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*NMA Mining Week* is a weekly publication of the National Mining Association. Mining Week archives are always available online at [www.nma.org](http://www.nma.org).

## House panels approve liquefaction, clean air provisions and workforce initiatives

Two House committees this week approved initiatives on coal liquefaction, clean air and workforce training provisions strongly encouraged by NMA.

The House Energy and Commerce Committee, chaired by Rep. Joe Barton (R-Texas), completed work on a post-hurricane energy package aimed at expanding refining capacity, including NMA-supported language that includes facilities using coal as a feedstock and Clean Air Act (CAA) provisions relating to New Source Review and ozone NAAQS compliance requirements.

Meanwhile, the House Committee on Resources, chaired by Rep. Richard Pombo (R-Calif.), approved the bipartisan National Energy Supply Diversification and Disruption Prevention Act by a 27-16 vote and, along with it, a provision that provides resources establishing a "Federal Energy and Mineral Resources Professional Development Fund." The fund would assist academic institutions to attract and train the next generation of mining, mineral, geophysical and petroleum engineers.

The Energy and Commerce panel's bill H.R. 3893, included language advocated by NMA extending the definition of a refinery to include those that use coal as a feedstock. Specifically, a refinery includes "a facility designed and operated to receive, load, unload,

*See House panel, page 2*

## Second Circuit allows potentially liable parties to recover costs for voluntary cleanups

The U.S. Court of Appeals for the Second Circuit has ruled that a party that is potentially liable under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) may sue under the law for recovery of response costs it has incurred voluntarily.

The availability of this course of action had been put in doubt following the Supreme Court's December 2004 decision in *Cooper Industries Inc. v. Aviall Services Inc.* The high court ruled that a potentially liable party may seek contribution under CERCLA's §113(f)(1) only during or following a civil action.

In the wake of *Aviall*, there were concerns the decision would slow Superfund cleanups with parties waiting to be sued by federal or state agencies before stepping forward to undertake cleanup and seeking contribution from others responsible.

After examining the statutory language and prior case law, the Second Circuit earlier this month concluded that an independent cause of action exists under CERCLA's § 107(a), even in the absence of a civil action or a settlement agreement, and even for parties that may themselves be liable under that provision.

In *Consolidated Edison v. UGI Utilities*, the court concluded that in light of *Cooper Industries*, "it no longer makes sense to view Section 113(f)(1) as the means by which the Section 107(a) remedy is effected by parties that would themselves be liable if sued under Section 107(a). Each of those sections, 107(a) and 113(f)(1), embodies a mechanism for cost recovery available to persons in different procedural circumstances."

It concluded that a party potentially liable under §107(a) may proceed under that provision "to recover necessary response costs incurred voluntarily, not under a court or administrative order or judgment." ✕

## NMA members continue generous hurricane relief effort

NMA members have continued their generous response in assisting with hurricane relief in the Gulf region, with contributions to date totaling more than \$11 million.

Among the latest updates:

**AmerCable** donated money, food, clothes and volunteers to the Houston Astrodome and other sites in Texas and Arkansas. **Atlas Copco** will match up to \$10,000 in employee contributions to the hurricane relief fund. **DBT** has placed a \$25,000 corporate contribution in addition to employee contributions.

**Philippi-Hagenbuch Inc.** is matching employee contributions. **Terex** provided immediate delivery of light tower generators and is accelerating machinery deliveries to the areas where the equipment is needed most. The company's factories have adjusted production schedules to concentrate on those products that are immediately needed in the Gulf.

**Berwind Corp.** is contributing \$250,000 to the American Red Cross for Hurricane Katrina relief efforts. In addition, the company is also matching employee contributions dollar-for-dollar up to \$5,000. **Cleveland-Cliffs Inc.** is also making a cash contribution to relief efforts.

**Arch Coal Inc.** is matching employee donations to the American Red Cross until Oct. 1 – so far the company has gathered more than \$21,000 in employee contributions for a total donation of \$42,000.

In response to the recent threat posed by Hurricane Rita, **BNSF Railway** provided a special Trinity Railway Express passenger train that carried some 450 evacuees from the Houston area to Dallas Union Station.

NMA members who have similar examples of contributions to hurricane or other natural disaster relief should send the information to Tom Johnson at [tjohnson@nma.org](mailto:tjohnson@nma.org). We will publish new information in upcoming issues of Mining Week. ✕

## Federal regulation costs now at 'staggering' \$1.1 trillion, report says

The total cost of federal regulations currently stands at a "staggering \$1.1 trillion," according to a new report commissioned by the Small Business Administration (SBA).

The report, published by Mark Crain for the SBA Office of Advocacy, found that small businesses are most severely impacted by environmental and tax compliance regulations.

Environmental regulation compliance costs 364 percent more for small firms than for large companies, the study found. Likewise, the cost of tax compliance is 67 percent higher for small firms than large ones.

The report adds that small businesses bear a disproportionately larger share of the federal regulatory burden than their big business counterparts. Regulatory compliance and paperwork costs for firms with fewer than 20 employees have soared to an estimated \$7,647 per employee, the study said.

The U.S. Chamber of Commerce said the report's findings "serve to illustrate the overwhelming need we have for regulatory reform in this country. The regulatory burden we impose on our own businesses has severely handicapped our ability to be competitive in the domestic and international markets." ✕

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### House panel *from page 1*

store, transport, process and refine coal by any chemical or physical process, including liquefaction, in order to produce gasoline, diesel or other liquid fuel as its primary output . . . ."

The technology for converting coal into synthetic oil (liquefaction) is well established and is cost effective at an oil price of approximately \$35 per barrel, a little more than half the current price of \$67 per barrel. The U.S. government, directly and through industry partnerships, has supported research and development for direct and indirect liquefaction for more than 30 years.

Indirect liquefaction of coal produces environmentally-compatible, zero-sulfur liquid fuels that are cleaner than required under current air quality regulations. The fuels can be intermingled with petroleum fuels and can use the same distribution infrastructure. Their development in the U.S., however, has been hampered by uncertainty over whether coal refinery products would remain competitive with up-and-down oil prices; the high price of building a coal refinery; and long lead times (a minimum of seven years) for refinery construction.

The CAA provisions supported by NMA would codify key provisions of the Bush administration's 2003 New Source Review (NSR) reforms and direct that the

term "modification" be interpreted within the meaning of Section 111 of the CAA for NSR applicability purposes. The bill also includes a "bump up" provision that the Environmental Protection Agency administrator may use to extend attainment deadlines for areas that are not in compliance with the ozone National Ambient Air Quality Standard (NAAQS).

Regarding the workforce training provisions, NMA President and CEO Kraig R. Naasz wrote Chairman Pombo prior to the vote, expressing the "wholehearted support" of the mining industry. "We, like others in the energy industry, face the daunting task of ensuring reliability for the long-term supply of the energy and minerals produced at our nation's mines while facing the challenge of attracting new workers to replace those nearing retirement."

Naasz said the legislation "will provide the vital resources to ensure that the academic institutions are capable of attracting and training the next generation of mining, mineral, geophysical and petroleum engineers. The bill recognizes the necessity to provide the human capital necessary for our nation's economic, energy and minerals security and in so doing, ensures that students will have the opportunity to pursue careers in these rewarding and vital fields of study." ✕

## ICMI will present October training sessions on auditing the International Cyanide Management Code

The International Cyanide Management Institute (ICMI) will present training sessions on auditing the International Cyanide Management Code on Oct. 18, 19 and 20.

The training will be available over the Internet as a series of three two-hour presentations. Each presentation will be followed by a live interactive session for questions and answers.

ICMI began accepting code signatories on July 11. The code is now being implemented at gold mines and cyanide production facilities around the world. Signatory companies must have their operations audited by independent third parties meeting ICMI criteria and using ICMI's Verification Audit Protocols.

ICMI said the training sessions will provide prospective auditors with the information they need to effectively audit the code. It will discuss required auditor credentials, the audit process and interpretation of code provisions, with its prime focus on how the audit questions in the Verification Protocols should be applied to on-the-ground situations.

Although not a requirement for code auditors, this training will be critical for anyone intending on auditing the code.

In addition, the training sessions will also be valuable for those in the gold mining, cyanide production and transportation industries that have signed or are considering signing onto the code, the institute said. "A

full understanding of the auditors' expectations will help them to apply the code at their operations, improve their management of cyanide, and prepare for certification."

ICMI said the training will also be useful to other parties interested in the safe and environmentally sound management of the cyanide used in gold mining, especially stakeholders who have followed the code development process and who are interested in seeing this program fully implemented.

Visit the ICMI web site at [www.cyanidecode.org](http://www.cyanidecode.org) for additional information on times and registration and more detailed information. ✕

## UK official: Britain should turn to clean coal technologies

The United Kingdom's environment minister says his nation should turn to technologies that remove carbon dioxide (CO<sub>2</sub>) from fossil fuels, including coal, rather than use nuclear generation.

According to the Bloomberg News Service, Elliott Morley said clean coal and gas may be a less expensive way of reducing CO<sub>2</sub> emissions than spending as much as 2 million pounds (\$3.8 billion) each on building nuclear plants.

"You have to look at costs and benefits," he said. "Nuclear plants are expensive and if you're looking at the energy mix, then at the moment I think you'll probably get more value from investment in clean coal."

Morley's comments echo those made recently by British Prime Minister Tony Blair, who said he would encourage alternative sources of carbon-free electricity to curb greenhouse gases. The nation, which signed the Kyoto Protocol, has seen its carbon emissions actually rise, instead of decline, over the past three years.

Blair, who currently holds the rotating presidency of the European Union (EU), recently signed an agreement on EU's behalf with China, to provide that nation with technology for clean coal-based power stations that also employ carbon sequestration. A UK Environment Department spokesman said the agreement was "hugely important because China has huge coal reserves and intends to use them. We want them to develop in a sustainable way."

In a June 30 web chat, Blair said the "most important thing is to invest in clean coal technology, carbon sequestration, renewable energy, clean vehicles, and in fact we are increasing investment in all those areas." ✕

## State AML programs win OSM awards

State reclamation programs in Colorado, Indiana and Kentucky recently received the Office of Surface Mining's (OSM) annual Abandoned Mine Land (AML) Program awards, which honor outstanding AML reclamation.

Kentucky received three awards, each for work at the Spewing Camp

Branch Refuse AML Project. Indiana's Department of Natural Resources (IDNR) Division of Reclamation and the Colorado Inactive Mine Reclamation Project (CIMRP) were recognized with one award each.

Kentucky received the Eastern Regional Award for exemplary reclamation achievement; the National Award for most exemplary reclamation project of 2005; and the People's Choice Award, decided by a vote of active mine operators, citizens, educators and reclamation specialists.

IDNR was presented the Mid-Continent Regional Award for exemplary reclamation at abandoned mine land site 380, the Sugar Ridge Fish and Wildlife Area, in Winslow, Ind.

The Western Regional Award went to CIMRP for operations completed with the help of students from Mesa State College.

The awards were presented at the National Association of Abandoned Mine Land Programs Conference in Bristol, Va. ✕

## Measure passed by House would improve Endangered Species Act

In a significant action strongly supported by NMA, the House this week passed 229-193 a measure that would update and modernize the Endangered Species Act (ESA) of 1973.

The approval of the Threatened and Endangered Species Recovery Act (TESRA) of 2005 (H.R. 3824), introduced by House Resources Committee Chairman Richard Pombo (R-Calif.) and Rep. Dennis Cardoza (D-Calif.), marks the first time in more than a decade ESA reform has passed the House. NMA has worked aggressively with House members and staff in support of the measure.

TESRA would fix long-standing existing ESA problems by: (1) focusing on species recovery; (2) providing incentives for private property owners to participate in species recovery; (3) increasing openness and accountability; (4) strengthening scientific standards; (5) creating bigger roles in the process for state and local governments; (6) providing more

certainty and compensation for private property owners; and (7) eliminating dysfunctional critical habitat designations.

"When the law is not working, we have to respond to that, step in, reauthorize the bill, put the emphasis on recovery, protect private property owners," said Pombo. "If you take away someone's private property – if you take away the use of it – you have to pay them for it." The Bush administration also voiced support for the bill, praising the "importance of protecting private property rights."

During the bill's consideration, a colloquy occurred between Rep. Barbara Cubin (R-Wyo.) and Pombo regarding coal leasing, with Cubin clarifying that Section 10 of H.R. 3824, authorizing cooperative agreements between federal agencies and states, does not require coal lease stipulations for candidate or "special status" species.

A major substitute amendment offered

by Reps. George Miller (D-Calif.) and Sherwood Boehlert (R-N.Y.) and opposed by NMA failed by a 216-206 vote. That measure, NMA said, would have resulted in private property owners "not being able to get a straight answer as to whether use of their property would violate ESA, would stick private property owners with the bill, replace dysfunctional critical habitat with something worse – lands 'necessary for recovery,' and remove critical incentives programs and improvements in use of good science to make endangered species determination.

In addition to NMA, a broad coalition of more than 100 industries, businesses and citizens groups is supporting TESRA. Rep. Mike Simpson (R-Idaho), a strong mining industry supporter, cast the 218th vote sealing passage of the House measure. The bill is working its way through the legislative process in the Senate. ✕

## Newsbits

**Phelps Dodge Corp.** says **John A. Fenn** will become senior vice president-Africa, effective Oct. 1. He has been serving as vice president-resource management for **Phelps Dodge Mining Co.** In addition, **William D. Rech** has been named to Fenn's previous position. Rech has been serving as vice president-global operations for **Climax Molybdenum Co.** . . . **CONSOL Energy's Consolidation Coal Co.** has donated a former **Quarto No. 4** mine building and about 15 acres of land to Monroe County, Pa., a gesture termed "a very generous gift" by County Commissioner Gary Hudson Sr. The property will be used for economic development, specifically an incubator business project . . . **Placer Dome Inc.** said it will proceed with the development of the **Pueblo Viejo** gold project in the Dominican Republic, but

has determined that the **Cerro Casale** project in Chile is not financially viable at this time. The former is a gold project; the latter a gold and copper deposit . . . **Mosaic Fertilizer** has been granted permission by the Manatee County Commissioners to expand its **Four Corners** mine in the northeastern section of the Florida county. The company sought to add 305 acres to the 11,156-acre facility, which produces phosphate. Reclaiming the property for agricultural use is scheduled to start in 2010, the company said . . . **GE Energy Financial Services** has named **Jerry M. Eyster** to its strategic marketing unit to help identify and evaluate investment opportunities. The company's unit has invested more than \$4 billion in coal, ranging from mining-related equipment to coal-based power stations. Eyster has

more than 30 years experience in the coal industry, including serving as vice president of corporate development for **A.T. Massey Coal Co.** . . . **Alpha Natural Resources** has acquired **Nicewonder Coal Group**, a Central Appalachia producer, and expects the purchase to increase annual production by approximately 20 percent (or 4.3 million tons) in 2006, the company said. The aggregate purchase price was \$316.2 million . . . **American Electric Power (AEP)** has selected **GE Energy** and **Bechtel** to design its proposed 600-mw Integrated Gasification Combined Cycle (IGCC) plant. AEP said this will be the first such engineering and design agreement undertaken for an IGCC plant of this scale.



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