

October 23, 2006

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

Subject: RIN 1219-AB51 Comments to 30CFR Part 100

Dear Ms. Silvey,

The Construction Materials Association of California (CMAC) would like to submit the following comments to the record regarding the Mine Safety & Health Administration's rule proposed on September 8, 2006 titled "Criteria and Procedures for Proposed Assessment of Civil Penalties."

CMAC represents producers of aggregates in Northern and Central California. Aggregates are extracted from surface mines and used to build roads, homes, bridges, schools, and water systems. The combined aggregate and construction industries are the 4th largest industry and support 1.8 million jobs in California.

- *To begin, we are concerned that this proposal goes well beyond what is required in the recently adopted MINER Act of 2006. We understand the MINER Act raises civil penalties for five specific conditions; however, MSHA's proposed changes to Part 100 go significantly beyond that and are unsupported by the record.*
- *CMAC is concerned with MSHA's assumption that increased penalties will improve safety and health conditions in the mining industry. As the premise for increasing the penalties for non-compliance, there are no supporting data or studies presented in the proposed rule to support this claim. MSHA should be prepared to provide the public with appropriate studies to support it before moving forward with this proposed rule. Furthermore, MSHA has provided no analysis of the connection between the majority of non-Significant and Substantial (S&S) violations and mine injuries or fatalities.*

- *As an alternative to increasing penalties, MSHA might consider requiring mandatory safety and health compliance training provided by MSHA for mine operators who have violation per inspection day rates much higher than average.* By taking a proactive role in educating the mine operators on acceptable compliance and safe work practices, or a similar requirement, MSHA could achieve its goal of improving safety and health conditions in the mining industry.
- *MSHA may also consider improving the consistency of their inspections.* Due to the subjective nature of many of MSHA's standards, there can be a wide variation in the numbers of citations issued by different inspectors. This has caused confusion and frustration in the mining community in the past. An increase of penalties will only magnify these inconsistencies and decrease the respect many mine operators have for MSHA.
- *CMAC opposes the new point system proposed by MSHA.* Without supporting evidence that increasing penalties will achieve improved safety and health conditions, CMAC believes that the current regulations, with the exception of those increases mandated by the MINER Act of 2006, are adequate and should not be changed.
- *CMAC opposes the elimination of the single penalty assessment.* It is believed that the elimination of the single penalty assessment will increase the number of informal conferences and appeals to contest citations. This will unnecessarily divert resources from the improvement of safety and health conditions at the mine and within MSHA to contest of citations that are minor in nature.
- *CMAC opposes the introduction of the repeat violation category in the proposed rule.* The inconsistencies noted earlier between inspectors are also strongly influenced by their background and experience. Inspectors with stronger backgrounds and experience in various areas (i.e., electrical) are more likely to observe and write a citation when they have a greater familiarity with the hazard and the environment. Also, due to the wide scope of some standards (i.e., 30CFR 56.11001), the same conditions are not being repeated although the same standard is cited. Further, the gravity of the citation is not a consideration in the repeat violation criteria. The inclusion of non S&S, or minor citations, in this category would seem counterproductive to the true purpose of this rule.
- *CMAC opposes reduction of the time period for calculating violations per inspection day from 24 months to 15 months.* The differences between surface, underground and intermittent mining operations are not accounted for by this change. The purpose of the history of violations in the penalty structure is to discourage high rates of violations. However, the number of inspections at a particular mine can vary greatly depending on the type of mine. The smaller surface mines will experience the greatest effect from this change.

- *CMAC opposes the reduction of the current 10-day time period to request an informal conference to 5 days.* The proposed change would not provide mine operators sufficient time to evaluate and decide whether conferencing a citation is warranted. This change could result in mine operators scheduling conferences for citations that would not have been otherwise contested. Any change in the rule should also clarify whether the number of days is based on working or calendar days.
- *Finally, CMAC opposes the change in the “good faith reduction from 30% to 10%.* This reduction can only work to discourage mine operators from abating violations in a timely manner. The 30% credit helps reduce the number of citations that are formally appealed and provides some positive adjustment by employers that are making efforts to abate conditions that resulted in violations.

In conclusion, CMAC thanks MSHA for the opportunity to comment. Your consideration for our concerns with the proposed rule will be appreciated.

Sincerely,

Charles L. Rea
Interim Executive Director