

the compact

IMCC 2017 Mid-Year Meeting Scheduled for Washington, DC

The Interstate Mining Compact Commission (IMCC) will hold its 2017 Mid-Year Meeting October 30-November 1 at the Fairmont Hotel in the "Capitol City" of Washington, DC.

The tentative itinerary includes plans for meetings on Monday, October 30 with federal agency officials from the Office of Surface Mining Control and Reclamation in the Department of the Interior and the Environmental Protection Agency. A luncheon and evening reception are also being planned for Monday.

A meeting with the Mine Safety and Health Administration is tentatively scheduled for the morning of Tuesday, November 1. In the afternoon, a joint meeting of the IMCC Mine Safety and Health and Noncoal Environmental Affairs Committees will take place, followed immediately by a joint meeting of the IMCC Resolutions and Finance and Administrative Committees.

The Coal Environmental Affairs and Abandoned Mine Lands Committees will meet jointly the morning of Wednesday, November 1, followed by IMCC's Mid-Year Business Meeting in the afternoon, which will conclude the meeting.

A registration form with hotel reservation information for the meeting is included with this newsletter. More meeting and agenda details will be emailed to interested parties as they become available.

For more information, contact: IMCC at 703.709.8654.

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**A Newsletter
Published by the
Interstate Mining
Compact Commission**

Upcoming Meetings:

IMCC 2017 Mid-Year Meeting
October 30 – November 1, 2017
The Fairmont
Washington, DC

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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IMCC Submits Statements on Administration's FY 2018 Proposed Budget

The Interstate Mining Compact Commission (IMCC) submitted two statements to the House Appropriations Committee regarding the Trump Administration's Fiscal Year (FY) 2018 budget proposal – one on Title V issues submitted on behalf of IMCC, and one on Title IV issues on behalf of the National Association of Abandoned Mine Land Programs.

Office of Surface Mining Reclamation and Enforcement (OSMRE) staffing would be set at 383 full time employees (FTEs), a reduction of 38 (~10%) from the previous year. State Title V grants would be funded at \$60.2 million, a reduction of \$8.3 million from the previous year. Additional information was submitted by IMCC regarding state regulatory grants under Title V, which further explains the importance of holding grant levels steady. This information was well received by the Committee.

The budget would eliminate the \$90 million abandoned mine lands (AML) pilot program (formally the "AML Economic Development Grants pilot program"), under which Pennsylvania, West Virginia, and Kentucky each received funding last year for special economic revitalization projects. As the reason for the

program's elimination, the proposal states: "Although beneficial, funding for this pilot program overlaps with existing mandatory AML grants."

The budget proposes to significantly curtail the Bureau of Land Management (BLM) hardrock AML program, a reduction of approximately \$11 million. The budget states "In the AML program, BLM will continue to focus on identifying and securing abandoned mine hazards, and warning the public about specific abandoned mine hazards; however, BLM will not undertake any new mine remediation work." IMCC will work with the Administration and with the Appropriations Committee to ensure that the critical importance of maintaining already limited funding for hardrock AML work is well understood, particularly the grant funding BLM provides to State hardrock AML programs.

IMCC Submits Comments on EPA's CERCLA 108(b) Proposed Rule

On July 11, the Interstate Mining Compact (IMCC) submitted comments concerning the U.S. Environmental Protection Agency's (EPA) proposed regulations titled, "Financial Responsibility Requirements under CERCLA [Comprehensive Environmental Response, Compensation, and Liability Act] 108(b) for Classes of Facilities in the Hardrock Mining Industry." In its comments, IMCC also endorsed comments submitted by several IMCC member and non-member states, the Western Governors' Association, the U.S. Forest Service, and the U.S. Small Business Administration Office of Advocacy.

IMCC's comments advocate for EPA to withdraw the proposed rule and make a "no action needed" (or "no rule") determination for the hardrock mining industry under CERCLA 108(b), stating that the proposed rule is duplicative and potentially preemptive of comprehensive state programs and federal requirements currently in place. IMCC states EPA has failed to demonstrate the degree and duration of risk warranting a national rule for hardrock mining financial assurance. EPA also failed to recognize the risk reduction already afforded by the state and federal land management agency programs that have developed over the thirty years since CERCLA was enacted, including financial assurance requirements. IMCC believes these programs already accomplish the goals set forth in EPA's proposed rule.

The comments also address federalism concerns and the inadequacy of the federalism process. EPA did not meaningfully engage the states as regulatory partners during the rulemaking process, resulting in an inadequate understanding of existing state programs. IMCC criticized the rule's overly prescriptive one-size-fits-all formulaic approach that does not account for site-specific factors that are essential considerations in calculating financial responsibility requirements at hardrock mine sites. The comments further address preemption concerns and other problems identified with the rulemaking process and EPA's approach in the proposed rule.

For a copy of IMCC's comments, contact: Beth Botsis at 703.709.8654 or E-mail: bbotsis@imcc.isa.us

Interior Secretary Zinke Signs Order Re. Greater Sage-Grouse

On June 7, 2017, Department of the Interior (DOI) Secretary Zinke signed Secretarial Order 3353 regarding "Greater Sage-Grouse Conservation and Cooperation with Western States." The purpose of the order is to enhance cooperation between DOI and several Western states including: Oregon, Washington, California, Nevada, Idaho, Utah, Montana, North Dakota, South Dakota, Wyoming, and Colorado in the management and conservation of the Greater Sage-Grouse and its habitat. It also supports a partnership "with clearly defined objectives and roles for federal and state entities responsible for Sage-Grouse management and conservation in order to sustain healthy populations of the species." Finally, the order establishes a Sage-Grouse Review Team to review the federal land management agencies' Sage-Grouse plan amendments and revisions completed on or before September 2015, along with other tasks. The team consists of land managers and other professionals from the Bureau of Land Management, U.S. Fish and Wildlife Service, and the U.S. Geological Survey. The team will closely coordinate with the U.S. Department of Agriculture, the U.S. Forest Service, and will engage with appropriate state agencies.

As part of the enhanced coordination effort with the states, the Order calls for memoranda of understanding and other agreements to be developed with states and other partners regarding implementation of the 2015 Sage-Grouse Plans; training for Bureau of Land Management (BLM) staff regarding the 2015 Sage-Grouse Plan implementation, including directions to consider state and local information, as appropriate; and memoranda of understanding and other agreements with states and other partners regarding integration of information on Sage-Grouse populations into federal land management decisions.

Congress Passes FY 2017 Omnibus Appropriations Package

The Federal Budget for Fiscal Year (FY) 2017 (H.R. 244, [The Consolidated Appropriations Act of 2017](#)) was signed into Law on Friday, May 5. This Omnibus Appropriations package funds the Federal Government through the end of FY 2017.

State regulatory grants under the Surface Mining Reclamation and Enforcement Act (SMCRA) Title V will be held steady at \$68.6 million, the same as the FY 2016 level.

H.R. 244 extends the abandoned mine lands (AML) pilot program initiated by the 2016 Omnibus by providing \$105 million in total funding, with eligibility expanded to 3 additional Appalachian states "with the largest unfunded needs for the reclamation of Priority 1 and Priority 2 sites as delineated in the Abandoned Mine Land Inventory System". Under the new formula for AML pilot program funding, \$25 million each will be provided to the 3 Appalachian states with the largest unfunded needs (West Virginia, Kentucky, Pennsylvania), and \$10 million each will be provided to the subsequent 3 Appalachian states (likely Ohio, Virginia, Alabama).

H.R. 244 includes a new title, the "Health Benefits for Miners Act of 2017", which includes a variety of provisions to shore up funding for Mine Workers Health and Benefit funds, some of which are funded through provisions of SMCRA Title IV. It is important to note that the increased funding for United Mine Workers Association (UMWA) pension funds provided in H.R. 244 will not have an impact on state AML grant funding. The Continuing Resolution passed by Congress in December 2016 amended SMCRA to permanently insulate grants to certified states and tribes from potential reductions as a result of UMWA appropriations.

House Committee Holds Hearing on Community Reclamation Partnerships Act

On May 24, the House Natural Resources Committee held a hearing on a new legislative approach to liability protections for coal abandoned mine land (AML) projects known as the "Community Reclamation Partnerships Act" (CRPA). The Interstate Mining Compact Commission (IMCC) worked closely with the Committee in developing this bill, which is based on a proposal developed by IMCC earlier this year with particular support from the Pennsylvania Department of Environmental Protection (PADEP). John Stefanko testified in support of the bill on behalf of Pennsylvania, IMCC, and National Association of Abandoned Mine Land Programs (NAAML). Mr. Stefanko described the circumstances surrounding this issue and need for this relief, particularly in the context of the successful state level Good Samaritan program in Pennsylvania.

The goal of H.R. 2937 is to achieve clarity and practicality in the State AML programs' obligations for water treatment under Title IV. In addition, it would allow states to extend their own solidified liability protection for these projects to eligible partners (i.e. "Good Samaritans") under an established process. With these modifications to SMCRA, the hope is that the state AML programs and their partners will be able to proceed with their work unimpeded by unreasonable, unhelpful, prohibitive aspects of liability and National Pollutant Discharge Elimination System (NPDES) requirements under the Clean Water Act.

House Committee Passes RECLAIM Act and CRPA

The House Natural Resources Committee held a mark-up hearing on June 27, at which two bills related to the Surface Mining Control and Reclamation Act (SMCRA) Abandoned Mine Lands (AML) Program were considered. The Committee passed both the "Revitalizing the Economies of Coal Country by Leveraging Investment and Investing More" (RECLAIM) Act, (H.R. 1731), and the "Community Reclamation Partnerships Act" (CRPA)(H.R. 2937).

The RECLAIM Act passed the Committee with little resistance, with only two members voting "no". Three amendments to H.R. 1731 were offered, each of which passed. The amendments offered by Ms. Cheney (R-WY) and Mr. Thompson (R-PA) were mainly intended to ensure the bill would operate as intended. They would, respectively, conserve payments to certified states, and penalize States who use RECLAIM funding on things other than reclamation and water treatment projects. The amendment offered by Rep. Beyer (D-VA) is the most notable. It responds to concerns from the minority members related to how the bill targets funding toward especially economically beneficial projects. Under the Beyer amendment, if in the state's opinion it is the best use of that funding, a state would be allowed to use RECLAIM funding at a site that does not meet RECLAIM's economic eligibility requirements. However, documentation demonstrating that economic priorities were not practicable for the site or that funding for that site was not otherwise available must be submitted in such instances.

IMCC will continue to work with the Committee to ensure that the bill is workable. A conference call was held on July 3 to brief the states and discuss next steps. Ultimate prospects for RECLAIM becoming Law remain unclear, but the bill has significant momentum in the House and a relatively high political profile.

The Community Reclamation Partnership Act (the coal Good Samaritan bill developed by IMCC) passed the Committee with unanimous consent. Majority and Minority members both expressed support for the discussion draft version of the bill featured in the May 24 hearing. Following some relatively minor modifications, the Committee developed a bill they could pass without debate. Energy and Mineral Resources Subcommittee Ranking Member Representative Lowenthal (D-CA) praised the bill's sponsor, Representative Lahood (R-IL) for the thoughtful new bi-partisan approach to this legislation.

House Committee Holds Hearing on the RECLAIM Act

On Wednesday, April 5, the Energy and Mineral Resources Subcommittee of the House Natural Resources Committee held a legislative hearing on H.R. 1731, the "Revitalizing the Economy of Coal Communities by Leveraging Local Activities and Investing More" (RECLAIM) Act. The RECLAIM Act is a modified version of the 2015 Obama Administration "AMLER" ("Abandoned Mine Land Economic Revitalization") proposal to accelerate \$1 billion from the Abandoned Mine Land (AML) Trust Fund for projects with enhanced economic benefits.

Bob Scott of Kentucky and Autumn Coleman of Montana served as State witnesses. The hearing provided an opportunity to provide the states' and tribes' input on the far-reaching potential impacts of H.R. 1731, as well as to open discussions with Congress on the imminent need for reauthorization of the AML fee, both of which were addresses by Mr. Scott and Ms. Coleman.

House Committee Hearing Examines SMCRA AML Program Funding Issues

The Energy and Mineral Resources Subcommittee of the House Natural Resources Committee held an oversight hearing on Title IV abandoned mine land (AML) funding issues on Wednesday, June 7. The hearing was intended to examine circumstances surrounding the AML Program, particularly with respect to funding issues. The hope is that this hearing set-up discussions around the future of the AML program building toward reauthorization of fee collection authority in 2021. Chairman Gossar's opening statement

noted that the AML Program has changed significantly since the last reauthorization in 2006, and as we look toward reauthorization, it is important to clearly understand how it is working.

Robert Rice of West Virginia testified on behalf of the Interstate Mining Compact Commission (IMCC), National Association of Abandoned Mine Land Programs (NAAML), and West Virginia. He presented a full state perspective on the workings and recent history of the AML Program, with a strong focus on the need for reauthorization. Mr. Todd Parfitt testified on behalf of the state of Wyoming, and focused on the operation of and current issues related to certified AML programs. He discussed the need to proceed with a balanced approach in the reauthorization effort. He also discussed the operation of Wyoming's AML Program, especially in the context of an Office of the Inspector General (OIG) report released regarding certified states.

Other witnesses included Acting Office of Surface Mining Reclamation and Enforcement (OSMRE) Director Glenda Owens, John Dawes of the Foundation for Pennsylvania Watersheds, and Hal Quinn, President of the National Mining Association (NMA). All witnesses except for NMA discussed the positive impacts of the AML program and expressed strong support for reauthorization.

Following the witness statements, much of the hearing focused on alleged ambiguity around how AML grant funds are spent. The discussion was based on conflicting accounts between the National Mining Association and other witnesses as to how much construction work is accomplished. Mr. Rice was able to clearly explain how inaccuracies in E-AMLIS misinform the picture of AML progress. Mr. Rice clearly established that AML grant funding is diligently tracked by OSMRE and the States, and that any supposed ambiguity relates only to how that information is recorded and reported in E-AMLIS. Acting OSMRE Director Owens later submitted a letter to the Committee correcting the record and clarifying conflicting reports regarding how much AML funding is spent on construction vs. non-construction activities.

EPA/Corps Proposes Rule to Rescind 2015 WOTUS Rule

On July 27, 2017, the Environmental Protection Agency (EPA), Department of Army, and Army Corps of Engineers (Corps) proposed a rule to rescind the Obama-era "Clean Water Rule" (CWR) that expanded federal jurisdiction over defined "waters of the United States" (WOTUS). The proposed rule would also re-codify the regulatory text that existed prior to finalization of the 2015 CWR, which is also currently in place as a result of the U.S. Court of Appeals for the Sixth Circuit's stay of the 2015 rule. Therefore, once finalized this action will not change current practice with respect to how the definition applies, and is intended to provide certainty in the interim, pending a second rulemaking in which the agencies will engage in a substantive re-evaluation of the definition of WOTUS. The actions are in response to an Executive Order signed by President Trump on February 28. The proposed rule would be implemented in accordance with Supreme Court decisions related to pending litigation, agency guidance and longstanding practice. The published proposed rule is available here:

<https://www.federalregister.gov/documents/2017/07/27/2017-13997/definition-of-waters-of-the-united-states-recodification-of-pre-existing-rules>

"We are taking significant action to return power to the states and provide regulatory certainty to our nation's farmers and businesses," said EPA Administrator Scott Pruitt. "This is the first step in the two-step process to redefine 'waters of the U.S.' and we are committed to moving through this re-evaluation to quickly provide regulatory certainty, in a way that is thoughtful, transparent and collaborative with other agencies and the public."

EPA and the Corp have also begun deliberations and outreach related to the second rulemaking revising the definition of WOTUS. The new approach will reflect the more restricted principles consistent with Justice Scalia's opinion in the "Rapanos" case.

As part of EPA's federalism outreach on the CWR, on May 8 Administrator Pruitt sent letters to state Governors requesting the states' input on the future revised rule. The letter addressed the importance of cooperative federalism as a guiding principle for the agencies, and of clearly understanding what will work

best for the states as EPA seeks to redefine “waters of the United States.” EPA and the Corps began a federalism consultation on April 19 with a meeting with several state and local government associations. IMCC has been invited to participate in future federalism outreaches regarding WOTUS.

House Holds Oversight Hearing Re. Hardrock Mining

The Energy and Mineral Resources Subcommittee of the House Natural Resources Committee held an oversight hearing on July 20 entitled “Seeking Innovative Solutions for the Future of Hardrock Mining.” Among the issues addressed at the hearing were the following:

- All infrastructure projects rely upon mining operations.
- Many of the needed raw materials are available in the United States; however, access is stymied by an arduous and uncertain regulatory scheme.
- Mining of mineral resources creates tangible value, introducing new money into the nation’s economic system. Harvesting domestic mineral resources contributes to local economies, creates jobs, and benefits our nation’s overall economic security.
- An inappropriately structured federal royalty rate on hardrock mining would further disincentivize mining investments in the US, and a royalty instituted without permitting reform would be devastating to the hardrock mining industry.
- Good Samaritan legislation for abandoned hardrock mine site reclamation can be a positive force to resolve the legacy issue of abandoned mine lands.

Witnesses included: Mr. James (Jim) Cress Counsel Byran Cave LLP Denver, Colorado; Mr. Murray Hitzman Associate Director for Energy and Minerals United States Geological Survey Reston, Virginia; Mr. Mitchell Krebs President and CEO Coeur Mining Chicago, Illinois; Ms. Lauren Pagel Policy Director Earthworks Washington, DC; and Mr. Bret Parke Deputy Director Arizona Department of Environmental Quality Phoenix, Arizona.

Bret Parke provided an overview of the impact of EPA’s proposed rule on financial assurance for hardrock mining industry and did an excellent job representing the interests of Arizona and the mining states. A copy of his testimony is available from IMCC.

During the robust Q and A that followed the witnesses’ oral presentations, a number of issues were pursued by the Subcommittee members in attendance. These included:

- The difference between gross and net royalties and which approach is simpler and easiest to implement. How do economic cycles impact how we structure royalties, especially from a global perspective.
 - The inhibitions and time constraints associated with obtaining a hardrock mining permit in the U.S.
 - What considerations should Congress consider in developing a Good Samaritan approach for hardrock mining that limits potential liability. Rep. Lamborn (R-CO) noted in this regard that he plans to re-introduce his Good Samaritan bill from past Congresses.
 - What are the cleanup costs associated with legacy hardrock mines and how do we best address hardrock AML.
 - What are the most important factors to protect and enhance our minerals industry vis-à-vis other international markets.
 - What environmental laws are mining companies required to comply with.
 - What are some of the obstacles to the cleanup of hardrock AML sites.
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IMCC Seeking New Executive Director

The Interstate Mining Compact Commission (IMCC) is seeking candidates for the position of Executive Director. IMCC is a multi-state governmental organization representing the natural resource and environmental protection interests of its 26 member states in Washington, DC. Information concerning IMCC can be found at www.imcc.isa.us.

For further information, or for a copy of the formal announcement and job description, contact: current IMCC Executive Director Greg Conrad at 703.709.8654 or E-mail: gconrad@imcc.isa.us.

- END -

Registration Form

Interstate Mining Compact Commission 2017 Mid-Year Meeting

The Fairmont, Washington D.C. – October 30 – November 1, 2017

2401 M Street, NW, Washington, DC 20037

Last Name:	First Name:
Title:	State/Org. & Dept.:
Street Address:	
City:	State:
Telephone:	Postal Code:
Email Address:	Attending Spouse/Companion's Name (if applicable):

Registration Fees:	\$325.00 <i>Delegate</i>	\$75.00 <i>Spouse/Companion</i>
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Important Note: *Please register with IMCC by September 29, 2017. Cancellations received after October 13, 2017 are non-refundable (We will have committed our final numbers to the hotel at this date). Early registrations are very helpful to our planning and budgeting and are greatly appreciated.*

HOTEL RESERVATION INFORMATION:

Hotel reservations can be made online at:

<https://aws.passkey.com/go/imcc2017midyear> or by calling the Reservations Department at **202.429.2400** or the Global Reservations Center at **1.800.441.1414**. You must identify yourself with the "Interstate Mining Compact Commission" to receive the group rate, which is the prevailing government per diem room rate that will be set no later than September 1, 2017 by the Federal General Services Administration (GSA) (the current per diem is \$231+ taxes/single or double). If there are more than two people sharing a room, each extra person will be charged an additional \$30 per night. There is no charge for children 18 and under. Departure date changes can be made up to and including the time of registration at no charge, however an early departure fee of \$115.50 will be charged if your plans change after you check-in at the hotel. To receive complimentary in-guestroom Wi-Fi, you must register for the Fairmont President's Club Membership prior to arrival at: <https://www.fairmont.com/fpc/>. There is no cost to enroll.

RESERVE EARLY: *due to this hotel's policies, we cannot guarantee that you will receive the agreed upon rate should the block fill up or you miss the reservation deadline.*

Hotel reservations must be made by Friday, September 29, 2017.

Hotel cancellations can be made up to 72 hours in advance for a full refund.

You will be invoiced for the registration fee (\$325), or you can send a check payable to the Interstate Mining Compact Commission (IMCC) to:

IMCC
445 Carlisle Drive, Suite A
Herndon, VA 20170

You do not have to send your registration payment with this form. Registration forms received without payment will automatically be invoiced.

We cannot accept credit card payments.

Questions? Contact IMCC at: 703/709-8654, fax: 703/709-8655, or email: bboatsis@imcc.isa.us.