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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 only a handful of legislative days until its next scheduled recess, Congress must craft a short-term extension for federal funding that expires at the end of this month. Attention is also focused on a promised proposal to enact permitting reform, and now the workload has been scrambled by a potential nationwide rail labor strike that may land in the lap of Congress as early as the end of this week. 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

September is also National Food Safety Education Month. An estimated one in six Americans get foodborne illness every year, but the Centers for Disease Control and Prevention has [four simple steps to prevent food poisoning](#).

Potential U.S. Rail Shutdown



Class I rail carriers began enacting contingency plans for controlled shutdowns of their networks in the event of a rail labor strike or a lockout due to an impasse in negotiations with rail labor unions. Under the Railway Labor Act, the parties have until Friday, Sept. 16, to agree on a deal for wages, benefits, and work rules. These collective bargaining negotiations have been ongoing since Jan. 2020 between rail labor unions and the National Carriers Conference Committee (NCCC) that represents most Class I railroads. The Association of American Railroads [stated](#) that freight customers may experience delayed or suspended service over the course of the next week as railways prepare to safely reduce operations. The NMA [issued](#) a statement expressing concern over the potential for a rail strike and its impact on the mining sector and the supply chains it supports.

With little incentive for either the rail labor unions or the Class I carriers to settle, there is a

good chance of either a rail labor strike or a lockout starting this coming Friday. Congress would have to step in and enact back-to-work legislation to get the rails running again. However, Congressional action will have its own challenges in settling the dispute, as both sides will want to blame the other for a nationwide rail shutdown that will surely exasperate an already tight supply chain. The last time Congress stepped in to settle a rail strike was in 1991. Yesterday, Senators Richard Burr (R-N.C.), ranking member of the Senate Health, Education, Labor, and Pensions Committee and Roger Wicker (R-Miss.), ranking member of the Senate Commerce, Science, Transportation Committee, both with jurisdiction over railways and labor disputes, introduced legislation to codify by Friday the recommendations from the three person Presidentially appointed Emergency Board to end the dispute. Please find a copy of the press release and resolution [here](#).

Rich Nolan discussed the potential for a rail stoppage with [Fox News' Neil Cavuto on Fox Business](#). Nolan was also quoted in coverage of rail issues by [Bloomberg](#), [Mining.com](#), [S&P Global](#) and others.

Capito Introduces Alternative to Manchin Permitting Bill



On Monday, Senate Environment and Public Works Committee (EPW) Ranking Member Shelley Moore Capito (R-W.Va.), along with 39 Republican cosponsors, introduced the *Simplify Timelines and Assure Regulatory Transparency (START) Act*. The legislation seeks to address several key federal regulatory and permitting reforms and serves as an alternative to the upcoming permitting legislation Senator Joe Manchin (D-W.Va.) will introduce, which could move as part of the upcoming continuing resolution (CR). A link to the legislative text can be found [here](#) and the EPW press release on the bill can be found [here](#), which includes a list of cosponsors and a section-by-section. Notable provisions from the bill include codification of several Trump-era regulatory changes such as those made to the National Environmental Policy Act and “waters of the United States” (WOTUS). The legislation also includes several reforms including Section 7 consultation under the Endangered Species Act, New Source Review under the Clean Air Act, and prohibits retroactive vetoes under Clean Water Act Section 404 permits and codifies state certification limits under Clean Water Act Section 401.

Negotiations related to the CR and the possible inclusion of permitting provisions continue with Manchin and Majority Leader Chuck Schumer (D-N.Y.) remaining optimistic. However, Minority Leader Mitch McConnell (R-KY.), who is a cosponsor of the START Act, prefers the Capito legislation over the Manchin proposal in these negotiations.

WOTUS Rule Sent to OMB for Interagency Review

Today the U.S. Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (Corps) sent their draft final rule defining “waters of the United States” (WOTUS) to the Office of Management and Budget (OMB) for interagency review. If finalized as proposed, the revised WOTUS rule will expand the federal government’s jurisdiction over features considered WOTUS and create significant regulatory uncertainty, increase mitigation costs, and delay permitting timelines for the mining industry and broader regulated community. Interagency reviews at OMB typically take 60-90 days, although the review period can be longer or shorter than that timeframe. This timeline generally aligns with the agencies’ goal to finalize the rule by the end of the calendar year. The NMA plans

to request a meeting with OMB and will seek your input on our meeting strategy in the coming weeks.

Interior Issues Guidance to Strengthen Tribal Co-Stewardship of Public Lands and Waters



The Department of the Interior released new guidance to improve federal stewardship of public lands, waters, and wildlife by strengthening the role of Tribal governments in federal land management. The guidance is intended to further the directives from [Secretarial Order 3403](#) which outlines how the Department of the Interior and the Department of Agriculture will strengthen Tribal co-stewardship efforts. New guidance from the [Bureau of Land Management](#), the [National Park Service](#), and the [U.S. Fish and Wildlife Service](#) outlines how each bureau will facilitate and support agreements with Tribes to collaborate in the co-stewardship of federal lands and waters.

Comment Period Opens on EPA Proposal to Designate Certain PFAS as CERCLA Hazardous Substances

On Sept. 6, 2022, the U.S. EPA published a [proposed rule](#) to designate perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

This action will trigger new mandatory release reporting requirements and allow the agency to impose CERCLA's strict joint and several liability scheme on parties responsible for releases of these chemicals. PFOA and PFOS are just two of thousands of per- and polyfluoroalkyl substances (PFAS). The mining industry may have used certain products containing PFAS such as Aqueous Film-Forming Foam (AFFF) for firefighting and training, flotation chemicals, and biosolids used for reclamation. The NMA encourages companies to analyze whether this rule will affect any remedial actions at existing CERCLA sites. If your company is impacted by this rule, please contact Tawny Bridgeford at tbridgeford@nma.org. EPA will accept comment on this proposal through Nov. 7, 2022.

NMA and Third Party Voices

The [Roanoke Times](#) (Va.), [The Wheeling Intelligencer](#) (W.Va.), [Jacksonville Journal Courier](#) (Ill.) and others ran an op-ed by Rich Nolan in which he discusses the negative impact of bad policies on grid reliability.

The NMA is quoted by [Inside EPA](#) in a report noting that mining industry groups are urging a federal interagency working group to back the passage of "Good Samaritan" legislation to speed the cleanup of abandoned hardrock mines, arguing administrative efforts have proved insufficient, although environmental groups warn such a law could undermine key environmental statutes.

Mining and Energy News

Recent analysis from [Benchmark Minerals](#) concludes that more than 300 new mines could need to be built globally over the next decade to meet the demand for electric vehicle and energy storage batteries.

[Wall Street Journal](#) reported that for electric vehicles to qualify for Washington's new tax

credits, a wave of investment in mineral extraction and processing will have to follow the build-out of U.S. battery plants.

[Argus](#) reported that coal generation in the PJM Interconnection, the US' largest electric grid, fell in August from year-earlier levels for the fourth month in a row. Argus also reported that coal generation in the MISO power region fell 18 percent from a year earlier in August amid greater competition from natural gas and a decrease in overall electricity demand. [Argus](#) also reported that ERCOT coal power fell again in August.

[Argus](#) reported that EIA has lowered its U.S. coal consumption and supply forecasts for this year as renewable power continues to squeeze out coal generation.

[Utility Dive](#) published last week: “California ISO narrowly avoids rolling outages as peak demand hits record 52 GW.”

[Argus](#) reported that U.S. thermal coal exports posted annual declines for a third consecutive month in July, led by decreases to parts of Asia and Africa.

[Mining.com](#) reported that Tesla Inc. is plotting a potential lithium refinery on the gulf coast of Texas.

[Utility Dive](#) explored how accelerating an energy transition requires more than just lots of money.

Writing about environmentalist opposition to permitting reform, a New York magazine op-ed noted: “As astonishing as it may sound, at the moment, the [greatest enemy of the green-energy revolution](#) is climate-change activists and their progressive allies.”

Greece announced it will keep [seven coal-fueled power plants](#) running for longer than previously planned.

[Bloomberg](#) reported China may add even more coal-fueled power plants than expected in the next few years.

India extended deadlines for coal plant environmental compliance [for the third time](#).

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](#)

CORESafety



The September edition of CORESafety TV:

- A discussion of the drones in coal mines.
- An interview with Dr. Pedram Roghanchi and Dr. Mostafa Hassanalian.
- CORESafety's module nine on Reinforcement and Recognition.



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