From: Green, Edward <EGreen@crowell.com>
Sent: Monday, April 10, 2017 1:27 PM
Subject: Comments re Reopening of Comment Period on proximity Detection Systems for Moile Machines in Underground Mines (82 Fed. Reg. 2285, Jan 9, 2017) RIN 1219-AB78; Docket No. MSHA-2014-00119
Attachments: Hon. Patricia Silvey Letter dtd 4-10-17.pdf

Here are comments of the National Mining Association, Murray Energy Corporation, PacifiCorps' Interwest Mining Company, and the Bituminous Coal Operators' Association on MSHA's Proposed Rule re Proximity Detection Systems for Mobile Machines in Underground Mines (82 Fed. Reg. 2285, Jan. 9, 2017) RIN 1219--AB78; Docket No. MSHA--2014--0019.

AB78-COMM-35

April 10, 2017

The Honorable Patricia W. Silvey
Deputy Assistant Secretary for Operations
U.S. Department of Labor
Mine Safety and Health Administration
201 12th Street South
Arlington, VA 22209-3939

RE: COMMENTS OF THE NATIONAL MINING ASSOCIATION, MURRAY ENERGY CORPORATION, PACIFICORPS' INTERWEST MINING COMPANY, AND THE BITUMINOUS COAL OPERATORS' ASSOCIATION ON MSHA'S PROPOSED RULE RE PROXIMITY DETECTION SYSTEMS FOR MOBILE MACHINES IN UNDERGROUND MINES (82 FED. REG. 2,285, JAN. 9, 2017) RIN 1219--AB78; DOCKET NO. MSHA—2014—0019

Dear Secretary Silvey:

On behalf of the National Mining Association (NMA), Murray Energy Corporation, PacifiCorps' Interwest Mining Company, and the Bituminous Coal Operators' Association (BCOA), please find below and attached our comments responsive to the notice published in the Federal Register for January 9, 2017, reopening the rulemaking record and requesting additional comments on MSHA's proposed rule on Proximity Detection Systems for Mobile Machines in Underground Mines. *See* 82 Fed. Reg. 2,285. The proposed rule was originally published in the Federal Register for September 2, 2015. 80 Fed. Reg. 53,070. The new January 9, 2017 notice asked for comments by February 8, 2017. This comment period was extended, in response to a request, through today "to give stakeholders additional time to evaluate the comments and rulemaking record and provide meaningful input." *See* 82 Fed. Reg. 9,369 (Mon., Feb. 6, 2017).

To begin, as noted below, we thank you for this additional extension of time; and appreciate the opportunity to provide additional comments on the proposed rule. We commented on the September 2, 2015 proposal, and wish to incorporate those comments herein, as though fully set forth. The proposed rule poses numerous technological challenges. Thus, we are especially pleased that MSHA extended the comment period further until today. That additional time gave us the opportunity to work further with your colleagues at the National Institute for Occupational Safety and Health (NIOSH) and other stakeholders, like we did in 2016.

More specifically, as you know, following the close of the original comment period on December 15, 2015, in order to deal with the aforementioned technological challenges, we and representatives of the United Mine Workers of America (UMWA) asked NIOSH to form a proximity detection system "partnership" to address and work on a research program designed to

achieve resolutions to the technological issues identified. MSHA was invited to participate in that partnership as well. After some hesitation, we were pleased that MSHA agreed to attend (as an observer, we understood) an initial partnership meeting that was held at the NIOSH research station in Bruceton, PA on June 22, 2016. The meeting was well attended by senior MSHA officials, including yourself. We thought the meeting was quite successful and we are pleased that MSHA has included in the rulemaking record the materials presented at the meeting. *See* 82 Fed. Reg. 2,286 and 2,290.

Among the reasons for seeking the current extension for comments is that we asked NIOSH to schedule another meeting of the proximity detection system partnership to assess progress made in NIOSH's research program since June 22, 2016, to date; and to ensure that all stakeholders had the same understanding of the status of NIOSH's research activities in this area. On March 22, in Bruceton, your colleagues at the NIOSH Pittsburgh Mining Research Division (PMRD) presented a very well done assessment of the NIOSH proximity detection system research program. That assessment was carried out in a "workshop" format.

This workshop was well attended by representatives of the mining industry, labor, equipment manufacturers and technology providers, MSHA, and NIOSH. We are pleased at the progress being made. Nevertheless, as the examples we briefly discuss below demonstrate, much work remains to be done. Key, in this respect, is that the NIOSH research program is based on a three-year schedule, which has 18 months remaining.

The senior MSHA officer in attendance at the March 22 workshop was Kevin Stricklin. He informed attendees that the materials from the workshop would be placed into the MSHA rulemaking docket. He also said the agency is not currently in the process of working on a final rule for this issue; and that any MSHA decision on how and whether to proceed would be guided by the research program underway at NIOSH.

We are pleased about Mr. Stricklin's statements and think they represent a very positive outcome. Consequently, we recommend that the rulemaking record for this proposal remain open for additional comment until NIOSH's current research program is completed in September, 2018. During that time, we would expect NIOSH to conduct additional workshops during the pendency of, and following the completion of the currently scheduled research program. The proceedings of these workshops should be added to the docket, along with any other peer-reviewed research on proximity detection systems. Once the NIOSH research program is completed, we will be happy to continue working with MSHA, NIOSH, and other stakeholders to analyze the work completed; and discuss what steps might be taken in resolving what are likely to be especially vexing and practical problems.

To explain more fully, we provide you below with some of our initial thoughts and concerns.

- The configuration requirements for a proximity detections system on a mobile machine should be determined by an application-specific risk assessment. Such an application-

specific risk assessment seems to be central to the South African requirements discussed in the preamble to the January 9, 2017 notice. *See* 82 Fed. Reg. 2,986 and 2,290.

- Requirements for proximity detection systems should include provisions for minimizing the risk of electromagnetic interference for all electrical equipment. Mine operators and proximity detection system manufacturers should not be held responsible for limiting electromagnetic noise generated by electrical devices they do not control. This is particularly problematic with regard to interferences generated by the continuous personal dust monitor (CPDM).

- MSHA is considering requirements that will negatively impact or be impacted by the existing requirements for proximity detection systems in 30 C.F.R. section 75.1732. Here we speak to the preamble discussion in the January 9 notice in which MSHA states it has become aware of a feature on a miner-wearable component on a proximity detection system that determines if the magnetic field sensing coils have been affected by electromagnetic interference and can no longer detect the magnetic field generated by the machine-mounted components. *Id.* 2,290. According to the preamble, this feature provides a distinct audible and visible alarm on the miner-wearable component when it is not functioning properly due to magnetic interference. *Id.* "MSHA is considering *requiring this design feature for all miner-wearable components*." *Id.* (Emphasis added.) Not only do we believe design-specific requirements have no place in any MSHA standard (these should be performance-oriented); but also (and importantly), adoption of such a requirement would conflict with section 75,1732(b)(4) providing that equipment be immediately removed from service if not functioning properly. Adoption by MSHA of specific design features are likely to restrict overall system effectiveness, reduce early and voluntary adoption by mine operators, and function to limit innovation by manufacturers.

- MSHA fails to consider incentives for early adoption of safety technology by considering specific, complex prescriptive regulatory requirements, Mine operators should be rewarded for early adoption of performance-oriented safety technology instead of being faced with the threat of early enforcement or stranded investments due to MSHA regulatory decisions.

- Some additional performance-oriented ideas are compatibility of various proximity detection systems; effectiveness of one proximity detection system for all varieties of section equipment; can proximity detection systems be incorporated into the cap lamp; or could they be permanently attached to a miner's belt, hard hat, tracking device, or other item of apparel; enhanced durability; and a system check to ensure the miner wearable component is actually being worn and not simply placed in a location where the equipment can still operate.

Finally, please find attached the preliminary commentary of an NMA-member coal mine operator which you will find responsive to MSHA's January 9 notice.

We look forward to working with MSHA and NIOSH, as well as other stakeholders, to develop solutions to the problems identified by this rulemaking. We are especially pleased that the concept of "partnerships" offers real opportunity to educate all in the mining community about developing feasible solutions to the technological challenges facing us.

Sincerely,

Bruce Watzman
Senior Vice President, Regulatory Affairs
National Mining Association

Edward Green
Counsel for Murray Energy Corporation,
PacifiCorps' Interwest Mining Company,
and the BCOA

Attachment

Copies with attachment:

Kevin Stricklin
Sheila McConnell
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