

the compact

IMCC Wishes a Happy New Year to All of Our Friends and Colleagues. 2020 has presented many unique challenges. We look forward to 2021 and a new administration in Washington with excitement for the possibilities that lie ahead and hope that the difficulties of the past year will soon be behind us.

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**A Newsletter
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IMCC Elects Officers and Approves Committee Chairs for 2021

On December 10, 2020, the Interstate Mining Compact Commission (IMCC) conducted its Midyear Business Meeting virtually. During this meeting, delegates to IMCC elected a slate of officers for the Compact for 2021. Governor Mike DeWine of Ohio, who is represented by Dave Crow, will serve as Chair. Governor Asa Hutchinson of Arkansas, who is represented by Larry Bengal, will serve as Vice Chair. Governor John Bel Edwards of Louisiana, who is represented by Abby Alkire, will serve as Treasurer.

Upcoming Meetings:

IMCC 2021 Annual Meeting
May 2-5, 2021
Griffin Gate Hotel
Lexington, Kentucky

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Committee Chairs and Vice Chairs for 2021 will be:

Abandoned Mine Lands	Robert Scott, KY	Jerry Schoeppner, NM
Awards	Steve Weinzapfel, IN	James Matheny, MS
Finance	Abby Alkire, LA	Gordon Slone, KY
Coal Environmental	Brent Elliot, TX	John Stefanko, PA
Hardrock/Noncoal	Bryan Epperson, TN	Brent Goodrum, AK
Environmental		
Mine Safety & Health	Dustin Morin, AL	Mary Ann Pritchard, OK
Resolutions	Dave Crow, OH	Larry Bengal, AR

Other business transacted during the Midyear Business Meeting included: review of the independent auditors report of IMCC's FY 2020 Financial Statement; review of IMCC's financial statement for the first quarter of FY 2021; adoption of a dues structure for IMCC for FY 2022 and 2023; approval of the minutes of the June 2020 IMCC Business Meeting; discussion of plans for future meetings in 2021; approval of resolutions honoring long term state participants in IMCC; and, the Executive Director's Report. The meeting was well attended, with representation from all but two of the member states.

Virtual Meetings of the Interstate Mining Compact Commission Continue

As have all organizations, businesses and units of government, IMCC has had to adapt the way it does business in the face of health concerns and financial impacts from the COVID-19 pandemic. In addition to the Midyear Business Meeting, IMCC held a virtual Midyear Meeting on October 27, 2020 with the Interior Department to discuss the many ongoing DOI and Office of Surface Mining Reclamation and Enforcement (OSMRE) policy developments that affect state mining regulators. The meeting was well attended. Leadership from OSMRE headquarters and each of its regional offices, plus 21 states were in attendance. Many topics were discussed, including the status of Congressional appropriations for SMCRA Title IV and V programs, the Ten Day Notice Rule, the final 2020 Biological Opinion and issues related to its implementation, the report of the Title V Program Finance Workgroup, the Administration's position on Abandoned Mine Land (AML) program Reauthorization, an update on efforts of the AML Pilot Program Workgroup, clarification of the Administration's Unmanned Aerial Systems (UAS) policy and plans for transition reports for a new administration. In addition, the meeting also featured a roundtable discussion regarding implementation of regulatory programs during the COVID pandemic. During this discussion, each state and the federal representatives at the meeting had the opportunity to discuss challenges and innovative approaches to accomplishment of regulatory objectives during the COVID pandemic.

A joint virtual meeting of IMCC's Abandoned Mine Lands and Coal Environmental Committees was held eight days later, on November 4, 2020. This meeting provided the opportunity for a states-only discussion of DOI's policy direction. IMCC has also hosted virtual meetings or conference calls on other topics.

Plans for the 2021 Annual and Midyear Meetings

IMCC currently plans to hold its 2021 Annual Meeting at the Griffin Gate Hotel in Lexington, Kentucky. Planning is currently underway for the meeting, which will begin Sunday May 2 with a Welcome Reception. The committee meetings will run from Monday May 3 to Wednesday May 5, with the Awards Banquet scheduled for Tuesday May 4. The registration form along with hotel booking information can be found on the IMCC website at <http://imcc.isa.us/meeting-info.html>, and the schedule and agendas for the various IMCC committee meetings to be held in conjunction with the Annual Meeting will be posted on the IMCC website as well once finalized.

In recognition of the evolving nature of health concerns from the COVID-19 pandemic and the economic consequences of it on the states, IMCC negotiated a 75 day "no fault" cancellation provision in its contract with the Griffin Gate Marriott for this meeting. This will allow IMCC to cancel the contract without liability upon 75 days notice. IMCC intends to continue to plan for the Annual Meeting on the assumption that it can safely be held and travel restrictions will be lifted. IMCC will be reaching out to the member states in early February to gauge the feasibility of holding the meeting in person, as planned. If an in-person meeting is not feasible, alternate arrangements for virtual meetings will be made. On a positive note, IMCC has already received an initial advance registration for the Annual Meeting.

IMCC has scheduled its 2021 Midyear Meeting. It will be held at the Bourbon Orleans Hotel in New Orleans, Louisiana from Monday, October 18 to Wednesday, October 20, 2021. IMCC has also negotiated a no-fault cancellation provision in its contract with this hotel.

BiOp Implementation

The US Fish and Wildlife Service (FWS) finalized the 2020 Biological Opinion for SMCRA Title V regulatory programs on October 16, 2020. This Biological Opinion provides a process for application of the Endangered Species Act (ESA) in mine permitting with incidental take protection for states and permit applicants. It also provides an elevation process for resolving disputes between state regulatory authorities and the FWS. OSMRE and the FWS have been meeting to discuss its implementation. A meeting with the states to discuss next steps is expected to be scheduled in January 2021. More will be announced as details become available.

President Trump Signs FY 2021 Federal Budget Bill

Both houses of Congress adopted an omnibus bill establishing a federal budget for Fiscal Year 2021 on December 21, 2020. Congress incorporated several other bills, including a COVID relief package it had been negotiating for months, in this spending bill. After some initial doubt as to whether President Trump would sign the omnibus bill because of displeasure he expressed publicly with the portion of the bill dealing with COVID relief, he nonetheless signed it into law on December 27, 2020.

The bill provides funding for the federal government for Fiscal Year 2021, including:

- Appropriation of the full amount of \$68.59 million for grants to states and tribes for operation of SMCRA Title V regulatory programs.
 - Recission of \$25 million of de-obligated Title V money from previous years, thus reducing the balance of de-obligated funds carried forward from previous years to around \$5 million.
 - Appropriation of \$115 million from the Treasury for the Pilot Program operated through SMCRA Title IV AML programs by six Appalachian states and three tribes under the same terms as in recent years.
 - Recission of \$10 in unobligated AML funds from past years. This comes from AML money appropriated for OSMRE's use in prior years that OSMRE has failed to spend.
 - Appropriation of the full amount of \$10.537 million for state training grants in MSHA's budget.
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New Ten Day Notice (TDN) Rule Takes Effect

On December 24, 2020, a new rule clarifying OSMRE's ten day notice procedure took effect. The rule attempts to more clearly differentiate between the issues that are addressable through the TDN procedure and the issues that should instead be addressed through oversight on the programmatic level. The rule defines a class of "state regulatory program issues" that should generally be addressed through programmatic oversight under 30 CFR Part 733. Permit defects that have not resulted in an on-the-ground violation are generally treated as "state regulatory program issues". The rule also clarifies that OSMRE may consider readily available information, including information from a State regulatory authority, in determining whether there is "reason to believe" a violation exists that justifies issuance of a TDN. It also clarifies what is considered "appropriate action" by a State regulatory authority in response to a TDN. This includes a reasonable opportunity for investigation by the state. Finally, the rule clarifies the way citizens complaints regarding alleged violations are to be addressed. As clarified, the rule should enable more expeditious action by State regulatory authorities on such complaints, without the extended delay from the exchange of official correspondence between OSMRE and the states that the TDN procedure had often involved.

New ESA Critical Habitat Rule to Take Effect

On January 19, 2021, a new rule governing the way critical habitat for endangered and threatened species is designated will take effect. The new rule should strengthen the role of states and stakeholders in the designation of critical habitat under the Endangered Species Act (ESA). The ESA allows an area that might otherwise qualify as critical habitat to be excluded from a designation of critical habitat where the benefits of exclusion outweigh the benefits of inclusion of the area. In weighing the benefits of exclusion versus inclusion of an area, Section 4(b)(2) authorizes the FWS to consider economic impacts, national security and other relevant impacts. States or others will be able to identify areas the FWS must consider for exclusion from a designation. By specifying that nonbiological impacts identified by State or local governments, federally recognized tribes or permittees, lessees or contractor applicants for a permit, lease or contract on federal lands are outside of the scope of the FWS's expertise to analyze, the rule attempts to reduce the deference courts might otherwise give a FWS decision that analyzes these factors. The rule goes on to specify that the FWS, itself, is required to "assign weight" to the opinions of experts or sources with firsthand information in these areas that are defined as being beyond the scope of the FWS's expertise when it is analyzing the benefits of exclusion of an area, consistent with that expert or firsthand information.

Two other proposed rules that would affect critical habitat designations remain pending. One proposed in August 2020 would define "habitat" for purposes of the ESA. The US Supreme Court has held that an area included in a critical habitat designation must be "habitat" for the species at issue. This ruling may preclude areas that must be modified in order to be suitable as habitat for a species from being designated as critical habitat for that species. The proposed rule would clarify the meaning of "habitat" for this purpose. The other, proposed in September 2020, further clarifies the process for excluding area from critical habitat designations.

Recent News Regarding IMCC State Representatives

Eric Cavazza of Pennsylvania is retiring from his position as the Director of the Commonwealth's Bureau of Abandoned Mine Lands Reclamation program as of January 2, 2021. Eric will continue to be a part of the state mining regulatory community as OSMRE's Pittsburgh Field Office Director, a position he begins on January 4, 2021.

Alan Edwards, Deputy Director of the Wyoming Department of Environmental Quality and Administrator of Wyoming's Abandoned Mine Lands Division, retired from service as a state employee in October 2020. Alan will be enjoying more time with his wife and family in retirement. Alan may also put his years of expertise to use as a consultant.

Virginia's representative to IMCC, Bradley C. "Butch" Lambert, Deputy Director of the Virginia Department of Mines Minerals and Energy, is retiring from service to the Commonwealth as of the end of 2020.

Please join IMCC in wishing these friends and colleagues who have contributed so much to the Compact over many years nothing but the best in their future endeavors.