

NATIONAL STONE, SAND & GRAVEL ASSOCIATION



Natural building blocks for quality of life

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MSHA/OSRV

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Patricia W. Silvey, Acting Director
Office of Standards, Regulations and Variances
Mine Safety & Health Administration
US Department of Labor
1100 Wilson Blvd., Room 2350
Arlington, Virginia 22209-3939

Subject: RIN 1219-AB51 "Criteria and Procedures for Proposed Assessment of Civil Penalties"

VIA E-MAIL: zzMSHA-comments@dol.gov

VIA Hand Delivery

Dear Ms. Silvey:

The National Stone Sand & Gravel Association (NSSGA) appreciates the opportunity to submit additional comments for the record regarding the Mine Safety and Health Administration's (MSHA) "Criteria and Procedures for Proposed Assessment of Civil Penalties" rule proposed on September 8, 2006. These comments are in addition to the comments respectfully submitted to MSHA by NSSGA as required by the previous deadline of October 23, 2006.

Based near the nation's capital, NSSGA is the world's largest mining association by product volume. Its member companies represent more than 90 percent of the crushed stone and 70 percent of the sand and gravel produced annually in the U.S. and approximately 115,000 working men and women in the aggregates industry. There are approximately 11,000 aggregate operations in the United States, employing on average less than twenty employees per location. Sales of natural aggregates (crushed stone, sand and gravel) generate nearly 38 billion dollars annually for the U.S. economy. During 2005, a total of 3.2 billion tons of crushed stone, sand and gravel, valued at \$17.4 billion, were produced and sold in the United States.

Aggregates are used in nearly all residential, commercial and industrial building construction and in most public works projects, such as roads, highways, bridges, railroad beds, dams, airports, schools, water and sewage treatment plants and tunnels. While the American public may know little of these raw natural materials since they are not generally consumer products, aggregates go into the manufacture of asphalt, concrete, glass, paper, paint, pharmaceuticals, cosmetics, chewing gum, household cleansers, and many consumer goods. Environmental uses and benefits include erosion control, deacidification, flue gas desulphurization and storm water runoff controls. Aggregate operations can support habitat for wildlife and reclamation uses include water supply, residential and environmental purposes.

NSSGA is committed to safety and health in mines. Safety is, and will continue to be, a high priority for the aggregates industry. The industry recognizes that its employees are its most valuable asset—an asset that must be protected for the well-being of the industry now and in the future.

Introduction

On October 20, 2006, NSSGA submitted its detailed response to MSHA regarding the proposed “Criteria and Procedures for Proposed Assessment of Civil Penalties” rule. On October 26, 2006, MSHA reopened the comment period for this rule, requesting comment for specific issues concerning conference requests and the single penalty assessment. NSSGA appreciates the opportunity to provide additional comments on those two issues, as well as the comments previously submitted.

Conference Requests

MSHA has proposed a provision requiring mine operators to provide a statement explaining why each citation or order should be conferenced at the time of the initial conference request. This proposed provision, in addition to the proposed five-day notification period, would cause extreme difficulties for the mine operator and ultimately discourage the conference process. The conference process needs to be accessible to all miners. A mine operator would be limited only to five days to discover that the citation had occurred, conduct internal legal research, investigation, interviews, obtain other information and provide it to MSHA for review. This would create an unnecessary burden for the mine operator, who may have limited administrative resources. A conference request would be granted or declined based on information gathered in a limited amount of time and with little investigation. If a mine operator misses the five-day window to request a conference, the operator may initiate an appeal process, ultimately creating greater time and administrative burdens both for MSHA and the operator. Requiring this information prior to the conference itself would potentially undermine and discredit the objectivity of the conference process.

To reiterate the previous comments on this issue, MSHA should, at a minimum, retain the current 10-day conference notification period and make the conference process available to every mine operation that requests it. In addition, a written request for conference should not be required by MSHA.

Single Penalty Assessment Criteria

As stated previously in our comments submitted October 20, 2006, NSSGA urges MSHA to retain the single penalty assessment. Operators must eliminate all hazards and legitimate violations, but the enforcement of the regulations by agency personnel is neither even-handed nor consistent. Removing the single penalty may result in higher penalties for citations erroneously issued, more contested citations and the diversion of resources away from improving safety and health in the mine. Removing the single penalty has the potential to create a more adversarial relationship between MSHA and operators without making mines safer or more healthful for miners.

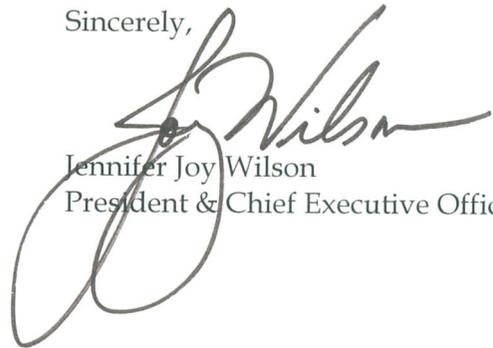
Conclusion

In summary, NSSGA would prefer to see the use of an advisory panel to evaluate the economic issues, data supporting the assumption that increased penalties drives safety performance and the effects of the penalty assessment process on improving safety and health could lead to proactive improvements for this industry. In addition to the comments submitted previously under separate cover, the following issues are significant to the aggregate industry:

- retaining the single penalty assessment;
- retaining the 10-day conference request period; and
- ensuring that the conference process is fair to all operators.

Thank you for the opportunity to make NSSGA's concerns known to MSHA.

Sincerely,



Jennifer Joy Wilson
President & Chief Executive Officer