



RICH NOLAN
President & CEO

April 23, 2020

The Honorable Andrew Wheeler
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Wheeler:

Domestic mining remains vital to helping the nation weather this COVID-19 storm and the nation's eventual road to a strong recovery. As a Department of Homeland Security designated essential industry, our mines continue to safely operate to produce the required minerals that are the building blocks of America's industrial base and manufacturing supply chains.

The unprecedented economic toll already wrought by COVID-19 and the measures taken to combat it have policymakers rightfully exploring additional rounds of incentives to jumpstart the economy and put Americans back to work. We appreciate the Administration contemplating additional regulatory certainty as part of its plans for the nation's economic recovery. Your efforts to date at the U.S. Environmental Protection Agency (EPA) to ensure certainty and predictable permitting processes have given the industry a fighting chance to survive the storm. Now, with your continued help we can work together to build the recovery.

The National Mining Association (NMA) would like to meet with you and partner with your team to put additional and specific incentives in place:

- **Groundwater Permitting**

A lack of clarity on whether discharges to groundwater are subject to regulation under the Clean Water Act (CWA) has led to an increasing number of CWA citizen lawsuits that could impact the mining industry. The new decision this week from the U.S. Supreme Court in *County of Maui v. Hawai'i Wildlife Fund* creates even more uncertainty and as a result there is increased urgency for EPA to move forward with a rulemaking. Furthermore, in addition to providing durable clarification that groundwater discharges are not subject to CWA regulation, the rulemaking should more broadly expand that interpretation to other indirect discharges such as those from smokestacks or rail cars.

National Mining Association 101 Constitution Avenue, NW | Suite 500 East | Washington, DC 20001 | (202) 463-2600

- **CWA Section 401 State Certification Process**

While a 2019 executive order addressed a significant hurdle to exports—state misuse of the CWA section 401 certification process to block export projects—additional action is necessary to ensure the long-term viability of the United States as a major coal exporter. NMA urges EPA to finalize its proposed 2019 CWA section 401 rule to modernize the process for review and approval of section 401 state certifications and prevent abuse of the process.

- **Compensatory Mitigation**

In 2019, EPA took an important first step to initiate revisions to the 2008 compensatory mitigation rule. The mining industry needs additional flexibility in the implementation of mitigation requirements that account for the temporary nature of mining impacts and extensive reclamation work undertaken by mining companies, and to address overly burdensome requirements for compensatory mitigation projects, including financial assurances and conservation easements. NMA urges EPA to make this rulemaking a priority.

- **CWA Section 404(c) Vetoes**

Under the previous administration, EPA significantly expanded the application of its CWA Sec. 404(c) veto to both retroactively revoke an existing 404 permit for a coal mining operation and to preemptively veto a minerals mining operation prior to the submission of a permit application. To restore regulatory certainty, reinstate state authority over land use permitting, and foster capital investment, job creation and economic growth, EPA must undertake a rulemaking to establish commonsense limitations on this authority.

- **National Ambient Air Quality Standards (NAAQS) Reviews of Ozone and Particulate Matter**

Over the last several months, EPA completed key steps in the NAAQS review process for particulate matter and ozone consistent with your commitment to complete the five-year review process in a timely, efficient, and transparent manner. Just last week, EPA released its proposal to retain the current particulate matter standard and is anticipated to propose its decision on ozone later this year. NMA supports the retention of both standards as they protect public health and the environment with an adequate margin of safety. Importantly, retaining these standards will avoid additional unnecessary and burdensome permitting requirements and controls on mining operations and other industrial facilities.

- **New Source Review (NSR) Reforms Designed to Accompany the Affordable Clean Energy (ACE) Rule**

EPA's ACE rule was intended to be accompanied by NSR reforms to remove barriers to efficiency improvements at coal plants. Ultimately, the NSR revisions were severed from the ACE rule to allow consideration of technical issues related to the modified NSR threshold test using hourly emission rate changes. NMA urges EPA to expeditiously issue the final NSR rule to avoid the expensive and lengthy permitting requirements for efficiency upgrades that will reduce emissions per unit of electricity produced and as a result, the hourly emission rate at any given level of electricity demand.

- **Coal Combustion Residuals (CCR) Regulation**

The prior administration's 2015 rule on the disposal of CCR threatened the economic viability of coal-fired power plants and resulted in premature closures. NMA recognizes that EPA's numerous efforts to reform the 2015 rule have been complicated and delayed by adverse court decisions. NMA appreciates EPA's reconsideration efforts and encourages the agency to finalize the four rules currently in process to provide permitting and regulatory certainty for coal-fired power plants. NMA encourages the agency to carefully consider industry stakeholder comments to ensure these rules provide maximum flexibility for safely operating impoundments and landfills or closing such units and securing alternate disposal capacity.

- **Powerplant Effluent Limitation Guidelines (ELGs)**

In late 2019, EPA proposed revisions to the overly stringent 2015 ELGs that threatened to cause premature coal plant closures. NMA urges EPA to finalize its modifications to provide more flexible standards and compliance timeframes related to flue gas desulfurization wastewater and bottom ash transport water.

- **New Source Performance Standards (NSPS) for New or Modified Coal Plants**

In late 2018, EPA proposed revisions to the 2015 rule that required carbon capture and storage (CCS) for new or modified coal plants, which posed a major technological hurdle for new plants or upgrades to existing plants. EPA must proceed with finalization of that rule to eliminate the CCS requirement and provide a path forward for commercially viable, advanced coal technology.

NMA is committed to partnering with you in support of these lawful and rational recovery initiatives. We would welcome the opportunity to meet with you and your team. Thank you again for your time and recognition of our industry and its contributions to the economy and well-being of our nation. If you have any questions regarding this letter, please contact me at (202) 463-2619 or cpak@nma.org.

The Honorable Andrew Wheeler
April 23, 2020
Page Four

Sincerely,

A handwritten signature in black ink, appearing to read 'Rich Nolan', with a long horizontal flourish extending to the right.

Rich Nolan

National Mining Association 101 Constitution Avenue, NW | Suite 500 East | Washington, DC 20001 | (202) 463-2600