



IMCC 2011 Mid-Year Meeting Scheduled for Point Clear, Alabama

The Interstate Mining Compact Commission's (IMCC) 2011 Mid-Year Meeting will be held at the Marriott Grand Hotel in Point Clear, Alabama on October 18 - 19, 2011.

The Noncoal Environmental Affairs and Mine Safety & Health Committees will meet jointly on October 18. A joint meeting of the Coal Environmental Affairs and Abandoned Mine Land Committees will follow. There will be a luncheon on this day and a reception in the evening.

On Wednesday, October 19, the joint meeting of the Resolutions and Finance and Administrative Committees will take place. The Executive Commission Business Meeting will immediately follow and will conclude the Mid-Year Meeting.

A registration form, hotel reservation information, and an Airport Transportation Request Form are included in this newsletter. They can also be downloaded from our website at www.imcc.isa.us (Click on the "Conferences" tab). Contact: Beth Botsis at bbotsis@imcc.isa.us or by phone: 703.709.8654.

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Upcoming Meetings:

IMCC 2011 Mid-Year Meeting

October 18 - 19, 2011
Marriott Grand Hotel
Point Clear, Alabama

IMCC 2012 Annual Meeting

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

For more information on IMCC Meetings as it becomes available, visit our website: www.imcc.isa.us and click on the "Conferences" tab. Copies of IMCC's Compact Newsletter are also available on the website by clicking on the "Publications" tab.

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Alaska's Governor Parnell Presents IMCC Minerals Education Award



Governor Parnell Presents IMCC Public Outreach Award to Michelle Bruner and Nick Enos for Alaska Resource Education
Photo: Judy Patrick Photography

Alaska Governor Sean Parnell presented the Interstate Mining Compact Commission's (IMCC) 2011 Minerals Education Award in the Public Outreach Category to Alaska Resource Education (ARE) during a meeting of the Alaska Resource Education Development Council on June 28, 2011 before 950 people who were in attendance.

While introducing the award, Governor Parnell stated, "The Interstate Mining Compact Commission provides a strong united voice that makes a difference in each member states' efforts. It helps member states have effective regulatory programs, to conserve natural resources, and have strong mineral economies. IMCC is also invited to testify before Congress. They weigh in and keep an eye on

[activities of] EPA, BLM, OSM.... The Commission has given the public outreach award 13 times, but this is the first time an Alaska entity has received the award. Alaska Resource Education programming has been around for over 20 years.... It's my distinct honor to formally present the award on behalf of the Interstate Mining Compact Commission to the nonprofit partnership between the Alaska Department of Education and Alaska Resource Education."

Receiving the award from the Governor on behalf of ARE were Michelle Bruner, Executive Director of ARE, and Nick Enos, Vice President of ARE and Environmental Manager for Barrick Gold Corporation, Donlin Creek.

IMCC 2012 Annual Meeting to be Held in Asheville, North Carolina

The Interstate Mining Compact Commission's (IMCC) 2012 Annual Meeting will be held at the DoubleTree Biltmore Hotel in Asheville, North Carolina from April 29 - May 2, 2012.

A welcoming reception will kick-off the meeting on the evening of Sunday, April 29. On Monday, April 30, a General Session will be followed by the joint meeting of the Mine Safety and Health and Noncoal Environmental Affairs Committees. An excursion is tentatively being planned for attendees on Monday afternoon and evening to include a bus trip on the Blue Ridge Parkway to view a mine site and will conclude with dinner prior to returning to Asheville. Further details will be available at a later date.

On Tuesday, May 1, the Coal Environmental Affairs and Abandoned Mine Lands Committees will meet jointly. The annual awards reception and banquet will take place in the evening.

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

For further information, visit IMCC's website at www.imcc.isa.us and click on the "Conferences" link. Registration and transportation forms will be posted on the website closer to the meeting date. Contact: Beth A. Botsis at phone: 703.709.8654 or e-mail: bbotsis@imcc.isa.us.

EPA Proposes Revised Definition of Solid Waste and Expands Environmental Justice Analysis

The Environmental Protection Agency (EPA) recently proposed a revised regulatory definition of solid waste (DSW) under the Resource Conservation and Recovery Act (RCRA). EPA also released a draft expanded environmental justice (EJ) analysis for the DSW final rule. An EPA press release states that the expanded EJ analysis "evaluates the rule's potential impact on low-income and minority communities." The proposal and EJ analysis are open for public comment.

EPA said the DAW proposal will increase "transparency and oversight and accountability for hazardous materials recycling. Facilities that recycle onsite or within the same company under the reduced regulatory requirements retained under the proposal would be subject to enhanced storage and record keeping requirements as compared to the 2008 rule. Companies that send their hazardous materials offsite for recycling would have tailored storage standards, while being required to send their materials to a permitted hazardous waste recycling facility."

EPA reversed course from the 2008 final rule and is "[a]pplying the regulatory definition of legitimate recycling, the contained standard, and the notification requirement to all hazardous secondary material and hazardous waste recycling", according to EPA's "Frequently Asked Questions" on the proposed rule.

House Passes H.R. 2018 re. Role of States Under Clean Water Act

The House of Representatives, by a vote of 239 - 184, passed the "Clean Water Cooperative Federalism Act of 2011" (H.R. 2018). House Transportation and Infrastructure Chairman John Mica of Florida and Ranking Member Nick Rahall of West Virginia sponsored the act. The bill would clarify state priority in clean water standard enforcement under Section 404 and preclude EPA from retroactively voiding permits approved by the states. The bill would amend key provisions of the act to address permitting delays, curb the regulatory reach of the EPA vis-a-vis state agencies and preserve the states' authority to set their own water quality standards.

Explaining the rationale for his bill, Chairman Mica said "EPA continues to strangle economic growth in this country with its overreaching and arbitrary regulatory regime." By amending several sections of the CWA, the bill would:

- Prevent EPA from substituting its own water quality standard for an existing and approved state standard without the state's consent;
- Prevent EPA from overriding a state determination that a discharge will comply with state standards;
- Assert that states continue to have primary responsibility for, and rights over, the land and water resources within the states;

- Preclude EPA veto of Section 404 permits without state consent and prevent the agency from rejecting state-approved Section 402 permits based on objections that the state improperly applied EPA guidance to an approved water quality standard; and
- Allow states to assume whole or partial delegation of the Section 404 permitting program.

Recently EPA claimed that, according to its in-house analysis, H.R. 2018 would “significantly undermine EPA’s ability to ensure that state water quality standards are adequately protective and meet CWA requirements” and “fundamentally change the Federal-State relationship” in the CWA. Bob Gibbs of Ohio disagreed, saying “H.R. 2018 removes one of the biggest stumbling blocks to American job creation – the EPA’s ability to coerce and undermine state permitting programs.” Gibbs referred to resolutions passed by state legislatures calling for a restoration of traditional state authority in regulating water quality. Rep. Rahall of West Virginia said coal miners “are scared about their jobs,” emphasizing the threat EPA poses to his state’s economy. “I hoped under this administration we would reach common ground,” Rahall said. “Unfortunately, that has not been the case.”

Environmental Groups Planning Lawsuits re. Coal Ash Surface Impoundments; House Passes Coal Ash Bill

Environmental organizations are planning a series of lawsuits later this year against dozens of coal ash surface impoundments alleging they pose a threat to drinking water. In a June 23 report, the Environmental Integrity Project said 33 coal ash disposal sites contain dangerous levels of arsenic, lead and selenium. The organization said it will sue utilities later this year over a dozen sites they allege violate the Resource Conservation and Recovery Act’s (RCRA) “open dumping” rules, hoping to persuade the Environmental Protection Agency (EPA) to regulate coal ash as hazardous under Subtitle C. So long as such sites are regulated via delegated authority to the states under RCRA, state regulators will not properly control their impact on groundwater, according to the environmentalists.

EPA is not expected to issue a final coal ash rule until next year, but environmentalists are eager to influence the agency’s decision even though they acknowledge the limitations of court action. “Even the weakest proposal EPA has would be far better than current [conditions] at these sites, so it wouldn’t shake things up too much,” said one environmental attorney of the planned lawsuits. “It would mostly get the dinosaurs.”

Industry groups have claimed the sites have structural and environmental integrity and pointed out the substantial recycling of coal ash into other products. They cited a June 15 study showing as many as 316,000 jobs would be lost and \$110 billion spent over 20 years to comply with a hazardous designation for coal ash. They claimed the reuse industry would also suffer substantially from such a designation.

In a related action, the House Energy and Commerce Committee approved legislation that would establish a procedure for state control of coal ash disposal at waste sites with some federal supervision and minimum national standards. The bill also clarifies that the coal and permit program to be implemented by EPA does not apply to the utilization, placement and storage of coal ash at surface mining and reclamation operations. Rules on mine placement of coal ash are being developed by the Office of Surface Mining within the U.S. Department of the Interior.

IMCC/MSHA Sign MOU re. Working Relationship

The Interstate Mining Compact Commission (IMCC) and the Mine Safety and Health Administration (MSHA) signed a memorandum of understanding (MOU) to facilitate coordinated and timely federal/state interactions to promote and protect the mining industry’s most precious resource, its miners. During a signing ceremony at MSHA’s Approval and Certification Center in Triadelphia, West Virginia on May 11, IMCC Executive Director Greg Conrad stated that “While the states have worked cooperatively and in close coordination with MSHA over the years, today’s MOU clarifies and solidifies our working relationship. Under the terms of the MOU, we believe that the states and MSHA are well positioned to implement our respective responsibilities under state and federal mine safety and health laws in a spirit of effective and efficient communication, cooperation and coordination on matters of mutual concern and interest.” In his remarks, MSHA Assistant Secretary Joe Main noted that “we expect the MOU will help us develop more effective training through state-administered programs, and engage in better



Joe Main of MSHA (left) and Greg Conrad of IMCC (right) at signing of the IMCC/MSHA MOU.



MSHA and State attendees at signing of IMCC/MSHA MOU.

intergovernmental communications and coordination that will minimize duplication of efforts and improve consistency of enforcement of standards." The signing ceremony was part of a larger meeting between MSHA officials and several state mine safety and health agency personnel to discuss mine emergency response efforts and improve coordination during mine emergencies. As part of the meeting, there were demonstrations by state and MSHA personnel regarding mine emergency equipment and vehicles.

MSHA District 12 Office Begins Operations

The Department of Labor's Mine Safety and Health Administration (MSHA) announced recently that the newly-formed District 12 office within the agency's Coal Mine Safety and Health division has begun operations. MSHA split the agency's jurisdiction over southern West Virginia coal mines which were formerly covered by District 4, into two separate districts earlier this year. The new office is temporarily housed at the National Mine Health and Safety Academy in Beaver, West Virginia, and will eventually be located in Pineville. It will have jurisdiction over field offices in Pineville, Logan and Princeton. District 4 will remain in Mt. Hope and oversee field offices in Mt. Hope, Mt. Carbon, Madison and Summersville.

"The creation of an additional office in a part of the country with the highest concentration of coal mines has been one of my goals since coming to MSHA," said Joseph A. Main, assistant secretary of labor for mine safety and health. "Splitting this district will allow MSHA to more effectively execute its mission, provide adequate oversight and keep pace with the evolution of the coal industry."

Timothy Watkins, formerly an assistant district manager in Pikeville, Kentucky, and a mining engineer, has been selected as the new District 12 manager. His staff eventually will be structured like that of other coal district offices. Charles Carpenter was recently selected as manager of District 4.

IMCC Testifies at MSHA Public Hearing re. Proposed Rule on Examinations of Work Areas in Underground Coal Mines

IMCC recently testified at a public hearing conducted by the Mine Safety and Health Administration concerning a proposed rule on examinations of work areas in underground coal mines. In its comments, IMCC stated that "our overarching concern with respect to any proposal addressing certification programs is the impacts that it could have on the existing role of state governments pursuant to their respective regulatory programs." IMCC noted that the states have consistently taken the lead in certifying the various competencies that attend the operation of coal mines pursuant to the Mine Safety and Health Act and that, while there are differences among the states in how they address certification, this aspect of state regulatory programs has consistently worked well. IMCC also noted that in order for MSHA to accomplish its intended purpose under the proposal, state certification programs would have to be significantly restructured and all examiners would have to undergo enhanced training and testing to meet the new standard of "identifying all violations of mandatory health or safety standards." IMCC also expressed concerns about the consequences of the proposed rule for mine examiners, and by extension the states who certify them, if MSHA continues to move in the direction articulated in the rule. "MSHA should take into consideration the impacts this rule could have on state certification programs, both in terms of costs and continued viability of the programs," IMCC stated. IMCC will submit written comments on the proposed rule on July 29.

Senate Democrats Urge EPA to Clarify Guidance on "Good Samaritan" Clean-ups

Senate Environment and Public Works Committee Chairman Barbara Boxer of California and Colorado Senators Mark Udall and Michael Bennet urged the Environmental Protection Agency (EPA) Administrator Lisa Jackson in a June 13 letter to enhance the agency's "guidance and expanding outreach to stakeholders who work to restore water quality in the West by helping to clean up old mining sites." The three Democratic senators referenced the efforts of third-party

groups, known as "Good Samaritans," to clean up sites for which they have "no responsibility for mining activities or the resulting pollution" and the problems they encounter. Specifically, the senators voiced concern that EPA's guidance for Good Samaritan cleanups does not sufficiently describe the flexibility under the Superfund law to undertake such efforts. "In particular," they wrote, "we believe that the guidance could be updated to provide additional clarity to Good Samaritans that compliance with such agreements [those entered into between the third parties and EPA] is sufficient to satisfy requirements that help protect environmental quality, including water quality." They noted that some potential Good Samaritans consider liability under the Clean Water Act to be "a barrier to abandoned mine clean-up projects" along with ambiguity surrounding the need for qualifying parties to obtain a Clean Water Act permit for a passive water treatment system with a long-term discharge. They asked the administrator to address this concern.

IMCC Testifies at House Subcommittee Oversight Hearing on AML Solutions

Loretta Pineda, Director of the Division of Reclamation, Mining and Safety within the Colorado Department of Natural Resources, testified on behalf of the Interstate Mining Compact Commission (IMCC) and the National Association of Abandoned Mine Land Programs (NAAML) at an oversight hearing conducted by the House Energy and Mineral Resources Subcommittee on July 14 concerning "Abandoned Mine Lands: Innovative Solutions for Restoring the Environment, Improving Safety and Creating Jobs." In her testimony, Ms Pineda stated that "we are all aware of the legacy of inactive and abandoned mines that continues to endanger our citizens, scar our landscapes and pollute our waters. The critical message for today's hearing is that, while notable and significant progress has been made by the states and tribes to address inactive and abandoned mines – often in conjunction with our federal partners – much more needs to be done." She went on to note that the three most important steps to accomplishing more in the way of reclamation and remediation work involves 1) additional funding; 2) legislative adjustments to fulfill the intent of Congress under SMCRA; and 3) Good Samaritan protections. IMCC's written testimony contained several recommendations and concerns that should be considered in any Good Samaritan legislative effort. IMCC also advocated for a select number of revisions to the 2006 Amendments to SMCRA that would allow the states and tribes to fund additional hardrock and acid mine drainage AML projects nationwide.

Recent EPA Personnel Changes Announced

The White House announced in June that Ken Kopocis, senior counsel on the House Committee on Transportation and Infrastructure, will serve as the Environmental Protection Agency's (EPA) assistant administrator for the Office of Water. Kopocis worked on water issues in Congress for more than 25 years with the Transportation and Infrastructure Committee and the Senate Environment and Public Works Committee. Kopocis replaces former water chief Peter Silva, who stepped down in February.

Several other EPA personnel also announced their departures in June. After 33 years as an EPA career staffer, Rob Brenner, director of the Office of Policy Analysis and Review in the Air Office, will retire from the position in late July. Brenner played a key role in developing and implementing the 1990 Clean Air Act Amendments. David McIntosh, associate administrator for the Office of Congressional and Intergovernmental Relations, also left EPA on June 24 for a position in the private sector.

President Obama Nominates Rebecca Wodder for Interior Assistant Secretary

Recently President Obama nominated Rebecca Wodder, the Chief Executive Officer of American Rivers, a national river conservation group, as the Interior Department's next assistant secretary for fish, wildlife and parks. Wodder will be responsible for overseeing national parks and the Fish and Wildlife Service. If confirmed, Wodder would replace Rachel Jacobson, Department of Interior's principal deputy solicitor, who served as acting assistant secretary when Tom Strickland left the position.

State Grant Funding for FY 2012 Approved by House Appropriations Committee

The House Appropriations Committee recently marked up and passed the Fiscal Year (FY) 2012 appropriations bill for the Interior Department, including the Office of Surface Mining (OSM). The Committee approved \$68.7 million for state Title V grants (the same amount approved last year in the continuing resolution). While this is about \$2.5 million

less than the \$71.3 million received in FY 2010, the amount accords with state needs as forecast for FY 2012. The Subcommittee also rejected OSM's proposal to raise fees on the coal industry since the appropriations bill "provides the funds necessary for states to run their regulatory programs." The Committee went on to say that "providing Federal regulatory grants to primacy states results in the highest benefit and the lowest cost to taxpayers. If a state were to relinquish primacy, OSM would have to hire and train sufficient numbers and types of federal employees and the cost to implement the program would be significantly higher." Finally, the Committee rejected OSM's proposal to increase federal inspections and enhanced federal oversight of state regulatory programs. The Committee noted that "delegation of the authority to the states is the cornerstone of the surface mining regulatory program. The Committee believes the President's proposal to increase Federal inspections would not only be a redundant activity, but also duplicative and wasteful spending. The State regulatory programs do not need enhanced federal oversight to ensure continued implementation of a protective regulatory framework." As a result, the Subcommittee did not provide the almost \$4 million and 25 FTE (full time employee) increase requested by OSM for those activities and maintained OSM's State and Program Evaluation funding at the FY 2010 level. The Committee also included several "riders" addressing issues that impact OSM initiatives, including a prohibition on the use of OSM funds to "develop, carry out, implement, or enforce proposed regulations published on June 18, 2010" (i.e. the stream protection rule); a prohibition of the use of funds by EPA or Interior to "carry out, implement, administer or enforce proposed enhanced coordination procedures issued on June 11, 2009 (i.e. the EPA/DOI/Corps MOU re. Appalachian surface mining operations, including OSM's enhanced oversight initiatives and stream protection rule) or guidance dated April 2, 2010 (regarding conductivity)"; and a prohibition on the use of funds by the Environmental Protection Agency (EPA) to "develop, propose, finalize, implement, administer or enforce any regulation that identifies fossil fuel combustion waste as hazardous waste."

House Appropriations Bill Blocks Corps from Using Funds for Guidance

The House Appropriations Committee's Fiscal Year 2012 Energy and Water and Related Agencies Appropriations bill released in June includes a provision blocking the U.S. Army Corps of Engineers from using any funds to implement rules or guidance amending the Clean Water Act's jurisdictional provisions. In practice, this provision is intended to restrict the agencies' ability to enforce the jurisdictional guidance issued jointly on April 27 by the Corp and the Environmental Protection Agency.

Senate Committee Passes AML Amendment to SMCRA for Noncoal and AMD Projects

The Senate Energy and Natural Resources Committee recently passed S. 897, a bill introduced by Committee Chairman Jeff Bingaman that would amend the 2006 Amendments to the Surface Mining Control and Reclamation Act (SMCRA) to clarify that states who are not yet certified under Title IV of the Act are able to spend their unappropriated state share balances on noncoal abandoned mine land (AML) reclamation projects. The Interior Department, through an Office of Surface Mining (OSM) rulemaking in 2008, blocked the states from using these moneys for this purpose. The bill would also allow the use of these funds for contributions to state set-aside programs for future acid mine drainage projects, which was also authorized by the 2006 Amendments but contradicted in OSM's rule. IMCC had previously testified in favor of the bill at a legislative hearing held on May 18. A similar bill (H.R. 785) is before the House Natural Resources Committee and legislative hearings on the bill are expected before the August recess.

OSM and States Hold Regional Meetings

The Office of Surface Mining (OSM) and state regulatory authorities under the Surface Mining Control and Reclamation Act (SMCRA) recently held a series of regional meetings to discuss topics of mutual concern and interest. The Appalachian Regional Meeting was held on June 1 and 2 in Cincinnati, with six states represented. The Mid-Continent Regional Meeting was held on June 21 and 22 in St. Louis, with ten states in attendance. A Western Regional Meeting is scheduled for August 9 and 10 in Denver, at which seven western states are expected to attend. Agenda items included state updates, various federal oversight topics (inspections, national priority reviews, data statistics, public outreach, actions plans and annual evaluation plans), use of ten-day notices to address permit defects, interagency coordination under the June 2009 memorandum of understanding (MOU), OSM's cost recovery proposal, OSM's stream protection rule and Environmental Impact Statement (EIS), training TIPS innovations, the outlook for coal, and various abandoned mine land (AML) issues.
