Resolution

Interstate Mining Compact Commission
Re Financial Responsibility (Bonding) for Mine Reclamation

BE IT KNOWN THAT:

WHEREAS, the development of our Nation's minerals necessarily involves the surface disturbance of the land and often results in impacts to air and water resources; and

WHEREAS, state and national laws provide for the reclamation of land disturbed by mining and for the protection of human health and the environment related to those disturbances; and

WHEREAS, with regard to hardrock and noncoal mineral development, state governments have largely taken the lead in fashioning regulatory programs that address environmental protection and reclamation requirements; and

WHEREAS, an important component of state regulatory programs is the requirement that mining companies provide financial assurances in a form and amount sufficient to fund required reclamation if, for some reason, the company fails to do so in accordance with the state program. These types of financial assurances, often referred to as bonding, protect the public from having to finance reclamation and closure if the company goes out of business or fails to meet its reclamation obligation; and

WHEREAS, all states have developed regulatory bonding programs to evaluate and approve the financial assurances required of mining companies. States have also developed the staff and expertise necessary to calculate the appropriate amount of bonds, based on the unique circumstances of each mining operation, and to make informed predictions of how the real value of current financial assurance may change over the life of the mine, including post-closure; and

WHEREAS, Section 108(b) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. Sec. 9608(b), requires that the U.S. Environmental Protection Agency (EPA) promulgate financial responsibility requirements for industrial facilities that take into account the risks associated with their use and disposal of hazardous substances; and

WHEREAS, pursuant to a federal district court decision in California (*Sierra Club v. Johnson*, 2009 WL 2413094 (N.D. Cal. 2009)) which ordered EPA to move forward with the rulemaking, EPA announced in July 2009 that is has selected hardrock mining as the first industry sector for which it would develop financial responsibility requirements under CERCLA Section 108(b) (74 Fed. Reg. 37213, July 28, 2009); and

WHEREAS, in preparation for its rulemaking, EPA has recently undertaken an analysis of reclamation bonding requirements in approximately 20 state regulatory programs throughout the U.S.; and

WHEREAS, since the initiation of EPA's rulemaking initiative, a number of IMCC member states have expressed concern that any bonding requirements that EPA may develop for the hardrock and noncoal

mining industry could be duplicative of state requirements, and could even preempt them entirely under EPA's reading of Section 114(d) of CERCLA. The states have also questioned whether EPA has the resources to implement reclamation bonding for hardrock and noncoal mines, since bond calculations usually reflect site-specific reclamation needs and costs; and

WHEREAS, the states are concerned that EPA may be attempting to fill alleged "gaps" in state reclamation bonding programs that either may not exist or that are unrelated to the purposes of a reclamation bonding program;

NOW THEREFORE BE IT RESOLVED:

That the Interstate Mining Compact Commission recognizes the states' lead and primary role in regulating the environmental impacts associated with hardrock and noncoal mining operations within their borders, including financial assurance requirements for reclamation; and

Affirms that the states have a proven track record in regulating mine reclamation, having developed appropriate statutory and regulatory controls and dedicated resources and staff to insure full and effective implementation of their regulatory programs; and

Believes that the states currently have financial responsibility programs in place that are working well and as such should stand in lieu of federal requirements under Section 108(b) of CERCLA; and

Recommends that an independent, impartial body (such as the National Academy of Sciences) conduct a study to review financial responsibility requirements under state regulatory programs to determine their sufficiency, to identify any serious gaps, and to recommend whether a federal rulemaking on the matter is needed; and

Urges the U.S. Environmental Protection Agency to seriously reconsider the need for and direction of the anticipated financial responsibility rulemaking under Section 108(b) of CERCLA given its potential impacts on existing state regulatory programs, particularly with regard to preemption effects and the duplication of resources resulting from an unnecessary federal regulatory program.

Issued this 12th day of October, 2012

ATTEST:

Gregory Conrad

Executive Director