

IMCC 2016 Annual Meeting Held in Lake Placid, New York

The Interstate Mining Compact Commission (IMCC) held its 2016 Annual Meeting in Lake Placid, New York April 17 - 20 at the Mirror Lake Inn. Attendees were welcomed during a casual opening reception the evening of Sunday, April 17.

On Monday morning, April 18, Janice Schneider, Assistant Secretary for Land and Minerals Management in the U.S. Department of Interior (DOI) provided opening remarks on matters of mutual concern to DOI and the states. Ms. Schneider, Deputy Assistant Secretary Brandi Colander, Office of Surface Mining (OSM) Director Joseph Pizarchik, and several OSM Regional Directors and headquarters staff met with the states immediately following.

A roundtable discussion luncheon took place at Noon where attendees engaged in informal discussions on several issues of interest, including Good Samaritan Legislation, bonding issues, blasting, and abandoned mine lands (AML) issues, among others. The luncheon was followed by a General Session in the afternoon. Speakers and topics included: "Mining History of the Adirondacks", presented by Dr. William Kelly, New York State (NYS) Geologist Emeritus and Director of NYS Geological Survey (Retired); "Applications of the Forestry Reclamation Approach" presented by Dr. Michael French, Director of Operations for Green Forest Works and Forester with The American Chestnut Foundation; and "Social Cost of Carbon" presented by Jonathan Hall, Director, Alabama Surface Mining Commission. The day of meetings concluded with IMCC's Finance and Administrative Committee Meeting. A cocktail hour in the lobby bar area at the Inn provided an opportunity for attendees to socialize and network in the evening.

On Tuesday, April 19, the joint meeting of the Noncoal Environmental Affairs Committee and the Mine Safety and Health Committee were held in the morning. Following a break for lunch, the joint meeting of the Coal Environmental Affairs and AML Committees took place. IMCC's 2016 National Reclamation Awards, Minerals Education Awards, and Mine Safety and Health Training Awards were presented during the Annual Awards Banquet that evening. Several of the award recipients were present at the banquet.

Following a meeting of the IMCC Resolutions Committee on Wednesday morning, April 20, the IMCC Executive Commission Business Meeting concluded the Annual Meeting.

For more information, contact: Beth Botsis at 703.709.8654 or E-mail: bbotsis@imcc.isa.us.

IMCC 2016 Mid-Year Meeting Plans Underway for Park City, Utah

Plans are currently underway for the Interstate Mining Compact Commission (IMCC) 2016 Mid-Year Meeting in Park City, Utah. The meeting will take place at the Park City Marriott beginning at 1:00 p.m. on Monday, October 17, and will conclude by 1:00 p.m. on Wednesday, October 19. 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.

For more information, contact: IMCC at 703.709.8654.

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Commission

Upcoming Meetings:

IMCC 2016 Mid-Year Meeting

October 17 - 19, 2016
Park City Marriott
Park City, Utah

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

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IMCC States Meet with OMB Re. the Stream Protection Rule

Several Interstate Mining Compact Commission (IMCC) member states had the opportunity to meet with the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) in Washington, DC on June 20, 2016, regarding the Office of Surface Mining's (OSM) Stream Protection Rule (SPR). The states reinstated their position that the rule is significantly flawed and should be withdrawn. They also expounded on several particularly problematic provisions in the rule and on how its "one size fits all" approach does not take into account important regional differences, such as climatic, hydrologic, and topographic factors, among others. Many of the problems within the rule were directly attributed to OSM's lack of coordination and meaningful engagement with the states during the rule's development stage. Additionally, according to several states' estimates, OSM grossly underestimated the annual increase in costs to state regulatory programs for implementation of provisions in the rule, many of which the states believe are overkill, unnecessary, and will have little or no benefit. The increased costs to states would pose a need for increased federal appropriations for state program grants, and states may have difficulty in meeting the grant match requirements. The states stood by their commitment to engage with OSM going forward in an effort to make the rule more workable, should it be withdrawn and the effort renewed.

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House Committee Markup of "Mining Trio" Bills

On June 14 and 15, the House Natural Resources Committee held a mark-up of several bills relevant to mining and abandoned mine land (AML) programs. Known as the "Mining Trio," the bills are respectively related to: funding for mining schools, formation of a charitable foundation to further AML remediation, and liability protections for "Good Samaritans" undertaking AML work. All three bills passed out of the Committee.

The "Mining Schools Enhancement Act" (H.R. 3734), introduced by Representative Hardy (R-NV), is a response to declines in mining engineering program enrollment, which may lead to a shortage of mining engineers. It would require the Office of Surface Mining Reclamation and Enforcement (OSMRE) to ensure that at least 70% of applied science funding is expended to fund activities of mining and mineral engineering programs at mining schools in the United States. This bill passed without amendment.

The "Energy and Minerals Reclamation Foundation Establishment Act" (H.R. 3844), introduced by Representative Hice (R-GA), would provide a means to encourage, obtain, and use donations for the expressed purpose AML work. A board of qualified individuals from various sectors would direct use of the funds collected. The bill passed with an amendment to place the Bureau of Land Management on the board as an ex-officio member, rather than OSMRE.

Title III of the "Locatable Minerals Claim Location and Maintenance Fees Act" (H.R. 3843), introduced by Representative Lamborn (R-CO), would empower state programs and citizen groups to undertake AML water treatment work with protection from daunting, unnecessary liabilities under the Clean Water Act. The bill would establish a federal "Good Samaritan" program applicable to all lands and to both coal and hardrock AML sites. States could apply for delegated authority to administer their own Good Samaritan programs. This bill passed out of committee with an amendment requiring additional precautions when affecting an abandoned mine pool.

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IMCC Files Comments Re. WildEarth Guardians Petition for Rulemaking Re. Self-Bonding

The Interstate Mining Compact Commission (IMCC) recently filed comments on a petition to initiate rulemaking that was submitted to the Office of Surface Mining Reclamation and Enforcement (OSMRE) by WildEarth Guardians (WEG) on March 3, 2016. The petition requested that OSMRE amend the agency's regulations related to self-bonding. IMCC strongly recommended that OSMRE deny the petition and instead continue with the evaluation of the reclamation bonding program as a whole that is currently underway through the OSMRE Financial Assurance Coordination Team (FACT), that is also working in coordination with IMCC's Bonding Work Group.

In its comments, IMCC noted that it shares concerns regarding recent coal company bankruptcies and current financial health of the coal industry, particularly whether disturbed coal mines will be reclaimed by the bankrupt companies, and whether the costs to restore the land and water will be shifted to taxpayers.

"For these very reasons, IMCC has proactively engaged on several fronts to address not only self-bonding concerns,

but the myriad issues attending reclamation bonding under SMCRA” the comments state, “Given the interconnectedness of these various issues, and the important role the states play in addressing them, we assert that a broader-based, more comprehensive approach is needed as opposed to the narrower tactic advanced by the petition.”

IMCC noted that the states’ primary concern regarding the recent downturn of the coal industry is assuring that reclamation continues at affected mines so taxpayers are not potentially saddled with the costs of reclaiming active mines. To IMCC’s knowledge, all of the impacted mines are operating in compliance with their reclamation obligations and the states’ goal is to continue this trend. The states are reluctant to force replacement of self-bonds through short-sighted enforcement actions that would lead to the premature cessation of mining and reclamation operations with attendant increased reclamation costs due to an unanticipated change of mining plans.

In an effort that began several years ago, and continues in earnest today, IMCC has been exploring the broader implications of all key elements related to reclamation bonding, including self-bonding, and how changes could impact not just coal mining operations, but all mining nationwide – especially regarding the availability of bonds and the capacity of the surety and banking industries to meet demands. IMCC has communicated and shared information with OSMRE’s FACT regarding many of these mutual concerns. Through IMCC, the states have also met with representatives from the surety industry and the investment community and bankruptcy experts. IMCC established a Bonding Work Group responsible for addressing critical areas of bonding. Among the work group’s targeted areas are calculating the correct bond liability; effective and appropriate bond instruments; matching bond instruments to risk of forfeiture; and how states should best position themselves with respect to Chapter 11 bankruptcy filings.

IMCC contends it would be premature for OSMRE to advance a rulemaking on self-bonding, or any other bonding issues, until such time as the states and the agency’s own FACT have had an opportunity to pursue the issues identified above and engage in stakeholder outreach. Since the states have implemented the bonding provisions of their respective regulatory programs for over 30 years, they are in the best position to determine whether and to what extent adjustments are needed. IMCC also noted in its comments that OSMRE has not found the states to be deficient in this area as demonstrated by the agency’s annual federal oversight reviews.

For more information or a copy of IMCC’s comments, contact: Beth Botsis at 703.709.8654 or E-mail: bbotsis@imcc.isa.us.

WGA Adopts Policy Resolutions Re. Good Samaritan Protections, Species Conservation and ESA

Seven new policy resolutions were adopted by the Western Governors’ Association (WGA) during the Association’s recent 2016 Annual Meeting in Jackson Hole, Wyoming. Of particular interest to the Interstate Mining Compact Commission (IMCC) states are a resolution on cleaning up abandoned mines in the West, and species conservation and the Endangered Species Act (ESA), which are further described below. In addition, resolutions adopted included: federal-state land exchanges and purchases; combating invasive species; wildland fire management and resilient landscapes; energy and transmission; and national parks and the West.

WGA’s policy resolution titled, “Cleaning Up Abandoned Mines in the West” calls on Congress to legally protect volunteer remediating partners, including local and state government agencies, which conduct cleanup, from becoming legally responsible under Section 301(a) and Section 402 of the Clean water Act (CWA) for any continuing discharges from the abandoned mine site after completion of a cleanup project. Many of these “Good Samaritan” efforts have been stymied due to questions of liability for any discharges from an abandoned mine site remaining after their cleanup efforts are completed, even though the Good Samaritan succeeds in reducing the water quality impacts and had no previous responsibility or liability for the site. Remining of old abandoned mine sites and voluntary remediation by mining companies that could result in an improved environment are also hindered by such liability concerns. WGA also calls on Congress and federal agencies to consider legislative and administrative remedies to address potential Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Resource Conservation and Recovery Act (RCRA) liabilities. The resolution expresses the support of Western Governors of efforts by Congress and the Administration to encourage public-private partnerships that would facilitate cleanups by Good Samaritans.

In the policy resolution titled, “Species Conservation and the Endangered Species Act,” WGA recognizes that species conservation and habitat protection can be enhanced through working with the U.S. Fish and Wildlife Service (FWS), the National Marine Fisheries Service (NMFS), the Department of Interior (DOI), and local governments and stakeholders. The resolution calls for statutory changes to the Endangered Species Act (ESA) to be developed in a fashion that results in broad bipartisan support and maintains the intent of the ESA to protect and recover imperiled species. Western Governors identified the following seven broad goals they believe should drive improvements to species conservation and the ESA:

- ▶ Require clear recovery goals for listed species, and actively pursue delisting of recovered species;
- ▶ Increase the regulatory flexibility of the Services to review and make decisions on petitions to list or change the listing status of a species under the ESA;
- ▶ Enhance the role of state governments in recovering species;
- ▶ Ensure the use of sound science in ESA decisions;
- ▶ Incentives and funding for conservation are essential;
- ▶ "Foreseeable future" must be defined;
- ▶ States should be full partners in listing, critical habitat designations, recovery planning, and delisting decisions, particularly when modeling is used in analysis.

The resolution also encourages the federal government to consider sound science, particularly from state agencies, and to include such science in its species status assessments and listing decision.

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IMCC Engages in Federalism and SBREFA Processes Re. EPA CERCLA 108(b) Rulemaking

Pursuant to Executive Order 13132 (Federalism), on May 18, the Interstate Mining Compact Commission (IMCC) participated in a federalism consultation briefing conducted by the Environmental Protection Agency's (EPA) Office of Congressional and Intergovernmental Relations (OCIR) on EPA's rulemaking effort regarding financial responsibility for hardrock mining under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), Section 108(b). Several other state and local government organizations were also in attendance, including the Western Governors' Association (WGA), the Association of Clean Water Administrators (ACWA), the Association of State and Territorial Solid Waste Management Officials (ASTSWMO), the Environmental Council of the States (ECOS), the National Association of Counties, and the Council of State Governments.

EPA began the briefing with a presentation providing an overview of the proposed rulemaking, including the agency's explanation of why they believe the rule should not preempt state and local laws relating to mining reclamation under CERCLA Section 114(d), and how EPA intends to adjust the level of CERCLA 108(b) financial responsibilities to reflect best practices currently in place, including those required by states. However, the presentation did not provide specifics about what the financial requirement adjustments would look like or what best practices would be considered. EPA also provided examples of what the financial assurance costs would potentially be for various mine scenarios under the formula being developed by the agency for calculating bond costs, but questions remain as to what kind of information EPA is using to develop the cost basis being used in the formula. Without more specific information regarding language in the rule, concerns remain regarding the potential for duplication and preemption of effective state financial assurance programs that are currently in place for hardrock mining, and what the implications would be for the state programs. IMCC will be submitting comments to EPA by the August 18 deadline as a follow-up to the federalism briefing.

On June 16, IMCC also participated in a meeting of the small business entities (SERs) that are part of the Small Business Regulatory Enforcement Fairness Act (SBREFA) process related to the CERCLA 108(b) proposed rulemaking. IMCC arranged for presentations by the states of Nevada, Utah, and New Mexico during the briefing. The states provided excellent overviews of the financial assurance programs and protections that currently exist within their states, and indicated areas where there are concerns that an EPA rulemaking may preempt the state regulations.

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U.S. Supreme Court Rules Corps Jurisdictional Determinations are Final Agency Action

On May 31, 2015, the United States Supreme Court held in *USACE v. Hawkes Co.* that U.S. Army Corps of Engineers (Corps)-approved "jurisdictional determinations" (JDs) designating properties as "Waters of the United States" under the Clean Water Act (CWA) constitute a "final agency action" and, as such, can be appealed by a landowner prior to any government enforcement or permitting action occurring. In its unanimous decision, the Court held that a Corps-approved JD is of such legal and economic significance that a landowner should be entitled to seek judicial review without being penalized. The ruling is limited to JDs approved by the Corps.

IMCC Presentations on AML Legislative Activity

The Interstate Mining Compact Commission's (IMCC) Legislative and Regulatory Affairs Specialist Ryan Ellis gave presentations on recent abandoned mine land (AML) legislative activity at two events: an Environmental Protection Agency (EPA) sponsored forum on water infrastructure financing issues held in Big Stone Gap, VA on June 15-16, and the annual Pennsylvania Abandoned Mine Reclamation Conference held in Indiana, Pennsylvania on June 22-23.

The presentation covered AML-related legislative activity over the course of the 114th Congress, beginning in January 2015. Topics included: a national hardrock AML program, responses to the Gold King Mine Spill, Good Samaritan Protections, AML appropriations, AML economic revitalization pilot funding. The RECLAIM Act, and reauthorization of Surface Mining Control and Reclamation Act (SMCRA) Title IV fee collection authority. In addition to reviewing the status of each of those initiatives, the presentation also discussed IMCC state perspectives on and overall trends in AML issues.

compact forum

North Carolina Coal Ash Mine Reclamation Projects

By

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In February 2014, a failure in a portion of the stormwater conduit under the primary ash basin at the Dan River Steam Station in Stokes County, NC resulted in the release of a large volume of coal ash residuals into the Dan River. The spill brought local, state and national attention to the management of coal ash. Shortly after the spill, Governor Pat McCrory proposed a comprehensive coal ash action plan in April 2014. The North Carolina General Assembly passed legislation based on the "Governor's Coal Ash Action Plan", known as the "Coal Ash Management Act" (CAMA, S729), which became effective on September 20, 2014. This legislation requires the cleanup of coal ash and closure of coal ash ponds at all 14 coal ash sites and gives oversight to the Department of Environmental Quality (DEQ). The law also set hard deadlines to end wet coal ash production in North Carolina and imposes new, protective requirements on large projects using coal ash as structural fill material. The law includes new requirements regarding public notification of spills, providing drinking water to affected families, and monitoring of groundwater around the ash ponds. As part of CAMA, NCGS 130A-309 provides for comprehensive management of coal combustion residuals and for permitting, construction, operation and closure of structural fills in open pit mines.

In November 2014, Green Meadow, LLC and Charah, Inc. submitted applications for mining permit modifications and structural fill reuse permits to the Division of Energy, Mineral, and Land Resources (DEMLR) and the Division of Waste Management (DWM), respectively, as allowed under CAMA. On January 23, 2015, the state approved a request to transfer mining permit #53-05 for the Colon Mine in Lee County, and permit #19-25 for the Brickhaven #2 Tract A in Chatham County to Green Meadow, LLC. This was a required first step in moving the permitting process for these two sites forward. These two projects must also obtain Clean Water Act Section 401 Water Quality Certifications from the Division of Water Resources.

Notice of the draft permits was posted to the DEQ website on March 23, 2015, the first day of the public comment period. Additionally, notice was published in the local newspapers on March 26, 2015. Two public hearings were held on the proposed permit actions and the public comment period subsequently ended on May 16, 2015. Public comments focused on several major issue areas including quality of life, transportation, construction standards for liners, ground and surface water contamination, Duke Energy's environmental history, property rights, environmental justice, the permitting process, and public water supply protection in the Cape Fear River Basin. As stated above, a thorough review of all public comments received and the project record was conducted by DEQ staff, including interagency discussions and site visits to insure that all public safety and environmental protection issues had been addressed.

Subsequently, on June 5, 2015, mining permit modifications were issued by DEMLR for both sites. The modifications included redesigning the erosion and sedimentation control measures throughout the site and reducing the affected acreage to 314 acres. The modifications also included changing the method for reclaiming the mines by constructing structural fill using coal combustion byproducts in accordance with the provisions of the Coal Ash Management Act of 2014. Reclamation of the mine sites using a structural fill also required separate permits from the Division of Waste Management, permit #5306-STRUCT-2015 for the Colon Mine and permit #1910-STRUCT-2015 for the Brickhaven No. 2 Mine.

For more information and to view copies of the mining permit modifications and associated structural fill documents, visit: <http://deq.nc.gov/news/hot-topics/coal-ash-nc/moving-forward-coal-ash>.

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