

June 19, 2006

Mine Safety and Health Administration
Office of Standards, Regulations, and Variances
Room 2350
1100 Wilson Boulevard
Arlington, Virginia 22209-3939

**RE: Comments on the Emergency Mine Evacuation Rulemaking (RIN
1219-AB46)**

Dear Sir/Madam:

The Portland Cement Association (PCA) welcomes the opportunity to comment on the emergency temporary standard on mine evacuation published in the *Federal Register* on March 9, 2006 (71 Fed. Reg. 12251). The current rulemaking is a justified response to recent accidents in underground coal mines, and MSHA should limit this response to those underground coal mine facilities. While the provisions in the rule might be appropriate to underground coal mines, they are not appropriate for surface mines. PCA therefore urges MSHA to limit the final rule to underground coal mines.

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. Since portland cement manufacturing facilities are regulated by MSHA, the current rulemaking is applicable to PCA's member companies.

In the preamble to the emergency temporary standard, MSHA makes a strong case for the need for the current rulemaking. The preamble cites the recent tragedies related to underground mine disasters and the need to ensure proper planning, communication, and safeguards for underground coal miners. The temporary standard, however, is not appropriate for, and should not be applied to, surface mines.

Clearly, the intent of this emergency standard is to require underground mines to quickly notify MSHA of an emergency so that MSHA's underground mine emergency response team can be mobilized. That team brings together equipment and expertise that can mean the difference between the life or death of a trapped underground miner, especially when rescue operations are likely to take hours, if not days. MSHA has no similar response team for surface mines

and is generally not equipped to provide material on-site assistance to operators of surface mines during the critical first minutes of a surface mine emergency (e.g. fires, injuries, damage, etc.). For surface mines, the interests of the injured person are best served by the mine operator being able to focus his or her attention on notifying and attending to the response of local emergency response agencies, such as fire, ambulance, and police.

In most provisions of the standard, MSHA recognizes this distinction between underground coal mines and other mines and limits the rule's applicability only to the former. The immediate notification provision should also be limited to underground mines, but the temporary language does not contain this qualifier. The immediate notification provision in the permanent rule should be improved with a few simple alterations. PCA suggests that this provision read as follows:

Sec. 50.10 Immediate notification.

If an accident occurs, an operator shall immediately contact the MSHA District Office having jurisdiction over its mine. If an operator cannot contact the appropriate MSHA District Office, it shall immediately contact the MSHA Headquarters Office in Arlington, Virginia by telephone, at (800) 746-1553. In the case of accidents in underground coal mines resulting in death or injury or entrapment that might reasonably result in death, the operator shall contact MSHA as described at once without delay and within 15 minutes. In such cases, if communications are lost because of an emergency or other unexpected event, the operator shall notify MSHA at once without delay and within 15 minutes of having access to a telephone or other means of communication.

MSHA should consider developing guidance that addresses proper incident notification time in the case of less serious accidents or at facilities other than underground mines. The most stringent notification requirements are intended to be limited only to the most serious underground accidents, but there is a need for clear guidance on the definition of "immediate" at other facilities and for less serious accidents at underground facilities.

The recently passed MINER Act limited the immediate notification provision to only the most serious accidents. There were many indications from legislators that the intent of Congress in including this provision was to address underground mining accidents on the level of the recent Sago tragedy. It is too soon after the fast-track passage of this bill to determine whether this sentiment will be reflected in written legislative history.

Again, PCA appreciates the opportunity to comment on the emergency mine evacuation rulemaking. Please contact me at tcarter@cement.org or 202-408-9494 if you have any questions or comments.

Sincerely,

Thomas B. Carter
Staff Vice President
Environment, Health and Safety