

## **Federal SMCRA (Baucus) Amendment Briefing**

### **Purpose**

To brief DEP Senior Management and public officials about the unintended negative impacts of the recently enacted amendment to the federal Surface Mining Control and Reclamation Act (PL 95-87) which could result in a **reduction of over \$200 million to Pennsylvania's AML and AMD Set-Aside Programs** over the next ten years.

### **Background**

On July 6, 2012, President Obama signed into law the Surface Transportation Bill (HR 4348). Included in the bill within Section 100125 was a provision (the Baucus Amendment) which amends Section 411 the Surface Mining Control and Reclamation Act (SMCRA) which impacts AML grants to states in varying degrees over the remaining ten year life of the federal AML Program. The amendment sets a limit of a maximum of \$15 million in total annual payments from the AML Fund to a certified state (a state that has completed reclamation of all of its high-priority coal mining AML features).

### **Impact of Amendment Nationally**

On the surface, this small amendment would appear to only impact the State of Wyoming which currently receives approximately \$150 million annually and is certified. According to an analysis undertaken by the IMCC, the total impact to the State of Wyoming over the remaining ten years of the AML Program is a reduction in total grant payments of approximately \$718 million. However, further analysis by IMCC identified that this would then result in a reduction in payments to uncertified states (states like Pennsylvania with remaining high-priority coal mining AML features in need of reclamation) by nearly \$550 million over the life of the AML program whenever the reduction to Wyoming is analyzed in context with other provisions in SMCRA and OSM's funding allocation formula.

### **Implementation of the Amendment**

There are five subaccounts within the federal AML fund. Two of these subaccounts are known as the "in lieu" of state share fund and the historic coal fund. A complex formula is used by OSM to determine the funding for each state/tribe from the various subaccounts. Without getting into the fine details of the funding allocation formula, the amount of funding that is not paid to Wyoming from the "in lieu" of state share fund subaccount will result in a corresponding decrease to the historic coal fund subaccount. Applying this to the federal FY 2012 OSM AML grant distribution summary results in a reduction in the historic coal fund subaccount which reduces the annual AML grant to individual states by the approximate amounts as follows: Pennsylvania (\$17.8 million), West Virginia (\$10.2 million), Illinois (\$5.5 million), Kentucky (\$5.4 million), Ohio (\$3.4 million), Indiana (\$1.8 million), Virginia (\$1.6 million) and Alabama (\$1.5 million). Thirteen other states will also be affected representing an additional \$5 million. These examples are a best case scenario, and depending on which subaccount OSM draws from for Wyoming's AML grant, the impacts and the reduction in annual grants to the uncertified states which receive funding from the historic coal subaccount (like Pennsylvania) could be even higher.

### **Impact of the Amendment to Pennsylvania**

In terms of the federal AML Program, Pennsylvania is an uncertified state which receives significant AML Grant funds from the historic coal fund subaccount of the federal AML fund (~34% of the total). Depending on how OSM implements the amendment, there would be a range of between approximately \$52 million and \$67 million reduction to the amount paid to Wyoming from the "in lieu" subaccount for

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the next few years. As such, the annual loss to PA's AML Program during those years would be approximately \$17.8 million if the reduction is \$52 million and as high as approximately \$23.2 million if the reduction to the historic coal fund is \$67 million. This would then translate to a corresponding loss of approximately \$5.3 – 7.0 million annually to Pennsylvania's 30% AMD Set-Aside Program. The total loss to Pennsylvania's AML and AMD Set-Aside Programs over the remaining ten year life of the federal AML Program could well be in excess of \$200 million.

### **Current Efforts to Reverse/Repeal the Baucus Amendment**

Efforts are underway on Capitol Hill to explore potential fixes for this debilitating amendment to SMCRA. The first official attempt is HR 6113, introduced by Rep. Lummis (R-WY) and Rep. Rahall (D-WV) which would invalidate the amendment contained in the Transportation bill. Prognosis for the movement of this bill is uncertain at this point, but two potential vehicles include S. 897 (which is awaiting action on the floor of the House) and the Farm Bill. Other efforts that are being considered include a fix to be contained in the technical corrections bill associated with the Transportation bill (which could be several months down the line) and a bill that would invalidate the AML amendment while providing different sources of funding for the Secure Rural Schools and Payment in Lieu of Taxes (PILT) programs, which the AML offset funding was intended to address.

### **Recommendations**

The Pennsylvania congressional delegation should be briefed on this issue and should be convinced to support any and all efforts to reverse or repeal the Baucus amendment.