

## IMCC's 2014 Annual Meeting to be Held in Reno, Nevada

The Interstate Mining Compact Commission's (IMCC) 2014 Annual Meeting will be held April 27 - 30, 2014 at the Peppermill Hotel in Reno, Nevada.

A welcoming reception will take place on the evening of Sunday, April 27. On Monday, April 28, Nevada Governor Brian Sandoval will present a welcoming address followed by the General Session. Topics and speakers for the session include: "Mining's Contributions to Nevada" by Tim Crowley, President, Nevada Mining Association; and "The Sage Grouse Endangered Species Listing and Nevada's Sage Grouse Ecosystem Group" by Allen Biaggi of A. Biaggi & Associates, LLC. A joint meeting of the Noncoal Environmental Affairs and Mine Safety and Health Committees will begin following the speakers. In the afternoon attendees will visit the historic mining town of Virginia City before touring the Comstock Mine. The day's events will conclude with a networking dinner at the Gold Hill Hotel featuring a talk on "Nevada's True Gold Mining History" by keynote speaker Ron James who served as the state historian for 30 years.

On the morning of Tuesday, April 29, the joint meeting of the Noncoal Environmental Affairs and Mine Safety and Health Committees will resume, as needed. It will be followed by a meeting between the states and representatives from the Federal Office of Surface Mining (OSM). The Coal Section of the Environmental Affairs Committee and the Abandoned Mine Land Committee will meet jointly immediately following the OSM/states meeting. The Annual Awards Banquet will take place in the evening where the IMCC 2014 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 30 and will be followed immediately by the Executive Commission Business Meeting which will conclude the Annual Meeting.

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

## IMCC Staff Realignment and Expansion

Gregory Conrad, Executive Director of the Interstate Mining Compact Commission (IMCC) recently announced two significant changes with respect to the IMCC staff, effective as of January 15, 2014. Former Director of Programs, Beth Botsis, was promoted to Deputy Executive Director. In addition to her previous responsibilities, as Mr. Conrad's second in command, Beth will also be taking on several legislative and regulatory issues for IMCC and will be responsible for running the organization whenever the executive director is out of the office. The appointment recognizes the great value that Beth has been to the organization over the past 27 years and provides her with new opportunities to serve the states.

Mr. Conrad also announced that IMCC has hired as a new full time employee, Ryan Ellis, who was IMCC's intern over the past six months. Ryan will serve as IMCC's Legislative and Regulatory Affairs Specialist and will be responsible for a range of these issues for the organization, including several new subject matter areas that IMCC plans to pursue. Ryan has a B.A. degree in political science from The Catholic University of America in Washington, DC and hopes to pursue post-graduate work in the future.

A Newsletter Published by  
Interstate Mining Compact  
Commission

### Upcoming Meetings:

#### IMCC 2014 Annual Meeting

April 27 - 30, 2014  
The Peppermill Hotel  
Reno, Nevada

#### IMCC 2014 Mid-Year Meeting

October 15 - 17, 2014  
The Westin Georgetown Hotel  
Washington, DC

For more information on IMCC Meetings as it becomes available, visit our website:

[www.imcc.isa.us](http://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.

### 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](mailto:gconrad@imcc.isa.us) or  
[bbotsis@imcc.isa.us](mailto:bbotsis@imcc.isa.us)

IMCC looks forward to working with and serving the interests of the member states as the Compact continues work on current initiatives and anticipates future, new endeavors.

For more information, contact: Gregory E. Conrad at 703.709.8654 or E-Mail: [gconrad@imcc.isa.us](mailto:gconrad@imcc.isa.us).

---

## **Winners of IMCC's 2014 National Mine Reclamation Awards Announced**

The Interstate Mining Compact Commission (IMCC) recently announced the recipients of its annual national reclamation awards. Named after the charter executive director of the Compact, the Kenes C. Bowling National Mine Reclamation Awards are presented each year to mining operations in the coal and noncoal categories that have demonstrated excellence in reclamation based on achievement in five categories: compliance; contemporaneous reclamation; drainage control; bond release (or reclamation success); and innovativeness.

The 2014 winner in the coal category is Luminant Mining Company, LLC for its Big Brown Mine B Area located in Freestone County, Texas. The 2014 winner in the noncoal category is Newmont Mining Corporation for its Twin Creeks Mine – Piñon Tailings Facility located in Humboldt County, Nevada. The 2014 winner of the Floyd G. Durham Special Recognition Award for a Small Operator is T&T Coal, Inc. for its Larue Mine located in Clay County, Kentucky.

Luminant Mining Company's Big Brown Mine B Area is a surface coal mining operation encompassing some 2,224 acres of the total 15,000 acres of the Big Brown Mine, which has an estimated total production of 175 million tons of lignite. Mining occurred in the B Area from 1996 - 2001, with backfilling and grading of the final pit completed in 2005. The successful post-mine land-use plan supports a diverse mix of vegetation types and includes fish and wildlife habitat, pastureland, developed water resources, and industrial/commercial use. Because of the potential size of the final impoundment, the possibilities for fishery-related uses seemed significant. Luminant partnered with the Texas Parks & Wildlife Department's Fisheries Division (TPWD) to develop a plan that would support a long-term research project that will attempt to determine if fast growth rate and large maximum size are heritable traits in largemouth bass, and if these traits can be amplified through a selective breeding program. The basic design plan considered key reclamation factors such as soil condition, topography, and slope stability, and incorporated features to enhance fisheries management, such as a bench shelf to provide more shallow water around the perimeter, an island, and irregular bottom contours. The approximately 112 surface acres comprising the B-89 impoundment would provide for fisheries research on a controlled private lake. To achieve post-mine contours consistent with the approximate original contours of the area, the company moved over 1.9 million cubic yards of earth material to reclaim the 1.57-mile-long final pit. A 6,100-foot section of Pin Oak Creek was bypassed with flow through the new impoundment. The plan had to ensure that the bypassed segment of the creek was not negatively impacted. Luminant was able to obtain the needed water rights for the B-89 impoundment based on a unique design that maintained normal flows through Pin Oak Creek and only diverted excess flows through the impoundment. Pin Oak Creek, which flowed through the entire length of the B Area, was mined through and carefully restored. Approved species of trees, shrubs, and grasses were planted. Minor drainage channels were developed as the land was leveled and returned to approximate pre-mine topography. Wetlands and ponds were blended in as companion resources throughout the Pin Oak Creek system. Reduction of the final pit highwall resulted in slopes that blend well with the surrounding topography and support the planned fish and wildlife habitat land use. Mining engineers incorporated a terrace and drop pipe system to transition surface runoff into the impoundment which helps to protect against erosion. After final grading, native hydrophytic vegetation was planted in isolated areas where shallow groundwater resulted in surface saturation requiring special revegetation methods. The entire area surrounding the impoundment now supports a diverse plant community which provides fish and wildlife habitat. In 2009, the impoundment reached full capacity and discharged through the designed spillway, flowing back into the restored Pin Oak Creek. Through the partnership of Luminant and TPWD, the B-89 impoundment has become a unique living laboratory for genetic research in the quest to isolate fast-growing strains of largemouth bass. DNA testing of stocked fish and their offspring has yielded valuable information related to the study objective.

IMCC will also be presenting an honorable mention to United Minerals Company, LLC/Peabody Midwest for its Somerville East Mine (Permit #S-354) located near Arthur, Indiana for its use of geomorphic reclamation techniques and reestablishment of wildlife and forest habitat. The cutting edge technology and high level of engineering, planning and management on this pre-mined site resulted in the elimination of a dangerous exposed highwall and its conversion to gently rolling fields with flat crop areas in upper elevations and wildlife and forest areas on steeper slopes and in drainage corridors. Water quality was improved on the permit area and within the downstream watershed. Eight wetlands over approximately 30 acres were constructed with varying water depths valuable to fish and wildlife populations. Through cooperation and planning with another mine operator, Hat Creek and its tributary were reconstructed and physical, chemical and biological characteristics were enhanced over pre-mining conditions. Forest and wildlife planting areas more than exceeded the 450 per acre bond release standard with survival rates over 95% after the second year of establishment. Exfoliating bark species were included to provide potential future summer habitat for the Indiana Bat in close proximity to water. Numerous species of waterfowl have been observed

using wetlands and impoundments, and a white tailed deer herd, quail, dove, woodcock, meadowlark, small mammals, and various other wildlife inhabit the permit area.

Newmont Mining Corporation's Twin Creeks Mine is part of the historic Getchell Mining District which has been active since the late 1800s. Approximately 9,000 acres have been disturbed by mining activities on this active mine site, and almost 1,800 of those acres have been reclaimed. As part of this project, Newmont stopped using an old oxide ore mill and its associated tailings facility at the end of 2001. The tailings facility covers a total area of approximately 150 acres and contains 8.99 million tons of tailings that range up to about 80 feet in depth. The process of closing the tailings facility began by reducing the process solution inventory. Effluent was transferred to an active heap leach facility as makeup water, which not only reduced the amount of process solution in the old tailings, but also reduced total water consumption at the mine. A design was engineered to breach the dam and construct a drop structure (spillway) to remove future meteoric water from the top of the facility. This design reduces the amount of water that infiltrates and eventually needs to be managed as process solution and further reduces the total amount of water used at the site. A five foot thick cover of alluvium, which exceeded the permit requirement of two feet and totaled more than 1 million cubic yards of material, was placed over the tailings surface. Twin Creeks alluvium is an excellent growth media with good chemistry, enough coarse particles to resist erosion, and enough fines to hold moisture well. Final tasks were completed in 2010 including: plugging and abandoning the decant pipe and several embankment piezometers; breaching the dam and constructing the drop structure, including a stilling basin at the toe of the embankment followed by a channel to convey meteoric water away from the facility; and finally regrading the embankment and completing final grading of the cover layer followed by completing all seedbed preparation. More than a dozen species of grasses, forbs, and shrubs are established on the closed and reclaimed facility. Piñon Tailings Facility has been transformed into a plateau that is frequented by the local pronghorn antelope. The breach, drop structure, and channel are functioning as designed to periodically remove meteoric water from the top of the facility. Effluent reporting to the lined underdrain pond has been reduced to less than 2.5 gpm. The Piñon Tailings Facility is the first tailings facility in Nevada to meet all closure and reclamation milestones. The reclamation work also received a Nevada Excellence in Mine Reclamation Award in 2012.

IMCC will also present an honorable mention to Hanson Material Service for its Fairmount Quarry in Vermilion County, Illinois. By partnering with Mr. John Miller, a local farmer with an innovative approach to farming operations, and Professor DoKyeoung Lee, a grass specialist from the University of Illinois (UI), Hanson Material returned pre-mined agricultural lands back into diversified agricultural use, which fits into the area's agribusiness model, successfully addressing local and regional needs while exceeding reclamation requirements. The company developed a special planting method using Mr. Miller's non-traditional farming equipment for planting native seeds chosen for their vigor and ability to grow in poor soil by professors at UI's Biomass Program. Ammonium nitrate from a wastewater treatment plant was used for fertilizer. Within one year, some areas performed so well they were released from bond (whereas, under normal circumstances, it would have taken multiple years, several plantings, and hundreds of man hours to achieve reclamation requirements). The mine soils management techniques are readily available to be applied at other locations. The company also planted previously reclaimed tracts which are now used to produce seed to sell. Hanson also used the bond release area to set up a state-of-the-art water station which allows the many agribusiness community members to purchase much-needed water without having to travel a long distance to obtain it.

The Floyd G. Durham Small Recognition Award for a Small Operator will be presented to T&T Coal, Inc. for its Larue Mine located in Clay County, Kentucky. Larue Mine is a coal surface mining operation averaging approximately 50,000 tons mined per year. Traditional surface mining methods were used to remove overburden with drills, dozers, loaders, and trucks. All organic material was removed and windrowed and topsoil was stockpiled and redistributed onto the backfilled areas during reclamation. Each pit was reclaimed as mining advanced, with no more than three working areas operating at a time, and no more than 1500 feet of open highwall, which was reclaimed within 60 days of being created. Drainage ditches and sediment structures were used for controlling water runoff and sediment control. The pre-mining land use was forest, with areas of previous mining and highwalls. T&T reclaimed the site to hayland and pasture, creating a more useful and valuable property for the landowners. Orchardgrass, Red Clover, Timothy, and Korean/Kobe Lespedeza species were planted. All grasses are growing well and phase one bond release has been obtained. The permit will be eligible for phase three bond release in 2017.

The awards will be presented at the Annual Awards Banquet in conjunction with IMCC's 2014 Annual Meeting in Reno, Nevada at the Peppermill Hotel on Tuesday, April 29.

For more information, contact: Beth A. Botsis at 703.709.8654 or E-Mail: [bbotsis@imcc.isa.us](mailto:bbotsis@imcc.isa.us).

---

## **Winners of IMCC's 2014 National Minerals Education Awards Announced**

The Interstate Mining Compact Commission (IMCC) recently announced the winners of its 2014 National Minerals Education Awards. Begun in 1999, the minerals education awards are presented annually in two categories: the mining awareness educator category and the public outreach category. The mining awareness educator award is presented to a teacher or school from one of the 26 member states of the IMCC. The public outreach award is presented to an industry, environmental, citizen or other group, or to a state government body, also from one of the 26 member states. The awards recognize the achievement of excellence in one or more of the following categories: provided educational outreach in an innovative manner that increases the level of understanding in the classroom and/or community about mining and its impact; promoted awareness of environmental stewardship while enhancing the understanding of issues associated with mining and natural resource development; (public outreach) fostered cooperation and partnerships with diverse groups to achieve understanding, enhanced the understanding of issues associated with mining and natural resource development, and/or fostered public education through mine tours, visitor centers, community awareness days, career days, personnel volunteerism in the schools, maintaining adopt-a-school programs or education partnerships; created unique educational materials or curriculum demonstrating the production and/or use of minerals and associated environmental protection; or any other innovative initiative deemed deserving by the awards committee.

The winner in the public outreach category for 2014 is the Nevada Mining Association's Education Committee located in Reno, Nevada, for its teacher workshop program. Since 1984, the Nevada Mining Association, through their Education Committee, has partnered with the Nevada Division of Minerals to offer earth science and mineral education workshops for teachers. Currently, two workshops are held each year, one in southern Nevada and the other in northern Nevada. The workshops are accredited as courses by the State of Nevada Department of Education, the University of Nevada - Las Vegas, and the University of Nevada - Reno, and are offered for both university credit and professional development (PDE) credit. The workshops are open to all teachers of grades K-12, school administrators and librarians. There is no charge for the workshops (except for the cost of university or PDE credit, if desired). From 1984 through 2013, a total of 5,712 teachers have attended these workshops. The workshops are designed so that participants will: receive and share information to increase their knowledge of the earth sciences; analyze information to develop lesson plans appropriate to their grade level; and understand the importance of mining and the minerals industry to modern society. Teachers receive hands-on instruction from knowledgeable professionals and a large variety of educational materials to use in their classrooms. The workshops include field trips to operating mines and points of geologic interest. All classroom activities and presentation materials are aligned to state and federal science education standards. The Nevada Mining Association's Education Committee is responsible for all aspects of the workshops, including planning, development of hands-on activities, session materials, classroom instruction, field trip coordination, and the collection and preparation of mineral and rock samples for teacher kits. The Committee consists of staff from the Nevada Mining Association and the Nevada Division of Minerals, as well as a large and passionate group of current and former educators and mining professionals.

The Committee's program has had impacts beyond the borders of the state as well. They have generously shared information and activities they developed over the years with others interested in minerals education, including IMCC's own Education Work Group. Some activities developed by the Committee are also used in other education programs throughout the country that have been nominated for the IMCC Public Outreach Award over the years, and by educators who have been past winners of the IMCC Educator Awareness Award. The Committee also provides free-use year-round access to mineral education information on the Nevada Mining Association's website.

The winner in the mining awareness educator category for 2014 is Robert Livingston, lead instructor for the Mining Technology program at Gillette College in Gillette, Wyoming. Mr. Livingston has played an integral part in developing a mature and high caliber Mining Technology program that is coordinated with hands-on technology demonstrations at Gillette College. He also serves as the key advisor to students in the program, and is a Faculty Senate Committee member.

In addition to teaching courses, Mr. Livingston has personally developed five mining and reclamation courses for Gillette College students in the Mining Technology degree program based on his extensive field experience in the mining sector, as well as collaborative input from mining and environmental staff from several Powder River Basin coal mining companies. He is able to provide real-life examples from the industry, increasing the practical value of each course both to the students and their future employers. In addition to incorporating field demonstrations at coal mines into his teaching, Mr. Livingston uses innovative and state-of-the-art hands-on tools to ensure that students have an applicable understanding of them. These tools include innovative software programs and a fluvial geomorphology table to demonstrate multiple erosional conditions and potential contamination situations that will need to be addressed. The table is designed with several settings and formats to allow instruction about erosion, various mining scenarios, water behavior, sedimentation, and stream formations, among other situations. It can be used to mimic diverse real-world scenarios that facilitate education sessions for students in a broad spectrum of learning phases – from elementary grades to college students – providing the basis for a wide variety of lessons via a hands-on

approach. Mr. Livingston also developed courses focused on environmental compliance and mine reclamation in which he emphasizes the importance and necessity of integrating environmental stewardship into the decision-making processes and implementation of mining and reclamation.

Through his teaching and use of innovative state-of-the-art tools, Mr. Livingston is advancing the caliber of the mining technology program's graduates and future mining professionals. The program also helps students develop leadership skills in business and communication. He has provided focused packages of classes in blocks and timing tailored to accommodate the schedules of working students striving to advance in the field. He has been instrumental in developing an Associate Degree program that provides a foundation for immediate application in the fields as well as a basis for more advanced degree studies for those who wish to pursue them. To that end, he has also cultivated relationships with other educational institutions and facilitated the advancement of many students wishing to pursue further education.

In addition to the award winners, two honorable mentions will be presented this year in the public outreach category to the Eastern Coal Council in Richlands, Virginia, and the Grove Stone and Sand Company/Hedrick Industries in Swannanoa, NC.

For more information, contact: Beth Botsis at 703.709.8654 or E-mail: [bbotsis@imcc.isa.us](mailto:bbotsis@imcc.isa.us).

---

### **IMCC's Executive Director Greg Conrad Addresses "Meet Alaska"**

On January 10, 2014, the Interstate Mining Compact Commission's (IMCC) Executive Director Greg Conrad had the opportunity to speak before the Alaska Support Industry Alliance "Meet Alaska" conference in Anchorage. There were more than 700 people in attendance including mining, oil, and gas industry leaders, and state government legislators and officials. Alaska became IMCC's newest full member state in April 2013, having previously been an associate member. IMCC welcomed this timely opportunity to introduce Alaska energy industry leaders and government officials to the work of the organization.

In his remarks titled "The Interstate Mining Compact Commission: Seeking to Secure State Sovereignty in the Minerals Arena," Mr. Conrad provided a short history of how the IMCC came to be, what constitutes an interstate compact, the purposes of interstate compacts, and the process a state must engage in to become a member. Prior to discussing several issues that IMCC is currently engaged in, he explained IMCC's organizational and committee structures, provided an overview of IMCC programs and publications, and spoke on other benefits of state membership in the Compact. He emphasized the importance and value of the (currently 26) member states from across the country coming together with a united voice to be heard and have their concerns understood in Washington, DC on mining issues and related environmental concerns, particularly in today's difficult legislative and regulatory climate.

Several of the legislative and regulatory issues which IMCC is actively engaged in were addressed, including:

- The federal budget and the implications for state mining regulatory and abandoned mine land program grant funding, and potential budgetary impacts on state primacy;
- The effects and potential effects of sequestration on state regulatory programs;
- Recent IMCC and Alaska participation in an oversight hearing before the House Subcommittee on Energy and Mineral Resources on October 10, 2013, at which Alaska Department of Natural Resources Deputy Commissioner Ed Fogels testified on behalf of IMCC and the state;
- Legislation in Congress addressing the development of critical and strategic minerals (H.R. 761 and S. 1600);
- Legislation that has been introduced in, and in some cases passed by, the House of Representatives that would address what has been referred to as the "regulatory train wreck" that inhibits mineral development and other business activity (H.R. 2122, H.R. 2642 and H.R. 2824). IMCC recently testified in support of H.R. 2824 which was passed by the House Natural Resources Committee and would re-direct OSM's efforts to promulgate a stream protection rule;
- Extension of the collection of fees from the coal industry under the Surface Mining Control and Reclamation Act to fund the abandoned mine land program that provides grants to states to reclaim mines that were abandoned prior to 1977;
- A legislative initiative in pursuit of protections from liability under the Clean Water Act for those who undertake to remediate abandoned coal and hardrock mines that have impaired water quality associated with them ("Good Samaritan" protections);
- Numerous Environmental Protection Agency (EPA) rulemakings and initiatives, including EPA's recent rulemaking efforts on Financial Assurance under Section 108b of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA);
- The Office of Surface Mining's (OSM) stream protection proposed rulemaking, the related environmental impact statement (EIS) scoping process, and the related development of a June 2009 EPA/Department of

Interior/Corps of Engineers Memorandum of Understanding regarding Surface Coal Mining in Appalachia which has potential for nationwide impacts;

- Mine placement of coal combustion residues, or coal ash;
- OSM cost recovery proposals to recoup costs associated with federal and state regulatory program implementation, particularly related to permitting, through increased fees to mine operators;
- Federal oversight of state regulatory programs;
- EPA's connectivity study addressing the interconnection of most waters in the entire U.S. which could serve as the basis for an expansive EPA rulemaking that would dramatically increase EPA's Clean Water Act jurisdiction.

Mr. Conrad also referred to several court cases in which IMCC recently filed *amicus curiae* briefs, including in the states of Montana, Oklahoma and North Dakota. "With respect to legal challenges, IMCC itself has been active on behalf of its member states, particularly with respect to preserving state primacy under national environmental laws," he said. "Given the antipathy of the present Administration with regard to state sovereignty and its preference for a larger federal government role, especially in the area of environmental protection, the states have been increasingly dependent on the courts to preserve state primacy."

Further in regard to state primacy and the federal and state relationship, Mr. Conrad identified some areas of federal overreach which are of concern to the IMCC member states, particularly EPA's intrusions into areas of state authority. He emphasized the need for state and federal partnerships in the area of mining regulation and said the states stand ready to engage in such partnerships. He also called for federal regulators to respect the experience and expertise of state agencies, "who are often more familiar than federal regulators with the particular circumstances and needs in their communities." He indicated that a stronger state and federal partnership benefits the whole nation, resulting in increased federal efficiency that reduces both government expense and delays that affect projects. "Environmental protection can continue to be strengthened by federal and state experts complementing rather than duplicating each other's work."

"We believe it is critical that state and federal governments, as partners under SMCRA, learn how to work smarter and find ways of supporting one another instead of undermining our working relationship." Mr. Conrad said. He concluded by stating, "We look forward to persevering in the years to come to strongly advocate for state primacy and states rights in the minerals arena."

Mr. Conrad's remarks and the accompanying power point presentation are available on the home page of IMCC's website at [www.imcc.isa.us](http://www.imcc.isa.us). For more information, contact: Greg Conrad at 703.709.8654 or E-mail: [gconrad@imcc.isa.us](mailto:gconrad@imcc.isa.us).

---

### **IMCC Executive Director Presents Bonding Paper at EMLF Winter Workshop**

The Interstate Mining Compact Commission (IMCC) Executive Director Gregory E. Conrad presented a paper at The Energy and Mineral Law Foundation's (EMLF) Winter Workshop on Energy Law on February 9 - 11, 2014. The paper provided an overall assessment of the current and evolving issues in the bonding arena from the state regulators' perspective. In crafting the paper and the presentation, IMCC staff consulted with many of the member states in order to gain a picture of contemporary bonding challenges and the measures IMCC states are developing to handle those challenges. The paper discussed such topics as: the use of self-bonding and corporate guarantees; the use of alternative bonding systems, i.e. bond pools, the development and use of trust funds for the long-term treatment of water quality at reclaimed mines, the current status of the expected CERCLA 108(b) rulemaking, the desire of landowners for continuing financial assurance at post-bond release, as well as other specific issues. The full paper as well as the accompanying power point presentation are available on IMCC's website on the "IMCC Meeting and Workshops Presentations" page at this link: <http://www.imcc.isa.us/Presentations.htm>.

For more information, contact: Greg Conrad at 703.709.8654 or E-mail: [gconrad@imcc.isa.us](mailto:gconrad@imcc.isa.us).

---

### **IMCC Letter to Congress Supporting the Plain Regulations Act of 2013**

The Interstate Mining Compact Commission (IMCC) submitted a letter to Congress in January in support of S. 809 and H.R. 1557, the Plain Regulations Act of 2013. The stated purpose of the bill is to "Ensure clarity of regulations to improve the effectiveness of federal regulatory programs while decreasing burdens on the regulated public." The bill adds "regulations" to the list of documents required to be written in "plain language" by the previous Plain Writing Act of 2010 (5 U.S.C. 301 note). The Act defines plain languages as "language appropriate to the subject or field and intended audience." (Sec. 3(3)) The IMCC letter of support echoes the concerns of the bill and highlights its potential benefits from the perspective of the state regulator. IMCC's arguments center around the crucial role of our state regulators in collaboration with federal agencies in the design of regulatory frameworks, as well as

implementation of those frameworks on the ground. "Hopefully the use of plain language will result in clearer understanding of the contents of new regulations which will in turn result in: providing both state and federal regulators clearer understanding of their respective responsibilities, reducing time spent in the developmental stages and time spent alleviating confusion and revising regulations, improving trust and coordination among the state and federal regulators, allowing state regulators to make more accurate projections and recommendations, and ultimately, production of regulations that are better tailored to their goals," IMCC stated.

For more information or a copy of IMCC's letter, contact: Ryan Ellis at 703.709.8654 or E-mail: [rellis@imcc.isa.us](mailto:rellis@imcc.isa.us).

---

### **IMCC Executive Director Testifies Re. Critical Minerals Policy Act of 2013**

On January 28, 2014, the Senate Committee on Energy and Natural Resources held a legislative hearing on the Critical Minerals Policy Act of 2013. Gregory E. Conrad, Interstate Mining Compact Commission (IMCC) Executive Director, testified in support of the bill on behalf of IMCC and the Alaska Department of Natural Resources (AKDNR), filling in for deputy commissioner Bob Swenson who was unable to escape Juneau due to weather. IMCC filed a separate statement in support of the bill in addition to the jointly submitted written testimony regarding the development and operation of Alaska's Strategic and Critical Minerals Initiative.

S. 1600 represents a comprehensive set of measures designed to reinvigorate domestic supply chains for "critical minerals." The bill directs the Secretary of the Interior to maintain a list of 20 minerals (excluding fuel minerals) designated as "critical" due to a variety of factors like importance in use for energy, defense, and consumer electronics technologies in combination with potential supply restrictions, especially those associated with foreign political risks like protectionism (hoarding of these resources by China is a particular concern). The full list is yet to be determined but Title II of the bill indicates interest in certain minerals including: cobalt, lead, lithium, thorium, and rare earth elements. Rare earth elements are defined as those elements in the periodic table from lanthanum to lutetium, and also including elements such as yttrium and scandium.

The AKDNR's testimony outlines Alaska's Strategic and Critical Minerals Initiative which began in 2011. The initiative has pursued a very similar set of approaches to S. 1600, including a comprehensive assessment of the state's critical mineral potential, providing incentives and support for development of those minerals, improving efficiency of the permitting process, deepening cooperation with federal agencies, and attracting new investment for the state's critical mineral resources. The description of the successes and difficulties for the state's data gathering efforts seemed to be of particular interest to the Committee as they are seeking to engage in a nation-wide assessment of the U.S. potential for domestic production. The testimony describes the immense amount of effort that this type of data-gathering has required and advises the Committee that a meaningful nation-wide mineral assessment will require unprecedentedly extensive cooperation among various agencies as well as significant funding.

IMCC's statement focused on provisions of the bill regarding the reduction of duplicative permitting processes and the encouragement of coordination among stakeholders, two of the major strategies employed by S. 1600. The bill directs the relevant federal agencies to avoid duplication of effort, prevent unnecessary paperwork, and minimize delays in administration of relevant laws and issuance of permits (Sec. 102(a)(9)). It also encourages early collaboration among agencies and affected stakeholders to address their interests and minimize delays (Sec. 105(3)(c)). IMCC stated its strong support for these provisions, citing the member states' experience in coordinating with federal agencies and expediting permitting processes as an imperative element in allowing the mineral sector to flourish while maintaining environmental responsibility.

Mr. Jim Sims, Vice President of Corporate Communications at Molycorp, a rare earth minerals mining company, also testified regarding the difficulties arising from overly burdensome permitting requirements. The company recently resumed operations after a decade long shutdown which, according to Mr. Sims, was partially a result of the immense effort required to track and comply with permitting requirements. The company is one of the few to produce rare earth elements domestically, an occurrence S. 1600 means to make more prevalent. Molycorp's testimony also described other practical barriers to development of domestic sources of critical minerals, one of which was the near complete lack of processing facilities for rare earths on U.S. soil.

The hearing itself was very cordial as a result of the bill stemming from a bipartisan effort. The Committee members present and those testifying expressed no marked opposition or serious concerns about the bill. The Department of Energy (DOE), however, would not make a formal comment in support of the bill pending further study (much to the dismay of Senator Murkowski (R-AK), the bill's sponsor). All other testimony was supportive of the general purposes of the bill and the set of strategies it employs. In addition to IMCC, Molycorp, and the DOE, the Committee heard testimony from the U.S. Geological Survey, Major General (Ret.) Robert H. Latiff, Ph.D. (providing a defense perspective), the Semiconductor Industry Association, the Alliance of Automobile Manufacturers, and the Colorado School of Mines. Their respective testimonies can be found online here:

<http://www.energy.senate.gov/public/index.cfm/hearings-and-business-meetings?ID=e42aa3f2-dc0a-4395-8377-0665c856ff5a>. You can also view an archived webcast of the hearing at the Committee's website.

For a copy of the Alaska testimony or IMCC's statement, or for more information, contact: Greg Conrad at 703.709.8654 or E-mail: [gconrad@imcc.isa.us](mailto:gconrad@imcc.isa.us).

---

## **Congress Approves Omnibus Appropriations Bill for FY 2014**

Congress approved a \$1.012 trillion comprehensive spending bill for Fiscal Year (FY) 2014 in January, known as the "Omnibus Appropriations Bill". The Omnibus Bill rolls up all of the federal agency appropriation bills into a single legislative vehicle. The final amounts for each agency are based on the targets set in the budget resolution adopted by Congress in December 2013 prior to the Christmas recess.

The Omnibus Bill contains two major victories for the Interstate Mining Compact Commission (IMCC) and the member states who worked diligently to secure these two priority funding measures. First, the bill provides \$68.6 million for state regulatory grants under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) – a rejection of the proposed \$11 million cut by the Obama Administration. In the report language accompanying the Omnibus Bill it is stated, "The Committees find the budget proposal to reduce regulatory grants would undermine the State-based regulatory system. It is imperative that States continue to operate protective regulatory programs as delegation of authority to the States is the cornerstone of the surface mining regulatory program. Further, the agreement does not provide funds to expand and enhance Federal oversight activities of State programs". The Omnibus also provides \$8.4 million for state assistance/training grants under the Mine Safety and Health Administration (MSHA) which reflects a rejection of the proposed elimination of this funding by the Administration. These line item appropriations for funding cannot be adjusted through reallocation or reprogramming by the Office of Surface Mining (OSM) or MSHA.

Also contained in the Omnibus Bill is a rider which prohibits the U.S. Army Corps of Engineers from changing the definition of fill material in its regulations pertaining to rock, sand, slurry, mining overburden and other materials that could raise the bottom elevation or fill waters of the U.S. It also requires the Corps to report to Congress on the number of mining permits being issued. Another rider requires the Environmental Protection Agency (EPA) to accelerate the review and comment period for Section 404 permits issued by the Corps, and to report monthly to Congress on the number of Section 404 permits under EPA's review. Finally, another rider requires EPA to undertake additional research concerning financial assurance requirements for the hardrock mining industry pursuant to Section 108(b) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) before proceeding with any rulemaking on the matter. Language in the rider also requires EPA to "avoid requiring financial assurances that are duplicative of those already required by other Federal agencies."

The distribution of mandatory Abandoned Mine Land (AML) payments from the AML Trust Fund to the states is still to be resolved. This distribution has traditionally occurred in mid-December, although in 2013 it was delayed due to the sequester. It has not been determined whether the remaining elements of the sequester apply to mandatory payments such as those under SMCRA for the AML program. Although the budget resolution eliminated sequestration cuts for discretionary spending in FY 2014 and 2015, it also requires the President to sequester the same percentage of mandatory budgetary resources in 2022 and 2023 as will be sequestered in 2021 under current law, which is an indication that some aspects of the sequester are still in place, particularly regarding mandatory funding.

For more information, contact: Greg Conrad at 703.709.8654 or E-mail: [gconrad@imcc.isa.us](mailto:gconrad@imcc.isa.us) or [bbotsis@imcc.isa.us](mailto:bbotsis@imcc.isa.us).

---

## **Court Strikes Down Stream Buffer Zone Rule**

On February 20, 2014, the U.S. District Court for the District of Columbia struck down the 2008 Stream Buffer Zone Rule promulgated under the Bush Administration. The court said the rule violated the Endangered Species Act. Senior Judge Barbara Rothstein struck down the rule because the Office of Surface Mining (OSM) had failed to consult with the Fish and Wildlife Service (FWS) before issuing the new standards, which replaced a 1983 rule establishing a buffer zone around streams to keep coal mining spoil from entering waterways. Rothstein deemed OSM's reliance on a 1996 biological opinion by FWS when deciding not to consult the agency directly as "arbitrary and capricious." She concurred with environmental groups who claimed the 1996 biological opinion did not include new information about the effects of surface mining.

"Faced with clear evidence that habitats within stream buffer zones are home to threatened and endangered species and that mining operations affect the environment, water quality and all living biota, OSM's determination that the revisions to the stream protection rule encompassed by the 2008 Rule would have no effect on threatened and endangered species or critical habitat was not a rational conclusion," Rothstein wrote in her opinion.

Industry had argued that the court should send the rule to OSM for corrections, rather than scrapping it. Justice Department attorneys for the Administration agreed with striking down the rule but did not think the judge should touch the biological opinion. A spokesman for the National Mining Association, which intervened in the case, did not say whether the industry will appeal at this point.

Action now has turned to the Hill where a bill is expected to reach the floor of the House of Representatives addressing this matter. H.R. 2824, which was approved by the House Natural Resources Committee last year, would block the Office of Surface Mining (OSM) from promulgating its forthcoming Stream Protection Rule. The bill would require the agency and states to implement the 2008 Stream Buffer Zone Rule. House Natural Resources Chairman Doc Hastings (R-WA) plans to push for a manager's amendment to the legislation including language stating that the 2008 rule does comply with the Endangered Species Act, contrary to Judge Rothstein's decision. The amendment cites discussions between the directors of the U.S. Fish and Wildlife Service (USFWS) and OSM in 2006, and OSM's review and consideration of comments the USFWS submitted during the 2007 rulemaking process. Additionally, Hastings intends to add a section requiring OSM to carry out "all required consultation on the benefits and other impacts of the implementation of the rule to any threatened species or endangered species, with the participation of the [USFWS] and the United States Geological Survey."

For more information, contact: Greg Conrad at 703.709.8654 or E-mail: [gconrad@imcc.isa.us](mailto:gconrad@imcc.isa.us).

---

### **IMCC Joins Minerals Science and Information Coalition**

The Interstate Mining Compact Commission (IMCC) recently joined a broad-based group of organizations with minerals and materials interests to form the new Minerals Science and Information Coalition (MSIC). The American Geosciences Institute (AGI) heads up the new coalition together with the Society for Mining, Metallurgy and Exploration (SMME). MSIC's purposes include raising awareness and garnering support for minerals science and information functions in the federal government through federal minerals research, information gathering, analysis, and forecasting. Coalition members include geoscience, physical, chemical and material science professionals; professional societies, trade associations, and groups representing the extractive industries; state geologists; other state government organizations; processors, manufacturers, and other minerals and materials supply-chain users; and other consumers of federal minerals science and information.

For more information, contact: Beth Botsis at 703.709.8654 or E-mail: [bbotsis@imcc.isa.us](mailto:bbotsis@imcc.isa.us).

---

### **MSHA and OSM Proposed Budgets for FY 2015**

President Obama released his proposed budget for Fiscal Year (FY) 2015 on March 4, 2014. With regard to the Office of Surface Mining (OSM), the budget proposes to cut Title V regulatory grants to primacy states by \$13.4 million below FY 2014 levels – an additional \$2 million cut from recent years. As in past budgets, the states are encouraged to recover more of their regulatory costs from the coal industry for services provided, including reviewing, administering and enforcing permits. At the same time, OSM proposed to increase its Title V budget by \$4 million and add twelve full time employees (FTEs) to "improve implementation of existing laws and support state and tribal programs." OSM's budget also includes approximately \$5 million for applied science projects, deployment of GeoMine, electronic permitting, cost recovery data application, and monitoring of abandoned mine land (AML) projects and financial information.

OSM's budget includes legislative proposals to eliminate payments to certified states and tribes under the AML Program (Title IV). The agency also proposed an increase in the AML fee paid by industry into the Trust Fund to 1977 levels (35 cents per ton for surface mined coal and 15 cents for underground mined coal). Additionally, OSM proposed the establishment of a hardrock AML fee and program to be administered jointly by OSM and the Bureau of Land Management (BLM).

A legislative proposal to institute a leasing program under the Mineral Leasing Act of 1920 for certain hardrock minerals with annual rental payments and a royalty of not less than five percent of gross proceeds is also included in the BLM budget.

The Mine Safety and Health Administration's (MSHA) budget contains a proposal to completely eliminate funding (\$8.4 million) for state grants under the Mine Safety and Health Act. It proposes to increase MSHA's budget by \$2.8 million and eighteen FTEs to "expand training delivery and oversight."

For more information, contact: Greg Conrad at 703.709.8654 or E-mail: [gconrad@imcc.isa.us](mailto:gconrad@imcc.isa.us).

---

## **New EPA Coal Ash Regulation Deadline**

The Environmental Protection Agency (EPA) will propose a final coal ash disposal rule by December 19, 2014, according to a consent decree approved by the U.S. District Court for the District of Columbia recently regarding *Appalachian Voices v. U.S. EPA*. The consent decree requires EPA to “sign for publication in the *Federal Register* a notice taking final action regarding EPA’s proposed revision of RCRA subtitle D regulations pertaining to coal combustion residuals,” though it does not specify the regulatory pathway EPA is to follow. Several interveners, including industry and environmental groups, consented to the December deadline. In 2010 EPA issued a proposal for the subtitle D regulatory framework while simultaneously keeping open the potential for regulating coal ash combustion waste for the first time as a hazardous substance under subtitle C. No action other than several data requests by the agency had taken place since then.

House Energy and Commerce Committee leaders responded to the consent decree by calling on the Senate to take up the bipartisan H.R. 2218, the “Coal Residuals Reuse and Management Act” (H.R. 2218), which passed the House with bipartisan support by a vote of 265 to 155 on July 25, 2013. A broad coalition of American workers, job creators, and other stakeholders strongly support the legislation. The bill would create a state-based regulatory program with minimum federal disposal standards as an alternative to EPA’s proposal to regulate coal ash as a hazardous waste and it would preserve beneficial use of coal ash.

“The regulatory uncertainty surrounding this rule continues to chill investment and job creation. This consent decree does not solve this long-standing problem, and EPA may still choose to regulate coal ash as a hazardous waste, putting the beneficial reuse industry and more jobs at risk. The House has offered a bipartisan solution that ensures an enforceable permit program for the management and disposal of coal ash that benefits both the environment and our economy. We can close this regulatory gap today if only the Senate were to take up our bill,” said House Energy and Commerce Committee Chairman Fred Upton (R-MI) and Environment and the Economy Subcommittee Chairman John Shimkus (R-IL).

“Over the past four years, we have conducted over 100 meetings and discussions and worked with the EPA, labor unions, businesses, coal ash recyclers, utilities and state environmental and safety officials to craft legislation,” said Rep. David McKinley (R-WV), author of H.R. 2218. “A legislative solution will give more certainty for the hundreds of thousands of Americans whose jobs depend on it. This recent action by the court makes it even more imperative for the Senate to pass this bill.”

---

## **Senators Ask President to Halt Greenhouse Gas Rules**

Twenty-two senators led by Roy Blunt (R-MO) and Joe Manchin (D-WV) sent a letter to President Obama on January 30 urging him not to issue greenhouse gas (GHG) regulations or policies that would raise energy costs to American consumers and businesses. The bi-partisan letter asks the President to “avoid any actions which damage ratepayers throughout this country, especially when those actions result in no measurable benefits and no measurable effects on the very thing that the actions are designed to address.” The senators cited the value of low-cost electricity to U.S. manufacturing competitiveness and employment, as well as to modest income households.

The senators referred to Germany and other EU countries which have relied too heavily on renewable fuels to replace fossil energy for power generation. Currently Germany has the highest electricity costs in the continent which are more than twice the highest rates paid in the U.S. They warned the President that unless his GHG action plan is halted for power plants, the U.S. may suffer a similar fate.

The country is “on the verge of a manufacturing renaissance due to inexpensive and reliable electricity,” said the senators. “Low price natural gas is part of this, as is coal, which at 40 percent of our electricity mix is still the main source of base load power for our nation.”

---

## **EPA Moves to Restrict Bristol Bay Mine in Alaska**

On February 28, the U.S. Environmental Protection Agency (EPA) announced it is initiating a process under the Clean Water Act (CWA) to examine whether to block a proposed gold and copper mine in Alaska. Bristol Bay is home to a fishery that supports nearly half of the world’s sockeye salmon. The EPA is invoking its authority under the CWA to determine whether it should permanently bar the U.S. Army Corps of Engineers from issuing a discharge permit for the mine project which would require dumping waste into the surrounding Bristol Bay watershed. If the project were to go forward, the mine is predicted to create 1,000 jobs and generate up to \$180 million in state revenue. Some

native Alaskan tribes, commercial fishing operations and environmentalists who have been opposed to the project consider this announcement by EPA a major win.

"Extensive scientific study has given us ample reason to believe that the Pebble Mine would likely have significant and irreversible negative impacts on the Bristol Bay watershed and its abundant salmon fisheries," EPA Administrator Gina McCarthy said in a statement. "It's why EPA is taking this step forward in our effort to ensure protection for the world's most productive salmon fishery from the risks it faces from what could be one of the largest open pit mines on earth. This process is not something the Agency does very often, but Bristol Bay is an extraordinary and unique resource."

The action follows the January 24 release of EPA's "Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska," a study that EPA claims documents the significant ecological resources of the region and the potentially destructive impacts to salmon and other fish from potential large-scale copper mining of the Pebble Deposit. The assessment asserts that the proposed Pebble Mine would likely cause irreversible destruction of streams that support salmon and other important fish species, as well as extensive areas of wetlands, ponds, and lakes.

In testimony at an October, 2013 Congressional oversight hearing regarding the EPA in Washington, DC, Ed Fogels, Deputy Commissioner for the Alaska Department of Natural Resources, called EPA's assessment process "flawed" and suggested it could lead to the preemption of a thorough environmental analysis of the project under the National Environmental Policy Act (NEPA) once the project is actually proposed. He described EPA's study as having no legal basis and being based entirely on hypothetical mining activity compounded by theoretical projects that may never develop. "It ignores best practices, mitigation efforts and permit stipulations that would have to be met before the project would be permitted," Mr. Fogels said in his testimony.

Tom Collier, chief executive of the Pebble Limited Partnership, issued a statement calling the move "a major overreach onto an asset of the state of Alaska. The steps taken by EPA to date have gone well outside of its normal practice, have been biased throughout, and have been unduly influenced by environmental advocacy organizations," he said. Alaska Senator Lisa Murkowski accused the EPA of issuing a "preemptive veto" that could set a dangerous precedent.

The announcement does not mean the Obama administration has made a final decision, but it will delay construction for months and make it harder for the project to move ahead. The EPA sent a letter to the Army Corps, the state of Alaska, and the mine's sponsor to ask why they believe the operation would not damage the pristine watershed. The recipients will have 15 days to respond, though the agency can extend that deadline. The Administrator for EPA's Region 10 will then issue a "proposed determination" that will lay out whether the company can discharge waste into the area, and if so, where and how much. At that time a public comment period will be opened on the proposal. The regional administrator will send a recommendation to EPA headquarters once the comment period has ended.

---

## **Republicans on House Committee Claim OSM Misled Panel on Impact of Rule**

House Natural Resource Committee Republicans recently criticized Office of Surface Mining (OSM) Director Joe Pizarchik, claiming that he misled the panel in previous testimony concerning potential job losses expected as a result of OSM's revised stream buffer zone rule which is expected to be published in December, 2014. The criticisms came as a result of an Interior Department Inspector General's report which found that OSM officials asked consultants who had prepared the environmental impact statement to change their assumptions to minimize anticipated job losses from the original buffer zone rule proposal. Assistant Inspector General Robert Knox was called before the panel to testify. He said OSM may have changed the ground rules during the regulatory process but his report found "no evidence this was done for political reasons." Republican Chairman Doug Lamborn (CO) wasn't convinced. "This is a case of killing the messenger because he carries bad news," he said. The bad news in this case was the consultant's estimation that OSM's preferred alternative would have caused the loss of 7,000 jobs.

---

## **WV Elk River Chemical Spill**

In early January, a ruptured storage tank at Freedom Industries, Inc.'s chemical distribution facility leaked 7,500 gallons of a coal-cleaning chemical into West Virginia's Elk River making drinking water unsafe for 300,000 people in nine counties of the state. Initially, some local and national environmental groups blamed the accident on lax regulatory oversight of the coal industry by the state. However, the chemical leak was at a chemical facility, not a coal mine or a coal prep plant. Senate Environment and Public Works Chairwoman Barbara Boxer (D-CA), along with other congressional Democrats, called for oversight investigations into the accident and current regulatory gaps. Two related hearings before her panel were announced, one in February and another to be scheduled later in the spring.

---

## **EPA and U.S. Attorneys Investigating Duke Energy Coal Ash Spill**

The U.S. attorney's office in Raleigh, North Carolina recently issued subpoenas seeking records from Duke Energy and the North Carolina Department of Environment and Natural Resources (DENR) as part of their investigation into the Duke Energy coal ash spill which occurred on February 2 of this year. The coal ash spilled out of a holding pond and into the Dan River near the Virginia border and left the waterway polluted with 39,000 tons of toxic sludge in the third-largest coal ash spill in U.S. history. The subpoenas seek emails, memos and reports related to the spill and the state's oversight of the company's 30 other coal ash dumps. The subpoena states, "An official criminal investigation of a suspected felony is being conducted by an agency of the United States [the Environmental Protection Agency (EPA)] and a federal grand jury," though the specific crime and target for potential prosecution are not identified in the document. U.S. Attorney Thomas Walker is leading the investigation. DENR spokesman Drew Elliot said the state will fully cooperate with the federal investigation. The agency's chief lawyer will testify next month before a grand jury.

---

## **OSM Solicits Nominations for Coal Mine Reclamation, ECHO, and AML Awards**

The Office of Surface Mining (OSM) is seeking nominations for awards that recognize outstanding efforts to reclaim active and abandoned coal mines. OSM offers two programs – the Excellence in Surface Coal Mining Reclamation Awards and Abandoned Mine Land Reclamation Awards. The awards honor the nation's highest-quality reclamation projects. Previous winners not only exceeded the requirements of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), but often devised or refined innovative techniques to achieve superior results in returning a site to productive use after completion of mining.

OSM is also seeking nominations for the bureau's ECHO Award, to recognize an individual who has made a significant or unique contribution to the implementation of the Surface Mining Control and Reclamation Act (SMCRA). First presented as part of OSM's observance of the 35<sup>th</sup> anniversary of SMCRA, the ECHO is given to a person who has embraced the law's fundamental purpose to protect people and the environment and to restore the land and water.

OSM will present the AML Reclamation Awards at the 2014 Annual Conference of the National Association of Abandoned Mine Land Programs (NAAML), September 21 -24, 2014, in Columbus, Ohio. The Excellence in Surface Coal Mining Reclamation Awards will be presented on October 27, 2014, in Washington, DC.

Visit OSM's website for more information: <http://www.osmre.gov/>.

---

## **DC Court Hears Arguments in EPA Guidance Case**

On Monday, February 10, 2014, the D.C. Circuit Court of Appeals heard arguments in *National Mining Association v. McCarthy*. The states of West Virginia and Kentucky joined the National Mining Association (NMA) in the latest of a string of cases concerning the Obama Administration's strategies to curb mining activities in Appalachia. Specifically being challenged are "enhanced coordination" between the Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps) for Section 404 Clean Water Act permits, and EPA's 2011 guidance concerning conductivity standards. State regulators and industry groups maintain that these actions are outside of the regulatory authority afforded EPA. They urged the Court of Appeals to uphold the district court's rulings in 2011 and 2012 that invalidated the "enhanced coordination" process and the EPA guidance document, finding that they "exceeded the statutory authority afforded to [EPA] by the Clean Water Act."

Currently, the outcome of this case appears to hinge on the practical effects that increased scrutiny and the guidance document have had on the state regulatory programs and regulated entities. During the February 10 hearing EPA's arguments seemed better received by the judges regarding their "enhanced coordination" efforts than in the past. However, the conductivity guidance document remained the subject of skepticism.

In response to claims that the guidance document is effectively a rulemaking which did not follow the normal rulemaking process, Department of Justice's Matthew Littleton argued that "the guidance has no legal impact" and could therefore be disregarded by the states. Judge Kavanaugh remained skeptical and noted that this was "not how it was advertised," pointing out that Lisa Jackson, the EPA Administrator at the time of the guidance document's promulgation, said that the guidance would prevent most mountaintop coal projects in Appalachia.

While EPA contends that the guidance does not represent a new legal obligation for states' permitting efforts, West Virginia attorney Benjamin Bailey said that the states can ignore the guidance "at their peril" and that the guidance has "changed the way things are done forever" by "forcing [conductivity standards] down the [state] agencies' throats."

Kentucky attorney Mary Stephens also commented on the guidance's effect on state programs during the hearing, specifically the way they handle their National Pollutant Discharge Elimination System (NPDES) permits. She stated that the administration has "totally stymied Kentucky's NPDES permitting program."

State regulators continue to weigh in on how the EPA has exacerbated delays in permitting in order to further the Administration's environmental goals. The states of Alabama, Alaska, Montana, and Virginia submitted briefs to the court noting that the "EPA has ignored principles of cooperative federalism and usurped state authority under environmental laws."

---

### **GAO Report on BLM Lease Undervaluation**

Amid widespread criticism aimed at the Department of Interior's Bureau of Land Management (BLM), coal companies continue to defend the agency's coal leasing practices. The Government Accountability Office's (GAO) report released in February highlighted inconsistencies in how BLM values its coal leases which critics say may have cost taxpayers tens of millions in lost revenue. Several leases were specifically noted as having been accepted at below fair market value, violating the 1920 Mineral Leasing Act requiring that coal sales be competitive. As a result, mining industry opponents have called for a general overhaul of the way the BLM values coal on federal lands, with some even demanding a temporary moratorium on coal leasing pending reform of the agency's coal valuation criteria.

Mining industry proponents maintain that the GAO report does not provide that a general overhaul of federal coal leasing is needed. Rather, they argue that changes to the program need only be "narrowly tailored." National Mining Association spokesman Luke Popovich told reporters, "An absence of documentation and consistency was the finding, not evidence of systematic flaws that encourage sales at below market valuations." Popovich noted that most sales are actually made at above market value, so this should not be understood as a "consistent effort to shortchange the public." Coal industry proponents also pointed out that the GAO report highlights the \$1.2 billion in coal revenues returned to tax payers in 2012.

---