



June 13, 2022

Deputy Director Glenda Owens
Office of Surface Mining Reclamation and Enforcement
U.S. Department of the Interior
1849 C St. NW
Washington, D.C. 20240

Attn: Department of the Interior Draft Guidance on the Bipartisan Infrastructure Law Abandoned Mine Land Grant Implementation

RE: Comments to the Office of Surface Mining Reclamation and Enforcement from the National Mining Association

Dear Deputy Director Owens,

The National Mining Association (NMA) appreciates the opportunity to provide comments on the recently released draft guidance (guidance) for eligible states and the Navajo Nation on how to apply for the first \$725 million in funding available for reclaiming abandoned mine lands (AML) as part of the Bipartisan Infrastructure Law. The NMA is a national trade association that includes the producers of most of the nation's coal, metals, industrial, and agricultural minerals; the manufacturers of mining and mineral processing machinery, equipment, and supplies; and the engineering and consulting firms, financial institutions, and other firms serving the mining industry. The NMA's members conduct mining operations throughout the United States.

The NMA is concerned that the guidance will continue historic problems with the AML reclamation program, including lack of oversight and AML funds being used for non-coal projects. Under the current program, billions of dollars have been spent on projects and activities unrelated to the AML primary purpose of restoring historic abandoned coal mine sites. As such, the NMA encourages the Office of Surface Mining Reclamation and Enforcement (OSMRE) to revise the guidance to include conditions that eligible states and tribes use the AML grant money for actual remediation of priority 1 and 2 (P1 and P2) coal AMLs.

Historical Issues with AML Oversight

While today's mining industry plans for the restoration and reclamation of mined land even before mining occurs, decades ago, that was not always the case. To address the issue of legacy mining sites, since 1977, modern coal mining companies have been

paying fees on each ton of domestically-produced coal into a fund – the AML Reclamation Fund – to reclaim high-priority coal mines abandoned or not sufficiently reclaimed before 1977. Unfortunately, after 40 years and more than \$12 billion paid into the fund, little has been accomplished to restore priority sites.

The AML fund has become a target for diverting coal industry funds to purposes not intended under the law. According to the Department of the Interior's Inspector General, the lack of oversight, the absence of sound data management, and an unreliable AML database have resulted in: (1) states diverting AML money to non-coal projects notwithstanding the continued presence of high priority coal projects in the state; (2) some states expending substantial sums on administrative costs without completing any AML projects; and (3) the inability to deliver accurate or useful cost accounting for AML projects.

High administrative costs have also diverted funds from their core purpose. A Government Accountability Office (GAO) report found that between 1985-1990 \$360 million, or 28 percent, of the \$1.3 billion spent during that period was used for federal and state administrative expenses.

Current Guidance

There is no reason to believe that this new grant program will be administered any differently than the AML fund has in the last 40 years without adequate oversight and accountability to ensure that P1 and P2 sites are, in fact, prioritized. The NMA encourages OSMRE to quickly initiate rulemaking to establish requirements and obligations related to the application procedures, allowable uses of funds, and reporting on program activities and outcomes, and to ensure adequate oversight of states and their use of funds.

Conclusion

The NMA appreciates the opportunity to provide comments on the guidance. We continue to believe it is important that the guidance be focused on priority reclamation projects and the oversight required to ensure funds are not used on overhead and administrative costs, or on sites that are unrelated to historic coal mining, and should utilize the grants to prioritize P1 and P2 sites. Given the historic issues with the AML fund, the NMA would support a revision in the guidance, or immediate rulemaking to prioritize P1 and P2 sites, with adequate oversight of states managing the Bipartisan Infrastructure Law grants to reflect the intended purpose under the law.

If there are any questions, please reach out to me at kmills@nma.org or (202) 463-2643.

Sincerely,

Katie Mills

Katie Mills
Associate General Counsel