



IMCC Mid-Year Meeting Held in Charleston, South Carolina

The Interstate Mining Compact Commission's (IMCC) Mid-Year Meeting was held at the Doubletree Suites Historic Hotel in Charleston, South Carolina on October 26 - 27, 2010. Eighteen of the twenty-four IMCC member states were represented. Joe Pizarchik, Director of the Office of Surface Mining (OSM) in the Department of Interior and several OSM regional directors and staff members were also present and participated in the joint meeting of the Abandoned Mine Lands (AML) and Coal Environmental Affairs Committees on Tuesday.

On the morning of Tuesday, October 26, the Mine Safety and Health and Noncoal Environmental Affairs Committees met jointly. At the beginning of the meeting two speakers addressed attendees: Ed Fogels of the Alaska Department of Natural Resources spoke on "Human Health Impact Assessments"; and Wendy Hamilton of the South Carolina Department of Health and Environmental Control gave an overview of key mining issues in South Carolina, with special emphasis on permitting issues. A joint meeting of the AML and Coal Environmental Affairs Committees followed and reconvened after breaking for a luncheon at Noon. Attendees also enjoyed a networking reception on Tuesday evening.

During the Coal Environmental Affairs Committee meeting, state representatives reviewed a draft Resolution in support of the U.S. Environmental Protection Agency's proposal to exempt the placement of coal combustion residues in mines from the applicability of its proposed rules regarding coal combustion residues, and to formally confirm OSM's lead role in the development of such rules. This is consistent with the approach recommended by the National Academy of Sciences. The full commission adopted the resolution unanimously during the business meeting on Wednesday.

The Resolutions and Finance and Administrative Committees met jointly on Wednesday, October 27. The Committee voted to approve the Fiscal Year 2010 audit as presented during the meeting. The Executive Commission Business Meeting followed and concluded the Mid-Year Meeting.

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Upcoming Meetings:

IMCC 2011 Annual Meeting

April 3 - 6, 2011
Oglebay Lodge
Wheeling, West Virginia

IMCC 2011 Mid-Year Meeting

October 18 - 19, 2011
Marriott Grand Hotel
Point Clear, Alabama

For more information on IMCC Meetings as it becomes available, visit our website: www.imcc.isa.us and click on the "Conferences" tab. Copies of IMCC's Compact Newsletter are also available on the website by clicking on the "Publications" tab.

Contact Information:

Interstate Mining Compact Commission
445-A Carlisle Drive
Herndon, VA 20170
Ph: 703.709.8654 / Fax: 703.709.8655
Email: gconrad@imcc.isa.us or
bbotsis@imcc.isa.us

IMCC 2011 Annual Meeting Scheduled for Wheeling, West Virginia

The Interstate Mining Compact Commission's 2011 Annual Meeting will be held from April 3 - 6 at Oglebay Lodge in Wheeling, West Virginia. A registration form and hotel reservation form are included with this newsletter.

A welcoming reception will kick-off the meeting on the evening of Sunday, April 3. The opening session will begin on Monday morning, April 4 at 8:30 a.m. (Speakers TBD) and will be followed by a joint meeting of the Mine Safety and Health and Noncoal Environmental Affairs Committees. A social reception/dinner is scheduled for Monday evening.
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On Tuesday, April 4, the Abandoned Mine Lands and Coal Environmental Affairs Committees will meet jointly. The IMCC Annual Awards Reception and Banquet will take place on Tuesday evening where the 2011 IMCC National Reclamation Awards and Minerals Education Awards will be presented.

IMCC's Finance and Administrative and Resolutions Committees will meet jointly on the morning of Wednesday, April 6. The Executive Commission Business Meeting will follow immediately and will conclude the Annual Meeting.

For more information visit the IMCC's web site at <http://www.imcc.isa.us> and click on the "Conferences" button, or contact: Beth Botsis at phone: 703.709.8654 or e-mail: bbotsis@imcc.isa.us.

Call for Nominations for IMCC's 2011 National Reclamation Awards and Minerals Education Awards

The Interstate Mining Compact Commission (IMCC) is now accepting nominations for the 2011 National Reclamation Awards and the 2011 Minerals Education Awards. The awards will be presented during the IMCC's 2011 Annual Meeting in Wheeling, West Virginia next April. Information on deadlines and criteria for the awards and nomination forms have been distributed to all member state representatives. They are also available on our website (www.imcc.isa.us click on "Awards").

For further information, contact: Beth A. Botsis at phone: 703.709.8654 or e-mail: bbotsis@imcc.isa.us.

IMCC Comments on EPA Proposed Rule re Disposal of Coal Combustion Residuals

The Interstate Mining Compact Commission (IMCC) recently submitted comments to the U.S. Environmental Protection Agency (EPA) regarding a proposed rule published on June 21, 2010 at *75 Fed. Reg. 35128* regarding the Disposal of Coal Combustion Residuals from Electric Utilities under the Resource Conservation and Recovery Act (RCRA). IMCC's comments particularly focused on concerns of the states regarding the impacts the rulemaking will have on those aspects of the states' regulatory programs related to the placement of coal combustion residues (CCRs) in both active and abandoned mines. IMCC expressed concerns that although in the preamble EPA clearly states that the proposed rule does not address the placement of CCRs in minefills, and that management of CCRs in minefills will be addressed in separate regulatory actions recognizing the experience of the Office of Surface Mining (OSM), there are several other areas in the preamble and proposed rule where EPA's position on this matter is unclear and requires further clarification or elaboration to avoid ambiguity or confusion. IMCC strongly supports the recommendation of the National Academy of Sciences that minefilling of CCRs be handled in a separate rulemaking by OSM. However, IMCC is concerned that this approach is not effectively implemented in the rules proposed by EPA. IMCC is particularly concerned with the definitions of "minefill"; "minefilling operations"; "CCR landfill"; and "beneficial use of coal combustion products" and the implications these definitions will have for OSM's future rulemaking regarding mine placement of CCRs. IMCC suggested that EPA adjust its proposed rules and provide greater detail in the preamble to the final rule regarding the respective roles of the states and OSM concerning the regulation of mine placement of CCRs to avoid counterproductive overlap and regulatory uncertainty and confusion.

A copy of the comments can be obtained by contacting Greg Conrad or Beth Botsis at IMCC (Phone: 703.709.8654 or e-mail: gconrad@imcc.isa.us or bbotsis@imcc.isa.us).

MSHA Public Hearings Scheduled re Proposed Coal Dust Rule

The Mine Safety and Health Administration (MSHA) recently announced dates for upcoming public hearings regarding the agency's proposed rule, "Lowering Miners' Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors." Seven hearings are scheduled in West Virginia, Indiana, Alabama, Utah, Pennsylvania and Kentucky. For dates and location information, visit this link (MSHA's website): www.msha.gov/REGS/FEDREG/PROPOSED/2010PROP/2010-30099.asp

Interior Proposes ESA Protection for Polar Bears in Alaska

Recently the Department of Interior (DOI) proposed protecting vast areas of Alaska for polar bear habitat threatened by melting sea ice. According to the Fish and Wildlife Service (FWS), the more than 187,000 square miles DOI proposes to include as protected critical habitat under the Endangered Species Act (ESA) makes up an area nearly one-third the size of the state. Offshore sea ice, of which federal agencies estimate two-thirds will disappear in the next 50 years, makes up much of the proposed designation. Two years ago the Bush administration was the first to propose "threatened" status for the bear and the DOI designated habitat that environmental groups initially opposed as insufficient. By designating "critical habitat," the FWS is responsible for preventing "adverse modification" to the area, including the denial of permits for any activities that would interfere with species recovery.

GAO Report Faults EPA Enhanced Review Process of Surface Mines

The U.S. Government Accountability Office (GAO) recently released a report which faulted the Environmental Protection Agency's (EPA) enhanced review of 79 surface coal mining-related Section 404 permits, finding the agency:

- ▶ Has been ineffective in enhancing coordination or streamlining the permitting process;
- ▶ Hinders coordination by failing to send decision-makers to monthly meetings of regulators and stakeholders;
- ▶ Requests substantive changes in processes that have already been approved and begun, resulting in additional delay and cost;
- ▶ Encroaches on state authority by insisting on how mines are to be designed;
- ▶ Fails to communicate to state officials all pertinent information required for state permit consideration and approval; and
- ▶ Adds to the uncertainty by preventing permit applicants from sharing information from past reviews.

GAO concludes that only six permits have been issued since EPA began its enhanced review in early 2009; thirty-six permits are still waiting enhanced review; and only one permit is currently under enhanced review. The report was requested by House Natural Resources Committee Chairman Nick Rahall of West Virginia. It is likely to add ammunition to investigations into the conduct of regulatory agencies which new House leaders have promised to initiate.

OSM Issues New Draft Directives re Oversight of Coal Mining Operations

On November 18, the Office of Surface Mining (OSM) issued three new draft directives to its field offices that tighten regulatory oversight of coal mining operations. The directives implement the agency's tasks under a 2009 Memorandum of Understanding (MOU), which according to the Obama administration is needed to protect the environment and public health from the impacts of Appalachian coal mining. The directives increase the frequency of OSM's oversight inspections, clarify procedures for addressing what OSM considers to be "permit defects", and resolve problems identified in approved state and tribal regulatory programs, according to OSM. Department of Interior (DOI) Secretary Ken Salazar also commended OSM employees for tightening oversight of coal mining but cautioned "there is still much more to do in order to fully realize OSM's mission of protecting the environment while continuing to provide for the Nation's energy needs."

The Secretary accompanied the commendation with a memorandum dated November 15 in which OSM director Joe Pizarchik instructed field staff to ignore a 2005 decision by then Assistant Secretary Rebecca Watson. In her decision, Watson had informed environmental plaintiffs there was no basis for their request for OSM intervention in primacy states where permit decisions and any appeals are solely matters of state jurisdiction.

EPA Files Consent Decree for New Limits on Power Plant Discharges, Coal Ash Ponds

The U.S. Environmental Protection Agency (EPA) agreed in a November 8 consent decree to propose new effluent limit guidelines (ELG) for coal-based power plants by July 23, 2012, and to finalize the guidelines by January 31, 2014. The consent decree was filed the same day the Sierra Club and Defenders of Wildlife filed a lawsuit in U.S. District Court for the District of Columbia. The groups told EPA last year they intended to file the suit, according to press reports. The decree is intended to cover discharges of toxic metals, including mercury, arsenic and cadmium, from coal ash storage ponds and pollution controls at power plants. EPA Administrator Lisa Jackson already planned to propose new guidelines by 2012, but the consent decree provides environmentalists with a legally enforceable agreement to force EPA to finalize the new rules in case of a change in administration following the next presidential election. Proposal of the ELG is expected to follow EPA's finalization of its national emissions standards for hazardous air pollutants rule for power plants, which will likely result in higher concentrations of mercury and other materials in wastewater from scrubbers power plants used to remove controlled emissions. Environmental groups said they view the ELG as one additional tool to force EPA to regulate coal ash as a hazardous waste and to preclude transfer of pollutants from the air to the water.

Court Rules Abandoned Mine Cleanup Subject to CWA

A three-judge panel of the U.S. Court of Appeals for the 4th Circuit ruled recently that cleanup activities at abandoned coal mine sites are subject to Clean Water Act (CWA) permitting requirements. In *West Virginia Highlands Conservancy (WVCA) et al. v Huffman*, the court ruled the State of West Virginia was required to obtain National Pollutant Discharge Elimination System (NPDES) permits for discharges at abandoned coal mine sites where the state oversaw cleanup activities following forfeiture of reclamation bonding by the original operator. The ruling follows a 1993 ruling by the U.S. Court of Appeals for the 9th Circuit in which a landowner (the East Bay Municipal Utility District) that attempted to clean up pollution from an abandoned mine on its land was held liable under the CWA for the discharge of residual pollution coming from the municipality's treatment facility.

The 1993 ruling resulted in congressional efforts to clarify both CWA and Superfund liability for so-called Good Samaritans after several Western groups and regulatory agencies determined they could not continue their voluntary efforts to remediate abandoned hard rock mine sites for fear of risking unlimited liability under one or both statutes. Senator Mark Udall (D-CO) introduced S1777 in the current Congress. The bill would have set up an alternative to the traditional NPDES permit for reclamation of abandoned hard rock sites. Representative Doug Lamborn (R-CO) also introduced legislation in 2009, H.R. 3203, that would have limited liability under both the CWA and the Superfund law.

While the EPA has negotiated liability limitations from Superfund for cleanup activities by some groups, including Trout Unlimited, the agreements have proven to be too complicated for many to navigate. The court's decision may prompt additional congressional consideration in the new Congress. In his opinion, Judge J. Harvie Wilkinson III wrote, "In passing the NPDES scheme, Congress considered the costs and decided that the benefits were worth it. If Congress somehow struck the balance wrong, it is for Congress to correct it."

IMCC/NAAMLPL Testimony Presented at Legislative Hearing on H.R. 4817

Loretta Pineda, Director for the Division of Reclamation, Mining and Safety in the Colorado Department of Natural Resources testified before the Energy and Mineral Resources Subcommittee of the House Committee on Natural Resources on September 23, 2010, on behalf of the Interstate Mining Compact Commission (IMCC) and the National Association of Abandoned Mine Land Programs (NAAMLPL). IMCC/NAAMLPL's testimony voiced strong support for H.R. 4817, a bill to amend the Surface Mining Control and Reclamation Act (SMCRA) to clarify that uncertified States and Indian Tribes have the authority to use certain payments for certain noncoal abandoned mine land reclamation projects.

The IMCC/NAAMLPL testimony points out that across the country, the number of abandoned hardrock mines with extremely hazardous mining-related features has been estimated at several hundred thousand. The hardrock AML problem is pervasive and significant. The states are intimately familiar with the highest priority problems within their borders and also know where limited reclamation dollars must immediately be spent to protect public health and safety or protect the environment from significant harm. State agencies are working on hardrock abandoned mine problems through a variety of limited state and federal funding sources. Until now, for states with coal mining, the most consistent source of AML funding has been the Title IV grants under SMCRA. Section 409 of SMCRA allows states to use these grants at high priority non-coal AML sites. The funding is generally limited to safeguarding hazards to public safety (e.g. closing mine openings) at hardrock sites.

In December 2006, Congress significantly amended the SMCRA abandoned mine lands (AML) program to, among other things, distribute funds to states in an amount equal to that previously allocated under SMCRA but never appropriated. IMCC/NAAMLPLP testimony stated that, while Section 409 was not amended in any way, the Interior Department, through both a Solicitor's Opinion (M-37014) and final rule (73 Fed. Reg. 67576), has now interpreted SMCRA to prohibit this enhanced funding from being used for noncoal projects. H.R. 4817 would remedy the Interior Department's interpretation of the 2006 Amendments. That interpretation not only disregards the fact that Section 409 was left unamended by Congress, it is also inconsistent with assurances repeatedly given to the states and tribes by the Office of Surface Mining (OSM) during the consideration of the legislation that noncoal work could continue to be undertaken with these AML funds. The interpretation would also have the unacceptable result of requiring states and tribes to devote funds to lower priority coal sites while leaving dangerous noncoal sites unaddressed. A suggested amendment to H.R. 4817 which would not only authorize uncertified states and tribes to use certain payments for certain noncoal reclamation projects, but also for certain acid mine drainage (AMD) reclamation projects was included in the testimony.

For a copy of the IMCC/NAAMLPLP testimony, contact Greg Conrad at phone: 703.709.8654 or e-mail: gconrad@imcc.isa.us.

EPA Seeks Small Business Input for Hardrock Mining Financial Assurance Rule

The U.S. Environmental Protection Agency (EPA) recently invited small businesses to participate in a Small Business Advocacy Review (SBAR) panel to evaluate the proposed rule establishing financial responsibility requirements for certain hardrock mining facilities under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Under the Regulatory Flexibility Act, EPA is required to establish an SBAR panel for proposed rules that may have a significant impact on a substantial number of small entities. According to EPA, the agency's "preliminary analyses (for the proposed rule) currently show that approximately 289 companies (or 81 percent of the potentially regulated universe) are small entities." The SBAR panel is made up of federal employees from EPA, the Office of Management and Budget and the Small Business Administration's Office of Advocacy. The panel will ask small entity representatives (SERs) to provide input on the potential impacts of the proposed rule based on background information provided by the EPA. SERs will also give advice and recommendations on how to limit the potentially burdensome impacts.



*Wishes for Happy Holidays
and a Healthy & Happy New Year
from the IMCC Staff*