

**Overview of OSMRE/States Summit
Re. SMCRA Title IV Abandoned Mine Lands Program
December 13-14, 2017 – Main Interior, Washington, DC**

On December 13-14, 2017, the Office of Surface Mining Reclamation and Enforcement (OSMRE) met with representatives of the National Association of Abandoned Mine Land Programs (NAAML) and Interstate Mining Compact Commission (IMCC) to discuss contemporary issues attending the Abandoned Mine Lands (AML) program under Title IV of the Surface Mining Control and Reclamation Act (SMCRA). Participants included representatives from 9 states and 1 tribal nation, the Department of the Interior (DOI) and OSMRE leadership, and IMCC. A list of Summit attendees is attached.

The meeting opened with a welcome to attendees by DOI and OSMRE leadership, noting the importance of the AML program and the hope to build on the good work begun by the States and OSMRE during the Title V Summit held in September 2017. Both OSMRE and State representatives emphasized that rebuilding the state-federal relationship and achieving effective state-federal communication is critical to the program's success, and would be particularly important as the deadline for reauthorization of the AML program approaches.

The group reviewed a series of informational/advocacy videos developed in cooperation between the states of Wyoming and Pennsylvania highlighting the types of work in which the AML programs are engaged, what's been accomplished, the variety of positive impacts AML projects have, and the fact that there is a significant amount of AML work remaining to be done – captured by the slogan “Our Work's Not Done”. These videos, as well as other AML videos produced by other NAAML member states, will soon be available on a website: www.ourworksnotdone.org.

It was agreed that as the states work toward reauthorization of what they see as a critical program, and the Administration considers a formal position with respect to the future of the program, it will be incumbent on both to answer questions about and demonstrate what the program has accomplished and how it is working. It will be equally important to determine how to optimize its implementation. To that end, it was agreed that the States and OSMRE would work together to develop information as necessary to support public and congressional understanding of the AML program, and that the states would likewise work with the Administration as it develops its own position. All parties emphasized the importance of providing uniform and consistent AML Program information and maintaining a unified position to the extent possible in order to ensure an optimal outcome for the AML program, including between eastern/western circumstances, large and small program needs, and state and federal perspectives, etc.

The state attendees were invited to discuss issues of particular concern in their respective states, which served to outline the most pressing/high profile issues in the states' view. Each state provided a perspective and offered issues for consideration, but also built on

and generally shared one another's concerns. The issues noted by the states are collected below.

- The need to improve the reporting of AML accomplishments, show the accountability that exists, and demonstrate the states' good stewardship of AML funding.
- Circumstances detracting from the most efficient possible pace of AML work, including the complicating effect of NEPA, bat protection considerations, and short construction seasons
- How the AML inventory does not, and was never intended to capture all aspects of AML work, especially with respect to design and engineering costs
- Inaccuracies in the OIG report (Final Evaluation Report - Office of Surface Mining Reclamation and Enforcement's Oversight of the Abandoned Mine Lands Program - Report No. 2016-EAU-007), especially related to the circumstances in certified states, e.g. discounting the significant, often high danger coal AML work remaining to be done in certified states
- The significant amount of highly dangerous noncoal reclamation work as well as long term water treatment being accomplished by the certified tribal AML programs
- Concerns related to the intersection of MSHA authority and AML work
- Difficulties in minimum program states, including constrained progress due to funding rate, large AML inventories remaining, and the importance of watershed cooperative agreements for leveraging existing funding
- Issues related to grant administration efficiency
- The importance of the AML emergency program and funding, especially with respect to frequent subsidence events in heavily undermined regions
- The unrealistic standards of NPDES impeding AMD water treatment work
- The dynamic nature of the AML inventory, e.g. as a result of known sites that are degrading, populations shifting nearer to mine features, and previously unknown sites manifesting due to natural events or being discovered via new inventorying technology

State attendees were encouraged by DOI leadership to consider identifying areas where efficiencies could be achieved based on the concerns articulated in the beginning of the meeting. It was noted that the Administration is committed to finding ways to lessen regulatory burden in general, and is highly interested in receiving the states' input as part of that process. The states committed to working with the Administration to identify such potential efficiency gains, and more generally as they continue to deliberate on the best way to approach the AML problem in light of reauthorization.

Discussions then moved into the broad areas outlined by the agenda with the goal of scoping out specific concerns and issues to be potentially addressed through the Summit. Discussion was allowed to unfold naturally, but the issues identified are listed and organized below. The issue areas discussed during this portion of the meeting included:

- Reauthorization Preparation
 - The need to develop good supporting information as interest in the AML program grows in advance of reauthorization. This should include both numeric data and contextual explanation
 - Circumstances surrounding the upcoming reauthorization effort and how they differ from the past.
 - The potential for significant changes to AML fee collections and the AML grant distribution formula, and concerns with that possibility
 - Identifying top policy priorities for reauthorization
 - Responding to misperceptions, inaccurate information, or criticisms of the AML program, and the effect of coal industry health on reauthorization
 - Improving public understanding of the definition and nature of AML sites
 - Establishing the timeline for producing information to support reauthorization needs
 - Identifying issues with the AML inventory, and how to produce a better way for the public to view that information with appropriate context
 - IMCC/NAAML P major goals for reauthorization based on policy resolutions – e.g. maintaining fees levels and extending for 15 years
 - The need to tailor messaging to audience, e.g. simple vs complex descriptions of the program for varying purposes
 - The importance of the AML emergency program, and how failure to reauthorize Title IV would effect states’ obligations with respect to emergencies
 - The need to maintain a holistic message on the value and role of the AML program, balanced with the need for specificity
 - Possible ways of providing projections for future AML work in light of issues with AML inventory, e.g. how to consider inflation
 - How to coordinate OSMRE provision of data from e-AMLIS, FBMS, or other sources to states for purpose of reauthorization needs
 - The connection between e-AMLIS issues and reauthorization
 - The possibility of a public-facing dashboard to improve public understanding of the AML inventory and grant-based financial data
 - Developing video messages through cooperation with states and hopefully OSMRE, and how to provide focused messages
 - The cause of the “undelivered orders” situation, related to difference between federal definition of “committed” and practical sense of states’ actually committing funding to projects and the lag in how funds are spent and drawn down
 - Desire to collect information and website links related to states’ AML accomplishments for the “www.ourworksnotdone.org” website
 - Importance of ongoing AMD funding to maintain the progress made by AML programs’ water treatment efforts

- E-AMLIS Issues
 - Issue of access to and functionality of e-AMLIS, e.g. glitches experienced by the states related to inconsistent data queries
 - The need for a long term solution to e-AMLIS issues, as well as shorter term needs for more accurate, complete information
 - The scope of OSMRE's contract to fix e-AMLIS issues and the importance of state-OSMRE coordination in identifying and resolving issues.
 - How inventory statistics are produced and vetted by OSMRE
 - The possibility of a disclaimer regarding the limits of the AML inventory on OSMRE's website explaining its limited information regarding AML accomplishments and funding
 - Need to share the AML grant funding pie chart developed by OSMRE following the congressional hearing of June 7, 2016 related to AML funding, which provides a more accurate representation of AML spending
 - Inaccurate understandings of financial and inventory tracking issues as portrayed in the OIG report regarding certified states
 - Differences between the states in approach to accounting for project costs, e.g. how design and engineering are accounted for in administrative cost subaccounts in grant applications
 - Possibility of using states' grant application data to support more accurate financial reporting, with a summary of Pennsylvania's grant expenditures over the last decade generated through the FBMS system as an example
 - Strategy for approaching explanations of state grant funding, providing high level of specificity on most recent authorization period
 - Example WY grant application form, potential benefits and drawbacks to that approach for other states
 - How to adequately account for emergency project spending
 - Explanation of how OSMRE tracks the projects on which states are expending grant funds at any given time, and the various levels of accountability already built into the system
 - Issues related to the grant process, and the need to identify, address the disadvantages, and preserve the advantages of the simplified grant process
 - The need to prioritize e-AMLIS issues based on time frame, value of the activity, and interconnectedness
 - The possibility of AML grant workshops

- Oversight/ Program Implementation

- Circumstances around federal oversight were generally considered to be good – the states reported that OSMRE regional office interaction is cooperative and productive
 - Issues with the OIG Report regarding the Indiana AML program
 - Inaccuracies in the OIG Report regarding certified states, e.g. many of the recommendations as proposed by states already being done by OSMRE and state programs
 - OSMRE timeline and strategy for responding to OIG report
 - Concerns that measures implemented to address OIG Report on certified states will carry over onto uncertified states especially in regard to grant management and AML inventory issues
 - Issues related to delayed state reclamation plan updates, e.g. where lack of update is preventing certain benefits to state program progress
 - Issues related to the Authorization to Proceed (ATP) Process
 - Issues related to incidental take as part of AML projects
 - How NEPA interaction with AML program could be made more efficient, e.g. categorical exclusions could be reasonably expanded to expedite certain projects
 - Issues related to interaction with historic preservation agencies
- Other Issues
 - Public misunderstanding of the AML pilot program’s relation to the general AML program, i.e. the separate source and purpose of pilot funding
 - Issues with logistics of submitting lists for AML Pilot projects
 - How to improve states’ ability to contend with AML emergencies while maintaining and facilitating progress with regular AML inventories
 - RECLAIM Act – eventual need for states and OSMRE to cooperate on implementing the RECLAIM Act if it becomes law
 - Community Reclamation Partnerships Act (CRPA) – eventual need for state and OSMRE to cooperate on implementing if it becomes law
 - Hardrock AML – expectations for congressional attention to hardrock AML issues and the need for OSMRE-states cooperation as those efforts develop
 - Issues related to the DOI policy of providing extra review for grant programs in amounts over \$100k, which has been resolved by OSMRE
 - Timeline for 2018 AML grant distributions
 - Potential effects of congressional budget actions, the impact of sequestration, and general expectations of budget regarding AML funding
 - Technical assistance being provided to the states from OSMRE has been a good experience across the board

On the second day of the meeting, discussions focused on identifying the highest priority issues, assigning general designations as short or long term initiatives, and identifying areas appropriate for state-OSMRE cooperation. A number of state-federal working groups were commissioned to further examine the priority issues identified. Each work group was assigned a lead and/or co-lead and a group of state participants. The work groups and attendant issues/objectives will be constituted as follows:

- **E-AMLIS**
 - Lead/Co-Lead: OSMRE/WV
 - Membership: WY, WV, CO, NAV, UT, IN, OSMRE
 - Issues:
 - Coordinate to address needed fixes to e-AMLIS
 - Consider Public-facing dashboard

- **AML-1**
 - Lead/Co-Lead: OSMRE/MT
 - Membership: MT, WV, PA, UT, IN, OSMRE
 - Issues: Reinstitute previous AML-1 review teams (Priority Documentation Team and Cost Estimating Guidelines Team), review previous recommendations, consider new recommendations

- **Data Reporting Requests**
 - Lead: PA
 - Membership: PA, MT, UT, OSMRE
 - Issues:
 - Develop and coordinate generation of data reports, e.g. Sept. 30 e-AMLIS report
 - Consider how to generate/present information on accomplishments, remaining work, and funding/expenditures
 - Consider separate approaches for financial and inventory reporting, potentially utilizing the federal Financial and Business Management System (FBMS)

- **Messaging**
 - Co-Lead: PA & WY
 - Membership: WY, PA, KY, UT, NAV, OH, OSMRE
 - Issues:
 - Develop and update the www.ourworksnotdone.org website as a central clearinghouse for videos and other AML Program information and data
 - Coordinate messaging at various levels: general info for public and Congress, detailed info for DOI and congressional staff
 - Combine data and contextual explanation
 - Explanation of AML Inventory, benefits and limitations

- Address NMA criticisms and congressional concerns
 - AML Pilot – differentiating from traditional AML projects

- **NEPA**
 - Lead: WV
 - Membership: WV, UT, AL, CO, IA, AK, OSMRE
 - Issues:
 - Consider ways to improve efficiency of AML funding, generate description of AML project process
 - Consider expansion of current NEPA Categorical Exclusions (CEs) used for AML reclamation
 - Consultation Processes and Multi-Agency MOUs
 - FWS – ESA/Bat Protection
 - Army Corps of Engineers – 404 permits
 - Mine Safety and Health Administration - jurisdiction
 - EPA – NPDES permits
 - Bureau of Land Management
 - State Historic Preservation Societies

- **Grant Process**
 - Lead: OSMRE
 - Membership: IN, PA, NAV, IA, OSMRE
 - Issues:
 - Review Simplified Grant Process
 - Review implementation of emergency program
 - Reconciling undelivered orders issues

Specific action items agreed to during the meeting which are not otherwise covered under a workgroup assignment include:

- Share action plans for OIG report with states (OSMRE)
- AML Funding Pie chart to be added to OSMRE e-AMLIS website (OSMRE)
- Meet with new Assistant Secretary for Land and Minerals Management Joe Balash (IMCC)
- Circulate PA legal opinion regarding application of NPDES to AMD treatment under Title IV (PA)

The expected next steps are for the work groups to initiate actions through preliminary conference calls, hopefully during January 2018. It is envisioned that the Summit representatives will reconvene in-person to follow up on action items identified during the meeting sometime during the Spring of 2018 (possibly at the NAAML P Winter Business Meeting in San Antonio, TX).

Summit Attendees

State Representatives

- Greg Conrad, Executive Director, Interstate Mining Compact Commission (IMCC)
- Alan Edwards, AML Administrator and Deputy Director, Wyoming Department of Environmental Quality
- Travis Parsons, Planning Administrator, West Virginia Department of Environmental Protection
- Marvin Ellis, Director, Abandoned Mine Lands Program, Indiana Department of Natural Resources
- Bob Scott, Director, Division of Abandoned Mine Lands, Kentucky Department for Natural Resources
- Eric Cavazza, Director, Bureau of Abandoned Mine Reclamation, Pennsylvania Department of Environmental Protection
- Brian Bradley, Environmental Program Manager, Bureau of Abandoned Mine Reclamation, Pennsylvania Department of Environmental Protection
- Madeline Roanhorse, Department Manager, Navajo AML Reclamation/UMTRA Department
- Jeff Butler, Branch Chief Planning and Maintenance, Alabama Department of Labor, Abandoned Mine Land Office
- Dana Dean, Associate Director for Mining, Utah Division of Oil Gas and Mining
- Jeff Graves, Director, Inactive Mine Reclamation Program, Division of Mining, Reclamation, and Safety, Colorado Department of Natural Resources
- Susan Kozak, Chief, Mines and Minerals Bureau, Iowa Department of Agriculture and Land Stewardship
- Ryan Ellis, Legislative and Regulatory Affairs Specialist, IMCC

OSMRE/DOI representatives

- Glenda Owens, Acting Director, OSMRE
- Tom Shope, OSMRE Appalachian Regional Director
- Al Clayborne, OSMRE Mid-Continent Regional Director
- Sterling Rideout, OSMRE Assistant Director, Program Support Directorate
- Kate MacGregor, Acting Assistant Secretary for Land and Minerals Management, Department of the Interior