

the compact

IMCC 2018 Annual Meeting April 8-11 in Charlotte NC

The Interstate Mining Compact Commission's (IMCC) 2018 Annual Meeting is quickly approaching. The meeting will be held from April 8-11 at the Omni Charlotte Hotel in uptown Charlotte, North Carolina. See the December 2017 issue of the Compact Newsletter for more information, or contact IMCC at 703.709.8654.

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**A Newsletter
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IMCC Deputy Executive Director Beth Botsis to Retire

After 30 years of service to the states, IMCC Deputy Executive Director Beth Botsis recently announced her early retirement from IMCC effective April 30, 2018. Beth joined IMCC in August of 1988 and served in various capacities over the years, handling a variety of legislative and regulatory issues and managing the administrative affairs of IMCC. Her expertise responding to constituent concerns and arranging for dynamic meetings of the organization were particularly valued by the member states. Beth is considering a number of opportunities in her home state of Michigan. The Compact wishes her well in her new pursuits.

Upcoming Meetings:

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

[NOTE: As of this printing, the server is inaccessible for updating the IMCC website. Please be patient until this ongoing problem can be remedied.]

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IMCC Announces Winners of its 2018 National Reclamation Awards

The Interstate Mining Compact Commission (IMCC) recently announced the recipients of its annual national reclamation awards. Named after the charter executive director of the Compact, the Kenes C. Bowling National Mine Reclamation Awards are presented each year to mining operations in the coal and noncoal categories that have demonstrated excellence in reclamation based on achievement in five categories: compliance; contemporaneous reclamation; drainage control; bond release (or reclamation success); and innovativeness. This year a small operator will also be recognized with the Floyd G. Durham Special Recognition Award for Excellence in Reclamation by a Small Operator.

The 2018 winner in the non-coal category is Freeport-McMoRan, Inc., Copper Queen Mine, located in Cochise County, Bisbee, Arizona. An honorable mention will be presented in the non-coal category to Pete Lien & Sons, Inc., Rifle Quarry, DRMS # M-1985-038, located in Garfield County, Rifle, Colorado. The 2018 winner in the coal category is Peabody Energy for its Wild Board Mine, Barren Fork Pit, Permit # S-00360. The Special Recognition Award for Excellence in Reclamation by a Small Operator will be presented to Gillies Creek Industrial Recycling for its Bottoms Bridge Mine, located in Henrico County, Sandston, Virginia.

The awards will be presented at a banquet held in conjunction with the IMCC Annual Meeting, April 8 - 11, 2018 in Charlotte, North Carolina.

In the non-coal category, Freeport-McMoRan, Inc.'s Copper Queen Mine was nominated by the Arizona Department of Environmental Quality (ADEQ) for its innovative concentrator tailing storage area (CTSA) reclamation that encompasses two mill tailings storage facilities located adjacent to one another. The reclamation project was submitted as a test reclamation plan to ADEQ. The north tailing impoundment contains sulfide (puritic) tailing and has a footprint of approximately 262 acres, embankment heights ranging from approximately 35 to 90 feet, and a maximum crest elevation of 4,960 feet. The south tailing impoundment also contains sulfide (puritic) tailing and has a footprint of about 644 acres, embankment heights ranging from approximately 75 to 95 feet, and a maximum crest elevation of 4,925 feet.

Copper Queen Mine is located in the Mule Mountains in a well-populated area of Cochise County, Arizona about 82 miles southeast of Tucson that is rich with heritage and cultural resources. The mine site is largely surrounded by residential communities, is bisected by public roads and highways, and has a municipal airport adjacent to the east side of the property. It also lies about 2 miles north of an international border. At an elevation of approximately 5,000 feet, the site is situated between the fringes of the Sonoran and Chihuahuan Deserts, and receives approximately 18 inches of precipitation per year with about 105 inches of evapotranspiration annually.

Freeport-McMoRan, Inc. began voluntary reclamation activities at the mine site in 2006, and in 2010 initiated reclamation of the north and south concentrator tailing storage areas, with a total reclamation surface area of approximately 1,000 acres. The concentrator tailing storage area was capped with local soil, seeded with a site specific seed mix, and a stormwater drainage system was installed. Primary goals of the reclamation included: employing and monitoring a number of test reclamation methodologies with the intent of identifying those that enhance the post-closure value of the area to the community and wildlife; minimizing net infiltration from precipitation; creation of wildlife habitat and a view shed; and attenuating stormwater discharge for wildlife use and recharge to the aquifer. The final goal was to reclaim the concentrator tailing storage area in an environmentally responsible manner using ADEQ's "Best Available Demonstrated Control Technology Guidance Manual" published in 1996, and the Arizona State Mine Inspector's Mine Land Reclamation Guidance. The test reclamation program was intended to identify key information on reclamation cover performance, slope stability and erosion, vegetation establishment, and water management.

The lack of available soils at the site for capping presented a reclamation challenge. The available soils at the site are heterogeneous with respect to particle size distribution and rock content. The key to designing a self-sustaining ecosystem was to let the soil used for capping dictate the design criteria, such as uninterrupted slope length and slope angle, and determining a site specific seed mix based on soil and climate compatibility.

Another challenge was the efficient, economic, and practical management of high intensity stormwater. The site has a concave surface that creates a large watershed. Significant amounts of fill would have been required to alter the watershed, and in its original state, the south end of the project would have discharged in excess of 1,400 cubic feet per second during a 100 year 6 hour storm event down a 33% slope. The company attenuated stormwater in lined attenuation basins on the top surface of the CTSA thus reducing design flows to less than 200 cubic feet per second. The lined facilities also allowed a portion of surface water to remain available to wildlife throughout much of the year. The basins are designed to match the surrounding environment and act like pseudo playas.

The project far exceeded expectations and critically important knowledge related to copper mine reclamation continues to be gained from it, as well as useful technical practices for future mine reclamation. The reclamation resulted in an evolving self-sustaining ecosystem that attracts various kinds of fauna and continues to recruit new flora from the surrounding areas as "volunteer" or as brought in from wildlife utilizing the area. Due to the improved view shed and decreased annual maintenance costs community relations were improved, and the company's continued work with the surrounding community is likely to result in additional post mine land use opportunities.

A certificate of honorable mention in the noncoal category will be presented to Pete Lien & Sons, Inc. for its Rifle Quarry, DRMS # M-1985-038. The Rifle Quarry is a construction material site where historical mining had taken place prior to it becoming a permitted site in 1985, with a post-mining land use of wildlife habitat. Work at the site was done in conjunction with the Bureau of Land Management. This open pit limestone operation included an approximately 60 foot tall and 1,200 foot long highwall face. Blasting was utilized to remove rock from the highwall that was stockpiled and further processed on site to be compacted and used to create flat areas where possible. To achieve the post-mining land use, the highwalls were sloped at 80 degrees or less. Reclamation in western Colorado is difficult given the hot summers, freezing winters, and an average of only 10-14 inches of precipitation each year. Those conditions combined with a site that has little to no topsoil made revegetation very challenging to achieve. Fish emulsion and pond solids from the nearby Rifle Falls Fish Hatchery were used as a successful alternative vegetative growth media, along with grain or potato mash solids from local breweries and distilleries to help ameliorate soil nutrient deficiencies at the site. After doing the necessary testing and additional permitting required to allow its use, the company sought out material that would otherwise be considered waste and used it successfully for reclamation purposes. This innovative methodology will prove useful for other reclamation in the future. The site now contains a variety of pollinator friendly plants to support various walks of life. BMP's installed to properly control sediment and erosion help protect the water quality of the down gradient RFFH, and historical adits and shafts that once posed safety hazards have been closed.

The 2018 winner in the coal category, Peabody Energy was nominated by the Division of Reclamation within the Indiana Department of Natural Resources for its Wild Boar Mine, Barren Fork Pit, Permit #S-00360 for its impressive reclamation resulting in a high diversity of land uses and restoration of stream channels. The company applied a magnitude of effort and investment of time, resources, and manpower in order to achieve the exemplary end result. The permit is composed of 8,566 acres, of which 3,200 acres have been disturbed. Over 2,000 disturbed acres have already been reclaimed. Wild Boar is an area mine using a truck/shovel mining method to extract coal primarily from the #5 coal seam with a thickness ranging from 4-5". Approximately 2.5 million tons of coal are mined each year. The disturbed area of the pit was about 70-80' deep. The area contained approximately 100 acres of previously disturbed pre-Surface Mining Control and Reclamation Act (SMCRA) area and 1.2 miles of unreclaimed highwalls. In many cases, the area had a near absence of soil material. The minimum soil replacement requirement for forestland in Indiana is 12". However, at the Wild Boar Mine an average of 48" was replaced over areas that were designated as forestland as a post mining land use, far exceeding depth requirements at added cost to the company. The added soil material assured an increase in water holding capacity and rooting zone, thereby allowing for far greater productivity potential.

In order to avoid compaction of the soil during replacement, great care was taken by the company in its choices of truck and shovel, low ground dozers, and other equipment, as well as in how the reclamation process was conducted. The existing highwalls required leveling and grading in order to recreate natural drainage patterns. Rocky material from the substratum, existing logs, and other vegetative debris which normally would be considered waste material were recycled and used to create water control measures and riparian wildlife habitat. The use of this material for successful reclamation serves as an example that is transferable to a variety of mining scenarios.

Gillies Creek Industrial Recycling will receive the Special Recognition Award for Excellence in Reclamation by a Small Operator for its Bottoms Bridge Mine, which was nominated by the Virginia Department of Mines, Minerals and Energy, Division of Mineral Mining for its successful reclamation of a historically mined and unreclaimed area into an environmentally and ecologically beneficial wetland. The wetland is adjacent to native wetlands and appears as if it is an original feature of the landscape. Through creation of a wetland, Gillies Creek also provided a diverse wildlife habitat that resulted in bald eagles residing nearby, as well as deer, turkey, egrets, geese, ducks, various species of turtles, and more. The company also allows selected employees fishing and hunting privileges on the property.

Mining at Bottoms Bridge originally began in the 1960s, prior to the state having regulatory authority over mining, leaving behind a series of eight ponds. Gillies Creek permitted the site and obtained a mine license in September 2006. Once mining was completed, the mined area was reclaimed as wetlands for mitigation banking purposes. The creation of a wetland is a costly and time consuming process. Monitoring of the reclaimed area must continue for years after the initial phases of the project are complete. Thus far, the operator estimates that \$400,000 – 500,000 has been spent in reclamation across the site. During the project, approximately 7.8 acres in the area were disturbed, creating 5.6 acres of mitigation bank credits.

In late 2012, the original pond was dewatered to allow the operator to excavate borrow material from Mine 2. Vegetation surrounding the pond was cleared and available topsoil was stockpiled to use during reclamation. A dam was created between the pond and the Chickahominy River to prevent the river from flooding the site, though dewatering of the pit was still required. Gillies Creek Industry Recycling also provides disposal services for inert soil material generated from construction projects. While mining was taking place, offsite soil material was brought in to backfill the mined out areas. The wetland was filled to within approximately one foot of the existing ground elevation. The banks of the wetland area were graded to a 3:1 slope with all grade work completed by late 2013. Additional organic matter was applied to the surface layer to help facilitate the germination and growth of vegetation.

The operator used two stabilization seed mixes for reclamation, including one intended for non-wetland areas, and another for wetlands, which was placed mainly on the pit floor and banks. Forested wetland plants were brought in and hand-planted, including red maple, tag alder, river birch, green ash, winterberry, sycamore, willow oak, and black willow. Once seeding and vegetation was established on the pit floor and banks, the dam between the wetland area and the Chickahominy River was breached so that the wetland water level would be controlled by the water level of the river.

During reclamation, two groundwater monitoring wells and five vegetation monitoring stations were installed. For a period of 8 weeks in the spring, the operator is required to measure the groundwater wells weekly, and the level must be within one foot of the existing grade. Vegetation monitoring is conducted annually in the fall. Data must be compiled in a summary report that measures the project's success and submitted to the Interagency Review Team (IRT), which is made up of the Virginia Department of Conservation and Recreation, U.S. Fish and Wildlife Service, The U.S. Environmental Protection Agency (EPA), and the Department of Forestry, at designated times over a required ten-year monitoring period.

. Mitigation credits are released throughout the required ten-year monitoring period based on achievement of the prescribed success criteria. To date, all available credits within the Mine 2 area have been sold.

In addition to serving as a wildlife habitat, the mitigation bank credits earned allow for the development of parcels in other areas where wetland habitats may be negatively impacted. Gillies Creek has managed to make wetland mitigation a cost effective post mining land use as part of their business model, and has dedicated the personnel and man hours needed to complete the required monitoring phases of the project. The model used to remine and reclaim Mine 2 has proven so successful that in early 2018 the company began implementing the same model in other areas of the permit to turn pre-mined ponds into wetlands.

IMCC Announces Winners of its 2018 National Minerals Education Awards

The Interstate Mining Compact Commission (IMCC) announces the recipients of its 2018 Annual Minerals Education Awards. Begun in 1999, the minerals education awards are presented each year in two categories: the mining awareness educator category, presented to a teacher or school; and the public outreach category, presented to an industry, environmental, citizen or other group,

or to a state government body. The nominees must be from among one of the 26 member states of IMCC.

The 2018 minerals education award winners are: The Colorado Mining Association (CMA) Education Foundation located in Denver, Colorado in the public outreach category; and Jerome (Jerry) Zaykoski, PG, CPG with the New York State (NYS) Department of Environmental Conservation, and geology professor at Jefferson Community College, Watertown, New York in the educator awareness category. The awards will be presented at a banquet held in conjunction with the IMCC Annual Meeting, April 8-11 in Charlotte, North Carolina.

The Colorado Mining Association Education Foundation is a 501(C)(3) organization nominated by the Colorado Division of Reclamation Mining and Safety in the public outreach category for its long-standing, effective, and innovative "All About Mining: 21st Century Mining for K-12 Educators" course that has been providing an immersive education experience for educators for almost 50 years. The comprehensive course was developed in cooperation with the Colorado School of Mines and the Colorado Department of Natural Resources, and also fosters cooperation and partnerships between diverse professionals involved in the mining and reclamation process. The course covers the complete exploration and mineral resource discovery process, mining methods, mining safety precautions, and the reclamation cycle of natural resources development culminating in beneficial land use. Since 1968, over 1,550 educators from all 50 states and several foreign countries have experienced the course and gone on to

spread the knowledge gained within their communities. The Foundation continually evaluates and revises its course to ensure it remains relevant and up-to-date. In 2013-2014, the Board undertook the task of modernizing the course by making it available both online and in person to help accommodate educators' busy schedules.

Each participant that completes all three components of the four week course receives 6 hours of discount-priced Colorado School of Mines Continuing Education Credits to advance their careers. The interactive course has been accredited and approved by the Colorado School of Mines. The three course components include: at-your-own-pace online lectures incorporating quizzes on lecture content and completion of three lesson plans; three days of in-depth review of several online topics and short field trips on the Colorado School of Mines Campus; and a five-day road trip to visit mines and other sites within Colorado where they gain first-hand experience and receive education materials that can be brought immediately into the classroom. The online component of the class is offered at no charge to educators, while the three-day and five-day components are offered at a low fee, with some scholarships available for those who qualify.

The 2018 educator awareness winner, Jerome (Jerry) Zaykoski, PG, CPG, has served with the New York State (NYS) Department of Conservation for 31 years as the Regional Mined Land Reclamation Program Supervisor for Region 6, and has also been an adjunct geology professor at Jefferson Community College for the past 24 years. Jerry is responsible for implementing New York State's Mine Land Reclamation Program in his region, which covers approximately 7,955 miles and has 284 active mines. He oversees the permitting, inspection, enforcement and outreach of mining operations. In addition, Jerry performs educational outreach efforts several times a year, including: Earth Day events; participation in the Fort Drum Outdoor Adventures Day; running a minerals lab for home schooled children at local high schools; and providing presentations at the State University of New York Environmental Science and Forestry Adirondack Interpretive Center for their Rock Fest.

A hands-on display of everyday household items and the minerals used to manufacture them focusing largely on minerals previously and currently mined in NYS is often part of Jerry's outreach. The display provides the audience with a better appreciation for local minerals and the mining that must be done to extract them. In addition to the targeted youth audience, adults routinely engage with questions and dialogue highlighting the importance of minerals and where they come from.

Information focused on the environmental aspects of mining, including the role of the NYS Mined Land Reclamation Law and its mandates for reclamation are also included in the presentations.

As an adjunct professor at Jefferson Community College, Jerry has taught lab and non-lab Earth Science classes, and currently focuses his teaching efforts on an Environmental Geology course he developed for the college in 1993. The course is taught continuously at the college campus, and as a Continuing Education Class at the Fort Drum campus. An online version of the course was developed in 2000, which is used to teach the class during the spring semesters. The course includes many local examples of geologic processes and human influenced impacts that Jerry ties into processes or mitigations that are involved in the mining and mineral extraction industry, as well discussions about the materials developed from the minerals mined. In 2014, Jerry published a paper about the iron mining history in New York State titled, "History and Geology Review of Magnetic Mining in the Western Adirondacks," and he is currently partnering with former State Geologist William Kelly to write a book on the history of mining in the state.

The awards recognize the award winners for achieving excellence in one or more of the following categories, as appropriate to the award category: provided educational outreach in an innovative manner that increases the level of understanding in the classroom and/or community about mining and its impacts; promoted awareness of environmental stewardship while enhancing the understanding of issues associated with mining and natural resource development and/or through active involvement of citizens; created unique educational materials or curriculum demonstrating the production and/or use of minerals and associated environmental protection; fostered cooperation and partnerships with diverse groups to achieve understanding; enhanced the understanding of issues associated with mining and natural resource development; and/or fostered public education through mine tours, visitor centers, community awareness days, career days, personnel volunteerism in the schools, maintaining adopt-a-school programs or education partnerships, or any other innovative initiative deemed deserving by the awards committee.

IMCC Announces its 2018 Mine Safety and Health Training Award Winners

The Interstate Mining Compact Commission (IMCC) announces the winners of the Annual National Mine Safety and Health Training Awards. The mine safety and health training awards are presented annually in two main categories, a state award and an industry award, each including four subcategories: coal surface, coal underground, metal/nonmetal surface, and metal/nonmetal underground, for a potential of up to four awards to be presented annually in each of the two categories. The awards were established to recognize excellence in mine safety and health training programs and materials.

For 2018, three mine safety and health training awards will be presented in the state category. The award winners are: the Colorado Division of Reclamation Mining and Safety in the metal/nonmetal underground mining category; and the Virginia Department of Mines, Minerals and Energy's Division of Mining in both the coal surface and coal underground mining categories. The awards will be presented at a banquet held in conjunction with the IMCC Annual Meeting, April 8 – 11 in Charlotte, North Carolina.

The Colorado Division of Reclamation Mining and Safety was named the state metal/nonmetal underground mining category winner for its Online Part 46 New Miner Training Program. The program was developed utilizing current learning management system principles and concepts and is intuitively well-organized and simple to navigate, including color-coded modules and on-screen navigation buttons and prompts. The online format was adapted from a national award-winning interactive DVD, and is available on-demand on most devices, such as tablets, computers, laptops, and others. It automatically tracks the time and completion of each module and includes a printable log of completion that can be retained for record-keeping purposes. Each module includes

a databank of quiz questions to test a user's retention of the material presented, and users can easily exit and re-enter the training as time permits.

The product was developed by a task force of experienced miners and safety professionals utilizing extensive video footage depicting actual mining situations that effectively illustrate and reinforce the content presented. It is intended to be utilized for a minimum of the first 4 hours, up to the full 24 hours of training required by the Department of Labor's Mine Safety and Health Administration's regulations before an employee can begin work on a mine site. The tool is also easy to use for MSHA-required specific topic training, annual refresher training, and task training. It is effective for use by trainers for classroom learning as well as individual training. With the current turnover of the workforce and increase in new employees to the surface mining industry, this program fills a need for ready access to comprehensive and effective Part 46 new miner training. It helps ensure new employees understand the mining process and current technology employed; learn to recognize mine safety and health hazards they may encounter; and learn best practices for mitigating safety and health hazards at a mine site.

The Division of Mines within the Virginia Department of Mines, Minerals and Energy was named the winner in the state category for coal underground mining for its "Safety Topic of the Month" training materials. The materials include trifold emergency preparedness pamphlets and brochures that coordinate with monthly safety meetings and training talks at each underground mine site. The material used in the safety brochures is designed to address the daily ever changing mining conditions faced by miners. Possible hazardous conditions that can be encountered are highlighted and stressed during the safety talks in order to prepare the miners to handle changing conditions safely; to identify, avoid, and prevent unsafe working conditions; and to respond appropriately during a mine emergency. Each miner receives a safety brochure on the discussion topic to follow as the trainers review the material. The miner can keep the brochure to review the material at any time. The miners are challenged each month during the on-site safety meetings to engage in the topic discussions and are given opportunities to share their own experiences. The brochures include questions concerning the information contained to help keep the miners engaged.

The Virginia Department of Mines, Minerals and Energy's Division of Mines was named the state category winner for coal surface mining for its 2017 Surface Mine Foreman Continuing Education Training Program DVD. The training program is developed every two years and is intended to increase the knowledge, competency and ability of surface coal mine foremen to conduct effective mine examinations and to preserve the safety of the miners they supervise. Virginia surface coal mining often occurs in close proximity to old, abandoned underground mines. For this reason, the recognition and safe reaction to the expulsion of large amounts of water, blackdamp (hazardous low oxygen atmosphere), and other mine gases is crucial for preventing serious accidents and fatalities. The main objectives of this training program are to: familiarize surface foremen with their responsibilities; increase the knowledge and skill level of foremen with special emphasis on mining near gas wells and lines, safe haulage practices, flyrock, blasting records, ground control plans, preshift/onshift examinations, and highwall examinations; upgrade foreman training on accident awareness and prevention; and familiarize foremen with substance and alcohol abuse and state and federal legal considerations. The training program DVD includes PowerPoint instruction, printed materials, and a series of safety videos. Approximately 388 surface foremen received continuing education training during the 2016-2017 training years.

Nominations for the awards are considered based on the following criteria: the training material is relevant to solving a safety problem or promoting a safer work environment; the training material can be applied on the job and for specific mining situations, and it addresses specific needs with information that is timely and positively impacts employee and workplace safety; the training material is easy to use; the training material is engaging and able to keep the attention and focus of trainees, and it promotes employee awareness of workplace safety concepts and issues, while being clear and easily understood by employees; and the training materials created are unique and innovative. A safety record criteria is also applied to nominations in the industry category, requiring

the nominee company to provide Total Incident Rate statistics and calculations for the previous calendar year as part of their nomination packet. Consideration is given as to the size of the mine.

IMCC meets with MSHA Leadership Team; Signs MOU

On March 13, 2018, Greg Conrad and Tom Clarke of the Interstate Mining Compact Commission (IMCC) met with the new Assistant Secretary of the United States Department of Labor for Mine Safety and Health, David G. Zatezalo, at the Mine Safety and Health Administration's (MSHA) headquarters in Arlington, Virginia. Also in attendance at the meeting were Wayne D. Palmer, MSHA's Deputy Assistant Secretary for Policy, and Patricia W. Silvey, MSHA's Deputy Assistant Secretary for Operations. At the meeting, a new memorandum of understanding (MOU) between IMCC and MSHA was signed. Among the goals of the MOU are to minimize duplication of federal and state efforts, reduce the potential for conflicting standards, provide consistency, and to promote a culture of safety in the mining industry.



At the meeting, Assistant Secretary Zatezalo shared some of his points of emphasis for mine safety, which include use of seat belts and proximity detection on surface equipment. He estimated that these measures might have prevented 25% of the mine fatalities that occurred in 2017.

IMCC took the opportunity to brief Assistant Secretary Zatezalo and his team on issues of interest to the states, including MSHA jurisdiction at abandoned mine land projects, state training grants, and future meetings between the states and MSHA to enhance coordination between state authorities and MSHA at mine sites and at mine impoundments.

EPA CERCLA 108(b) Final Action Decision for Hardrock Mining Published in Federal Register

The Environmental Protection Agency (EPA) final action decision regarding CERCLA 108(b) financial assurance requirements for hardrock mining was published in the Federal Register on February 21 (83 FR 7556). As reported in the December, 2017 issue of the "Compact", EPA determined that modern mining practices coupled with existing state and federal requirements already adequately address risks from operating hardrock mining facilities. The agency thereby concluded the "degree and duration of risk" associated with modern mining operations did not warrant issuance of a final rule. EPA's decision was announced in a press release and on the agency's website on December 1, 2017, in accordance with a court deadline for a final action decision to be made.

The Idaho Conservation League, Et. Al. plaintiffs (in re *Idaho Conservation League, Et. Al. Petitioners for Writ of Mandamus* decided by the U.S. Court of Appeals for the District of Columbia on January 29, 2016) will likely file a challenge to EPA's decision in the DC Circuit Court. Possibly the same panel of judges that heard the *mandamus* decision case will retain jurisdiction on future challenges at least until such time as EPA publishes its final action decisions (also required by the court in the *mandamus* decision) regarding CERCLA 108(b) FA requirements for three additional

industry sectors: chemical manufacturing; petroleum and coal production; and electric power generation, production, and distribution. The Interstate Mining Compact Commission (IMCC) and the states will be considering whether to intervene on behalf of EPA in future challenges.

EPA Final Rule Re. WOTUS Applicability Date Published and Immediately Challenged

The Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) published a final rule in the Federal Register on February 6, 2018 (82 FR 5200) adding an applicability date to the Obama Administration's 2015 final rule defining "waters of the United States" (WOTUS Rule or Clean Water Act Rule (CWA)). The final rule will maintain the status quo by delaying applicability of the 2015 rule until February 6, 2020. The delay is intended to provide continuity and regulatory certainty for regulated entities, and will allow EPA and the Corps time to reconsider the WOTUS definition under the two-step process embarked on last July: step one being the publication on July 27, 2017 of a proposed rule to rescind the 2015 rule and revert to the previous definition of WOTUS; and step 2 being a formal rulemaking process for development of a new WOTUS definition. The final rule became effective on February 6, foregoing the usual 30-day waiting period between publication and the effective date of a rule.

The need for the delay arose when the U.S. Supreme Court ruled on January 22 that the courts of appeal do not have original jurisdiction to review challenges to the 2015 rule, which had previously been stayed nationwide on October 9, 2015 by the U.S. Court of Appeals for the Sixth Circuit pending further action of the court. Previously the U.S. District Court for the District of North Dakota had enjoined the applicability of the 2015 rule only in the 13 states that challenged the rule in that court.

Several green groups and Democratic attorneys general immediately announced plans to sue over the delay. On the date of publication of the rule, a complaint was filed in the U.S. District Court for the Southern District of New York by the Natural Resources Defense Council, Inc., and National Wildlife Federation asking the court to vacate the final rule claiming the defendants violated the Administrative Procedures Act and the U.S. Constitution. As a result of the Supreme Court's ruling on jurisdiction, any lawsuits will have to start in the district courts. If a judge were to rule in favor of plaintiffs challenging the Trump administration's final rule, the result could be that the Obama WOTUS rule goes into effect in some states and not in others, creating the very chaotic and uncertain situation EPA's final rule is meant to avoid.

Oversight Hearing Held on Hardrock Good Samaritan Policy

On Thursday, March 15, the Energy and Minerals Resources Subcommittee within the House Natural Resources Committee held an oversight hearing titled, "Abandoned Hardrock Mines and the Role of Non-Governmental Entities." The hearing was primarily intended to examine the need for "Good Samaritan" liability protections for groups seeking to treat water impacted by abandoned hardrock mines. Discussion during the hearing focused on current circumstances around hardrock abandoned mine land (AML) work including the scale of the hardrock AML problem, current hardrock AML programs and funding, and the legal obstacles to facilitating hardrock AML water treatment work under federal environmental law, most notably the Clean Water Act (CWA).

Two state witnesses provided testimony at the hearing. Autumn Coleman of Montana testified on behalf of her state and the National Association of Abandoned Mine Land Programs (NAAML), for which she currently serves as Vice President. Jeff Graves of Colorado testified on behalf of his state. The Interstate Mining Compact Commission (IMCC) worked closely with Ms. Coleman in developing her testimony and assisted her and Mr. Graves in navigating the hearing. Both state

witnesses did a superb job representing the perspectives of the state AML programs and responding to questions from the Committee.

Other witnesses at the hearing included: Chris Wood, President/CEO of Trout Unlimited; and, serving as minority witness, David Strohmaier, Commissioner of Missoula County, Montana. The testimony of all four witnesses largely aligned around the value of hardrock AML work; the need for Good Samaritan liability protections to facilitate that work, particularly for AMD treatment; how current legal frameworks constrain Good Samaritans' and the states' clean up efforts; and examples of hardrock AML water treatment projects that have been completed with the assistance of Good Samaritans, and/or potential projects that have been shelved due to liability concerns. Ms. Coleman and Mr. Graves each emphasized the need for state AML programs to be granted liability protection to enhance their own efforts; while Mr. Strohmaier stressed the need for a national hardrock AML program in addition to Good Samaritan policy; and Mr. Wood suggested that a "Pilot" program to test Good Samaritan policy ideas would be helpful to building consensus around a full Good Samaritan program.

The most notable overall result of the hearing is the seemingly broad agreement among Committee members from both parties and hearing participants that some level of CWA liability protections are needed and that a series of pilot projects would be a beneficial exploration and demonstration of Good Samaritan policy. Past hearings have not featured this level of agreement, which signals a positive sign for Good Samaritan policy moving forward.

Oversight Hearing Held on Critical Minerals Policy

On February 15, 2018, the Energy and Minerals Resources Subcommittee within the House Natural Resources Committee held a legislative hearing on H.R. 520, the "National Strategic and Critical Minerals Act." Sponsored by Representative Amodei (R-NV). This bill is the latest in a series of attempts by the House to facilitate the development of certain classes of minerals with particular importance for national security and economic interests.

The primary goal of H.R. 520 is to improve efficiency in permitting processes for critical mineral mines, which according to the bill, currently range in timeframe from 7-10 years. Strategic and critical minerals are broadly defined by the bill. Eligible minerals must be important for national defense/security, energy infrastructure, renewable energy, manufacturing, agriculture, housing, telecommunications, healthcare, transportation, and/or US economic security and balance of trade. The bill would seek to optimize supply chains for these minerals by avoiding duplicative, redundant review processes; deferring to the analysis conducted by state regulatory authorities; and setting reasonable deadlines for analysis and review phases. The total permitting process is not to exceed 30 months.

To accomplish this, the bill requires the lead permitting agency to cooperate with other agencies to minimize delays, set strict timelines and permitting goals, and track progress against those timelines and goals. In order to cut down on unnecessary/duplicative review processes, the National Environmental Policy Act (NEPA) would be deemed to be satisfied if the lead agency determines that environmental and other factors are adequately provided for under other state/federal law.

The hearing examined circumstances surrounding domestic development of critical minerals, with particular focus on issues including: the impact the bill would have on environmental standards; the level of protection provided by current environmental law related to mining, particularly for water resources; the breadth of the definition of critical minerals included in the bill; and the feasibility of current permitting practices for critical mineral development. The Committee is now expected to refine the bill in a mark-up session based on feedback received in the hearing, which is

elaborated further in an Interstate Mining Compact Commission E-memo on the hearing dated February 28, 2018.

The hearing followed a recent Executive Order (EO) from the Trump Administration on the importance of domestic critical mineral production. It laid out the administration's plans to facilitate production by designating a list of critical minerals and reducing permitting timelines for those minerals. The committee's consideration of H.R. 520 may take into account the Trump Administration's definition of critical minerals in the recent EO.

IMCC Participates in NAAML P Winter Business Meeting

The Interstate Mining Compact Commission (IMCC) staff participated in the National Association of Abandoned Mine Land Program's (NAAML P) Winter Business Meeting in San Antonio, Texas from February 5-6, 2018. NAAML P continues to contract with IMCC for legislative and regulatory affairs counsel, as part of which IMCC provided a series of briefings during the Winter Meeting. On the first day IMCC participated in meetings of the Hardrock Abandoned Mine Land (AML) and Reauthorization Committees, and provided an update on AML-related legislation at a special committee meeting. At the Business meeting on the second day, IMCC provided an update on the Office of Surface Mining Reclamation and Enforcement (OSMRE) states AML Summit held in December 2017, including an overview of the work groups formed to address various AML-related issues. IMCC also provided an update on other AML-related topics, such as the Fiscal Year 2018 Federal Budget.

IMCC Staff Meets with EPA Re. Opportunities for Collaboration on Mining Issues

On March 21, 2018, Interstate Mining Compact Commission (IMCC) staff met with several members of the U.S. Environmental Protection Agency (EPA) to discuss opportunities for "communication, collaboration, and cooperation" on several issues related to mining. Some particular areas of mutual interest included abandoned mine land (AML) issues and the need for Good Samaritan protections to protect citizen groups, non-governmental entities, and the states from potential long-term liabilities under the Clean Water Act (CWA) when undertaking cleanup efforts. Good Samaritan focused measures could eliminate hindrances to efforts being made by these groups within their communities, particularly at sites where great improvements could be made but where CWA standards will never realistically be fully achievable. The meeting opened the way for more future discussions and collaboration between IMCC and EPA to work toward finding a non-legislative Good Samaritan solution, and on other important issues related to mining.

EPA also briefed IMCC on its "Smart Sectors" program, a partnership program overseen from within the EPA Office of Policy that focuses on collaboration and developing sensible approaches to protecting the environment and public health. Its primary goals are to pursue meaningful collaboration with regulated sectors (and other regulators, such as the states), including mining; develop more forward-thinking ways to improve environmental outcomes and develop sensible policies; and to improve communications and streamline operations internally at EPA. The program is a revival of EPA's Common Sense Initiative, which began in the 1990s.