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ARGUS Q&A

NMA vice president Bruce Watzman

Bruce Watzman is senior vice president of regulatory affairs at the National Mining Association (NMA). He manages the organization's regulatory policy activities and oversees the group's legislative efforts. This interview was edited for length and clarity.

Argus: How is this year going to play out in terms of legislation?

Watzman: There may be some appetite for legislation on some energy issues. We have seen spikes in energy prices. The weather we are experiencing is causing some in Congress to think more about our energy policy and, in turn, what is our optimal energy mix. But from our perspective we do not see a very robust legislative year across the board.

The House seems to be more willing to advance legislation that is more favorable to a true above-the-line energy policy than the Senate. But hopefully as more people begin to pay attention to what the ramifications are of some of these policy decisions they will be more receptive to having an open and honest debate about these policies.

Argus: How might the challenge to senator Mitch McConnell's (R-Kentucky) seat and the race for retiring senator Jay Rockefeller's (D-West Virginia) spot affect the coal industry?

Watzman: McConnell is a good friend of the industry. He has demonstrated that time and time again, and the industry is supporting his re-election. We hope and fully expect that he will win.

The Republican candidate for Rockefeller's seat, or at least the one who appears to be the leading candidate right now – representative Shelley Moore Capito – has been a good friend of the industry and we will continue to seek out her support and her counsel as legislation moves through the House. As with other members of the West Virginia House delegation, they all understand what is happening to the coal industry today.

Argus: What position is NMA taking on the Environmental Protection Agency's (EPA) greenhouse gas (GHG) emissions rules for new plants?

Watzman: We are working through our comments that will be part of the rulemaking record.

Our concern is whether the rule provides adequate time to develop, demonstrate and commercialize the technology that we all want to see ripen, or whether in essence we are putting the cart before the horse: Are we developing regulations in advance of this technology? We do not feel carbon capture technology has been commercially proven irrespective of the EPA's claim that it has.

Small-scale demonstration plants are important but if the technology was fully developed, as the law requires, they would not be demonstration plants. They would be operating at scale 24/7.

Argus: What would NMA like to see in a GHG rule for existing plants and what would you expect to see?

Watzman: I would not predict what we expect to see because there are a whole host of options that have been reported previously, and various paths that EPA can follow – whether it is establishing state budgets or setting up an across-the-board efficiency limit for all existing plants or possibly others. EPA is going through that process and probably struggling like everybody else to define what they want to accomplish and then constructing a pathway to reach that.

Do they want to have a more efficient, cleaner coal fleet or is the objective, as some would encourage, a path that eliminates coal over some period of time? Until EPA defines that for the stakeholders, it is difficult to construct that pathway. We are going through that same process and it is extremely challenging.

Argus: What would be acceptable limits?

Watzman: Our objective is to retain as much of that existing fleet as we can and have a regulatory environment that allows for construction of new plants. That is what we are fearful that we will not have after EPA's New Source Performance Standards (NSPS) for new sources is finalized. We also want to minimize the loss of billions of dollars already invested to comply with previous rules.

We project that we will lose about 66GW of the existing fleet through the mercury and air toxics standards (MATS) rulemaking already. We will then have fewer plants but the remaining units will be larger, newer, cleaner and more efficient.

If the goal is to reduce CO₂ emissions then the reductions that will result from the MATS rulemaking need to be considered.

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Argus: What is it like to work with the current EPA administrator versus previous leadership?

Watzman: We have had more opportunity for dialogue with the new administrator. We have had the opportunity to meet with her and her senior leadership team, to share our concerns and express a willingness to work with her if there is a reciprocal willingness on her part.

Argus: What are the big issues to look for at the Mine Safety and Health Administration (MSHA) this year?

Watzman: MSHA does not have a very robust regulatory agenda, but they have an important regulatory agenda.

Clearly the rule that we, like everyone else, expect to see any time now would lower the respirable dust limit for underground coal mines. This rule will have significant implications for the underground coal industry. We have been engaged in this rulemaking since its inception – we participated in the public hearings and filed comments and our message has been the same all along. Namely, MSHA has crafted a solution in search of a problem rather than identifying the problem and then crafting the solution. It has attempted to characterize this as a problem across the entirety of the underground coal industry. When we review the x-ray surveillance data that is collected by the National Institute for Occupational Safety and Health we do not see this as an industry-wide problem. Clearly there is a problem – in geographic pockets in the industry – but that in and of itself does not justify the necessity for a standard that reduces the standard across the entire industry.

The fact of the matter is we do not see operators holding back on technology to reduce dust exposure underground. A recent Government Accountability Office stakeholder meeting that included industry, academia and government researchers validated that view. There is no readily available dust technology sitting on the shelf that is going to enable the industry to achieve the reductions that MSHA's proposed rule would mandate.

A rule requiring technology for proximity detection is not finalized but will be in short order. I think that the industry through implementing the technology voluntarily was able to learn a lot in advance of MSHA promulgating a final rule and hopefully MSHA's final determination has been informed by the industry's experience with the technology.

Argus: What sort of cost is there to compliance?

Watzman: Regulations do not come cheaply whether it is air regulations or water regulations or MSHA regulations. For example, when we polled our members following passage of the Mine Improvement and New Emergency Response Act of 2006, also known

as the MINER Act, we found compliance costs exceeded \$1bn. This reflects in part the cost of developing and testing the technology.

The underground coal industry produces a lot of product, but in sheer numbers of operations it is relatively small. That becomes frustrating because there are a lot of technology innovators and developers who do not want to participate in the underground coal marketplace because of its size.

It becomes a challenge in attracting new technologies that have to go through MSHA's time-consuming and costly approval and certification process.

Argus: How do you expect NMA's challenge of MSHA's pattern of violations (POV) rules to play out?

Watzman: We hope we get a favorable court ruling. Oral arguments occurred on the 29th of this month and we hope for a quick decision. Our best estimate is that the court will issue a decision this summer. But in the meantime MSHA is implementing the final rule and has placed some mines on POV and it is causing challenges.

Argus: Any there other rules we should be looking out for?

Watzman: I do not think there are any rules. We do think it is time that we have an open and honest discussion among industry stakeholders on whether or not the Federal Mine Safety and Health Act is structured properly to drive the continuous improvement that we all desire. The industry has made phenomenal strides. Forty years ago, the industry had 400 plus fatalities a year. We are down to 30 to 40 on any given year right now, so a tenfold reduction in the number of fatalities. But I think that you also have to ask the question: after 40 years should not the level be better? And if the answer to that is yes then the question that follows is what needs to change? The act is very strict, rigid and prescriptive. It does not encourage proactive actions. In fact on occasion proactive actions might conflict with regulatory requirements. So I am hopeful that we have reached a point where we can discuss this honestly.

Argus: Which is a greater threat to coal - gas or regulation?

Watzman: I think both are important but while gas prices ebb and flow, adverse regulatory policy fixes in place decisions that are extremely difficult to reverse and that is of greater concern.

There is a finality to regulation and law where there is not in the marketplace. Gas will soon be responding to new market opportunities abroad and here in the US for industrial use. Gas also faces additional regulatory costs - all of which will allow efficiently mined coal to compete.

For more information on *Argus Coal Weekly*, please contact us at moreinfo@argusmedia.com.