

# Interstate Mining Compact Commission

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# Interstate Cooperation In Natural Resources Development and Environmental Protection

By

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Summit of the States on Interstate Cooperation  
June 1-2, 2006 ■ Cincinnati, Ohio

# Interstate Cooperation In Natural Resources Development and Environmental Protection

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State governments are faced with significant responsibilities and challenges in their roles as primary regulatory authorities in the areas of mineral development and associated environmental protection. It takes considerable effort to properly focus the issues surrounding development of our abundant mineral wealth so as to assure production in an environmentally sound manner. State governments are pressed from all sides to perform their regulatory or research roles regarding mineral production in such a way that they satisfy environmental, multiple-use socioeconomic, and industrial concerns. The charge from the citizenry of our respective states, as contained in duly enacted laws, is essentially to establish and maintain programs of land and other resource development, restoration, and regulation that assures adequate supplies of needed materials and yet copes with the impacts of their production.

One of the mechanisms that governments have of accomplishing these objectives, especially in an area such as mineral development, is through coalitions – local, regional, and national. One of the practical reasons for the use of coalitions is that, many times, mineral development and some of its environmental impacts do not respect state or other artificial boundaries. Minerals must be mined where we find them, and the environmental consequences of mineral development may spread beyond even the best designed and projected permit area. When one adds to this the economic impacts that may arise from interstate competition, the need for interstate cooperation becomes obvious. In fact, such concerns have led to federal preemption on several occasions as evidenced by the Clean Water Act, the Clean Air Act, and recent efforts to revise the 1872 Mining Law.

The value of coalitions is that they provide an avenue for cooperation among states, between governments (be they state, local, or federal), and even among several affected parties such as government, industry, and conservationists.

Perhaps the most formal type of coalition that exists today is the interstate compact. A

compact is both a statute and a contract. It is almost always a statute in each of the jurisdictions that is party to it. Even in those cases where this may not be strictly true, the instrument has the force of statutory law.

The Interstate Mining Compact Commission (IMCC) fits very much into the mold of a traditional compact. The compact had its beginnings in 1964. In April of that year in Roanoke, Virginia, the Council of State Governments held a conference on surface mining, attended by state and federal legislative and administrative officials, by mining industry representatives, and by conservationists. In the aftermath of this meeting, the Southern Governors' Conference, that fall, called on the Council of State Governments to assist the states in developing one of more compacts to deal with surface mining problems. These initiatives led to the subsequent adoption in many states of strengthened laws and programs for regulating surface mining; to supplement these intrastate activities, the Interstate Mining Compact was drafted and became available for their consideration in the legislative sessions of 1966.

The Interstate Mining Compact was thus conceived and Kentucky became its first member, followed by Pennsylvania and North Carolina. With the entry of Oklahoma in 1971, the compact was declared to be in existence and operational. In February 1972, permanent headquarters were established in Lexington, Kentucky, and an executive director was retained. Since the establishment of a permanent headquarters, 15 additional states – West Virginia, South Carolina, Maryland, Tennessee, Indiana, Illinois, Texas, Alabama, Virginia, Ohio, Louisiana, Arkansas, Missouri, North Dakota, and New York – have become full members. In addition, three states – New Mexico, Utah, and Wyoming – have become associate members.

The Mining Compact is designed to be advisory and not regulatory, and its defined purposes are to:

- Advance the protection and restoration of the land, water, and other resources affected by mining;
- Assist in the reduction or elimination or counteracting of pollution or deterioration of land, water, and air attributable to mining;
- Encourage (with due recognition of relevant regional, physical, and other differences) programs in each of the party states that will achieve comparable results in protecting, conserving, and improving the usefulness of natural resources, to the end that the most desirable conduct of mining and related operations may be universally facilitated;
- Assist the party states in their efforts to facilitate the use of land and other resources affected by mining, so that such may be consistent with sound land use, public health, and public safety and to this end study and recommend, wherever desirable, techniques for the improvement, restoration, or protection of such land and other resources; and
- Assist in achieving and maintaining an efficient and productive mining industry and increasing economic and other benefits attributable to mining.

Participation in the compact is gained through the enactment of legislation by the states authorizing their entry into the compact. The states are represented by their respective governors who serve as commissioners. The compact also provides for the establishment of a mining advisory body within each state consisting of representatives from conservation interests, the mining industry, an other public and private interests.

Among the compact's powers are the study of mining operations, processes, and techniques; the study of conservation, adaptation, improvement, and restoration of land and related resources affected by mining; the gathering and dissemination of information; making recommendations; and cooperating with the federal government and any public or private entities having an interest in any subject within the purview of the compact.

The compact acts through several committees that have responsibility for particular subject matter or policy areas including: environmental affairs, mine safety and health, mineral education, abandoned mine lands, resolutions, and finance. The governors are represented on these committees by duly appointed delegates from their respective states.

The IMCC was founded on the premise that the mining industry is one of the most basic and important in the nation. Our manufacturing activities, transportation systems, and the comfort of our homes depend on the products of mining. At the same time, it is essential that an appropriate balance be struck between the need for minerals and the protection of the environment. We recognize that individual states have the power to establish and maintain programs of land and other resource development, restoration, and regulation appropriate to cope with the surface effects of mining. The IMCC would not shift responsibility for such programs. On the other hand, our 22 member states believe a united position in dealing with the federal government affords us a decided advantage. Our commission feels strongly that the collective voice of many is important in our efforts to retain some semblance of states' rights.

Over the years the IMCC has become an organization of national scope serving as the eyes, ears, and spokesperson for the mining states in Washington, D.C. It strives to effectively represent the interests of the mining states in their dealings with Capitol Hill and the executive agencies in an effort to articulate the concerns and recommendations of the states in their role as primary regulators of mining activities within their borders.

The IMCC provides several meaningful and critical benefits and services that greatly assist the states in their efforts to promote development of their abundant mineral resources while assuring adequate protection of the environment. We coordinate and facilitate intergovernmental meetings and discussions on strategic regulatory issues that often address the balance of power between the states and the federal government. We sponsor benchmarking workshops and technical forums designed to enhance the excellence of state regulatory programs. And we represent the interests

and positions of the states on a variety of legislative, regulatory, legal and scientific matters in the context of testimony, comments, briefs and statements.

In particular, the compact provides opportunities and forums for interstate action and communication on issues of concern to member states. The compact is actively engaged in a variety of state/federal partnerships and programs arising under such statutes as the Surface Mining Control and Reclamation Act, the Mine Safety and Health Act, the Resource Conservation and Recovery Act, and the Federal Water Pollution Control Act. On the coal side, the IMCC deals extensively with the federal Office of Surface Mining (OSM) on such issues as federal oversight of state regulatory programs, federal grants to support funding of these programs, reauthorization of the Abandoned Mine Land program and other significant OSM rulemakings and policies. We work extensively with the U.S. Environmental Protection Agency (EPA) on such matters as mine placement of coal combustion wastes and effluent limitations applicable to coal mines.

The IMCC administers the COALEX system, a computerized legal research and informational network available only to the states through a grant with the Office of Surface Mining. The compact also undertakes studies on behalf of the states as evidenced by its report on Non-Coal Mineral Regulation in the United States.

The compact also is active in recognizing the accomplishments of the industry that we regulate. Each year, the compact presents a national reclamation award in both the coal and noncoal categories. We believe such a program highlights the positive work that the industry and the states together are doing in the way of environmental protection.

The real value, however, of multistate organizations like the IMCC is their ability to coordinate action and to speak as one voice on issues of importance to the states. Without opportunities and forums such as these, the states are left to fend for themselves or, worse yet, are criticized as being unable to effectively handle issues or resolve

problems that are uniquely within the province of the states. This then serves as a justification for federal preemption, and the states find their authority being superseded by national legislation.

Environmental protection and resource management call for a stabilizing federal presence, but the federal government must guard against fostering well-intentioned programs that produce costly activity without progress. Problems are inevitable with federal legislation that paints the entire nation with the same broad stroke. Americans live in a land of diverse environmental conditions and problems. Federal regulation of our environment must reflect the diversity of this country's many regions. Efforts to achieve and sustain a cleaner world require a balanced partnership between the states and the federal government, an arrangement that recognizes and builds upon the relative strengths of the partners.

For their part, the states shoulder the primary responsibility for planning, designing, implementing, and enforcing programs to achieve federal and state goals and standards. This involves exercising discretion in the design and operation of environmental programs as long as program goals are achieved. It also involves the right to establish standards more stringent than federal minimums, in accordance with the states' fundamental obligation to protect their citizens' health and welfare.

The states recognize that a strong federal presence in setting national goals, providing assistance, and exercising performance-based oversight is appropriate in environmental programs. But states must have flexibility in implementing and achieving federal goals. The attempt to define one solution and technique for all occurrences of a problem is impossible in a country as diverse as ours. Flexibility is also one of the best incentives the federal government can offer for innovative and speedy environmental protection. For their part, the states must be willing to continue shouldering the responsibility and demonstrating their ability to administer the public trust in a competent and comprehensive manner.