Abandoned Mine Land Funding and Trends for States

States still coping with large coal mine restoration projects could lose federal funding after a provision was inserted into the 2012 transportation reauthorization bill intended to cap payments to some states that have largely resolved their mitigation work. The changes made to the program come amid criticism from the media about the use of those funds by states in the spring of 2012, as well as concerns from the Obama administration regarding the program’s effectiveness as significant amounts of funding go to states that certify to the federal government they no longer have major coal reclamation projects.

The Department of Interior has inventoried more than 12,000 abandoned mines across the country. Many of these sites pre-existed federal environmental reclamation requirements and were abandoned after their ore and minerals were depleted, leaving no responsible financial party to pay for the damage to the environment or to remove hazards posed to public safety. In order to help states pay the costs associated with reclaiming abandoned coal mines, Congress passed legislation in 1977 charging fees on coal production that were then placed in a fund to be disbursed by the federal government. Historically, those payments to states lagged authorized levels because they were subject to congressional appropriations. The political wrangling over the mine cleanup funds took an uncertain turn when payments to certified states were capped and used as an offset for the transportation reauthorization bill. Proponents thought it was a simple solution, but the change caused a negative ripple effect that will cut funding for other states still coping with large restoration projects.

Origins of Federal Action
In 1977, Congress passed the Surface Mining Control and Reclamation Act, which created the Office of Surface Mining Reclamation and Enforcement, to ensure that lands used for coal mining would be restored and returned to conditions that could support multiple land-use activities, reforestation and improvements to water quality to levels before mining occurred. The act charged coal companies a reclamation fee and a production fee based on the tonnage of coal produced from surface and underground mining operations. Today, those fees stand at 31.5 cents per ton for reclamation and 13.5 cents per ton of coal for production.

Before the law was passed, many states were burdened with thousands of hazardous abandoned mines that posed significant environmental problems and public safety risks for communities. The problems found on those sites typically included groundwater pollution, open entrances to mine shafts, sediments clogging streams, fumes and surface instability, as well as mine fires and coal refuse. Under the law, individual states would receive 50 percent of the money for reclamation efforts and the Department of the Interior would receive the remainder to help other states that needed extra assistance to alleviate extraordinary cleanup situations.

Large coal producing states expected to see substantial payouts from the fund; however, disbursements were subject to the appropriations process by Congress. States rarely received the promised 50 percent rate of return authorized under federal law. Over the past six years, funding levels have significantly trended upward. States received a record amount of $485 million in the 2012 fiscal year from the Abandoned Mine Lands fund, with the largest share going to five states—Wyoming, Pennsylvania,
West Virginia, Kentucky, and Illinois.1 Many other states have long-term mine cleanup problems, but do not fare well under the existing funding structure because most of their large, commercial-scale mining operations no longer exist. That means those states are sending little, if any, coal production fees into the fund. Policymakers from Wyoming, Montana and other states counter that they are trying to recoup what is owed to them under federal law after several years of haphazard funding by Congress. For example, Wyoming contributed nearly $3 billion to the Abandoned Mine Lands fund and has only received roughly one-third of that money back in disbursements.2

Certified States and Funding Changes

Provisions were added to the Abandoned Mine Lands program in 1990 that allowed certified states and tribes to expand the use of funds to other non-reclamation activities even when larger environmental and safety issues had been resolved. In essence, certified states were ones that alerted the federal government that they no longer had major immediate remediation projects. They include Louisiana, Montana, Texas, Wyoming, and the Crow, Hopi and Navajo tribes.3

In 2006, Wyoming Sen. Mike Enzi led a bipartisan group of coal state senators to add new provisions in House Resolution 6111, the Tax Relief and Healthcare Act, which instituted landmark changes to the Abandoned Mine Lands funding distribution formula. Instead of the collected fees being subject to the whims of congressional action through the appropriations process, the new measure guaranteed states would receive funds directly to make up for the lack of payments made by the federal government since the late 1970s. Abandoned Mine Lands funding levels jumped from $71 million in the 2006 fiscal year—the year before the legislative change—to $485 million in the 2012 fiscal year.4 Under terms of the deal, states like Wyoming would get “historic” payments owed to them from the Abandoned Mine Lands fund for seven years and then a direct payment afterward from the U.S. Treasury for other mineral reclamation projects.5 As part of the legislative change, certified states also were no longer guaranteed their entire share of state payments made into the fund after 2006.

Funding Controversy

Several states and three Native American tribes received $180 million in Abandoned Mine Lands funding that had little, if any, association with cleaning up abandoned mines, according to an April 2012 Wall Street Journal article. The funding had been used for some potentially controversial projects, such as $10 million for renovating the basketball arena for the University of Wyoming, according to the article.6 Critics claimed changes to the program in 2006, which made disbursements to states with large, historic coal production mandatory instead of discretionary, left little funding for states with large cleanup projects but small mining operations. They contend it may take decades for those states to remediate their long-term environmental problems associated with their abandoned mines due to an insufficient funding stream in the existing Abandoned Mine Lands disbursement structure. For example, the Kansas Department of Health and Environment estimates that it has $225 million in restoration costs from more than 350 abandoned mines across the state.7 Under the current federal funding formula, however, it will take nearly 75 years to finish its existing restoration work.

President Obama’s 2013 fiscal year budget called for substantial changes to the Abandoned Mine Lands program that would “terminate unrestricted payments to the States and Tribes that have been certified for completing their coal reclamation work, since these payments do not contribute to reclaiming abandoned coal mines.”8 In its place, the administration proposes limiting funding to only the highest priority sites that need remediation based on competitive grants awarded by an advisory council within the Department of Interior. Changing the funding structure could save up to $1.1 billion over the next 10 years, according to federal estimates, and the competitive grant program mirrors provisions found in the recommendations from the National Commission on Fiscal Responsibility, more commonly known as the Bowles-Simpson deficit reduction plan. Members of Congress from coal states and mining industry advocates have opposed diverting industry fees intended for reclamation work as a deficit reduction mechanism. In addition, many congressional lawmakers contend that changing the Abandoned Mine Lands program to a competitive grant program would violate the Surface Mining Control and Reclamation Act and forfeit billions in revenue promised to states.

Transportation Reauthorization and Mine Reclamation?

The long and acrimonious debate surrounding the transportation reauthorization bill for the nation’s roadways and mass transit programs, which endured
nine temporary extensions since 2009, reached a culminating point in June 2012. Congressional leaders were largely in agreement on final legislative text, but the great conundrum of finding sufficient revenue to pay for authorized highways, mass transit and trails programs were short of funds. The appeal of using a revenue raiser to limit funding for mine cleanup in certified states proved too tempting for conferences of the transportation reauthorization bill. Congress added a provision to cap payments at $15 million for abandoned mine reclamation in certified states and tribes when making finishing touches to the final bill. Negotiators at the time thought the negative blowback would be felt only from Wyoming, which was expected to lose $700 million in total funding, while sparing other states because of the effect of the tailored legislative language.

The simple solution, however, did not take into account the complexities in the existing Abandoned Mine Lands funding structure and the inserted provision also cut funding for other uncertified states that still have serious environmental problems and needed restoration work. According to an analysis by the Interstate Mining Compact Commission, Pennsylvania and West Virginia alone stand to lose $17.8 million and $10.2 million a year, respectively, because of the policy rider inserted in the transportation bill. Bipartisan legislation (House Resolution 6113/Senate 3514), introduced in both the House of Representatives and the Senate, would repeal the offset used in the transportation bill, which was sponsored primarily by legislators from the Pennsylvania, West Virginia and Wyoming congressional delegations. Supporters warned that other states’ mine reclamation efforts could be seriously jeopardized without a solution. According to a press release issued by Sens. Mike Enzi and John Barrasso of Wyoming, Joe Manchin and Jay Rockefeller of West Virginia, and Bob Casey of Pennsylvania, several states would see drops in promised Abandoned Mine Lands funding as a result of the offset used in the transportation legislation. Illinois would lose $55 million; Kentucky, $54 million; Ohio, $34 million; Indiana, $18 million; Virginia, $16 million; and Alabama, $15 million; as well as 13 others that would see drops in promised allocations.10

Bill sponsors say they are committed to resolving the error made in the transportation bill and remain committed to addressing the problem when Congress returns from its August recess. Supporters, however, must come up with roughly $1 billion in new revenue or spending cuts if the offset is simply repealed. The obstacles to finding a resolution are not insurmountable, but it could prove challenging to balance the obligations owed to states for abandoned mine restoration with ongoing funding difficulties facing the nation’s stressed roadways and transit systems.

REFERENCES


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