From: Hunter Prillaman [mailto:hprillaman@lime.org]
Sent: Monday, December 13, 2010 12:18 PM
To: zzMSHA-Standards - Comments to Fed Reg Group
Subject: National Lime Association Comments on Retaining Dam ANPRM (RIN 1219- AB70)

Attached please find the National Lime Association's comments on the Advance Notice of Proposed Rulemaking on metal and nonmetal dams, (75 Fed. Reg. 49,429 (Aug. 13, 2010)), RIN 1219-AB70.

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National Lime Association
LIME
The Versatile Chemical

December 13, 2010

Mine Safety and Health Administration
Office of Standards, Regulations, and Variances
1100 Wilson Blvd., Room 2350
Arlington, Virginia 22209-3939

RE: Advance Notice of Public Rulemaking, Metal and Nonmetal Dams; RIN No. 1219-AAB70

The National Lime Association (NLA) is pleased to present its comments on the Advance Notice of Proposed Rulemaking on metal and nonmetal dams, (75 Fed. Reg. 49,429 (Aug. 13, 2010)). NLA is the trade association for manufacturers of calcium oxide and calcium hydroxide, collectively referred to as "lime." NLA's members operate mines under the jurisdiction of MSHA.

A number of lime operations have above-grade surface impoundments with restraining structures or dams. These impoundments serve various purposes, including containment of water and slurry from lime kilns outfitted with scrubbers to control air emissions. The impoundments vary in size and configuration, from large impoundments with relatively high dams, to very small impoundments holding less than 10 acre-feet, with low dams, berms or retaining walls. Most of the dams in the lime industry are in remote locations, where failure would present little or no hazard to worker safety or to the public. A few are in higher-risk locations. NLA believes that the impoundments in the lime industry are properly designed and operated and, as far as NLA is aware, there has never been an impoundment failure in the lime industry.

Most dams in the lime industry are located in states with active state regulatory authorities, and many of the dams—especially those associated with larger impoundments—have state-issued permitste with detailed engineering, operations, and closure requirements.

MSHA Should Not Disrupt Effective State Dam Regulatory Programs

In determining whether to impose additional regulations on metal/non-metal dams, MSHA should carefully consider the potential impact of those regulations on existing dam permitting and inspection programs in the states. As noted above, in most states dams at metal/nonmetal mines are closely regulated by state authorities, along with dams at nonmine properties. MSHA should avoid duplicative regulation and inspection regimes, and thus should defer to well-run state programs. At the very least, MSHA should carefully review the extent and effectiveness of state programs before promulgating new regulations.

MSHA's Current Approach to Metal/Nonmetal Dams Is Appropriate

While MSHA's regulation for dams at metal/nonmetal mines is expressed in general terms, MSHA District Dam Safety Representatives and inspectors actively and effectively inspect these dams using enforcement tools provided by MSHA. In 2009, MSHA issued a Procedure Instruction Letter (http://www.msha.gov/regs/complian/PILS/2009/PIL09-IV-1.asp), explaining these procedures, including detailed inspection checklists and inspection forms. As the Letter notes, the work of the District Dam Safety Representatives is supported by a comprehensive electronic MSHA inventory of dams at mine properties, and by assistance from MSHA's Directorate of Technical Support's Mine Waste and Geotechnical Engineering Division.

It is the experience of the lime industry that MSHA inspectors have done a good job in inspecting dams, often working well in tandem with state authorities. In the rare cases in which state authorities do not have robust dam inspection programs, MSHA inspectors can (and do) carry out more focused inspections of dams on mine properties.

Accordingly, NLA does not believe that there is evidence that changes to the retaining dam regulations for metal/nonmetal mines is necessary. As with many other MSHA regulations, performance-based regulations stated in general terms result in appropriate inspections by experienced MSHA personnel.

MSHA Should Continue to Use Size Categories Consistent with Prevailing Federal and State Standards

In the Procedure Instruction Letter cited above, MSHA indicates that impoundments should generally only present safety concerns if they are above a specified size—those that are six feet or more in height containing 50 acre-feet or more, and those 25 feet or more in height and containing 15-acre-feet or more—and the substantive guidelines in the inspection materials are only applied to mines exceeding those size limits. This is consistent with the provisions of the National Dam Safety Program, as well as with the provisions of most state dam regulations. See 33 U.S.C. Section 467.

In its regulations for coal mines, MSHA deviated from this national standard, imposing substantive requirements on impoundments over five feet high and containing 20 acre-feet, or 20 feet high with no lower limit for contents. 30 C.F.R. 77.216(a).

NLA believes that if MSHA decides to propose more detailed dam regulations for metal/nonmetal mines, it should continue to apply the national standard of size criteria, and not the coal mine criteria. Otherwise, many small impoundments may automatically become subject to regulation, despite posing minimal risk. All of the examples of serious dam failures in the ANPRM involve very large impoundments. MSHA already appropriately asserts the authority to inspect and regulate any dam, regardless of condition or size, if its failure is likely to result in loss of life or other significant damage—the size limits only exclude *automatic* imposition of substantive requirements on small dams that do not pose serious risks.

In sum, NLA believes that, given MSHA's current inspection practices and the prevalence of effective state programs, there is no evidence that new regulations for metal/nonmetal dams are needed. Nonetheless, if MSHA does choose to craft new regulations, it should take care not to disrupt effective state programs, and it should not automatically extend requirements to small impoundments that pose minimal risks.

NLA appreciates the opportunity to comment on these important issues.

Very truly yours,

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