



*Natural building blocks for quality of life*

December 4, 2007

U.S. House of Representatives  
Washington, DC 20515

Re: Oppose S-MINER Act

Dear Member of Congress:

The House Education and Labor Committee on Oct. 31 passed legislation of great concern to the aggregates industry -- the Supplemental Mine Improvement and New Emergency Response Act (S-MINER). The substitute bill, H.R. 2768, offered by committee Chairman George Miller (D-Calif.) during markup combined two bills -- H.R. 2768 the S-MINER Act, and H.R. 2769, the Miner Health Enhancement Act.

Safety is the number one priority of the members of the National Stone, Sand & Gravel Association (NSSGA). As the largest mining association by product volume and number of miners, NSSGA believes the S-MINER legislation is punitive and will fall especially hard on the aggregates mining sector. The 2006 bipartisan MINER Act should be fully implemented before additional mine safety legislation, which may or may not increase miner safety and could create confusion and undermine safety improvements achieved to date under the Act, is considered by Congress. The aggregates industry is prepared to sit down at that time with other interested parties to identify remaining safety concerns and avenues to address them. As it stands now this bill is premature, unnecessary, punitive, and violates due process of law.

NSSGA members have worked diligently to promote safety: from partnering with government agencies to collaboratively developing safety regulations and producing our own in-house safety training programs and videos. NSSGA developed a safety pledge signed by 90 percent of our members with the goal of reducing workplace injuries by 50 percent. NSSGA supplies 30 "Rip & Share" safety handouts annually to industry publications to increase awareness of specific safety issues and presents safety awards to the aggregates operations with the best safety records. One fatality or accident is too much, but both the fatality rate and incident rate for the aggregates industry are lower than other mining sectors and our aim is to reduce them to zero.

Of the 250,000+ miners in America, half (120,000 according to MSHA) are employed at one of the 11,000 stone, sand and gravel operations nationwide. Since stone, sand and gravel do not burn, produce explosive gasses, and can generally be mined from the surface, the safety issues are different from those at other types of mines. The simple fact that *over the past dozen years there has not been a single multi-fatality incident* is further evidence of the different safety issues facing the industry. Considering aggregates move twice as much tonnage (about 3 billion) as the next largest sector, the safety record of our members is noteworthy.

Provisions of S-MINER are unnecessary since they duplicate existing provisions of law. Other S-MINER provisions are financially punitive in that companies are determined guilty and financially penalized before they have the opportunity to prove their innocence. In addition, S-MINER takes a one-size fits all approach that fails to recognize that mines are unique and will result in many mines installing inappropriate or unnecessary technology.

The Miner Health Enhancement Act provisions incorporated into H.R. 2768 circumvent notice and comment rulemaking, thereby preventing the development of scientifically sound as well as technologically and economically feasible safety and health standards and policies. Furthermore, these troubling provisions of the bill subvert due process of law, specifically the Administrative Procedures Act, by not allowing input from the affected parties, a basic tenant of the democratic process.

Safety and health standards inherently are risk management functions that properly should remain delegated to MSHA. The S-MINER bill requires the adoption by MSHA as Permissible Exposure Limits (PELs) NIOSH Recommended Exposure Limits (RELs) for chemicals used in mining. The legislation would alter the well-established and effective roles and responsibilities of the Mine Safety and Health Administration (MSHA) and the National Institute for Occupational Safety and Health (NIOSH), thrusting NIOSH into a rule making and policy setting role that was never intended.

The aggregates industry is continually striving to improve its safety record. NSSGA assists in this effort by providing tools our members can use in their operations to increase the safety of their workers. Additional regulations on the already highly regulated aggregates industry that has shown continued safety improvements at this time would create confusion and threaten further progress. Denying the industry the opportunity to provide comment on proposed regulations not only denies due process but sets a precedent that could undermine the Federal rulemaking process throughout government.

NSSGA urges opposition to this bill. If you have any questions or would like to know more about our safety programs, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Jennifer Joy Wilson". The signature is written in a cursive, flowing style with a long, sweeping underline.

Jennifer Joy Wilson  
President & CEO