



STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
LAND RECLAMATION SECTION

**Comments on OSMRE Draft Guidance on the Bipartisan Infrastructure Law  
AML Grant Implementation  
On Behalf of the Tennessee Department of Environment & Conservation - Land Reclamation Section  
June 13, 2022**

As the OSMRE authorized Abandoned Mine Land (AML) program with the responsibility of implementing Title IV of SMCRA in Tennessee, the Tennessee Department of Environment & Conservation (TDEC) Land Reclamation Section respectfully submits the following comments.

**General Comments**

The TDEC Land Reclamation Section would like to stress the importance of maintaining the existing processes of the current AML program that have proven to be successful over the last 40 years. The BIL guidance document presents many new administrative tasks that will divert efforts away from the fundamental mission of the AML program. The 2021 Bipartisan Infrastructure Law Abandoned Mine Land Grant program presents an enormous and immediate increase in the level of funding dedicated to the reclamation of abandoned mine lands in Tennessee, and as a minimum funded AML program, the TDEC Land Reclamation Section will be required to restructure its organization and retool its approach toward AML reclamation in the state. When the SMCRA Amendments of 2006 enacted a 50% increase in the level of funding for minimum program states from \$2 million to \$3 million annually, a three-year ramp-up period was also included in the amendment to give state AML programs time to adjust and prepare for the additional grant funding. By contrast, the new BIL AML Grant program will provide an 282% increase in Tennessee's annual funding level by October 1, 2022, without affording a phase-in period to allow for programs to prepare for this monumental challenge. An efficient, simple, and streamlined implementation of IIJA Section 40701 will allow all state AML programs, large and small, to effectively transform this opportunity into continued reclamation success.

**Preference for Former Miners and Union Labor** (Section III, pages 3-4; Sec IV p 5; Sec IX, p 9; and Sec X, p 11)

Current Tennessee procurement law, rules, and policies strive to promote an environment conducive to Contracting Parties providing goods and services to the State in an impartial and objective manner, and do not allow preferential treatment of any groups in the competitive bid process. AML reclamation projects do not qualify for any of the Tennessee Department of General Services granted exceptions to a competitive procurement bid process.

Although procurement preference cannot be given to former miners, over the course of the 40-year history of the TN AML program, over 55% of reclamation contractors have been involved in the mining industry.

While the state cannot require contractors to adopt collective bargaining agreements, local hiring provisions, project labor agreements, and community benefits agreements; it should be noted that over 98% of all TN AML contracts have been awarded to local contractors that employ local workers.

*States and Tribes should engage with labor or worker organizations that represent coal industry workers to identify current or former employees of the coal industry who are candidates to be employed by AML reclamation contractors and provide OSMRE with certifications of this engagement:* It should be noted that the U.S. Energy Information Administration reports that the Tennessee coal industry has employed an entirely non-union workforce since 2004, which will make it difficult to comply with this portion of the guidance.

#### **Aggregating Contracts** (Sec III, page 4)

An emphasis on aggregating projects into statewide or regional construction contracts would prevent many current TN AML contractors (all of which are local businesses and most of which are diversity business enterprises (DBEs) and former miners) from being able to bid on reclamation projects, which conflicts with the guidance as well as with state procurement goals.

#### **Eligible Projects and Prioritization** (Section III)

*Prioritizing projects that provide employment opportunities to current and former employees of the coal industry:* While the state cannot know in advance if a given project will be bid on by any specific contractors or the makeup of their workforce, the general nature of AML projects tend to favor the skillset former miners possess, which is reflected in the fact that over 55% of the program's previous reclamation contractors are former mining industry workers.

*Requiring contractors to affirm they will give preference to miners in any hiring for BIL-funded AML projects:* Under the state's EEO policy, the AML program cannot require contractors to give preference to any one group when making hiring decisions.

#### **Justice 40 Initiative** (Sec I, page 1; Sec III, p 3)

Although the majority of TN AML projects are in EJ40 qualified communities, there are sites that fall outside of these qualifying areas that must be addressed, particularly since many of the areas of the TN coalfield continue to experience rapid development.

#### **Subaccounts** (Sec IV, page 5; Appendix I)

Additional subaccounts that track engineering and design costs add an onerous administrative burden to AML programs to internally enumerate and track this information.

#### **BIL AML Grants** (Sec IV, page 5-6)

*A description of each proposed project to be funded during the grant period of performance:* A list of proposed projects at the time of grant application submittal would be unreliable and misleading, while creating an additional and heavy administrative burden. Project development is a years-long and very fluid process, and a variety of factors can make a project impractical or raise its priority. The eAMLIS system is a more appropriate tool for tracking potential projects and reclamation priorities.

*A statement of how the State or Tribe will prioritize projects employing current or former employees of the coal industry:* The project procurement process occurs much later in the grant's period of performance. The actual AML reclamation contractor and the work histories of their employees is impossible to know at the time of grant application.

#### **Separate Grant Applications** (Sec IV, page 5 & footnote 6)

The lift involved in implementing this rapid expansion in funding, especially for a minimum program state such as Tennessee, would be exacerbated by additional administrative requirements such as multiple grant applications and subsequent grant reports. Up to this point in the history of Title IV, states have demonstrated the ability to appropriately use and accurately track various funding sources in accordance with their divergent requirements.

### **Project Authorization (Section IX)**

*States and Tribes should engage with labor and worker organizations that represent coal industry workers to identify current or former employees of the coal industry who are candidates to be employed by AML reclamation contractors:* The project authorization process occurs prior to the selection of the AML reclamation contractor. The contractor and the work histories of their employees is not known at the time of project authorization. The same issues that would arise engaging with labor and worker groups at the point of grant application would apply at the project authorization stage as well. It should be noted that the U.S. Energy Information Administration reports that the Tennessee coal industry has employed an entirely non-union workforce since 2004, which will make it difficult to comply with this portion of the guidance.

*For projects or aggregated projects in excess of \$1 million, States or Tribes may provide a certification that a Project either uses a unionized project workforce or includes a project labor agreement:* These requirements would conflict with state procurement laws and goals of promoting use of in-state businesses and diversity business enterprises.

Engaging with organized labor falls well outside of the purview and authority of the AML Program. Just as the AML Program relies on the properly delegated Department of General Services for the procurement of contractors, the state Department of Labor would be the appropriate agency to address workforce related activities.

### **Performance Measures & Reporting (Section X)**

The TN AML Program is not equipped with the knowledge base or skill set to evaluate many of the socio-economic measures listed on page 11. Several of the environmental benefits would require monitoring in perpetuity to get accurate and relevant data. Monitoring and measuring requires a significant amount of staff time and diverts the program focus away from what needs to be done to quantify what is already completed.

### **Appendix III: BIL AML Project Flowchart**

The project flowchart in Appendix III closely mirrors OSM's flowchart for the General AMLER process (<https://www.osmre.gov/programs/reclaiming-abandoned-mine-lands/amlr>) . Section 40701 strongly references and builds upon Title IV of SMCRA, which would suggest that Congress intended the BIL AML program to mirror the fee-based AML program, not AMLER. A process closer to what all states are experienced in executing under the fee-based program would streamline program implementation and expedite reclamation as envisioned by Congress.

### **Conclusion**

The 2021 Bipartisan Infrastructure Law brought a previously unfathomable increase in funding to the nation's AML programs. This windfall will amount to not only a nearly 300% increase for the TN AML program, but also an overall OSM distribution of over 470% more than the total FY21 AML grant awards. In order to be effective and responsible stewards of this historic allocation, the states and OSM must commit to implementing the BIL AML Grant program in the most efficient way possible and focus on the processes that have proven successful in the past.

Thank you again for the opportunity to provide comment on this guidance.

Sincerely,

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Tennessee Department of Environment & Conservation