



HOUSE COMMITTEE ON
NATURAL RESOURCES
CHAIRMAN BRUCE WESTERMAN

To: Subcommittee on Energy and Mineral Resources Republican Members
From: Subcommittee on Energy and Mineral Resources staff: Ashley Nichols (Ashley.Nichols@mail.house.gov) & Rebecca Konolige (Rebecca.Konolige@mail.house.gov) x59297
Date: Tuesday, November 14, 2023
Subject: Oversight hearing titled *“Examining the Biden Administration’s Abandoned Mine Lands and Active Mining Programs”*

The Subcommittee on Energy and Mineral Resources will hold an oversight hearing titled *“Examining the Biden Administration’s Abandoned Mine Lands and Active Mining Programs”* on **November 14, 2023, at 10:15 a.m. in room 1324 Longworth House Office Building.**

Member offices are requested to notify Lonnie Smith (Lonnie.Smith@mail.house.gov) by 4:30 p.m. on Monday, November 13, if their Member intends to participate in the hearing.

I. KEY MESSAGES

- Coal mining and mine reclamation in the United States are regulated by the Office of Surface Mining Reclamation and Enforcement (OSMRE), housed at the Department of the Interior (DOI).
- The Surface Mining Control and Reclamation Act (SMCRA) of 1977 regulates two aspects of the coal mining sector: the reclamation of coal mines abandoned before the era of modern regulation, known as abandoned mine lands (AML), and the regulation of active coal mining.¹
- Although the active mining and mine reclamation programs have been running for decades, the past several years have seen a large increase in delays for necessary approvals, unclear and conflicting administrative guidance, and new administrative requirements for coal mining states and tribes.
- This hearing will provide an opportunity for Members and witnesses from geographically diverse coal mining states to discuss challenges related to OSMRE activities, and to consider methods to improve agency efficiency and transparency.

II. WITNESSES

- **Ms. Glenda Owens**, Deputy Director, Office of Surface Mining, Reclamation and Enforcement, Washington, DC

¹ Office of Surface Mining, Reclamation and Enforcement, “Programs”, <https://www.osmre.gov/programs>

- **Mr. Kyle Wendtland**, Administrator, Wyoming Department of Environmental Quality, Land Quality Division, Cheyenne, WY
- **Mr. Dustin Morin**, Director, Mining and Reclamation Division, Alabama Department of Labor, Montgomery, AL
- **Mr. Benjamin McCament**, Chief, Division of Mineral Resources Management, Ohio Department of Natural Resources, Columbus, OH
- **Mr. Peter Morgan**, Senior Attorney, Sierra Club Legislative Office, Washington, DC
[Minority Witness]

III. BACKGROUND

Key SMCRA Programs and Delegated State Authority

The two programs under SMCRA regulating active coal mining and AML reclamation are Title IV and Title V, respectively. Title IV of SMCRA establishes the AML Reclamation Program, which is funded by a fee on each ton of coal produced.² This fee has been reauthorized eight times, most recently in 2021 under the Infrastructure Investment and Jobs Act (IIJA), which lowered the fee level by 20 percent and reauthorized it through September 30, 2034.³ The funds raised by these fees are disbursed through a pre-set formula to states and tribes to reclaim coal mines on their lands that were abandoned prior to the enactment of SMCRA in 1977.⁴ The IIJA also provided \$11.3 billion in additional funding for reclamation grants, distinct from the funds raised by the preexisting SMCRA fee on coal production. For active surface mining, SMCRA has Title V, which regulates production and details requirements for states to receive delegated authority to regulate coal mining in their state.⁴ As Title IV funding is exclusively used for AML reclamation, coal sites regulated under Title V are ineligible for grants from the AML Reclamation Fund.⁵

A key aspect of coal mining in the United States is ability of states to achieve “primacy,” a designation under SMCRA that delegates authority to states to administer their own regulatory programs. To achieve primacy, a state must receive Secretarial approval that their regulations are no less stringent than the federal requirements under SMCRA.⁶ Once a state has primacy, it becomes the primary regulator of active coal mining and the administrator of the state’s AML grants.⁷ OSMRE conducts oversight of primacy states and assists states and tribes as needed.⁸ Currently, 24 states have primacy for Title V work, and 25 states and 3 tribes have approved

² Office of Surface Mining, Reclamation and Enforcement, Reclaiming Abandoned Mine Lands, <https://www.osmre.gov/programs/reclaiming-abandoned-mine-lands>

³ *Id.*

⁴ Office of Surface Mining, Reclamation and Enforcement, Regulating Active Coal Mines <https://www.osmre.gov/programs/regulating-active-coal-mines>

⁵ Congressional Research Service, The Abandoned Mine Reclamation Fund: Issues and Legislation in the 117th Congress - <https://crsreports.congress.gov/product/pdf/IF/IF11352#:~:text=Coal%20mining%20sites%20regulated%20under,assurance%20f or%20completing%20site%20reclamation.>

⁶ Office of Surface Mining, Reclamation and Enforcement, Regulating Active Coal Mines <https://www.osmre.gov/programs/regulating-active-coal-mines>

⁷ *Id.*

⁸ *Id.*

state-run AML programs for Title IV activities.⁹ However, it is important to note that the approval of mining plans cannot be delegated – no surface coal mining or reclamation operations may be conducted until the Secretary of the Interior has approved the mining plan on leased federal coal sites.¹⁰

Concerns with Implementation of IJA Funding

The IJA contained a number of provisions affecting current and future AML funding. As mentioned previously, IJA reauthorized the preexisting coal mine reclamation fee and provided \$11.3 billion in additional funding for reclamation grants. While this new funding presents an opportunity to accelerate AML remediation, confusing and conflicting guidance from DOI and OSMRE has raised multiple concerns from the states about IJA implementation.

Instead of simply distributing the additional funding for state and tribal grants per the longstanding SMCRA formula, OSMRE added several new “recommendations” specific to IJA funding. In addition to meeting existing SMCRA requirements, such as prioritizing AML sites that pose hazards to human health and safety, environmental effects, and water quality, states will also need to describe how an AML project may address environmental justice and reduction of greenhouse gas emissions, among other considerations.¹¹ For example, many coal communities are not deemed environmental justice communities by the Council on Environmental Quality, and therefore may struggle to make the case for addressing environmental justice concerns in AML work.¹² Additionally, applications for IJA funding must take Davis-Bacon Act requirements into account, with no apparent exemption for projects in “right-to-work” states.¹³

The new socioeconomic considerations for IJA funding, which were never historically required, raise concerns that OSMRE will “vet” projects based on these new factors, instead of allowing the states to exercise their delegated authority under SMCRA to select projects as they see fit.¹⁴

In addition to new project considerations, OSMRE is also creating a large new administrative burden for IJA funding. For example, the agency is requiring separate applications for IJA grants and the fee-based AML grants, even though both sources of funding are used for the same purposes. OSMRE is also requiring detailed project lists to be submitted with the state grant application; as a result, any changes in project prioritization at the state level would demand a time-consuming grant amendment to be approved. These new requirements place massive

⁹ Testimony of Glenda Owens, Deputy Director, Office of Surface Mining, Reclamation and Enforcement, before the Committee on Natural Resources, Subcommittee on Energy and Mineral Resources, “Examining the President’s Fiscal Year 2024 Budget Request for the Office of Surface Mining Reclamation and Enforcement,” May 16, 2023, <https://www.doi.gov/ocl/osm-budget>.

¹⁰ Office of Surface Mining, Reclamation and Enforcement, Federal Lands Program, <https://www.osmre.gov/programs/regulating-active-coal-mines/federal-lands>.

¹¹ Office of Surface Mining, Reclamation and Enforcement, “GUIDANCE ON THE BIPARTISAN INFRASTRUCTURE LAW ABANDONED MINE LAND GRANT IMPLEMENTATION,” May 2023, <https://www.osmre.gov/sites/default/files/inline-files/FY23-BIL-AML-Guidance.pdf>.

¹² Council on Environmental Quality, Climate and Economic Justice Screening Tool, November 22, 2022, <https://screeningtool.geoplatform.gov/en/#6.84/40.443/-78.493>.

¹³ Office of Surface Mining, Reclamation and Enforcement, “GUIDANCE ON THE BIPARTISAN INFRASTRUCTURE LAW ABANDONED MINE LAND GRANT IMPLEMENTATION,” May 2023, <https://www.osmre.gov/sites/default/files/inline-files/FY23-BIL-AML-Guidance.pdf>.

¹⁴ Interstate Mining Compact Commission, correspondence with Committee on Natural Resources staff, December 12, 2022.

burdens on the states, many of which are still struggling to hire additional personnel to manage the influx of new funding.

The administration's entire approach to IJA funding implementation stands in contrast to the longstanding, successful function of the AML Program, which has empowered states with primacy to select projects best fitting the needs of their communities in a given year. While many states have voiced their concerns about IJA implementation and the new administrative guidance to OSMRE, OSMRE has not sufficiently heeded these concerns or updated guidance to reflect state feedback.¹⁵

Delays in AMLER Projects

OSMRE also manages the Abandoned Mine Land Economic Revitalization (AMLER) grant program, funded through the Congressional appropriations process since 2016.¹⁶ Unlike the AML Program, which is required to prioritize projects that mitigate human health and safety and environmental effects, the AMLER program is meant to incentivize mine remediation on sites that would also provide ongoing economic benefits to the community. For example, an AML site that could be repurposed for a prospective small business may be eligible for a grant under the AMLER program. AMLER has achieved significant success, particularly in Appalachia, where economic redevelopment of coal communities is greatly needed.

Unfortunately, this program has also experienced major delays at OSMRE, with some projects waiting months for final agency approval. For example, one AMLER project in Virginia spent 1,202 days in review before the prospective developer finally withdrew from the project.¹⁷ The Fiscal Year 2024 Appropriations bill for Interior, Environment, and Related Agencies contains a provision to disburse AMLER funds directly to designated states and tribes within 90 days of the bill's passage, and if that deadline is not met, the amount appropriated for salaries and expenses at OSMRE will be reduced by \$100,000 per day until such payments have been made.¹⁸

Obstruction in Active Coal Mining

In addition to managing the AML Program, OSMRE also regulates active coal mining. As mentioned previously, while many coal-mining states and tribes have delegated authority from OSMRE to run their AML programs, that delegated authority does not extend to mine plan approvals and/or other mining authorizations, nor does it extend to review of such actions under the National Environmental Policy Act (NEPA) of 1969.¹⁹ Those approvals must be completed by OSMRE.

¹⁵ Interstate Mining Compact Commission, correspondence with Committee on Natural Resources staff, December 12, 2022.

¹⁶ Office of Surface Mining, Reclamation and Enforcement, "Abandoned Mine Land Economic Revitalization (AMLER) Program," <https://www.osmre.gov/programs/reclaiming-abandoned-mine-lands/amler>.

¹⁷ Interstate Mining Compact Commission, correspondence with Natural Resources Committee staff, December 12, 2022.

¹⁸ Committee on Appropriations, "Making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2024, and for other purposes," Full Committee Print, pgs. 26-27, <https://docs.house.gov/meetings/AP/AP00/20230719/116262/BILLS-118--AP--AP00-FY24InteriorFullCommitteeMark.pdf>.

¹⁹ Office of Surface Mining, Reclamation and Enforcement, Abandoned Mine Land Economic Revitalization (AMLER) Program, <https://www.osmre.gov/programs/regulating-active-coal-mines/federal-lands>.

Unfortunately, many states have been experiencing long delays in coal mining approvals. New federal coal leasing is currently under moratorium,²⁰ but even operations not subject to the moratorium – such as expansions of existing operations, mine plan modifications, and metallurgical (steelmaking) coal leasing – have struggled to receive needed authorizations. These delays have regularly impeded domestic coal production, a pattern that is unfortunately in keeping with President Biden’s stated goal of shutting down coal plants in the United States.²¹

One example is the delayed mine plan amendment for the Black Butte mine in Wyoming. This mine plan amendment, required to expand operations by an additional 9.2 million tons of coal, was submitted in 2019 and approved by the state on January 15, 2021,²² but has yet to receive final federal approval. Concerns about these delays were summarized by the Governor of Wyoming, Mark Gordon, who noted in an April 25, 2023 letter to Secretary Haaland that “the approval appears to have stalled,” despite multiple completed reviews under NEPA.²³ Deputy Director Owens replied to Governor Gordon’s letter on July 10, 2023, stating in part:

“Many of OSMRE’s recent NEPA reviews have necessitated particularly robust scrutiny to ensure that review is consistent with recent caselaw and updated revisions to NEPA regulations and guidance. These NEPA analyses require careful consideration of supporting and pertinent information regarding operations at the mine site and power plant, as well as legal review by the Office of the Solicitor.”

The “updated revisions to NEPA regulations and guidance” in the Deputy Director’s response are likely in reference to the NEPA reforms in the Fiscal Responsibility Act,²⁴ which was signed into law on June 3, 2023. No other explanation for the extended delay was provided, nor was any further detail as to when a decision on the mine plan amendment might be expected.

According to testimony provided by Randall Luthi, Chief Energy Advisor to Governor Gordon, before the Committee on Natural Resources on July 12, 2023, the delays regarding the Black Butte mine plan have yet to be resolved:

“The OSMRE has held the plan in review since January 15, 2021 without issuance of the required Right of Entry Letter. During this time period, OSMRE has continually requested more information for completion of their review and approval. At this point, the coal within the proposed Federal Mine Plan has been through three NEPA reviews...Based on this level of scrutiny, the only reasonable conclusion that can be drawn, is that the delayed processing of Federal Mine Plans appears to be deliberate.”²⁵

²⁰ Clark Mindock, “Judge reinstates Obama-era coal-leasing ban,” Reuters, August 15, 2022, <https://www.reuters.com/legal/litigation/judge-reinstates-obama-era-coal-leasing-ban-2022-08-13/>.

²¹ Trevor Hunnicutt, “Biden comments on coal-fired plants slammed by Manchin ahead of U.S. midterms,” Reuters, November 5, 2022, <https://www.reuters.com/world/us/biden-comments-coal-fired-plants-slammed-by-manchin-ahead-us-midterms-2022-11-05/>.

²² Letter to Secretary Deb Haaland, Department of the Interior, from Governor Mark Gordon, State of Wyoming, April 25, 2023. <https://republicans-naturalresources.house.gov/UploadedFiles/Govlethaalandbbmine4-25-23.pdf>.

²³ *Id.*

²⁴ PUBLIC LAW 118–5.

²⁵ Testimony of Randall Luthi, Chief Energy Advisor – Governor Mark Gordon, Committee on Natural Resources, Subcommittee on Energy and Mineral Resources, “Examining the Biden Administration’s Record on Federal Coal Leasing | Subcommittee on Energy and Mineral Resources,” July 12, 2023, https://naturalresources.house.gov/uploadedfiles/testimony_luthi.pdf.

Rules in Development

On April 25, 2023, OSMRE published a proposed rule titled, “Ten-Day Notices and Corrective Action for State Regulatory Program Issues.”²⁶ This rule would modify existing federal regulations to correct SMCRA violations in primacy states, OSMRE’s handling of complaints and requests for federal inspections, and federal oversight and takeover of state regulatory programs under Title V of SMCRA. Primacy states have strong concerns about this rule usurping their exclusive authority over their own state programs. In their comments on this proposed rule, the Interstate Mining Compact Commission (IMCC), which represents state regulators, wrote:

“The Proposed Rule violates the letter and spirit of the SMCRA provisions that expressly confer *exclusive* regulatory jurisdiction on primacy states by significantly altering the relationship between State Regulatory Authorities and [OSMRE]...[T]his proposal was generated by OSMRE headquarters staff who lack any real experience in inspection, enforcement and permitting. They did so without meaningful consultation with OSMRE’s regional and field office staff, who do have experience overseeing State efforts in these areas. There was no consultation with the states.”²⁷

In addition, OSMRE is considering a second rule regarding Emergency Action Plans (EAPs) and After Action Reports (AARs) for dams.²⁸ SMCRA does not grant OSMRE authority over dam regulatory functions at the state level, so this rule would represent a major change in policy. As states already have existing regulations for dams and emergency response, a national dam safety rule would require meaningful engagement with the states in order to avoid conflicts with or duplication of state laws. Adoption of a national dam safety rule could ironically pose safety risks of its own; conflicting federal and state regulations could increase confusion in the case of an emergency, risking possible errors or delayed responses.

The apparent disregard of concerns expressed by coal mining states in regard to AML issues, including the proposed rules, as well as active mining, has become a pattern at OSMRE over the past several years. Continued oversight of this agency is necessary to ensure timely execution of core duties of the agency.

²⁶ 88 FR 24944.

²⁷ Interstate Mining Compact Commission, “Comments of the Interstate Mining Compact Commission Notice of Proposed Rulemaking – Ten-Day Notices and Corrective Action for State Regulatory Program Issues, 88 Federal Register 24944, April 25, 2023, OSM–2022–0009 RIN 1029–AC81,” June 26, 2023.

²⁸ Letter to Acting Director Glenda Owens, Office of Surface Mining Reclamation and Enforcement, from Thomas Clarke, Executive Director, Interstate Mining Compact Commission, April 26, 2023.