



**ARIZONA  
ROCK  
PRODUCTS  
ASSOCIATION**

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MSHA/OSRV

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Mr. Robert Stone  
Office of Standards, Regulations and Variances  
Mine Safety & Health Administration  
U.S. Department of Labor  
1100 Wilson Blvd., Room 2350  
Arlington, VA 22209-3939

Subject: Mine Improvement and New Emergency Response Act

VIA E-Mail: [zzMSHA-comments@dol.gov](mailto:zzMSHA-comments@dol.gov)

Dear Mr. Stone:

The Arizona Rock Products Association (ARPA) appreciates the opportunity to submit comments regarding the U.S. Mine Safety and Health Administration (MSHA) Mine Improvement and New Emergency Response (MINER) Act of 2006. ARPA requests thoughtful consideration of the concerns submitted by the ARPA Safety Committee.

For 50 years, the Arizona Rock Products Association (ARPA) has been providing representation for 46 member companies involved with the production of aggregates, asphaltic concrete, ready mix concrete, asphalt, lime products, and portland cement. Our members, along with 78 associate members providing related transportation, contracting and consulting services, make ARPA one of the most influential public and private policy advocates in Arizona.

In 2005, the Arizona Rock Products Industry created a direct economic impact valued at nearly \$2.5 billion. The producers of aggregates, stone products, cement, asphalt, and ready mix employ over 10,547 employees and supply essential materials to the construction industry that employs an additional 195,330 workers. The Rock Products industry has been growing at an average rate of over 10% per annum since 1991, and as such is a significant and dynamic force in Arizona's economy.

ARPA is committed to protecting the safety and health of aggregates workers. ARPA members manage safe and environmentally sound operations and responsibly utilize a valuable natural resource for the benefit of our economy. Our members care about the people working in and around our operations and progressively manage some of the safest operations in the industry. In 2005, ARPA members reported over 9.8 million employee-hours on operating facilities with less than 20 lost-time accidents making ARPA sites some of the safest industrial facilities in the United States.

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## SUMMARY

Over the last 20 years, the mining industry has seen a dramatic reduction in the fatality and reportable incident rates of representative operations. The aggregates industry is no exception and has enjoyed vast improvements in safety records due in part to improved communications, awareness, training and collaboration with MSHA. In light of the recent tragedies in the coal mining industry, critical review of safety requirements is laudable, but changes should be based on supporting empirical data that makes a compelling showing that changes are needed and most importantly will result in reduction of incidents, especially when affecting all sectors. MSHA has failed to make that case in some of the current amendments.

ARPA understands the need for revision to the current Act in order to conform to the statutory changes in Public Law 109-236, this proposal goes far beyond what is necessary to meet its obligations under the new law. The proposal has several significant flaws that must be addressed before the rule is finalized. These concerns are outlined below.

### **100.3 Regular Assessment**

Increases in fines have not been shown to reduce incidents only to promote time consuming negotiations that are an ostensible attempt at compliance. Further, these increases will likely cause companies to feel compelled to file more appeals and therefore inspectors, field office supervisors and district managers will spend more time at hearings rather than conducting inspections and much needed training.

### **100.5 Special Assessment**

ARPA does not agree that every penalty should have the potential to be subject to special assessment and feels that by allowing MSHA to have subjective oversight beyond the prescribed list of eight categories should not be allowed.

### **100.5 Repeat Violations**

Inclusion of a repeat violation category is repetitive as it is covered by the history of violations section and would consider the same citations twice.

### **100.5 Immediate Incident Notification (15 Minute Requirement)**

Section 103 (j) of the Federal Mine Safety and Health Act was amended to state: "For purposes of the preceding sentence, the notification required shall be provided by the operator within 15 minutes of the time at which the operator realizes that the death of an individual at the mine, or an injury of entrapment of an individual at the mine which has a reasonable potential to cause death, has occurred."

This stipulation in the Act does not take into account the multitude of extenuating factors that might warrant an exception or exemption to this rule. ARPA would like



consideration of clarifying language that would add protection to operators acting in good faith, but might be required to secure a site or provide life saving aid. The language would not expunge the 15 minute rule, but rather provide an affirmative defense for situations that would require well trained industry safety professionals more time to stabilize or secure the accident scene allowing us to deal with the emergency at hand.

Thankfully there is considerably more training and resources available to our safety personnel than at the passage of the Act. MSHA's purview historically has been that of investigation. Arguably, MSHA response would not provide assistance for rescue or the likelihood of improved safety and health of the individuals involved above what our safety professionals could provide.

### **100.6 Conference Requests**

ARPA disagrees that the request for a conference option should be reduced by five days. In doing so, MSHA would vastly reduce a company's ability to respond in its defense and does not take in consideration the obligations of the facility staff responsible for participating in the conference; and is therefore unrealistic.

Five days is not enough time to petition a conference because many of our member companies have corporate offices that would need to respond to citations, it is unlikely the citations can be sent, reviewed and responded to within 5 days.

This measure would clearly discourage early settlement attempts and encourage costly litigation and because litigation costs are high, it will reduce valuable resources that could otherwise be dedicated to training, safety equipment and time spent doing valuable safety audits.

### **Conclusion**

ARPA strongly urges MSHA to consider industry concerns and recognize the continued strides the industry makes toward improvement even in the wake of an isolated incident. ARPA would like to thank the agency for the opportunity to submit comments during this period. Further, we look forward to meaningful and productive resolution of the issues previously stated in a manner that promotes realistic and necessary safety and health measures.

Sincerely,



Rusty Bowers  
Executive Director

