

BRUCE WATZMAN
Senior Vice President, Regulatory Affairs

December 13, 2010

Ms. Patricia W. Silvey, Director
Office of Standards, Variances & Regulations
Mine Safety & Health Administration
1100 Wilson Boulevard
Arlington, VA 22209-3939

Re: MSHA ANPRM on Metal and Nonmetal Dams; RIN No. 1219-AAB70

Dear Ms. Silvey:

The National Mining Association (NMA) appreciates this opportunity to comment on the Advance Notice of Proposed Rulemaking of the Mine Safety and Health Administration (MSHA) regarding metal and nonmetal dams (75 Fed. Reg. 49,429 et seq.; Aug. 13, 2010).

NMA is a trade association representing producers of most of America's coal, metals and industrial and agricultural minerals. NMA membership includes more than 325 corporations involved in all aspects of the mining industry, including coal, uranium, metal and industrial mineral producers; mineral processors; equipment manufacturers; state associations; bulk transporters; engineering firms; consultants; financial institutions; and other companies that supply goods and services to the mining industry. NMA's members produce energy, metals and minerals essential to economic prosperity and a better quality of life. The fundamental benefits of mining industry products to modern economic and social development and to environmental improvement are well known. Equally important are the local economic benefits that mining provides to communities. These benefits are derived from employment, wages, economic activity resulting from purchases of goods and services, payment of taxes, and royalties and fees to local, state and national governments. As such, our members have a keen interest in this regulatory initiative.

Most of the dams at metal and nonmetal mining operations are tailings dams. Tailings dams share many common engineering attributes with water retention earth structures (embankment dams), but there are major distinguishing

differences that must be considered as the agency determines if revisions to the existing regulations are necessary and, if so, how developing regulations are applicable to mine-site retention structures. Major differences include:

- Water retention dams are constructed over a short period of time prior to their operation. Tailings dams are typically constructed in a capital phase (starter dam) and raised continuously or intermittently over the operating life of the storage facility.
- The geotechnical properties of the tailings and the design of the delivery and deposition system used for structural fill in the dam itself. Tailings facilities typically impound solids (versus water) whose properties change during the life of the facility due to consolidation and settlement.
- The geotechnical properties of the tailings and the design of the delivery and deposition system used for structural fill in the dam itself. These properties are not always available in advance of detailed design because the tailings are a waste byproduct of the mining operation itself.

As the agency is well aware, a tailings dam design is a specialized branch of dam engineering. Every site and dam is unique and good design requires a fundamental grasp of basic engineering issues and their application in practice with follow-up construction and operations. As such, it is important that regulations be sufficiently flexible to accommodate the unique design characteristics required to provide for the safe construction and operation of tailings storage facilities.

Today guidance on dam construction, operation and maintenance is provided by many means. Most—if not all—states where tailing dams are located have regulations in place governing their design, construction, operation and maintenance. Additionally, other federal agencies, i.e. the U.S. Army Corps of Engineers; Environmental Protection Agency; and the Federal Emergency Management Agency, provide state-of-practice criteria for water dam construction and operation that may be applicable to tailings dams. Finally, numerous non-governmental and international bodies including the International Commission on Large Dams; the Association of State Dam Safety Officials; and the Canadian Dam Association provide technical guidance on dam safety and management of tailings storage facilities. This network of expertise and oversight provides tailings dam operators with sufficient tools for the safe operation of these facilities. In light of this, it is imperative that the agency consider the adequacy and effectiveness of these programs before proceeding with proposed rules.

We are aware that several members of the National Mining Association have provided detailed responses to the questions contained in the ANPRM. Their comments are predicated upon their many years of experience safely constructing and operating tailings storage facilities. It is imperative that MSHA not use the issuance of new regulations to disrupt the successful operation of these facilities, a

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trend that has been demonstrated over decades. While the agency has referenced limited and isolated incidents as the basis for this review, the ANPRM fails to recognize the hundreds of facilities that are and continue to be operated successfully and safely. Regulations that threaten this record must be avoided.

Should MSHA choose to regulate by completing dam inspection and/or design evaluations, it should ensure all activities are completed by licensed professional engineers with significant experience and expertise in the areas of geotechnical engineering, seismicity, hydrology, and hydraulic engineering.

NMA thanks the agency for the opportunity to provide these comments, and we look forward to working with MSHA to ensure the promulgation of regulations to build upon the industry's successful construction and operation of tailings storage facilities.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bruce Watzman".

Bruce Watzman