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MINE Update
MINING INDUSTRY NEWS E-COMM UPDATE

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Brought to you by the National Mining Association

This Week in the News

Senators reached a bipartisan deal allowing Democrats to raise the debt limit with a simple majority vote. But plenty of heavy lifting remains as congressional leadership tries to pass a major climate and social programs bill before Christmas. 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 the mining and energy markets are faring.

Safety Share

Occupational Health and Safety published a “[back to the basics](#)” article pointing out that workplace safety precautions set in place prior to the pandemic should not be forgotten.

House of Representatives Discusses Supply Chains and Permitting Reforms



Last Thursday, Republicans on the House Natural Resource Committee held a virtual [forum](#) to discuss ongoing supply chain issues facing the U.S. More than a dozen witnesses from across the country spoke about the high cost of energy, labor and consumer goods as well as other supply chain challenges facing our nation. They further discussed need for solution-oriented policies that support domestic production and manufacturing, reshore supply chains, and improve investor confidence. Ranking Member Bruce Westerman’s (R-Ark.) opening statement foreshadowed much of the forum’s discussion when he said that “America can and should produce more domestic energy, facilitate more mineral development, harvest more of our forests sustainably and provide for more water infrastructure to ensure that we are not dependent on nations that do not follow the rules or have inferior environmental standards.” Ahead of the forum, the NMA worked with Committee staff to identify supply chain issues impacting the mining industry and provide NMA-generated materials and infographics to prioritize domestic mining.

Also on Thursday, during a House Select Committee on the Climate Crisis [hearing](#), the former Executive Director of the Federal Permitting Improvement Steering Council (FPISC) discussed the need to increase the efficiency and certainty of the federal permitting process. This included urging congressional support for the NMA-backed One Federal

Decision framework and FPISC (which was permanently reauthorized with new deadlines in the Infrastructure Investment and Jobs Act), both of which improve coordination between federal agencies allowing for more timely permitting timeframes. He also urged the Biden administration to reverse course on its attempts to rescind longstanding permitting efficiencies without proposing improvements to systemic issues related to federal permitting process. The NMA worked to provide committee staff with relevant background materials on the need for permitting improvements that support a robust domestic mining industry. The NMA will continue to work in a bipartisan manner with both committees to support fair regulatory policies that promote certainty in the mine permitting process on federal lands.

NMA Files Comments on USGS Critical Minerals List

The NMA last week filed [comments](#) on the U.S. Geological Survey (USGS) [proposed updated list of minerals](#) considered critical pursuant to the 2017 Executive Order 13817, “A Federal Strategy to Ensure Secure and Reliable Supplies of Critical Minerals.” 86 Fed. Reg.62199. Subsequently, the USGS [reopened](#) the comment period and extended the deadline until Jan. 10, 2022. The USGS did not provide a reason for the extension. Please review the submitted NMA comments and advise by Jan. 7 if you believe any supplemental association comments are merited.

The NMA’s comments focus on the growing demand for minerals fueled in part by the energy transition, infrastructure objectives and other goals of the Biden-Harris administration. The comments also address the USGS’ narrow interpretation of the definition of critical minerals, the limitations of the criticality methodology, processing constraints and China’s dominance of critical mineral supply chains.

NMA Files Brief in West Virginia v. EPA



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The NMA this week filed its [brief in support](#) of the state of West Virginia and 17 additional states' arguments regarding the limits of the U.S. Environmental Protection Agency's (EPA) authority under Clean Air Act section 111(d). The NMA's brief argued that EPA's reliance on two sentences in section 111(d) to adopt the Clean Power Plan, which would have set major national policy through complete transformation of the nation's electric grid, cannot stand. Under the major question doctrine, an agency only has the authority to establish a major national policy if Congress clearly and unambiguously delegated such authority. This doctrine furthers the separation of powers by adopting a statutory presumption that Congress would generally not want administrative agencies to resolve significant national policy issues.

The NMA asserted that Section 111(d) plainly does not contain such a clear statement of transformative authority, as its prosaic terms nowhere suggest that EPA has the power to transform the nation's energy mix. NMA's brief demonstrates that EPA's efforts to seize upon a snippet of general statutory language as authority to implement a dramatic shift in the nation's electricity generation, from coal to lower- or zero-emitting sources, meet all three judicial tests that trigger the application of the major questions doctrine: (1) when an agency seeks to resolve an issue of vast economic and political significance; (2) when the agency bases its regulatory action on never before claimed tools that would give the agency enormous and transformative power and (3) when the agency's actions encroach upon traditional state authority or on the core expertise of another administrative agency.

The briefs filed by the West Virginia coalition, North Dakota, North American Coal Corporation, Westmoreland Mining Holdings LLC and others may be accessed on the [Supreme Court docket](#).

Comments on EPA's Selenium Technical Support Materials Due Jan. 3, 2022

Available [here](#) are the National Mining Association's (NMA) draft comments, prepared by GEI Consultants, on the Environmental Protection Agency's (EPA) draft selenium guidance. [Recall](#) that draft guidance was originally released in 2016, but was never finalized and eventually withdrawn. The updated draft guidance was released in October 2021 and consists of four technical support materials (TSMs). Overall, the comments note that while the TSMs provide a solid foundation for providing guidance for implementing the selenium criterion, there are several concerns and recommendations that EPA should address in the final guidance to provide stakeholders the clarity they need to implement the criterion. Please send any redlines, edits, or feedback directly to cmchale@nma.org by COB Tuesday, Dec. 21, to ensure we have time to work with the GEI team to incorporate your feedback. Comments were initially due Dec. 3, 2021, but EPA extended the deadline to Jan. 3, 2022. Comments must be emailed to wqs-implementation@epa.gov

EPA Releases Second Draft Aluminum TSD for Public Comment

On Dec. 6, EPA released for public comment its [second draft technical support document](#) (TSD) for implementing the 2018 recommended aquatic life water quality criteria for aluminum. Recall that over the last two years, NMA has highlighted various implementation concerns, including the criteria's use of total rather than bioavailable aluminum, EPA's failure to consider alternative analytic methods that potentially could more accurately measure bioavailable aluminum, concerns with state flexibility, concerns about the collection of input parameter data, and the agency's failure to address aluminum used for EPA-approved beneficial uses. The NMA will schedule a conference call to discuss the TSD and our comment strategy. Comments on the draft TSD must be emailed

to wqs-implementation@epa.gov by Feb. 7, 2022.

In the States



Alaska Gov. Mike Dunleavy said he's preparing to ask state legislators to support a bid to take over wetlands permitting under the Clean Water Act. The governor acknowledged it would be a "tall task" to get primary control over Section 404 of the Clean Water Act, which permits dredging and filling of wetlands and waterways. Only three states currently have such authority. The request will also ask for funding to seek primacy under the Resource Conservation and Recovery Act, a statute governing hazardous waste. Under the Clean Water Act, states or tribes can seek to take over permitting and administering the Section 404 program. Before approving such a request, EPA must determine whether a state has a sufficient program to implement and enforce the federal 404 permitting program. Alaska has 174 million acres of wetlands that covers more than 40 percent of the land area.

Virginia's Gov.-elect Glenn Youngkin said that he will use executive power to withdraw Virginia from the Regional Greenhouse Gas Initiative, which he said is essentially a tax on electricity ratepayers and a bad deal for them and for business. "Just this week Dominion

Energy announced that they will seek to double the carbon surcharge that is being applied to ratepayers under the Regional Greenhouse Gas Initiative,” said Youngkin, who won the governor’s office last month and takes office Jan. 15. “RGGI will cost ratepayers over the next four years an estimated \$1 billion to \$1.2 billion dollars. RGGI describes itself as a regional market for carbon, but it is really a carbon tax that is fully passed on to ratepayers. It’s a bad deal for Virginians. It’s a bad deal for Virginia businesses. And as governor I will withdraw us from RGGI by executive action.”

NMA and Third Party Voices

[The National Journal](#) quotes Rich Nolan in a story on Sen. Catherine Cortez Masto's fight to “purge the House reconciliation bill of \$3 million for the Interior Department to roll out a new mining regulation under a more stringent legal standard. That effort comes after she notched major wins for the mining industry in recent months.”

[The Lane Report](#) quotes Rich Nolan in a story on the \$5.8 billion vehicle battery production plant that Ford and SK Innovation plan to build in Kentucky.

The [Elko Daily Free Press](#) quotes Rich Nolan in its report on MINExpo INTERNATIONAL® 2021.

The NMA’s Katie Sweeney is quoted in an [Elko Daily Free Press](#) report on efforts to place a gross royalty on hardrock minerals reared up recently in a U.S. House committee, and while the royalty push was blocked from a Senate reconciliation bill, Nevada lawmakers are watching for new royalty moves.

[Politico Pro](#) mentions the NMA in a report that Senate Democrats are considering changing a little-noticed provision in the House's version of the Build Back Better Act to make it easier for power companies and other greenhouse gas emitters to take advantage of tax credits designed to drive carbon capture technologies.

The NMA is quoted in an [Inside Sources](#) op-ed that argues that Biden's Build Back Better proposal will lead to money sent to China.

The NMA is mentioned in [E&E Energywire](#) and [InsideEPA](#) reports on the Supreme Court review of the EPA's authority to curb carbon emissions from existing power plants.

The [St. Joseph News Press](#) (Mo.), [Salem News](#) (Ohio), [East Liverpool Review](#) (Ohio), [Lisbon Morning Journal](#) (Ohio), [Pottstown Mercury](#) (Pa.), [Exton Daily Local](#) (Pa.), [Swarthmore Times Herald](#) (Pa.), [Lansdale Reporter](#) (Pa.), [Delaware County Daily Times](#) (Pa.), [Mainline Times and Suburban](#) (Pa.), [The Trentonian](#) (N.J.), [Elko Daily Free Press](#) (Nev.) and [Kokomo Tribune](#) (Ind.) all ran an op-ed by Terry Jarrett, an energy attorney and consultant who has served on the board of the National Association of Regulatory Utility Commissioners and the Missouri Public Service Commission, in which he warns we need the existing coal and nuclear power fleets to safeguard against energy crises.

Mining and Energy News

[According to Investor.com](#), recent analysis from Jefferies was upbeat on mining for 2022, *"We are bullish on mining for 2022 based on fundamental factors and valuations. We are most constructive on the base metals, and especially copper and aluminum, while we are most cautious on iron ore and coal."*

[Reuters](#) reported that later this decade, fewer graduates will have the skills needed to build and run mines producing lithium, nickel, copper and other metals to feed ravenous makers of electric vehicles, solar panels and other renewable-energy technologies.

[S&P Global](#) reported that strategic or critical metals availability at the right price may threaten some countries' ability to meet electric vehicle take-up targets, disordering the energy transition, key metals industry players told S&P Global Platts.

[The Wall Street Journal](#) reported that the lithium price surge is setting off a scramble for supply and fueling fears about long-term battery metals shortages.

[Bloomberg \(subscription\)](#) reported that Sprott Uranium Trust now holds almost a third of the world's annual supply of uranium and is growing.

[Mining.com](#) reported that mining company, USA Rare Earth, announced that it expects to produce nearly half of the critical minerals listed in the U.S. Geological Survey's revised list of raw materials deemed crucial for national security and the economy.

[The International Copper Study Group](#) (ICSG) has released it's the World Copper Fact Book 2021 with a handy compilation of 2020 information on copper history, supply, demand, trade, recycling and resources.

[The World Gold Council](#) has released an in-depth analysis of the Indian gold market highlighting the modest levels of gold recycling that make India heavily reliant on bullion imports to meet its domestic demand.

[Argus](#) Media (subscription) reported that U.S. coal exports extended their year-on-year gains in October but lagged the two-year highs set earlier in 2021. Also from [Argus](#), EIA has lowered its coal consumption outlook in 2021 as tight supply has led some utilities to conserve and manage their coal usage this winter.

[Argus](#) Media (subscription) reported that U.S. coal imports are on track to rise this year, primarily on the back of increased steel production.

[WVTF.org reported](#) that metallurgical coal is making a comeback in Virginia this year, with much of it going overseas to China.

[Public Radio Tulsa](#) reported on the increase in global demand for metallurgical coal and the state of Virginia's role in the metallurgical coal market.

[EIA's recent "Today in Energy"](#) report shows that coal stockpiles at U.S. electric power plants totaled 80 million tons at the end of September, the lowest monthly level since

March 1978, due to retirements, lower demand from the remaining plants and higher coal generation over the summer.

[Argus](#) Media (subscription) reported that Central Appalachian coal production rose by 22 percent in the third quarter from a year earlier but continued to lag 2019 levels. In addition, [Argus](#) reported that U.S. utilities could consume about as much coal in 2022 as this year, providing support for demand and production.

[Bloomberg reported on recent Department of Labor data](#) showing that the price of electricity surged 6.5 percent compared to the same month last year – the biggest jump in more than a decade.

[Power Magazine](#) reported on the North American Electric Reliability Corporation's (NERC) recent 2021-2022 Winter Reliability Assessment report urging generators across the U.S. to take proactive steps to prepare for an eventful winter and keep communications open with grid operators.

[E&E News reported](#) that the chair of the Federal Energy Regulatory Commission (FERC), Richard Glick, urged governors from Western states last week to start forming an organized electricity market, saying extreme weather fueled by climate change is threatening the West's ability to keep the lights on.



To support our community through the holidays, the NMA team made sandwiches for and delivered them to local food bank Martha's Table.



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