

any intent with respect to agents of LLCs because, when Congress enacted Section 110(c), LLCs effectively did not exist.

The courts have recognized that, over time, conditions may come into existence which Congress did not contemplate when it enacted a statute, but which implicate the concerns Congress was addressing when it enacted the statute. As the Supreme Court stated in *Browder v. United States*, 312 U.S. 335 (1941):

There is nothing in the legislative history to indicate that Congress considered the question of use by returning citizens. Old crimes, however, may be committed under new conditions. Old laws apply to changed situations. The reach of the act is not sustained or opposed by the fact that it is sought to bring new situations under its terms.

312 U.S. at 339 (footnotes omitted). *Accord Weems v. United States*, 217 U.S. 349, 373 (1910) (“Time works changes, brings into existence new conditions and purposes. Therefore a principle, to be vital, must be capable of wider application than the mischief which gave it birth.”). When confronted with a question of statutory application with respect to which Congress did not express or could not have expressed an intent when it enacted the statute, courts have treated the question as one the resolution of which was delegated to the agency Congress authorized to administer the statute. *See NBD Bank, N.A. v. Bennett*, 67 F.3d 629, 632–33 (7th Cir. 1995); *Zoelsch v. Arthur Andersen & Co.*, 824 F.2d 27, 33 (D.C. Cir. 1987). *See also Kauthar SDN BHD v. Sternberg*, 149 F.3d 659, 663–67 (7th Cir. 1998) (where resolution of the question was not delegated to any agency, the court itself filled the void created by Congressional silence by examining the underlying policy concerns), *cert. denied*, 525 U.S. 1114 (1999); *Robinson v. TI/US West Communications Inc.*, 117 F.3d 900, 904–07 (5th Cir. 1997) (same).

Because Congress expressed no intent with respect to agents of LLCs, the question becomes whether an interpretation that Section 110(c) is applicable to agents of LLCs is reasonable. *See Chevron*, 467 U.S. at 842–43; *Excel Mining*, 334 F.3d at 6. The Secretary believes that it is. LLCs generally create the same sort of shield against personal liability which led Congress to impose personal liability on the directors, officers, and agents of corporations. Indeed, LLCs fit within the legal definition of a “corporation.” *See Black’s Law Dictionary* (7th ed. 1999) at 341 (a “corporation” is “[a]n entity (usu. a business) having authority

under law to act as a single person distinct from the shareholders who own it \* \* \*; a group or succession of persons established in accordance with legal rules into a legal or juristic person that has legal personality distinct from the natural persons who make it up [and] exists indefinitely apart from them \* \* \*”). *See also Webster’s Third New International Dictionary* (2002) at 510 (a “corporation” is “a group of persons \* \* \* treated by the law as an individual or unity having rights and liabilities distinct from those of the persons \* \* \* composing it \* \* \*”). Significantly, a number of LLCs in the mining industry are the sort of relatively large and corporately structured entities which Congress had in mind when it enacted Section 110(c). The Secretary believes that the underlying objective Congress identified when it enacted the Coal Act in 1969 and reiterated when it enacted the Mine Act in 1977—to place responsibility for compliance and liability for violations “on those who control or supervise the operation of \* \* \* mines as well as on those who operate them”—will best be advanced if Section 110(c) is interpreted as being applicable to agents of LLCs.

For all of the foregoing reasons, the Secretary believes that the interpretation set forth in this Interpretive Bulletin is permissible under the Mine Act, and that it will advance the Act’s objectives in cases involving LLCs by imposing legal liability on those individuals within the LLC who actually make the decisions with regard to safety and health in the mine.<sup>3</sup>

Dated: June 30, 2006.

**David G. Dye,**

*Acting Assistant Secretary for Mine Safety and Health.*

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<sup>3</sup>The Secretary recognizes that Section 110(c) has been held not to apply to agents of partnerships because, by its terms, Section 110(c) applies only to agents of corporations. *Paul Shirel and Donald Guess, employed by Pyro Mining Co.*, 15 FMSHRC 2440 (1993), *aff’d*, 52 F.3d 1123 (D.C. Cir. 1995) (unpublished). That holding has no bearing in this situation, however, because partnerships, unlike LLCs, existed and were a well-known form of business organization when Congress enacted the Mine Act.

The Secretary does not address in this Interpretive Bulletin whether Section 110(c) is applicable to agents of non-traditional business entities other than LLCs. The Secretary will address the applicability of Section 110(c) to the agents of such entities as the question arises.

## NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

### National Endowment for the Arts

#### Submission for OMB Review; Comment Request

July 3, 2006.

The National Endowment for the Arts (NEA) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 [Pub. L. 104–13, 44 U.S.C. chapter 35] Copies of this ICR, with applicable supporting documentation, may be obtained by calling the National Endowment for the Arts’ Director for Guidelines & Panel Operations, Jillian Miller, at 202/682–5004. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call 202/682–5496 between 10 a.m. and 4 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503 202/395–7316, within 30 days from the date of this publication in the **Federal Register**.

The Office of Management and Budget is particularly interested in comments which:

Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used.

Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submissions of responses.

#### SUPPLEMENTARY INFORMATION:

*Agency:* National Endowment for the Arts.

*Title:* Panelist Profile Form.

*Frequency:* Every three years.

*Affected Public:* Individuals.

*Estimated Number of Respondents:* 250.

*Total Burden Hours:* 25.

*Total Annualized Capital/Start Up Costs:* 0.

*Total Annual Costs (Operating/Maintaining Systems or Purchasing Services):* 0.

The National Endowment for the Arts enriches our nation and its diverse cultural heritage by supporting works of artistic excellence, advancing learning in the arts, and strengthening the arts in communities throughout the country.

With the advice of the National Council on the Arts and advisory panels, and Chairman establishes eligibility requirements and criteria for the review of applications for funding. Section 959(c) of the Endowment's enabling legislation, as amended, directs the Chairman to utilize advisory panels to review applications and to make recommendations to the National Council on the Arts, which in turn makes recommendations to the Chairman.

The legislation requires the Chairman "(1) To ensure that all panels are composed, to the extent practicable, of individuals reflecting a wide geographic, ethnic, and minority representation as well as to (2) ensure that all panels include representation of lay individuals who are knowledgeable about the arts \* \* \*". In addition, the membership of each panel must change substantially from year to year and each individual is ineligible to serve on a panel for more than 3 consecutive years. To assist with efforts to meet these legislated mandates regarding representation on advisory panel, the endowment has established an Automated Panel Bank System (APBS), a computer database of names, addresses, areas of expertise and other basic information on individuals who are qualified to serve as panelists for the Arts Endowment.

The Panelist Profile Form, for which clearance is requested, is used to gather basic information from qualified individuals recommended by the arts community; arts organizations; Members of Congress; the general public; local, State, and regional arts organizations; Endowment staff; and others.

**Murray Welsh,**

*Director, Administrative Services, National Endowment for the Arts.*

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## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 172nd meeting on July 17-20, 2006, Room T-2B3, 11545 Rockville Pike, Rockville, Maryland.

The schedule for this meeting is as follows:

#### Monday, July 17, 2006

8:30 a.m.-8:35 a.m.: *Opening Statement (Open)*—The ACNW Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.-9:30 a.m.: *U.S. Department of Energy (DOE) Briefing on Exploratory Drilling of Aeromagnetic Anomalies in the Yucca Mountain Region (Open)*—A DOE representative will present an evaluation of the results of this drilling which has been done in support of the ongoing update of the 1996 expert elicitation on Probabilistic Volcanic Hazard Analysis.

9:45-11:45 a.m.: *NRC Staff Review of Revised International Commission on Radiological Protection (ICRP) Recommendations (Open)*—Briefing by and discussions with NRC staff representatives regarding their review of the June 5, 2006, ICRP report titled "Draft Recommendations of the International Commission on Radiological Protection."

2 p.m.-3 p.m.: *Exchange of Information between NMSS Management and ACNW Members (Open)*—NMSS management will brief the Committee about the upcoming office reorganization. ACNW staff will brief NMSS management about the revised action plan and how it reflects recent Staff Requirements Memoranda (SRMs).

3 p.m.-5 p.m.: *Discussion of Draft ACNW Letter Reports (Open)*—The Committee will discuss proposed ACNW letters.

#### Tuesday, July 18, 2006

ACNW Working Group Meeting (WGM) on predicting the performance of Cementitious Barriers for Near Surface Disposal (Open).

8:30 a.m.-8:45 a.m.: *Opening Remarks and Introductions*—The ACNW Chairman, Dr. Michael Ryan will make opening remarks regarding the conduct of today's sessions. ACNW Vice Chairman Allen Croff will provide an overview of the WGM, including the meeting purpose and scope, and introduce invited subject matter experts.

*Session I: Where Are Cementitious Materials Used and How Are They Important to Performance Assessment?*

8:45 a.m.-9:15 a.m.: *Use of Cementitious Materials to Dispose of Wastes Determined to be Non-HLW (Dr. Christine A. Langton Savannah River National Lab, SRNL)*—Dr. Langton will discuss cementitious waste forms and cement types and environments.

9:15 a.m.-9:45 a.m.: *What Functions do Cementitious Materials Perform that are Important to Assessing System Performance (i.e., What do we Want Grouts to do?) (Professor David Kosson, Vanderbilt University)*—Professor Kosson will discuss the functions of cementitious materials; e.g., control water infiltration, control Eh of infiltrating water, and prevent subsidence.

9:45 a.m.-10:15 a.m.: *Panel Discussion (All)*—Vice Chairman Croff will moderate a panel discussion of Session I topics by the Committee members and invited subject matter experts.

*Session II: How Can Grouts Fail and What Can Cause Grout Failure?*

10:30 a.m.-11:15 a.m.: *Failure Processes and Mechanisms (Dr. Rachel Detwiler, Braun Intertec Corporation)*—Dr. Detwiler will discuss failure processes and mechanisms of cementitious materials.

11:15 a.m.-12 p.m.: *Causes of Failure of Cementitious Materials (Professor Barry Sheetz, Pennsylvania State University)*—Professor Sheetz will discuss specific causes that are important to failure of cementitious materials.

12 p.m.-12:30 p.m.: *Panel Discussion*—Vice Chairman Croff will moderate a panel discussion of Session II topics by the Committee members and invited subject matter experts.

*Session III: State-of-the-Art in Long-Term Prediction of Cementitious Material Performance*

1:15 p.m.-2:15 p.m.: *Current Capability to Predict the Conditions and Processes Important to Cement Failure (Professor Fred Glasser, Aberdeen University, UK)*—Professor Glasser will discuss current capability to predict the conditions and processes important to cement failure, and the affect of failures on cement performance, based on modern experience, experiment, and observation.

2:15 p.m.-2:45 p.m.: *Current Capability to Predict the Conditions and Processes Important to Cement*