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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

With Congress out of session for another week, the White House increased efforts to shift public focus from Ukraine to domestic economic issues that will be critical in upcoming midterm elections. 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

With mask mandates falling and more employees returning to offices, a medical analyst offered [three factors to consider](#) when determining personal choices for COVID protection.

CEQ Releases Final Phase 1 NEPA Regulations



This morning, the Council on Environmental Quality released the final Phase 1 NEPA regulations [final rule](#). The final rule appears to be very similar to the October 2021 proposed rule and reaffirms that federal agencies must evaluate all environmental impacts – including those associated with climate change – during the environmental review process. Specifically, the final rule restores three provisions that were modified in a 2020 rule under the previous administration including the requirement for federal agencies to evaluate all relevant environmental impacts; providing federal agencies full authority to address alternative approaches that could minimize environmental health and public costs; and establishing CEQ’s NEPA regulations as a floor, rather than a ceiling, for the environmental review standards that federal agencies should be meeting. Over the coming months, CEQ plans to propose a Phase 2 rulemaking to further dismantle the 2020 reforms.

NMA and Allies Request More Time on SEC Climate Disclosure Proposal

The NMA this week submitted a [letter](#) to the Securities and Exchange Commission (SEC) requesting a 90-day extension (from publication) of the comment period on the [proposed rule](#) on “The Enhancement and Standardization of Climate-Related Disclosures for Investors.” The NMA argues that this extension request is commensurate with the length, complexity, and significance of this rulemaking. Comments are currently due on May 20, 2022. West Virginia Attorney General Patrick Morrisey also submitted a [letter](#) on behalf of 20 attorneys general requesting an additional 60 days from the existing comment deadline. Both letters ask for a July 11, 2022, deadline. The NMA needs member company feedback on this proposed rule so that we can develop a draft outline of critical legal and practical concerns for the mining industry. Please contact Tawny Bridgeford at tbridgeford@nma.org by the end of the week if your company has identified any legal or practical concerns with the proposed rule that should be addressed in written comments.

Supreme Court Update: NMA Files Amicus Brief in Sackett v. EPA

Briefing has begun in a Clean Water Act (CWA) case that the U.S. Supreme Court will hear this fall, *Sackett v. Environmental Protection Agency* (EPA). In this case, the Court will consider whether the U.S. Court of Appeals for the Ninth Circuit [set forth](#) the proper test for determining whether wetlands are “waters of the United States” (WOTUS) under the CWA. This case is important for the mining industry and broader regulated community, as confusion over Justice Kennedy’s “significant nexus” test that is at issue in the case has led to project delays, litigation, and uncertainty for many years.

Yesterday, the NMA, along with numerous other mining associations, filed an [amicus brief](#) supporting the Sacketts and urging the Court to resolve the uncertainty that has plagued regulated entities for over a decade. As part of the Waters Advocacy Coalition, NMA also supported a [brief](#) filed by the Western Caucus and a [brief](#) led by Senator Capito with 199 congressional signatories. Respondents' brief is due June 10. NMA will keep you apprised of important developments.

NMA to Speak at STB Hearing on Inconsistent and Unreliable Rail Use



Earlier this month, the Surface Transportation Board (STB) [announced](#) a public hearing on April 26 and 27, 2022, regarding recent rail service problems and recovery efforts involving Class I carriers. The STB has heard informally from a range of stakeholders, including the U.S. Secretary of Agriculture and others, about the impacts of inconsistent and unreliable rail service on rail users, particularly shippers of agricultural and energy products. These reports have been validated by the STB weekly rail service performance data. As a result, the STB directed several executive-level officials from BNSF Railway Company, CSX Transportation, Inc., Norfolk Southern Railway Company, and Union

Pacific Railroad Company to appear to discuss the recent rail service problems, each carrier's ongoing and planned efforts to improve service, and each carrier's estimated timeline for recovery of normal service levels.

The NMA filed a notice of intent to participate in the hearing and will provide oral and written testimony of the issues NMA members are experiencing when it comes to unreliable rail service. Written testimony should be submitted to the STB e-filing website by April 22, 2022.

DOE Announces Lending for Battery Minerals Project

Yesterday, Jigar Shah, Director of the Department of Energy's (DOE) Loan Programs Office (LPO) announced conditional lending commitment under the Advanced Technology Vehicles Manufacturing (ATVM) loan program of up to \$107 million to a subsidiary of Syrah Resources, which mines and processes graphite. The LPO loan will support expansion of production capacity of natural graphite-based active anode materials (AAM) for lithium-ion batteries at Syrah's facility in Vidalia, LA. Please find a link to the LPO's announcement [here](#).

Once finalized, this will be the first loan from the ATVM program in more than a decade and represents an important first step in the LPO's efforts to provide expanded loan guarantees for eligible projects that increase domestic production, processing, and recycling of critical minerals. The LPO announcement further states that, "one key area of focus within this strategy is to increase the availability of the critical minerals and related materials that are key components to the clean energy technologies we need to achieve our national climate and economic goals." The NMA is excited by this announcement and looks forward to continuing to work with the LPO and Director Shah, who will be speaking at the NMA's board meeting next month, to support a robust domestic mineral supply chain.

Congress Requests DOL Pause on Self-Insurance Collateral

Several coal state members of Congress went on the record this week to urge the Department of Labor (DOL) Office of Workers' Compensation Programs (OWCP) to improve decision-making transparency and stakeholder engagement before taking further action to update how coal operators determine self-insurance collateral amounts and appeals under the Black Lung Benefits Act (BLBA) program. This [NMA supported congressional letter](#) is an important step in holding OWCP accountable and ensuring due process for the companies that fund and operate under the Black Lung Disability Trust Fund (BLDTF). The NMA has engaged on DOL's collateral security regulatory steps since at least 2017 and will continue to work with the DOL Office of Workers' Compensation Programs on next steps in rulemakings and interested members of Congress on congressional oversight of the program and new regulations.

Congress Steps Up Oversight to Ensure Electricity Reliability



This week, members of Congress inquired with the Midcontinent Independent System Operator (MISO), Inc. and PJM Interconnection, LLC, key regional transmission organizations with coal electricity generating capacity, asking for more information on each organization's public comments to the U.S. EPA and expressing serious concerns over the EPA's deadline for closure of combustibles residuals (CCR) impoundments at several power plants. Please find the letters to MISO [here](#) and PJM [here](#). The interested members of Congress involved requested the NMA's assistance and input in this inquiry concerning how EPA's action would threaten regional grid reliability and why the deadline for closing these impoundments should be extended. This is one of the many EPA regulatory actions NMA is tracking through the new MAST system and providing information to interested members of Congress to ensure grid reliability is not threatened due to lack of EPA interactions with key RTOs.

MINEPAC + COALPAC: Upcoming Events

So far in 2022, MINEPAC and COALPAC have contributed to the re-election campaigns of more than fifteen bipartisan members of Congress who are advocates of the mining industry.

Additionally, the NMA is hosting upcoming events for the following members:



Sen. Lisa Murkowski (R-Alaska)



Rep. Mike Simpson (R-Idaho)



Sen. Catherine Cortez Masto (D-Nev.)

Sen. Lisa Murkowski (R- Alaska) – April 27

- Senate Appropriations Committee, Ranking Member of the Interior – Environment Subcommittee and Member of the Energy and Water Subcommittee
- Senior Member of the Senate Energy and Natural Resources Committee

Rep. Mike Simpson (R-Idaho) – May 17

- House Appropriations Committee, Ranking Member of Energy and Water Development Subcommittee and Member of the Interior, Environment, and Related Agencies Subcommittee

Sen. Catherine Cortez Masto (D-Nev.) – May 24

- Senate Energy and Natural Resources Committee, Chair of the Public Lands, Forests, and Mining Subcommittee

These events provide necessary contributions to mining allies' re-election campaigns in advance of the upcoming mid-term election.

For more information regarding these events or about NMA's PACs in general, please contact Ryan Jackson at rjackson@nma.org or MK Kirlin at mkirlin@nma.org. In the meantime, see our [FAQs](#) to learn more.

NMA and Third Party Voices

The NMA is quoted in an [E&E Climatewire](#) report noting that the Biden administration has said it is activating all the levers of government to advance environmental justice for people of color. However, one of President Joe Biden's own policies for climate action might challenge his commitment to racial equity.

The NMA is quoted by [Inside EPA](#) in its coverage of West Virginia Attorney General Patrick Morrisey's efforts leading a 19-state coalition in opposition to EPA's threshold proposal to again find regulation of power plants' air toxics "appropriate and necessary" (A&N) under the mercury and air toxics standards (MATS), despite broad support for the finding from power sector and many other industry groups.

From our third parties, the [Reno Gazette Journal](#) (Nev.) carries an op-ed by Gen. John Adams, U.S. Army brigadier general (retired), president of Guardian Six Consulting and a former deputy U.S. military representative to NATO's Military Committee, in which he argues employing the Defense Production Act can help cut red tape, de-risk investment in mining, and spur production at the speed and scale we need.

Mining and Energy News

[Argus Media](#) reported on EIA data showing U.S. coal receipts climbed in January from year-earlier levels, propelled by a 16 percent jump in Powder River Basin mine deliveries.

[Reuters](#) reported that Ford Motor Company has a preliminary lithium battery metal supply deal with a facility in Argentina.

[Electrek](#) reported Elon Musk announced that Tesla "might actually have to get into the mining and refining" of lithium due to recent price increases to "insane levels".

[S&P Global](#) reported on recent Department of Commerce data for February showing that U.S. coal exports reached a 3-year high amid the war in Ukraine.

Argus Media reported that EIA has [raised its domestic coal consumption](#) forecasts for 2022-2023 amid elevated natural gas prices.

[Cowboy State Daily](#) reported that Wyoming's coal producers have seen significant increases in demand for their product domestically.

[UIC Today](#) reported on a new study by the University of Illinois Chicago indicating that silica exposure is a driving force behind rising rates of coal workers' pneumoconiosis.

[The World Steel Association's](#) short-term steel outlook forecasts steel demand to grow by 0.4 percent in 2022 to reach 1,840.2 metric tons after increasing by 2.7 percent in 2021. In 2023 steel demand will see further growth of 2.2 percent to reach 1,881.4 Mt. The forecast release notes, "despite the sporadic COVID infection waves and the manufacturing sector's supply chain constraints, steel demand recovered strongly in 2021, especially in the E.U. and the U.S."

[Argus](#) reported coal-fueled generation in the Electric Reliability Council of Texas (ERCOT) power region rose from year-earlier levels for a second month in a row in March, amid higher natural gas prices.

[Wall Street Journal](#) carries an op-ed arguing that we need to stop buying uranium from Russia.

[E&E Energywire](#) reported that U.S. commodity prices for coal and natural gas are rising and "a coal crisis is brewing in India," according to a research note from Rystad Energy.

[Missouri Independent](#) reported that environmental advocates are raising concerns that a Missouri law enacted last year to speed up utilities' transition to renewable energy may soon be changed to make it easier for companies to keep coal plants partially open.

[Capital and Main](#) published: "Will lithium save the imperial valley?"

[The World Nuclear News](#) reported that think tank, Nuclear Innovation Alliance, is calling for doubling U.S. nuclear generation by 2050.

[Utility Dive](#) reported that MISO's market monitor calls for market reforms to prevent power plants from retiring when they are still needed. This is becoming evident as capacity prices jump across MISO's central and northern regions, driven by a supply shortfall.

[Greenwire](#) reported that U.S. automakers are racing to secure mineral supplies for electric vehicles and choosing sources that aren't controlled by China.

Visual Capitalist illustrated how [lithium consumption](#) has nearly quadrupled since 2010.



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