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*Abandoned Mine Reclamation Fee on Coal*

Nonna A. Noto, Government and Finance Division

August 31, 2006

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## Abandoned Mine Reclamation Fee on Coal

**Updated August 31, 2006**

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# Abandoned Mine Reclamation Fee on Coal

## Summary

The Abandoned Mine Reclamation Fund, also known as the Abandoned Mine Land (AML) Fund, is financed by fees levied per ton of domestically produced coal. The fee is 35 cents per ton for surface-mined coal, 15 cents per ton for underground-mined coal, and 10 cents per ton for lignite. The fund and the fees were established by the Surface Mining Control and Reclamation Act of 1977 (SMCRA) to finance restoration of land abandoned or inadequately restored by mining companies before August 3, 1977. The fees were originally scheduled to expire in 1992, but Congress has extended them seven times. The FY2006 Interior, Environment, and Related Agencies Appropriations Act (H.R. 2361; P.L. 109-54) enacted on August 2, 2005, extended the fees for nine months, until June 30, 2006. The Bush Administration's FY2007 budget requested that the AML fees be extended through September 30, 2007, at their current levels. This interim extension was intended to provide time for the Administration to work with Congress to change the rules governing expenditures from the AML Fund. The FY2006 Emergency Supplemental Appropriations Act (H.R. 4939, as amended; P.L. 109-234), enacted on June 15, 2006, extended the fees through FY2007, as the Administration had requested.

In the 109<sup>th</sup> Congress, there are proposals to extend the AML fees longer term as part of bills to reauthorize the abandoned mine reclamation program. H.R. 5970 (Thomas), passed by the House on July 29, 2006, as well as S. 2616 (Santorum) and S. 3829 (Stabenow), would lower the fees by 20%, in two stages, and extend them through FY2021. H.R. 2721 (John Peterson) and S. 961 (Rockefeller) would extend the fees at their current rates through FY2019. H.R. 1600 (Cubin) would lower all of the fees by 20% and extend them through FY2020. S. 1701 (Thomas) would lower all of the fees by 20%, in different stages, and extend them through FY2015.

The AML Fund has a balance of \$2.1 billion which earns interest. Since FY1996, most of the annual interest earnings of the fund have been transferred to the United Mine Workers of America (UMWA) Combined Benefit Fund (CBF) to help pay the medical expenses of "orphan" retirees, their spouses, and dependents. From FY1996 through FY2005, \$746 million in interest was transferred. The law provides that if the regular AML fees sunset, special fees should be established solely to provide for the annual transfer to the CBF.

Under current law, 50% of the AML fees collected are allocated back to the state or Indian tribe that collected them (known as the state share). Since 1977, when SMCRA was enacted, the production of coal has shifted westward, mostly to Wyoming, while most of the remaining high priority reclamation sites are in eastern states, the location of historic (pre-1978) coal production. The Office of Surface Mining estimates that at least \$3 billion in additional reclamation expenditures is needed to clean up remaining Priority 1 and 2 sites. AML fees could be lower, or collected for fewer years, if the state share allocation were eliminated and the AML Fund focused on reclaiming these high priority sites. However, western states would have less interest in supporting the AML Fund if they received nothing in return for their producers' contributions. This report will be updated when legislative events warrant.

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# Abandoned Mine Reclamation Fee on Coal

## History of Authorizations

The Abandoned Mine Reclamation Fund — also known as the Abandoned Mine Land or AML Fund — was established by the Surface Mining Control and Reclamation Act of 1977 (SMCRA).<sup>1</sup> Its purpose is to finance restoration for land abandoned or inadequately restored by mining companies before August 3, 1977. The AML Fund is supported by fees levied per ton of domestically produced coal.

The AML fees were originally scheduled to expire in 1992, but Congress has extended them seven times.<sup>2</sup> The Omnibus Budget Reconciliation Act of 1990 extended the fees from 1992 through FY1995.<sup>3</sup> The Energy Policy Act of 1992 extended the fees from 1995 through FY2004.<sup>4</sup> The Continuing Resolution for FY2005 extended the fees for 51 days until November 20, 2004.<sup>5</sup> The Consolidated Appropriations Act for 2005 extended the authorization to collect the fees for nine months, until June 30, 2005.<sup>6</sup> The Emergency Supplemental Appropriations Act for FY2005 extended the fees for three months, until September 30, 2005.<sup>7</sup> The Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006 extended the AML fees for nine months, until June 30, 2006.<sup>8</sup> The Emergency

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<sup>1</sup> P.L. 95-87, Title IV; 30 U.S.C. 1231 et seq.

<sup>2</sup> The expiration date of the fees is specified in Section 402(b) of SMCRA; 25 U.S.C. 1232(b).

<sup>3</sup> P.L. 101-508, Section 6003(a).

<sup>4</sup> P.L. 102-486, Section 2515.

<sup>5</sup> P.L. 108-309, Making continuing appropriations for the fiscal year 2005, and for other purposes, enacted Sept. 30, 2004, Section 125.

<sup>6</sup> P.L. 108-447, enacted Dec. 8, 2004, Division E, Title I, Section 135. This provision originated in S. 2084, Section 123. See U.S. Congress, Senate, *Department of the Interior and Related Agencies Appropriations Bill, 2005, Report to accompany S. 2084*, Report 108-341, Calendar No. 695, 108<sup>th</sup> Cong., 2<sup>nd</sup> Sess., Sept. 14, 2004, p. 47.

<sup>7</sup> P.L. 109-13, An act making Emergency Supplemental Appropriations for Defense, the Global War on Terror and Tsunami Relief, for the fiscal year ending September 30, 2005, and for other purposes, enacted May 11, 2005, Section 6035.

<sup>8</sup> P.L. 109-54, Title I, General Provisions, Department of the Interior, Section 129. The AML fee extension was included in the version of H.R. 2361 approved by the Senate in Title I, General Provisions, Department of the Interior, Section 127. The counterpart bill approved by the House (also H.R. 2361) did not contain a similar provision. See CRS Report RL32893, *Interior, Environment, and Related Agencies: FY2006 Appropriations*, by Carol Hardy Vincent and Susan Boren.

Supplemental Appropriations Act for FY2006, enacted on June 15, 2006, extended the fees for 15 months, until September 30, 2007.<sup>9</sup>

A longer-term extension of the AML fees is likely to be linked to the reauthorization of the abandoned mine reclamation program<sup>10</sup> and to plans for federal assistance to the United Mine Workers of America (UMWA) Combined Benefit Fund (CBF) for orphan retiree health benefits. An example is Title III of H.R. 5970, the Estate Tax and Extension of Tax Relief Act of 2006, passed by the House on July 29, 2006. Title III is named the Surface Mining Control and Reclamation Act Amendments of 2006. Sections 312(a) and (b) of H.R. 5970 would lower the AML fees by 20%, in two stages: by 10% on October 1, 2007, and by the remaining 10% on October 1, 2012. The fees would be extended for 14 years, through FY2021.

## Fee Levels and Collections

Under section 402(a) of SMCRA<sup>11</sup> the AML fees were set at the rate of 35 cents per ton for surface-mined coal and 15 cents per ton for underground-mined coal (or 10% of the value of the coal at the mine, whichever is less). The fee was set at 10 cents per ton for lignite (or 2% of the value of coal at the mine, whichever is less).<sup>12</sup> These same rates continued each time the fees were extended.

According to the legislative history of section 402(a) of SMCRA, the lower fee set for underground mining compared with surface mining reflects the "... disproportionately high social costs incurred by underground coal mine operators in meeting responsibilities under the Coal Mine Safety and Health Act of 1969, as amended."<sup>13</sup> The fee for lignite coal was agreed to by the conference committee. "The compromise reached on the reclamation fee for lignite reflects the conferees

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<sup>9</sup> P.L. 109-234, the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006, Section 7007. The provision was not included in the version of H.R. 4939 passed by the House. It was included as Section 9016 of H.R. 4939, as amended, passed by the Senate.

<sup>10</sup> For further discussion, see CRS Report RL32373, *Abandoned Mine Land Fund Reauthorization: Selected Issues*, by Robert L. Bamberger.

<sup>11</sup> 30 U.S.C. 1232.

<sup>12</sup> There is also a federal excise tax on coal that funds the Black Lung Disability Trust Fund. The black lung tax is currently levied at the rate of \$1.10 per ton of underground-mined coal and \$.55 per ton of surface-mined coal, not to exceed 4.4% of the price at which the ton is sold by the producer. There is no black lung tax on lignite, or on imported or exported coal. See Section 4121 of the Internal Revenue Code and CRS Report RS21935, *The Black Lung Excise Tax on Coal*, by Salvatore Lazzari. For more information on the expenditures financed by this tax on coal, see CRS Report RS21239, *The Black Lung Benefits Program*, by Edward Rappaport.

<sup>13</sup> U.S. Congress, House Committee on Interior and Insular Affairs, *Surface Mining Control and Reclamation Act of 1976*, report to accompany H.R. 13950, 94<sup>th</sup> Cong., 2d sess., H.Rept. 94-1445, (Washington: GPO, Aug. 31, 1976), p. 85. Cited in 69 *Federal Register* 56912, Sept. 22, 2004.

balancing two factors. First, lignite generally has had a lower value than coal and thus a 10 percent fee could be onerous. Second, many recent long-term contracts for lignite have had prices in the same range as subbituminous coal.”<sup>14</sup> Thus the disparity in rates was not linked to differences in the estimated cost of repairing damage done to the environment by the alternative methods of coal removal.

The AML reclamation fee is collected quarterly from coal operators, commonly referred to as producers. It is levied on each ton of coal produced domestically. From its outset in 1977, the fee was not levied on imported coal. Recently the issue of whether the fee applies to exported coal has been in litigation. In an April 2005 decision, the Federal Claims Court ruled that applying the fee to exported coal is unconstitutional. The government still has the option to appeal the decision. Approximately \$100 million in refunds of AML fees are at stake.<sup>15</sup>

The fee is administered and collected by the Office of Surface Mining (OSM) in the Interior Department.<sup>16</sup> OSM was successful in collecting an estimated 99.9% of AML fees due in FY2005.<sup>17</sup> In FY2004 AML fee collections were \$287 million while total distributions for AML programs were \$159 million.<sup>18</sup> In FY2005 fee collections were \$293 million and total distributions for AML programs were \$148 million.<sup>19</sup> Cumulatively over the life of the fund, from January 30, 1978, when the first AML fees were paid, through September 30, 2005, the AML Fund has collected \$7.4 billion. Appropriations from the fund were \$5.7 billion. As of September 30,

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<sup>14</sup> U.S. Congress, *Joint Explanatory Statement of the Committee of Conference [To accompany H.R. 2]*, 95<sup>th</sup> Cong., 1<sup>st</sup> Sess., House Conference Report No. 95-493, July 12, 1977, p. 98.

<sup>15</sup> The application of the AML fee to coal destined for export was declared to be unconstitutional in *Consolidation Coal Company, et al. v. U. S.*, 54 Fed. Cl. 14 (2002), *reversed*, 351 F.3d 1374 (Fed. Cir. 2003), *remanded*, (64 Fed. Cl. 718, Apr. 4, 2005). The *Consolidation Coal* case followed in the wake of a 1998 federal district court ruling in *Ranger Fuel* (33 F. Supp. 2d at 468) which found that levying the black lung excise tax on the sale of coal for export was unconstitutional under the Export Clause of the U.S. Constitution. The IRS accepted that decision in Notice 2000-28, issued May 20, 2000. See CRS Report RS21935, *The Black Lung Excise Tax on Coal*, by Salvatore Lazzari, pp. 4-5.

<sup>16</sup> The Bush Administration has advanced a proposal that the black lung excise tax, currently collected by the IRS, also be collected by OSM. In the 108<sup>th</sup> Congress, this provision was included in H.R. 3778 and S. 2049, in proposed amendments to section 414(b) of SMCRA. In the 109<sup>th</sup> Congress, this proposal is included in H.R. 2721.

<sup>17</sup> U.S. Department of the Interior, Office of Surface Mining (Reclamation and Enforcement), *Annual Report 2005: Abandoned Mine Land Reclamation*, pp. 5-6. Available at [<http://www.osmre.gov/annualreports/05SMCRA2AbandMineLandReclam.pdf>]. See also *Annual Report 2005: Administration and Finance*, Table 14: Collections Management, p. 3. Available at [<http://www.osmre.gov/annualreports/05SMCRA5AdminFinance.pdf>], visited Aug. 23, 2006.

<sup>18</sup> U.S. Department of the Interior, Office of Surface Mining, *Abandoned Mine Land Fee Collections and Funding: 2004*, updated Dec. 8, 2004. Available at [<http://www.osmre.gov/amlfunding04.htm>].

<sup>19</sup> U.S. Office of Surface Mining, *Annual Report 2005: Abandoned Mine Land Reclamation*, Table 1: Abandoned Mine Lands Fee Collections and Funding, p. 2.

2005, the balance of the fund was \$2.1 billion;<sup>20</sup> the unappropriated balance of the fund was \$1.8 billion.<sup>21</sup> The unappropriated balance represents 24% of cumulative collections.

OSM estimates that about \$3 billion in additional reclamation expenditures is needed to clean up remaining Priority 1 and 2 sites. Another \$3.6 billion of high priority coal problems affecting the general welfare of individuals and the environment have been identified.<sup>22</sup> Under the current SMCRA law, 50% of the fees collected are allocated back to the state or Indian tribe that collected them (known as the state and tribal shares). Ten percent are allocated to the Rural Abandoned Mine Land Program (RAMP) which has received no appropriation since FY1995. Twenty percent are allocated to sites ranked Priority 1 and 2 for reclamation, based on historic coal production. And 20% go to other reclamation projects and administrative costs.<sup>23</sup> Since 1977 when SMCRA was enacted, the production of coal has shifted westward, primarily to Wyoming, while most (94%) of the remaining high priority reclamation sites are in eastern states, the location of historic (pre-1978) production. Consequently, the state share program now results in high allocations to western states while the greater reclamation needs are in eastern states.

AML fees could be lower, or collected for fewer years, if the state share allocation were eliminated and the AML Fund focused on reclaiming high priority sites. However, western states would have less interest in supporting the AML Fund if they received nothing in return for their producers' contributions.

## Relationship to the UMWA Combined Benefit Fund

The AML Fund first began to earn interest on its unappropriated balance in FY1992, as the result of legislation enacted in 1990.<sup>24</sup> Under provisions of the Coal Industry Retiree Health Benefit Act (the Coal Act, part of the Energy Policy Act of 1992), up to \$70 million of the interest earned on the balance in the AML Fund may be transferred each year to the UMWA Combined Benefit Fund. This is to help pay for the health care expenses of certain "orphan" or "unassigned" retirees whose former employers have gone out of business, and of their spouses and dependents. The total amount of interest earnings transferred from the AML Fund to the CBF

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<sup>20</sup> U.S. Office of Surface Mining, *Annual Report 2005: Abandoned Mine Land Reclamation*, Table 2: Abandoned Mine Land Reclamation Fund Status, p. 5.

<sup>21</sup> U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement, *Abandoned Mine Land Fund: Status*, updated July 26, 2006. Available online at [<http://www.osmre.gov/fundstat.htm>].

<sup>22</sup> U.S. Office of Surface Mining, *Annual Report 2005: Abandoned Mine Land Reclamation*, p. 1-2.

<sup>23</sup> U.S. Office of Surface Mining, *Annual Report 2005: Abandoned Mine Land Reclamation*, p. 3-4.

<sup>24</sup> P.L. 101-508, Omnibus Budget Reconciliation Act of 1990, Section 6002(c). 30 U.S.C. 1231(e).



from FY1996 through FY2004 was \$679 million.<sup>25</sup> Another \$67 million was transferred in FY2005,<sup>26</sup> for a total of \$746 million.

To guarantee this funding source, the Energy Policy Act contained a proviso that after the regular AML fees sunset on September 30, 2004, the AML fee should be established at a rate to continue to provide for the deposit of funds to the CBF.<sup>27</sup> In preparation for this possibility, on September 17, 2004, OSM published a final rule to permit the collection of a special AML fee in the event that Congress allowed the regular fee to expire.<sup>28</sup> OSM noted that Section 402(b) of SMCRA did not address whether the same differences in rates should continue to apply to coal produced after the regular fees expired.<sup>29</sup> In its September 17, 2004 rule, OSM stated its intention to maintain the same ratios among the per ton fees that were originally established by SMCRA. The fee per ton of coal produced by underground methods would be 43% of the fee per ton of coal produced by surface methods. The fee per ton of lignite coal produced would be 29% of the fee per ton of coal produced by surface methods.<sup>30</sup> OSM proposed AML fees for FY2005 of 8.8 cents per ton for surface-mined coal, 3.8 cents per ton for underground-mined coal, and 2.5 cents per ton for lignite coal.<sup>31</sup> These fees were based on estimates of coal production by type of mining and were set with the intention of raising \$69 million, the estimated interest earnings of the AML Fund in FY2005. The exact level of the fees was projected to change each year from FY2006 through FY2015 in relation to estimated interest earnings and coal production, but the ratios among the fees were to remain the same. Because the existing fee levels were extended by Congress, the lower fees proposed by OSM never took effect.

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<sup>25</sup> OSM, *Annual Report 2004*, p. 79. This includes interest earned by the AML Fund during fiscal years 1992-1995, but transferred in subsequent years.

<sup>26</sup> U.S. Executive Office of the President, Office of Management and Budget, *Appendix, Budget of the United States Government, Fiscal Year 2007*, p. 604. Also reported in U.S. Office of Surface Mining, *Annual Report 2005: Abandoned Mine Land Reclamation*, pp. 5-6.

<sup>27</sup> P.L. 102-486, Section 2515.

<sup>28</sup> 30 CFR Parts 870 and 872, Coal Production Fees and Fee Allocations, 69 *Federal Register* 56122-56131 (final rule), 56132-56144 (proposed rule) Sept. 17, 2004. The proposed rule was republished at 69 FR 56908-56920, Sept. 22, 2004, because of a blank page printing error in the Sept. 17 print edition.

<sup>29</sup> 69 *Federal Register* 56126, Sept. 17, 2004.

<sup>30</sup> Referring to 30 CFR Paragraph 870.13(b)(3)(ii). 69 *Federal Register* 56126, Sept. 17, 2004.

<sup>31</sup> 69 *Federal Register* 56124, Sept. 17, 2004, Table 1. Because the regular AML fees were extended through FY2005, and now through June 2006, these special rates did not take effect.

## Economic Burden of the Fee<sup>32</sup>

For some time, AML fees have been below the statutory percent-of-price limits of 10% of value for surface- and underground-mined coal and 2% for lignite. Steep increases in coal prices in late 2003 and in 2004 further reduced the relative burden of the fee, measured as a percent of price. In the last year, coal prices have fallen somewhat, raising the relative burden, but it is still below the low points of 2004 in most cases. Judging by spot prices, the price of coal in mid-August 2006 is as much as 85% higher than in 2003, and the relative burden of the AML fee in the categories examined in **Table 1** consequently is only between half and two-thirds of what it was in 2003.

It should be noted that spot prices in recent years have been noticeably higher than likely contract prices, which apply to the predominant share of U.S. coal production. Consequently, the actual burden of the AML fee in 2006 probably is somewhat greater than indicated by the percentages reported in the following text and table.

The \$0.35 AML fee equaled 1.4% of the estimated average U.S. price of surface-mined bituminous coal in mid-August 2006 (\$25.00), compared with 2.6% in 2003 (\$13.42). The \$0.15 fee equaled 0.3% of the estimated average U.S. price of underground-mined bituminous coal in mid-August 2006 (\$45.00) compared with 0.6% in 2003 (\$26.71). The \$0.10 fee was at 0.9% of the average U.S. price of lignite in 2003; no lignite price data are available yet for 2006. For the AML fees to be at the percent-of-price limits, the price of surface-mined coal would need to be \$3.50 per ton or less, underground-mined coal \$1.50 per ton or less, and lignite \$5.00 per ton or less.

In contrast, the black lung excise tax (BLET) runs closer to its limit of 4.4% of price in most cases. The BLET of \$0.55 per ton of surface-mined coal equaled 2.2% of the estimated mid-August 2006 average U.S. spot price of surface-mined bituminous coal (\$25.00) but is 5.0% of the spot price of Powder River Basin coal (\$10.90). The twice as high tax of \$1.10 per ton on underground-mined coal equals 2.4% of the estimated mid-August 2006 average U.S. spot price of underground-mined coal (\$45.00).

The relative AML fee generally is higher on surface-mined coal than on underground-mined coal — both because the absolute fee is higher and because the price of surface-mined coal is lower. However, the relative burden of the fee can differ by specific type of coal within those categories. For example, the \$0.35 AML fee in mid-August 2006 equaled 3.2% of the estimated average spot price of bituminous coal surface-mined in the Powder River Basin, which has a lower heat content than most other bituminous coals. It was 0.8% for surface-mined bituminous coal from other geographic basins. This compares with an average 0.3% burden of the \$0.15 fee for underground-mined bituminous coal.

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<sup>32</sup> Bernard A. Gelb, Specialist in Industry Economics in the Resources, Science, and Industry Division of CRS, contributed this section.

**Table 1. AML Fees vs. Coal Prices, by Mine Type**

Mine type or coal rank	AML fee per ton	Price per ton <sup>a</sup>		AML fee as % of price	
		2003	Mid-August 2006	2003	Mid-August 2006
Surface (bituminous)	\$0.35	Powder River Basin			
		\$6.74	\$10.90	5.2	3.2
		Other Basins			
		\$22.00 <sup>b</sup>	\$43.00 <sup>b</sup>	1.6	0.8
		Total United States <sup>c</sup>			
		13.42	\$25.00 <sup>b</sup>	2.6	1.4
Underground (bituminous), total U.S.	\$0.15	\$26.71	\$45.00 <sup>b</sup>	0.6	0.3
Lignite, total U.S.	\$0.10	\$11.20	n.a.	0.9	n.a.

**Sources:** Energy Information Administration, *Annual Coal Report 2004*, November 2005; *Coal News and Markets*, week of August 20, 2006 [<http://www.eia.doe.gov/cneaf/coal/page/coalnews/coalmar.html>] visited August 30, 2006. Percentage of price calculated by CRS.

- a. Price data are per short ton — at mine mouth for 2003, spot prices for 2006.  
b. Price approximated by CRS.  
c. Because of wide differences in the specific types of coal mined by surface methods, the average U.S. price of surface-mined coal is not representative of prices in individual states.

## Proposals to Extend the Fees

In its FY2005 budget, the Bush Administration proposed returning unobligated state share balances to the states over a 10-year period and henceforth eliminating the state share allocation so that more of future AML fee collections could be spent on the reclamation of high priority sites. AML fees could also then be lowered. The Administration proposed to reduce the fees in three stages, by 15%, 20%, and finally 25%, over the period FY2005-FY2018.<sup>33</sup> In contrast, in its FY2006 budget, the Administration proposed extending the AML fees at their current rates. The Administration again proposed to allocate more of the AML receipts to the restoration of the most serious abandoned mine land. The Administration again expressed its commitment to addressing the financial viability of the UMWA

<sup>33</sup> The Administration's FY2005 proposal was included in H.R. 3778 (John Peterson) and S. 2049 (Specter) in the 108<sup>th</sup> Congress. See also U.S. Executive Office of the President, Office of Management and Budget, *Appendix, Budget of the United States Government, Fiscal Year 2005* (Washington: GPO, 2004), p. 588.

Combined Benefit Fund.<sup>34</sup> The Administration's FY2006 position on the AML program reauthorization and the extension of the AML fees is represented by H.R. 2721 (John Peterson) introduced in the first session of the 109<sup>th</sup> Congress.

In its FY2007 budget, the Bush Administration proposed a temporary extension of the current AML fees through September 30, 2007. This was to provide time for the Administration to negotiate with Congress about changes in the rules for AML Fund expenditures previously proposed in the Administration's FY2005 and FY2006 budgets.<sup>35</sup>

In the first session of the 109<sup>th</sup> Congress, Congress passed the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006 (H.R. 2361 P.L. 109-54), which extended the current AML fees for nine months, until June 30, 2006. In the second session, Congress approved the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (H.R. 4939 as amended, P.L. 109-234), enacted June 15, 2006. This law extended the current AML fees for 15 months, until September 30, 2007, as the Administration had requested.

Other proposals would extend the fees longer term as part of bills to reauthorize the abandoned mine reclamation program. H.R. 5970 (Thomas), the Estate Tax and Extension of Tax Relief Act of 2006, was approved by the House on July 29, 2006. Sections 312(a) and (b) of that bill would lower the AML fees by 20%, in two stages. The first reduction of 10% would take effect October 1, 2007. For five fiscal years the fees would be 31.5 cents per ton on surface-mined coal, 13.5 cents per ton on underground-mined coal, and 9 cents per ton on lignite. The second reduction of 10% would take effect October 1, 2012. The rates would be 28 cents per ton on surface-mined coal, 12 cents per ton of underground-mined coal, and 8 cents per ton for lignite. Those fees would remain in effect for nine years, through September 30, 2021. This fee-reduction schedule is identical to that previously proposed in Sections 102(a) and (b) of S. 2616 (Santorum). It is also identical to that subsequently proposed in Sections 312(a) and (b) of S. 3829 (Stabenow). (Title III of S. 3829 is identical to Title III of H.R. 5970. Like S. 2616, both of these titles are named the Surface Mining Control and Reclamation Act Amendments of 2006.)

In addition, H.R. 2721 (John Peterson) and S. 961 (Rockefeller) would extend the fees at their current rates through FY2019. H.R. 1600 (Cubin) would lower all of the fees by 20% and extend them through FY2020. S. 1701 (Thomas) would also

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<sup>34</sup> U.S. Executive Office of the President, Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2006* (Washington: GPO, 2005), *Analytical Perspectives*, pp. 296, 298; *Appendix*, pp. 597-598.

<sup>35</sup> U.S. Department of the Interior, Office of Surface Mining, Office of Surface Mining Reclamation and Enforcement, *Bureau Highlights*, AML Reauthorization, p. BH - 28, available at [<http://www.osmre.gov/news/OSM%20FY07%20Budget%20Highlights.pdf>], visited Apr. 18, 2006. Also, "OSM Budget Calls for Reauthorization of AML Fee Collection Authority, Increases Funding for State and Tribal Regulatory Programs," Office of Surface Mining News Release, Feb. 6, 2006, available at [<http://www.osmre.gov/news/020606.htm>], visited Apr. 18, 2006.

lower all of the fees by 20%, but in different stages; it would extend the fees through FY2016.

## Bills Introduced in the 109<sup>th</sup> Congress

The following descriptions of other bills introduced in the 109<sup>th</sup> Congress concentrate on the positions each takes regarding long-term extension of the abandoned mine reclamation fees. The descriptions also note when a bill largely replicates a bill introduced in the 108<sup>th</sup> Congress or contains provisions similar to another bill introduced in the 109<sup>th</sup> Congress.

Seven of the bills also address the reauthorization of the abandoned mine reclamation program and six address the transfer of interest earned by the AML Fund to UMWA retiree health benefit plans. Both of these topics are beyond the scope of this report.<sup>36</sup> A Senate hearing was held on S. 961 and S. 1701 in September 2005.<sup>37</sup>

### House

**H.R. 1600 (Cubin).** Abandoned Mine Lands Reclamation Reform Act of 2005. H.R. 1600 would lower all of the AML fees by 20% and extend them through FY2020.

H.R. 1600 would amend SMCRA to reauthorize and reform the abandoned mine reclamation program. H.R. 1600 replicates H.R. 3796 (Cubin and Rahall) introduced in the 108<sup>th</sup> Congress, with one exception. H.R. 1600 contains a new Section 3 which gives detailed instructions for the transfers of interest earned by the AML Fund to three UMWA health benefit plans. This is in place of Section 2(b)(10) of H.R. 3796.

H.R. 1600 shares many elements in common with S. 961 (Rockefeller) but has some differences. H.R. 1600 would lower the AML fees by 20% while S. 961 would leave them at current levels. H.R. 1600 would extend the fees through FY2020 while S. 961 would extend them through FY2019. H.R. 1600 includes provisions not found in S. 961 regarding the payment of state shares to qualified states. H.R. 1600 differs slightly from S. 961 in the provisions regarding the transfer of the interest earnings of the AML Fund to the three UMWA retiree health benefit plans.

Introduced April 13, 2005; referred to the Committee on Resources; referred to the Subcommittee on Energy and Mineral Resources on April 22, 2005.

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<sup>36</sup> For further discussion of these issues, see CRS Report RL32373, *Abandoned Mine Land Fund Reauthorization: Selected Issues*, by Robert L. Bamberger.

<sup>37</sup> U.S. Congress, Senate Committee on Energy and Natural Resources, *Amend the Surface Mining Control and Reclamation Act of 1977*, hearing on S. 961 and S. 1701, 109<sup>th</sup> Cong., 1<sup>st</sup> sess., S.Hrg. 109-256, Sept. 27, 2005 (Washington: GPO, 2006).

**H.R. 2721 (John Peterson).** Abandoned Mine Reclamation Program Extension and Reform Act of 2005. H.R. 2721 would extend the AML fees at their current rates through FY2019. H.R. 2721 would amend SMCRA to reauthorize the collection of the reclamation fees, revise the abandoned mine reclamation program, promote remining, authorize the Office of Surface Mining to collect the black lung excise tax, and make sundry other changes. The bill does not make any changes to the transfer of AML interest earnings to the CBF.

H.R. 2721 represents the Bush Administration's FY2006 proposal. It replicates the Administration's bills introduced in the 108<sup>th</sup> Congress — H.R. 3778 (John Peterson) and S. 2049 (Specter) — with just a few differences. The Administration's bills in the 108<sup>th</sup> Congress had proposed lowering the fees in three stages, by 15%, 20%, and finally 25%. H.R. 2721 would raise the proposed minimum allocation to a state or Indian tribe from \$2 million to \$3 million. It also includes a new provision that Tennessee receive an allocation of not less than \$3 million. It includes another new provision regarding the priority to be given by the Secretary of the Interior in awarding certain grants.

Introduced May 26, 2005; referred to the Committee on Resources; referred to the Subcommittee on Energy and Mineral Resources on May 31, 2005.

**H.R. 5970 (Thomas).** Estate Tax and Extension of Tax Relief Act of 2006. Title III is named the Surface Mining Control and Reclamation Act Amendments of 2006. (Title I is the Reform and Extension of Estate Tax After 2009. Title II is the Extension of Expansion of Certain Tax Relief Provisions. Title IV is the Increase in the Minimum Wage. From these three titles comes the reference to the “trifecta bill.”)

Sections 312(a) and (b) of H.R. 5970 would lower all three AML fees by 20%, in two equal stages, and extend them for 14 years. The first stage would be in effect for fiscal years 2008-2012. The second stage would be in effect for fiscal years 2013-2021. The fee on surface-mined coal would drop by 10% from 35 cents to 31.5 cents on October 1, 2007, and to 28 cents on October 1, 2012. The fee on underground-mined coal would drop from 15 cents to 13.5 cents and then to 12 cents. The fee on lignite would drop from 10 cents to 9 cents and then to 8 cents.

Title III of H.R. 5970 would make numerous other changes to SMCRA governing the expenditure of moneys from the Abandoned Mine Reclamation Fund. It would also amend both SMCRA and the Internal Revenue Code regarding the financing of the United Mine Workers of America (UMWA) Combined Benefit Fund, as well as the 1992 UMWA Benefit Plan and the 1993 Plan.

Title III of H.R. 5970 has many elements in common with S. 2616 (Santorum), including the 20% reduction in AML fees and their extension through FY2021. Among the major differences, H.R. 5970 drops the provisions of S. 2616 that would make a portion of revenues received from coal leases under the Mineral Leasing Act (MLA) available to the three UMWA retiree health benefit plans named above. (Title III of H.R. 5970 drops all of Title II and other references to the MLA in Title III of S. 2616). It includes a new section (Sec. 319) on tribal regulation of surface coal mining and reclamation operations.

Introduced July 28, 2006; referred to and discharged by the Committees on Ways and Means; Energy and Commerce; Education and the Workforce; and Resources on the same day. Passed in the House on July 29, 2006, by a vote of 230 to 180. On August 3, 2006, cloture on the motion to proceed to consideration of H.R. 5970 failed in the Senate by a vote of 56 to 42, four short of the 60 votes needed.

Title III of H.R. 5970 was reintroduced on August 3, 2006, as Title III of S. 3829.

The Congressional Budget Office estimated that Title III of H.R. 5970 would have a net budget cost of \$3.88 billion over the 10-year period FYs 2007-2016. This includes an increase in outlays of \$4.91 billion offset by an increase in revenues of \$1.03 billion.<sup>38</sup>

## Senate

**S. 961 (Rockefeller).** Abandoned Mine Land Reclamation Reform Act of 2005. S. 961 would extend the AML fees at their current rates through FY2019. S. 961 would amend SMCRA to reauthorize and reform the abandoned mine reclamation program.

S. 961 shares many elements in common with H.R. 1600 but has some differences as noted in the description of H.R. 1600 above. S. 961 is identical to S. 2211 (Rockefeller) in the 108<sup>th</sup> Congress, with two exceptions. S. 2211 would have lowered the AML fees by 20%, as H.R. 1600 now does. S. 2211 included the provisions now found in H.R. 1600 but absent from S. 961 regarding the state share for qualified states.

Introduced April 28, 2005; referred to the Committee on Energy and Natural Resources. Hearings were held September 27, 2005.

**S. 1701 (Thomas).** Abandoned Mine Land Reclamation Reform Act of 2005. S. 1701 would lower all three fees by 20%, in different stages. The fee on surface-mine coal would be lowered in three stages. For the period beginning July 1, 2006, through October 1, 2009, the fee would be lowered from 35 cents to 32 cents per ton; for October 1, 2009, through October 1, 2013, it would drop to 30 cents; for October 1, 2013, through October 1, 2016, it would drop to 28 cents. The fee on underground-mine coal would remain at 15 cents per ton through October 1, 2009; it would drop to 12 cents for the period October 1, 2009, through October 1, 2016. The fee on lignite would remain at 10 cents per ton through October 1, 2009; it would drop to 8 cents for the period October 1, 2009, through October 1, 2016. S. 1701 addresses the transfer of interest earnings of the AML Fund to the UMWA Combined Benefit Fund. S. 1701 would make other changes to the AML program, including the payment of unappropriated state share balances to states and Indian tribes over several years and promoting re-mining, among others.

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<sup>38</sup> U.S. Congress, Joint Committee on Taxation, *Estimated Budget Effects of H.R. 5970, the "Estate Tax and Extension of Tax Relief Act of 2006 ('ETETRA')," as Introduced in the House of Representatives on July 28, 2006* (JCX-34-06), July 28, 2006, p. 4.

Introduced September 14, 2005; referred to the Committee on Energy and Natural Resources. Hearings were held September 27, 2005.

**S. 2616 (Santorum).** Surface Mining Control and Reclamation Act Amendments of 2006. S. 2616 would lower all three AML fees by 20%, in two equal stages. The first stage would be in effect for fiscal years 2008-2012. The second stage would be in effect for fiscal years 2013-2021. The fee on surface-mined coal would drop by 10% from 35 cents to 31.5 cents on October 1, 2007, and to 28 cents on October 1, 2012. The fee on underground-mined coal would drop from 15 cents to 13.5 cents and then to 12 cents. The fee on lignite would drop from 10 cents to 9 cents and then to 8 cents.

S. 2616 also would reauthorize the AML program, modify the AML allocation formulas to provide more funding to historic production states with high priority reclamation problems, and use Mineral Leasing Act revenues from coal to pay the states their unappropriated balance of past state share collections over a 10-year period as well as pay for future state share allocations. S. 2616 would make substantial changes to the financing of UMWA retiree health benefits protected under the Coal Act of 1992. It would provide federal funding to the 1993 Multiemployer Health Benefit Plan, in addition to the Combined Benefit Fund and 1992 Benefit Plan, to pay for “orphan” retirees whose employers have gone out of business. Funding would continue to come from the interest earnings of the AML Fund. Additional funding would now come from coal-related revenues from lease sales, rents, royalties, and bonuses paid under the Mineral Leasing Act. Still other monies for the three UMWA health plans would come from amounts allocated but not appropriated for the Rural Abandoned Mine Land Program (RAMP). The unassigned beneficiaries premium would be eliminated if possible. Relief from future premium payments would be provided to “reachback” companies, those companies that had not signed the 1988 bargaining agreement but were assigned beneficiaries. Reimbursements, with interest, would be made for health premiums paid by companies whose assignment of beneficiaries has been revoked by court decisions but have not yet been repaid (“final judgement” companies).

Introduced April 7, 2006; referred to the Committee on Finance.

**S. 3829 (Stabenow).** Tax Relief and Minimum Wage Act of 2006. Title III is named the Surface Mining Control and Reclamation Act Amendments of 2006. This title is identical to Title III of H.R. 5970, which passed in the House on July 29, 2006. S. 3829 drops the estate tax provisions of H.R. 5970 (Title I) but retains the other three titles. In addition to the SMCRA amendments, S. 3829 includes the title addressing the extension and expansion of certain tax relief provisions, again with wording identical to H.R. 5970. S. 3829 also includes the title that would increase the federal minimum wage, but replaces the second section.

Sections 312(a) and (b) of S. 3829 would lower all three AML fees by 20%, in two equal stages. The first stage would be in effect for fiscal years 2008-2012. The second stage would be in effect for fiscal years 2013-2021. The fee on surface-mined coal would drop by 10% from 35 cents to 31.5 cents on October 1, 2007, and by an equal amount, to 28 cents on October 1, 2012. The fee on underground-mined coal would drop from 15 cents to 13.5 cents and then to 12 cents. The fee on lignite



would drop from 10 cents to 9 cents and then to 8 cents. This is identical to the fee reduction proposal in S. 2616 and H.R. 5970. For a brief description of other provisions of Title III, see the entries for H.R. 5970 and S. 2616 above.

Introduced August 3, 2006; referred to the Committee on Finance.