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## **IMCC 2019 Mid-Year Meeting Scheduled for Hot Springs, Arkansas**

The Interstate Mining Compact Commission will be holding its 2019 Mid-Year Meeting at the Arlington Hotel in Hot Springs Arkansas. Planning is currently underway for the meeting, which will begin Monday, October 7, and conclude on Wednesday, October 9. A schedule for the various IMCC committee meetings to be held in conjunction with the meeting will be posted on the IMCC website once the itinerary is finalized.

The deadline for registering for the Mid-Year Meeting and for booking hotel reservations is Friday, August 30. The registration form, which includes hotel booking information, can be found on the IMCC website

For more information, contact: IMCC at 703.709.8654

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## **Bill Drafted for AML Re-Authorization**

Congressional efforts for reauthorization of collection of the fee on coal production that supports the Abandoned Mine Lands (AML) program under Title IV of the Surface Mine Control and Reclamation Act (SMCRA) has taken another step forward. Legislative counsel in the House of Representatives has completed a discussion draft of a bill for AML re-authorization at the request of Rep. Cartwright (D-PA). There is optimism that a bipartisan re-authorization bill could be introduced sometime after Congress returns from its summer recess.

As drafted, the bill would adopt a straw man bill developed by IMCC nearly word for word. It would extend the fee at the current rate for fifteen years, through September, 2036, with only a few minor adjustments to the program. Among these adjustments are:

- Increasing minimum program funding from the current rate of \$3 million per year to \$5 million per year.
- Affirming the federal obligation to fund AML emergencies and providing for delegation of AML emergency programs to the states.
- Exempting the AML program from sequestration and distributing previously sequestered funds to the states.

Under current law, authorization to collect the AML fee expires on September 30, 2021. According to the federal AML inventory, AML hazards whose correction is valued at well over \$10 billion remain to be addressed.

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### **Upcoming Meetings:**

**IMCC 2019 Mid-Year Meeting**  
October 7-9  
The Arlington Hotel  
Hot Springs, Arkansas

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## **DC Circuit Affirms EPA's CERCLA 108(b) Hardrock Mining Decision**

On July 19, 2019, a three judge panel of the United States Circuit Court of Appeals for the District of Columbia (DC Circuit) issued a decision in the case of *Idaho Conservation League, et al, v. Wheeler* unanimously upholding the final agency action of the Environmental Protection Agency (EPA) under section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) declining to impose financial responsibility requirements on the hardrock mining industry. EPA made this decision in the context of a rulemaking in which it had initially proposed to impose such requirements. The court rejected arguments that EPA (1) incorrectly interpreted the term, "risk", as used in CERCLA §108(b) (2) was arbitrary and capricious; and, (3) violated the federal Administrative Procedure Act (APA) because it was not a "logical outgrowth" of the rule that EPA had proposed.

The perspective of state mining regulators was represented in this case by state attorneys general and agencies from the following states: Arizona, Arkansas, Louisiana, Montana, Alaska, Colorado, Michigan, New Mexico, South Carolina, Utah, Nevada, South Dakota, Wyoming and Wisconsin. IMCC held five conference calls of these and other states during 2018 to try to organize a coalition of states to advance the state perspective in this litigation.

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## **US Supreme Court Sets Oral Argument in *County of Maui* CWA Case**

Litigation over the issue of whether the Clean Water Act (CWA) applies to discharges into groundwater that later reach "waters of the United States" will take the next set toward resolution on November 6, 2019. Briefing in the *County of Maui* case, in which this issue is posed, was completed this summer. The United States Supreme Court has set oral argument for November 6, 2019.

In addition to the importance of this issue in the proper application of the CWA, *County of Maui* deserves attention because it will be an opportunity to gauge how the Court's two newest Justices deal with CWA jurisdiction as members of the Court. Justice Gorsuch replaces Justice Kennedy, whose opinion in *Rapanos v US* formed the decision of the Supreme Court in this seminal case on CWA jurisdiction. Kennedy's opinion agreed more with more elements of Justice Scalia's four justice opinion in *Rapanos* than with the other group of four justices. Justice Kavanaugh replaces Justice Scalia. As replacements for two key justices in the *Rapanos* case, Justice Gorsuch and Justice Kavanaugh will be in a position to put their own touch on jurisprudence in the area. It will be interesting to see the direction the two of them take.

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## **OSMRE Decision on Permit Termination for Failure to Initiate Operations in Alaska**

On July 24, 2019, OSMRE Western Region Director David Berry issued an eleven-page decision responding to two citizen complaints regarding a November 29, 2018 decision of the Alaska Department of Natural Resources (DNR) that, among other things, granted a retroactive extension of two permits held by Usibelli Coal Mine, Inc. for its Wishbone Hill coal mining operation. OSMRE received the complaints in 2019. They are part of ongoing opposition to mining at Wishbone Hill since 2011 by the Castle Mountain Coalition, the Chickaloon Village Traditional Council and others, based on their belief that no valid permits exist for this operation by virtue of the provision of Alaska law which provides that permits on which operations have not begun within three years of permit issuance terminate, unless extended. This provision mirrors section 506(c) of federal SMCR.

OSMRE determined that the Alaska DNR properly granted a retroactive extension of the permits in its November 29, 2019 decision. Alaska's decision also stated that it had extended the Usibelli

permits each of the three times it had renewed them. Although OSMRE observed that Alaska's position on these permit extensions at permit renewal had merit, it decided that in light of its determination that the 2018 retroactive extension was valid, it did not need to address these other permit extension decisions. Alaska's decision included extensive documentation of both litigation and difficulties in marketing the coal to be mined by Usibelli that kept operations from beginning earlier at Wishbone Hill. Litigation affecting a mine's ability to initiate operations is specifically identified by section 506(c) as a basis for extending a permit. Under the other criterion for granting a permit extension, "reasons beyond the control and without the fault or negligence of the permittee," OSMRE accepted evidence of Usibelli's difficulties in marketing its coal Alaska DNR set forth in its decision.

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### **BLM Releases Draft EA in Response to Montana Court Decision on the Federal Coal Leasing Program**

On May 22, 2019, the Bureau of Land Management (BLM) released a draft Environmental Assessment (EA) it produced pursuant to the National Environmental Policy Act (NEPA). The EA examines the impacts of ending the previous administration's moratorium on federal coal leasing. The moratorium was imposed pending completion of a programmatic environmental impact statement (PEIS) for the federal coal leasing program that addressed climate change and other issues. BLM took comments on this draft EA through June 6, 2019.

This EA is a response to the April 19, 2019 decision of the U.S. District Court for the District of Montana. That Court concluded that terminating the moratorium on federal coal leasing was a major federal action that triggered an obligation under NEPA to conduct an analysis of environmental impacts. The discussion of scope and alternatives in BLM's draft EA carefully narrows the federal action at issue by pointing out that:

- the "moratorium" was actually just a two year "pause" in federal coal leasing, pending completion of a PEIS;
- certain coal leasing activity was not subject to the "moratorium" or "pause" and continued despite it; and,
- only three coal leases that were not exempt from the "pause" were approved during the time it would have otherwise been in effect.

The EA then discusses the impact of lifting the pause of federal coal leasing on: 1) greenhouse gas emissions and climate change, 2) the socioeconomics, and, 3) water quality, quantity and riparian areas.

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### **OSMRE Withdraws Proposed Blasting Rule Based on WEG Petition for Rulemaking**

On July 30, 2019, OSMRE published notice of its decision to withdraw a rulemaking it had initiated upon a petition filed by Wild Earth Guardians (WEG) for regulation of air emissions from blasting operations at surface mines. OSMRE said it had reconsidered its decision to act upon this petition for two reasons. First, citing the *In Re Permanent Surface Mining Regulation* court decision regarding OSMRE's initial permanent program regulations, OSMRE explained that its authority to regulate air quality from mining operations was limited to impacts on air quality from emissions attendant to erosion, leaving it without authority to promulgate the regulations WEG's petition sought. Second, OSMRE stated that existing state law, including state implementation plans (SIPs) under the Clean Air Act contained adequate authority to protect against the harms that were the subject of WEG's concerns.

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## **IMCC States Annual Meeting with MSHA Assistant Secretary Zatezalo Held on July 18**

On July 18, 2019, state mining regulators met with Assistant Secretary of Labor for Mine Safety and Health David Zatezalo and his senior staff at the Mine Safety and Health Administration (MSHA) headquarters in Arlington, Virginia in this year's annual meeting between state mine safety and health regulators and MSHA. The states expressed their continued desire to engage with MSHA as partners in the mission of assuring the safety and health of the nation's miners. A wide range of topics were discussed in this half day meeting, including: Reciprocity for mine foremen; use of proximity detection on underground and surface mobile equipment, an MSHA reorganization and consolidation of coal and metal/non-metal offices 103J and 103k orders, progress on the assistant secretary's priorities, providing adequate numbers of judges for mine rescue contests; and, state training grants in the administration's budget for MSHA.

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## **IMCC's 2019 Annual Meeting Held in Tucson, Arizona**

The Interstate Mining Compact Commission (IMCC) held its 2019 Annual Meeting May 5-8 at the Ventana Canyon Hotel in Tucson, Arizona. A casual welcome reception took place on the evening of Sunday, May 5, kicking off the Annual Meeting.

On Monday, May 6, the Honorable Joe Balash, Assistant Secretary of Land and Minerals Management in the U.S. Department of Interior (DOI) provided opening remarks. Immediately following, officials from the Office of Surface Mining met with the IMCC member states to discuss issues of mutual concern. Next, the standing committees met beginning with a joint meeting of the IMCC Finance and Administrative Committee and the Resolutions Committee.

On Tuesday, May 7 the meeting continued, starting with a joint meeting of the Noncoal Environmental Affairs Committee and the Mine Safety and Health Committee. The Coal Environmental Affairs and Abandoned Mine Lands Committee Joint Meeting followed in the afternoon. The Annual Awards Banquet took place in the evening, during which the IMCC 2019 National Reclamation, Minerals Education, and Mine Safety and Health Training Awards were presented. Some of the award winners were unable to attend the banquet, and those awards were presented at a later date.

IMCC's Finance and Administrative Committee and the Resolutions Committee Joint Meeting continued on the morning of Wednesday May 8, followed by the Annual Executive Commission Business Meeting, concluding the Annual Meeting.

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## **Awards Presentations**

A few of the Interstate Mining Compact Commission (IMCC) 2019 Minerals Education and Mine Safety and Health Training Award winners were unable to attend the Awards Banquet in conjunction with IMCC Annual Meeting in May. As a result, these awards were presented at various events over the following two months.

IMCC Executive Director, Tom Clarke, was honored to present the Mine Safety and Health Training Award in the State Coal Underground Mining category to the Virginia Department of Mines, Minerals and Energy, Division of Mines for its Mine Safety Minute Training Videos. The award was presented at the 2019 Coal Mine Rescue Contest in Wise, Virginia on June 5.

Mr. Clarke was grateful to have also been invited to the Annual Meeting of the Virginia Transportation Construction Alliance (VTCA), which took place in Hot Springs, Virginia on July 13, to present the Mine Safety and Health Training Award in the State Metal/Nonmetal Surface Mining

category. This award recognizes the work of the Virginia Department of Mines, Minerals and Energy, Division of Mineral Mining in collaboration with the VTCA for their Open Pit Miner Apprentice Program.

Lafarge Marblehead Quarry received the Minerals Education Award for their dedication to providing educational outreach. The award presentation took place at the Marblehead Quarry, located in Ottawa County, on the Marblehead peninsula, on the banks of Lake Erie. Following the presentation, company officials provided a tour of the mining facility, including blasting operations at the working highwall. At the conclusion of the tour, Ohio Department of Natural Resources and guests were asked to join company managers and staff for lunch and continuing discussions. Lanny Erdos, Division Chief and Mine Safety Program Administrator of the Division of Mineral Resources of the Ohio Department of Natural Resources, indicated that company officials are already working on thoughts relative to next year's award!

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### **OSMRE NEPA Manual Finalized**

Office of Surface Mining Reclamation and Enforcement (OSMRE) Acting Director Glenda Owens signed a revised manual governing the agency's procedures for conducting analyses required under the National Environmental Policy Act (NEPA) on July 31, 2019. The new OSMRE NEPA manual was developed as part of an Interior Department-wide effort to update and streamline its processes under NEPA. It incorporates the Department's 150 page and one-year time limits for completing most environmental impact statements (EIS). The manual also adopts the Department's 300 page and two-year time limits for an unusually complex EIS. Discussions between the states and OSMRE regarding opportunities for further streamlining NEPA processes are expected to continue.

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### **Ohio's Lanny Erdos is Moving On**

Lanny Erdos, Division Chief and Mine Safety Program Administrator of the Division of Mineral Resources of the Ohio Department of Natural Resources has announced that he will be leaving the Ohio Department of Natural Resources on August 30, 2019 to accept a position with the federal government. Please join us in giving our best wishes to Lanny as he embarks on the next phase of his career. Lanny has been one of IMCC's true stalwarts. His leadership skills and dedication will make him an asset to any organization he serves. It has been a real privilege to work with him.