



**Testimony for the Record**  
**U.S. House of Representatives**  
**Natural Resources Subcommittee on Energy and Mineral Resources**

**“Examining the Biden Administration’s Abandoned Mine Lands and Active Mining Programs”**

**November 14, 2023**

The National Mining Association (NMA) appreciates the opportunity to provide the House Natural Resources Subcommittee on Energy and Mineral Resources with written testimony in response to the committee’s examination of the Biden administration’s Abandoned Mine Lands (AML) and active mining programs. The NMA is the only national trade organization that serves as the voice of the U.S. mining industry and the hundreds of thousands of American workers it employs before Congress, the federal agencies, the judiciary and the media, advocating for public policies that will help America fully and responsibly utilize its vast natural resources. The NMA’s members conduct coal and hardrock mining operations throughout the U.S. and, as such, have a shared interest in the cleanup and reclamation of historic coal AMLs and related activities.

**Historical Issues with AML Oversight**

While today’s mining industry plans for the restoration and reclamation of mined land even before mining occurs, 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 46 years and more than \$12 billion paid into the fund, little has been accomplished to restore priority 1 and 2 (P1 and P2) sites.

The AML fund has repeatedly been an attractive target for diverting coal industry funds to projects and activities not intended under the law. According to the Department of the Interior’s Inspector General (DOI-OIG), the lack of oversight, 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. Additionally, high federal and state administrative costs have also diverted funds from their core purpose.

While the DOI-OIG's 2023 Final Inspection Report<sup>1</sup> on the Office of Surface Mining Reclamation and Enforcement's (OSMRE) AML program found that OSMRE had made progress on implementation of its 2017 recommendations, more needs to be done to meet existing deadlines and ensure greater performance of the program. Notably, OSMRE's July 2022 guidance did take a step in the right direction by outlining funding priorities, stating that P1 and P2 projects directly related to coal mining practices would be considered first. That said, OSMRE and states must fight the urge to divert funding away from the high priority coal inventory and ensure prioritization of P1 and P2 coal AML sites.

### **Ten-Day Notices**

In April, OSMRE proposed a rule<sup>2</sup> to modify the way the agency deals with Ten-Day Notices (TDN) under the Surface Mining Control and Reclamation Act (SMCRA). SMCRA sets forth a deliberate regulatory scheme in "primacy states" where operators are required to comply with only state law and regulations, dealing with the state as its regulatory authority. The proposed rule, as written, will significantly increase the likelihood of surface mining operators becoming subject to two – often conflicting – regulatory directives, of disrupting operations, and of impairing their ability to meet contract terms for supplying coal to customers by repealing recent clarifications that OSMRE finalized<sup>3</sup> in 2020.

According to OSMRE, the agency began reconsidering the 2020 rule in 2021, and decided to conduct this rulemaking the same year. It is worth noting that OSMRE did not even gain a full year of experience under the 2020 rule before deciding to propose a repeal and revision.

Further, OSMRE has failed to show that the 2020 rule resulted in any material delays in considering possible violations or actual burdens preventing citizens from engaging in the process for identifying possible violations and alerting the state regulatory authority and OSMRE. As such, there is no justification for the proposed rulemaking and the proposed rule should be withdrawn.

### **Continued Funding**

Importantly, the Infrastructure Investment and Jobs Act (IIJA) included<sup>4</sup> nearly \$11.3 billion for legacy abandoned coal mine reclamation activities to be made available to eligible states and tribes annually for 15 years. While this is significant in helping the continued cleanup and reclamation of historic coal AMLs, funding without strict

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<sup>1</sup> [DOI Office of Inspector General, March 2023](#)

<sup>2</sup> 88 Fed. Reg. 24,944 (April 25, 2023)

<sup>3</sup> See 85 Fed. Reg. 75,150 (Nov. 24, 2020).

<sup>4</sup> P.L. 117-58 Section 40701(f)

adherence and prioritization of P1s and P2s sites under the program is not a durable, long-term fix.

Since its inception in 1977, the coal AML program fee – paid exclusively by coal producing companies – has been extended ***eight*** times, most recently in the IIJA, through 2034. This means at its current expiration, it will have been in existence for 57 years – decades past its intended lifespan. This should provide the committee with a sense of perspective and urgency to reform the administration of the program to deliver the funding solely to its intended purpose.

### **Protecting Reliability and Revenues**

Coal mining has been a national energy and economic success story. In addition to providing a low cost, reliable source of energy for all Americans and material for steel manufacturing, coal provides substantial revenues to the federal, state and local governments through royalties, bonus payments and rents. This is in addition to a price per ton AML fee paid by coal companies for reclamation activities.

Unfortunately, federal policy governing coal production – especially on federal lands – has been whipsawed back and forth depending on who controls the White House. The Biden administration has repeatedly failed to grasp that, in addition to generating significant revenues, coal production drives economic development, job creation and retention, and provides electricity reliability and U.S. competitiveness in building critical infrastructure. In addition, the administration’s continued pursuit of a suite of U.S. Environmental Protection Agency regulations to force coal-fired power plant closures and continuation of the Department of the Interior’s moratorium on the Federal Coal Leasing Program threatens our nation’s energy security negatively impacts our communities that depend on coal production, and deprives funds for coal reclamation activities.

### **Conclusion**

A robust domestic coal mining industry, supported by the right federal policies, is essential to provide affordable and reliable energy and to fund AML reclamation priorities. The NMA supports the reclamation of AML sites but urges appropriate oversight of the fund to ensure industry and taxpayer funds are used effectively and efficiently, on the priority reclamation projects for which the funds were intended. Only with such oversight can we avoid the historic misuse of AML funding.