



IMCC 2012 Mid-Year Meeting to be Held in Chicago, Illinois

The Interstate Mining Compact Commission's (IMCC) 2012 Mid-Year Meeting will be held October 11 - 12, 2012 at the Renaissance Blackstone Hotel in Chicago, Illinois.

On Thursday morning, October 11, the Noncoal Environmental Affairs and Mine Safety and Health Committees will meet jointly. A meeting between IMCC and the federal Office of Surface Mining (OSM) will follow. After a luncheon, the Abandoned Mine Lands and Coal Environmental Affairs Committees will meet jointly in executive session. A reception will be held in the evening.

IMCC's Finance and Administrative and Resolutions Committees will meet jointly on the morning of Friday, October 12 and be followed immediately by the Executive Commission Business Meeting which will conclude the Mid-Year Meeting.

A registration form is included with this issue of the "Compact". Contact: Beth A. Botsis at 703.709.8654 or E-mail: bbotsis@imcc.isa.us. Information about the meeting is also available on the IMCC website at: <http://www.imcc.isa.us/Conference.htm>.

IMCC Welcomes Nevada as an Associate Member

The state of Nevada became an associate member of the Interstate Mining Compact Commission (IMCC) effective July 1, 2012. Governor Brian Sandoval submitted a letter to IMCC Executive Director Gregory Conrad requesting associate membership in the Compact. The 19 full member states then voted unanimously to approve Nevada's request and the state's entry into the IMCC. Governor Sandoval has appointed Alan R. Coyner, Administrator of the Nevada Division of Minerals, as his official representative to the Compact.

Davis Named Director of NC Division of Land Resources; Taylor Named NC State Geologist

Tracy Davis was recently named the new Director of the North Carolina Division of Energy, Mineral and Land Resources (DEMLR) (formerly Division of Land Resources). Dr. Kenneth Taylor, Chief of the North Carolina Geological Survey was named as the new North Carolina State Geologist. They replace James Simons who previously served as the Director and State Geologist until his retirement effective May 31, 2012.

DEMLR promotes the wise use and protection of North Carolina's land and geologic resources. Within the Division, the Land Quality Section programs regulate and provide technical assistance related to mining, dam safety and sedimentation control. The North Carolina Geological Survey performs scientific investigations, provides technical assistance and maps the state's geological resources. The division as a whole supports public education in the earth sciences.

"Tracy's engineering background, regulatory experience and managerial skills combine to make him a good fit for this very challenging position," said Dee Freeman, Secretary of the North Carolina Department of Environment and Natural

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Commission

Upcoming Meetings:

IMCC 2012 Mid-Year Meeting

October 11 - 12, 2012
Renaissance Blackstone Hotel
Chicago, Illinois

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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Resources (DENR). "Tracy has extensive field knowledge, technical expertise and exceptional communication skills, and will lead the division in its environmental protection mission, while at the same time keeping in mind the practical concerns of the regulated community."

Davis, a licensed professional engineer and certified public manager, has worked for DENR for nearly 25 years. He started his career as an assistant state mining specialist in the Land Quality Section, and was then promoted to manage the section's mining permit program. Davis has served as the Section's chief engineer since 2003. In that role, he managed the Section's engineers and environmental professionals across DENR's seven regional offices, and led special projects, including the statewide implementation of the express permitting program for erosion and sedimentation control projects. Davis has a bachelor's degree in civil engineering from North Carolina State University. A native of Dayton, Ohio, he has lived in Raleigh since childhood, where he still resides with his wife and son.

Since 1851, North Carolina state law has recognized the need to have an expert on the geology of North Carolina within state government. James Simons, who was a licensed geologist, served as the lead State Geologist prior to his retirement. Freeman designated Kenneth Taylor as the new State Geologist in concert with his duties leading the North Carolina Geological Survey.

Following ratification of Session Law 2012-143, the "Clean Energy and Economic Security Act", the North Carolina Division of Land Resources was renamed the Division of Energy, Mineral and Land Resources, effective August 1, 2012.

Senate Bill Introduced to Undo AML Cap

Recently a bi-partisan group of senators introduced a bill (S. 3514) which would repeal an offset to the transportation bill that would cap at \$15 million per year the amount of abandoned mine land (AML) trust funds payable to states and tribes that are certified to have finished cleaning up their priority abandoned coal mine sites. Initially the offset appeared to affect only Wyoming, which would have been denied \$700 million over the next decade based on the existing formula for distribution of AML funds. However, due to the complex formula associated with the AML program, non-certified states like West Virginia, Kentucky and Pennsylvania also stand to lose AML funds. A companion bill (H.R. 6113) has been introduced in the House by Representative Cynthia Lummis (R-WY).

Coal Ash Bill Introduced in Senate

Senator John Hoeven (R-ND) and Senator Ken Conrad (D-ND) recently introduced S. 3512, the "Coal Ash Recycling and Oversight Act of 2012," which would prohibit the Environmental Protection Agency (EPA) from designating coal ash as a hazardous waste while providing for regulation of coal ash disposal by state environmental agencies using the municipal solid waste regulations under Subtitle D of the Resource Conservation and Recovery Act (RCRA).

"This legislation represents a reasonable new approach to environmental law – a states-first approach," Hoeven and Conrad said in a joint statement. "It ensures good environmental stewardship, while helping to preserve jobs and ensure that a beneficial product is made available for worthy uses. Just as importantly, it ensures that Congress and the states hold the reins of environmental policy."

The bill would allow states to set up their own permitting program for the management and disposal of coal ash based on existing EPA regulations to protect human health and the environment. The benchmarks for what constitutes a successful program will be set in statute. S. 3512 builds upon H.R. 2273 which was passed by the House last October. There is strong bipartisan support for the bill in both the House and Senate.

In a related development, Representative Ed Markey (D-MA), Ranking Member of the House Natural Resources Committee, has expressed concern about OSM taking the lead on mine placement of coal ash and has suggested that EPA play a larger role. He has sent a letter to Interior Secretary Salazar requesting wide-ranging information regarding OSM's development of a proposed rule on mine placement, including coordination by OSM with EPA; mines that use CCRs; stakeholder input to the rulemaking process; EPA damage cases involving minefills; ground water impacts of CCR placement; the requirement for a full Environmental Impact Statement (EIS) on the rule; and how an EPA hazardous waste determination would impact mine placement.

States/Industry Win Case Challenging EPA Guidance Re. Appalachian Coal Mining

Recently the U.S. District Court for the District of Columbia handed down its ruling in the case, *National Mining Association v. Jackson*. The court sided on all counts with the state and industry plaintiffs in their challenge to the Environmental Protection Agency's (EPA) final guidance affecting Appalachian coal mining operations. The case was brought by the National Mining Association (NMA) together with the state of West Virginia and the Commonwealth of Kentucky after EPA issued draft guidance to its regional offices on, among other things, the use of conductivity benchmarks in assessing the effects of surface mining on streams and the application of Clean Water Act (CWA) Sec. 404(b)(1) guidelines in the issuance of CWA Sec. 404 permits. The plaintiffs challenged the guidance as binding in nature, infringing upon states' roles in Clean Water Act (CWA) permitting, violating the Surface Mining Control and Reclamation Act (SMCRA) and impermissibly setting a *de facto* water quality standard for conductivity. In his ruling, Judge Reggie B. Walton stated, "EPA overstepped its statutory authority under the CWA and SMCRA, and infringed on the authority afforded state regulators by those statutes." EPA was using the enhanced coordination process and guidance document to effectively stop new or expanded surface coal mining operations in Appalachia.

Uranium Resources Inc. and the Navajo Nation Reach Agreement for Mine Cleanup in New Mexico

The Navajo Nation and Uranium Resources Inc. have finalized a cleanup agreement that could also lead to new mining projects in northwestern New Mexico. The agreement requires Uranium Resources Inc. to clean up legacy pollution in the area before any new mining begins. Once the cleanup is completed, the agreement also gives the company limited access to tribal lands. The company plans to begin *in situ* leach uranium recovery in the Church Rock area of New Mexico near Gallup. The recovery method usually involves injecting water with oxygen and sodium bicarbonate underground to free uranium. According to Uranium Resources' safety and environment senior vice president, Mark Pelizza, the agreement stems from a previous deal with the Navajo Nation in which the company agreed to foot the bill to survey past pollution in the area where both parties were working on cleaning up the site to an "undefined level."

Domestic Energy and Jobs Act Introduced in the Senate

Senate Republicans recently introduced the "Domestic Energy and Jobs Act of 2012" (S. 3445), an energy bill that includes several provisions for alleviating regulatory burdens on coal, including a provision that would block the Office of Surface Mining (OSM) from finalizing its forthcoming stream protection rule. Senator John Hoeven (R-ND) sponsored the Senate bill which was co-sponsored by 29 Republican senators. The bill would also establish a critical minerals policy similar to a measure by the same name that passed the House last month. It incorporates legislation that had previously been introduced in the Senate by Senator Lisa Murkowski (R-AK). The new legislation would also bar the Administration from giving OSM responsibilities currently held by the Bureau of Land Management via a planned reorganization of coal and mining oversight. Representative Mark Amodei (R-NV) offered a similar proposal in an amendment that was attached to the House version of the bill.

Senator Dan Coats (R-IN) introduced a bill (S. 3450) recently that would also address concerns with the Stream Protection Rule. The "Coal Miner Employment and Domestic Energy Infrastructure Protection Act" would prevent OSM from displacing the current Stream Buffer Zone Rule with the expanded Stream Protection Rule. The bill mirrors H.R. 3409 introduced in the House by Representative Bill Johnson (R-OH) that was passed by the House Natural Resources Committee.

Comprehensive Mine Safety Bill Re-introduced in the Senate

The "Robert C. Byrd Mine and Workplace Safety and Health Act" (s.3443) was re-introduced in the Senate recently by Senator Jay Rockefeller (D-WV). The comprehensive mine safety legislation was co-sponsored by Senators Tom Harkin (D-IA), Joe Manchin (D-WV) and Patty Murray (D-WA). Along with many of the same mine safety provisions that were included in Senator Rockefeller's two previous pieces of mine safety legislation, the bill also includes provisions specific to issues highlighted in investigations of the events at Upper Big Branch on April 5, 2010 when an explosion occurred resulting in 29 deaths. The new provisions include:

- Establishing strict penalties for ventilation changes without approval;
- Requiring the Mine Safety and Health Administration (MSHA) to issue a rule within six months to lower exposure levels to respirable dust;
- Requiring quarterly training on the use of emergency oxygen supplies and installation of "black box" technology on mining equipment;

- Improving federal and state coordination of safety violations; and
- Prohibiting mine operators from keeping multiple sets of books.

S. 3443 would also increase maximum criminal penalties, strengthen whistle blower protections, provide for independent investigations of the most serious accidents and give MSHA expanded authority to subpoena documents and testimony. The legislation would also change MSHA's "pattern of violations" (POV) process by tightening standards for when federal regulators cite a POV and hold mine operators accountable for the safety of their mines.

OSM Director Pizarchik Testifies Re Stream Protection Rule

Joe Pizarchik, Director of the Office of Surface Mining (OSM), recently testified at a House Natural Resources Committee hearing on the agency's response to congressional subpoenas regarding OSM's development of its Stream Protection Rule. The committee began investigating OSM's work on the new rule (intended to replace the 2008 Stream Buffer Zone Rule) last year after a draft report leaked by OSM's contractors showed that the proposed regulation would cost more than 7,000 jobs and cause economic harm in 22 states.

"The Obama administration has made no secret of their desire to reduce or prohibit coal production," Chairman Doc Hastings (R-WA) said. "Their war on coal is being carried out on multiple fronts – from the Environmental Protection Agency to the Office of Surface Mining – all using the same tactic of imposing onerous red tape that will slowly cripple the industry. Never mind the thousands of American families and small businesses that depend on coal for their livelihood." Republicans also questioned why the proposed rule was not released by June 29, a deadline set during a settlement agreement between the agency and organizations that challenged the 2008 rule in court. "We agreed to make our best effort to publish by that date," Pizarchik said. "We continue to make our best effort to publish [a proposed rule and EIS]." Pizarchik did not offer a specific date for release of the proposed rule and accompanying EIS.

Republicans on the committee also accused OSM of "stonewalling" Congress and failing to completely comply with the subpoenas issued for more information about development of the rule. Two subpoenas have already been issued to the Department of the Interior seeking internal communications, drafts of documents and recordings of meetings related to the development of the rule. Pizarchik said the agency has provided more than 13,500 pages of documents to the committee and will continue to work with the committee to provide documents "while respecting the separation of powers."

OSM Evaluates State Permit Extensions

The Office of Surface Mining Reclamation and Enforcement (OSM) continues to increase its oversight activity in the states regarding the issue of extensions for validly issued permits. Last December, OSM issued a pair of Ten-Day Notices (TDNs) in Alaska based on citizen complaints alleging that Usibelli Coal Mine conducted surface coal mining operations without a valid permit in 2010. These allegations were based on the assertion that surface coal mining operations commenced more than three years after the permit was issued and that any extensions or renewals by the state were invalid. The state of Alaska appealed the TDNs to the agency, arguing that the company is not in violation because the permit was lawfully reviewed by the state and renewed several times since the original permit was issued in 1991. OSM issued a response to Alaska on July 19 alleging numerous problems with the state's actions, including an insufficient record, failure to make necessary findings and failure to provide notice of the permit extension. Alaska in turn responded to OSM's request for further information with a letter dated August 2 that included extensive documentation of its permitting decisions. A similar action is pending in West Virginia and the issue has been identified as a national priority topic for annual state oversight evaluations in 2013.

House Passes National Strategic and Critical Minerals Production Act (H.R. 4402)

Prior to its August recess, the House of Representatives passed H.R. 4402, the National Strategic and Critical Minerals Production Act, sponsored by Representative Mark Amodei (R-NV) by a vote of 256 to 160. According to the House Natural Resources Committee press release, "the purpose of the bill is to streamline government red tape to allow the U.S. to more efficiently develop our Nation's strategic and critical minerals, such as rare earth elements, that are vital to job creation, American economic competitiveness, and national security." Among other things, the bill:

- Requires the Department of the Interior and the Department of Agriculture to more efficiently develop domestic sources of strategic and critical minerals and mineral materials; including rare earth elements.

- Defines strategic and critical minerals as those that are necessary:
 - a) For national defense and national security requirements;
 - b) For the Nation's energy infrastructure including pipelines, refining capacity, electrical power generation and transmission, and renewable energy production;
 - c) To support domestic manufacturing, agriculture, housing, telecommunications, healthcare and transportation infrastructure; and
 - d) For the Nation's economic security and balance of trade.
- Facilitates timely permitting processes for mineral exploration and mine development projects by clearly defining the responsibilities of a lead agency;
- Limits the total review process for issuing permits to 30 months unless signatories to the permitting timeline agree to an extension;
- Ensures American mineral mining projects are not indefinitely delayed by frivolous lawsuits by setting reasonable time limits for litigation. Specifically, sets a 90 day time limit to file a legal challenge to an energy project, requires the venue for actions challenging the mining project to the judicial district where the project is located, and limits any preliminary injunctions to halt mining projects to 60 days unless the court finds clear reason to extend the injunction.

Action on the measure in the Senate is uncertain. And while the Administration has not threatened a veto of the measure, the President issued an official statement criticizing the measure as providing far too broad a definition of critical minerals and for prioritizing mineral extraction on public lands over other uses such as hunting and grazing.

OSM Announces Winners of 2012 AML Reclamation Awards and National Awards for Excellence in Surface Mining

The Office of Surface Mining Reclamation and Enforcement (OSM) recently announced the winners of the agency's two award programs that honor top-quality projects that reclaim surface coal mines.

The Abandoned Mine Land (AML) Reclamation Awards recognize outstanding AML reclamation in the United States and showcase exemplary reclamation techniques. Only projects funded wholly or in part and completed by approved state or tribal regulatory programs are eligible to win. A panel of judges composed of directors of state reclamation programs and OSM managers vote to determine the winners.

The five winners of the 2012 AML Reclamation Awards are:

- National Winner: The Dents Run AML/AMD (Acid Mine Drainage) Ecosystem Restoration Projects, Benezette Township, Elk County, Pennsylvania
- Appalachian Region Winner: Lower Rock Creek Watershed Restoration Project, McCreary County, Kentucky
- Mid-Continent Region Winner: I-72 Piers 3 Sag Subsidence Emergency, Sangamon County, Illinois
- Western Region Winner: Spring Meadow Lake Abandoned Mine Reclamation Project, Helena, Lew and Clark County, Montana
- Small Project Winner: Maclean 3 Abandoned Mine Reclamation Project, Carbon County, Utah

OSM will present the awards at the National Association of Abandoned Mine Land Programs' (NAAML) annual conference in Des Moines, Iowa, September 23 - 26.

The Excellence in Surface Coal Mining Awards are presented to coal mining companies that achieve the most exemplary mining and reclamation in the country. Typically, winners demonstrate a commitment to using sound mining practices and executing highly effective reclamation plans designed to enhance post-mining beneficial use of the land.

The 2012 Excellence in Surface Coal Mining Award winners are:

- National Award: Cottage Grove Mine, Peabody Energy, Equality, Illinois
- National Award: Dave Johnston Mine, Glenrock Coal Company, Glenrock, Wyoming
- National Award: North Antelope Rochelle Mine, Peabody Powder River Mining, LLC, Wright, Wyoming
- Good Neighbor Award: Alcoa Sandow Mine, Alcoa, Inc., Rockdale, Texas
- Good Neighbor Award: Antelope, Cordero Rojo, and Spring Creek Mines, Cloud Peak Energy Resources LLC, Gillette, Wyoming

OSM will recognize each company's achievements on September 26 as part of the MINExpo conference in Las Vegas, Nevada.

For more information on OSM's reclamation awards, visit the OSM home page at www.osmre.gov.

Employment Opportunity: Recruitment Notice for New Agency Director in Wyoming

The state of Wyoming is seeking qualified applicants for an agency director position appointed by and to serve at the will of the Governor of Wyoming. The Director is responsible for the Department of Environmental Quality (DEQ) and charged with managing and leading environmental regulatory programs for air, water, mining, abandoned mine reclamation, solid and hazardous waste, and industrial siting.

All interested persons should submit a letter of interest, resume, letters of recommendation or any other relevant course work to: Governor Matthew H. Mead, ATTENTION: Colin McKee, 200 West 24th Street, Room 124, Cheyenne, WY 82002 no later than September 7, 2012.

An EEO/ADA Employer, the State of Wyoming actively supports the ADA and reasonably accommodates qualified applicants with disabilities.
