



14619 West State Road 48
Jasonville, IN 47438 9517
May 27, 2022

Comments Concerning "GUIDANCE ON THE BIPARTISAN INFRASTRUCTURE LAW ABANDONED MINE LAND GRANT IMPLEMENTATION"

The Indiana Abandoned Mine Land Program has become proficient in reclaiming abandoned mines and remediating hazardous features in Indiana's coal region. With funding being the primary hindrance to the program over the last 40 years, we look forward to the increased resources offered by the Bipartisan Infrastructure Law. Coordination with The Office of Surface Mining over that time has resulted in a successful and respected program that has benefitted countless Hoosiers burdened by the safety and environmental impacts of legacy mining. Developments by the Office of Surface Mining such as simplified grant application and ability to de-obligate and re-obligate funding between grants has played a significant role in the success of the program. It is incredibly important to have the flexibility to populate grants with enough funding to requisition large projects. OSM's development of AMLIS has also benefitted the program immensely, offering a shared resource between federal and state agencies that increases communication and facilitates workflow. I remain confident in our proven ability to work together with OSM to accomplish timely, high quality reclamation projects and report those accomplishments to the public. The following paragraphs detail the points of the guidance I believe will not help to further the success we have enjoyed to date.

LABOR AGREEMENTS

The law found at Indiana Code 22-6-6, is Indiana's policy statement that it has opted out of some provisions of the National Labor Relations Act (cited on page 9 paragraph 3 of BIL Guidance). The Indiana Right-to-Work law provides that no employer, labor organization or any person may require an individual to become or remain a member of a labor organization, or pay dues, fees or assessments (or charitable donation substitutes) as a condition of employment, new or continued. The Right to Work Law also prevents conflict with or preemption of federal law (IC 22-6-6-2). The requirement to comply with Davis-Bacon wage scale is clearly defined in the Infrastructure Investment and Jobs Act (IIJA). Requirements for Union labor and collective bargaining are not. This lack of a clear requirement in IIJA will certainly complicate any attempt to adapt state procurement processes to the guidance. Furthermore, certification of union labor before the project is bid, as part of the ATP process is not possible. State procurement processes do not support a requirement for companies to be union prior to bidding and such a requirement may be counter to state law. Such a requirement would indirectly support Unionization of potential bidders as prohibited in the last sentence of Section III of the guidance document. This would leave the Indiana AML program in need of developing a Project Workforce Continuity Plan as defined in Page 9, points 1-6 of the BIL Guidance document. Points 1-3 are covered by State law in Title 22, Labor and Safety, as well as state procurement laws

that require winning bidders to comply with the Fair Labor Standards Act. Point 4 is covered by the Davis-Bacon Wage Requirement of the BIL. Point 5 and 6 seem to have little to do with a “Project Workforce Continuity Plan”. In the 40-year history of the AML program in Indiana, a workforce continuity plan has not been needed to complete award-winning projects. There are entire sections of state and federal law that define workforce relations. It is unlikely that further requirements will bring clarity and streamline construction of much needed AML remediation projects. AML program personnel are poorly equipped to develop such plans and labor agreements. This lack of experience will likely bring delays and confusion to an already daunting project development process. A definition of “local hires” is also needed. A hire living within the Indiana portion of the Wabash Coal Basin would be considered local by many. Most experienced AML contractors and labor in Indiana the Indiana portion of the Wabash Coal Basin are not union.

MINER PREFERENCE

Indiana AML projects occur in the same region that active mines are operated. The very nature and location of these projects have historically provided alternative employment for current and former coal miners. The AML program itself provides employment for former miners. Miners typically and predictably possess some of the most relevant knowledge, skills, and abilities that make them well suited for reclaiming mines, including abandoned ones. Miners are a large part of the success of the program to date. All AML projects utilizing heavy earthmoving equipment, remediating subsidence, and requiring specialized knowledge of mining principals are inherently preferential to miners. A water replacement project however may not have the same inherent preference. Choice of projects that may be preferential to miners should be left up to the states/tribes as they are best equipped to judge the efficacy of these prioritizations. This may be why the framers of section 40701 left miner preference as an option for prioritization of projects rather than a requirement. A requirement would likely lead to unintended negative consequences. Discussions with WorkOne Indiana, have revealed lists of unemployed miners in any capacity are not available. Contact with UMW District 12, was initiated and preliminary suggestions are that lists such as what is suggested in page 9, paragraph 2 of the guidance document, are more likely maintained by local mines. Even if such a list could be obtained it is unlikely to result in anything more than the current system’s organic preference for qualified individuals. Current state procurement processes do not support awarding bids to anyone but the low bidder. Shouldn’t the miner’s children have a shot at working on these projects?

JUSTICE 40 INITIATIVE

Identification of disadvantaged communities is imperative to insuring they receive some of the benefits of AML remediation projects. Communities with disproportionate environmental stressor burden and job loss through energy transition have been identified as disadvantaged (Page 1, footnote 3 of BIL guidance). It is undeniable that unpermitted mining is disproportionate environmental stressor. It would follow that an abandoned mine remediation project as identified in AMLIS and approved by the Office of Surface Mining that presents a hazard to human safety, health, or the environment would benefit the mining/energy community that has been disadvantaged by bearing the limitations and hazards imposed by such a feature. AML projects in Indiana, by definition, benefit communities negatively impacted by legacy mining. For these reasons, The Climate and Economic Justice Screening Tool must reflect features from AMLIS in the Reduction and Remediation of Legacy Pollution Category. Multiple DOI press releases have referred to the AML program as cleanup of legacy pollution. Proximity to a Coal fired powerplant should also be considered as these plants are expected to experience job loss through energy transition. Coal communities are clearly disadvantaged yet the current version of the screening tool makes no attempt to capture data affecting these communities.

GRANT APPLICATION

The current AML program utilizes a grant application process that has been tested and honed to be as efficient as possible. BIL funding for AML projects is more permissive with respect to what can be funded than established fee collection based grants. Furthermore, the few paragraphs of the BIL are clearly dependent and are meant to build upon SMCRA. Considering the intention to release the grants as quickly as possible, it seems that the current application process could be utilized to expedite grant awards. It works well and has been used in the past to distribute alternatively sourced funding to the AML programs. The idea of moving away from simplified grants and reverting to including project lists, as suggested in page 5, paragraph 4, point 1 of the BIL guidance has already been proven to be unnecessary and fruitless. Indiana maintains an inventory of potential AML projects on AMLIS. Each project requires arduous planning, coordination, and preparation as well as OSM approval. Additional project lists will be an exercise in duplication of process. To submit arbitrary lists of potential projects with a grant application will result in either junk data or an endless process of amending project lists as new projects are reported and prioritized. Logistical issues routinely slow project development and a project that was originally included on a grant application can easily be delayed to the point of not being included on that grant. The focus should remain on AMLIS as it is the system from which these new lists would be derived. It seems that the inclusion of lists in the grant application process would be for the purpose of vetting, yet OSM can control which sites/projects qualify from the current AMLIS interface and ATP process. BIL expands eligibility of projects. Why then do we seem to be making the application process more stringent and emplacing additional potential controls? This will certainly lead to confusion and delays.

Page 5, paragraph 4, point 2 suggests that the state's prioritization process should be included in the grant application. This is already contained in the state reclamation plan. This would be a duplication of existing data.

Page 5, paragraph 4 contains other troublesome inclusions in a potential new application process. Most of these have been discussed previously. Generally, these requirements include social and economic aspects that the AML program is poorly equipped to evaluate and plan for. There are other agencies that specialize in social programs and Workforce development. The AML program is equipped to mitigate and eliminate safety and environmental problems associated with Pre-Law mining. Attempts to blend and duplicate other agencies into the AML program will certainly lead to confusion and delays.

PERFORMANCE MEASURES

Many of the new performance measures in section X of the BIL Guidance document are difficult or impossible to actually measure. The following measures suggested in the document are dependent upon interpretation, based on estimates, or simply a poor measure of coalfield reclamation.

- Number of acres of endangered species habitat reestablished
- Amount of methane emissions reduced
- Quantity of iron, aluminum, manganese, sulfate, etc. removed and/or recovered on annual basis by AMD water reclamation projects
- Quantity of Rare Earth Elements (REE) recovered by AMD water reclamation projects
- Percent of overall benefits and types of benefits that accrue to disadvantaged community, community of color, low-income community, or Tribal or Indigenous community;
- Demographics/number of workers from under-represented groups; (just don't know how/where to ask for an accounting of this)
- Percent of workers from the local community; (define local)
- Number of residents positively impacted by the restoration of previously polluted waterways;
- Number of residents within [X] miles of BIL-funded projects.

CONCLUSION

The Indiana AML program has enjoyed a long history of successful projects that greatly benefit coal communities in Indiana. We have also enjoyed great cooperation and benefits working with OSM to streamline and improve grants processes and working agreements to make AML restoration the highly respected and productive program that it is today. The Guidance on the Bipartisan Infrastructure Law stands to set the tone of AML reclamation in Indiana for the foreseeable future. The tone of the current guidance document is far removed from the clear and laudable goal of mitigation and elimination of safety and environmental hazards associated with Pre-SMCRA mining. A goal clearly supported by SMCRA and BIL. A goal OSM, states, and tribes have become adept at delivering on. Many provisions of BIL are extensions of what is already known about the AML program. The current AML program creates great opportunities for employment of current and former miners. It is also well known that inability to inventory and work on stand-alone priority 3 reclamation has been an unfortunate fact in the program for years. It appears that congress intended to reward the program with increased latitude in project prioritization and full funding. It surely is not a coincidence that the funding level almost exactly matches what was in AMLIS at the time the BIL was passed. The guidance seeks to force what is allowed. The States and Tribes are already facing the daunting task of exponential growth of a successful program. This growth must come despite staunch resistance to increased staff and vehicles. The additional administrative burden proposed in the guidance document will stretch current staff and resources to its limits, leaving little time for development of projects that coal communities need. Staff time needs to be spent with the people the program naturally and predictably benefits. The people living near unsafe and environmentally impacted abandoned mines that once supported the energy needs of a growing nation.

Sincerely,

A handwritten signature in black ink, appearing to read "Kit Turpin". The signature is fluid and cursive, with the first name "Kit" and last name "Turpin" clearly distinguishable.

Kit Turpin
Deputy Director
Abandoned Mine Land Program
Division of Reclamation