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February 26, 2010

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

RE: Rin 1210-AB63 Criteria and Procedures for Proposed Assessment of Civil Penalties/Reporting and Recordkeeping: Immediate Notification of Accidents.

To Whom It May Concern:

In response to the proposed and direct final rule of 12/29/2009, RIN 1219-AB63 I offer the following objections:

Supplementary Information

II. Companion Proposed Rule, Direct Final Rule, and Significant Adverse Comments

Elsewhere in this issue of the Federal Register, MSHA is publishing a direct final rule. This companion proposed rule and the direct final rule are substantively identical. MSHA is publishing this companion proposed rule to speed notice and comment rulemaking should the Agency withdraw the direct final rule.

Response: By publishing the proposed and direct final rule simultaneously, MSHA is attempting to circumvent the review process and exclude miners from having input.

MSHA does not anticipate that this proposed rule would result in any changes in the way violations for failure to report certain accidents are evaluated or assessed.

Response: The proposed rule would very significantly change the way violations for failure to report certain accidents are evaluated or assessed. Specifically, the proposed rule would create tremendous ambiguity and uncertainty about which incidents should be reported. By adding "any other accidents" as part of the CFR part 50.10 section 5,

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MSHA virtually guarantees misinterpretation. The term "any other accidents" is not specific, and will almost certainly be interpreted to include a wide variety of events such as first aid injuries, medically treated injuries, property damage, equipment breakdowns, etc.

IV. Section-by-Section Analysis

This proposed rule would change existing § 50.10 to require that the operator immediately contact MSHA in the event of the following accidents: (1) Death of an individual at the mine; (2) injury of an individual at the mine which has a reasonable potential to cause death; (3) entrapment of an individual at the mine which has a reasonable potential to cause death; or (4) any other accident.

Response: The addition of "(4) any other accident" uses a general term that can and has been misinterpreted. The rule should read "(4) accidents as defined in CFR § 50.2 (h)." This would provide clear guidance to both the inspector and the miner. For even more clarity, the proposed rule could actually list the referenced criteria.

MSHA believes that this proposed rule would provide the mining community with more transparency relative to violations involving failure to report accidents. Specifying the type of accident in the citation would make it readily apparent when the violation would be subject to the higher penalty.

Response: Ambiguous terms and phrasing make the standards more difficult to understand – for both the miner and the inspector.

In addition, automating proposed assessments for most violations for failure to report an accident would improve the efficiency and effectiveness of MSHA's assessment process.

Response: Efficiency and effectiveness will be improved only when rules are clear and obvious to both the miner and the inspector. The proposed wording would guarantee that more miner and MSHA resources would be dedicated to the contestment process rather than preventative safety activity.

John Poeppelman
Florida Aggregates
CEMEX East Region