MISSOURI LIMESTONE PRODUCERS ASSOCIATION

P.O. Box 1725 • Jefferson City, MO 65102 • Phone (573) 635-0208 • FAX (573) 634-8006 • www.molimestone.com

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

Subject: Comments on "Criteria and Procedures for Proposed Assessment of Civil Penalties" published in Vol. 71, No. 174 of the Federal Register

Greetings:

The Missouri Limestone Producers Association was formed in 1944 as the statewide service association for the state's crushed stone industry. Our membership includes 55 companies that are engaged in the production of crushed stone products (most at multiple mine sites) and 102 companies that provide products and services to our industry.

CHANGES GO BEYOND REQUIREMENTS OF THE "MINER ACT"

We are aware that some of the changes in this rulemaking are required by Congress by its "Miner Act" of 2006. However, the rest of the proposed rule changes go well beyond these requirements. We question the necessity for this since the accident incidence rate for the aggregates industry has been on a continuous decline since 1989. It was 8.77 in 1989, then declined to 4.68 by 1999, and was 3.89 at the end of last year. Many companies have signed a pledge to do their part to help achieve an even lower national incidence rate. Yet, MSHA is proposing to unfairly punish our industry because of tragic events in the coal industry.

We also question MSHA's assumption that increased penalties leads to increased compliance. On the contrary, we believe that the best environment for increased safety is achieved through a cooperative effort between MSHA (while professionally fulfilling its regulatory role) and industry. Knowing that MSHA inspectors have the ability to issue citations that represent much larger monetary penalties will only cause industry personnel to view these inspectors with greater antagonism.

We suspect the costs to industry related to this rulemaking have been significantly under estimated by MSHA. For example, there are huge potential costs associated with increased litigation which is almost certain to occur not only because penalties are being raised so much, but also because MSHA is cutting in half the time allowed for operators to request a meeting to negotiate a settlement. We are concerned that the money needed to pay increased penalties and related legal costs will have a tendency to divert funds used for overall safety and health efforts. In addition, health insurance costs are rapidly escalating,

a situation that has already made it necessary for some employers to scale back this benefit. Costs related to this rulemaking will add to the pressure to reduce employee health insurance benefits.

MINE SITE versus CONTROLLING ENTITY

MSHA requests comments on whether "in considering the size of the operator, greater weight should be placed on the size of the controlling entity." We believe that MSHA should continue to look only at the individual mine site. Trying to assess the "size" of a controlling entity would often be difficult since many companies in our industry are vertically and horizontally integrated. This could lead to arbitrarily including divisions of a company's business that are unrelated to mining. Determination of a "stopping point" could be quite difficult.

Secondly, larger companies typically have regional divisions that operate under different management control. Competitive safety incentives are sometimes based on relative safety performance between divisions. It doesn't seem reasonable to punish one division for a poor safety performance of another division. What's more, larger companies often operate in multiple MSHA districts that have their own management priorities and areas of safety emphasis.

We believe MSHA should continue placing emphasis on the safety performance of individual mine sites. Local management, supervisors and employees are likely to retain more "ownership" of their safety performance if they know that they are the ones most responsible for their maintaining a good compliance track record.

SINGLE PENALTY ASSESSMENTS

We urge MSHA to not eliminate the single penalty assessment. Enforcement of MSHA regulations is not necessarily consistent since some inspection personnel understandably have more or less expertise and personal emphasis regarding certain standards. It is also important to keep in mind that many non-S&S citations have historically been issued in highly subjective conditions where one inspector may find a situation in conformity with a regulation, while another finds it to be an obvious violation. These are usually minor situations involving simple housekeeping or temporary oversight. Others are related to minor paperwork errors.

MSHA admits in its rulemaking notice that calculating points and assessments under this proposed new system will be time consuming. That seems especially unnecessary for the type of violations that pose little risk of injury or illness to mine employees.

Under similar OSHA violations involving little risk of injury, no penalty is assessed.

PENALTY POINTS FOR MINOR VIOLATIONS

The five-fold increase in penalty points for those citations classified as "unlikely" to result in injury or illness is not justified. The effectively eliminates the distinction between S&S and non-S&S citations from a penalty perspective. The current penalty points for gravity should be maintained.

GOOD FAITH INCENTIVES

We oppose the reduction of the good faith incentive for promptly abating violations from 30% to 10%. As previously mentioned, many citations are the result of temporary oversight or subjective evaluation by an inspector. It seems counterproductive to sharply reduce the incentive for abating such citations quickly. This would also reduce the need for follow-up inspections.

REPEAT VIOLATION CRITERIA

The "Repeat Violation" category in the regular assessment penalty point calculation seems to duplicate the "History of Violations" criteria.

MSHA can use a single standard to cover many unrelated conditions ("Safe Access" under 30 CFR 56.1101, for example, can relate to everything from a bent ladder step to having to step over a barrier to access a screen and several other situations). If a company establishes a multiple violation history in this and similar circumstances, it does not necessarily mean the company is negligently allowing the same hazardous condition to repeatedly occur.

Because each inspector subjectively interprets MSHA standards according to his own expertise and personal priorities, the "Repeat Violation" designation is likely to be unevenly applied.

SPECIAL ASSESSMENT CRITERIA

The criteria MSHA now uses for special assessments should not be eliminated. Removing the eight criteria could inappropriately expand the use of special assessments since MSHA inspectors interpret standards according to their own expertise and personal priorities. Deleting the standard criteria would make the special assessment process less objective.

TIME ALLOWED FOR CONFERENCE REQUESTS/ADDITIONAL INFORMATION

We believe MSHA should be consistent with OSHA in allowing 15 days to submit additional information or request a conference on citations. At the very least, MSHA should maintain the present 10-day period.

The proposed change does not allow mine operators enough time to determine the appropriate course of action following issuance of citations. Our industry is unique since operators often have sites that are scattered over a wide geographic area. It is possible for a

citation to not reach the proper management authority for a day or two (especially considering work schedules, vacation time, and illness). All operations, large and small, need time to seek appropriate guidance or research the circumstances of a citation before requesting a conference. This saves time spent in conference for both mine operators and MSHA personnel.

TIMELINESS OF ACCIDENT NOTIFICATION

Congress mandated that MSHA be notified of an accident within 15 minutes of the time an operator realizes that death, or an injury or entrapment that has a potential to cause death, has occurred. In some serious accident situations, particularly at small mines, this could cause a dilemma between providing trauma care for a victim or taking time away from that critical task to make a phone call. MSHA should provide guidance in the rule so that operators know they have time to provide emergency care for a victim before the 15-minute clock starts.

In addition, 30 CSR 50.10 says, "If an accident occurs, an operator shall immediately contact the MSHA District or Subdistrict Office…". This seems to mandate that all accidents must immediately be reported to MSHA. An inquiry to an MSHA office yielded the response that this applies only to the twelve situations described in Section B of Form 7000-1, but that is likely to be misunderstood by many operators. Also, is this in conflict with the new statutory requirement? MSHA should consider a clarification of Section 50.10.

We appreciate your consideration of these comments.

Sincerely,

Steve Rudloff
Executive Manager

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