



**pennsylvania**  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

**Testimony of**

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**The Environmental and Economic Impacts of the Anthracite Industry in Northeastern Pennsylvania  
and Pennsylvania's Coal Refuse Energy and Reclamation Tax Credit  
Before the Senate Committee on Community, Economic and Recreational Development**

**Tuesday, September 27, 2022**

Good afternoon, Senator Yudichak, Senator Cappelletti, and members of the Committee on Community, Economic, and Recreational Development. My name is Brian Bradley, and I am the Director of the Bureau of Abandoned Mine Reclamation for the Pennsylvania Department of Environmental Protection (DEP).

I am here to provide the Department's perspective on the environmental and economic impacts of the Coal Refuse Energy and Reclamation Tax Credit and information on the Bipartisan Infrastructure Investment and Jobs Act (IIJA) regarding the abandoned mine land (AML) and abandoned mine drainage (AMD) funds Pennsylvania will receive.

**Environmental and Economic Impacts of the Coal Refuse Energy and Reclamation Tax Credit**

The Coal Refuse Energy and Reclamation Tax Credit provides tax credits to eligible facilities which generate electricity by using coal refuse for power generation, control acid gases for emission control, and use ash produced by the facilities to reclaim mining-affected sites. In turn, this tax credit helps to support the reclamation of coal refuse piles, which are remnants of the commonwealth's earliest days of mining operations.

During historic mining operations, water was often used to clean and sort coal, and streams were used for transportation via the canal system. These legacy mines left coal waste piles in the communities where the coal was mined or adjacent to the waterways used for cleaning or transporting the coal. As for the expansive piles of discarded coal remnants left behind, the material is often eroded during storm events or extreme flow conditions or sources of acid mine drainage with significant impacts on water quality. Air quality is also frequently impacted if a pile catches on fire or by wind-blown dust. Many of

the coal refuse piles have been devoid of vegetation for decades further leaving the material susceptible to erosion. Furthermore, this material was often discarded in large piles or on hillsides, sometimes hundreds of feet in height – creating additional safety concerns related to their unstable slopes and combustible nature.

Once technology developments made it possible for coal refuse to be combusted to produce energy, the waste coal generation industry in Pennsylvania has helped to reduce the size, number and impacts of these coal refuse piles otherwise abandoned and negatively impacting air and water quality in the commonwealth. This has resulted in many environmental benefits, including controlling erosion and sedimentation that clogs waterways, establishing vegetation in areas that are typically barren, and reducing the potential for acid mine drainage.

The Coal Refuse Energy and Reclamation Tax Credit has been particularly important in assisting these facilities who use coal refuse for electricity generation since many of these plants were originally located near sources of refuse. With the completion of those refuse piles over time, the sources are now farther away from the plants, increasing transportation costs.

Additionally, the Coal Refuse Energy and Reclamation Tax Credit Program is beneficial, because the facilities using these tax credits are reclaiming sites that would either remain unreclaimed or would be left for the Commonwealth to reclaim with funds received from the federal AML program. Though the federal AML program exists to address these legacy issues, abandoned coal waste piles and silt dams are often considered a lower priority through the federal criteria and are usually not addressed through the AML program unless they are part of a larger project with abandoned surface or deep mine features. As a result, coal refuse operations and associated generation operations have been one of the most substantial waste coal cleanup efforts of the past 30 years, and this sector continues to play a critical role in terms of pollution prevention, environmental cleanup, and land reclamation in Pennsylvania that would otherwise remain for generations.

### **Bipartisan Infrastructure Investment and Jobs Act**

On November 15, 2021, President Biden signed the Bipartisan Infrastructure Investment and Jobs Act (IIJA) that reauthorized the collection of the coal AML reclamation fee and authorized the deposit of \$11.3 billion in additional US Treasury funding into the national AML Trust Fund for coal AML reclamation. The law fulfills a primary federal legislative goal over the past few years of reauthorization of the coal AML fee collection from industry for 13 years, at 80% of current rates. The IIJA also brings transformative changes to the coal AML program with \$11.3 billion in US Treasury funding that will be distributed over the next 15 years for coal AML and AMD. This is almost twice the amount nationally that has been granted to the states for AML work in the 40-year history of the program.

The Office of Surface Mining Reclamation and Enforcement (OSMRE) announced on February 7, that \$244.9 million is available in federal fiscal year (FFY) 2022 to Pennsylvania for reclaiming abandoned mine lands (AML) as part of President Biden's Bipartisan Infrastructure Law.

The DEP is expanding and developing new efforts to put the significant increase in funding to use in AML and AMD projects that include:

- Larger projects that were too expensive previously;
- Speeding up active AMD treatment plants DEP is already working on;

- AMD abatement and treatment with a focus on AMD Watersheds with a reclamation first approach to reclaim hazards and eliminate or reduce AMD sources;
- Addressing coal refuse piles that generate AMD and are sources of acidic sediment impacting streams
- Operating and Maintaining critical passive treatment systems; and
- Launching a new grant (subaward) program through the DEP Grants Center later this year for groups to submit AML and AMD projects and apply for funding

DEP issued a Request for Proposals (RFP) and is entering into agreements with 15 engineering firms (previously used 5 firms) to perform feasibility, design and permitting to accelerate AML/AMD projects that will be issued for bids. DEP is exploring contracting methods, in addition to traditional competitive bidding, to potentially use design-build contracts or performance-based contracts. DEP is also adding staff, mostly in the Bureau of Abandoned Mine Reclamation, to support the expanded AML/AMD program.

The IIJA continues the eligibility requirement that sites must be coal sites abandoned before August 1977 and must meet the priority designations for health and safety or environmental degradation problems. The IIJA includes provisions that are new compared to the traditional AML program that include, but are not limited to: prioritizing projects that equitably provide funding under the Justice40 Initiative towards meeting the goal that 40 percent of the overall benefits flow to disadvantaged communities; following federal Davis-Bacon requirements on contracts funded by the IIJA; and, incorporating the Build America Buy America (BABA) Act that requires all of the iron, steel, manufactured products, and construction materials (excluding concrete and aggregates) used in IIJA-funded contracts are produced in the United States, unless subject to an approved waiver.

The DEP's grant application for the \$244.9M FY2022 IIJA AML funding was submitted to OSMRE on September 2. The grant application requests an effective date of November 1. The grant guidelines in the OSMRE Federal Assistance Manual allow up to 60 days for OSMRE to process the application. The major funding elements (not all \$244.9M) covered by the IIJA grant include:

- \$103.7M – for construction contracts for AML projects, new AMD treatment, and AMD operation, maintenance and replacement (OM&R)
- \$70M – for grants for AML projects, new AMD projects, and AMD OM&R projects
- \$21M – for contracts with consultants to complete project planning and design tasks
- 100% OM&R funding for the Bureau's active AMD treatment plants
- 100% funding for the Bureau's personnel costs including existing and growth positions

### **Other Sources of Federal Funding**

Historically, Pennsylvania's sole source of funding to address abandoned mine problems, including emergencies such as sudden mine subsidence events, has been in the form of grants from the U.S. Department of Interior Office of Surface Mining Reclamation and Enforcement. These grants are funded by the per ton fee on coal mined nationwide.

Federal Fiscal Year 2022 Pennsylvania will receive a traditional AML grant based on the fee collected from coal producers in FFY2021; and, an AML Economic Revitalization (AMLER) program grant passed by congress in the federal budget. The AML grant is \$26.4 million and the AMLER grant is \$26.6 million. With the IIJA funding, this brings the total federal funding for AML and AMD reclamation in FFY 2022 to \$297.9 million. As a comparison, the federal funding received last year (FFY 2021) was \$52.4 million. I

have attached a graph to my written statement showing the significant increase in funding that begins this year.

Pennsylvania has inventoried over 287,000 acres of land in need of reclamation costing around \$5 billion in terms of construction costs. Yet, current federal AML funding would only provide Pennsylvania with a total of \$4.47 billion for these efforts (assuming AML funding remains at current levels for the next 15 years, which is not likely.) It's clear that Pennsylvania cannot rely solely on Federal funding to address all of Pennsylvania's AML and AMD problems.

Thank you for the opportunity to appear before the Committee today and I look forward to any questions that you might have.