



December 19, 2022

Mr. Mark Gehlhar
Office of Surface Mining Reclamation and Enforcement
1849 C Street NW, Room 4556-MIB
Washington, DC 20240
sent via e-mail

Dear Mr. Gehlhar:

The Department of Environmental Protection (Department) is providing the following comments in response to the notice of information collection and request for comment published in the *Federal Register* on October 18, 2022 at 87 FR 63088 by the Department of the Interior, Office of Surface Mining Reclamation and Enforcement (OSMRE) regarding Submission to the Office Management and Budget (OMB) for Review and Approval; Grants to States and Tribes (Notice).

The Department is respectively requesting that OSMRE retract or OMB reject the information collection request (ICR), the drafted changes to the OSM-51 and new draft "Instructions to Complete Program Narratives and Performance Reporting for Bipartisan Infrastructure Law (BIL) Abandoned Mine Land (AML) Program Grants" (Instructions).

The Department requests retraction or rejection of the ICR and related form changes for the following reasons:

- The revised forms (OSM-49, OSM-47, and OSM-51), as addressed in the Notice were not readily made available to state and tribal reclamation and regulatory authorities. The Department only received a copy of the drafted OSM-51 and separate Instructions on December 1, 2022, leaving a small window for the Department to review the OSM-51 and Instructions.
- The draft Instructions establish significant and time-consuming guidelines for applying for and reporting on BIL AML Grants. The Department appreciates that these grant application and reporting guidelines are intended to ensure funds are appropriately, transparently, and accountably administered, but the Department believes that these guidelines could be more efficiently streamlined through consultation by OSMRE with states and tribes that implement the BIL AML program (AML Programs).
- Absent such consultation with states and tribes that implement the AML Programs, the Department is concerned: the collection may hinder efficient and effective administration of the BIL AML Grants; how the information collected will be processed and used in a timely manner; that the burden on respondents is underestimated; how OSMRE will enhance the quality, utility, and clarity of the information; and how OSMRE will minimize the burden of this collection on the Department and the AML Programs.

Secretary

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After an initial review of the Instructions, it is evident that a substantial increase in reporting will be required, which will have a significant negative impact on the Department's AML Program. For example, the reporting requirements for the Abandoned Mine Lands Economic Revitalization (AMLER) Program has already required a significant amount of the Department's AML Program resources, leading to more time spent on reporting than investigating, developing, designing, and constructing AML reclamation projects. The significant difference between BIL and AMLER Program funding, \$244.9 million and \$26.6 million per year respectively, indicates the vastness of reporting that will be required to satisfy annual reporting on BIL Program grants if these reporting requirements are approved as drafted. This reporting requirement will be compounded in years to come when multiple grants with overlapping performance periods will be open simultaneously. In five years, the Department will be reporting on five active BIL AML Program grants and six active AML and AMLER Program grants. Additionally, the Department will be applying for a BIL AML Program grant, an AML Program grant, and an AMLER Program grant. The Department estimates at least fifteen responses with the OSM-51 form annually.

By the end of the fifth year of BIL AML grants (the grants have a five-year performance period), the Department will be required to submit OSM-51 forms for four BIL grant performance reports, one BIL grant closeout report (for the oldest of the five grants), and one grant project list (for the next grant year) in addition to non-BIL OSM-51 forms (traditional grant narratives) for two AML grant performance reports, one AML grant closeout report (for the oldest of the three-year AML grants), and one grant application (for the next AML grant year). Assuming AMLER continues, AMLER states and tribes must also submit two AMLER grant performance reports, one AMLER grant closeout report (for the oldest of the three-year AMLER grants) and one grant application (for the next AMLER grant year).

This would be a total of 14 grant submissions for the Department, including six submissions with the proposed BIL requirements and eight submissions for non-BIL grants. For the non-BIL grants, the Department believes that 1-15 hours per response as estimated in the ICR is not a reasonable range, as the current version of OSM-51 estimates an average of ten hours per response.

The Department believes that the 15-hour response time, the high end of the range listed in the ICR, for the BIL AML Program is not reasonable, and that the response time would be much higher under the drafted OSM-51 instructions specific to the BIL AML Program. In comparison, the Department's 2020 AML Program grant is nearing the end of the three-year performance period. The grant is \$32.2 million, and the Department funded 168 projects under the grant. Under a five-year \$244 million BIL AML Program grant, the project count will be much higher. Even at an unrealistic pace of one hour to collect and prepare reporting information per project, the Department would expend hundreds of hours to complete each BIL AML Program grant performance report response.

To more accurately estimate the burden of this collection on the respondents, the Department strongly encourages OSMRE to consult with the Department and other state and tribal

reclamation authorities. Additionally, it does not appear this reporting requirement is in accordance with the Paperwork Reduction Act of 1995, as outlined in the Notice.

General Comments on the revised OSM-51 and draft “Instructions to Complete Program Narratives and Performance Reporting for Bipartisan Infrastructure Law (BIL) Abandoned Mine Land (AML) Program Grants”

The ICR states that “OSMRE anticipates using the revised OSM-51 form to collect information that includes but is not limited to: an annual list of projects, a description of how the projects were prioritized and selected, how the State/Tribe obtained and used public input, the estimated benefits of each project, and how the State/Tribe will prioritize projects that employ current and former coal industry employees.” These points are elaborated below.

The Department and other state AML programs continue to express serious concern with these proposed changes, both individually and jointly, through the Interstate Mining Compact Commission (IMCC) and National Association of Abandoned Mine Land Programs (NAAML) in comments on OSMRE’s draft guidance for the BIL AML Program. To ensure that the BIL AML Program is implemented as effectively, efficiently, and transparently as possible, the Department urges OSMRE to consult with state and tribal reclamation agencies regarding the formulation and implementation of the associated forms and guidance. The changes contemplated in the OSM-51 ICR will directly and significantly impact the Department and other state AML programs, so we hope that the concerns expressed in these comments will be taken seriously and that OSMRE will work with the Department and other state and tribal reclamation agencies to ensure the BIL AML Program is implemented effectively, efficiently, and transparently.

Annual List of Projects

The Department has a 45-year history of successfully operating Pennsylvania’s AML Program. Throughout this long history, the Department has been efficiently and effectively eliminating the legacy public safety and environmental hazards left behind by unregulated and underregulated coal mining of the past. The Department will now have far greater resources for elimination of AML hazards than ever before. The challenge of effectively utilizing this money necessitates greater attention to program efficiencies, especially in the first years that the BIL AML Program funding is available. The annual project grant list and expanded project performance reporting that OSMRE seeks to add through this ICR and the revised OSM-51 form will impose new administrative burdens on the Department at a highly inopportune time, as the Department faces the new and substantial challenges to effectively and efficiently expend funds associated with this significant increase in funding.

The project lists would require significant additional administrative work in three main areas:

1. The ICR and Infrastructure Investment and Jobs Act (IIJA) Sec. 40701 guidance suggest that extensive additional project information beyond what is captured in eAMLIS (e.g., estimated economic benefits) will be required as part of the new

project lists that are contemplated. Providing that information would require significant additional staff time, representing additional burden on limited Department staff.

2. Project lists will be especially burdensome if required as part of grant applications. As part of the grant application, every deviation from the list that is initially submitted, which will invariably be numerous, would require a formal grant amendment to be submitted by the Department and approved by the OSMRE and would be an enormous additional administrative burden on already-strained Departmental staff capacity.
3. The ICR and OSM-51 revisions would establish additional and extensive project information requirements for annual grant performance reporting. The requirements would result in a multi-page project narrative report, including site photos, for each project funded under a BIL AML Program grant. Providing that information for hundreds of projects under each grant would require significant additional staff time, representing added burden on limited Department staff.

Prioritization and Selection Methods

The proposal to include additional information in OSM-51 submissions on how the Department prioritizes and advances projects appears to be based on the premise that there is currently a lack of sufficient information on how projects are prioritized and selected and/or that significant change can or should be made to the way the Department currently prioritizes projects.

Information on how the Department prioritizes AML projects is already available through the authorizing legislation for AML funding and the state reclamation plan. The Department therefore believes it is unnecessary for the Department to include additional information on project prioritization and selection in the OSM-51. Furthermore, the Department's identification and development of AML projects is a *reactive* rather than "selective" process in that the Department responds to reports from citizens or local officials to AML and AMD problems. Provided the reported problems meet AML eligibility requirements established in the Surface Mining Conservation and Reclamation Act (SMCRA) and are high-priority safety, health, and environmental AML problems, they are advanced for reclamation.

Public Engagement

Robust public engagement is already a central feature of how the Department operates, and it has well-established and robust processes for receiving public input. Opportunities for public input for each individual project are built into the National Environmental Policy Act (NEPA) process, with public advertisements being the most common means of soliciting input and public meetings being used where there is sufficient public interest. Identification of projects is already primarily driven by inquiries made by members of the public, drawing the Department's attention to AML problems needing to be addressed. When the public and/or property owners propose ways to address AML problems, they are always seriously considered and, if practical and productive, incorporated into project development plans. The Department is not convinced that

additional public engagement opportunities as in the proposed OSM-51 will be a productive use of limited staff capacity.

Estimated Project Benefits

The Department believes that requiring additional information on estimated project benefits in OSM-51 submissions beyond what is already available in the electronic Abandoned Mine Land Inventory System (eAMLIS) would be an unproductive use of limited AML staff time. Direct benefits of reclamation, such as the amount of highwall and other AML or AMD problems reclaimed, are the only types of benefits that are reasonable to ask the Department to measure and report, and that information is already contained in eAMLIS.

Coal Industry Employee (Miner) Preference

Pennsylvania's Procurement Code requires competitive contracting procedures and contracts to be awarded based on lowest responsible bidder criteria only. The Department believes it is unreasonable to require the Department to speculate what the Miner employment implications will be for projects at the early stage of preparing the OSM-51 form for a BIL AML grant application before the individual reclamation contractors are known.

We appreciate the consideration of our request and look forward to OSMRE's response.

Sincerely,



Ramez Ziadeh, P.E.
Acting Secretary