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**Subject:** FW: Comments of NMA, IMA-NA, and BCOA on MSHA's Request for Information To Improve the Health and Safety of Miners and To Prevent Accidents in Underground Coal Mines (RIN 1219--AB85)

**Attachments:** 32256473\_2015.06.26 - J. Joseph Main re NMA/IMA Comments.PDB: 28

**From:** Green, Edward [<mailto:EGreen@crowell.com>]  
**Sent:** Friday, June 26, 2015 3:09 PM  
**To:** Main, Joseph - MSHA; Silvey, Patricia - MSHA; Stricklin, Kevin G - MSHA  
**Cc:** McConnell, Sheila A - MSHA; Mark Ellis ([markellis@ima-na.org](mailto:markellis@ima-na.org)); [bwatzman@nma.org](mailto:bwatzman@nma.org)  
**Subject:** Comments of NMA, IMA-NA, and BCOA on MSHA's Request for Information To Improve the Health and Safety of Miners and To Prevent Accidents in Underground Coal Mines (RIN 1219--AB85)

Ladies and gentlemen, please find attached the comments of the National Mining Association ("NMA"), the Industrial Minerals Association—North America ("IMA-NA"), and the Bituminous Coal Operators' Association ("BCOA") on MSHA's "Request for Information To Improve the Safety and Health of Miners and to Prevent Accidents in Underground Coal Mines (RIN—AB85)."

Sincerely

Edward M. Green  
[egreen@crowell.com](mailto:egreen@crowell.com)  
Direct 1.202.624.2922 | Mobile: 1.202.236.3358

**Crowell & Moring LLP** | [www.crowell.com](http://www.crowell.com)  
1001 Pennsylvania Avenue NW  
Washington, DC 20004

June 26, 2015

**VIA EMAIL**

The Honorable Joseph A. Main  
Assistant Secretary of Labor for  
Mine Safety and Health  
U.S. Department of Labor  
Mine Safety and Health Administration  
201 – 12<sup>th</sup> Street South  
Arlington, VA 22202

**Re: Comments of the National Mining Association, Industrial Minerals Association-North America, and the Bituminous Coal Operators' Association on Request for Information To Improve the Health and Safety of Miners and to Prevent Accidents in Underground Coal Mines (RIN 1219—AB85)**

Dear Mr. Secretary:

Further to our letter of June 11, 2015, requesting a 60-day extension of the comment period on the subject Request for Information (copy attached herein), we were terribly disappointed to receive your short letter of June 24—a letter entirely unresponsive to the complex and grave concerns on rock dust issues we have long held, and outlined in our letter. A copy of your letter is also attached herein.

In light of your refusal to extend the comment period because of your single-minded insistence on moving forward on the issues identified, we have no choice other than to tell you that this letter and its attachments should be considered by MSHA to be the preliminary joint comments of the National Mining Association (“NMA”), Industrial Minerals Association-North America (“IMA-NA”), and the Bituminous Coal Operators' Association (“BCOA”) on MSHA's Request for Information To Improve the Health and Safety of Miners and to Prevent Accidents in Underground Coal Mines (RIN 1219—AB85), published in the Federal Register for February 26, 2015 (80 Fed. Reg. 10,436) (hereinafter the “RFI”). We say preliminary because since nothing in the Federal Mine Safety and Health Act of 1977 (the “Mine Act”) or the Administrative Procedure Act speaks to RFIs, we conclude there are no legal impediments to further comments; and we may choose to provide additional comments to MSHA, if we deem it to be useful.

To begin, when all is said and done, the RFI is clearly about MSHA's ongoing reactions to the terrible tragedy of April 10, 2010, at the Upper Big Branch (“UBB”) Coal Mine. MSHA specifically states in the RFI that it is looking for comments to “assist the Agency in determining whether regulatory action is needed, and, if so, what type of regulatory changes would be appropriate to improve health and safety in underground coal mines.” 80 Fed. Reg. 10,437, MSHA noted that regulatory recommendations were identified not only by the agency itself in its

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“Internal Review of MSHA’s Actions at the Upper Big Branch Mine-South, Performance Coal Company, Montcoal, Raleigh County, West Virginia” (the “Internal Review”), but also in the “Independent Panel Assessment” of this Internal Review (the “Independent Assessment”). *Id.* That Independent Assessment was commissioned by then-Labor Secretary Hilda Solis. We have studied the Internal Review and the Independent Assessment carefully; and while there is much of significance in them, with the exception of rock dust issues (discussed further below) we generally do not agree that development of a plethora of new regulations has merit.

As a matter of fact, Mr. Secretary, we want to remind you that both the Internal Review and the Independent Assessment contained numerous recommendations for reform of the manner in which MSHA administers and enforces the Mine Act. Many of these recommendations are within your authority to implement under the Mine Act—others would require legislative changes to the Mine Act. Any examination of MSHA’s UBB Single Source Page shows MSHA has devoted considerable attention to the Internal Review, but not a lot to the Independent Commission. See <http://www.msha.gov/PerformanceCoal/PerformanceCoal.asp>.

What is sorely missing from any of these analyses, however, is any outreach whatsoever to the public (especially stakeholders like us) seeking comment on the need for and efficacy of any of these recommendations. Such a failure on the part of MSHA simply avoids the opportunity to receive valuable public (and especially knowledgeable stakeholder) advice and commentary. We strongly urge a new RFI or some other sort of public outreach to obtain input on these important features of the Internal Review and the Independent Commission. MSHA’s current RFI is simply incomplete because of this key failure.

As for rock dust issues, we told you in our June 11 letter that of the 47 complex questions in the RFI, 14 of them deal directly with rock dust issues, and many of the other questions deal indirectly with these issues. We (separately and together) have been trying for weeks to meet with you and your key staff to discuss the fundamental concerns about rock dust we know you share with us. More specifically (again as noted in our June 11 letter), we want to discuss with you: (1) the particle size and anti-caking properties of rock dust; and (2) whether and how entrained rock dust in underground coal mine atmospheres affects the accuracy of the soon-to-be mandated continuous personal dust monitor (the “CPDM”). The former problem was identified in the aftermath of the UBB investigation. The latter problem was described by the industry in comments on the now final new respirable coal mine dust rules. MSHA failed to address the problem then; and now that the rules are being implemented, it is clear to us that the interference of entrained rock dust with the CPDM is an enormous problem. We believe you know that this problem is real and substantial too. Perhaps you have no good answer or remedy for the problem and, therefore, are avoiding it. That is a grave mistake.

Mr. Secretary, your colleagues at NIOSH have been working closely with us in an effort to find answers to both of these problems. NIOSH’s effort, albeit not entirely perfect, is appreciated by us—and we are actively engaged in dialogue with NIOSH. MSHA, on the other hand, is not engaging with us at all. Nor, as best as we can tell, is MSHA engaging with NIOSH,

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except on an informal fashion at lower agency levels. At long last after much pressing by us, you (and NIOSH Director Howard) at least wrote on May 29 that a meeting would be useful and that you would notify us as to a date for such a meeting. Now, almost a month later, we have yet to hear from you. Your continuing delay, frankly, precludes us from commenting substantively on the RFI—and adding insult to injury, you have now cut off the RFI comment period. We find your actions (and lack thereof) incomprehensible.

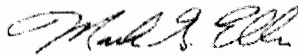
Perhaps you have no good answers to the problems identified; but burying your head in the sand will not make the problems go away. We would like to work constructively with you and we are prepared to do so. We are and will continue to work constructively with NIOSH on the problem identified. We hope you pay attention to these comments and act on them in cooperation with us.

Sincerely,



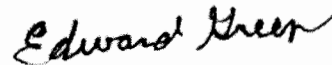
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Bruce Watzman  
Senior Vice President  
NMA



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Mark Ellis  
President  
IMA-NA



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Edward Green  
Counsel  
BCOA

Attachments

cc: Patricia Silvey  
Kevin Stricklin

DCACTIVE-32256459.1

**U.S. Department of Labor**

Mine Safety and Health Administration  
201 12th Street South  
Arlington, Virginia 22202-5452



**JUN 24 2015**

Edward Green, Counsel  
Bituminous Coal Operators' Association  
Crowell Moring LLP  
1001 Pennsylvania Avenue  
Washington, D.C. 20004

Dear Mr. Green:

I am writing in response to the June 11, 2015, letter received from you as counsel for the Bituminous Coal Operators' Association, from Mark Ellis, President of the Industrial Minerals Association-North America, and from Bruce Watzman, Senior Vice President of the National Mining Association requesting an additional 60-day extension to the comment period on the Request for Information (RFI) To Improve the Health and Safety of Miners and To Prevent Accidents in Underground Coal Mines. I am denying this request to extend the comment period so that MSHA may move forward on the issues highlighted in the RFI.

MSHA is committed to an open and transparent rulemaking process that provides stakeholders with optimum time to provide comments. The comment period for the RFI, scheduled to close on June 26, 2015, will have been open for 120 days since its publication on February 26, 2015. An opportunity to provide additional comments on issues addressed in the RFI will be available to interested stakeholders during any subsequent rulemaking the Agency pursues.

Thank you for your continued interest in the safety and health of our nation's coal miners.

Sincerely,

Joseph A. Main  
Assistant Secretary of Labor for  
Mine Safety and Health

cc:

Bruce Watzman  
Mark Ellis

June 11, 2015

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**VIA EMAIL**

The Honorable Joseph A. Main  
Assistant Secretary of Labor for  
Mine Safety and Health  
U.S. Department of Labor  
Mine Safety and Health Administration  
1100 Wilson Boulevard  
Arlington, VA 22209-3939

Re: Request for 60-Day Extension of the Comment Period on Request for Information  
to Improve the Health and Safety of Miners and to Prevent Accidents in  
Underground Coal Mines

Dear Mr. Secretary:

On behalf of the National Mining Association ("NMA"), the Industrial Minerals Association-North America ("IMA-NA"), and the Bituminous Coal Operators' Association ("BCOA"), the purpose of this letter is to request a 60-day extension of the comment period on the Request for Information to Improve the Health and Safety of Miners and to Prevent Accidents in Underground Coal Mines (the "RFI"). The RFI, consisting of 47 complex, interdependent questions, was published in the Federal Register on February 26, 2015 (80 Fed. Reg. 10,436). The comment period currently is set to expire on June 26, 2015, per an earlier extension of the comment period as published in the Federal Register on April 22, 2015, in response to requests from interested parties (including us) to coordinate comments. *Id.* 22,465.

That problem remains and is complicated further by the concerns we have on rock dust issues. More specifically, of the 47 questions in the RFI, 14 of them deal directly with rock dust issues. Furthermore, many of the other questions are inextricably connected to rock dust concerns. For the purpose, among others, of being able to reply to the RFI, the IMA-NA and the BCOA sent you and NIOSH Director John Howard, M.D. a letter seeking a meeting with both of you to discuss: (1) the particle size and anti-caking problems of rock dust; and (2) whether and how entrained rock dust in underground coal mine atmospheres affects the accuracy of the soon-to-be mandated continuous personal dust monitor ("CPDM"). NMA supports the need for a meeting to discuss these problems. On May 29, you and Dr. Howard replied to the IMA-NA and BCOA letter saying you both "agree[d] that a meeting would be an effective way to discuss [these] concerns," and that you would "contact [IMA-NA and BCOA] shortly to schedule a meeting."

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As of the date of this letter, no further information from either you or Dr. Howard has been received. Furthermore, we are aware that you and MSIIA's headquarters staff are in the process of preparing to move to new offices this coming weekend—a complicated, cumbersome undertaking that will take some time before you and your colleagues unpack, settle down, and get back to a normal pace of business.

Mr. Secretary, it is imperative that the meeting with you and Dr. Howard take place in order for the industry to be able to respond to the numerous rock dust questions in the RFI and the many questions related to rock dust. Following that meeting, the chances are virtually certain that it will result in the need for us to fully understand what we have discussed with you and Dr. Howard. We also expect that the need for further discussions with MSHA and NIOSH will ensue as a result of the first meeting. In short, if MSHA wants (as we are sure you do) meaningful, helpful comments on the RFI, then these comments should await the meeting, further necessary communications between MSHA, NIOSH, the industry, and other stakeholders, and the opportunity to understand fully the rock dust and rock dust-related questions in the RFI. Otherwise, we fear the comments you receive will likely be disjointed, incomplete, and (potentially) counterproductive.

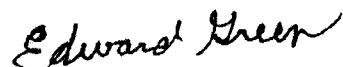
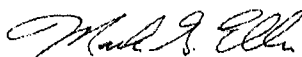
With the above in mind, NMA, IMA-NA, and the BCOA hereby request a minimum 60-Day extension of the comment period from the current comment deadline of June 26. We note that even if the meeting with you and Dr. Howard were held today, our request would remain the same because there is simply not enough time between now and June 26 to credibly respond to the RFI. Frankly, depending on the timing and substance of the promised meeting, it may well be that even more time may be necessary. However, we shall deal with that potential problem if and when it occurs.

Sincerely,

Bruce Watzman  
Senior Vice President  
NMA

Mark Ellis  
President  
IMA—NA

Edward Green  
Counsel  
BCOA



cc: Pat Silvey  
Kevin Stricklin  
Sheila McConnell  
Heidi Strassler