

Rio Tinto Minerals
8051 E. Maplewood Avenue
Building 4
Greenwood Village, CO 80111
USA
T +1 303 713 5000
F +1 303 713 5769

Matthew Pedersen-Howard
Director of Health &
Safety
Rio Tinto Minerals

April 4, 2011

By Email to zzMSHA-comments@dol.gov

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

RE: Comments on Proposed Rule, Pattern of Violations, RIN 1219-AB73

Rio Tinto Minerals (RTM) is pleased to submit the following comments on the proposal of the Mine Safety and Health Administration (MSHA) to revise the existing regulation for Pattern of Violations. RTM, as a member of the Industrial Minerals Association – North America (IMA-NA), also endorses and incorporates the comments submitted by IMA-NA on the proposed rule.

Rio Tinto Minerals (RTM) is a Rio Tinto company – one of the world's largest mining and exploration companies. RTM is a leading supplier of borates and talc with 2,500 people working at 40 facilities throughout the world. RTM has locations not only in the United States, Canada and Mexico but also France, Argentina, Belgium, Italy, Spain and Australia. We supply nearly half the global demand for refined borates – key ingredients in fiberglass, ceramics, glass, fertilizers, wood preservatives and hundreds of other uses – and 25 percent of the global demand for talc.

Rio Tinto Minerals believes the current Pattern of Violations (POV) process is complicated and unwieldy. The criteria used to place a mine on pattern status are confusing for not only the public but also the mine operator. It is difficult for a mine operator to assess how close it is to being placed into pattern status and the process contains too much subjectivity.

Given the problems with the current POV process, RTM would recommend MSHA undertake a comprehensive review of the POV program as detailed below. We believe any effective POV program needs to have: (1) clearly defined criteria for POV status; (2) consistency in treatment if a mine is placed in POV; and (3) a reduction in subjectivity. In order to keep miners safe and avoid safety incidents that result in fatalities or serious accidents, POV criteria should be based on both the rate of citations and orders per inspection day and overall frequency rate of reportable incidents. That is, a mine operation should be placed on POV status because of both poor regulatory and safety performance. Such a standard would help ensure that POV status identifies chronic and persistent violators of the mine safety standards which result in injuries. RTM recognizes that violations and the significance of those violations will be an important step in determining POV status but the rate of citations is not indicative of injury rates. Rather, we believe violations

need to be balanced with a more transparent and consistent metric that relates directly to the safety of miners at a mine site, such as reportable injury rates.

Criteria for Determination of POV Status

The inspection process unfortunately has numerous opportunities for subjective and inconsistent application of standards. This subjectivity exists in every step from the gravity determination to the assessment process. MSHA's proposal appears to exacerbate this subjectivity by authorizing POV status on both S&S citations and withdrawal orders (regardless of the MSHA standard violated). MSHA's POV regulations should be revised to decrease, not increase, this subjectivity. MSHA should be adopting criteria that are straightforward, clear and transparent so both the mine operator, mine employees, and the public, know if a mine is close to being placed in POV status.

- On a quarterly basis, based on a 12-month rolling average, MSHA should rank mines based on both: (1) a mine's regulatory compliance rate (combination of S&S citations and withdrawal orders) per inspection hours and (2) reportable incident rate from the prior 12 months.
- The MSHA threshold rankings for citation rate/reportable incident rate by mine category should be publicly available and posted on the MSHA website (for example, the reportable incident rate threshold for surface metal/nommetal mines in Q1 2010 was 3.75).
- Based on its ranking, a mine will be placed in "pattern of violations" status if, per inspection hour, its: (1) regulatory compliance rate is in the bottom 3 percent; and (2) reportable incident rate is in the bottom 8 percent. A mine meeting one but not both of the criteria will receive a "notification" letter and will be required to develop and submit to MSHA a plan to reduce the identified pattern.
- Any citations that give rise to POV status must qualify for an expedited review process. If any citation that gave rise to POV status is ultimately vacated, a mine site will automatically be removed from POV status.

Actions after POV Status

Once a mine is placed in POV status, there must be clear and consistent requirements for mine operations. MSHA must also establish a transparent process for removing a mine from POV.

- Once placed in POV status, a mine site will perform a two-hour safety stand-down for a complete inspection of the site and review S&S citations, withdrawal orders, injury records, and other relevant, identified safety information within 7 days and meet with MSHA to report the results.

- A mine site will have 10-days to develop a violation, accident and injury protection program. If a site does not have a current accident and injury protection plan, MSHA will provide framework or guidance to assist the mine operator.
- A mine site must provide an additional 8 hours of safety training for every employee, including contractors, to cover the new violation, accident and injury protection program.
- For sites under POV status, the Secretary can authorize spot inspections by authorized representatives of all or part of such mine every 10 working days at irregular intervals. If after 6 months a mine under POV status demonstrates improvements in both citation rates and injury rates, spot inspections will be discontinued.
- A mine site will be removed from POV status after 12 calendar months if its regulatory compliance rate is no longer within the bottom 3 percent or its reportable incident rate is no longer within the bottom 8 percent.
- If a mine site fails to be removed from POV status after 12 calendar months, even if it shows improvement in both categories, the mine will remain on POV for another 12 calendar months. If the site does not demonstrate improvement in either category (citation rates and injury rates) and remains on POV after 12 calendar months, the site will also be required to have a violation, accident, and injury protection program approved by MSHA within 30 days. If MSHA and the operator cannot agree on a plan within such 30 day period, the mine will be shut down until a plan is approved and an expedited review of the plan will be permitted.

[Other options to conditions to consider for showing no improvement after 12 calendar months: Immediate 10-day closure of mine for assessment by MSHA under what conditions it is allowed to re-open; site will be subject to triple the inspections for the next 12 months; 8-hour hazard recognition training by a third-party expert plus another 8 hours on new accident reduction plan].

Top Performers Inspection Schedule

- If a mine is ranked within the top 5 percent for both its regulatory compliance rate and reportable incident rate, and has not had a fatality in the preceding 12 months, inspections of the mine will be reduced to half for the next year (thereby allowing MSHA to focus their resources on mines with poor regulatory compliance and safety rates).

Rio Tinto Minerals appreciates the efforts of MSHA to improve the POV program and we understand that some of the elements of our recommended POV program cannot be implemented without Congressional approval. However, we

believe MSHA should begin a dialogue with Congress, mine operators, mine employees and the public so that these elements can be fully discussed. Such a discussion is especially critical, and warranted, by the dearth of specifics in MSHA's proposed POV rules.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Robison", written over a horizontal line.

Chris Robison

Vice President Operations - Americas