



November 25, 2005

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

Regulation Identifier Number 1219-AB41

RE: Proposed Rulemaking; Use of or Impairment from Alcohol and Other Drugs on Mine Property (RIN Number 1219-AB41)

Dear Sir/Madam:

The Portland Cement Association (PCA) appreciates the opportunity to provide comments on the advanced notice of proposed rulemaking regarding the use of or impairment from alcohol and other drugs on mine property. This proposal was published in the *Federal Register* on October 4, 2005 (70 Fed. Reg. 57808). Certainly the U.S. cement industry strives to ensure that our facilities are drug and alcohol free workplaces. Since most of our member companies have substance abuse policies in place, we do not believe that additional regulation is needed.

The Portland Cement Association is a trade association representing cement companies in the United States and Canada. PCA's U.S. membership consists of 45 companies operating 106 plants in 35 states and distribution centers in all 50 states servicing nearly every Congressional district. PCA members account for more than 95 percent of cement-making capacity in the United States and 100 percent in Canada.

Portland cement is the powder which acts as the glue or bonding agent that, when mixed with water, sand, gravel and other materials, forms concrete. Cement is produced from various naturally abundant raw materials, including limestone, shale, clay, and silica sand. Portland cement is an essential construction material and a basic component of our nation's infrastructure. It is utilized in numerous markets, including the construction of highways, streets, bridges, airports, mass transit systems, commercial and residential buildings, dams, and water resource systems and facilities. The low cost and universal availability of portland cement ensure that concrete remains one of the world's most essential and widely used construction materials.

Again, the PCA generally opposes additional regulations that relate to employer information-dissemination or record-keeping requirements. Many of our member companies already have policies and drug-free workplace programs in place (such as random testing and testing for cause) to deter and prevent substance abuse on mine property. Most, if not all, of these company-sponsored programs also include pre-employment drug screening to verify that perspective employees are indeed alcohol and drug free. Therefore, with anti-substance abuse programs already in place, we believe that the current regulation at 30 CFR 56/57.20001 is sufficient to address the issue.

The problem is not setting policies, but facilitating enforcement flexibility that will help discourage substance abuse at the workplace. Employers need to have the discretion to terminate the employment of any miner found under the influence of drugs or alcohol at the workplace. Workers should also understand that health-care or survivor benefits related to accidents could be reduced or barred in cases when the accident victim is impaired.

In addition, should new regulations be promulgated, the PCA believes that such regulations must take worker impairment into consideration when determining employer culpability in accidents involving workers who are under the influence. Despite the effectiveness of corporate programs or any additional foreseeable regulations, there will continue to be individuals who violate drug and alcohol policies. Companies that have policies and programs in place to convince workers not to abuse harmful substances should not be cited by MSHA when employees, of their own volition, choose to violate these policies and MSHA regulations.

Please contact me if you have any questions regarding the position and concerns of the portland cement industry. I can be reached at 202-408-9494 or tcarter@cement.org.

Sincerely,

A handwritten signature in black ink that reads "Thomas B. Carter". The signature is written in a cursive style with a large, stylized initial 'T'.

Thomas B. Carter
Director, Environment Health and Safety