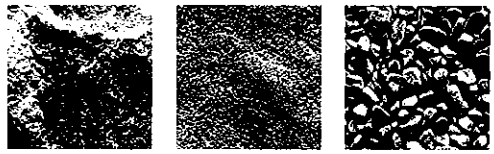
NATIONAL STONE, SAND & GRAVEL ASSOCIATION



Natural building blocks for quality of life

June 28, 2006

Mr. Robert Stone
Office of Standards, Regulations and Variances
Mine Safety & Health Administration
U.S. Department of Labor
1100 Wilson Blvd., Room 2350
Arlington, Virginia 22209-3939

Subject: RIN 1219-AB46 ETS Emergency Mine Evacuation

VIA E-MAIL: zzMSHA-comments@dol.gov.
VIA Hand Delivery

Dear Mr. Stone:

The National Stone Sand & Gravel Association (NSSGA) appreciates the opportunity to submit comments for the record regarding the U.S. Mine Safety and Health Administration (MSHA) Emergency Temporary Standard (ETS) on Emergency Mine Evacuation. It is important to recognize in your deliberations that one size does not fit all.

Based near the nation's capital, NSSGA is the world's largest mining association by product volume. Its member companies represent production at about 3400 operations nationwide providing more than 90 percent of the crushed stone and 70 percent of the sand and gravel annually in the U.S. with approximately 117,000 working men and women in the aggregates industry. Sale of natural aggregates (crushed stone, sand and gravel) generates nearly 38 billion dollars annually for the U.S. economy. During 2005, a total of about 3.2 billion tons (2.91 mt) of crushed stone, sand and gravel, valued at $17.4 billion, were produced and sold in the U.S. Most of the 11,000 operations in the aggregates industry are small operations with less than 50 employees.

Aggregates are used in nearly all residential, commercial and industrial building construction and in most public works projects, such as roads, highways, bridges, railroad beds, dams, airports, water and sewage treatment plants, and tunnels. While the American public pays little attention to these raw natural materials, they go into the manufacture of asphalt, concrete, glass, paper, paint, pharmaceuticals, cosmetics, household cleansers, and many consumer goods. They are used for water treatment at many public utilities.

The NSSGA is committed to protecting the safety and health of aggregates workers. Safety is, and will continue to be top priority for the aggregates industry. The industry recognizes that its employees are its most valuable asset -- an asset that must be protected for the well being of the industry now and in the future. NSSGA respects the government's effort to identify and require effective and proven technology and procedures to ensure that workers can be rescued in the event of a major disaster in underground operations.

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Summary

The recent disasters in the coal mining sector are tragic. The loss of even one life, let alone more than 20 lives, is devastating in any sector. Without minimizing these tragedies, the safety record of the mining industry, and the aggregates industry in particular, has improved dramatically over the past 15 years due to a heightened level of effort invested by the industry for continuous improvement in safety performance, and efforts by government to educate and enforce safety training requirements. The improvement in the aggregates industry safety record is attributable to a combination of more effective safety and health programs developed and implemented by the industry over the past decade, as well as training, collaboration and data evaluation and improved industry wide communications with MSHA.

This current Emergency Temporary Standard (ETS) changes Parts 48, 50 and 75 of the existing MSHA regulations. Part 75 applies to underground coal mines only and, therefore, does not impact the aggregates mining industry. At MSHA's public hearings it was stated changes to Part 48 which normally applies to all underground operations including aggregates underground operations, affects training requirements for underground coal only. The changes in Part 50 affect all mines by requiring a 15-minute notification period for the 12 types of incidents listed in Part 50.2(h). In addition, MSHA stated that consideration is being given to requiring all mine fires to be reported, even those of less than 30 minutes duration, by changing the definition of "accident" at Part 50.2(h)(6).

Part 50.10 Immediate Notification

NSSGA is concerned that this 15-minute notification requirement, while it attempts to define the term "immediate" contained in the existing standard, establishes a condition that could result in mandatory citations for a delay of even one (1) minute. Current legislation codifying mandatory notification requirements and increasing penalties specifically for failure to notify MSHA are troublesome.

Even though the present language requires "immediate" notification for the 12 types of accidents listed in 50.2(h), it has always been subject to interpretation in the context of the extenuating circumstances of an accident. The mine operator was allowed to deal with the emergency, ensure the safety of miners and other personnel and stabilize conditions at the site of the accident prior to contacting MSHA. Especially in small operations, with limited personnel, characteristic of aggregate industry operations, it may be much more important to deal with the emergency than strictly meeting a 15 minute notification requirement.

One of the stated reasons for requiring 15-minute notification is to ascertain the level of response by MSHA, including initiating assistance to trapped or injured miners. At surface operations in the aggregate industry, it would be unusual for mine rescue teams or other specialized rescue efforts to be necessary following an accident. In coal or other underground mines this may be more important because of the confined space or engulfment hazards that may exist. For surface operations the circumstances are entirely different and the reporting requirement does not need to be changed from the current requirement.

At the time the Mine Act of 1977 was passed the emergency services available to mine operators were very limited. Today there are considerably more emergency service options available. MSHA's role in surface emergency response is primarily limited to investigation. Calling MSHA would not provide immediate expertise for rescue or improve the safety and or health of the aggregate workers involved above that already available to the aggregates industry.

NSSGA's concerns will be mitigated if MSHA draws a distinction between accidents that pose a threat to life, serious physical injury, or require an emergency response for trapped or injured miners, and all other reportable accidents. The former would require notification within 15 minutes, while all others remain subject to the prior requirement to "immediately contact" the MSHA District Office.

Prompt notification to MSHA is only part of the equation for assuring a timely and effective response to emergencies. In connection with the changes made to the notification requirements, MSHA should change agency procedures for receiving notification and transmitting the information to appropriate officials in a position to act decisively and diligently in response to the operator's notification of an accident. Such changes may include a 24-hour manned call center or designated personnel in each District Office to be on call to receive notifications.

Part 50.2(h)(6) Definition of Accident

There is no need to change the definition of unplanned mine fire from the current "within 30 minutes of discovery" as suggested in the preamble to the Emergency Temporary Standard or to require the reporting of all fires. This may increase the number of reports required and may not improve the safety of miners in many situations such as equipment or trash fires that do not create a hazard beyond managing the fire itself. In aggregate operations, there is little danger of causing an explosion or other significant hazard to aggregate workers from such a fire. These incidents should be managed with normal firefighting procedures and equipment. Reporting as currently required provides MSHA with the information needed to meet its mission.

Conclusion

MSHA should continue to engage stakeholders in an effort to develop communication and tracking systems that could improve mine rescue operations. While technology continues to advance, the government must continue to both promote and facilitate that development with the goal to achieve proven technology that actually enhances mine operations safety. It is far more important to encourage the development of practical tools and to evaluate their usefulness in a broad range of mines. This is the most effective way to match the best of the emerging systems with the environment where they will most beneficial.

Thank you for the opportunity to make the concerns of the NSSGA known to MSHA during this comment period. We look forward to a satisfactory resolution to these issues during the standard setting process.

Sincerely,

Jennifer Joy Wilson
President & Chief Executive Officer