

## SMCRA Title IV (as amended December 2007) Questions and Answers

### **What is Title IV?**

Title IV is the section under the federal Surface Mining Control and Reclamation Act (SMCRA) that deals with lands and waters adversely affected by coal mining that occurred before the legislation was enacted in 1977. Title IV establishes the Abandoned Mine Reclamation Fund (AMRF) to provide grants for reclaiming abandoned mine lands and waters. In December 2007, SMCRA was amended, significantly changing Title IV. The rest of this document refers to the law as amended.

### **What are the priorities for reclamation under Title IV?**

**Priority 1** – “the protection of public health, safety, and property from **extreme danger of** adverse effects of coal mining practices”;

**Priority 2** - “the protection of public health, safety, and property from adverse effects of coal mining practices”;

*Both P1 & P2 include: clogged streams, clogged stream lands, dangerous highwalls, dangerous impoundments, piles and embankments, dangerous slides, gob piles, hazardous equipment or facilities, hazardous or explosive gases, hazardous water bodies, industrial/residential waste, portal, subsidence, surface burning, underground mine fires, vertical openings.*

**Priority 3** – “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.”

*P3 includes acid mine drainage (AMD)*

Separate and distinct from the above priorities is a category for **drinking water supplies** “for the purpose of protecting, repairing, replacing, constructing, or enhancing facilities relating to water supply, including water distribution facilities and treatment plants, to replace water supplies adversely affected by coal mining practices.”

### **What kinds of projects are eligible for funding under Title IV?**

The general intent of Title IV is to mainly fund sites with health and safety hazards, as defined in Priorities 1 and 2 (P1 and P2). There are exceptions:

- P3 projects that are adjacent to either P1 or P2 projects;
- Acid mine drainage projects as described in the 30% AMD set-aside provision below;
- Water supply projects as described above.

In addition to funding of on-the-ground projects, funding necessary to run each state’s reclamation program will come from the state’s annual grant. For Pennsylvania, that generally refers to DEP’s Bureau of Abandoned Mine Reclamation (BAMR). This administrative percentage can be expected to be in the neighborhood of the high teens to low twenties based on past performance.

**What is Certification?**

A state that has completed all of its P1 and P2 sites (as well as the requisite paperwork) becomes “certified”. States that still have unreclaimed P1 & P2 sites from the inventory are non-certified. An intent of the 2006 legislation is to provide enough monies through the year 2022 to have all states become certified.

**What are benefits to certification?**

The most obvious is the completion of reclamation for all sites in a state classified as P1 & P2 health and safety problems – a primary intent of Title IV. Under the amended Title IV, a certified state will receive grants over 10 years totaling the balance that state has accumulated in the Abandoned Mine Reclamation Fund. The balance resulted from yearly Congressional appropriations that only partially paid out reclamation fees. Certified states have few restrictions on how the grants are spent.

**How is funding for abandoned mine reclamation derived?**

The vast majority of funding is obtained by a reclamation fee imposed on all coal mined in the United States. The following table shows those fees.

| Years     | Surface Mined Coal<br>(cents per ton) | Deep Mined Coal<br>(cents per ton) | Lignite<br>(cents per ton) |
|-----------|---------------------------------------|------------------------------------|----------------------------|
| 2007      | 35                                    | 15                                 | 10                         |
| 2008–2012 | 31.5                                  | 13.5                               | 9                          |
| 2003–2021 | 28                                    | 12                                 | 8                          |

About a billion tons of coal are produced annually in the U.S.

**How do non-certified states obtain reclamation funding?**

Each non-certified state receives an annual grant which is derived from the reclamation fees collected the previous year. Congress no longer appropriates funding to the states – it is now mandatory. Thus, the full amounts allocated to each state from the collected fees are dispersed. A formula based on current annual coal production and the historic coal production (the cumulative total of all coal produced before 1977) of each state is used to determine the grant amounts. There is a grant minimum of \$3 million.

**What is the 30% acid mine drainage (AMD) set-aside?**

This is a Title IV provision which allows a state, at its discretion, to use up to 30% (up from 10% previously) of its annual grant for eliminating the sources of AMD or treating AMD. The state must place those funds in an account which may gather interest. Those funds must be used only for the stated purpose. No time limit is imposed on spending the funds. Since AMD is considered a P3 priority, the only funding for a strictly AMD project is this program.

**Does the 30% set-aside affect a state's ability to become certified?**

Perhaps. In a given year, if a state requests a set-aside, the amount of the set-aside will not be available to do P1 & P2 projects. Assuming adequate monies are available, taking an annual portion of the state's grant for the set-aside will only slow the ability to certify. Since a state will continue to receive reclamation funding until it becomes certified, time is the only penalty for taking a portion of the grant for the set-aside, again assuming monies will be available. For Pennsylvania, it's a bit tricky because it will be one of the last states to finish its P1 and P2 inventory, with the distinct possibility that all funds will become exhausted before certification is possible. Without knowing revenues from reclamation fees and expenditures for the 30% set-aside nationwide, as well as other programs, we can at best make educated guesses.

**How long will Title IV funding last?**

Collection of reclamation fees will continue to fund the program through fiscal year 2021, with the payout of those funds the following year in 2022. Beyond that, the reserves in the Abandoned Mine Reclamation Fund will be available for funding in subsequent years at the 2022 levels. How many years? Perhaps several, but no one can say at this point due to the number of factors involved. At this point it must be assumed a further reauthorization of reclamation fee collections will not happen, with the program ending when monies are exhausted.

