



## IMCC 2011 Mid-Year Meeting Held in Point Clear, Alabama

The Interstate Mining Compact Commission's (IMCC) 2011 Mid-Year Meeting was held at the Marriott Grand Hotel in Point Clear, Alabama on October 18 - 19, 2011. There were approximately 40 attendees at the meeting, including representatives from eighteen IMCC member states, the federal Office of Surface Mining, and a guest speaker.

The Noncoal Environmental Affairs and Mine Safety & Health Committees met jointly on October 18 and the session was followed by the joint meeting of the Coal Environmental Affairs and Abandoned Mine Land Committees.

During a luncheon on October 18, Dr. George Crozier, Executive Director Emeritus of the Dauphin Island Sea Lab, presented an interesting talk about impacts of the BP oil rig explosion and spill which occurred in the Gulf of Mexico in 2010. A casual reception was held in the evening.

On Wednesday, October 19, a joint meeting of the Resolutions and Finance and Administrative Committees was held. The Executive Commission Business Meeting followed and concluded the Mid-Year Meeting.

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

## IMCC 2012 Annual Meeting Scheduled For Asheville, North Carolina

The Interstate Mining Compact Commission's (IMCC) 2012 Annual Meeting will be held from April 29 - May 2, 2012 at the DoubleTree Biltmore Hotel in Asheville, North Carolina. A registration form for the meeting accompanies this issue of "The Compact".

A welcoming reception will kick-off the meeting on the evening of Sunday, April 29. The opening session will begin on Monday morning, April 30 at 8:30 a.m. (speakers TBD) and will be followed by a joint meeting of the Mine Safety and Health and Noncoal Environmental Affairs Committees. Plans are underway for a field trip and dinner for the afternoon and evening on this day.

On Tuesday, May 1, the Abandoned Mine Lands and Coal Environmental Affairs Committees will meet jointly. The Annual Awards Reception and Banquet will take place on Tuesday evening where the 2012 IMCC National Reclamation Awards and Minerals Education Awards will be presented.

IMCC's Finance and Administrative and Resolutions Committees will meet jointly on the morning of Wednesday, May 2. The Executive Commission Business Meeting will follow immediately and will conclude the Annual Meeting.

For more information and a downloadable registration form, visit the IMCC web site at <http://www.imcc.isa.us> and click on the "Conferences" button. Contact: Beth Botsis at phone: 703.709.8654 or e-mail: [bbotsis@imcc.isa.us](mailto:bbotsis@imcc.isa.us).

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### Upcoming Meetings:

#### IMCC 2012 Annual Meeting

April 29 - May 2, 2012  
DoubleTree Biltmore Hotel  
Asheville, North Carolina

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. Copies of IMCC's Compact Newsletter are also available on the website by clicking on the "Publications" tab.

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## **Call for Nominations for IMCC's 2012 National Reclamation Awards and Minerals Education Awards**

The Interstate Mining Compact Commission (IMCC) is currently accepting nominations for the 2012 National Mined Land Reclamation Awards and the 2012 Minerals Education Awards. The awards will be presented during the IMCC's 2012 Annual Meeting in Asheville, North Carolina next May. Information on deadlines and criteria for the awards and nomination forms have been distributed to all member state representatives. They are also available on our website (see below).

For further information, visit IMCC's website at [www.imcc.isa.us](http://www.imcc.isa.us) and click on the "Awards" link, or contact: Beth A. Botsis at phone: 703.709.8654 or e-mail: [bbotsis@imcc.isa.us](mailto:bbotsis@imcc.isa.us).

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## **States Testify and IMCC Files Statement at House Field Hearing on OSM Stream Protection Rule**

The House Subcommittee on Energy and Mineral Resources held a hearing in Charleston, West Virginia on September 26, 2011 titled, "Jobs at Risk: Community Impacts fo the Obama Administration's Effort to Rewrite the Stream Buffer Zone Rule." The hearing was focused on the Office of Surface Mining's (OSM) ongoing efforts to make comprehensive nationwide changes to its Surface Mining Control and Reclamation Act (SMCRA) regulations regarding the stream buffer zone rule which would alter almost every aspect of its regulations affecting streams.

Present at the hearing were three Republican House members, Representatives Shelley Moore Capita (WV), Bill Johnson (OH) and Subcommittee Chairman Doug Lamborn (CO). They heard from two panels of state government witnesses including West Virginia Governor Earl Ray Tomblin and regulatory authorities from West Virginia, Virginia and Wyoming. Private interests represented in a second panel included state coal associations and coal mining companies, as well as two environmental activists.

The states were represented at the hearing by Butch Lambert, Deputy Director of the Virginia Department of Mines, Minerals and Energy; Tom Clarke, Director of the West Virginia Division of Mining and Reclamation; and John Corra, Director of the Wyoming Department of Environmental Quality. The three state agency representatives described the potential impacts that the anticipated proposed rule on stream protection would have on existing state regulatory programs and the coal economies of their respective states, including jobs. They also addressed the flawed process attending the development of an environmental impact statement to accompany the proposed rule, especially the restricted opportunities for state input and the inaccuracy of information concerning coal mining and regulatory programs nationwide.

IMCC filed a statement for the record that addressed the process for development of the proposed rule and draft EIS. "The agency, on more than one occasion, has engaged in comprehensive analyses through both rulemakings and environmental impact statements that addressed the complexity of the issue and provided solutions that are consistent with SMCRA, protective of the environment and respectful of state primacy," IMCC stated. "There is little left to offer." IMCC posed a series of key issues that should be resolved before OSM moves forward with the rule, including the specific regulatory standards that are in play under both SMCRA and the Clean Water Act. "The data and information we are familiar with (including OSM oversight reports) indicate that the states have been implementing stream protection requirements in a fair, balanced and appropriate manner that comports with the requirements of SMCRA and our approved regulatory programs."

Follow up hearings were held by the Subcommittee in Washington, DC on November 4 and November 18. At the first hearing OSM Director Joe Pizarchik was the sole witness. Subcommittee members questioned the Director about the basis and need for the rulemaking, the EIS development process, and the impact that the rule would have on jobs (particularly as forecast by early drafts of the EIS). "We fully appreciate how important coal production is to the Nation's economy and energy supply," he noted. "Coal mining provides well-paying jobs. ...We also recognize the need to not only carry out our mandate, but to do so using the best available science and technology. We are considering revising the 2008 Stream Buffer Zone Rule because there are areas that should be improved. Scientific advances not fully explored and considered in the 2008 rule will allow us to better understand coal mining's impact on water and aquatic ecosystems."

At the November 18 hearing, two of the subcontractors involved in the drafting of the EIS testified that OSM's initial goal of preparing the EIS within an 8 month period of time was unrealistic. Steve Gardner and Joe Zaluski of ECSI (Engineering Consulting Services, Inc.) stated that significant delays were encountered as OSM weighed whether to engage in scoping sessions for the EIS (as required by the National Environmental Policy Act) and whether to include underground mining operations within the purview of the proposed stream protection rule. The witnesses also stated that the assumptions on which coal production and job impacts were leased changed radically during the EIS drafting

process. At one point causing the contractors to disassociate themselves with some of the conclusions reached in later draft chapters of the EIS. The draft EIS and proposed rule continue under development, with OSM utilizing a new contractor to develop the regulatory impact analysis.

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### **IMCC and NAAML P Urge Supercommittee to Reject AML Reform Proposals**

The Interstate Mining Compact Commission (IMCC) and the National Association of Abandoned Mine Land Programs (NAAML P) sent a joint letter to the chairmen of the Joint Select Committee on Deficit Reduction (the "Supercommittee") on October 24 urging them to reject a legislative proposal contained in the President's Plan for Deficit Reduction related to the reclamation of abandoned coal mine lands (AML) located throughout the United States. "The coal AML proposal would have significant, deleterious impacts on current efforts by state and tribal programs for the ongoing cleanup of abandoned mine lands, and as such we strongly oppose it," the letter stated. "Once again, with this deficit reduction proposal, we see the Administration attempting to emasculate the will of Congress as expressed in the 2006 Amendments to the Surface Mining Act.... In 2006, following 10 years of debate and eventual compromise among all affected parties, Congress once again labored over and decided upon a revised course of action for our nation with respect to the cleanup of abandoned coal mine lands that built additional certainty and stability into the program. We urge the Select Committee to allow this law to work as intended." A detailed analysis of the impacts of the President's legislative proposal accompanied the letter.

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### **EPA Coal Ash Regulations Would Cause Infrastructure Costs to Soar Per New Study**

A new study claims road and bridge construction costs would soar if the Environmental Protection Agency (EPA) regulates coal ash as hazardous waste under the Resource Conservation and Recovery Act (RCRA). The study, sponsored by the foundation of the American Road and Transportation Builders Association, concludes that infrastructure costs would rise by \$5.2 billion annually if coal ash were unavailable for construction purposes. The study also estimates a hazardous rule for controlling coal ash could raise annual building costs by \$2.5 billion and annual building materials costs by \$2.7 billion. More than 75% of concrete used to build and maintain U.S. transportation infrastructure relies on coal ash as a component in its cement blend, according to the foundation. EPA has indefinitely delayed publishing a final coal ash rule after proposing two alternatives for regulating coal ash under RCRA. EPA estimated the cost of regulating coal ash under Subtitle C would be \$1.4 million annually.

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### **MSHA Allocates \$8.44 Million in Training Grants**

The Mine Safety and Health Administration (MSHA) recently announced that it has allocated \$8,441,000 in health and safety training grants to the states and the Navajo Nation in fiscal year 2011. The grants cover training and retraining of miners working at both surface and underground coal, metal and non metal mines, including miners engaged in shell dredging or employed at surface stone, sand and gravel operations. The grants were awarded under the Mine Safety and Health Act of 1977.

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### **IMCC Executive Director is Plenary Speaker at NAAML P Conference**

Interstate Mining Compact Commission (IMCC) Executive Director Greg Conrad served as the keynote speaker at the 33<sup>rd</sup> annual conference of the National Association of Abandoned Mine Land Programs (NAAML P) in Lake Tahoe, California in October. Speaking on "Key Legislative and Regulatory Challenges Facing Today's AML Program Manager," Mr. Conrad began by addressing the federal budget and appropriations process and the implications this could have for state and tribal abandoned mine land (AML) programs, particularly proposals to eliminate funding for certified states and tribes and to reform the mechanism by which grant funding will be distributed to uncertified states via a competitive bidding process. Mr. Conrad also provided an overview of the implications of deficit reduction and budget cutting measures for funding received by the states for the implementation of regulatory programs aimed at active mining operations. "What is of particular concern in the current legislative environment is that many are calling for dramatic action by the Supercommittee whereby the "spirit of shared sacrifice" has become the mantra of the day," he noted. Mr. Conrad also addressed several pending rulemakings that have implications for the states and tribes, including those on stream protection, mine placement of coal ash and financial assurance requirements at hardrock mines. In concluding, Mr. Conrad stated that "the tension that attends all of this is spilling over into the working relationship between state and federal governments that is central to the effective implementation of our respective

duties under national environmental and resource protection laws. As a result, the situation calls for newfound focus and commitment to the larger goals and objectives of our programs that transcends politics as we attempt to weather the economic upheaval that pervades our world.”

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### **IMCC and NAAML P Testify at Senate Hearing Re OSM/BLM Merger**

The Interstate Mining Compact Commission (IMCC) and the National Association of Abandoned Mine Lands (NAAML P) testified at a hearing by the Senate Energy and Natural Resources Committee on November 17 regarding the consolidation of the Office of Surface Mining (OSM) within the Bureau of Land Management (BLM). Testifying on behalf of the two organizations, Butch Lambert, Deputy Director of the Virginia Department of Mines, Minerals and Energy stated that “clearly, by its own terms, the Secretarial Order [No. 3315 dated October 26, 2011] will have significant implications for state governments who implement regulatory programs under the Surface Mining Control and Reclamation Act (SMCRA). Given that the states were never informed, much less consulted, about this consolidation, the Secretary’s order raises more questions than it answers for us.”

Mr. Lambert went on to discuss a series of key issues and concerns that attend the consolidation that should be resolved before moving ahead with any reorganization. After discussing the intent of the original framers of SMCRA regarding the establishment of OSM, Mr. Lambert went on to note that “the importance of separating out the respective missions, duties and roles of OSM and BLM continues today. From the states’ and tribes’ perspective, to ignore the original intent of Congress for establishing these independent agencies would potentially undermine the carefully crafted statutory design and unduly upset the balance of powers and authorities between those agencies. It would also impact the state/federal relationship envisioned by SMCRA. We believe there are ways that Interior can accomplish the administrative efficiencies that it desires without running afoul of the statutory purposes of SMCRA and the Federal Land Policy and Management Act (FLPMA) and compromising the roles of OSM, BLM and the states under those statutes.” In addition to Mr. Lambert, John Corra, Director of the Wyoming Department of Environmental Quality also testified on behalf of his state and the Western Interstate Energy Board, raising many of the same concerns as IMCC and NAAML P.

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### **ECOS Prepares Renewed Opposition to EPA Coal Ash Rule**

During the organization’s recent annual meeting, the Environmental Council of the States (ECOS) welcomed a recently released Environmental Protection Agency (EPA) notice of data availability (NODA) on coal ash management practices. State agencies say they will use the opportunity to build a public record for opposing EPA’s July 2010 proposal to regulate coal ash as a hazardous waste under Subtitle C of the Resources Conservation and Recovery Act. State agencies claim that implicit in the EPA proposal is the unwarranted assumption that state coal ash storage and management regulations are inadequate. In a presentation to ECOS, officials from the states’ waste management agencies warned that, if left unchallenged, “Alleged, not proven, damage cases” could persuade EPA to back a hazardous waste designation that would “undermine the reputation and credibility of state programs.” Mary Zdanowicz, an official with the states’ solid waste organization, blamed environmentalists favoring strict coal rules for “state bashing, which we take very seriously.”

ECOS also reinforced the group’s support for H.R. 2273, which would bar EPA from regulating coal ash as hazardous under Subtitle C. ECOS Executive Director Steve Brown praised the bill’s provisions for giving states primacy over federal regulation of coal ash. A new federal coal ash program that would create another level of oversight is unwarranted, said Brown. It would be costly and time-consuming, requiring additional resources as well as EPA’s program approval, he said.

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### **Court Decision in NMA v. EPA Re. Appalachia Coal Permits**

U.S. District Judge Reggie Walton recently handed down a ruling in *NMA v. EPA* declaring the Environmental Protection Agency’s (EPA) coal permit review process illegal under both the Clean Water Act (CWA) and the Administrative Procedures Act. The National Mining Association (NMA) had filed the complaint that EPA had exceeded its authority under Sec. 404 of the CWA by interfering with the U.S. Army Corps of Engineers’ issuance of several coal mining permits in Appalachia. Judge Walton rejected EPA’s defense of the process as merely “procedural screening” and not “substantive.” Instead, Walton stated that the enhanced review of permits has had a “present and binding effect on the agencies and the permit applicants,” imposing “unequivocal requirements” on applicants and, therefore, required notice and comment. The immediate effect of the ruling will be to free several dozen sequestered permits.

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## **House Passes H.R. 2273 Barring EPA from Regulation CCRs as Hazardous Waste**

The "Coal Residuals Reuse and Management Act," (H.R. 2273) was recently passed by the House of Representatives by a vote of 267 - 144. The bill, introduced by Representative David McKinley (WV), would bar the Environmental Protection Agency (EPA) from regulating coal combustion residuals (CCRs) as a hazardous waste under the Resource Conservation and Recovery Act (RCRA). It would remove EPA's ability to regulate CCRs as a hazardous waste by establishing a federal floor for the state regulation of CCR disposal based on the controls already in place for municipal solid waste landfills, including requirements for design, groundwater protection, corrective action and closure standards. The bill grants EPA the authority to intervene if a state is unable or unwilling to properly manage a coal ash disposal program that meets federal guidelines and establishes monitoring programs to ensure existing disposal sites comply with those guidelines. Companion legislation (S. 1751) was introduced in the Senate by Senator John Hoeven on October 20.

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## **Northern Arizona Mining Continuity Act Introduced in Congress and EIS Released for Public Review**

Senators John McCain (AZ), Orrin Hatch (UT) and Mike Lee (UT) and Representatives Trent Franks (AZ), Bob Bishop (UT), Jeff Flake (AZ), Paul Gosar (AZ), David Schweikert (AZ) and Ben Quayle (AZ) recently introduced the "Northern Arizona Mining Act of 2011." The legislation is designed to stop the U.S. Department of the Interior (DOI) from withdrawing roughly 1 million acres of federal lands near the Grand Canyon from new uranium mining claims without first obtaining congressional approval. The bill responds to a statement made earlier this year by Secretary of the Interior Ken Salazar announcing the administration's plan to institute, pending review, a 20-year ban on all new hardrock mining claims near the Grand Canyon, based in part on concerns about potential pollution of the Colorado River.

In a recent letter to Secretary Ken Salazar, several members of Congress claimed that the withdrawal has nothing to do with protecting the Grand Canyon, but is instead a de facto wilderness classification for an area that conservationists previously agreed would remain accessible to the mining industry. DOI's own environmental study on the proposed withdrawal found no conclusive evidence that modern-day mining operations in the area are harming the river. The bill, in calling for a prohibition of the proposed mining withdrawal, acknowledges that environmentally responsible uranium mining has been occurring near the Grand Canyon National Park for the past two decades.

In related news, the Bureau of Land Management (BLM) released the "Northern Arizona Proposed Withdrawal Final Environmental Impact Statement" (EIS) for public review on October 26, 2011. The EIS analyzes the impact of BLM's proposed withdrawal of one million acres of land near the Grand Canyon National Park from location and entry under the 1872 Mining Law, subject to valid existing rights. Publication of the EIS triggered a 20-day comment period after which DOI is expected to make a final decision. According to a statement by BLM Director Bob Abbey to a House panel, the administration opposes congressional attempts to block his agency from banning future mining activity on the proposed one million acre plot. Abbey said the area targeted for set aside contains rich uranium deposits, but would pose unacceptable risks to the park environment if mined. Abbey and Forest Service Associate Chief Mary Wagner oppose H.R. 3155, the bill that would block the set aside, stating that "it cuts short the thorough and deliberate process in which the public and a wide variety of stakeholders have engaged." Commenting on the final EIS, Abbey acknowledged that further study of mining's impacts on the park environment are warranted. But he also stated enough is known about potential impacts to warrant a ban on future mining activity for 20 years.

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## **Senators Question EPA Re. Hardrock Financial Assurance Measures**

A letter from Senators Mike Crapo (ID) and Jim Risch (ID) was recently sent to Environmental Protection Agency (EPA) Administrator Lisa Jackson expressing "procedural and substantive concerns" with subjecting certain classes of facilities, including hardrock mining operations, to future financial assurance requirements under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). In the letter, the senators argue that EPA was only instructed to publish notices identifying possible classes of facilities that could be subject to requirements under CERCLA Section 108 (b), while stressing that "promulgating financial responsibility regulations and the timing thereof are discretionary." EPA targeted hardrock mining and several other industry sectors for future financial assurance requirements in response to a 2008 Earthjustice lawsuit.