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MINE Update

MINING INDUSTRY NEWS E-COMM UPDATE

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This Week in the News

The U.S. Supreme Court not only ended its term with a significant decision for the coal-based electricity sector but also addressed the constitutional limits to broad-reaching federal regulations that stretch legislative authority. Despite the ruling, however, the Biden-Harris administration's agencies continue to pursue multiple paths that pose additional challenges on many fronts for the mining industry. Both chambers of Congress are in recess for the Independence Day holiday, but announcements are already coming out for legislative action in July. 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

Headed to the beach this summer? Here's how to spot a [rip current](#).

Supreme Court Decision in the West Virginia v. EPA Case

In a successful case for the State of West Virginia and coal-based electricity sector, the U.S. Supreme Court [held](#) that “Congress did not grant EPA in Section 111(d) of the Clean Air Act (CAA) the authority to devise emissions caps based on the generation shifting approach the Agency took in the Clean Power Plan (CPP).” As noted in the NMA’s [press release](#), the case ultimately was more about the limits of agency authority than climate. NMA’s statement applauded the Supreme Court’s decision “confirm[ation] that there are limits to the authority that administrative agencies have to unilaterally issue transformative rules, particularly those that impose deep and uneven economic impacts on every state and industry across the country.”

In a 6 to 3 decision, authored by Chief Justice Roberts, the Court declared unlawful the CPP’s conclusion that the “best system of emission reduction” under CAA 111(d) for coal-fired power plants included a requirement for existing coal-fired power plants to reduce their own production of electricity, or subsidize increased generation by natural gas, wind, or solar sources. The court noted that since passage of the CAA 50 years ago, “EPA has exercised this authority by setting performance standards based on measures that would reduce pollution by causing plants to operate more cleanly.” In examining the question whether the conception of EPA’s authority as articulated in the CPP is within the power granted to it by the CAA, the Court’s answer was a resounding no, finding that “[a] decision of such magnitude and consequence rests with Congress itself, or an agency acting pursuant to a clear delegation from that representative body.”

Notably, however, the Court did not completely bar EPA from regulating greenhouse gases under the relevant statutory provisions. Rather, it merely said that the CPP presented an “extraordinary” case of an administrative agency using vague language to wield transformative power that had not been clearly granted to it by Congress.

The case will now return to the D.C. Circuit, where EPA will likely ask for voluntary remand since the Biden administration has already announced plans to write new rules for existing power plants. According to its regulatory agenda, EPA has indicated it will propose that rule in March 2023, meaning a final rule would be unlikely before 2024. While the Court’s decision today will prevent EPA from relying on “generation shifting” in that upcoming rule, the decision did not place any other restrictions on EPA’s authority to regulate carbon dioxide emissions from fossil fuel-fired power plants.

DOE Announces Intention to Purchase One Million Pounds Domestic Uranium for Uranium Reserve



The Department of Energy (DOE) last week [announced](#) its intent to purchase up to an estimated one million pounds of U3O8. The NMA [applauded](#) the solicitation as an important first step in establishing the long-awaited uranium reserve but urged more be done to wean the U.S. off foreign sources of uranium, particularly from sources controlled by Russia. In 2021, production of domestic uranium was at an all-time low, supplying less than one percent of U.S. demand. DOE's solicitation specifies the uranium must be provided by a vendor that has produced uranium at a domestic uranium recovery facility at any time since January 1, 2009.

NMA Files Comments on TSCA Reporting Rule for Asbestos

Yesterday, the NMA filed [comments](#) on EPA's proposed rule **that would require a one-time reporting obligation under the Toxics Substances Control Act (TSCA) for certain information on asbestos**. If finalized, this rule would impose new and difficult-to-meet reporting obligations on NMA member companies to provide certain asbestos-related information. Specifically, EPA's rule would impose a new reporting regulatory burden on member companies who are mining in areas with asbestos present in the geology or who import articles containing asbestos.

The NMA believes that as drafted, the likely scope of the reporting requirements may be much broader than EPA intended, and the additional information retrieved would not advance the purposes of the rulemaking or EPA's further work on asbestos under its TSCA authorities. The NMA recommends that EPA include a narrowly tailored exemption for naturally occurring chemical substances to remove unnecessary reporting obligations for hardrock mining activities. Alternatively, the NMA urges EPA to adopt a one percent applicability threshold to limit the scope of the proposed rule. The NMA also highlights the burdens associated with reporting on imported articles containing asbestos. Finally, the NMA requests that EPA allow at least nine months from the Final Rule's

effective date to commence the reporting period and urges the agency to consider extending the reporting period to at least a four-month period.

Congress Returns for a Busy July Next Week

The U.S. House and Senate return next week for an important work period covering the remainder of July. The U.S. Senate will have 38 legislative days to vote on bills between returning next week and the end of the federal fiscal year on September 30 which also coincides with the expiration of partisan budget reconciliation instructions for this fiscal year. The U.S. House meets only 23 legislative days between returning and September 30.

Senator Chuck Schumer (D-N.Y.) has announced a framework on reconciliation legislation which all Senate Democrats have agreed to support at least in principle. This reconciliation legislation is much narrower than a previous version of reconciliation language, the Build Back Better Act, which failed at the end of last year. Currently, the announced reconciliation legislation solely focuses on healthcare matters such as drug price negotiation for Medicare and possibly extension of tax credits for Affordable Care Act premiums. Further ability to reach agreement on matters such as tax provisions, energy, climate, among other priorities, currently remains out of reach. This announcement may complicate Congress' consideration of other legislative measures as reconciliation legislation in any form remains partisan and may remain highly controversial. The U.S. House will return next week to consider the National Defense Authorization Act for FY23 where multiple amendments will be considered including bipartisan amendments addressing strengthening mineral supply chains and new domestic production.

NMA Participates in West Virginia Coal Summit



Last week, leaders from the NMA, including Rich Nolan, Ryan Jackson, Ashley Burke and Jerry Mullins, participated in the West Virginia Coal Association's Coal Summit, a gathering of elected officials, NMA member companies, industry representatives, allies and others, to discuss issues facing industry and discuss potential solutions.

The group heard from elected officials including Senator Joe Manchin (D-W.Va.), Senator Shelley Moore Capito (R-W.Va.), Governor Jim Justice, Congressman Bill Johnson (R-Ohio) and Congressman Mike Carey (R-Ohio); industry leaders including Jimmy Brock of CONSOL Energy, Joe Craft of Alliance Resource Partners, Paul Lang of Arch Resources, Matthew Adams, Vice President and Tax Counsel of Navajo Transitional Energy Council, and Mike Day of Eagle Specialty Materials; as well as other industry trade associations and consultants representing electricity generation, transmission and coal transportation offered insight on polling, state legislative and grassroots organizing, and federal regulatory and legislative challenges and opportunities throughout the two-day meeting.

The meeting was organized by the West Virginia Coal Association and participants plan to gather more frequently in the future to address current opportunities and challenges.

NMA and Third Party Voices

The [Wall Street Journal](#), [The Washington Post](#), [Mining Weekly](#), [Mining Journal](#), [E&E Greenwire](#) and the [Financial Times](#) all quote the NMA in their coverage of the US Supreme Court ruling in *West Virginia v. EPA*.

From our third parties, [Bakersfield Californian](#) (Calif.), [The Trentonian](#) (N.J.), [Delaware County Daily Times](#) (Pa.), [Pottstown Mercury](#) (Pa.), [Exton Daily Local](#) (Pa.), [Swarthmore Times Herald](#) (Pa.), [Lansdale Reporter](#) (Pa.), [Main Line Times and Suburban](#) (Pa.), [Elko Daily Free Press](#) (Nev.) and [Fairbanks Daily News Miner](#) (Alaska) all ran an op-ed by Kevin Kearns, president of the U.S. Business and Industry Council, in which he argues Washington must address the bureaucratic hurdles handcuffing America's mining industry — particularly the duplicative and painfully cumbersome mine permitting process that regularly takes a decade or longer.

[Inside Sources](#) (D.C.) carries an op-ed by Dan Ervin, a finance professor at Salisbury University, in which he argues our coal and nuclear power plants remain critically important and should be embraced as a bridge to the future, not as a problem to be dismantled.

Mining and Energy News

[ClimateWire](#) reported that recent heat waves are testing China's ability to stabilize its coal market. The air conditioning has been switched on just as industrial demand for electricity revives after the reopening of Shanghai and easing of Covid-19 curbs elsewhere in the country.

[Energywire](#) reported that Albemarle Corp., a global mining and chemicals company, plans to open a factory to process lithium in the U.S., potentially addressing a weak point in the domestic supply chain for electric vehicle batteries.

[Electrek](#) reported that Tesla Megapacks are on their way to Hawaii in order to create a giant new energy storage system that is about to replace the state's last remaining coal power plant.

[ClimateWire](#) reported on recent IEA analysis indicating that global clean energy spending is expected to surge 12 percent in 2022, reaching \$1.4 trillion as the world pours money into renewables, electric vehicles and energy efficiency. But the transition to clean energy will not be smooth. IEA's annual review of global energy investment found a 10 percent rebound in global coal investment with growth of another 10 percent this year. IEA also noted that clean energy spending is being impacted by high prices "being driven in large part by bottled-up supply chains, which have been unable to keep up with surging demand for the critical minerals used in solar panels, wind turbines and electric vehicles. And the adoption of clean technologies varies widely across the world."

[Argus](#) reported that U.S. utilities may opt to idle a few coal-fueled power plants this summer amid skyrocketing prices for NOx emissions allowances.

[Utility Dive](#) reported on recent DOE energy employment analysis for 2021 showing that energy jobs in the U.S. are growing faster than employment in the overall domestic economy, driven in particular by renewables and the development of clean transportation. Energy sector jobs grew 4 percent overall in 2021, but not all energy sectors saw growth. Employment in the fuels technology sector, which includes gas, coal and petroleum, declined by more than 29,271 jobs, or about 3.1 percent. The coal industry saw the greatest percentage decline, shedding 7,125 jobs and reducing employment by 11.8 percent, while gas saw a small increase.

[Argus](#) reported that increased European coal imports are providing support for dry bulker freight rates as heightened demand for alternative sources of thermal fuel amid western sanctions on Russia is partially offsetting downward pressure from diminished iron ore demand globally.

[E&E Energywire](#) reported that a pro-China online campaign sought to gin up opposition to rare earths minerals projects in the U.S. and elsewhere, according to a recent report, a new risk for auto and energy technology companies that rely on the minerals.

[EnergyWire](#) reported on recent BP Statistical Review of World Energy 2022 analysis indicating that China and India accounted for over 70 percent of the growth in coal demand last year, but the U.S. and Europe also saw an increase in coal consumption "after nearly 10 years of back-to-back declines," the BP report said. The report also documents a cobalt increase of 63 percent in 2021 to average \$51,000/ metric ton. Similarly, lithium carbonate prices rose 58 percent to average \$11,000/ton. So far in 2022, mineral prices have continued to surge.

[Reuters](#) reported that U.S. power companies are facing supply crunches that may hamper their ability to keep the lights on as the nation heads into the heat of summer and the peak hurricane season.

[E&E News](#) reported that mining company Twin Pines Minerals LLC has sued the Army Corps of Engineers for blocking its titanium project in Georgia over concerns it would pollute swampland in the area. Twin Pines argues that the decision was "unlawful and unwarranted."

[Washington Post](#) reported that the Czech Republic has decided to reverse plans to halt mining in a key black coal region to help the country safeguard its power supply amid high demand and the energy crunch prompted by the Russia's war in Ukraine.

[Argus](#) reported that Montana and 15 other states have asked the 9th U.S. Circuit Court of Appeals to take on a request to reconsider its ruling faulting the federal government's study of a lease modification for Signal Peak's Bull Mountain underground mine.

[Utility Dive](#), the NMA and others reported that the Supreme Court ruled that the Environmental Protection Agency cannot set fleet-wide greenhouse gas emissions limits for existing power plants under the Clean Air Act's Section 111(d), dismissing arguments raised by a group of electric utilities, the Biden administration and others.

[Capitol Beat](#) reported that Georgia Power announced plans to recycle more than 9 million tons of coal ash stored at Plant Bowen at a pace of about 600,000 tons per year.

[Mining.com](#) published: “USGS deploys satellite imagery in the global fight against illegal mining.”

[E&MJ](#) published: “Compass Minerals will supply LG with battery-grade lithium starting in 2025.”

[WABE](#) published: “Georgia state regulators may stick with coal – despite Georgia Power's plan to shut it down.”

[Washington Examiner](#) reports the Supreme Court decision in West Virginia v. EPA clipped what environmental lawyers saw as one of their best chances under existing law to transform the power sector away from coal.

[EnergyWire](#) published: “How U.S. university coal plants plunged 77 percent in a decade.”

[EnergyWire](#) reported that the Department of Energy will purchase up to 1 million pounds of domestically produced uranium to kick-start a government-run strategic reserve, according to a funding opportunity released recently.

[Washington Post](#) published: “The U.S. is ditching coal; The Supreme Court won't change that.”

[Reuters](#) reported that fossil fuels have surpassed renewables to become the European Union's largest source of power generation as use of natural gas reached its highest point in a decade, according to the bloc's statistics office, Eurostat.

[The Wire](#) published: “The world can't wean itself off lithium - China dominates the global supply chain for lithium-ion batteries. Now rival countries are scrambling for more control over “white oil.”

Mining Action Strategy Team

Access the latest snapshot of the NMA's ongoing regulatory efforts. The MAST tracker is updated weekly to the extent new actions have occurred.

Current password: Mining

[Mining Action Strategy Team](#)



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