



ALASKA MINERS ASSOCIATION, INC.

3305 Arctic Blvd., #105, Anchorage, Alaska 99503 • 907) 563-9229 • FAX: (907) 563-9225 • www.alaskaminers.org

2011 APR -4 P 3:46

April 4, 2011

MSHA
Office of Standards, Regulations, and Variances
1100 Wilson Blvd., Room 2350
Arlington, VA 22209-3939

FAX 202-693-9441

MSHAcomments@dol.gov

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

Thank you for the opportunity to comment on the proposed rule entitled "Pattern of Violations" (POV). The Alaska Miners Association (AMA) is a non-profit membership organization established in 1939 to represent the mining industry. The AMA is composed of more than 1200 individual prospectors, geologists and engineers, vendors, small family miners, junior mining companies, and major mining companies. Our members look for and produce gold, silver, platinum, diamonds, lead, zinc, copper, coal, limestone, sand and gravel, crushed stone, armor rock, etc. Many of our members operate small, family operated placer mines, gravel pits and quarries. All of our members are concerned about how the proposed rule will affect them and in some cases their very ability to continue in business.

Background:

Alaska's current mining industry consists of 3 underground and two surface hardrock mines each with 200 to 550 employees, one surface coal mine employing 130, approximately 120 active rock quarries and sand and gravel operations, and approximately 200 small mechanized placer and suction dredge gold mines. The majority of the placer mines are small family-owned and operated, and employ three or fewer individuals. Total direct mine (FTE) employment in Alaska is estimated to be 3500 with an additional 2000 jobs indirectly attributed to the industry. Most of the placer mines operate seasonally and many are in remote regions of Alaska with little infrastructure (roads, communication, power, etc.) available.

We have several major concerns with the proposed rule:

- **MSHA has lost its way.** MSHA is no longer focused on the health and safety of mine workers and this current proposed rulemaking on pattern of violations is just one more example. MSHA's primary focus is now to penalize companies. MSHA betrays this fact on a routine basis by their actions, comments and attitudes. We frequently receive reports from large and small mines like the following:
 - If inspectors do not write "enough" citations they are taken back to the mine by their supervisors, and sometimes district managers, and the supervisors and managers write citations to prove to the negligent inspector that he had not done his job.
 - Some inspectors carry a huge chip on their shoulder and are intoxicated with the power that they have to order others around.
 - On occasion inspectors will not communicate with the mine operators and have told them to "shut up", "if you do not like it you can appeal it." And then MSHA tells the Congress that the rules for appealing citations are too lax and that companies are abusing the appeal process.
 - In some cases inspectors have not allowed mine officials to brief them on items such as mine policies and new traffic patterns before the inspector goes into the mine.

- MSHA inspectors in some cases will tell you that they are under tremendous pressure to issue citations, citations, citations. They will also tell you that morale in the agency is terrible and if they could find a job somewhere else they would leave.
 - The presence of multiple MSHA inspectors, and/or inspectors on site over extended periods of time (sometimes every day for several weeks, including weekends), in and of itself results in a serious safety hazard. During such inspections the focus of everyone at the mine is on the inspectors, not on safety. Furthermore, the mine supervisors and safety personnel are dedicated to accompanying the inspectors and this detracts from their jobs. The result is that employee safety is compromised during such inspections.
 - If MSHA was truly interested in improving health and safety, it would propose rules to decrease the inspection frequency at mines with the best safety records and propose rules that would reward companies for no lost time accidents.
- **The proposed rule gives MSHA too much power and lacks opportunity for redress by companies.** The proposal to use non-final citations and orders to identify mines with a pattern of violations has the effect of establishing a new standard: "guilty until proven innocent" with the additional caveat that even if you are innocent you will have already suffered the consequences of being guilty without recourse. Despite MSHA data that indicates less than 1% of the citations are reversed, reversals do occur.
 - **Mines operating in remote areas of Alaska will not be unable to access the MSHA on-line data bases on a timely basis to track their pattern of violations.** MSHA should continue to provide written notification to mines in danger of establishing a "pattern of violation" unless a company requests that it not be sent.
 - **Many of the small mines in Alaska (typically 1-3 person operations) lack the expertise and resources to develop mine health and safety plans.** MSHA trainers in Alaska do have generic plans that offer a starting point. However, they are not site specific and may not pertain directly to the types of mining being conducted (such as suction dredging in marine and fluvial environments, operating in extreme cold, etc.). We suggest that a working group consisting of MSHA certified trainers, MSHA personnel, and industry representatives be established to develop applicable health and safety plans that would address these unique conditions. Short courses could be provided at AMA conventions to assist small miners in complying.
 - **The Termination of Notice procedure will be difficult to implement for small mines in Alaska.** The seasonal nature and remote locations of many operations will make it unfeasible if not impossible to conduct follow-up inspections.
 - **AMA believes that the proposed action is both an economic and regulatory significant action as it will negatively and selectively affect much of the small-scale mining sector in Alaska.**
 - **Increasing the frequency of MSHA visits to 2 per year will be costly and difficult in Alaska due to mine locations in remote areas, weather patterns, and the seasonal nature of the operations.**
 - **Compliance Costs.**
 - 104.3(c) requiring MSHA to issue an order withdrawing all persons from the affected area of a mine if any S&S violation is found within 90 days after the issuance of the POV notice is not logical. The general public has the right to access public lands and waters

including those falling within claim boundaries so long as they do not interfere with the mining operation. Suction dredge operations occur on waterways that are also used by rafters and kayakers. Other operations are located adjacent to recreational trails used by hunters, hikers, ATV operators, etc.

- The average cost of developing and implementing an approved safety and health program (\$22,100), if correct, is an unreasonable burden for many small mines.
- AMA believes the estimated cost to implement the proposed rule is too low. However, even if it is in the actual cost range, the onus of the cost will be born differentially by small mines and it will likely be put some small mine out of business due to the cost prohibitive nature of the rule.
- The proposed rule, based on MSHA calculations, would cost more than the threshold of 1% of revenues. Most placer mines in Alaska produce less than 200 ounces of gold/year and employ three or less. Even at current prices in the neighborhood of \$1400/ounce (\$1100/ounce of raw placer gold) 1% would be \$2200. MSHA estimates the average implementation cost to be \$22,100 which far exceeds the 1% threshold.

Executive Order: 13175: Consultation and Coordination with Indian Tribal Governments. Implementation of this rule could have impacts on Alaska Regional and Village Corporations, several of whom have royalty agreements with mining companies.

Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking. We do not agree with the conclusion by MSHA that the proposed rule will not have a significant economic impact on a substantial number of small entities. The majority of the estimated 200 placer mines in Alaska would be negatively and substantially impacted economically.

Sincerely,



Steven C. Borell, P.E.
Executive Director

Cc: Office of Information and Regulatory Affairs
Office of Management and Budget
New Executive Management Building
Attention: Desk Officer for MSHA Re: RIN 1219-AB73
725 17th Street N.W.
Washington, D.C. 20503

Senator Lisa Murkowski
Senator Mark Begich
Congressman Don Young
Governor Sean Parnell