforcement (OSMRE). Upon approval of their reclamation plans, states and tribes exercise primary responsibility for identification, monitoring, and reclamation of AML sites within their respective borders.

Additional Information: The state AML programs with large remaining inventories of unreclaimed AML sites, are referred to as “uncertified” states. When a state or tribe has reclaimed all high priority coal AML areas, they may be eligible for certification.

How is the AML program funded?

Answer: The AML Program’s work is made possible by the AML fee levied on coal currently produced in the United States. Current fees are 28¢ per ton for surface mined coal, 12¢ per ton for underground mined coal, and 8¢ per ton for mined lignite.

Additional Information: Congress set the current fees when they were extended in the Tax Relief and Health Care Act of 2006, lowering the fees 20% from the original amounts set in 1977. The Office of Surface Mining Reclamation and Enforcement (OSMRE) is responsible for collecting, managing, and distributing the money generated by the AML fee.

What is the AML Trust Fund?

Answer: The Office of Surface Mining Reclamation and Enforcement (OSMRE) collects and deposits the proceeds of AML fee collection into the AML Trust Fund. AML moneys are retained in the Trust Fund until distributed in accordance with the specific provisions of SMCRA.

How are funds allocated among the AML programs?

Answer: AML funding is allocated based on formulas established in SMCRA. The amount states and tribes receive each year in annual payments varies depending on the fees collected during the previous fiscal year.

Additional Information: The Tax Relief and Health Care Act of 2006 ensured distribution of AML grants is mandatory. Prior to 2006, distribution was subject to Congress' annual appropriations process. The statute requires AML Reclamation Program funds collected during the previous fiscal year to be distributed as follows:

- **State/tribal share:** Non-certified states receive 50% of the AML fees originating from coal production in their state during the previous year. Certified states receive amounts equal to their respective share from U.S. Treasury general funds. The state/tribal share funding that the certified states and tribes would otherwise receive (were they not ineligible for state/tribal share funding and instead being provided money from the Treasury) is transferred to the AML Trust fund for **immediate** distribution as historic coal share to the uncertified states.
- **Historic coal share:** 30% of total fee collections from the previous year are allocated to historic coal share for uncertified states. Historic coal grants are based on each state's percentage of coal tonnage produced prior to 1977. Congress created Historic Coal grants so that states with large numbers of abandoned mines, but little current coal production, would not be left without funds to reclaim them.
- **Federal aka "Discretionary Share":** 20% of total fee collections from the previous year are available for federal expenditures by OSMRE. These funds must first be used to provide Minimum Program Make-Up grants to non-certified states. These ensure that non-certified states receive at least \$3 million a year or the amount necessary to reclaim their remaining high priority AML areas, whichever is lower. OSMRE uses the remaining amount to fund operations and federal reclamation projects. The latter amount must be appropriated by congress each fiscal year.

What is an uncertified AML program?

Answer: The state and tribal AML Programs receive annual grants from OSMRE to plan and construct AML projects until all high priority coal AML areas have been reclaimed.

Additional Information: Twenty of the twenty-Five state AML Programs have large remaining inventories of unreclaimed AML sites and are considered “uncertified”. The progress of reclaiming and restoring AML sites by state and tribal programs is tracked in the Abandoned Mine Land Inventory System (AMLIS). Once a state or tribe has completed reclamation of all known priority 1 and 2 AML sites, they apply for certification. The twenty currently uncertified states are: AL, AK, AR, CO, IL, IN, IA, KS, KY, MD, MO, NM, ND, OH, OK, PA, TN, UT, VA, and WV.

What is certification or a certified program?

Answer: An AML program becomes “certified” when it has reclaimed all its known high priority coal AML areas.

Additional Information: Once certified, the source of the grant funds the state/tribe receives shifts from the AML Trust Fund to the General Fund of the U.S. Treasury. These funds have less restrictions on their use and typically are used to address emergencies, newly manifesting coal AML problems, maintenance of existing projects and conducting noncoal AML reclamation. It is important to note that while a certified program has completed all known high priority coal AML reclamation, this does not mean that all abandoned coal mine sites have been reclaimed. Currently five states and three tribes are certified: LA, MS, MT, TX, and WY, and the Crow, Hopi, and Navajo tribes.

Does certification mean these programs don’t need additional funding?

Answer: No. Certified programs continue to need funding to support AML reclamation. Over time, previously undetected abandoned mines are discovered, aging underground mines collapse creating subsidence problems, and populations expand into more rural areas with past mining issues raising the priority of need for reclamation.

What is a minimum program?

Answer: SMCRA Title IV designates any uncertified state program for which the annual AML grant distribution formula results in less than a \$3 million grant as a “minimum program”.

Additional Information: These states often have very significant AML inventories, but due to low levels of current coal production and comparatively low levels in the years prior to 1977, (which respectively determine a program’s “state share” and “historic coal share”) they do not receive adequate base-level funding under the current grant distribution formula. In these cases the grant distribution is augmented with “federal share” funds to reach the \$3 million minimum. Minimum program states currently include: AK, AR, IA, KS, MD, MO, NM, ND, OK, TN, and UT

Do minimum program states still need funding? Are they getting enough?

Answer: Additional funding provided to minimum program states is helpful to encouraging progress, but the \$3 million mandatory distribution is still markedly deficient as compared to the massive AML inventories and costs remaining in many of these minimum program states.

Additional Information: To accomplish reclamation these states often must combine several years’ worth of grant funding to fund one significant project. The lack of funding compromises these states’ ability to maintain sufficiently-staffed, securely-funded AML Programs, stalling progress with their inventories significantly. Emergency projects have a major impact on minimum programs. These events shift funding from planned projects to emergency projects. A single emergency project can consume an entire year’s funding, further delaying reclamation of inventoried AML problems. To assist the minimum programs in reaching certification more rapidly and in dealing with emergencies that occur within their jurisdiction, IMCC and NAAML P strongly recommend an increase in minimum program funding from \$3 million to \$5 million per year.

- The AML Inventory and Progress with Reclamation -
Information on how the AML program keeps track of reclamation work and on the progress that has been made with reclamation so far

What is the AML inventory (e-AMLIS)?

Answer: The Abandoned Mine Land Inventory System (e-AMLIS) is an ongoing inventory of identified unreclaimed and completed AML sites categorized based on type and priority (as defined in SMCRA). The inventory includes estimates for unreclaimed problems of the *construction costs* necessary to reclaim each hazard or impact and actual *construction costs* for the AML problems that have already been reclaimed.

Additional Information: The Office of Surface Mining Reclamation and Enforcement (OSMRE) maintains e-AMLIS and the States and Tribes, with oversight by OSMRE, are responsible for updating the data. It is important to note that e-AMLIS only includes data related to *construction costs* and it is not intended to provide a full picture of how AML grant funding is utilized. OSMRE and the state and tribal AML Programs continually update the inventory as new sites are identified and as AML reclamation work is completed. See the FAQ entitled “How is progress with AML work tracked and reported?” to learn more on how progress with AML work is tracked and for details on how OSMRE tracks the complete range of AML funding expenditures. Additional information about e-AMLIS is available on OSMRE’s website at:

<https://www.osmre.gov/programs/AMLIS/description.shtm>

Does the AML inventory (e-AMLIS) reflect costs for all AML work being accomplished and all uses of AML funding?

Answer: e-AMLIS was created primarily to aid OSMRE and the states and tribes in tracking reclamation construction costs of coal mining related AML accomplishments, especially the reclamation of high-priority health and safety hazards.

Additional Information: e-AMLIS serves this purpose adequately, but was not intended to, and is not structured to present a comprehensive or perfectly accurate picture of remaining AML costs, or of all of the ways that AML grant funding is spent by the States and Tribes. The inventory only reflects direct *construction costs* of reclamation and does not reflect

several other ways that the states and tribes are authorized to utilize their grant funding to contend with the impacts of AML, for example funding necessary costs to investigate, survey, design, engineer, permit, implement, and manage reclamation projects.

Why does the number of AML features documented in the AML inventory (e-AMLIS) and the total cost listed to reclaim those features continue to grow?

Answer: The AML inventory (e-AMLIS) and associated cost estimate to address all of the known AML sites has continued to grow due to previously unknown AML features and hazards being discovered and also due to a change in priority (increased health and safety hazard) of previously known lower priority AML sites.

Additional Information: The AML inventory (e-AMLIS) has continued to grow despite the notable progress with AML work for several reasons. Contrary to popular belief, the AML inventory is not static. With the legacy of over 200 years of unregulated (and in some cases undocumented) coal mining in the United States, it is inevitable 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 total cost to complete remaining AML reclamation work. With advancements in technology, the collection of more complete maps and mining records, the development and encroachment of nearby communities into AML areas, and increased awareness and identification of these sites by local residents, many additional AML hazards have been identified and added to the AML inventory in the last few decades. 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 outdated cost estimates, inflation, and updated understanding of reclamation requirements. Finally, it should be noted that any additions to the inventory by the states or tribes must be reviewed and approved by OSMRE.

Does the AML inventory (e-AMLIS) need to be updated?

Answer: The answer to this question depends on the purpose one has in mind for the AML inventory. The original and primary purpose of the AML Inventory is tracking the number, location, size, relative danger level, and rough reclamation costs of the AML sites identified as well as the details (construction cost, units reclaimed, date reclaimed, etc.) for completed AML reclamation projects – and it generally serves this purpose well. To the extent that the inventory is being used to identify and track remaining AML sites, it is therefore not in need of significant update.

Because tracking AML site locations and reclamation progress is the inventory's primary purpose, cost estimates are not routinely updated and many are significantly out of date. To the extent that the AML inventory would be used to understand the overall remaining costs of unfunded AML work, a significant update effort would therefore have to be undertaken to achieve a high degree of accuracy.

Additional Information: The inventory was created in the 1980's during the early days of the AML Program, and since then has been the central means by which the states and tribes plan and track their progress with reclamation. Due to the expensive, time-consuming nature of inventorying work, and the fact that funding is prioritized for reclamation work, it is generally impractical to keep the AML inventory 100% up-to-date.

Existing inventory entries are generally only reviewed or updated as needed and as opportunities arise. Cost estimates in e-AMLIS are therefore often significantly out of date where, for example, they have not been updated to account for inflation since the 1980s. Generally speaking, the relative accuracy of the cost estimates is less important relative to the AML Programs' immediate job of performing reclamation. The states and tribes have the information they need to identify the next most important site, and there is no shortage of high-priority sites in need of reclamation in most AML-impacted states and tribes. The states and tribes therefore feel well-equipped to continue reclamation for the foreseeable future without the need for a comprehensive update to the AML inventory.

While the AML inventory cannot be said to provide a full and accurate picture of remaining AML reclamation costs, the current inventory *does* nonetheless adequately demonstrate that total remaining AML reclamation costs far exceed the amounts which have been or will be appropriated through the AML Program as currently authorized through SMCRA. From the states' and tribes' point of view, remaining costs are high enough that, in terms of dollars that could be spent to update or improve the inventory, total accuracy is generally less important than furthering actual reclamation work. However, several NGOs and others believe that a comprehensive update of the AML Inventory would be beneficial to more fully define the extent of the remaining AML problem

nationally. To the extent that updating AML site data and cost estimates in the AML inventory (e-AMLIS) is deemed necessary and desirable, NAAMLPP recommends that such efforts be funded separately from regular ongoing annual AML grants to states and tribes.

One potential source of funding an AML inventory update would be a one-time or recurring appropriation from the federal share of the AML Trust fund for states and tribes to use for inventory update efforts without compromising the current and ongoing reclamation work and AML emergency projects funded through their annual AML grants. It would be inconsistent to expect both improved inventorying and increased focus on high-priority reclamation without additional, separate funding for the inventory updating effort.

How is eligibility and priority for AML site reclamation determined?

Answer: The Surface Mining Control and Reclamation Act (SMCRA) defines lands and waters that are eligible for reclamation as:

“Lands and waters which were mined for coal or which were affected by such mining, wastebanks, coal processing, or other coal mining processes and abandoned or left in an inadequate reclamation status prior to Aug. 3, 1977, and for which there is no continuing reclamation responsibility under state or federal laws.”

SMCRA defines three priorities and establishes that expenditures of moneys from the fund shall reflect the following priorities in the order stated:

Priority 1 (P1) - the protection of public health, safety and property from extreme danger of adverse effects of coal mining practices;

Priority 2 (P2) - the protection of public health and safety from adverse effects of coal mining practices; and,

Priority 3 (P3) - the restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources and agricultural productivity.

Additional Information: The purpose of the priority system is to strategize which AML sites should receive precedence when decisions about project selection are made. This system is important in that it helps to ensure that the AML Program is effectively balancing the health and safety as well as the environmental impacts of AML sites and serving

impacted communities based on their needs. Priority 1 and 2 sites (P1 and P2), as the most direct health and safety concerns, have long been given precedence by the AML Program; these sites pose the highest danger to citizens' lives, and SMCRA requires that these sites be dealt with first and receive the vast majority of AML grant funding.

The AML Programs also engage in a notable amount of important priority 3 (P3) work – which is generally defined to include any environmentally impacted site without a particularly high risk to public health and safety. It is important to note that most Priority 3 work is conducted in conjunction with Priority 1 and Priority 2 projects (under the “P3 adjacency” rule). Where multiple AML features exist at one site, it generally makes economic sense to remediate all those impacts as one project. This system allows the states and tribes to select projects based on health and safety priorities while also making steady progress with environmental impacts. In this way, the states and tribes can *fully* restore a given site, rather than only the worst portions while leaving other impacts behind. For example, dangerous highwalls are at times reclaimed by backfilling with adjacent spoil material, which is itself classified as a priority 3 AML feature. As another example, the AML Program might, in the course of sealing a dangerous mine shaft, also work on other present AML impacts such as coal refuse piles, abandoned equipment, or pollution of nearby streams.

While “Priority 3” projects are “lower” priority in terms of imminent safety risk, they severely impact long-term environmental and economic health. For example, streams that run orange with AMD pollution render watersheds devoid of biological life and eliminate all recreational or economic uses. Priority 3 projects are sometimes mischaracterized as unimportant due to their being labeled as “low priority” compared to priority 1 and 2 sites. In this case, “low priority” is a misnomer - it is true only relative to other projects, not in terms of the project's overall importance. All inventory-listed AML projects are important, or they would not have been included in the inventory.

What is the process for completing an AML project?

Answer: The first step in completing an AML project is identifying and gathering information on the prospective site. The State/Tribe then determines the eligibility of the abandoned mine for AML funds, which requires that the site must have been abandoned prior to August 3, 1977 (except for a few limited circumstances outlined in SMCRA) and have no ongoing reclamation responsibilities by any viable, extant party. The State/Tribe is required to perform a site inventory to account for the size, scope, and estimated construction costs of a given project, then enter that preliminary information into e-AMLIS. Once a project has been identified, implementation of that project requires compliance with requirements

under SMCRA as well as a cadre of other environmental laws such as the Clean Water Act, the National Environmental Policy Act, the National Historic Preservation Act and the Endangered Species Act. OSMRE reviews the State's/Tribe's compliance measures and, when the requirements are satisfied, issues an Authorization to Proceed (ATP) for each project.

Meanwhile, the State/Tribe must also investigate options and develop project plans including conducting sampling, designing and engineering the project itself, and submitting these plans for additional review including obtaining all necessary permits. Then, the State/Tribe must generally procure a construction contractor to complete the project, which often requires a contract bidding process. Once the contractor is selected and work moves forward, the State/Tribe must oversee progress with the project. Once the project has been completed, the State/Tribe will update the AML inventory to reflect the final project construction cost and update their grant report information for OSMRE. The States and Tribes then monitor the success of the projects and perform any necessary maintenance.

How is progress with AML work tracked and reported?

Answer: OSMRE tracks and reports progress on AML Fund expenditures through grants to the States and Tribes using the Financial and Business Management System (FBMS). OSMRE also uses the AML Inventory, e-AMLIS, to track and report progress on AML reclamation work in terms of the *construction cost* of reclamation work that has been completed and reclamation cost estimates of work that remains to be done.

Additional Information: OSMRE keeps track of all AML grant expenditures (e-AMLIS tracks only construction costs) through the Financial and Business Management System (FBMS). The state and tribal AML Programs submit detailed information to OSMRE through their grant applications and annual performance reports that is entered in FBMS and shows how AML grants have been, or will be, spent on the complete range of grant activities. A recent review of FBMS information for AML Grants between 2008 and 2017 found that the States and Tribes have allocated 91.1% of the funding to plan, design, construct, and inspect the various types of projects authorized under SMCRA and 8.1% was allocated for administrative costs.

OSMRE uses information from FBMS and e-AMLIS to report on the AML Program's progress through annual reports as well as through annual budget justification documents. OSMRE's annual report features the full range of project types to which AML funding is directed, whereas the budget justification document only provides a subset of data based on

certain data-sets in e-AMLIS, which highlight certain types of AML work but do not represent a full picture of what AML funding has accomplished. Much of this latter information is dictated by requirements under the Government Performance and Results Act (GPRA).

What are undelivered orders?

Answer: “Undelivered orders” is a term used by OSMRE that refers to funding that has been allocated and distributed to state and tribal AML grants but has not yet been accessed and “drawn down” (withdrawn) from the U.S. Treasury by the State/Tribe. The term does not account for budgetary or contractual commitments at the State/Tribal level, or grant guidelines that require grant funds be drawn down over time as expenses are incurred.

Additional Information: Under federal grant management guidelines funds “distributed” to States and Tribes through AML Grants generally remain in the U.S. Treasury until they are expended by the State/Tribe during the 3-year performance period of each grant. The guidelines require the States/Tribes to minimize cash-on-hand and draw down funds from the Treasury only as they are expended. An example of this is an AML construction contract that has a 12-month duration. The State/Tribe legally “commits” the full contract amount at the time of contract award. That amount however continues to appear as an undelivered order at the federal level as the construction work progresses. As invoices are processed (usually monthly) and the contractor gets paid the State/Tribe withdraws the amount from the U.S. Treasury incrementally reducing the corresponding “undelivered order” amount. While undelivered orders is an important measure for the U.S. Treasury, it is not an accurate representation of ongoing AML activities at the State/Tribal level and does not reflect committed AML grant funds that are unavailable for new projects.

How do AML programs ensure AML funding is used efficiently and as intended by SMCRA?

Answer: There are a variety of mechanisms in place to ensure that AML funding is used in the ways intended for by SMCRA and with optimal benefit. First, prior to receiving any AML funding, a State/Tribe has to prepare a Reclamation Plan and receive plan approval from OSMRE. Second, the States/Tribes must comply with SMCRA and follow the eligibility and priority ranking criteria established by Congress in the Act. The States/Tribes must also prepare an annual AML grant application that identifies in broad terms how the AML grant funding will be used. These

AML grant are submitted to OSMRE for review and approval prior to any funding be utilized. Finally, OSMRE maintains a strong oversight role that includes approving AML problems and their priority ranking when they are entered in the AML inventory; reviewing project documentation and issuing Authorizations to Proceed (ATP) before States/Tribes can initiate reclamation or related construction; and routinely inspecting and reviewing AML project sites in the field before, during and after construction to ensure successful reclamation and compliance with all AML Program requirements

Additional Information: Under SMCRA's cooperative federalism system, the state and tribal AML Programs take the lead in administering their respective programs and document their approach and procedures in the State/Tribal Reclamation Plan. OSMRE's approval of the State/Tribe's Reclamation Plan designates that the plan meets the standards set by the law and regulations. The States/Tribes are required to update their Reclamation Plan if they implement a different approach or procedure and OSMRE can request a plan update when it believes it is needed.

The progress and operation of the AML Program is regularly reviewed by Congress, which continually assesses the progress of AML work and adjusts the AML Program as necessary to meet current and future needs and to achieve optimal results. For example, when Congress amended the program in 2006 it, among other things, eliminated Priority 4 and Priority 5 rankings to focus the program on the highest Priority rankings (1 through 3), and increased the provision for acid mine drainage (AMD) treatment and abatement from 10% to 30% of a State/Tribe's annual grant amount.

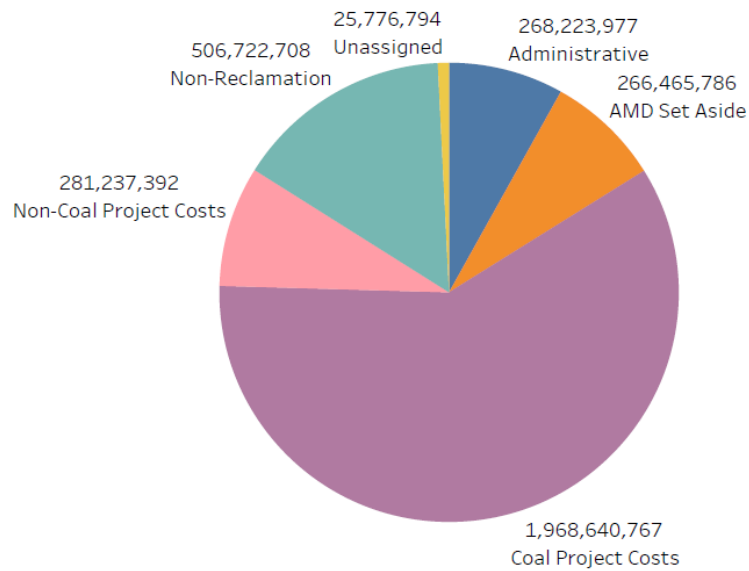
OSMRE maintains a strong oversight role in ensuring that the state and tribal AML Programs are complying with the rules of the program. OSMRE reviews and approves the overall reclamation plans for each state and tribal AML Program at the outset. On an ongoing basis, OSMRE reviews every AML project before it begins and issues an Authorization to Proceed (ATP) before a State/Tribe can initiate reclamation or related construction. OSMRE reviews periodic reports from each state/tribal AML Program outlining its use of grant funding and the progress being made. OSMRE also routinely inspects and reviews AML project sites in the field before, during and after construction to ensure successful reclamation and compliance with all AML Program requirements.

How do the AML programs allocate their funding? How much do the AML programs spend on administration of the program?

Answer: The state and tribal AML Programs strive for efficiency in the use of their limited AML grant funding. The state and tribal AML Programs submit detailed information to OSMRE through their grant applications and annual performance reports on how AML grants have been, or will be, spent on the complete range of grant activities. OSMRE tracks this information in the Financial and Business Management System (FBMS). A recent review of FBMS information for AML Grants between 2008 and 2017 found that the States and Tribes have allocated 91.1% of the funding to plan, design, construct, and inspect the various types of projects authorized under SMCRA and 8.1% was allocated for administrative costs.

Additional Details: The AML grants from 2008 through 2017 covered in the FBMS review have awarded \$3.3 billion to the States/Tribes. Through the grant application process the funds are categorized by the states/tribes into standardized cost categories established in OSMRE's Financial Assistance Manual (FAM). For the review, the grant budget amounts were summarized into 5 Categories with a 6th for funds that were unassigned due to a grant award or amendment that was pending at the time the data was pulled. Unlike e-AMLIS, the grant-based information includes not only construction costs but also reflects the necessary costs to investigate, plan, design, permit, and inspect the construction of reclamation projects. The grant categories show that the states/tribes have spent or budgeted:

- 59.3% to plan, design, construct, and inspect coal reclamation projects;
- 15.3% to plan, design, construct, and inspect non-reclamation activities (these are the projects in certified states/tribes "established by the State legislature or tribal council of the Indian tribe, with priority given for addressing the impacts of mineral development" as authorized under SMCRA Section 411(h)(1)(D)(i))
- 8.5% to plan, design, construct, and inspect non-coal reclamation projects;
- 8.1% for administrative costs;
- 8.0% to plan, design, construct, and inspect acid mine drainage (AMD) abatement or treatment projects;
- Less than 1% was unassigned at the time of the report



Category	Category Total	%
Administrative	\$ 268,223,977.00	8.09%
AMD Set Aside	\$ 266,465,786.00	8.03%
Coal Project Costs	\$ 1,968,640,767.00	59.35%
Non-Coal Project Costs	\$ 281,237,392.00	8.48%
Non-Reclamation Activities	\$ 506,722,708.00	15.28%
Unassigned Funds	\$ 25,776,794.00	0.78%
Grand Total	\$ 3,317,067,424.00	

Is there un-used money in the federal AML Trust Fund?

Answer: Yes, as of September 2018 there was a balance of approximately \$2.4 billion in the federal AML Trust fund. This is often referred to as the “unappropriated balance.” As a general note, it is important to keep in mind that all of the money in the unappropriated balance is already serving and/or is planned for a certain purpose.

Additional Details: The money currently residing in the AML Trust Fund, often called the “unappropriated balance”, exists for several reasons. The major categories of moneys in the unappropriated balance are: “Prior Balance Replacement Funds”, “Phase-in” Funds, and left-over funding from the Rural Abandoned Mines Program (RAMP).

Prior Balance Replacement Funds: This is the most significant amount of money in the unappropriated balance. Pursuant to the 2006 SMCRA amendments, “Prior Balance Replacement” funding was paid from the U.S. Treasury to state and tribal AML Programs

in order to compensate for funding that was withheld before AML grants were made a mandatory expenditure. Congress placed an equivalent amount that was paid to the states and tribes as prior balance replacement funds into the AML Trust Fund in order to generate interest revenue. The interest generated by the AML Trust Fund is provided to support the funding needs of the United Mine Workers of America (UMWA) pension and healthcare. The prior balance replacement funds in the unappropriated balance of the AML Trust Fund are currently scheduled to be distributed to the uncertified AML Programs beginning in FY 2023.

Phase-in Funds: The 2006 SMCRA amendments provided that state/tribal Share, Certified In-lieu (CIL Payments), and Minimum program make-up funds payments would each be reduced by a certain percentage amount in the first few years following 2006. The funding withheld during those years was placed in the AML Trust Fund in order to generate interest income, and therefore is currently reflected as part of the unappropriated balance. That funding is to be paid to the states and tribes from which it was withheld under a predetermined schedule as prescribed in SMCRA.

State/Tribal Share phase-in: Distributions were reduced to 50% in 2008 and 2009 and 75% in 2010 and 2011. The portion of fee collections not distributed in those years remains in the AML Fund in respective state/tribal sub accounts and is distributed to the state/tribe upon certification or after FY 2022.

CIL Phase-in: Distributions to the certified in-lieu states and tribes were reduced to 25% in FY 2009, 50% in 2010, and 75% 2011. These states and tribes received the difference back in two equal payments in FY 2018 and 2019.

Minimum Program Phase-in: Mandatory payments from the Federal Share to minimum program states (to bring their distribution to the minimum \$3 million) were reduced to 50% in FY 2008 and 2009 and 75% in 2010 and 2011. The funds will be distributed to the minimum program states as they certify or at the end of AML Program.

RAMP Funds: - The Rural Abandoned Mine Program (RAMP) allocation was eliminated by the 2006 amendments to SMCRA. Former RAMP moneys were transferred to the federal share of AML funding for a variety of purposes, including supporting state and tribal AML Programs, conducting federal reclamation projects, and administering the AML Program.

How does sequestration effect AML grant funding?

Answer: AML grant funding has been subject to sequestration pursuant to the Balanced Budget Control Act since 2013. Since then, a percentage of funding has been withheld from grants to states and tribes. As of FY 2018, \$118.6 million of AML funding has been sequestered.

Additional Information: Funds sequestered from uncertified programs are retained in a discrete account, which is not considered part of the AML Trust Fund unappropriated balance. OSMRE is tracking the amounts that have been withheld from each state/tribe so that those moneys can eventually be paid back to the states and tribes to which they would otherwise have been paid. However, OSMRE lacks the authority to return sequestered money to the originally intended AML programs without specific direction from Congress.

Is there enough money left in the AML Trust Fund to cover reclamation needs going forward?

Answer: No. The funding remaining in the AML Trust fund is not adequate to complete all of the total remaining reclamation needs. Although some moneys are retained in the AML Trust Fund for the purpose of distribution after the last regular AML grant distribution in FY 2022, those remaining funds will only allow reclamation of a fraction of the remaining inventory.

Additional Details: As of September of 2018, the unappropriated balance remaining in the AML Trust fund was approximately \$2.4 billion. The estimated construction cost of the unfunded P1/P2 inventory of AML sites included in the federal e-AMLIS inventory system is approximately \$9.4 billion (which does not include the additional necessary costs to investigate, survey, design, engineer, implement, and manage reclamation projects).

- Types of AML Work -

Information on the types of work engaged in by the AML program

What types of work do AML Programs do?

Answer: The AML programs are engaged in a variety of types of work to restore and protect against the adverse impacts of AML sites. The most common type of AML projects seek to protect public health and safety, for example by sealing open mine shafts, repairing subsidence damage from collapsed underground mines, and extinguishing coal refuse fires. While making progress with health and safety impacts, the AML programs have also steadily worked to remediate the environmental impacts of AML sites, for example treating water impacted by acid mine drainage (AMD) pollution.

Additional Information: The AML Program's mission is to restore and safeguard our nation's AML-impacted lands and waters in order to protect public health and safety, improve the environment, and promote the beneficial use of land. To achieve those goals, it was clear to Congress from the outset that a strong AML Program must be equipped to contend with many types of AML impacts,

Is the AML Program only focused on safety?

Answer: No, the AML program is not only focused on safety. While the AML programs are directed by law to prioritize safety-oriented projects, they are also required to give attention to environmental impacts such as polluted water.

Additional Information: Understandably, there has been a tendency throughout the history of the AML Program to focus solely on protecting our Nation's citizens from the dangers associated with AML sites. Yet, it has become increasingly clear over the following decades that these sites impact much more than the immediate health and safety of nearby citizens. In addition to public health and safety issues, AML sites have significant adverse impacts on the environment. Without reclamation, the environmental impacts associated with historic mining would leave the Nation's landscape permanently scarred and contaminated.

How does the AML Program benefit health and safety?

Answer: The AML programs reduce the number of people injured or killed as a result of AML hazards and contribute to restoring impacted communities sense of security.

Based on e-AMLIS data as of 2017, more than 7.2 million people nationwide have been protected from abandoned mine hazards. 875,000 acres of high priority abandoned coal mine sites have been reclaimed, more than 46,000 dangerous mine shafts and portals have been eliminated, and reclamation of over 29,000 acres of dangerous piles and embankments have been completed.

Additional Information: The most common types of AML health and safety projects are dangerous highwalls, mine openings (shafts and portals), and subsidence events.

Highwalls, the most prominent remnant of abandoned surface mines, are vertical or near vertical rock cliff-faces created during excavation of a surface coal mine. 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 while near the base of the highwall.

Mine openings and subsidence events are often the hidden remains from the vast legacy of underground mining throughout the country. Many communities in historical mining regions are built partially or entirely on top of old underground mine workings, often unbeknownst to residents. The collapse of unsupported underground voids results in dangerous openings or depressions forming at the surface, which buckle streets and sidewalks and damage or destroy towns and homes built above.

How does the AML Program benefit the environment?

Answer: AML sites are the cause of many types of environmental impairment, including surface and groundwater contamination, erosion, sedimentation, inadequate vegetation, and most prominently, the pollution of rivers and streams as a result of acid mine drainage (AMD). AMD is the result of water-filled underground mines that drain toxic mineral- and metal-laden water into surrounding watersheds, resulting in the inability of these waters to support biological life or the drinking water needs of nearby communities.

Additional Information: With Title IV AML funding as a base, and with the addition of unwavering commitment by the states and tribes, careful project design, and productive, financial-resource-leveraging partnerships, the multitude of acid mine drainage water treatment systems constructed

through the Title IV AML Program are making real progress in battling AML water pollution. Individual treatment systems have a positive impact to nearby communities and ecosystems, and the aggregate impact of many such treatment systems can bring entire watersheds back to life. Thousands of miles of streams have been restored in this way, and the majority of the responsible treatment facilities rely on AML funds to some degree for continued operation, monitoring, and maintenance. The removal of coal refuse piles and remediation of poorly vegetated AML sites also contributes to water quality by reducing the amount of sediment entering the watershed, and these projects also rely on AML grants. Without that support, the substantial environmental gains these remediation efforts and treatment systems represent would be very quickly lost, and many thousands of miles of streams would return to being devoid of life.

What is Acid Mine Drainage (AMD)?

Answer: Many abandoned underground mines discharge groundwater flow that comes into contact with coal and other materials permeated with minerals that are easily dissolved in the water. This results in the formation of highly acidic water that runs out of the mine. AMD can also result from surface runoff from historic coal refuse and spoil piles. In these instances, nearby water resources are often polluted to the point that they no longer support life and are unsuitable for human recreation. The streams can also be rendered useless for drinking water supplies and industrial uses due to severe degradation from AMD.

Additional Information: Treating this type of water pollution is among the most difficult of AML projects, and in general is among the most challenging and expensive type of environmental restoration work. Typically the mine workings themselves cannot be reclaimed to the point of eliminating the source of the pollution. Therefore, the only viable option is to continually treat the water emanating from the literally hundreds of mine drainage portals, often in a single watershed. These sites are also among the least likely to be addressed via extra-governmental work due to sheer expense and the legally thorny nature of being responsible for such sites. The Title IV AML Program is therefore generally the only available source of meaningful restoration with respect to the water quality impacts of AML sites.

SMCRA provides that state and tribal AML Programs may designate a certain percentage (up to 30% if they have an approved AMD Set-Aside program) of their annual AML grants for application to AMD water treatment projects. Such projects require long-term treatment, for which annual AML grant funding is not otherwise available. The AMD set-aside accounts are intended to provide the opportunity for funding this

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

What are water supply replacement projects?

Answer: The states and tribes often utilize Title IV SMCRA funding to provide access to water for communities and households that have lost or had their water sources polluted due to pre-SMCRA mining operations, for example where an underground mine void collapses and empties nearby streams, or where nearby ground water resources are laden with toxic heavy metals.

Additional Information: Water supply replacement projects are a good example of a direct health benefit provided by the AML Program, albeit one that is generally lesser-known. Living among AML sites, as so many in the historical coal mining regions do, means contending with AML impacts in every respect of life, including access to safe and reliable drinking water.

In economically depressed regions of the country, AML Program water supply replacement projects are often the only available economically viable source of help, meaning that these communities are quite literally dependent on the AML Program to maintain basic standards of living. The AML impacted water supplies are often replaced by extending waterlines from municipal water companies and authorities to the communities experiencing degraded potable water supplies.

How does the AML Program benefit the economy?

Answer: The SMCRA AML Program plays a vital role in the effort to restore economic wellbeing in AML impacted communities by eliminating or reducing the drag on economic development caused by the AML hazards. Economic benefits accrue from much of the AML programs' work, including responding to the constant threats to infrastructure stability represented by subsidence events and landslides, and providing access to clean water and restoring opportunities for tourism and recreation.

The AML programs' work also results in thousands of direct as well as indirect jobs. Consistently conducted AML projects spur additional economic activity in turn, providing support for other industries.

Additional Information: 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 then multiplied when newly reclaimed sites once again become suitable for development. AML sites are often prime locations for new business ventures and/or tourist attractions, creating new space for rebuilding communities to grow economically. For every dollar of AML funding spent, \$1.59 is returned to the local economy. For every mile of stream improved, there is a net gain of \$80,000 per year to the local economy.

What are AML emergencies?

Answer: AML emergency projects are one of the AML programs' most important functions. These suddenly-occurring problems pose an extreme danger to our citizens' health, safety and general welfare and may involve 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. The state and tribal AML Programs stand ready to respond to public complaints that require immediate action to protect public health and safety or restore the environment from the effects of past coal mining. Communities located among prevalent abandoned mines live in constant worry of this type of sudden, devastating event – and the AML Program helps to bring to these communities the security and peace of mind they deserve.

Additional Information: For minimum programs or those programs receiving limited funding, AML emergencies can significantly impact their ability to meet planned reclamation needs. For some programs, emergencies have the potential to utilize all of a single year's funding. This in turn delays their ability to complete much needed reclamation and address the remaining needs as identified in their current inventories.

Can projects be funded that are not on the inventory?

Answer: Generally speaking, no. AML projects must be on the AML inventory to be eligible for funding. However, an exception is provided in the case of emergency projects.

Additional Information: By their nature, AML emergencies tend to be high priority and are often not already listed in the AML inventory because

they were not previously known or because the previous condition of the site was not considered high priority. OSMRE approval is still required before expending funds on AML emergency projects, and they are added into the AML inventory as the project is conducted.

Can AML funding be used for non-coal reclamation?

Answer: Generally speaking, non-coal AML sites are not eligible for SMCRA Title IV AML funding. However, there are certain rare cases in which non-coal AML work can be pursued.

Additional Information: Uncertified AML Programs may be allowed to expend AML funds on a non-coal AML project only if specifically requested by the Governor and approved by the Department of the Interior. This exception is allowed in order for particularly dangerous non-coal AML sites to be reclaimed if necessary. For certified states and tribes, more flexibility is granted in how AML funding is spent due to the fact that the majority of coal AML work has already been accomplished (hence their status as “certified”). It should also be noted that funding for certified programs comes from the U.S. Treasury, rather than from AML fee receipts. Certified programs must still prioritize coal AML work when previously unknown sites are discovered or where AML emergencies are present, but are also allowed to engage in non-coal AML work where the sites in question are of high priority due to the threat they pose to human health and safety.

- Reauthorization and the Future of the AML Program -
Information on what to expect for the future of the AML program and what would be required for the AML program to be preserved

What is “reauthorization”

Answer: The AML fee, on which both the federal and state/tribal AML Programs rely for the vast majority of funding, is set to expire in 2021. Without this source of funding, the states and tribes will be unable to continue operating their AML programs for long. In order for collection of the AML fee to continue, it must be “reauthorized” by Congress.

Why is consideration of reauthorization important?

Answer: Consideration of reauthorization of the AML fee is important because the decision made by Congress regarding reauthorization will determine whether the AML Program’s mission of restoring and protecting against the impacts of AML sites will be completed. While the AML programs have made great progress with reclamation, the remaining need for AML work far outweighs the resources available for that purpose.

Additional Information: OSMRE estimates that to complete reclamation of all known, unreclaimed AML sites and mine-drainage water discharges it will conservatively require more than \$10.4 billion for construction costs alone. Taking into consideration the additional costs to plan and design these projects, the funding shortfall is much greater.

How long will it take reclamation to be completed?

Answer: There are a variety of factors that make it difficult to predict how long it will take for all sites listed on the AML inventory to be completed. Acknowledging the difficulties discussed below in predicting a time frame for the end of reclamation needs, and that the rate of reclamation ultimately depends on the rate of AML funding that is provided, IMCC and NAAML P recommend an extension of 15 years, which is readily supportable based on the \$10.4 billion in AML costs currently in the AML inventory.

Additional Information: It is difficult to predict a time-frame for the completion of reclamation for a variety of reasons. First, the cost estimates contained in the AML inventory represent only direct construction costs, which excludes the other costs necessary in conducting an AML project such as design and engineering of the project. Furthermore, the costs in

the AML inventory often haven't been updated to account for inflation, so the current costs to complete reclamation work are in fact greater than what is represented in the current inventory. The AML inventory is a helpful tool for tracking, classifying, and generally gauging remaining AML work, but it is not positioned to provide a high-degree of certainty regarding the total costs necessary to complete remaining AML work.

A specific completion date for AML work is also hard to predict due to the nature and timing of AML impacts. Some types of AML work, for example dangerous high-walls and mine voids, are steadily declining in prevalence due to the AML programs' efforts, and a day will come when the vast majority of these impacts have been abated. For the most difficult AML problems however, like subsidence events and AMD water pollution, the ability to totally eliminate impacts is elusive. Progress in repairing mine subsidence and treating polluted water requires continuing effort and vigilance by the AML programs, and predicting the total costs in perpetuity for these ongoing efforts with perfect accuracy is not practical.

The bottom-line is that the resources and time that have so far been invested in the AML Program do not approach the scale of AML problems resulting from hundreds of years of unregulated mining, especially given what is now known about the extent of damage caused by these sites.

What will be lost if the AML program is not reauthorized?

Answer: Without reauthorization of the AML fee, a very significant amount of AML work is likely to remain unaddressed. Dangerous mine hazards will persist and unforeseen AML emergencies will continue to occur, risking property damage, injury, and death for local citizens. The deep environmental impacts on the lands and watersheds so loved by citizens of and visitors to historic coal country will go unrepaired. Mine drainage treatment systems serving to restore the quality of water resources in mine drainage impacted watersheds will go defunct without funding for operation and maintenance. In many cases, the advances already made in restoration would be lost. Constantly felt safety, health, and environmental impacts will continue to contribute to economic struggle, preventing historic coal communities from fully taking part in the American economic prosperity that historic coal mining in their regions helped to bring about. In all of these regards, the AML Program's contribution is necessary for the fundamental stability that AML-impacted communities need to thrive. If the AML fee is not reauthorized, consideration must be given to how these communities will contend with the more than \$10 billion in unfunded public liability and the immense health, environmental, and economic impacts represented by remaining coal AML sites.

How have reclamation techniques changed over time?

Answer: The AML Programs have continuously sought to improve the way that reclamation is conducted, and many advancements in reclamation techniques have occurred since the beginning of SMCRA in 1977. These include new techniques for earthwork and re-vegetation that have led to cost efficiencies and greater reclamation success. AML Programs routinely share new experiences with other programs and in so doing have improved the effectiveness for all programs.

Additional Information: Many of these accomplishments have been recognized by OSMRE through national awards presented to the states and tribes each year. Please see the following link to the OSMRE AML Reclamation Awards website for more information:
<https://www.osmre.gov/programs/awards/AMLwinners.shtm>

How has the AML program changed over time?

Answer: The AML Program's core mission remains unchanged from the beginning – the protection and restoration of lands and waters impacted by AML and the protection of nearby citizens' health and safety - but as understanding of AML sites and their impacts has evolved, so has understanding of the role the AML Programs must play to succeed in that mission.

Additional Information: The passage of SMCRA in 1977 provided state and tribes with the resources and authority to begin learning about and contending with the impacts of AML sites. It was clear to Congress from the outset that a strong AML Program must be equipped to contend with a variety of such impacts, and the state and tribal AML Programs were therefore authorized to engage in a variety of types of work.

As the future of the AML program is considered, Congress is responsible for assessing the current balance of priorities for the AML Program and investigating optimal ways of bringing the program's contribution to bear on the well-being of historic coal communities. Congress' understanding of how best to apportion and direct the use of AML funding has evolved with ever-increasing experience with the program.

Understandably, there has been a tendency throughout the history of the AML Program for discussions around AML to focus on the most apparent, safety-focused aspects of the AML Program's work, which is appropriate given how dangerous AML sites can be. Yet, as has become increasingly clear over the preceding decades of contending with and learning about the AML problem, these sites impact much more than the

immediate health and safety of nearby citizens. Beyond threats to health and safety, AML sites also degrade the environment, and severely impinge on economic development. While health and safety have always maintained the highest priority, the AML Program has been directed to weigh environmental and economic considerations in addition to health and safety to varying degrees throughout the program's life.

What is the status of reauthorization efforts?

Answer: Given the expiration of AML fee collection authority in September of 2021 and the likely competing legislative and political priorities over the next three years, we anticipate that significant work on reauthorization of fee collection authority would be undertaken during the 116th Congress, including introduction of legislation and relevant oversight hearings

Additional Information: Historically, reauthorization has been the most appropriate time to consider potential changes to the AML Program's design and implementation. Preparing for reauthorization therefore means assessing the current state of the AML work nationwide, including, among other things, how and where AML funds are being generated, how they are most fairly and sensibly distributed, how they are used, and how they should best be used in the future. IMCC and NAAMLPP have developed a set of recommendations on policy priorities for reauthorization of the AML fee based on the state AML programs' experience, which can be found here: NAAMLPP.net