



Natural building blocks for quality of life

March 9, 2010

Hard Copy being mailed via U.S. Post

The Honorable Joseph A. Main
Assistant Secretary of Labor for Mine Safety and Health
1100 Wilson Boulevard, 21st Floor
Arlington, VA 22209

Re: Change in MSHA Policy on Guarding for Return Rollers

Dear Secretary Main:

Last Friday we were encouraged to learn in correspondence from Dr. Wagner of the agency's intent to work through the MSHA-NSSGA Alliance's technical task force to provide guidance and education on technical and compliance issues on such matters as guarding and fall protection. We believe this is a step in the direction of stakeholders working with MSHA to achieve further reductions in injuries, illnesses and fatalities.

However, I wanted to express the aggregates industry's strong concern over an apparent change in the way MSHA inspectors in the western district are interpreting and enforcing standards concerning guarding of conveyor return rollers. We are in receipt of a letter to you from Mr. Gary Hambly, President/CEO of CalcIMA, our state association counterpart for California.

Consistent with broader aggregates industry experience, Mr. Hambly's letter notes that MSHA inspectors historically have not viewed most non-load-bearing return rollers as moving machine parts requiring guarding because of the remote potential for entanglement, even in the absence of skirt boards.

While those with skirt boards are expressly exempt (under current MSHA policy) from being considered "similar moving parts" under 56.14107, the tens of thousands of unguarded return rollers were also not identified as unsafe or violation of MSHA rules during the past 20-plus years because inspectors reasonably determined they were either too close to the ground for workers to work or travel under, or the areas were cleaned out mechanically (e.g., using a skid-steer), or persons only entered the area to do maintenance or repair when the equipment was de-energized or locked out, and workers were trained on such procedures. Other return rollers, while located near catwalks, were not previously cited because the conveyor assembly blocked access, or there was an emergency pull cord present to stop the belt before access or contact would occur, or the rollers were set inside of assemblies that prevented inadvertent contact.

In short, the reason for MSHA's very reasonable, well-understood and longstanding interpretation to not require guards in these situations was because accidental or non-intentional work-related contact would *not* occur. As recently as last month, MSHA's representative, Harvey Kirk, told NSSGA's safety and health committee that the scenarios where guards were required did not include those circumstances where contact would only arise from intentional conduct.

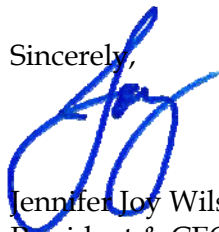
No reason has been given for the western district change. There has been no formal notice to operators in the aggregates industry of this change, and there has been no discussion with stakeholders of this change. This is exactly the kind of "gotcha" situation that you and Greg Wagner have told us, is not the way you want MSHA to operate.

NSSGA does not believe that citations should be issued for alleged violations based on any significantly changed interpretation before formal guidance or even notification has been provided to operators, much less before opportunities have been provided to discuss the government's technical feasibility, justification, assessment of risk, and potential alternative remedies to address MSHA's concerns.

Alternatively, NSSGA urges MSHA to immediately request input from stakeholders on all changes of MSHA interpretation on enforcement, so those who are impacted have a chance to comment on the change, and government can provide evidence of the risk, and cost/benefit analysis we believe you should provide.

We trust that you would agree that compliance with MSHA rules and worker safety and health, would be enhanced and best served by notice to and engagement with the aggregates industry before imposing new requirements on the same stakeholders. We look forward to your response.

Sincerely,



Jennifer Joy Wilson
President & CEO

cc: Mr. Jerry Geraghty, The Rogers Group Inc.
Mr. Don James, Vulcan Materials Company
Mr. Charlie Luck, IV Luck Stone Corporation
Mr. Ken MacLean, Lafarge A&C Eastern U.S.
Mr. Rod Martin, Martin Stone Quarries
Mr. Bill Schneider, MDU Resources / Knife River
Mr. Ward Nye, Martin Marietta
Mr. Louis Griesemer, Springfield Underground
Mr. Dave Thomey, Maryland Materials
Ms. Nancy Moorhouse, Teichert Materials
Mr. Gary Hambly, CalCIMA Executive Director
Mr. Joe Casper, NSSGA VP Safety and Health