NATIONAL LIME ASSOCIATION

April 9, 2018

Ms. Sheila A. McConnell, Director
Mine Safety and Health Administration
Office of Standards, Regulations, and Variances
201 12th Street South
Suite 4E401
Arlington, Virginia 22202-5452

Filed via E-Mail: zzMSHA-OSRVRegulatoryReform@dol.gov

RE: Initial Comments of the National Lime Association to MSHA on Regulatory Reform (E.O 13777)

Dear Ms. McConnell:

The National Lime Association (NLA) appreciates the opportunity to provide comments on MSHA's request for comments on regulations that should be eliminated or altered in response to Executive Order 13777. We understand that a more formal request will be issued in a Federal Register notice at a later date, and we anticipate providing additional comments at that time.

NLA is the trade association for manufacturers of high calcium quicklime, dolomitic quicklime, and hydrated lime, collectively referred to as "lime." Lime is a chemical without substitute, providing cost-effective solutions to many of society's environmental problems. Lime is produced by calcining limestone, and thus most lime manufacturers also quarry limestone, with mining operations under the jurisdiction of MSHA.

General Comments

In this submission, NLA will focus on areas of regulation that MSHA should consider addressing, as opposed to providing specific regulatory language. NLA would like to work with MSHA and other stakeholders in the development of more specific suggestions when that becomes appropriate.

NLA has reviewed the comments filed by other parties to date, and many good suggestions have been made. Several commenters have noted regulations that have become outdated, such as references to obsolete safety belts as fall protection (i.e. in 30 CFR Section 56.15005), or the requirement to arrange for emergency services (Section 77.1702) in an era in which 911 services are widely available. NLA also notes the comments of the Industrial Minerals Association-North America, which identify a number of additional regulatory provisions that are out of date. MSHA

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should review these suggestions carefully, especially when the outdated regulations may result in compromised worker safety (i.e., with respect to belts for fall protection).

Several commenters have also identified regulatory requirements that may impair safety, or that may divert attention from important safety-related actions. An example is the 15-minute notification requirement in Section 50.10, which can divert on-site responders from important immediate actions, including notifying local fire and rescue personnel. NLA supports reconsideration of this and other similar requirements.

NLA notes that other commenters have requested more specificity in many MSHA regulations, citing concerns about inconsistent enforcement. NLA and its members sympathize with these concerns, but we urge MSHA to tread cautiously in this area. The performance-oriented MSHA regulatory scheme has costs—such as the risk of unpredictable enforcement—but it also has benefits, including flexibility, recognition of differing situations in different parts of the mining industry, and the application, in most cases, of a rule of reason. NLA very much appreciates prior efforts by MSHA to improve consistency, such as the creation of the highly useful machine guarding and ladder guidance, as well as the judicious use by reference of OSHA standards (such as the 6-foot fall protection guideline). More specific regulatory language should be developed only with the assistance of operator and miner stakeholders, with a careful discussion of the balance of specificity and flexibility.

NLA's more specific suggestions are as follows:

Workplace Examination Rule

NLA has submitted prior comments and testimony on several occasions expressing our view that the new workplace examination rule, as finalized, is deeply flawed and should be reopened for further comment and consideration by MSHA. MSHA has finalized several changes that improve the rule, but they do not address a number of fundamental problems with the rule. NLA believes that this is one of the first rules that should be reconsidered by the agency, and that its effective date should be suspended until that reconsideration is complete.

Civil Penalties

MSHA made several changes to its civil penalty provisions in recent years, and NLA continues to believe that a number of these changes were unnecessary and/or counterproductive, and should be reconsidered. Examples include:

1. MSHA should reinstitute the single penalty provision, which allowed operators and inspectors to address minor infractions without the imposition of substantial penalties. This option greatly reduced the incentive to challenge minor citations. Under the current approach, even very minor infractions can result in major penalties, especially for large mines.
2. The 30% good faith abatement reduction in penalties was an effective incentive for prompt abatement, and should be restored.
3. The special assessment provisions in Sections 100(a) and (b) are duplicative and should be eliminated.

4. The current regulations impose a penalty—potentially a large one—in situations in which no negligence is found. This should be eliminated (or at most, a single penalty could be imposed in such a situation).
5. The regulations assume that the fact that an incident occurred means that it was likely to occur, leading to increases both in the elements of likelihood and severity. This is illogical, because unlikely events occur. These provisions should be corrected.

There are numerous other, more specific, provisions that should be reconsidered. NLA will be happy to provide more specifics when MSHA requests them, or to participate with other stakeholders in a broad review of these regulations.

NLA appreciates the opportunity to comment on these important issues.

Very truly yours,

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