

## IMCC 2014 Mid-Year Meeting in DC Fast Approaching

The Interstate Mining Compact Commission's (IMCC) 2014 Mid-Year Meeting is fast approaching. The meeting will be held at the Westin Georgetown Hotel in Washington, DC on October 15 - 17.

A full day of federal and state agency panel discussions will take place on October 15 with officials from the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency (EPA), the U.S. Bureau of Land Management, and the U.S. Fish and Wildlife Service in attendance. Potential topics of discussion include: wetlands mitigation; Section 404 permits in Appalachia; state primacy programs under Section 404; the Corps/EPA proposed rule on the Definition of Waters of the U.S. and a related Connectivity Study; Good Samaritan issues; the NPDES (Section 402) permitting process in Appalachia; NEPA compliance and its impact on permit issuance on federal lands; EPA's Proposed Rule on Financial Assurance under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA); the Greater Sage Grouse; bat protection issues and other Endangered Species Act issues related to mining; and the 1996 Biological Opinion for the Surface Mining Control and Reclamation Act of 1977 (SMCRA). A reception will be held in the evening.

On October 16, Joe Main, Assistant Secretary for the Mine Safety and Health Administration (MSHA), along with other MSHA officials, will meet with the states prior to the Joint Meeting of the Noncoal Environmental Affairs and Mine Safety and Health Committees. Immediately following, Joe Pizarchik, Director of the Office of Surface Mining (OSM), OSM Regional Directors, and other OSM officials will meet with the states prior to the Coal Environmental Affairs and Abandoned Mine Land Committees Joint Meeting. A luncheon will be held on that day. Tim Charters, Staff Director for the Subcommittee on Energy and Mineral Resources, U.S. House Committee on Natural Resources, will be the luncheon speaker.

On the morning of October 17, the IMCC Resolutions Committee and Finance and Administrative Committee will meet jointly. The Executive Commission Business Meeting will follow immediately and will conclude the Mid-Year Meeting.

Information and the October 15 draft itinerary and draft committee meeting agendas, are available on the IMCC website at [www.imcc.isa.us/Conference.htm](http://www.imcc.isa.us/Conference.htm). The final meeting agendas and itineraries will be posted at that link when they become available.

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

## IMCC 2015 Annual Meeting Scheduled for Baltimore MD

The Interstate Mining Compact Commission (IMCC) will hold its 2015 Annual Meeting at the Royal Sonesta Harbor Court Hotel in Baltimore, Maryland on April 26 - 29, 2015. The hotel is located across the street from Baltimore's scenic Inner Harbor. Registration information will be included in the next issue of the "Compact."

The tentative itinerary for the meeting is as follows. The meeting will open with a Welcoming Reception on Sunday, April 26. A General Session will kick off the day on Monday, April 27 and be immediately followed by the Joint Meeting of the Noncoal Environmental Affairs and Mine Safety and Health Committees. A social networking event is being planned for the evening.

To remove your name from our mailing list, please email Beth Botsis at [bbotsis@imcc.isa.us](mailto:bbotsis@imcc.isa.us). Questions or comments? Email [bbotsis@imcc.isa.us](mailto:bbotsis@imcc.isa.us) or call 703.709.8654.

A Newsletter Published by  
Interstate Mining Compact  
Commission

### Upcoming Meetings:

#### IMCC 2014 Mid-Year Meeting

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

#### IMCC 2015 Annual Meeting

April 26 - 29, 2015  
The Royal Sonesta Harbor Court Hotel  
Baltimore, MD

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:

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On Tuesday morning, April 28, the Coal Environmental Affairs and Abandoned Mine Land Committees will meet jointly. The Annual Awards Banquet will take place that evening, during which the IMCC Annual Reclamation Awards and Annual Minerals Education Awards will be presented.

IMCC's Resolutions Committee and Finance and Administrative Committee Joint Meeting will begin the day on Wednesday, April 29 and be immediately followed by the Executive Commission Annual Business Meeting, which will conclude the Annual Meeting.

The above is a preliminary itinerary and subject to change. More information on the meeting will be posted at [www.imcc.isa](http://www.imcc.isa) under the "Conference Info" tab when it becomes available. Room reservation and registration information will also be posted there, along with agendas for the committee meetings once they are available closer to the meeting date.

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

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### **IMCC and MSHA Sign Three Year MOU**

On June 30, 2014, Greg Conrad, Executive Director of the Interstate Mining Compact Commission (IMCC) and Assistant Secretary Joe Main of the Mine Safety and Health Administration (MSHA) signed a Memorandum of Understanding (MOU) "to collaborate and meet to discuss topics of mutual interest." The signing took place at the MSHA offices in Arlington, Virginia. The MOU is an information-sharing pact between IMCC and MSHA. The 2014 MOU is an updated version of the original MOU signed by IMCC and MSHA in 2011. It will be in effect for a term of three years.

IMCC provides a forum for interstate action and communication on behalf of its 26 member states on issues related to mining including environmental impacts, mine safety and health issues, and mine safety training programs, among others. MSHA is the federal regulatory agency tasked with overseeing the protection of the health and safety of the mining work force in the U.S.



IMCC Executive Director Greg Conrad (left) and Joe Main, Assistant Secretary, Mine Safety and Health Administration shake hands following the signing of the Memorandum of Understanding on June 30, 2014 .

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

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### **Call for Nominations for IMCC's 2015 National Reclamation and Minerals Education Awards**

The Interstate Mining Compact Commission (IMCC) is beginning the process of soliciting nominations for the 2015 Kenes C. Bowling National Reclamation Awards, and the 2015 National Minerals Education Awards. The criteria, deadlines, and nomination forms for both award programs can be found on IMCC's website at the following link: <http://www.imcc.isa.us/Awards.htm>. The announcements and forms have also been sent to the IMCC member states.

The awards will be presented at the Annual Awards Banquet in conjunction with IMCC's 2015 Annual Meeting in Baltimore, Maryland at the Royal Sonesta Harbor Court Hotel on Tuesday, April 28, 2015.

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

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### **IMCC Files Comments Re WEG Petition for Rulemaking to OSM on NOx Emissions**

The Interstate Mining Compact Commission (IMCC) recently filed comments with the Office of Surface Mining (OSM) in support of the comprehensive comments filed by the state of Wyoming and urging the agency to deny a petition for rulemaking submitted to OSM by WildEarth Guardians (WEG). The petition requests that OSM promulgate rules to prohibit the production of visible nitrogen oxide (NOx) emissions during blasting at surface coal mining operations. The petition claims OSM has the obligation to regulate air quality "in certain situations" under the Surface Mining and Reclamation Act of 1977 (SMCRA), and therefore has the obligation and authority to regulate visible NOx emissions at

mine sites. IMCC's comments point out that SMCRA specifically states that the "certain situations" under which OSM has authority are "activities related to erosion." Therefore, since WEG has not established any connection of NOx emissions to erosion, the petition asks OSM to exceed its limited statutory authority to regulate air pollution.

In response to the petition's assertion that there is a "regulatory gap", IMCC points to numerous federal and state regulations already in place to adequately protect workers and the public from the adverse effects of blasting which address the issues found in the petition. "Federal and state agencies already regulate blasting at surface coal mining operations along with its effects on miners and the public. Protection of human health and the environment are also ensured through MSHA [the Mine Safety and Health Administration], OSM and state regulations requiring blaster training and certification, controlling the scheduling of blasts, controlling access to blasting areas, and providing public notice of blasting operations, among other requirements."

In addition, IMCC commented that states have air quality regulations in place which ensure that blasting emissions do not degrade ambient air standards. Many states, such as Wyoming, have air quality standards which require surface coal mine operators to obtain air quality permits for their operations prior to the startup of mining. WEG's petition claims that state and federal ambient air quality standards are being exceeded during blasting events, but the state of Wyoming and IMCC claim WEG's approach is based on inference and conjecture and does not provide actual measured ambient air quality values to confirm their argument.

"We believe that existing regulations found in SMCRA along with the MSHA and state regulations, including state air quality regulations, already provide the required protections and address the issues in WildEarth Guardian's petition," IMCC states, "Therefore there is no need for new OSM rulemaking."

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

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### **IMCC Supports Critical Minerals Legislation**

The "National Strategic and Critical Minerals Production Act of 2013 (H.R. 761) passed the House of Representatives in September of 2013. In October of 2013, Senator Lisa Murkowski (R-AK) and Senator Ron Wyden (D-OR) introduced S. 1600, the "Critical Minerals Policy Act of 2013." The bill sheds light on the need for better minerals policies and intends to make the U.S. mine permitting process for critical minerals more timely and efficient.

In July of this year, Senator Murkowski said that this is an "opportune moment" to update the federal minerals permitting process because we have "bi-partisan and cost-neutral legislation that is ready to be considered." She added, "We have no reason to wait, or to forgo the tremendous benefits that critical minerals legislation would provide through our economy."

The Interstate Mining Compact Commission (IMCC) supports critical minerals legislation and recently sent a letter to congressional leaders in the House and Senate stating its support.

"In the face of growing 'resource nationalism' abroad, it is critical that the U.S. take steps to account for, protect and further bolster domestic sources of critical minerals," IMCC's letter stated. "The U.S. should endeavor to realize the immense benefits potentially derived from conscientious development of our Nation's rich supply of mineral resources, both on state and federal lands. IMCC believes critical minerals legislation to be a significant step in the right direction."

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### **OSM, States and Tribes Engage in Government Efficiencies Project**

The Office of Surface Mining/State/Tribal Government Efficiencies Project, begun in mid-January of 2014, has the objective of exploring long-term funding trends for state and federal programs under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), especially in light of current and anticipated fiscal constraints. Of particular concern was the effect that the erosion of resources may have on the states', tribes' and Office of Surface Mining's (OSM) respective abilities to fulfill mandatory statutory obligations. Three separate state/federal work groups were established to advance the initiative and met on a regular basis from January to July: the Financial Stability Work Group, Training/TIPS Sustainability Work Group, and Program Efficiency Work Group. Interstate Mining Compact Commission (IMCC) Executive Director Gregory E. Conrad served as for all three work groups along with an official from OSM.

The Financial Stability Work Group was tasked with developing options for establishing budget stability mechanisms that would enable state and tribal programs and OSM to fulfill their joint statutory obligations under SMCRA. As part of the process, the work

group developed and distributed a survey to collect information from SMCRA states and tribes on financial resources, which was compiled by IMCC. The Training/TIPS Sustainability Work Group was tasked with discussing potential improvements to the OSM training program, which provides training to federal, state and tribal personnel, ensuring consistent implementation of the requirements of SMCRA. The Program Efficiency Work Group's mission was larger in scope, considering broader issues such as program oversight, program amendments, technical assistance, the grant application process, and professional collaboration.

Final recommendations of the three work groups were completed in July. The recommendations were discussed at the IMCC Annual Meeting in Reno, Nevada and will be discussed further at the IMCC Mid-Year Meeting in Washington, DC in October.

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

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## **OSM Denies WEG Petition for Rulemaking Re. Greater Sage-Grouse**

On August 11, 2014, the Office of Surface Mining (OSM) denied a petition submitted by WildEarth Guardians (WEG) on February 26, 2014 requesting the agency promulgate rules to ensure adequate protection of the greater sage-grouse and its habitat from the impacts of coal exploration, surface coal mining, and underground coal mining in the western United States. WEG's petition cited several sections of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) as providing legal authority for OSM to conduct the requested rulemaking, including sections related to coal exploration permits, environmental protection performance standards, surface effects of underground coal mining operations, all of which "expressly provide for protection of threatened and endangered species, bald and golden eagles, and wetlands and wildlife habitat of 'unusually high value'." The petitioner asserted that the greater sage-grouse should be specifically protected in a similar manner.

In his response to the petition, OSM Director Joe Pizarchik wrote, "I have determined that the petition does not meet the threshold for acceptance under 30 CFR 700.12(c), as it does not establish a reasonable basis for rulemaking under the Surface Mining Control and Reclamation Act of 1977 (SMCRA)." He continued, "I share your concern for the greater sage-grouse, but the regulations implementing SMCRA already contain provisions adequate to protect this species to the extent authorized and required under SMCRA....Therefore, I am not accepting your petition for further consideration."

WEG had requested that OSM publish new rules under SMCRA to supplement its current rules with additional requirements specifically intended to protect sage grouse, including: limiting coal exploration to "helicopter portable drilling methods" in priority habitats and prohibiting exploration in nesting, brood-rearing, and wintering habitats during their seasons of use by sage grouse; prohibiting all surface mining in priority sage grouse habitat areas, and prohibiting all surface coal mining outside of primary habitat areas that are within 5.3 miles of an existing lek (mating area); and prohibiting all surface coal mining operations associated with underground mines within priority sage grouse habitat and prohibiting roads, overburden piles, and other related surface operations and impacts associated with underground mining outside of priority sage grouse areas if they are within 5.3 miles of existing leks.

OSM determined that the petition does not provide a reasonable basis for amending existing regulations, stating the petition presents "no facts, technical justifications, or legal evidence that existing SMCRA regulatory provisions do not provide a regulatory framework capable of protecting the greater sage-grouse to the extent required under SMCRA." OSM specifically cited several areas where current regulations already address the concerns found in the petition, including:

- requirements that both surface and underground coal mining operations minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values to the extent possible using the best technology currently available, and achieve enhancement of those resources where practicable;
- applications for mining permits must include fish and wildlife resource information for the permit and adjacent areas and the information must be sufficient to design the fish and wildlife protection and enhancement plan required under the rules;
- applications for mining permits must include a protection and enhancement plan which is consistent with the fish and wildlife performance standards, that describes how, to the extent possible using the best technology currently available, the operator will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the ESA, during surface coal mining and reclamation operations and how enhancement of those resources will be achieved where practicable;
- the regulatory authority (RA) must provide the resource information and protection and enhancement plans in a permit application to the FWS for review whenever the Service requests that the RA do so.

OSM also stated that, "one of the prerequisites for approval of State regulatory programs is that they contain regulatory program provisions that are no less effective than the Federal regulations in meeting the requirements of

SMCRA.” OSM cited several specific examples of how states are working with the coal companies, utilizing their current regulatory framework, to conserve the greater sage-grouse and its habitat, including efforts in Colorado, Wyoming, Utah, and Montana.

The FWS has identified the greater sage-grouse as a candidate for listing as a threatened and endangered species under the Endangered Species Act (ESA). This means the FWS has determined that listing under the ESA is warranted, but precluded by the need to address listing actions of a higher priority. The deadline for the FWS to make a listing decision is September 2015.

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

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### **OSM Denies WEG Petition for Rulemaking Re. NEPA Compliance Issues**

In a letter signed by Director Joseph Pizarchik, the Office of Surface Mining (OSM) denied a February 7, 2014 WildEarth Guardians (WEG) petition requesting that OSM promulgate “a rule to ensure compliance with the National Environmental Policy Act (“NEPA”) when reviewing and making recommendations [to the Secretary of the Interior] on Mining Plans in accordance with 30 C.F.R. Part 746.” The petition included draft rule language which WEG requested OSM consider adopting which essentially focused on increasing public involvement in various NEPA processes as they relate to leasing coal on federal lands, and provisions to require OSM to revise Environmental Assessments (EA) and Environmental Impact Statements (EIS) more frequently.

In the letter, dated June 26, 2014, Mr. Pizarchik stated, “In accordance with 30 CFR 700.12, I have reviewed the facts, technical justification and legal arguments provided in your petition. I have also reviewed the draft proposed rules that you requested be promulgated as requirements within 30 CFR Part 746. I find that existing regulations adopted under NEPA and the Surface Mining Control and Reclamation Act (SMCRA) contain requirements similar to those requested in your petition. Therefore, there is no need for rulemaking.”

In the supporting document accompanying Mr. Pizarchik’s letter, OSM maintains that the Council on Environmental Quality (CEQ) rules at 40 C.F.R. Parts 1500-1508 and the Department of Interior rules at 43 C.F.R. Part 46, both of which implement NEPA, already contain adequate requirements that are similar to some of the proposed rules in WEG’s petition. The Surface Mining Control and Reclamation Act (SMCRA) also includes public participation requirements for the process of reviewing permit applications which contain requirements similar to elements of the proposed rules in the petition. In its analysis, OSM stated that any changes needed in terms of implementation of those requirements would be best achieved through review and revision of internal agency guidance and procedure and through employee training. However, OSM agreed that, while not required under any existing regulation, the agency will provide notice to the public of the Secretary’s final decisions on mining plans when they become available, leaving it up to the OSM Regional Directors to determine the most effective means of doing so on a project-specific basis.

Addressing suggested rulemaking in the petition regarding public notice and comment on OSM’s intent to adopt another federal agency’s EIS, OSM concluded that further rulemaking would add no value, since procedures to address these concerns are already in place as outlined in Question 30 of CEQ’s Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Requirements, 46 FR 18036 (Mar. 16, 1981), and in OSM’s NEPA Handbook. Similarly, OSM concurred with the petition that the agency must ensure adequate public notification of the availability of any “finding of no significant impact” (FONSI) on EAs related to mining plans, and pointed out this is already required in existing regulations, along with many options as to how the agency achieves the required notification. OSM did not concur with the petition’s related proposed rule because they believe it would expand existing requirements under regulations implementing NEPA.

OSM found the recommended proposed rule which would require a FONSI to document OSM’s determination that the adopted EA adequately assesses the environmental effects of mining and reasonable alternatives that can be adopted by OSM to be unnecessary as well, since OSM’s issuance of a FONSI in itself indicates that the EA was found to be technically and legally sufficient in its assessment of environmental effects.

Finally, OSM declined to adopt a recommendation for a shortened timeframe for review of a mining plan EA or EIS before making a recommendation to the Secretary. Under current law, review of a mining plan which is 5 years old is required to determine whether significant information or circumstances have arisen. The petition proposed decreasing the timeframe to 3 years. OSM stated there is no reason to expect that mining in and of itself as a proposed action would involve circumstances that would change more rapidly than other proposed federal actions and, therefore, the shortened timeframe for mine-plan related NEPA documentation would be arbitrary and present an unjustified



additional burden. Additionally, in the case of federal coal leasing actions, NEPA typically addresses a larger proposed action area than is addressed within each subsequent mining plan. OSM currently re-evaluates the adequacy of the original NEPA documentation each time a mining plan or mining plan modification is proposed, and issues a statement of environmental compliance to address its findings on the adequacy of the documentation for the current mining plan as part of the recommendation package to the Secretary. This results in each NEPA document being reevaluated several times and on a more frequent interval than the current 5-year CEQ timeframe requirement.

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

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### **IMCC Executive Director Presentation Re. AML Reauthorization**

The Interstate Mining Compact Commission (IMCC) Executive Director Gregory E. Conrad spoke during a panel discussion at the National Association of Abandoned Mine Land Programs (NAAML) meeting in Columbus, Ohio earlier this month regarding reauthorization of the Title IV Abandoned Mine Land (AML) fee collection program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Mr. Conrad's presentation addressed the question "Where are we now?" in terms of impending efforts to pursue reauthorization. The presentation titled "The Present Landscape" included discussion of anticipated challenges, decisions that need to be made prior to reauthorization efforts, and potential for coordination with other groups and with Congress. Mr. Conrad also addressed congressional staff at a recent briefing on AML program reauthorization.

A copy of Mr. Conrad's presentation can be downloaded from IMCC's website here: <http://www.imcc.isa.us/AML%20Reauthorization%20Panel%20Presentation.pdf>.

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

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### **IMCC Executive Director Speaks at Pennsylvania AML Conference**

Gregory E. Conrad, Executive Director of the Interstate Mining Compact Commission (IMCC), presented a talk titled "Abandoned Mine Land Reclamation: Progress, Pitfalls and the Importance of Partnerships" on June 27 at the 2014 Pennsylvania Abandoned Mine Land (AML) Conference in State College. Mr. Conrad spoke on recent and past successes and struggles related to the Title IV AML program under the Surface Mining Control and Reclamation Act (SMCRA), including: successful efforts which led to the reauthorization of the AML program in 2006; several challenges posed by unsuccessful attempts since that time by the Administration to revisit and readjust several key aspects of the program via proposed budgets for the Office of Surface Mining (OSM), and in proposed deficit reduction plans; the raiding of the AML Trust Fund for spending offsets posed by the 2010 transportation bill known as MAP-21 (Moving Ahead for Progress in the 21<sup>st</sup> Century Act – Public Law 112-141); important successes resulting from excellent working relationships with authorizing committees in Congress to turn back proposed cuts to AML funding for certified states and tribes, and proposals in Fiscal Years 2012 and 2013 to reform the mechanism by which AML moneys would be distributed among the states and tribes; and the frustrating ongoing legislative dilemma states and tribes face with regard to sequestration of AML funding and the possibility the money may be permanently lost, despite the AML moneys coming from a dedicated trust fund.

As efforts begin toward reauthorization of the AML program through fee extension beyond 2021, Mr. Conrad spoke to the importance of building productive partnerships going forward, why continuing investment in these partnerships is required, and what we have learned from past experiences with such partnerships. "There is probably no other state/federal initiative that is as dependent on the pursuit of productive partnerships and a collaborative approach as the AML program," he said. Partnerships between the states, the federal Office of Surface Mining (OSM), and other stakeholders such as watershed groups, mining industry groups and environmental organizations are essential to the AML program. There are myriad interests, issues and considerations from a regulatory, policy and political perspective that must be reconciled and resolved as the program moves forward."

A copy of Mr. Conrad's presentation is available at IMCC's website here: <http://www.imcc.isa.us/PA%20AMR%20Conference%20Presentation%20AML%20June%202014.pdf>.

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

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## **Update on the Extractive Industries Transparency Initiative**

This article serves as an update to an article in the June 2014 issue of the Interstate Mining Compact Commission's (IMCC) "Compact" newsletter providing background information regarding the Extractive Industries Transparency Initiative (EITI), a global governance standard effort to which the United States officially became a "candidate country" in March of 2014 (SEE: "Compact" Vol. 32, Issue 2, June 2014 for more background information. Available here: <http://www.imcc.isa.us/NewsLetters/June2014.pdf>). IMCC has been closely engaged in the development of the EITI and continues to be involved in the multi-stakeholder group (MSG) through which the EITI operates.

A meeting of the MSG was held at the Department of the Interior (DOI) on September 9 and 10, where several important milestones were reached. The Deloitte firm has been contracted as the Independent Auditor (IA) who will be responsible for actually producing the USEITI report, as well as collecting and reconciling financial data. As a first step, the IA is required to produce an "inception report" in which they will assess the "terms of reference," an outline for the work expected of the IA.

The MSG officially approved an outline for the "contextual narrative" section of the USEITI report. The working group for the contextual narrative was able to reach a compromise on several of the more controversial topics at an in-person meeting held in August, which was attended by IMCC Executive Director Greg Conrad. For instance, with regard to the inclusion of data on "localities," i.e. county level data, it was agreed that 6 of the most important extractives producing counties would be chosen for inclusion in the report, with the notion that these same 6 counties would be tracked through subsequent USEITI reports. The methodology for choosing these 6 counties has not yet been agreed upon. This methodology, as well as the data included in the contextual narrative report in general, will be partially contingent on the recommendations of the IA presented in the inception report. IMCC has been closely involved with design of the contextual narrative, especially as it pertains to the use of publically available state data. IMCC has carefully monitored the development of this portion to ensure that state data is not used inappropriately and to advise on practical realities surrounding the collection and meaningful presentation of that data.

The MSG also approved a letter to be sent to 18 state Governors' offices intended to invite preliminary participation of the 18 states in the initiative. IMCC worked closely with the "opt-in" subcommittee on the design and approach of the letter, which is expected to be sent sometime in September. The 18 states were identified by the subcommittee based on their being a "top 5" mineral or revenue producing state in any of 8 categories: oil production, gas production, coal production, non-fuel mineral production, royalties collected, total severance taxes collected and severance taxes as a percentage of total taxes collected, and presence of energy/mineral producing tribes in the state. The states chosen based on these criteria were: Alaska, Arizona, California, Colorado, Illinois, Kentucky, Louisiana, Minnesota, Montana, Nevada, New Mexico, North Dakota, Oklahoma, Pennsylvania, Texas, Utah, West Virginia, and Wyoming. The letter will explain that the goal of gathering the state data is to showcase in a more central and accessible way the exemplary work that is already being done by the states to ensure robust auditing and meaningful transparency in natural resource management. The letter will also ask the states to identify a point of contact to consult with the MSG.

For more information, contact Ryan Ellis at 703.709.8654, or E-Mail: [rellis@imcc.isa.us](mailto:rellis@imcc.isa.us).

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## **IMCC Underground Mine Mapping Survey Conducted**

In May of 2014, the Interstate Mining Compact Commission (IMCC) surveyed its member states regarding the status of underground mine mapping efforts in order to determine what resources are needed for progress to continue. The survey indicated that, in most instances, state mine mapping efforts have slowed significantly recently due to limited resources and manpower to support the efforts. Nonetheless, remarkable progress has been made over the years and there is a great desire to revitalize these efforts and work toward additional progress on the initiative in each affected state. The areas that require the most attention include map identification and collection, scanning into a digital image (ideally meeting a 400 dpi and 24-bit RGB depth), georeferencing and, where possible, vectorizing (i.e. converting drawn features to GIS layers). When queried about their specific needs for accomplishing these important tasks, most states identified the need for additional dedicated manpower to undertake the work and funding for those positions. In some cases, new or updated equipment was also mentioned as a need. Estimated costs associated with those needs were also provided by the states and are included in the survey summary.

IMCC will continue to pursue cooperation with the Office of Surface Mining and the Mine Safety and Health Administration in developing a strategy to further progress in mine mapping and, in particular, to identify potential funding sources to support and enhance state efforts.

A copy of the survey is available on IMCC's website here: <http://www.imcc.isa.us/Mine%20Mapping%20Survey.pdf>.

For more information, contact Ryan Ellis at 703.709.8654, or E-Mail: [rellis@imcc.isa.us](mailto:rellis@imcc.isa.us).

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### **IMCC Self-Bonding Survey Conducted**

During discussions at the Interstate Mining Compact Commission's 2014 Annual Meeting in Reno, Nevada, it was suggested that IMCC survey the member states about the nature and extent of self-bonding obligations currently existing within the states, given the increasing sensitivity to the use of this bonding mechanism. IMCC sent a survey to its member states in May requesting information on their self-bonding regulations, companies currently holding self-bonds, the amounts of self-bonds held by each company, and the amounts of self-bonds held in total in the state. IMCC is still consulting with the states on next steps. It is expected that this survey will prove very helpful in identifying companies with large self-bonded obligations across state lines which are potentially problematic, as states are generally not privy to a company's obligations outside their own state.

A copy of the Self-Bonding Survey is available on IMCC's website here: <http://www.imcc.isa.us/Self%20Bonding%20Survey.pdf>.

For more information, contact Ryan Ellis at 703.709.8654, or E-Mail: [rellis@imcc.isa.us](mailto:rellis@imcc.isa.us).

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### **U of MI Economics Professor Editorial on Critical Minerals and the Need for Mine Permitting Reform**

In an editorial published in the July 10, 2014 edition of "The Detroit News", Mark Perry, a professor of economics at the Flint, Michigan campus of the University of Michigan and a resident scholar at the American Enterprise Institute, said that America's growing reliance on other countries for critical minerals is alarming and should be on the minds of voters during the upcoming elections.

Perry asserted that the United States has one of the most complex and outdated permitting processes in the world – one that can last seven to ten years, or five times longer than Australia and Canada. On average, Perry said, companies seeking to open new mines must deal with ten or more federal and state agencies before receiving an answer on a proposed permit. Add that to the fact that the Environmental Protection Agency (EPA) claims it has the ability to both preemptively and retroactively revoke permits, and it is easy to understand why mining investment in the United States has shrunk dramatically over the last two decades, he opined.

"If we continue to neglect domestic mining, manufacturers will become more vulnerable to supply disruptions and sudden jumps in the cost of minerals – both commodity and rare earth metals such as neodymium, samarium and dysprosium – that are critically important to defense and energy technologies, automobile components and a wide range of high-tech consumer products," Perry said.

Perry urged Congress to pass legislation that would streamline the "cumbersome mine-permitting process" without bypassing important environmental safeguards. "With sufficient investment, America could build its own mineral supply chain," Perry said. "Instead of relying heavily on foreign countries for commodity minerals such as copper, nickel, cobalt and titanium, we ought to make better use of our own resources."

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### **DC Circuit Court Overturns Decision Re. EPA Enhanced Process Under CWA**

In July, Judge Brett Kavanaugh of the U.S. Court of Appeals overturned a district court's ruling in *NMA v. McCarthy* and ruled that the Environmental Protection Agency's (EPA) enhanced coordination process and its use of guidance were within the EPA's consulting role under the Clean Water Act (CWA). The Judge ruled that EPA's use of guidance in lieu of regulation did not constitute final agency action, hence "imposed no obligations...or requirements" on states or companies. In consultation with other federal agencies, the judge ruled EPA's actions, which have stalled the issuance of coal permits, as defensible.



The Judge's reasoning also appears to make clear that EPA's coal permit guidance has no force of law. States and companies, he said, may simply ignore it. State attorneys general concerned about EPA's indifference to statutory procedures when it disagrees with state water quality standards may have more grounds for concern following the court's language in this decision. The decision has implications beyond the mining industry by encouraging agencies to rely on guidance when making significant changes to regulatory programs.

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### **D.C. Circuit Court Rejects WEG Petition to Regulate Coal Mines Under the Clean Air Act**

In July, the U.S. Court of Appeals for the D.C. Circuit ruled against a petition from the WildEarth Guardians (WEG) demanding the Environmental Protection Agency (EPA) add coal mines to a list of stationary sources for regulation under the Clean Air Act (CAA). In June, 2010, WEG asked EPA to list coal mines as a stationary source subject to New Source Performance Standards for mine methane emissions among other pollutants. The three judge panel unanimously agreed to reject the petition, upholding EPA's broad discretion, supported by case law, to exercise reasonable discretion in determining when to add a new source to the list of regulated air pollutants. That discretion, said the Court, includes "discretion to prioritize sources that are the most significant threats to public health."

EPA did not eliminate the possibility that it will include coal mine methane among regulated emissions in the future. However, the Court rejected WEG's contention that EPA could not delay the rulemaking despite the good reasons it may have for doing so as "contrary to precedent."

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### **OSM Announces Winners of Annual AML Awards and Excellence in Surface Mining Awards**

The Office of Surface Mining (OSM) recently announced the winners of the Agency's 2014 Abandoned Mine Land Reclamation Awards and 2014 National Awards for Excellence in Surface Mining.

The Abandoned Mine Land (AML) Reclamation Awards recognize outstanding abandoned mine land reclamation in the United States at mines abandoned before the passage of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Only projects funded wholly or in part and completed by approved state or tribal regulatory programs are eligible to win. A panel of judges composed of directors of state reclamation programs and OSM managers vote to determine the winners.

The winners of the 2014 Abandoned Mine Land Reclamation Awards are:

- **National Award:** AML Site 309, Mill Creek Highwall Project, in Pike County, Indiana, for addressing an extremely dangerous highwall adjacent to a heavily traveled road. The project also rebuilt the county road to improve public safety and implemented natural stream morphology to benefit the community and the environment.
- **Appalachian Region:** The Aaron Run Watershed AMD Remediation Project, in Westernport, Maryland, for the project's help in reintroducing native brook trout to Aaron Run by eliminating acid mine drainage (AMD) inflow and raising the pH of the stream to meet Maryland's water quality standards.
- **Mid-Continent Region:** The Goff AML Reclamation Project, in Marion County, Iowa, for eliminating dangerous highwalls, piles and embankments, pit ponds, and industrial/residential waste. The scope and complexity of the project meant that partnerships had to be forged among industry, landowners, and local conservation groups in order to succeed.
- **Western Region:** Smith Hill Coal Mine Reclamation, in Crested Butte, Colorado, for helping to eliminate a significant amount of coal waste on Smith Hill Mine. The project improved the habitat, reduced the instability and erosion of the waste, and improved the functionality of the land, which is used for recreational purposes and as a cattle load-out area.
- **Small Project Award:** Big Ben Emergency Shaft Project, in Springfield, Missouri, for the project's help re-laying and stabilizing the foundations of two homes that were affected by a subsidence issue caused by an abandoned vertical mine shaft.

OSM presented the awards at the annual conference of the National Association of Abandoned Mine Land Programs in Columbus, Ohio, September 21 - 24, 2014, during the AML Awards Banquet.

The Excellence in Surface Coal Mining Awards are presented to coal mining companies that achieve the most exemplary mining and reclamation in the country. Typically, winners demonstrate a commitment to using sound mining practices and executing effective reclamation plans designed to enhance post-mining beneficial use of the land.

The 2014 Excellence in Surface Coal Mining Award winners are:

- **National Award:** Red Hills Mine, Mississippi Lignite Mining Company, in Ackerman, Mississippi, for its use of naturally available materials for reconstructed stream bank stabilization. The operator's reclamation efforts allowed the habitat to quickly recover to pre-mining health.
- **National Award:** Antelope Coal Mine, Cloud Peak Energy, in Gillette, Wyoming, for the company's successful control of cheatgrass on reclaimed lands through innovative husbandry practices. Antelope Mine has successfully overcome the challenge of establishing and maintaining a sustainable native plant community that will meet or exceed criteria that an operation must meet in order for its reclamation bond to be released.
- **Good Neighbor Award:** Alpha Natural Resources, Elk Run Coal Company, Inc., in Boone County, West Virginia, for its significant contributions each year to communities near Elk Run Coal Company. Alpha Natural Resources has donated to local charitable causes, provided numerous volunteer hours to the community, and provided equipment and resources for other projects.

OSM will recognize each company's achievements at the National Mining Association Awards Luncheon on October 27, 2014, at the Hyatt Regency in Washington, D.C.