

# the compact

Volume 35, Issue 3  
October 2017

## IMCC 2017 Mid-Year Meeting Scheduled for Washington, DC

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

A series of Federal/State Sessions will take place on Monday, October 30 with federal agency officials from the Office of Surface Mining Control and Reclamation in the Department of the Interior (DOI) and the Environmental Protection Agency (EPA) expected to attend. Interior Secretary Ryan Zinke has been invited (unconfirmed) to speak in the morning to kick-off the DOI/States Session. EPA Administrator Scott Pruitt will speak at the luncheon on "The Importance of the State/Federal Relationship." An EPA/States Session will follow in the afternoon, followed by a Congressional Staff/States Session for later in the afternoon. The day will end with an evening reception.

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

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

For more information, contact: IMCC at 703.709.8654.

## IMCC Soliciting Nominations for the 2018 Awards Programs

The Interstate Mining Compact (IMCC) is accepting nominations for its 2018 awards programs, including the National Mine Reclamation Awards, Minerals Education Awards, and the Mine Safety and Health Training Awards. Nomination information and criteria were distributed to the member states over the summer and are available from IMCC. Nominations are due in the IMCC offices by February 1, 2018.

The criteria and nomination forms are also available on IMCC's website under the "Awards" tab at: [www.imcc.isa.us](http://www.imcc.isa.us). Note the information for the Reclamation and Mine Safety Training Awards reflects the 2017 awards programs (due to a website server glitch, the 2018 memoranda have not yet been uploaded). However, the criteria, submission information, and deadlines are the same. The awards banquet will be held in Charlotte, North Carolina in conjunction with the IMCC 2018 Annual Meeting. For more information, contact: IMCC at 703.709.8654.

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

### Upcoming Meetings:

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

**IMCC 2018 Annual Meeting**  
April 8 – 11, 2018  
The Omni Hotel  
Charlotte, NC

### Contact Information:

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## **IMCC 2018 Annual Meeting Set for North Carolina**

The Interstate Mining Compact Commission's (IMCC) 2018 Annual Meeting will be held on April 8-11 at the Omni Hotel Charlotte in Charlotte, North Carolina. Further plans for the meeting will be forthcoming as the itinerary and schedule are further developed. Look for more information in the next issue of the "Compact" newsletter. As more information becomes available it will also be posted on IMCC's website under the "Conferences" tab.

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## **OSMRE Rescinds Two Guidance/Policy Documents Re. SMCRA**

The Department of the Interior (DOI) has rescinded two Office of Surface Mining Control and Reclamation Enforcement (SMCRA) guidance/policy documents, citing the policies contained therein pose a significant burden on the coal industry and are in direct conflict with the Surface Mining Control and Reclamation Act's (SMCRA) concept of cooperative federalism. The rescinded documents include a July 27, 2016 OSMRE policy memorandum titled, "A More Complete Enforcement of SMCRA and Its Implementing Regulations," which provided direction to OSMRE staff on the enforcement of the existing regulations related to violations of the Clean Water Act associated with SMCRA-permitted operations. Also rescinded was an August 5, 2016 OSMRE "Policy Advisory: Self-Bonding," that directed regulatory authorities to stop allowing the use of new or additional self-bonds by coal mining companies until production and consumption market conditions stabilized.

In an October 12, 2017 Memorandum, Acting Assistant Secretary of Land and Minerals Management Katharine MacGregor wrote, "Therefore, in support of this administration's goal of ending the war on coal by rebuilding a healthy and viable coal industry, and restoring the primacy role of state programs implementing SMCRA, I am hereby rescinding each of these guidance/policy documents, effective immediately."

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## **BLM Announces Actions Regarding Greater Sage-Grouse**

Related to Secretarial Order 3353 signed by Secretary of Interior Ryan Zinke on June 7, 2017 titled "Greater Sage-Grouse Conservation and Cooperation with Western States," the Bureau of Land Management (BLM) has recently issued two press releases announcing actions by the agency in response to the Order.

First, BLM announced it has canceled its Sagebrush Focal Area (SFA) withdrawal application and the Department of Interior's (DOI) proposed withdrawal of 10 million acres of federal lands from location and entry under the Mining Law in Greater Sage-grouse habitat in six Western states. BLM also terminated the associated environmental analysis process. BLM determined that withdrawing 10 million acres was unreasonable in light of recent analysis of data showing that mining was not a significant threat to sage grouse and its habitat. Acting BLM Director Mike Nedd called the 10 million acre withdrawal proposal "overreach" and emphasized the importance of working closely with the states as partners in protecting the lands and conserving sage grouse habitat, while also supporting economic development and job growth.

BLM also noted a finding by the U.S. District Court for the District of Nevada that BLM's designation of Sagebrush Focal Areas in its 2016 greater sage-grouse plan amendment for Nevada was illegal. In light of that finding, the agency announced a Notice of Intent (NOI) will soon be published in the Federal Register launching a scoping process to solicit public comments on greater sage-grouse land management issues. The public will have an opportunity to comment on issues for the Bureau's consideration as it explores potential amendments to greater sage-grouse land use plans, to help improve sage-grouse conservation, and to strengthen communication and collaboration between states and the federal government. BLM is also seeking input on whether that planning effort should occur through state-by-state amendment processes, and expressed particular interest in hearing from Governors in states that engaged in extensive collaborative efforts to develop the existing plans. The public comment period will end 45 days after the NOI is published in the Federal Register.

The SFA notice of cancellation is available on BLM's website here: <https://on.doi.gov/2hOpRxn>, and a prepublication version of the NOI is available on the website here: <https://on.doi.gov/2fNuFPt>.

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### **States and OSMRE Hold Summits Re. Key Issues Under SMCRA in Washington, DC**

On September 19-20, 2017, at U.S. Department of Interior (DOI) headquarters in Washington, DC, a Summit was held between state mining regulatory authorities and Office of Surface Mining Reclamation and Enforcement (OSMRE) leadership. States represented at the meeting included: Montana, Wyoming, Utah, Illinois, Indiana, Ohio, Kentucky, West Virginia, and Pennsylvania. OSMRE was represented by the Acting Director, the three Regional Directors, the Assistant Director for Program Support, a representative from the DOI Solicitor's office, and an OSMRE Policy Advisor. The Interstate Mining Compact Commission's (IMCC) Executive Director and Deputy Executive Director also participated on behalf of the states. Several key issues related to Title V of the Surface Mining Control and Reclamation Act (SMCRA) were on the agenda.

Interior Deputy Secretary David Bernhardt provided opening remarks noting that Secretary Zinke's and the Administration's priorities include restoring trust and working cooperatively with communities, stakeholders, and states. He emphasized the importance of cooperative federalism in achieving the Administration's goal for America's energy independence. Acting Assistant Secretary for Land and Minerals Management Katharine MacGregor reiterated DOI's desire to work cooperatively with the states and thanked IMCC for helpful comments provided to DOI in recent months. Many of the issues on the agenda were initially raised in Transition Team Reports submitted by IMCC to the Trump Administration and in subsequent follow up letters to DOI.

Discussions focused on topics including cooperative federalism, federal oversight, federal enforcement, federal funding of state programs, re-initiation of Section 7 consultation between OSMRE and the Fish and Wildlife Service (FWS) under the Endangered Species Act (ESA), technical training and support, the state program amendment process, rulemaking, and National Environmental Policy Act (NEPA) implementation. State/OSMRE joint work groups were established to address several issues requiring further review and potential follow up actions.

Plans call for a similar Summit between the states and OSMRE to discuss issues related to implementation of the abandoned mine land (AML) program under Title IV of SMCRA.

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### **State Regulatory Authorities Meet with OSMRE**

States that exercise primary regulatory authority under the Surface Mining Control and Reclamation Act (SMCRA) met with officials from the Office of Surface Mining Reclamation and Enforcement (OSMRE) on three separate occasions during the month of August. The Western Regional Meeting was held on August 15 in Salt Lake City, Utah. It was followed by a state officials meeting the next day. The Appalachian Regional Meeting was held on August 22 and 23 in Roanoke, West Virginia. The Mid-Continent Regional Meeting was held on August 23 and 24 in Kansas City, Missouri. IMCC Executive Director Greg Conrad participated in each meeting and provided legislative briefings highlighting key bills that are moving through the 115<sup>th</sup> Congress. He also briefed participants on a planned Summit of the States to be held jointly with OSMRE in September and sought input regarding agenda items [see related article re. Summits].

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### **IMCC Meets with EPA Re. Status of the CERCLA 108(b) Proposed Rule**

On September 6, 2017, IMCC staff met with the Environmental Protection Agency (EPA) at its headquarters in Washington, DC for purposes of obtaining an update on the status of EPA's CERCLA 108(b) proposed rule on financial assurance for hardrock mines. EPA submitted a status report to the

court on July 31 in compliance with a settlement agreement that requires the agency to issue a final action decision on the rule by December 1, 2017. EPA is currently in the process of reviewing 11,000 comments submitted during the proposed rule's public comment period, and reported approximately 200 of them are substantive in nature. The agency expects to meet the December 1 deadline, but does not anticipate announcing a decision until on or close to that date.

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### **IMCC Submits Comments to DOI Re. OSMRE/FWS Reinitiation of Consultation Under the ESA**

On July 19, 2017, a meeting was held between the Interstate Mining Compact Commission (IMCC) member states, the U.S. Fish and Wildlife Service (FWS), and the Office of Surface Mining Reclamation and Enforcement (OSMRE) to discuss a draft Memorandum of Understanding (MOU) between the two federal agencies, and a related new 2017 Biological Opinion (BiOp) being developed concerning Endangered Species Act (ESA) coordination for Surface Mining Control and Reclamation Act (SMCRA) operations. On August 14, IMCC submitted formal comments to Katharine MacGregor, Acting Assistant Secretary for Land and Minerals Management in the Department of the Interior (DOI), as a follow-up to the meeting and a subsequent conference call that had taken place on July 26.

The draft MOU and new BiOp were being developed due to a recent OSMRE request for reinitiation of consultation with FWS under the ESA. OSMRE pointed to the nullification of the Stream Protection Rule (SPR) via a Joint Resolution adopted by Congress and signed by President Trump early this year under the Congressional Review Act (CRA) as the causation for a new consultation. The 2016 BiOp developed around the rule was also nullified by Congress' action. However, IMCC argued that, upon nullification of the SPR and the 2016 BiOp, reinitiation of consultation is not justified, since the regulatory environment now remains as it was prior to the promulgation of the SPR last December. Therefore, the 1996 BiOp previously in place is adequate and should remain in effect. IMCC asserted the federal agencies have not demonstrated why the 1996 BiOp is inadequate, other than a vague reference to unspecified "new science." OSMRE and FWS referred the states to a 2016 Environmental Impact Statement (EIS) that accompanied the SPR when asked what the "new science" consisted of. IMCC questioned whether it is in compliance with Congress' CRA action to rely on information in the EIS, since the action stated the SPR, along with the accompanying EIS "shall have no force or effect." It also prohibits the reissuing of a rule that is substantially the same, which raises concerns that provisions from the SPR might be reinstated inappropriately through a 2017 BiOp. Allegations that the 1996 BiOp fails to include newly proposed or listed species under the ESA were refuted by IMCC. Specific language cited from the 1996 BiOp state it and the accompanying conference report addresses "all present and future Federally listed and proposed species and...critical habitats that may be affected..." and allows for FWS to "maintain and update a list of protected species and habitats and the specific measures needed to ensure [their] protection."

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### **Five Bills Amending the ESA Pass Through House Natural Resources Committee**

Five bills amending the Endangered Species Act (ESA) were passed by the House Committee on Natural Resources on Wednesday, October 4, 2017. They are:

H.R. 1274, the "State, Tribal and Local Species Transparency and Recovery Act," was introduced by Rep. Dan Newhouse (R-WA). The bill amends the ESA to require the data used as a basis for listing and critical habitat determinations to be made available in the impacted states. It is intended to foster better cooperation between the federal government and states by ensuring state, local, and tribal scientific data is factored into ESA species listing decisions as part of the ESA's requirement for the Secretary to use the best available scientific and commercial data when reviewing the status of species. The bill passed by a vote of 22-13. It is identical to a provision in H.R. 4315 that passed the House in the 113th Congress with bipartisan support.

H.R. 717, the "Listing Reform Act," introduced by Rep. Pete Olson (R-TX), amends the ESA to require review of the economic cost of adding a species to the list of endangered or threatened species. It also authorizes the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) to prioritize petitions to list a species as threatened or endangered at their discretion, as opposed to the

current requirement that they be prioritized in the order received. It also removes the current 12-month deadline required to process petitions and requires that they be processed as expeditiously as practical, which will reduce the number of lawsuits that can be filed on the basis of lapsed deadlines. It also requires FWS and NMFS to refrain from prioritizing listing petitions over delisting petitions. It passed by a vote of 22-13.

H.R. 424, the "Gray Wolf State Management Act of 2017," introduced by Rep. Collin Peterson (D-MN), reissues the final rules from FWS to delist the gray wolf in the Western Great Lakes region and maintains effective state wolf management in Wyoming. The bipartisan bill passed by a vote of 26-14.

H.R. 2603, introduced by Rep. Louie Gohmert (R-TX), the "Saving America's Endangered Species Act" or "SAVES Act," amends Section 13 of the ESA to restrict nonnative species to the U.S. from being treated as endangered or threatened. The bipartisan bill passed by a vote of 22-16.

H.R. 3131, the "Endangered Species Litigation Reasonableness Act," introduced by Rep. Bill Huizenga (R-MI), amends the ESA by standardizing and capping attorney's fees to the same reasonable levels allowed for other types of citizen lawsuits against the government in accordance with the Equal Access to Justice Act. It also passed by a vote of 22-16.

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### **Community Reclamation Partnerships Act Passed by House of Representatives**

On Monday, October 2, 2017, the House of Representatives passed H.R. 2937, the "Community Reclamation Partnerships Act" (CRPA). Due to strong bi-partisan support at the committee level, a "suspension of the rules" was granted, meaning the bill followed an accelerated path, foregoing the full process for a vote on the House floor that would allow for amendments and debate to occur. The bill was also treated as a stand-alone measure rather than being combined with other legislation as was first anticipated. As a result, it was passed easily by a simple voice vote following a short explanation of the bill and its benefits by the introducing sponsor, Representative LaHood (R-IL).

The Interstate Mining Compact Commission (IMCC) worked closely with staff of the House Natural Resources Committee in developing this bill, which is based on a proposal developed by IMCC earlier this year with particular support from the Pennsylvania Department of Environmental Protection. It focuses on achieving enhanced acid mine drainage water treatment at coal abandoned mine land (AML) projects conducted under the Surface Mining Control and Reclamation Act (SMCRA) and is intended as complimentary to IMCC's efforts to advocate for the larger, more difficult needs of hardrock Good Samaritan relief and a hardrock AML program.

The bill must still make its way through the Senate and be signed by the President for it to become law, but this is a significant step in the right direction. IMCC and the National Association of Abandoned Mine Land Programs (NAAML) have steadfastly pursued this liability protection for many years, and it is a victory for both organizations and the AML community to culminate in this bi-partisan bill. IMCC sent letters thanking the primary congressional advocates for the legislation, including Representatives LaHood (R-IL), Rogers (R-KY), and Thompson (R-PA), and congratulating them on its passage.

The expected next step would be the introduction of a companion bill in the Senate, which would then begin a committee referral process similar to how the bill progressed on the House side. IMCC will continue to monitor progress and provide assistance in moving the bill through the Senate as the opportunity arises.

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### **EPA Administrator Pruitt Issues Directive Re. Consent Decrees/Settlement Agreements**

On October 16, 2017, Administrator Scott Pruitt of the Environmental Protection Agency (EPA) issued a "Directive Promoting Transparency and Public Participation in Consent Decrees and Settlement Agreements." The directive opens with, "The U.S. [EPA], in partnership with the states, serves a vital role in protecting human health and the environment. When conducting Agency action to achieve these

objectives, the EPA must strive to promote transparency and public participation to provide the American public with due process, accountability, and a sense of fair-dealing.” It further states there have been reports that EPA previously colluded with outside groups in seeking to resolve lawsuits filed against the agency through consent decrees and settlement agreements, effectively resulting in regulation through litigation. Other stakeholders, intervenors, and affected states were excluded by EPA from negotiations of such “sue and settle” agreements and backroom deals with special interest groups. The directive terminates such actions going forward and promotes transparency and public participation in the consent decree and settlement process involving lawsuits against EPA by setting forth an extensive list of specific procedures, including requirements that EPA directly notify any affected states and/or regulated entities within 15 days of receiving a complaint or petition for review, and instilling minimum 30 day comment periods and provisions for public hearings as to whether EPA should enter into the proposed consent decree or draft settlement agreement.

A copy of the full Directive including all of the newly installed procedures can be viewed and downloaded from EPA’s website here: [https://www.epa.gov/sites/production/files/2017-10/documents/signed consent decree and settlement agreement directiveoct162017.pdf](https://www.epa.gov/sites/production/files/2017-10/documents/signed_consent_decree_and_settlement_agreement_directiveoct162017.pdf).

### **Commerce Department Report Identifies Priority Regulatory Reform Targets**

On October 6, 2017, the U.S. Department of Commerce (DOC) published a report titled “Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing,” in response to a Memorandum issued by President Trump on January 24, just days after taking office. The Memorandum directed the Secretary of Commerce to seek comments from stakeholders on the impact of federal regulations and permitting requirements on domestic manufacturing. Based on the analysis of comments received, the Secretary was also to develop a report recommending a plan to streamline federal permitting processes and reduce regulatory burdens. One hundred seventy-one comments were filed in response to the request for information (RFI) published in the Federal Register on March 7, 2017. The report divides the key issues identified from responses received into two categories:

- 1) Inadequately designed rules that are: written or implemented with a lack of practical knowledge about how the regulated industry operates; economically or technologically impractical or based on unrealistic data or assumptions; lack clarity around compliance requirements; inflexible or too prescriptive with overly strict interpretations of policy and guidance; duplicative; outdated; not the best existing regulatory approach to achieve the objectives or the approach undermines key regulatory objectives; regulatory overreach beyond statute or rulemaking; complex, onerous, inefficient and lengthy processes (especially permitting processes); and/or they lend uncertainty, particularly regarding permitting processes.
- 2) Cumbersome processes (particularly permitting processes) that are onerous, duplicative, poorly coordinated between agencies, rules or permits; and/or where there is inconsistency among agencies or between federal and state regulatory authorities in application or enforcement of rules.

Twenty priority issues were identified, ten of which were Environmental Protection Agency (EPA) rules. Some of the priority issues that could also potentially impact the mining sector include:

- “Waters of the United States” rule, defining the scope of federal jurisdiction under the Clean Water Act (CWA), and CWA wetlands permits (EPA);
- National Emissions Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standards (NSPS) (Clean Air Act) (EPA);
- Clean Air Act New Source Review (NSR) and Prevention of Significant Deterioration (PSD) permits (EPA);
- CWA National Pollutant Discharge Elimination System (NPDES) permits (EPA);
- Clean Air Act Greenhouse Gas Requirements (EPA);
- Clean Air Act National Ambient Air Quality Standards (NAAQS) (EPA);
- Resource Conservation and Recovery Act (RCRA) – inappropriate classification of certain waste streams as hazardous (EPA);

- Risk Management Programs – new rule postponed in June 2017 to allow more time for reconsideration (EPA);
- Toxic Substances Control Act (TSCA) (EPA);
- Occupational Safety and Health Administration (OSHA) rule on tracing of workplace injuries and illnesses (EPA);
- Endangered Species Act (ESA) (EPA);
- National Environmental Policy Act (NEPA) (EPA and others);
- Crystalline silica standard (OSHA);
- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (EPA);
- Spill Prevention, Control, and Countermeasures rule (EPA).

The report makes three major recommendations:

1) Each agency’s Regulatory Reform Task Force (RRTF) should develop and submit to the President (by December 31, 2017) an “Action Plan” to address all permitting and regulatory issues highlighted in the RFI responses, with particular attention to the twenty priority issues.

2) An Annual Regulatory Reduction Forum should be created for regulators and industry stakeholders to evaluate progress in reducing regulatory burdens and accelerating permitting decisions.

3) The Administration should use existing authority to extend the use of streamlined permitting procedures in the FAST Act (Title 41 of the “Fixing America’s Surface Transportation Act of 2015” or FAST-41) to any project that will result in a significant, immediate economic benefit to the United States. The FAST Act contains various provisions aimed at streamlining the environmental review process, with improved agency coordination through the creation of a Coordinated Project Plan and a Permitting Dashboard. Covered projects typically receive better coordination, transparency of approvals, and expedited permitting.

The full report containing extensive additional commentary is available on DOC’s website here:

[https://www.commerce.gov/sites/commerce.gov/files/streamlining\\_permitting\\_and\\_reducing\\_regulatory\\_burdens\\_for\\_domestic\\_manufacturing.pdf](https://www.commerce.gov/sites/commerce.gov/files/streamlining_permitting_and_reducing_regulatory_burdens_for_domestic_manufacturing.pdf).

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