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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 the clock ticking on debt limit negotiations, regulatory proposals and congressional oversight continued to roll forward at a brisk pace. 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

[National Safe Boating Week](#) kicks off this Friday with "wear your life jacket at work day."

NMA Testifies in the Senate on Permitting Improvements



Last week, NMA President and CEO Rich Nolan represented the mining industry among four witnesses spanning oil and natural gas production, the renewable energy industry, and labor testifying before the Senate Energy and Natural Resources Committee on key improvements to the permitting process to promote new domestic mining production and improve U.S. competitiveness. Please find the testimony of all the witnesses and a link to the hearing [here](#). An executive from Jonah Energy out of Wyoming, the president of the American Clean Power Association, and the president of the AFL-CIO all echoed similar themes that permitting improvements must involve certainty, time limits on reviews, consistency and leadership from setting lead federal agencies, and limits on judicial review. Committee Chairman Joe Manchin (D-W.Va.) announced at the hearing he plans to hold a mark up of permitting legislation in the Energy and Natural Resources Committee within the next two months so that the full Senate can pass energy permitting legislation before the August recess. The NMA continues to work with offices on both sides of the

aisle on the Energy and Natural Resources Committee to pursue NMA member priorities reversing the Rosemont litigation, clear timelines for environment and judicial review, leasing reforms, and the reliability of our electric grid among other key priorities for inclusion in that legislation. There is action on permitting across the Senate. Senator Manchin has reintroduced his Building American Energy Security Act. Senator Barrasso (R-Wyo.) has introduced his SPUR Act. Senator Shelley Moore Capito (R-W.Va.) has introduced her RESTART Act. Senator Tom Carper (D-Del.), Chairman of the Senate Environment and Public Works Committee, plans to introduce permitting legislation of his own soon and held a permitting oversight hearing at his committee this morning. For information on all permitting legislation in Congress presently see the links below:

SPUR Act (Barrasso and Senate Energy and Natural Resources Committee Republicans)

- Bill text of the *SPUR Act* [here](#).
- Section by section of the *SPUR Act* [here](#).
- Summary of the *SPUR Act* [here](#).

RESTART Act (Capito and Senate Environment and Public Works Committee Republicans)

- Bill text of the *RESTART Act* [here](#).
- Section by section of the *RESTART Act* [here](#).
- Summary of the *RESTART Act* [here](#).

Building American Energy Security Act (Manchin)

- Bill text of *Building American Energy Security Act* [here](#).
- Summary of *Building American Energy Security Act* [here](#).

HR 1, Lowering Energy Costs Act (House passed)

- Bill text of *Lowering Energy Costs Act* [here](#).
 - Section by section of *Lowering Energy Costs Act* [here](#).
 - Summary of *Lowering Energy Costs Act* [here](#).
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EPA Proposes Aggressive New Greenhouse Gas Emissions Limits on Existing Coal Plants

Last week, the U.S. Environmental Protection Agency (EPA) unveiled [aggressive new greenhouse \(GHG\) emissions standards](#) for existing coal-fired electric generating units. EPA Administrator Regan [touted](#) the agency's proposal as "rel[ying] on proven, readily available technologies to limit carbon pollution and seiz[ing] the momentum already underway in the power sector to move toward a cleaner future." EPA claims that the "projected impacts of the proposed rule on power system operations, under conditions preserving resource adequacy, are modest and manageable." The NMA issued a [press release](#) condemning EPA's rulemaking, stating that "mandating [the] use [of carbon capture and sequestration (CCS)] in a rulemaking before this technology is technically and fully economically demonstrated is nothing more than unlawful showmanship reinforcing a destructive agenda." The NMA also emphasized the detrimental impacts of EPA's so-called "power plant strategy" on the coal fleet and the ability to provide reliable, affordable electricity to Americans.

EPA has decided that two technologies together constitute the best system of reducing GHG emissions from coal-fired power plants—CCS and co-firing with natural gas. EPA claims these technologies are adequately demonstrated, highly cost-effective, and widely available. Accordingly, EPA has proposed

mandatory standards based on these technologies for all existing coal-fired steam generating units. While EPA expresses confidence in the ability of the coal plants to utilize these technologies, EPA also recognizes that they cannot be implemented immediately.

Notably, EPA sets a completely unrealistic compliance date of Jan. 1, 2030, for each of the following subcategories that group coal plants into retirement dates. EPA believes that CCS can be implemented in approximately five years and co-firing with natural gas in 3.5 years.

- For **“long-term”** units planning to operate into the 2040s, EPA will require CCS with a 90 percent capture rate.
- For **“medium-term”** units planning to retire between 2032 and 2039, EPA will require natural gas co-firing of 40 percent (reducing emissions by 16 percent).
- For both **“imminent-term”** units (*i.e.*, those planning to retire by the end of 2031) and **“near-term”** units (*i.e.*, those to retire by the end of 2033 and accept a 20 percent operating limit until then), EPA proposes to require the units to prevent any increases in emission rate via routine operations and maintenance.

EPA justifies this focus on retirement dates by claiming coal-fired power is in decline because coal plants are aging, expensive, and uncompetitive, and noting that no new coal-fired units are expected to be built in the future. Comments on EPA’s proposed rule will be due 60 days after publication in the Federal Register. A more detailed summary of the rule is available [here](#).

DOI Issues Solicitor's Opinion on Use of Mining Claims for Waste Deposition

The Solicitor of the Department of the Interior (DOI) this week issued a new legal opinion, [M-73077](#), "Use of Mining Claims for Waste Deposition, and Rescission of M-37012 and M-37057." DOI indicates the opinion provides its response to the remand of Lithium America's Thacker Pass permit by the U.S. District Court for the District of Nevada. DOI's press release announcing the new opinion is available [here](#).

Recall, in the Thacker Pass case, the court [held](#) that the misguided [decision](#) of the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) related to the Rosemont Copper project applied to lands managed by the Bureau of Land Management (BLM). Unlike in Rosemont, the Nevada District Court did not declare the permit unlawful but remanded to BLM to "determine whether Lithium Nevada possesses valid rights to the waste dump and mine tailings land it intends to use."

While the solicitor's opinion provides a path forward for Thacker Pass, applied more broadly it raises other questions, confirming the need for the bipartisan legislation already introduced in Congress that returns interpretation of the General Mining Law to the longstanding legal precedent that came before the Rosemont ruling, ensuring the fundamental ability to conduct responsible mining activities on federal lands.

The opinion outlines the options available to mining companies similarly situated to Thacker Pass that propose to place tailings or waste rock on mining claims without evidence of a discovery, creating a "rebuttable presumption against discovery." First, that presumption may be overcome by sufficient evidence of mineralization. If the record does not contain such evidence,

companies can conduct additional exploration to make this demonstration. However, the opinion fails to provide any metrics for determining what amount of evidence will suffice, which could leave much to BLM discretion.

Secondly, in cases where mineralization cannot be demonstrated, companies have the option of re-staking the lode claims where waste or tailings facilities were planned as millsite claims. Notably, the opinion does not impose any restrictions on the number of millsite claims that can be staked in conjunction with mining claims or otherwise reference the then-Solicitor John Leshy's 1997 [Millsite Opinion](#). Under the third and fourth options, companies could seek special use or other permits available under the Federal Land Policy and Management Act for their waste rock and tailings facilities. As the mining industry is well aware, authorizations divorced from the Mining Law provide far greater discretion for federal land management agencies to deny approvals. The final option discussed is for companies to seek a land exchange to acquire needed acreage for waste rock and tailings. Given the length of time and resources involved in securing land exchanges, this option seems nearly unviable.

Unfortunately, the opinion also withdraws two previous helpful solicitor's opinions on ancillary use from 2005 and 2020 as depending on a rationale that conflicts with the new opinion and recent caselaw. Even more troubling, the opinion notes the earlier opinions "wrongly imply that the Mining Law forecloses the Department from withholding approval for portions of a plan of operations if the operator can't, as a matter of law, demonstrate discovery."

NMA Raises Industry Concerns in Thacker Pass Litigation



The NMA on May 5 submitted an [amicus brief](#) to the Ninth Circuit in support of Lithium America’s Thacker Pass mine. The intent of the brief was to alert the court to the repercussions to the broader minerals mining industry of adopting the environmental plaintiffs’ view of the Ninth Circuit decision in the Rosemont litigation. The Ninth Circuit Rosemont [decision](#) conflicted with more than a century of legal precedent, including numerous U.S. Supreme Court decisions, in misconstruing rights conveyed by the Mining Law to owners of unpatented claims and the use of surface resources to develop those claims.

The plaintiffs in the litigation over the Thacker Pass project contend that the Rosemont decision requires the BLM to conduct a demanding and fact-intensive claim validity determination before authorizing mining companies to occupy federal public lands for mining purposes. Our brief explained that neither the plaintiffs nor the court should dictate BLM’s response to the Rosemont decision as BLM has the discretion to determine the level of claim validity inquiry it should make moving forward. Further the NMA brief argued that “Overriding BLM’s authority and fashioning a new rule forcing agencies to conduct time-consuming mineral examinations and formal claim determinations, even when these determinations are not required . . . would delay mining projects by

years at a time when the United States desperately needs to ensure a domestic supply of critical minerals.”

Congressional Coal Caucus Meets Today

Today, the Congressional Coal Caucus met for its first meeting this Congress. Six members of Congress and two dozen Congressional staff attended to finalize the Caucus’ priorities for this Congress, plan for its next meeting in June and hear directly from a producer in Pennsylvania invited by Coal Caucus co-chairman Dan Meuser (R-Pa.). The Caucus has nearly two dozen members of Congress in new members and re-upped memberships and is a bipartisan opportunity for members of Congress to help develop legislation benefiting the coal production industry. If members of Congress with whom you work wish to get more information or to join this important caucus please simply direct their staff members to any one of the key staff representing the following list of Coal Caucus Co-chairs:

- **Rep Hageman** - troy.macmullan@mail.house.gov
 - **Rep Meuser** - matthew.perricone@mail.house.gov
 - **Rep. Johnson** - sam.hattrup@mail.house.gov
 - **Rep. Griffith** - JR.walker@mail.house.gov
 - **Rep. Carol Miller** - Max.Pedrotti@mail.house.gov
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NMA Kicks Off Filming for Industry Employment Video



This week, NMA's Ashley Burke kicked off filming for a video designed to support industry recruitment efforts and highlight how modern mining companies are using new technologies and working in environmentally responsible ways, all in support of the communities in which they live and work. Filming began on Monday with employees of Coeur Mining's Rochester mine in Nevada, where Coeur directly employs approximately 350 personnel and an additional 500 to 700 contractors onsite each day.



STB Ruling on UP's Use of Rail Embargoes

This week, the Surface Transportation Board (STB) issued a [ruling](#) in response to the December 2022 oversight hearing pertaining to the Union Pacific's (UP) excessive use of rail embargoes. The NMA testified at the hearing on the impact of embargoes, or *de facto* embargoes on mining operations in the west. The STB ordered the UP to produce additional documents and data for evaluation by June 14, 2023, and issued a protective order for confidential records that may be produced. After receiving this information from UP, the STB will decide whether further action is necessary to alleviate embargo concerns by shippers.

NMA and Third Parties In the News

In coverage of the EPA's power plant rule, the [Washington Post](#), [E&E Climatewire](#), [Politico Pro](#), [Politico Pro](#), [Financial Times](#), [NPR](#), [Washington Examiner](#), [Associated Press](#), [Fortune](#), [Roll Call](#) and [the Office of Mitch McConnell](#) all quote the NMA and Rich Nolan.

The NMA worked with the [Wall Street Journal](#)'s Editorial Board on a piece that argues against the damaging effects of the new EPA rules.

[The Senate Committee on Energy and Natural Resources](#) posted a quote from Rich Nolan in support of permitting legislation. Rich Nolan is quoted by [The Office of Senator Manchin](#) in a release on his permitting testimony.

[E&E Daily](#) quotes the NMA in a story noting Democrats' objections to a Republican resolution that would undo federal protections near Minnesota's Boundary Waters Canoe Area Wilderness to allow mining.

From our third parties, [Eastern New Mexico News](#) (N.M.) and [Las Vegas Sun](#) (Nev.) carry an op-ed from Jim Constantopoulos, a professor of geology and director of the Miles Mineral Museum at Eastern New Mexico University, in which he argues in favor of mining to support the green energy future.

[Kokomo Tribune](#) (Ind.) carries an op-ed by Michael Stumo, CEO of the Coalition for a Prosperous America, in which he argues Washington needs a bipartisan commitment to move faster on mine permit approvals.

Mining and Energy News

[Argus](#) reported that U.S. coal exports in March rose to the highest in more than four years, helping to boost first-quarter U.S. shipments and volumes at eastern U.S. railroads.

[Washington Post](#) reported from Bloomberg that if the U.S. and Europe are going to have a chance of challenging China's dominance in clean technologies, they need to catch up fast on critical minerals.

[Mining.com](#) reported that the top lawyer for Lithium Americas' Thacker Pass project, which is developing the largest lithium deposit in the U.S. in northwest Nevada, says it could be free of legal challenges by late summer or early fall.

[E&E Daily](#) reported that bipartisan lawmakers from mining-heavy Western states are pushing legislation to tackle growing legal challenges facing U.S. mining, triggering pushback from tribal, climate and conservation groups.

The [Cobalt Institute](#) reported that despite 2022 being a turbulent year for cobalt demand, it maintained an annual growth of 13 percent, reaching 187 kt. "The cobalt market prospects remain robust as cobalt demand is set to double

by 2030, growing at a 10 percent annual rate.” The Congo maintained a steady share of 73 percent of global production, followed by Indonesia 5 percent. The EV sector accounts for 40 percent of the total cobalt market.

[Argus](#) reported on EIA’s May coal outlook indicating they have increased the 2023 coal production and consumption forecasts in anticipation that overall electricity demand will be higher than previously estimated, but they lowered the outlook for next year.

[Politico](#) reported that some Democrats are distancing themselves from anti-coal policies.

[Wall Street Journal](#) reported that nuclear power in the West is having a long-awaited revival, with new reactors opening in the U.S. and Europe and fresh momentum toward building more soon. But the West doesn’t have enough uranium to fuel the reactors—and lacks the capacity to swiftly ramp up production. “Even more vexing, the biggest source of critical ingredients is Russia and its state monopoly, Rosatom, which is implicated in supporting the war in Ukraine.”

[Politico Pro](#) reported that the administration’s new greenhouse gas rule is designed to drive drastic changes in how U.S. power companies produce electricity — but utilities say it could escalate the risk of outages as it squeezes fossil fuel plants into retirement.

[Wall Street Journal](#) carries an op-ed arguing against the damaging effects of the new EPA rules.

[Reuters](#) reported on EIA forecast data projecting that the nation's coal power plant fleet could decline by more than half by 2050, as aging fleets are replaced by new plants powered by natural gas and renewable energy and as environmental regulations make it more costly to operate the facilities.

Meanwhile, the combined capacity from solar and wind power generation is expected to more than triple by 2050.

[Mining.com](#) reported that “mounting fears over the U.S. debt-ceiling crisis will benefit gold as investors brace for potential chaos in financial markets,” according to RBC Capital Markets.

[Bloomberg](#) reported that most of the U.S. is facing elevated [blackout risks](#) this summer in the event of widespread extreme heat as the power network serving roughly 400 million people grows increasingly fragile.

[Mining.com](#) reported that rising demand from automakers, industry and investors will push this year’s global platinum market into its biggest deficit in years.

Commodity Prices

Commodity Price - Snapshot

Metals Prices	Date	Price
Cobalt Spot Price (\$/lb)	5/16/23	\$15.84
Copper Spot Price (\$/lb)	5/17/23	\$3.75
Gold Spot Price (\$/ounce)	5/17/23	\$1,981.56
Lithium Spot Price (\$/kg)	5/17/23	\$32.51
Molybdenum Spot Price (\$/kg)	5/16/23	\$51.88
Nickel Spot Price (\$/lb)	5/16/23	\$9.51
Silver Spot Price (\$/ounce)	5/17/23	\$23.75
Steel HRC Price (\$/mt)	5/17/23	\$951.33
Steel Rebar Price (\$/mt)	5/17/23	\$527.02
Zinc Spot Price (\$/lb)	5/9/23	\$1.21
Energy Prices	Date	Price
Coal Price - Australian Premium Coking Coal Futures (\$/mt)	5/16/23	\$223.67
Coal Spot Price - Central Appalachian (\$/st)	5/12/23	\$75.75
Coal Spot Price - Newcastle futures (\$/mt)	5/17/23	\$165.06
Coal Spot Price - Rotterdam futures (\$/mt)	5/16/23	\$117.50
Natural Gas Spot Price - Henry Hub (\$/mmbtu)	5/10/23	\$2.12
Uranium Spot Price (\$/lb)	5/15/23	\$53.40

Sources: publicly available data from eia.gov, dailymetalprice.com, tradingeconomics.com, sgxgroup.com, investing.com

CORESafety



In the May edition of CORESafety TV we revisit Dr. Pedram Roghanchi, Dr. Mostafa Hassanalian and their team who have been working to develop a drone that will fly safely in coal mines and will meet MSHA approval.



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