



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

OCT - 3 2023

The Honorable Pete Stauber
Chairman, Natural Resources Subcommittee
on Energy and Mineral Resources
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Stauber:

Enclosed are responses prepared by the Office of Surface Mining Reclamation and Enforcement to questions for the record submitted to the Department's witness, Glenda Owens, Deputy Director, OSMRE, following her appearance at the May 16, 2023, oversight hearing before your Subcommittee entitled "*Examining the President's FY 2024 Budget for the Bureau of Land Management and the Office of Surface Mining, Reclamation and Enforcement.*"

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional
and Legislative Affairs

Enclosure

cc: The Honorable Alexandria Ocasio-Cortez
Ranking Member

**Questions for the Record
Natural Resources Subcommittee
on Energy and Mineral Resources
FY 2024 OSMRE Budget Request
May 16, 2023**

Questions from Chairman Westerman

Question 1. The Infrastructure Investment and Jobs Act (IIJA) provided \$11.3 billion in abandoned mine land (AML) funding to reclaim abandoned coal mines, in addition to the fee-based grant distributions to state and tribes from the AML Fund. This was intended to simply add new funding to cleanup efforts, *not* overhaul a program that has been working well since the 1970s. However, I understand that the states are facing many new so-called "recommendations" in order to receive this new funding - everything from application formatting and project lists to the inclusion of the "Justice40" initiative.

- a. Why is DOI adding nebulous new "strings" to the funds from IIJA instead of allowing the program to simply function as it always has?**

Response: The Bipartisan Infrastructure Law (BIL)/Infrastructure Investment and Jobs Act (IIJA) sometimes cites and interacts with the Surface Mining Control and Reclamation Act (SMCRA) but goes beyond the latter statute in several important ways. To help grant applicants understand the new allowable uses and requirements under the BIL Abandoned Mine Lands (AML) Program, the Office of Surface Mining Reclamation and Enforcement (OSMRE) developed a BIL AML Guidance document. This Guidance document provides clarification and recommendations for the Department's BIL AML implementation, consistent with statute and Executive Orders. These recommendations include prioritizing the hiring of current and former employees of the coal industry; aggregation of projects; recognizing the impact of legacy pollution on coalfield communities by ensuring that benefits accrue to these disadvantaged communities under the Justice40 initiative; and soliciting public engagement to obtain input on projects selected for BIL funding. States and Tribes are strongly encouraged to meet the recommendations set forth in the BIL AML Program Guidance document to the extent those steps are possible and consistent with applicable State or Tribal laws and regulations. OSMRE has a longstanding partnership with the states and Tribes implementing SMCRA and will continue to communicate with BIL AML-eligible states and Tribes to identify and improve practical approaches to implementation of the BIL/IIJA Guidance recommendations.

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Question 2. On April 25th, OSMRE issued a proposed Ten-Day Notice rule, which modifies existing regulations to address potential violations under the Surface Mining Control and Reclamation Act, as well as how citizens' complaints are handled and other matters. I have concerns that this rule may conflict with state primacy as explicitly addressed in the Surface Mining Control and Reclamation Act (SMCRA).

- a. Did OSMRE consult with states that have primacy under SMCRA or the Interstate Mining Compact Commission prior to these revisions?**

Response: OSMRE did not consult with any primacy State, the Interstate Mining Compact Commission (IMCC), or any non-governmental organization in its development of the proposed Ten-Day Notice rule. The publication of the proposed rule in the *Federal Register* (88 FR 24944 April 25, 2023) provides a 60-day opportunity for comment by the IMCC, individual states, Tribes, and the public on the proposal before it is finalized. The comment period is open until 11:59 EDT, June 26, 2023, and OSMRE encourages interested parties to provide comments.

- b. The proposed rule states that there are vast problems with the 2020 Ten-Day notice regulations; but does not provide explicit examples. Please provide the data being relied upon for the last three years of Ten-Day Notice requests to OSMRE, that show there is a problem with the 2020 Ten-Day Notice regulations.**

Response: During OSMRE's review of the 2020 Ten-Day Notice (TDN) rule, it found several provisions that were not consistent with SMCRA, such as requiring citizens to contact the state regulatory authority before, or simultaneously to, contacting OSMRE to report a possible violation; making distinctions that did not recognize certain violations, such as so-called permit defects; and requiring citizens to state the basis of their assertion that a state regulatory authority has not taken action with respect to the possible violation.

The proposed amendments are designed to ensure that possible violations of SMCRA are properly identified, and that the necessary corrective actions occur in a timely manner. In addition, the proposed amendments would clarify provisions of the TDN process related to determining whether the state regulatory authority has taken appropriate action, or shown good cause for not doing so, in response to the TDN as required by SMCRA, and would outline how permit defects will be addressed under the TDN process. These changes would further clarify the TDN process and ensure the requirements outlined in SMCRA are met.

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Question 3. OSMRE is using thresholds about projected coal production at a given mine site to determine whether a federal mine plan requires an EA or EIS. However, OSMRE has not disclosed what these threshold limits are, how they were established, or how they are applied in determining the level of NEPA review. Will you commit to providing the states and public information about how these thresholds are made, and how they are used in review?

Response: OSMRE is committed to a robust and transparent National Environmental Policy Act (NEPA) review process. OSMRE does not use thresholds as suggested in the question. The decision to develop an Environmental Impact Statement (EIS) or an Environmental Analysis (EA) is fact specific and informed by recent judicial decisions regarding an agency's obligations under NEPA regarding GHG emissions, including an agency's obligation to prepare an EIS when the effects of an action are significant.

Question 4. OSMRE is applying downstream effects in federal mine plan NEPA reviews. This is redundant, as these potential impacts and effects are already addressed by BLM during their NEPA analysis. Why is OSMRE duplicating the work of another federal agency related to the same activity?

Response: The Bureau of Land Management prepares NEPA analysis at the leasing phase, which typically occurs before the mine plan is developed, a state permit application is submitted, or OSMRE completes its analysis of the federal mining plan. The BLM NEPA actions related to coal leasing are usually completed several years before OSMRE's federal mining plan NEPA reviews and addresses broad scale analysis of the impacts of leasing the coal. OSMRE's analysis concerns a related but distinct agency action without which coal mining may not occur and is more specific to the mining of the coal and expected environmental impacts that arise from these actions after a permittee submits a mining plan for review. OSMRE frequently incorporates prior analysis and supplements this analysis in select resource areas, such as greenhouse gases and other emissions, where and when appropriate. OSMRE explains in each supplemental NEPA analysis what conditions or insufficiencies require supplementation and how OSMRE addressed these needs.

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Question 5. On April 26th, the Interstate Mining Compact Commission sent you a letter regarding the serious concerns states have about the anticipated dam safety rule, requiring Emergency Action Plans for dams despite nearly every state already requiring them. Emergency preparedness has always been under the primary authority of the states throughout the life of the program.

- a. Why should this rulemaking extend to dams in all states, including those with primacy under SMCRA and their own Emergency Action Plans in place, instead of being limited to only those dams within OSMRE's direct regulatory purview?**

Response: OSMRE has not proposed a rulemaking on the subject mentioned in the question. If a rule on the subject is proposed, there will be a public comment period during which OSMRE will provide opportunities for submission of comments on the proposal.