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MINE Update

MINING INDUSTRY NEWS E-COMM UPDATE

Issue 1 | January 3, 2024

Brought to you by the National Mining Association

This Week in The News

Congress remains out of session for another week, but faces a daunting agenda when members return, including two government-funding deadlines, policy changes for the U.S. southern border and foreign aid needs. Meanwhile, with the presidential primaries kicking off and the election year clock now ticking, regulatory agencies continue to push to enact a broad slate of Biden administration policies over the next several months. 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

Industrial Safety and Hygiene News has some helpful suggestions for **New Year's resolutions** to improve safety at your workplace. And January is **National Radon Action Month**. The National Safety Council has information on this naturally occurring hazard and how you can test your homes for exposure.

Supreme Court Oral Argument Scheduled for Ozone Transport Rule Stay



In a win for the mining industry, the U.S. Supreme Court **agreed** to hear oral argument next month on state and industry requests to stay the U.S. Environmental Protection Agency's (EPA) Ozone Transport rule. In October, the NMA filed an **emergency application** for immediate stay of EPA's final rule, following a divided panel on the U.S. Court of Appeals for the District of

Columbia Circuit (D.C. Circuit) denying our and the states' stay requests by a 2-1 margin. Our stay application emphasized that "EPA's willful decision to move forward has simultaneously abrogated the rights of States to regulate air pollution within their borders and improperly forced industries regulated by the Federal Plan into the immediate expenditure of hundreds of millions of dollars pending the lower court's review, all while jeopardizing the reliability of the grid." Ohio, Indiana and West Virginia also filed a [separate application](#), arguing that "EPA's rulemaking ignored obvious problems with its attempt to twist the Clean Air Act into a system of top-down regulation instead of the system of cooperative federalism that Congress intended." Our requests to the Supreme Court are the last available legal channel to halt the Ozone Transport rule nationwide pending the D.C. Circuit's consideration of the merits of our challenges. Earlier this year, seven regional circuits stayed EPA's disapproval of 12 state implementation plans, which act as the predicate for the implementation of EPA's federal plan under the Ozone Transport rule. Currently, nearly 90 percent of the emissions limitations in the Ozone Transport rule are blocked because of the regional circuit stays. Yet, EPA continues to charge forward in implementing the Ozone Transport rule in 11 states and is poised to potentially add more states to this program.

NMA Files Comments on EPA's Supplemental Notice Related to the Clean Power Plan 2.0 and Reliability of the Electric Grid



CLEAN POWER PLAN 2.0

The NMA recently filed [comments](#) in response to the EPA's [supplemental notice of proposed rulemaking](#) related to the agency's greenhouse gas emissions standards for new and existing power plants, known as the Clean Power Plan 2.0. EPA requested comment on potential mechanisms to address reliability issues raised by stakeholders on the proposed rule. Overall, the NMA's comments demonstrate that EPA continues to offer no meaningful, long-term solutions to the grid reliability challenges that plague EPA's "power sector strategy." The NMA's comments again urge EPA to work constructively with federal and regional grid experts to analyze the cumulative impacts of the "power sector strategy" rules before finalization. The NMA also highlights new information and data since the Clean Power Plan 2.0 comment period ended this summer, including the Federal Energy Regulatory Commission's 2023 reliability technical conference, the North American Electric Reliability Corporation's 2023 long-term reliability assessment, and other emerging trends related to electricity demand growth and the slow build out of replacement generation. The NMA makes clear that EPA's supplemental notice offers reliability "mechanisms" that will not resolve the more systemic and long-term threats to reliability that EPA's proposed rules would present. The NMA is also clear that the only solution to the reliability threats EPA's proposed Clean Power Plan 2.0 would present is revising the proposal to make it reasonably achievable, as required by the Clean Air Act.

Bipartisan House Caucus Urges FPISC to Reconsider Proposed Rule



The Climate Solutions Caucus, a group of bipartisan members led by Representatives Andrew Garbarino (R-N.Y.) and Chrissy Houlahan (D-Penn.) in late December voiced their concerns regarding the detrimental effect that the Federal Permitting Improvement Steering Council's (FPISC) [proposal](#) would have on the domestic mining industry. In a [letter](#) to FPISC Executive Director Eric Beightel, the caucus co-chairs urged for the broadening of covered mining projects eligible for expedited permitting processes under FPISC's permitting dashboard, as the program currently allows, or else risk U.S. economic and national security by continuing to rely on countries with less environmental and labor protections for minerals essential for renewable energy and transmission, such as copper.

The caucus' dissatisfaction is the latest in a growing vocal opposition to the proposal, which echoes NMA's submitted [comments](#). Senator Kyrsten Sinema (I-Ariz.) [highlighted](#) the impact to Arizona's mining industry while Sens. Dan

Sullivan (R-Alaska), Catherine Cortez Masto (D-Nev.) and Joe Manchin (D-W.Va.) along with 19 other senators **highlighted** the strategic disadvantage it would create for U.S. mineral supply chains. Further, a coalition of labor unions **criticized** the proposal and the negative effect it will have for job creation and domestic manufacturing. The NMA continues to engage with Congress and mobilize a coalition to prevent the punitive proposal from taking effect.

MSHA Final Rule Implements Safety Program for Surface Mobile Equipment



The Mine Safety and Health Administration (MSHA) recently published a final **rule** implementing a Safety Program for Surface Mobile Equipment. In the final rule, MSHA is requiring that mine operators develop, implement and update, periodically or when necessary, a written safety program for surface mobile equipment (excluding belt conveyors) at surface mines and surface areas of underground mines. Mine operators must develop and update the written safety program with input from miners and their representatives, as well as include actions mine operators will take to identify hazards and risks to reduce accidents, injuries and fatalities related to surface mobile equipment. The final rule offers mine operators flexibility to devise a safety program that is appropriate for their specific mining conditions and operations. The final rule responds to concerns raised by the NMA in written comments by allowing for: (1) a six-month delayed compliance date for development and

implementation of written safety programs; (2) additional MSHA engagement with various stakeholders to develop safety program templates; (3) a performance-based approach that allows operators to tailor a safety program that is appropriate for specific and unique operations but that must include at least four types of actions operators will take to reduce accidents, injuries and fatalities; and (4) the incorporation of existing training provisions into written safety programs. The Department of Labor's [news release](#) announcing the publication of the final rule indicates that MSHA district managers will discuss compliance assistance for the mining industry at stakeholder meetings beginning in January 2024.

NMA Files Comments on EPA's Draft *Maui* Groundwater Guidance

The NMA last week filed [comments](#) on EPA's draft guidance applying the Supreme Court's *County of Maui v. Hawaii Wildlife Fund* decision to the Clean Water Act (CWA) Section 402 National Pollutant Discharge Elimination System (NPDES) permit program. The NMA's comments highlighted several procedural and substantive issues with the draft guidance and urged the agency to engage further with the regulated community and states to address numerous legal, technical, and implementation issues before finalizing any guidance. The NMA also joined [coalition comments](#) explaining how the draft guidance is legally flawed because it distorts key aspects of the Supreme Court's holding; attempts to preclude consideration of an important factor in the "functional equivalent" analysis; introduces a new jurisdictional theory that is contrary to the CWA; and confuses the issues by loosely using the statutory term "discharge." While EPA denied our request for an extension of the comment period for this guidance, the NMA was successful in encouraging Congress to weigh in, securing extension requests from both the [House Transportation](#)

[and Infrastructure Committee](#) and the [Senate Environment and Public Works Committee](#). We are hopeful that our engagement with these committees of jurisdiction will result in future Congressional oversight on this important matter.

NMA Comments on Ambler Metals Project in Alaska

Last month, the NMA provided [comments](#) in response to the Bureau of Land Management's (BLM's) Draft Supplemental Environmental Impact Statement (DEIS) for the proposed Ambler Road Access Project (AAP) in Alaska. Recall, in a disappointing response to litigation on the 2020 Record of Decision for the AAP, the BLM requested a voluntary remand from the U.S. District Court for the District of Alaska and indicated further legal review revealed deficiencies in its previous analysis of subsistence impacts under the Alaska National Interest Lands Conservation Act (ANILCA) and the National Historic Preservation Act. In addition to highlighting the importance of Alaskan mineral resources, the NMA's comments argue that, despite the two discrete issues identified by the BLM in its voluntary remand, the DEIS was inappropriately expanded to multiple new issues and analyses of, among other things, water resources, air quality and climate, vegetation and wetlands, fish and aquatics, transportation, and environmental justice. Further, the NMA took issue with the new and inappropriate alternatives in the DEIS that went beyond the agreed upon additional analyses for voluntary remand and would disregard Congressional direction in ANILCA to construct the access road through the Gates of the Arctic National Preserve for access to the Ambler Mining District and AAP. The NMA also urged the BLM to finalize its review of the AAP as expeditiously as possible

to prevent further delays and the undermining of the administration's mineral goals.

NMA Comments on Forest Service Interim Final Rule on Long-Term Financial Assurance



Last week, the NMA submitted [comments](#) generally in support of finalization of the Forest Service's interim final rule that amends the agency's locatable mineral regulations to provide additional financial assurance options for funding reclamation activities. The comments emphasized the effectiveness of the current regulations, including the financial assurance requirements, in protecting both the environment and taxpayers from assuming any reclamation liability. The NMA noted, however, that the interim final rule provides additional clarity regarding the types of acceptable financial assurance mechanisms, the ability to review the amount of assurance periodically and perhaps most importantly, the ability to require funding for long-term post-closure obligations. As such, the rule bolsters the defensibility of the Forest Service's financial assurance requirements by addressing head-on the criticisms that most of the pertinent requirements, particularly those for long-term funding were articulated through policy or guidance as opposed to regulations.

EPA Begins Prioritization of Five Chemicals Under TSCA for Future Risk Evaluation

EPA recently [published](#) for public comment a notice that it is initiating the prioritization process for five chemical substances under the Toxic Substances Control Act (TSCA) that may be of interest to the mining industry. Comments are due March 18, 2024. EPA must conduct a [prioritization process](#) to determine if chemical substances are a high- or low-priority for risk evaluation. EPA expects to designate these five chemicals as “high-priority substances:” acetaldehyde, acrylonitrile, benzenamine, 4,4'-Methylene bis(2-chloroaniline), and vinyl chloride. The notice provides a general explanation of why these chemicals were chosen and the data EPA plans to use to support its designations. Michal Freedhoff, Assistant Administrator for EPA’s Office of Chemical Safety and Pollution Prevention, said in an [announcement](#): “Moving forward to comprehensively study the safety [of] these five chemicals that have been in use for decades is key to better protecting people from toxic exposure.” EPA expects to “initiate prioritization on five chemicals every year, which will create a sustainable and effective pace for risk evaluations.” EPA seeks additional relevant chemical information from the public that it will use in its review of each chemical.

IRS Releases Guidance on Hydrogen Production Credit



A close-up photograph of a white hydrogen storage tank with the letters 'H2' printed in blue on its side.

On December 22nd, the Treasury Department and the Internal Revenue Service released [proposed regulations](#) on the Clean Hydrogen Production Credit established by the Inflation Reduction Act (IRA). The regulations for the 45V tax credit, which are available for public comment for 60 days, outline how to qualify for up to \$3 per kilogram of hydrogen produced, provided prevailing wage and apprenticeship requirements are satisfied. The administration is seeking comment on how hydrogen produced by fossil fuel-generated electricity with carbon capture could qualify.

Under section 45V, a 60-cent credit kicks in for a kilogram of hydrogen produced with no more than four kilograms of carbon dioxide equivalent. Producers earn more credits with lower CO₂ equivalent emissions. The credit is available for 10 years, starting on the date that a hydrogen production facility is placed into service, for projects that begin construction before 2033, which will allow some facilities to receive the break into the 2040s.

According to the proposed rules, hydrogen producers would have to use renewable or zero emission electricity from generation sources which began commercial operation no more than three years prior to the construction of the hydrogen facility. The electricity would also have to be sourced from within the same geographic region as the hydrogen production facility and would be subject to hourly matching rules beginning in 2028. The NMA will be consulting with members on a comment strategy.

NMA and Third Parties In the News

The NMA was mentioned in an [E&E Daily](#) report noting that House Republicans unveiled legislation last month against the Biden administration's move to only fast-track permitting of mining projects deemed critical by the federal government.

Mining and Energy News

[E&E News PM](#) reported that the Minnesota Court of Appeals has affirmed a decision by a state agency to grant a major permit for the proposed NewRange copper-nickel mine, saying regulators adequately considered the possibility that developers might expand the project in the future.

[E&E Daily](#) reported that a bipartisan group of lawmakers reintroduced legislation to secure U.S. supply chains for high-tech magnets made with rare earth elements.

The U.S. [Department of Labor](#) recently announced a final rule from its Mine Safety and Health Administration (MSHA) to help protect miners from accidents, injuries and fatalities related to surface mobile equipment.

[Argus](#) reported that U.S. coal mining fatalities are on track to fall from 2022 but remain 80 percent above the record low achieved in 2020, according to MSHA data.

[Visual Capitalist](#) presented a graphically illustrated guide to the copper market in a recent feature.

[Argus](#) reported that coal exports out of Hampton Roads, Virginia, in November rose for a fourth consecutive month, bringing year-to-date volumes above total

2022 shipments.

[**Washington Times**](#) reported that the administration's sweeping new rule to end power plant emissions encountered opposition from administration officials, including warnings that the U.S. has no viable way to fully replace fossil fuels in the electricity sector in the next 15 years.

[**Hellenic Shipping News**](#) reported that "Consumers around the world will pay the price for the unfolding crisis in the Red Sea after missile attacks on merchant ships plunged supply chains into chaos." Ten percent of world trade moves through that region.

[**Kallanish**](#) reported that a few U.S. lawmakers are taking a stance on the acquisition of U.S. Steel by Japan's Nippon Steel.

[**Argus**](#) reported that U.S. rail coal volume is on pace to end this year lower than during 2022, tempered by lower electricity demand and higher power plant inventories.

The [**World Steel Association's**](#) latest data indicates that global crude steel production for the countries reporting to the association was 145.5 million metric tons (Mt) in November 2023, a 3.3 percent increase compared to November 2022.

[**The Wall Street Journal**](#) published a letter calling for the development of a responsible mining code.

[**Greenwire**](#) reported that China has banned the export of technology required to make rare earths magnets.

[**Argus**](#) reported that U.S. railroad metrics show carriers have mostly improved coal service performance from last year's problems, but some issues persist.

Three of the largest U.S. railroads moved at a faster rate in the first 50 weeks of this year than they had at the same period of 2022, Surface Transportation Board (STB) data show.

[**ETF Trends**](#) reported that uranium has been one of the best-performing commodities in 2023 and upside should continue in the new year given the global race of nations shoring up their supply for increased nuclear power usage.

[**Real Clear Energy**](#) ran an op-ed arguing for broader consideration of the minerals needed for the energy transition, beyond the current focus on battery metals.

[**Silver Institute's**](#) latest silver forecast shows the output of industrial, jewelry and silverware fabricators is forecast to increase by 42 percent between 2023 and 2033. This is roughly double the rate of growth of their demand for silver over the previous decade.

[**Hellenic Shipping News**](#) reported that thermal coal trade in Asia in 2023 is set to outpace 2022 by 17 percent, with the biggest driver of this rise being China's stockpiling of coal, while Vietnam more than doubled imports in the first eight months of 2023, according to a recent Resources and Energy Quarterly report.

[**Mining.com**](#) reported that the administration has extended the suspension of tariffs on European Union steel and aluminum for two years to continue negotiations on measures to address overcapacity and low-carbon production.

Recent data from [**International Copper Study Group**](#) (ICSG) shows world copper mine production increasing by approximately 1 percent over the first ten months of 2023, driven by a 1 percent rise in concentrate production with solvent extraction-electrowinning (SX-EW) remaining essentially unchanged.

[Mining.com](https://www.mining.com) reported on Bloomberg analysis indicating that nickel trading was lackluster in 2023 while copper and iron ore demand saw gains.

Commodity Prices

Commodity Price - Snapshot		
Metals Prices	Date	Price
Cobalt Spot Price (\$/lb)	1/2/24	\$13.21
Copper Spot Price (\$/lb)	1/3/24	\$3.85
Gold Spot Price (\$/ounce)	1/3/24	\$2,035.93
Lead Spot Price (\$/lb)	1/2/24	\$0.91
Lithium Spot Price (\$/kg)	1/3/24	\$13.50
Molybdenum Spot Price (\$/kg)	1/2/24	\$43.00
Nickel Spot Price (\$/lb)	1/2/24	\$7.41
Silver Spot Price (\$/ounce)	1/3/24	\$22.97
Steel HRC Price (\$/mt)	1/3/24	\$1,127.30
Steel Rebar Price (\$/mt)	1/3/24	\$551.53
Zinc Spot Price (\$/lb)	1/3/24	\$1.17
Energy Prices	Date	Price
Coal Price - Australian Premium Coking Coal Futures (\$/mt)	1/2/24	\$327.00
Coal Spot Price - Central Appalachian (\$/st)	12/29/23	\$78.65
Coal Spot Price - Newcastle futures (\$/mt)	1/2/24	\$131.82
Coal Spot Price - Rotterdam futures (\$/mt)	1/3/24	\$109.00
Natural Gas Spot Price - Henry Hub (\$/mmbtu)	12/20/23	\$2.49
Uranium Spot Price (\$/lb)	12/25/23	\$91.00

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

CORESafety



In the January edition of CORESafety TV, we cover the most recent winners of the Sentinels of Safety Awards.



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