



## Interstate Mining Compact Commission

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THOMAS L. CLARKE

June 20, 2022

Glenda Owens

Deputy Director

Office of Surface Mining Reclamation and Enforcement

United States Department of the Interior

1849 C Street, NW

Washington, DC 20240

Re: IMCC and NAAML P Comments on the Metrics Contained in the  
Draft OSMRE Implementation Guidance for  
Section 40701 of the Infrastructure Investment and Jobs Act

Dear Deputy Director Owens:

The Interstate Mining Compact Commission (IMCC) is an interstate organization representing the mineral and natural resource interests of its 26 member states. IMCC also serves as a policy liaison with Congress and the federal government for the National Association of Abandoned Mine Lands Programs (NAAML P). NAAML P represents 32 states and tribes, of which 29 implement federally approved abandoned mine land reclamation (AML) programs under Title IV of the Surface Mining Control and Reclamation Act (SMCRA). IMCC and NAAML P members are responsible for nearly all (in excess of 99%) of on-the-ground implementation of the coal AML program under Title IV of SMCRA. The states and tribes (collectively hereinafter, "AML programs") look forward to working with our federal partners at the office of Surface Mining Reclamation and Enforcement (OSMRE) to ensure that the coal AML program, as recently re-invigorated by the Infrastructure Investment and Jobs Act (Public Law 117-58) (IIJA), is optimally implemented. On behalf of the AML programs of IMCC and NAAML P, we submit these comments on the metrics contained in OSMRE's draft guidance for implementation of the AML program under Section 40701 of the IIJA.

Our comments on the metrics reflect many of the same concerns we had with the guidance as a whole. Many of them are neither authorized nor required by the law. They will also impose a significant new administrative burden of AML programs that already face the daunting task of efficiently and effectively putting the greatly increased new funding Section 40701 provides to work. Like with other aspects of the guidance, they represent fixes to things that just are not broken. We urge OSMRE to respect the AML programs' need to be efficient during this vitally important phase of implementation of the IJA and, subject to the limited exceptions discussed below, drop all of the new metrics when it produces final guidance for Section 40701. Below are our comments on specific metrics.

### **Reforestation Metrics:**

- Number of acres Reforested and Number of trees planted.

*AML Programs Comments:* While the AML programs support a reforestation metric, there should only be one. Either use “Number of Acres Reforested” or “Number of Trees Planted”, but not both. Also, this metric should be limited to those areas of the country where the native ecosystem was forested and the environment is capable of supporting reforestation. The metric should also recognize that private landowners may not consent to tree planting as part of an AML project on their land. No reforestation metric should be imposed for projects where a private landowner's refusal to consent prevents an AML program from planting trees.

### **Endangered Species Metrics:**

- Number of bat gates installed

*AML Programs Comments:* The AML programs support this metric. They do not support the metric for: “number of acres of endangered species habitat re-established” because AML programs lack access to the information necessary to accurately report this data. It would also be unduly burdensome for AML programs to seek out this information. The United States Fish and Wildlife Service of the Department of the Interior would be much more capable of producing data of this nature than the AML programs.

### **Acid Mine Drainage (AMD), Water Quality Metrics:**

- Number of AMD passive treatment systems built.
- Number of AMD passive treatment systems operated and maintained.
- Number of AMD active treatment systems built
- Number of AMD discharges abated
- Volume of water treated

*AML Programs Comments:* The AML programs support use of the above metrics for measurement of program accomplishments for improvement of water quality. The metric for “volume of water treated” needs to be clarified to reflect that “volume” is measured in average gallons per minute of flow.

- Number of outflows remediated
- Quantity of iron, aluminum, manganese, sulfate, etc. removed and/or recovered on annual basis by AMD water reclamation projects
- Miles of waterways improved
- Number of residents positively impacted by the restoration of previously polluted waterways
- Number of polluted water supplies addressed

*AML Programs Comments:* The AML programs oppose use of the above water quality metrics. AML programs have never previously been required to report on any of these metrics. There is no basis for these new requirements among the minor adjustments that Section 40701 makes to the AML program.

The information AML programs will be able to supply for metrics such as: “Number of outflows remediated” is duplicative of “number of AMD discharges abated,” and is, therefore, unnecessary.

Any responses to the metrics for “quantities” of various pollutants and “miles of waterways restored” will only be very rough estimates. Without significant increases to program costs solely for the purposes of gathering and reporting information, the quality of the information these metrics will yield will not be worth the effort to collect and report the data. “Miles of waterways improved” is likely to yield especially misleading results, because any water at a distance of *miles* from an AML-eligible source of water pollution will necessarily be affected by pollution from other sources.

The metrics for “numbers of residents” and “numbers of water supplies” will also be difficult to quantify. Both will require canvassing homes along AMD-impacted streams. As discussed below, a metric for a “number of households” would be easier to quantify than “numbers of residents”. Beyond the issue of residents versus households, these metrics would require much time-consuming investigative work. For example, when water quality in a stream is improved, that does not translate directly into an improvement for residents or households along the stream, downstream of the water quality improvement project. Some residents along these streams may get their water supply from a public water system. Others may get their water supply from wells. Among those whose water supply comes from a well, an inquiry would have to be made as to how deep the well is and the composition of the intervening layers of soil and rock to determine the extent to which the groundwater supplying the well interacts with the surface water in the stream. For any residents that live very far downstream, there are likely to be other potential sources of water pollution that affect the quality of both surface water and groundwater. In many rural settings, the

adequacy of septic systems is another potential impact on water quality in surface and groundwater systems that often affect water quality.

### **Water Supply Restoration Project Metrics:**

- Number of people receiving potable water after completion of water supply restoration projects
- Number of polluted water supplies addressed
- Number of residents positively impacted by the restoration of previously polluted waterways
- Number of polluted water supplies addressed

*AML Programs Comments:* The scope of what these metrics are intended to measure needs to be clarified. Are they intended to only apply to water system projects under Section 403(b) of SMCRA? Or, are they intended to also encompass water supply replacement projects undertaken pursuant to Priorities 1 and 2 under Section 403(a) of SMCRA? Depending on the answers to these questions, the AML programs may have other comments or questions.

There are existing metrics in e-AMLIS for these problem types that work well.

The proposed metrics all involve similar difficulties and should not be a part of final guidance on Section 40701. They require an AML program to project how many people reside in each household that might be served by a water system built as an AML project. This number is constantly in a state a flux as the number of people sharing a home is always changing. The proposed metrics also require an AML program to project which households in a service area will use a new water system and which households will decline water service in favor of reliance on pre-existing wells or other sources of water. AML programs are not capable of providing accurate responses for either of these projections without canvassing door-to door throughout the service area. Doing this would be unduly burdensome, and unlikely to yield accurate responses. A better metric might be one currently being used, a count of households the water system is serving.

### **Impact of the Miners Preference:**

*AML Programs Comments:* The guidance includes a metric for: “Number of former/current employees of the coal industry employed in AML reclamation.” Please see our discussion of the miners preference at pages 6 – 8 of our June 13, 2022 comments on the guidance.

### **Other Workforce Metrics:**

- Percent of workers from the local community
- Demographics/number of workers from under-represented groups
- Number of job hours involved in BIL AML remediation

*AML Programs Comments:* These are new requirements that lack any legal basis in Section 40701 of the IIJA or Title IV of SMCRA. The AML Programs oppose these new requirements.

### **Rare Earth Elements Metrics:**

- Number of tons of rare earth elements, metals, or sediment recovered for reuse
- Quantity of Rare Earth Elements (REE) recovered by AMD water reclamation projects

*AML Programs Comments:* Neither Section 40701 of the IIJA or Title IV of SMCRA allow AML funds to be spent on rare earth element recovery. Therefore, neither AML programs nor contractors performing AML work funded by either Section 40701 of the IIJA or Title IV of SMCRA will be recovering rare earth elements. Any rare earth element recovery effort is likely to be undertaken by others, who will be in a much better position to provide accurate information as to the yield from their rare earth element recovery efforts.

### **Methane Reduction Metrics:**

*AML Programs Comments:* The guidance includes a metric for: “Amount of methane emissions reduced.” Providing accurate information for this metric would require a reasonably sophisticated monitoring program to be established by experts on mine gases that the AML programs currently do not have. This will be very expensive and, based on the circumstances, be unlikely to yield any reliable information. See, page 17 of our June 13, 2022 comments on the guidance for more of our comments regarding greenhouse gas reduction.

### **Justice 40 Metrics:**

- Percent of overall benefits and types of benefits that accrue to disadvantaged community, community of color, low-income community, or Tribal or Indigenous community

*AML Programs Comments:*

The nature of much of what will be required under the Justice 40 initiative remains to be developed. In the first instance by the Council on Environmental Quality (CEQ) and the Office of Management and Budget (OMB). Therefore, without further development of Justice 40 from CEQ and OMB, including any Justice 40 metrics in the initial guidance

OSMRE produces is premature. We hope that OSMRE will consider input from the AML programs before it implements any direction it is given on implementation of Justice 40. Please see pages 18-20 of our June 13, 2022 comments on the guidance for more of our concerns regarding Justice 40.

### **Economic and Community Development Metrics:**

- Electric generating capacity of renewable energy facilities installed on reclaimed AML sites
- Number of businesses constructed on reclaimed AML sites, and number of people employed at those sites
- Acres of new recreational facilities constructed

*AML Programs Comments:* These metrics may be appropriate for AMLER, which is an economic and community revitalization program, but they are wholly inappropriate for the AML program. AML is a remedial program that exists to correct safety, health and environmental hazards left behind by coal mining conducted before 1977. In Section 40701 of the IIA, Congress chose to expand the existing AML program with very minor adjustments. It did not choose to expand the Abandoned Mine Lands Economic Revitalization Program (AMLER). The AML programs strongly oppose any attempt to confuse the purposes of the AML program with those of AMLER, as these metrics would certainly do.

### **Miscellaneous Other Metrics:**

- Number of project partners involved in AML reclamation projects
- Number of residents within [X] miles of BIL-funded projects
- If there is a community benefit agreement as part of the project

*AML Programs Comments:* The AML programs oppose use of the above metrics. AML programs have never previously been required to report on any of these metrics. There is no legal basis for these new requirements among the minor adjustments that Section 40701 makes to the AML program. The AML programs do not have databases that allow them to determine the number of residents within any distance of an AML project. We understand that OSMRE's e-AMLIS system already includes census information on the number of residents who are proximal to AML features. OSMRE should utilize the data it already has in e-AMLIS instead of burdening the AML programs with this new reporting metric. As stated in our June 13, 2022 comments, community benefit agreements are not among the "covered activities" on which AML programs are authorized to spend Section 40701 funds. Accordingly, there should not be anything to report on this metric.

Thank you for the opportunity to provide these comments. We value our partnership with OSMRE and are available to discuss our comments further. Please do not hesitate to contact us.

Sincerely,

A handwritten signature in blue ink, appearing to read 'T. L. Clarke', with a stylized flourish extending from the end.

Thomas L. Clarke  
Executive Director