



IMCC 2013 Annual Meeting to be Held in Cincinnati, Ohio

The Interstate Mining Compact Commission's (IMCC) 2013 Annual Meeting is scheduled for April 14 - 17, 2013 at the Netherland Plaza (Hilton) Hotel in Cincinnati, Ohio.

A welcoming reception will take place on the evening of Sunday, April 14. A General Session will start the day on Monday, April 15 (speakers TBD), followed by a joint meeting of the Noncoal Environmental Affairs and Mine Safety and Health Committees. An afternoon special issues session is currently being planned. In the evening a social networking dinner will be held at the Moerlein Lager House.

On Tuesday, April 15, a meeting with the Coal Environmental Affairs Committee, the Abandoned Mine Lands Committee and representatives from the Federal Office of Surface Mining is scheduled. The two committees will meet in Executive Session immediately following. The Annual Awards Banquet will take place in the evening where the IMCC 2013 National Reclamation and Minerals Education Awards will be presented.

IMCC's Finance and Administrative and Resolutions Committees will meet jointly on the morning of Wednesday, April 16 and will be followed immediately by the Executive Commission Business Meeting which will conclude the Annual Meeting.

A registration form for the meeting is included in this issue of "The Compact". For more information, contact: Beth A. Botsis at 703.709.8654 or E-mail: bbotsis@imcc.isa.us. Information about future IMCC meetings and a downloadable registration form are also available on the IMCC website at: <http://www.imcc.isa.us/Conference.htm>.

IMCC 2012 Mid-Year Meeting Held in Chicago, Illinois

The Interstate Mining Compact Commission's (IMCC) 2012 Mid-Year Meeting was held October 11 - 12, 2012 at the Renaissance Blackstone Hotel in Chicago, Illinois.

On Thursday morning, October 11, the Noncoal Environmental Affairs and Mine Safety and Health Committees met jointly. A meeting between IMCC and representatives from the federal Office of Surface Mining (OSM) followed. After a luncheon, the Abandoned Mine Lands and Coal Environmental Affairs Committees met jointly in executive session. A reception was held in the evening.

IMCC's Finance and Administrative and Resolutions Committees met jointly on the morning of Friday, October 12 and was followed immediately by the Executive Commission Business Meeting which concluded the Mid-Year Meeting.

For more information, contact: Beth A. Botsis at 703.709.8654 or E-mail: bbotsis@imcc.isa.us. Information about future IMCC meetings is also available on the IMCC website at: <http://www.imcc.isa.us/Conference.htm>.

A Newsletter Published by
Interstate Mining Compact
Commission

Upcoming Meetings:

IMCC Eastern Region Noncoal Minerals Symposium
December 11 - 12, 2012
Charlotte Sheraton Airport Hotel
Charlotte, North Carolina

IMCC 2013 Annual Meeting
April 14 - 17, 2013
The Netherland Plaza (Hilton) Hotel
Cincinnati, Ohio

IMCC Western Region Noncoal/Hardrock Minerals Symposium
March, 2013
Salt Lake City, Utah
More information will be posted on the IMCC website as it becomes available.

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

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Nominations Requested for IMCC 2013 National Reclamation and Minerals Education Awards

The Interstate Mining Compact Commission (IMCC) is currently accepting nomination for the 2013 Kenes C. Bolling National Reclamation Awards and the 2013 Minerals Education Awards. Criteria and nomination information and forms for both awards are available on the IMCC website. The reclamation awards information can be found at: <http://www.imcc.isa.us/2013ReclamationAwards.pdf> and the education awards information can be found at: <http://www.imcc.isa.us/EduAwardsForm.pdf>.

The awards will be presented at the IMCC Annual Meeting in Cincinnati, Ohio on Tuesday, April 15, 2013. Nominations for the reclamation awards must be made by IMCC member state regulatory authorities. Education award nominations can be submitted by any person or organization. Companies and individuals from the 25 IMCC member states are eligible to be nominated for the awards. For more information, visit the links supplied above or contact: Beth A. Botsis at 703.709.8654 or E-mail: bbotsis@imcc.isa.us.

IMCC Eastern Region Noncoal Minerals Symposium Scheduled in Charlotte, North Carolina

The Interstate Mining Compact Commission (IMCC) will sponsor an Eastern Region Noncoal Minerals Symposium at the Charlotte Sheraton Airport Hotel in Charlotte, North Carolina on December 11 - 12, 2012. Speakers and topics to be included in the symposium include: "Virginia's Electronic Permitting Program" by David Sanders, Virginia Department of Mines, Minerals and Energy (DMME); West Virginia's Electronic Permitting Program" by Amy Halstead and Debbie Martin, West Virginia Department of Environmental Protection; "The Geology of Uranium Occurrences in Virginia and Challenges to a Conceptual Uranium Mining Program" and "Noncoal Mine Mapping" by William Lassetter, Virginia DMME; "Demonstration of Virginia's Mine Mapping Flex Viewer" by David Sanders, Virginia DMME; "North Carolina's Mineral Storehouse and Emerging Resources" by Dr. Kenneth Taylor and Dr. Jeffrey Reid, North Carolina Geological Survey; "History of Gold Mining in South Carolina and Permitting the Haile Gold Mine" by Marianna DePratter, South Carolina Department of Health and Environmental Control; "An Industry Perspective on Permitting the Haile Gold Mine" by Ramona Schneider, Haile/Romarco; and "An Overview of Permitting Issues" by Jim Stephens, Arkansas Department of Environmental Quality, Thomas Crafford, Alaska Department of Natural Resources and Paul Baker, Utah Division of Oil, Gas & Mining. In addition to the speakers, there will be several roundtable discussions allowing the various states to share information and discuss issues of mutual concern.

A Western Region Noncoal/Hardrock Minerals Symposium is also in the planning stages for March 2013 in Salt Lake City, Utah. Information will be posted on the IMCC website once it becomes available (under the "Conferences" tab).

The symposium is open to all state government personnel but space is very limited and advance registration is required. For more information, contact: Beth Botsis at 703.709.8654 or E-mail: bbotsis@imcc.isa.us.

IMCC Cautions Congress About Sequestration Impacts

The Interstate Mining Compact Commission (IMCC), together with the National Association of Abandoned Mine Land Programs (NAAML), sent a joint letter on November 27 to the Chairmen of the House and Senate Appropriations Committees urging caution about the potential impacts on funding for state and tribal regulatory and abandoned mine lands (AML) programs as a result of across-the-board spending reductions under the Budget Control Act of 2012 (otherwise known as "sequestration"). "We understand that the percentage reductions under sequestration could range anywhere from 7.6% (for mandatory AML appropriations) to 8.2% (for discretionary appropriations that support state Title V primacy grants) – and potentially higher. These types of across-the-board cuts would have severe consequences for the states' ability to run effective programs under the Surface Mining Control and Reclamation Act (SMCRA), and in the case of the AML program, would likely result in negative impacts for jobs associated with AML reclamation work." The two organizations urged Congress to maintain their commitment to the critical role played by the states in accomplishing the purposes and objectives of SMCRA, including funding for state/tribal programs.

In a related action, IMCC recently adopted a resolution addressing the role of the states under national environmental programs such as SMCRA and the Clean Water Act. The resolution notes that Congress has expressed its intent under various national environmental and natural resource protection laws to recognize, preserve and protect the primary responsibilities and rights of the states to plan, develop and implement laws and regulations that insure the restoration, preservation and enhancement of land and water resources, and has therefore delegated exclusive jurisdiction (primacy) for certain federal program responsibilities to the states. In accepting these roles, the states

have demonstrated that they have the independent authority, technical ability and fiscal wherewithal to adopt and implement laws, regulations and policies that are as stringent as the federal counterparts. The resolution calls for adequate funding for environmental and natural resource programs at both the state and federal level and recognizes the importance of states working jointly with the federal government to achieve the most efficient and effective use of limited resources for the greatest environmental benefit.

IMCC Files Amicus Curiae Brief in Challenge to Oklahoma Permits

The Interstate Mining Compact Commission (IMCC) recently submitted an amicus curiae brief in a case before the U.S. Court of Appeals for the Tenth Circuit supporting the state of Oklahoma in its appeal of a lower court decision concerning the state's permitting authority under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). IMCC, together with the states of West Virginia, Alaska and Virginia, argue that the Office of Surface Mining (OSM), through an overly expansive and illegal use of the Ten-Day Notice (TDN) provisions under SMCRA, has directly inserted itself into state permitting decisions and thereby undermined SMCRA's explicit grant of exclusive jurisdiction to a primacy state. The TDN provisions, IMCC argues, are specifically intended for on-the-ground violations by a permittee, not permitting actions by a state. "SMCRA, its legislative and regulatory history and case law are abundantly clear that the TDN process was not intended to be used for state permitting decisions. By proceeding in this fashion, OSM has expanded its authority beyond congressional intent and attempted to confer upon itself regulatory authority that was expressly withheld," IMCC stated. A copy of the amicus brief is available from IMCC.

In a related development, IMCC adopted a resolution at its Mid-Year meeting in October that reasserts the states' commitment to the principles of primacy and federalism that underlie implementation of SMCRA and that urges OSM to rescind its Ten-Day Notice directive (INE-35) and to work cooperatively with the states to re-design the agency's oversight directives (REG-8 and REG-23) concerning the annual evaluation of state programs. Commenting on OSM's increased use of TDN's in primacy states, IMCC states that "at the same time that OSM is proposing to cut regulatory grants to states, these actions result in a significant drain on limited resources for the implementation of regulatory programs and often erode the state/federal working relationship under SMCRA."

IMCC Affirms State Role for Bonding Hardrock Mining Operations

In a resolution adopted at its Mid-Year meeting in October, the Interstate Mining Compact Commission (IMCC) called upon the U.S. Environmental Protection Agency (EPA) to seriously reconsider the need for and direction of an anticipated rulemaking addressing financial responsibility (bonding) requirements under Section 108(b) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). In the resolution sent to EPA Administrator Lisa Jackson, IMCC begins by noting 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. "IMCC 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." IMCC also recommended 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. In the meantime, IMCC urges EPA to delay action on the rule 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.

IMCC Resolution Suggests Larger Role for States re. OSM/BLM Consolidation

Noting its history of working cooperatively with the Office of Surface Mining (OSM) and the Bureau of Land Management (BLM) to reclaim abandoned mine lands at both coal and hardrock mine sites, IMCC recently adopted a resolution calling upon the Interior Department to consult with the states as it develops and implements decisions regarding the proposed consolidation of authorities and responsibilities between BLM and OSM pursuant to Secretarial Order No. 3320. "The states have over 30 years of experience in developing, designing, contracting for and managing projects for the reclamation of abandoned and inactive mines and have been recognized as experts in accomplishing this reclamation work," the resolution notes. IMCC and the National Association of Abandoned Mine Lands (NAAML) have advocated for a larger role for the states and tribes from the inception of the proposed consolidation given the potential impacts on state regulatory and abandoned mine land (AML) programs.

IMCC Meeting Focuses on Water Quality Issues

Interstate Mining Compact Commission (IMCC) member states met in St. Louis in early September to discuss water quality issues related to the regulation of both coal and hardrock mining operations. Among other matters, the states discussed numeric and narrative water quality standards; anti-degradation rules and policies; surface, ground and storm water challenges; permitting issues under Section 402 of the Clean Water Act; cumulative hydrologic impact assessments; jurisdictional waters determinations; nationwide permits under Section 404 of the Clean Water Act; and long-term water quality treatment (bonding). Overviews of pending litigation related to water quality issues were presented, as was an update on pending legislation before Congress. The meeting concluded with a discussion of potential future interactions with federal agencies and coordination with other state government organizations that also represent the states on water quality issues.

IMCC Presentation at 2012 Conference of Government Mining Attorneys

Interstate Mining Compact Commission (IMCC) Executive Director Greg Conrad participated in the 2012 Conference of Government Mining Attorneys (COGMA) in Knoxville, TN on September 17 – 19. Mr. Conrad presented a paper entitled “SMCRA Issues Update: Sustainable State Sovereignty” in which he provided an overview of the key issues facing the states under the Surface Mining Control and Reclamation Act (SMCRA). He discussed several pending rulemakings before the Office of Surface Mining (OSM) that will have a significant bearing on the implementation of state programs under SMCRA, including stream protection, mine placement of coal combustion residues, and cost recovery and permit fees. Mr. Conrad also addressed pending legislation that may impact both state and federal programs under SMCRA and the Clean Water Act, including funding for state regulatory and abandoned mine land (AML) programs. He also provided perspectives on federal oversight of state programs, the proposed OSM/Bureau of Land Management (BLM) consolidation and the political landscape following the national election on November 6.

IMCC Addresses Partnership Efforts at NAAMLPA Annual Conference

Noting that “it is incumbent upon state and tribal regulatory and program managers to choose the best and most promising approaches as we seek to balance the use of our abundant natural resources with the protection, preservation and restoration required under our state and federal laws,” Interstate Mining Compact Commission (IMCC) Executive Director Greg Conrad made the case for why partnerships are worth the effort in the larger regulatory world. In remarks entitled “Pursuing Productive Partnerships: Progress, Pitfalls and Political Prognosis” presented at the Annual Conference of the National Association of Abandoned Mine Land Programs in Des Moines, Iowa, Mr. Conrad presented an overview of the types of partnerships that have been engendered over the past 30 years under the Surface Mining Control and Reclamation Act (SMCRA). Noting the interactions between the states and tribes and several government agencies and watershed groups, he stated that “many of these working relationships continue to thrive today, resulting in notable on-the-ground results in terms of environmental restoration and water quality improvements.” He concluded his remarks with an articulation of the benefits associated with partnering and a listing of key elements that are necessary for future success based on input from abandoned mine land (AML) program managers who have been directly involved with partnering efforts over the years.

EPA Report Sets Framework for Rare Earth Production Impact Assessment

In September, the Environmental Protection Agency (EPA) released a report, “Rare Earth Elements: A Review of Production, Processing, Recycling, and Associated Environmental Issues” concerning the potential environmental and health impacts from rare earth elements (REES). The report is identified as a “technical information resource” for policymakers and a framework for EPA’s Office of Research & Development (ORD) to begin “to investigate potential environmental and health issues concerning the production, processing, recycling, recovery and life cycle of REES.”

The report found that the waste footprint and environmental impacts from mining to extract REE mineral ores are expected to be as significant as current metals/minerals mining practices. Primary pollutants of concern from REE mining and processing would be radioactive substances, metals, mine influenced waters, dust and related pollutants and organics, the report says. It also stated that the surrounding ore body of REES may contain sulfide minerals that could create acid mine drainage, but that REES are often found in ores with high levels of carbonate minerals, “which generally have high acid-neutralizing potential and therefore, can help buffer any effects of acidic mine drainage that might occur.” The report also stated that specific health effects that result from REE mining and processing are “not well understood.” Epidemiological studies have mostly been done on mixtures of REES, rather than individual elements, the report says.

House Natural Resources Committee Stream Rule Investigation Findings Released

The U.S. House of Representatives' Natural Resources Committee released a report in September detailing information uncovered in its more than 18-month ongoing investigation into the Department of the Interior's (DOI) rewrite of the 2008 Stream Buffer Zone rule. The report is titled, "President Obama's Covert and Unorthodox Efforts to Impose New Regulation on Coal Mining and Destroy American Jobs." It details the nature of the administration's rulemaking process; the economic impacts of the proposed regulation and attempts to under-report those impacts; and the administration's response to congressional oversight. The committee began investigating DOI regulations governing coal mining near streams in early 2011. Committee Chairman Doc Hastings (R-WA) issued two subpoenas to DOI for the production of documents: the first on April 5, 2012, and the second on May 11, 20-12. According to the committee, "not a single line item in either of the subpoena schedules has been complied with." The committee stated in the report that, to date, its "investigation has exposed gross mismanagement of the rulemaking process, potential political interference, and the widespread economic harm this regulation would cause. The Obama administration has already spent \$7.7 million taxpayer dollars conducting this rewrite and is poised to spend even more if it continues with the mismanaged rulemaking." The report concluded that the "committee will continue to analyze the information available, seek compliance with outstanding requests, and try to find the truth behind the administration's actions."

House Oversight Leaders Question EPA Over Bristol Bay Draft Report

In a letter dated September 24, 2012, Chairman Darrell Issa (R-CA) of the House Oversight and Government Reform Committee and panel member Jim Jordan (R-OH) requested documents and transcripts from Administrator Lisa Jackson related to the Environmental Protection Agency's (EPA) preliminary report on the impacts to the Bristol Bay watershed from the proposed Pebble Mine. The members set an Oct. 6 deadline for EPA to turn over documentation of its testing, citing doubts about "quality and accuracy." In the letter, Issa and Jordan said, "The unusually short amount of time in which EPA prepared the Assessment raises questions about whether EPA was more interested in reaching a predetermined conclusion than in conducting a scientifically valid review." EPA's preliminary findings were based on tests using a hypothetical mine, not on the actual mine. The Pebble Limited Partnership has yet to submit its proposal for mining copper, gold and molybdenum. Fueling critics' concerns are reports by peer reviewers, who criticized EPA for using dated and unrealistic assumptions to assess the impact of mining on the Alaskan watershed. "Many of the [review] panel members commented that EPA's assessment was generally too 'pessimistic' in tone," said the Issa letter. The review panel is expected to issue a final report on EPA's tests later this year.

Permit Reform Bill Introduced in the Senate

Senators Joe Manchin (D-WV) and Pat Toomey (R-PA) introduced the "Clean Water Cooperative Federalism Act" (S. 3558) in late September. The bill is identical to a House-passed measure co-sponsored by Representatives John Mica (R-FL) and Nick Rahall (D-WV). The bi-partisan bill addresses widespread complaints, also addressed in several recent federal court decisions, that the Environmental Protection Agency (EPA) has routinely overreached its regulatory authority. The measure would restore primary state authority for setting water quality standards and issuing permits. The bill prevents EPA from issuing revised or new water quality standards for any state, absent state agreement. It prevents EPA from superseding any state or interstate 401 certification that a discharge will comply with state standards. The bill also prevents EPA's administrator from withholding approval from, or limiting federal assistance for, a state program solely on the basis of the administrator's objections to a state standard or implementation of the standard, nor can the administrator veto a permit without the consent of that state. Under the bill, states will assume partial responsibility for implementing the Section 404 permitting program and limits are set for agency comments on permits proposed under the Section 404 program. "The fact is, federal courts agree with us: the EPA has overstepped its bounds," said Manchin. "This fight isn't over until Congress makes it crystal clear that the EPA needs to operate within its proper boundaries, and that's why we're introducing this legislation."

EPA Will Not Issue Coal Ash Rule This Year

The Environmental Protection Agency (EPA) says it will need longer than the six-month time period requested by environmentalist plaintiffs to evaluate and take comment on recent data and other concerns related to its broad review of coal ash disposal regulations. In an October 11 filing in *Appalachian Voices v. EPA* pending before the U.S. District Court for the District of Columbia, EPA stated the "arbitrary 6-month schedule" proposed by plaintiffs to complete a review and revise its nonhazardous waste regulations would result in a final rule that is "neither scientifically sound nor legally defensible." EPA explained that it could not provide a "well-informed judgement as to the specific amount of time required beyond six months to conclude final action" on a rule governing disposal of coal combustion residuals (CCR).

Coal ash recyclers and environmental groups sued EPA to force a hard deadline to determine how EPA will regulate ash. In June 2012, EPA proposed to regulate CCR as either hazardous waste subject to strict disposal controls under the Resource Conservation & Recovery Act (RCRA) subtitle C or the less stringent subtitle D solid waste rules. Coal ash recyclers, which contend a hazardous waste designation would decimate the reuse of ash, are seeking a three-month deadline for EPA to decide how it will proceed with coal ash rules.

Environmental groups asked the court in August to force EPA to undertake within six months a broad review of its regulations of CCR disposal, arguing that the agency violated a RCRA statutory provision requiring a three-year review and revision of certain regulations, including the Bevill exemption that precludes regulating CCRs as a hazardous waste, RCRA subtitle D regulations and the toxicity testing process for analyzing coal ash.

EPA rejected the environmental groups' claim that it must review and revise previous Bevill amendment regulatory determinations that called for non-hazardous regulations for CCR disposal. However, the agency concedes that it will complete a review of its non-hazardous waste regulations in relation to CCR disposal. EPA separately argued to the court that environmental groups' request to complete review and revision of the toxicity characteristic leaching procedure (TCLP) within six months is not possible due to the complexity of such an undertaking. EPA concedes that it is required to undertake such a review, stating that a minimum of one year is the amount of time necessary "to collect all of the available scientific information and to review all aspects of [the] regulations." The agency did not commit itself to a particular timeframe for revising the TCLP.

A bi-partisan group of senators led by Senator John Hoeven (R-ND) is sponsoring legislation, the "Coal Ash Recycling and Oversight Act of 2012" (S. 3512), which would direct the states to regulate CCR under subtitle D solid waste rules. The omnibus coal bill passed by the House in September included this provision.

MSHA Confirms Historically Low Fatality and Injury Rate in 2011

The Mine Safety and Health Administration's (MSHA) fatality data documents for 2011 confirmed historically low fatality and injury rates in U.S. mining. According to MSHA, 37 mining employees died on the job during 2011, with 21 fatalities in coal mining operations and 16 in metal-nonmetal operations, the second lowest number of mining fatalities since the agency began collecting data in 1910. The leading cause of fatalities was accidents involving machinery. The finalized fatal injury rate for all mining was 0.0114 per 200,000 hours worked, down 51% from a rate of 0.0234 in 2010. Preliminary data for the third quarter of 2012 showed a total of 11 fatal injuries occurred during that period, with six from coal mines and five from metal/nonmetal mines. Year to date, the agency shows 31 fatalities, with 16 from coal mines and 15 from metal/nonmetal mines.

