

Date: October 20, 2006

To: The Mine Safety and Health Administration, Dept. of Labor

Re: Public Comments – RIN 1219-AB51 ***Federal Register / Vol. 71, No. 174 / Friday, September 8, 2006 / Proposed Rules*** – for changes to increase penalty amounts, penalty points

Gentlemen;

I am writing on behalf of **Loukonen Bros Stone Company** located near Lyons, Colorado. My siblings and I own a company that quarry's Colorado sandstone from quarries that have been owned and managed by family members for five generations. My great grandfather, our father and uncle, my siblings and their children represent one hundred and sixteen years in the stone quarry business. We are a small business, generally representative in size, to most of the larger stone companies in the area. The local stone industry is unique in that the process and labor involved in quarrying sandstone has changed little in the hundred plus years that quarrying has been done in this area. Only the method of moving the quarried material has changed with modern times; the actual quarrying is nearly 100 percent hand labor using bars, shovels, wedges and chisels.

Our company, throughout its long history, has maintained a safe and healthy work environment for its workers with no fatalities or no disabling injuries and very few lost days of work for hundreds of thousands of hours worked up to the current time. To my knowledge, the sandstone industry in the front range of Colorado has a similar history of safety and responsible operation. In other words, the majority of sandstone quarries and companies conduct and maintain a work environment that is well above the safety standards and record generally associated with other mining/quarrying industries, especially coal mines.

It is for that reason that I submit this comment to oppose the Mine Safety and Health Administration proposal to increasing fines and points to make companies pay attention and comply with their regulations. All mining /quarrying companies and operators are not coal mining operations nor do the majority even remotely resemble such operations in scope or extent of safety issues. The majority are not guilty of gross and continuing safety violations, nor are the majority guilty of flagrant and willful noncompliance. It appears that the Mine Safety and Health Administration has seized upon the opportunity to use the emotionally charged atmosphere created by the West Virginia coal mine accidents and deaths this year to champion its agenda of increasing fines and penalty points for all mining and quarry activities, which it applies indiscriminately to all industries, as though they were coal mines.

One of the reasons given by the Mine Safety and Health Administration for wanting to change the rules is the assertion that safety violations have steadily increased since 2003, according to Mine Safety and Health Administration record keeping, which on paper, is true. But, I submit that, it is not because most companies ignore safety standards and purposely and willfully disregard the Mine Safety and Health Administration standards and requirements. I strongly believe, based on our recent experiences, that your agency has untaken and embarked on a course and policy of being primarily an aggressive enforcement agency intent on writing more citations and receiving more penalty assessments, which is the main reason for the increased numbers. Safety regulations are apparently used as a means to an end, not the converse. The Mine Safety and Health Administration appears to have taken the CFR 30, its Bible of safety, and altered and modified it to drive a campaign of control and penalties on all of the mining/quarrying industry, whether or not there is any history of fatalities, safety violations or noncompliance.

I present the following as an example of our recent experiences with the Rocky Mountain District of MSHA located in Denver, Colorado. During our long family and company history, someone in Loukonen Bros Stone Company has always dealt honestly and forthrightly with all the Mine Safety and Health Administration inspectors, maintaining a good working relationship to ensure compliance with any safety issues. For reasons not apparent to our company, our relationship with the Mine Safety and Health Administration inspectors suddenly and dramatically changed in 2004. A Mine Safety and Health Administration inspector came to one of our quarries and, in the span of less than a week, wrote over twenty citations and orders on protective equipment, tools and high walls. He created an artificial crisis on paper, with orders that are normally reserved for life threatening violations. Neither this quarry, nor any of our operations, had ever had any citations more serious than paperwork omissions and mechanical faults and had never been cited for the alleged violations at any time during all the years that the Mine Safety and Health Administration had inspected our quarries. As I stated earlier, no part of the operation and process of quarrying the stone had essentially changed in the hundred plus years the quarry had been operated. The General Manager and Loukonen Bros Stone was cited for serious and substantial violations and further charged with willful and unwarrantable failure. The inspector threatened sixty-five hundred dollar fines per day due to the serious nature of the violations, without there being any prior history or records of such violations. In other words, we were guilty, as charged, of flagrant and willful disregard, high negligence and noncompliance and could now start the long and expensive process of contesting the citations and orders.

We had no history of prior safety problems or violations, noncompliance or work days lost due to injuries. In fact, we had numerous Mine Safety and Health Administration safety certificates for hundreds of thousands of hours worked without injury. Loukonen Bros Stone Company actually received, at the end of 2005, another commendation for safety covering the same period of time in 2004 that all the alleged violations and citations occurred, signed by the same man whose office inspectors and officers accused our company and personnel of willful and flagrant noncompliance and not reporting injuries. We were treated as a company that totally ignored and thumbed its nose at the Mine Safety and Health Administration and failed to provide safe work conditions for its workers. Nothing could be farther from the truth, but we could do nothing about it except go through the Mine Safety and Health Administration's directed and controlled appeal process from start to finish, at great expenditure of time and money. In the end, we still ended up paying a large and unreasonable fine, had our company and safety reputation damaged and we were designated for the Mine Safety and Health Administration pattern of violations violator program in order to more closely scrutinize and single out our operations for an elevated level of penalties and fines that the Mine Safety and Health Administration inspectors could arbitrarily and subjectively trigger whenever it was deemed necessary to keep Loukonen Bros Stone Company from continuing its "long pattern of noncompliance." There appears to be a very glaring and ludicrous contradiction of reality in this whole scenario.

This summer we completed a two-year process of appealing and contesting the citations from the fall of 2004. After bargaining down the penalties, a standard and predictable Mine Safety and Health Administration practice after it set initial, unreasonably large fines, we paid your agency twenty-seven thousand dollars and spent over thirty thousand dollars in lawyer fees for the privilege of reaching that settlement. The fines and lawyer expense to fight the fines and penalty points cost us approximately one quarter of our net profit for a year. It is very apparent that even with reduction of fines, as they are presently assessed, the process can seriously affect any company's capability to operate and can easily tip a small company into bankruptcy and still be within Mine Safety and Health Administration thresholds of solvency.

I believe the foregoing experiences and contradictions support my concern and opposition to the proposed increases in fines and penalty point accumulation. **One size, one rulebook does not fit all!** If the coal mining industry is indeed perennially and willfully noncompliant, then write and apply more stringent rules for the coal mines. Let stand the current rules for the rest of the mining/quarrying industries and independent contractors not associated with the coal mines. It is folly and poor law that seeks to punish the majority for the transgressions of the minority. And that is exactly what the proposed changes would accomplish, greatly increased fines and accelerated accumulation of major penalty points, for even the most minor of citations, when the two citation threshold per year is exceeded. It is crucial for the Mine Safety and Health Administration to realistically reappraise its administration of mine safety and its conduct when citing and assessing penalties. In the real world there are relatively few that are guilty of willfully and continually breaking the rules and this fact needs to be acknowledged and acted upon accordingly by the Mine Safety and Health Administration. The proposed rule changes are not the answer to that acknowledgement and if implemented will be extremely detrimental to all segments of the mining/quarrying industry and the local economies where they are located. Government cannot take a broad-brush approach to safety programs to paint all mining/quarry industries the same, in order to apply standards and penalties that totally ignore the safety issues and history that are relevant to any particular industry. We are not all coal mining companies with coal mine issues!

Respectfully submitted,

L. Dean Loukonen, President
Loukonen Bros Stone Co.

Cc: U.S. Sen. Wayne Allard, U.S. Sen. Richard Lugar, U.S. Sen. Ken Salazar, U.S. Rep. Diana DeGette, U.S. Rep. Mark Udall, U.S. Rep. John Salazar, U.S. Rep. Marilyn Musgrave, U.S. Rep. Joel Hefley, U.S. Rep. Tom Tancredo, U.S. Rep. Bob Beauprez