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MINE Update

MINING INDUSTRY NEWS E-COMM UPDATE

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This Week in The News



Following his address to a COVID-slimmed down joint session of Congress at the 100-day mark of his presidency, President Biden's administration turned to strategies for advancing his proposals for more than \$4 trillion in spending – potentially by breaking the proposals into multiple smaller bills to improve their odds of passing Congress. As the debate evolves, the National Mining Association (NMA) remains focused on actively engaging to advance mining's interests at both ends of Pennsylvania Avenue. Plus we have updates on how mining and energy markets are faring.

Safety Share

Summer is finally coming. Time to think about safety [in the sun.](#)

IEA Report Underscores Importance of Mineral Production to Future Energy Technologies



New analysis from the International Energy Agency (IEA) acknowledges the wide range of minerals needed for future energy technologies, and concludes that mineral supply constraints could jeopardize the deployment and increase the cost of key energy technologies needed to tackle climate change. The IEA's report underscores the need for increased investment in responsible, secure minerals supply chains that will underpin the energy transition. The full report can be accessed [here](#), and the NMA's press release can be found [here](#). Rich Nolan was quoted in coverage of the report, including by [E&E](#).

Safety Technologies Rule Goes to OIRA for Review

The Mine Safety and Health Administration (MSHA) final rule, "Safety Improvement Technologies for Mobile Equipment at Surface Mines, and for Belt Conveyors for Surface and Underground Mines," is with the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), for review and approval before publication.

MSHA started the rulemaking with a [request for information](#) (RFI) in 2018. The previous administration started the process with the objective of reducing the number of fatalities and serious accidents that occur in powered haulage operations at mine sites. The NMA [filed comments](#) on the RFI. If approved by OMB, the final rule is expected to require mine operators to develop and implement safety programs at mines and facilities to address these types of accidents.

OSHA Emergency Temporary Standard at OMB

The Occupational Safety and Health Administration (OSHA) recently sent its COVID-19 related Emergency Temporary Standard (ETS) to the OMB. President Biden signed an [Executive Order](#) in January of this year directing OSHA to issue guidance and review its procedures for preventing virus transmission in U.S. workplaces. Four states have adopted an ETS, but [California's rule](#) is likely the framework on which the federal standard is based. OMB will review the ETS and determine whether it should be promulgated as a final standard.

EPA to Update TRI to Advance Environmental Justice

EPA last week [announced plans](#) to update the Toxics Release Inventory (TRI) program to advance environmental justice. While most of the actions in this plan do not directly impact the mining industry, they demonstrate a significant transition within the agency towards expanding the scope of TRI reporting requirements and increasing access to environmental information. According to EPA Administrator Michael Regan: "By requiring new and more data on chemical releases from facilities, EPA and its partners will be better equipped to protect the health of every individual, including people of color and low-income communities that are often located near these facilities but have been left out of the

conversation for too long.” EPA’s plans include adding new covered industries and TRI-listed chemicals, enhancing TRI search tools, and promoting the use of pollution prevention information. A full summary of EPA’s plans may be accessed [here](#).

AML 15-Year Free Extension and RECLAIM Act Reintroduced in Senate

Sen. Joe Manchin (D-W.Va.), Chairman of the Senate Energy and Natural Resources Committee, last week reintroduced the “Abandoned Mine Land (AML) Reclamation Fee Extension Act” and the “Revitalizing the Economy of Coal Communities by Leveraging Local Activities and Investing More (RECLAIM) Act.”

The AML Reclamation Fee Extension Act would extend the AML fee another fifteen years until Sept. 30, 2036. Rates would remain the same — 28 cents per ton on coal from a surface mine, 12 cents per ton from underground mines and 8 cents per ton for lignite coal. The fee is set to expire Sept. 30, 2021. The RECLAIM Act would accelerate the misuse of AML fees, diverting \$1 billion in AML funds over the next five years to revitalize coal communities hit hardest by the downturn of the coal industry.

A detailed memo on the bills is available [here](#). Last month, Rep. Liz Cheney (R-Wyo.) introduced [H.R. 2462](#), an NMA supported bill to reauthorize the AML program with necessary reforms and important fee relief to the coal production industry. We anticipate that Sen. John Barrasso (R-Wyo.), Senate Energy and Natural Resources Committee ranking member will introduce his legislation with NMA support reauthorizing the program with key fee relief as early as next week.

Crapo and Whitehouse Circulate Energy Sector Innovation Credit Act Discussion Draft



Mike Crapo (R-Idaho)



Sheldon Whitehouse (D-R.I.)

Following last week's energy tax hearing, Senate Finance Committee Ranking Member Mike Crapo (R-Idaho) and Finance Committee Member Sheldon Whitehouse (D-R.I.) released a **discussion draft** of the [Energy Sector Innovation Credit Act](#) (ESIC), a tax proposal to encourage innovation in the clean energy sector. The ESIC is a flexible up to 40% investment tax credit or 60% production tax credit for technologies with the least market penetration designed to promote innovation across a range of clean energy technologies, including electricity generation, storage, carbon capture, and clean hydrogen production. The credit is designed to help new technologies overcome the advantages of established technologies and phases out with higher market penetration. The credits are designed to apply to renewables, fossil fuels, and nuclear. The ESIC groups technologies into categories awarding the amount of credits on total market penetration of all technologies within each category, with higher credit levels (tiers) going to those with lower market penetration. Because this is a discussion draft, the NMA plans to provide feedback and our government affairs team would appreciate any feedback from individual companies to add to our response.

DOI Announces New Political Appointees

At the end of last week, the Department of the Interior (DOI) [announced new political appointees](#) ranging from DOI chief of staff, departmental advisors, deputy assistant secretaries, and others. The DOI announced that Steve Feldgus will join the department as deputy assistant secretary for land and minerals management. The Office of the Assistant Secretary for Land and Minerals Management has significant responsibilities regulating mining and on and offshore oil and gas production covering the Bureau of Land Management; and the Office of Surface Mining, Reclamation, and Enforcement affecting mining and the Bureau of Ocean Energy Management and the Bureau of Safety and Environmental Enforcement affecting oil and gas production. Most recently, Steve worked as deputy staff director and senior energy and minerals advisor to House Natural Resources Committee Chairman Raul Grijalva (D-Ariz.). The NMA has been regularly meeting with Steve, among others on Chairman Grijalva's team, concerning the Chairman's mining law agenda this Congress. Steve has been a receptive ear on mining issues while working on the committee staff, and the NMA will continue to work with Steve in his new capacity at DOI.

House Natural Resources Passes Save Oak Flat Act Out of Committee

On April 28, full House Natural Resources Committee held a markup of Chairman Raul Grijalva's (D-Ariz.) Save Oak Flat Act (H.R. 1884), which would repeal Section 3003 of the 2015 National Defense Authorization Act that authorized the exchange of U.S. Forest Service land to facilitate development of the Resolution Copper Project in Superior, Ariz. Several amendments were offered to the legislation by Energy and Natural Resources Subcommittee Ranking Member Stauber (R-Minn.) to address issues related to U.S. mineral import reliance, labor standards, minerals necessary for renewable energy technologies, and job creation. Another amendment dealing with existing Memorandum of

Understanding for labor agreements did receive bipartisan support. The bill was later passed out of committee by a vote of 23 to 20. The NMA continues to engage key offices, in coordination with Rio Tinto, to build bipartisan opposition to the legislation to prevent it from being brought to the House floor for a vote. Please find the NMA's memo on the markup [here](#).

States Petition Supreme Court on ACE Rule

Last week, a group of 19 states, led by West Virginia Attorney General Patrick Morrisey, [petitioned the U.S. Supreme Court](#) for review of the U.S. Court of Appeals for the District of Columbia Circuit's (D.C. Circuit) decision to vacate the Trump administration's Affordable Clean Energy (ACE) rule. In rejecting the ACE rule, the D.C. Circuit opined that the Clean Air Act (CAA) gave the U.S. Environmental Protection Agency (EPA) more than enough authority to adopt the Clean Power Plan (CPP), suggesting that the statute might support an even broader program. In their petition, the states argued the "ancillary" statutory provision underlying both ACE and the CPP did not authorize EPA to issue a rule to force fossil fuel-fired utilities to reduce operations and subsidize an expansion of renewable energy. That kind of significant authority, argued the states, requires a clear statement from Congress, which does not exist in the CAA. The petition also argues that, properly read, the statute only authorizes EPA to impose control measures that can be implemented at an individual stationary source of emissions (like those in ACE), and that EPA cannot impose measures that require the involvement of multiple sources, and even non-emitting facilities, to comply. If read broadly enough to authorize the CPP, the petition argues such a broad grant of authority would violate the prohibition on delegating legislative power to an administrative agency in the executive branch. The NMA will be submitting a brief supporting the states' petition for review.

Submissions Due for the Excellence in Surface Coal Mining Awards



It's time to submit your entries for the 2021 Excellence in Surface Coal Mine Reclamation Awards. Nominations are due no later than Monday, June 1, 2021.

For nomination information, please visit:

www.osmre.gov/programs/awards/activemineawards.shtm

NMA and Third-Party Voices

The NMA is quoted in an [E&E Daily](#) report noting that lawmakers on both sides of the aisle are jockeying to capitalize on the Biden administration's clean energy goals in order to enact their divergent visions for a mining overhaul.

The NMA is quoted in stories from [Lexology](#) and [JD Supra](#) on President Biden's American Jobs Plan.

Mining and Energy News

NPR profiled lithium mining prospects [in California](#).

[Mining.com reported](#) that new copper mine capacity will be needed beyond 2023 to meet the predicted surge in demand.

Industry market research firm, Freedonia Group's recent [mining equipment outlook](#) projects that "through 2024, global demand for mining equipment is projected to advance 1.0% annually to \$116.8 billion, reversing the losses recorded during the 2014-2019 period." Growth is due to replacement of aging equipment, new mining technologies and mechanization, as well as an economic rebound in China.

[The World Gold Council's gold demand trends report](#) for the first quarter 2021 showed strengthening consumer demand of 815.7 million tons mitigated by the impact of ETF outflows as global economies continued to recover.

[S&P Global's recent gold market analysis](#) shows that "coming out of widespread pandemic lockdowns in 2020, global gold production is expected to increase by a historic 6%, or 5.9 million ounces, year over year in 2021."

[NPR](#) reported that as demand for electric vehicles heats up, there's concern about a shortage of the key minerals needed to make them.

[The U.S. Department of Energy announced](#) it had awarded \$19 million for initiatives to produce rare earth elements and critical minerals.

The [IEA's Global Electric Vehicle Outlook 2021](#) found that "despite the pandemic setting off a cascade of economic recessions, a record 3 million new electric cars were registered

in 2020, a 41% increase from the previous year.”

[The Energy Information Administration’s \(EIA\) recent uranium production report](#) for the first quarter of 2021 shows that only three U.S. uranium facilities produced uranium, three less than in the fourth quarter of 2020.

[Japan Forward](#) reported on the lessons learned from China’s rare earth stranglehold.

EIA data showed coal has rebounded to account for 25 percent of electricity generation so far in 2021. EIA’s recent [Electricity Monthly Update](#) report shows a February coal stockpiles decrease of 12.5%, mainly as a result of the increase in coal-based electricity generation that occurred because of the sharp increase in natural gas prices in February 2021 relating to the extreme cold. The report also includes a feature article indicating that CO2 emissions from electric power generation decreased by 664 million tons from 2010 to 2019 mostly because of the shift from coal to natural gas and renewables in the electric power generation mix. In similar news, EIA’s [Electric Power Monthly](#) report data showed a 57% surge in coal generation in February.

BTU Analytics said rising natural gas prices may send coal utilization [even higher](#).

[S&P Global reported](#) that U.S. coking coal miners are continuing to benefit from China’s Australian coal ban.

[Argus Media reported](#) that coal consumption rose in 2020 at some U.S. coal plants.

[E&E News reported](#) on a recent Bureau of Economic Research concluding that “A moderate price on carbon combined with an influx of electric vehicles could prop up coal-fired power.”

Argus Media (5-3-21, subscription) reported that coal-based power plants that can stay online through the end of this decade will be run at higher capacity rates not seen since 2011.



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