



A publication of the
Oregon Independent Aggregate Association
PO Box 571
Stayton, Oregon 97383
www.oraaggregate.com

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Oregon Independent Aggregate Association Newsletter

November 2016

Chairman's Message

Mine Safety Law Seminar December 12-14, 2016

Now that the campaigning and political pontificating are over (well, at least the campaigning, for now...) we can mend our strained relationships and expand our minds with more useful information, such as the Mine Safety Law Seminar provided by OIAA. Şafepro and Adele Abrams will cooperatively provide valuable information to miners about safety law implementation, current trends in enforcement, and your rights as an operator in the face of citations and penalties. You would be well served to educate yourself at this informative seminar to prepare for your next inspection.

We held this seminar in 2014 and received very positive reviews from attendees. The 3-day Mine Safety Law Seminar is scheduled for December 12 to 14, 2016. There are still plenty of seats available, but we need to hear from you soon to make appropriate preparations.

MSHA Enforcement to Expand to Pacific Territories

An article submitted by Jim Sharpe this month provides a detailed look at MSHA's activities leading up to enforcement of mining regulations in the Pacific Islands. Not surprisingly, there is an accompanying \$350K budget request to go along with this new enforcement effort.

Everyone have a safe and Happy Thanksgiving!

Erick Staley
OIAA Chairman

November 10, 2016

To: Metal and Nonmetal Alliance Partners and Stakeholders
From: Kevin G. Stricklin, Acting Administrator for
Metal and Nonmetal Mine Safety and Health
Mine Safety and Health Administration

Re: Preventing Structural Failures Alert

Since 2010, an average of one metal and nonmetal miner has died each year in accidents attributable to structural failure. Serious injuries, close calls, and property damage accidents, which easily could have resulted in fatalities, occur far too regularly for the mining industry not to pay closer attention to structural integrity. Buckled beams and columns triggering major bin or roof collapses are the most commonly thought of structural failures, but, serious structural accidents are just as often caused by failure of undersized, worn, cracked, corroded or otherwise damaged fasteners, welds and small structural members.

The Mine Safety and Health Administration (MSHA) and the Industrial Minerals Association (IMA), North America worked together, through their alliance, to produce a Safety Alert publicizing best practices for preventing structural failures. The Alert includes commonsense practices, such as involving professional engineers in the design phase; using quality materials; and strictly adhering to plans and specifications during construction. Throughout the life of the structure, practice good housekeeping so damage or defects can be spotted early; make regular and periodic inspections; train miners and supervisors to recognize signs of structural deficiency and deterioration; and promptly report and repair damage. The bottom line is: find and fix structural defects when they are small and manageable.

Here is a link to the [Preventing Structural Failure Alert](#) recently published on MSHA's [Metal and Nonmetal Resource page](#) under Monthly Fatality Prevention Initiatives, November 2016. Alerts published in previous months also may be accessed on this webpage. The Spanish language version is available here: [Preventing Structural Failure Alert \(Spanish\)](#). The Alerts is formatted for 8-1/2" x 14" (legal size paper); it displays particularly well when printed on 11"x 17" paper.

MSHA plans to discuss structural safety during inspections and "Walk-and-Talks" at mine sites this month. If it has been a long time since a thorough structural inspection has been performed at your mine, if structural integrity is in question at your operation, or if you have identified needed repairs, this is a good time to follow up and get the work done. There is still time before winter weather further stresses structures with wind or snow loads, or cold weather makes it difficult to work outside.



REGISTRATION TIME IS RUNNING OUT

Safepro Law Institute coming to the Pacific Northwest

A special three day Safepro Law Seminar will be held **December 12, 13 & 14, 2016**. The seminar will be held at the Linn County Fairgrounds in Albany Oregon, and will be presented by Dean Beam of Safepro with guest speaker Adele Abrams.

If you are still undecided about attending this training event. Here is a list of some of the items that will be covered:

- Day 1 Miner Responsibilities, Miner Act Section 2, Inspector Responsibilities, Operator Entitlements, Citations 104A and 104D, S & S case law and penalties.
- Day 2 Adele Abrams will discuss the new workplace examination rule and its potential impact. See article below from Adele.
- Day 3 104D Handbook, How to talk to inspectors, Pre-Shift inspections, Guarding, Housekeeping and Part 46 task training.

This training is either free or very low cost depending on the type of membership you have. See a copy of the attached registration form for the fee schedule.

Proposed Workplace Examination Rule and Its Potential Impact

The proposed rule was released on June 8, 2016 and can be found on the Federal Register. The most significant changes require operators to conduct an examination before miners begin work in an area, provide notification of miners of any conditions identified that may adversely affect their safety or health, and requiring operators to document the adverse condition found and corrective action taken. The new standard increases the potential issuances of citations and opens the door for heightened enforcement. Operators may now see citations for failing to make records available, failing to correct a hazard properly, failing to document the corrective action, failing to document the adverse condition, failing to sign and date the record (before the end of the shift), failure to notify miners, failure to conduct the examination before work begins in the area. With these changes it will allow MSHA to bring heightened enforcement and larger fines but the threat of criminal accusations.

Adele Adams



SPECIAL EVENT REGISTRATION FORM
Safepro Mine Safety and Health Law Seminar

Presented by Dean Beam and Adele Abrams
December 12, 13 & 14th 2016
Linn County Expo Center- Albany Oregon
7:30 to 4:30

Company Name: _____

Business Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ e-mail address for confirmation: _____

Names of Attendees: _____, _____

_____, _____, _____

(Attach a separate sheet if needed – It is important that you include each attendee's name)

Seminar Fees:

| | |
|-------------------|---|
| Premier Members | Free of Charge |
| Corporate Members | \$ 200.00 per Person (20% discount is already included in this price) |
| Associate Members | \$ 250.00 per Person |
| Non-Members | \$ 400.00 per Person |

Registration includes Workbook & Training Materials, Coffee and lunch all three days.

Payment in the form of a check must be submitted along with this completed application to:

OIAA
Attention- Kellie Ramar
PO Box 489
Cornelius, Oregon 97113

Note this is not OIAA's regular PO Box. This address is for this registration only. ***Please make check payable to OIAA.***

Registration will be on a first come basis. Space is limited so please register early. A confirmation e-mail along with class information will be sent by December 1st. Registration will close on December 1, 2016.

If you are not a current OIAA member and would like to join you can deduct the price of this training registration (maximum of 2 attendees) from your membership fee. *Example- Corporate members can deduct \$ 400.00 from a new membership fee if two people will be attending, making your first year membership fee \$ 100.00, if only one person will be attending your membership fee will be \$ 300.00.* If you join as a Premier Member the full amount of dues is required but your class will be free, no limit on attendees. This offer is not available to Associate Members. A completed membership application and registration form must be submitted along with payment. A membership application is available on our website at www.oraggregate.com. Please contact Kellie Ramar – OIAA secretary at memberreply@oraggregate.com with additional questions or by phone (503) 849-5583.

Safety Corner



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LOCKOUT TAGOUT
YOUR LIFE DEPENDS ON IT

According to OSHA, following proper lockout/tagout procedures prevents an estimated **120 fatalities and 50,000 injuries** each year. Learn how to lockout/tagout and avoid unnecessary risk.

- 1 Notify all employees about the required lockout
- 2 Shut down equipment using normal stopping procedure
- 3 Locate and isolate equipment from all energy sources
- 4 Release any stored energy
- 5 Lockout all switches and controls with assigned locks and tags
- 6 After ensuring that no personnel are exposed, operate the normal operating controls to make sure equipment won't operate
RETURN EQUIPMENT TO 'OFF' STATE AFTER TEST
- 7 Perform servicing
- 8 Remove the lockout device
- 9 Once work is completed, notify all employees

DANGER DO NOT OPERATE
EQUIPMENT LOCKED OUT BY
NAME: John Smith
DATE: 2/26/16

ESFI.org | www.facebook.com/ESFI.org | www.twitter.com/ESFIdotorg | www.youtube.com/ESFIdotorg

MAY IS NATIONAL ELECTRICAL SAFETY MONTH

According to OSHA, following proper Lockout / Tagout procedures prevents an estimated 120 fatalities and 50,000 injuries each year. Learn how to Lockout / Tagout and avoid unnecessary risk.

1. Notify all employees about the required lockout
2. Shut down equipment using normal stopping procedure
3. Locate and isolate equipment from all energy sources
4. [Release any stored energy](#)
5. Lockout all switches and controls with assigned locks and tags
6. After ensuring that no personnel are exposed, operate the normal operating controls to make sure the equipment won't operate. **RETURN EQUIPMENT TO "OFF" STATE AFTER TEST**
7. Perform servicing
8. Remove the lockout device
9. Once work is completed, notify all employees

Better Late Than Never: MSHA to Enforce Mining Law in Pacific Islands after 50 Years of Inaction

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After nearly a half-century of inaction, the reach of U.S. mining law will finally be extended far westward beyond Hawaii beginning on April 1, 2017, when the Mine Safety and Health Administration says it will begin enforcing the Mine Act in several far-flung U.S. localities in the Pacific Ocean.

“It just dropped out of the sky on us,” MSHA Assistant Secretary Joe Main said when asked why the agency was just now getting around to enforcing the law in a number of Pacific islands that have been under its jurisdiction, yet have been left untouched, since at least 1969. Those lands are the Commonwealth of the Northern Mariana Islands (CNMI), Guam and American Samoa.

In a telephone interview in September, Main said he could not explain why previous MSHA administrators had not enforced mine safety in these territories. But he indicated that the localities came to the agency’s attention in July 2014 due to a complaint concerning a potential highwall hazard at a mine in American Samoa. The complaint was never confirmed, but it did put the country on MSHA’s radar screen. A quick check of Section 3(c) of the Mine Act revealed Guam and CNMI, formerly a part of the Trust Territory of the Pacific Islands, should be included as well.

For their part, the islanders were blindsided by the development. “It was a bit of a surprise to the U.S. territories when we popped into their life, as you can imagine,” Main recalled.

The initial physical interaction between the feds and island operators, all metal/non-metal mines, came in May 2015. According to a CNMI news source, that’s when MSHA Western District Manager Wyatt Andrews and his assistant, Paul Belanger, met with government officials and traveled around the archipelago to identify mines. The survey also encompassed Guam and American Samoa.

CNMI consists of a crescent-shaped chain of 15 islands in the northwestern Pacific. CNMI is bordered on the east by the Pacific Ocean and on the west by the Philippine Sea. The capital is on Saipan, the largest of the islands. Guam is the southernmost island in the CNMI chain but is independently governed. American Samoa lies southeast of CNMI in the South Pacific. Distances among the Pacific islands are immense. American Samoa is 3,600 miles from Guam and CNMI. Honolulu to the American Samoa capital, Pago Pago, is 2,600 miles; Honolulu to Saipan, 3,700 miles. In contrast, New York to Los Angeles by air is 2,450 miles.

While little knowledge was needed to identify larger mines, island government officials were surprised to learn that MSHA classified some its smaller operations as mines, too. “They [the governments] didn’t even know these were mines,” said Main, referring to such operations as those supplying lava for building construction and producing sea shells for aggregate.

During his May 2015 visit, Andrews told authorities MSHA would not begin to enforce the law until 2020, according to the news source, the *Saipan Tribune*. However, Andrews was back in March 2016 with a more urgent message: enforcement would begin on October 1, 2016. That date has since been set back to April 1, 2017, at least in part due to local political pressure for more time to come into compliance.

Training and Compliance Assistance Visits

Seasoned U.S. operators might wonder why MSHA, after finally gearing up to oversee these mines, is taking so long to lower its enforcement boom. Main’s answer for the “slow walk,” as he described it, is because of “the primitive environment that exists in that region that was never regulated,” and thus the necessity for an

extensive amount of hand-holding in the form of educational outreach and training assistance. “We’ve been doing that for quite some time,” Main said.

The agency put on six days of training over a two-week period last April for operations in Saipan and Guam under the auspices of MSHA’s Educational Field and Small Mine Services Group. The first three days focused on new miner training; the second three, on train-the-trainer classes, according to the Saipan newspaper. Operators in American Samoa apparently were trained a month earlier. Main said his agency also hosted a visit by U.S. territory governmental officials in September at the Mine Academy in Beaver, West Virginia, where they were briefed on training programs. They were also taken on a mine tour to “give them an idea of what regulated mining looks like,” the agency’s chief said.

Obviously unhappy over federal intervention, companies participating in the training grouched about its effectiveness. As quoted anonymously by the *Tribune*, individuals complained that the training was “ ‘sadly condensed, bereft of useful content, and far inferior’ ” to other federal training initiatives. “ ‘It was clearly an ‘information dump’ on all quarry and mine operators in the CNMI, done more to regulate rather than help us understand and implement these complex and costly regulatory burdens,’ ” the newspaper reported participants as saying.

Besides classroom instruction, the indoctrination has been taken directly to the mine sites, where MSHA inspectors have been conducting Compliance Assistance Visits (CAVs). During a CAV, an inspector writes citations for alleged violations just as he or she would during a normal inspection, but no fines are assessed. There is a distinct training component to the exercise, as many inspectors offer explanations on the spot for why he or she believes a condition is hazardous and thus a potential violation.

According to MSHA’s Data Retrieval System (DRS) and information we received through a Freedom of Information Act (FOIA) request, the agency has conducted 35 CAVs in the territories through November 9. Five CNMI mines received CAVs last May. From March through September, 10 of 14 mines in Guam were CAVed, while during the same time period seven of eight mines in American Samoa were visited. We should note that the DRS listings appear to be a work in progress, as only seven mines in Samoa were listed there, yet an eighth that was associated with two different identification numbers showed up among Samoan mines given us through our FOIA submittal. For CNMI, just one mine appeared in the DRS versus five through the FOIA initiative; for Guam, 11 of 14 mines appeared in MSHA’s computerized database.

While the mock enforcement exercises surely will aid operators by revealing shortcomings in their safety programs, training and processes, they could also open up the agency to charges of unfairness. Three mines received their first-ever CAV visits in September, just over six months before the hammer drops on them next April. In contrast, nine mines were first visited in March, giving them a six-month head start over their presumptive competition.

Perhaps more troubling, inspectors visited some mines multiple times. Four mines in Guam received two CAVs. The mines are Hawaiian Rock Products’ Fidian, JMC Equipment Rental’s JMC, and eponymous operations run by Primet Rock and Smithbridge Guam. CTC Construction’s CTC#1 Mine in American Samoa was also visited twice, while three other operations in Samoa got an astounding three CAVs: McConnell Dowell’s Quarry, Paramount Builder’s Paramount Crusher and Samoa Maritime’s Faga’Alu Mine. In many cases, MSHA justified the multiple visits by noting that they were done under different owners, but one has to wonder how much could really have changed on the ground even under new ownership.

Main’s observation about the “primitive” mining environment certainly holds up from the many deficiencies noted on the CAV paperwork. From our FOIA request came information about 14 CAVs (we asked for all such encounters from January 1, 2015 through September 9, 2016, but received 10 fewer CAVs than were actually

done during this period). Numerous alleged deficiencies – regarding guarding, mobile equipment, electrical hazards, failure to perform mandatory examinations and the like – were reminiscent of deplorable conditions at some U.S. metal/nonmetal mines in the second half of the 20th century.

For instance, at one CNMI mine, 68 CAV notices were written; at another, 60. At a third CMNI mine where 54 CAV notices were prepared, the inspector wrote, “Moving machine parts are not guarded. Electrical problems throughout. Mobile equipment has numerous defects, including brake issues. Lack of ROPS identification tags and lack of seatbelts. 10 miners have not received their complete part 46 training but all went through OSHA required training. PPE is provided and observed being worn. Fall protection was located lying on the ground at shop area. Attempt safety talk with the miners. Unknown if they know English very well.”

At this same location, the inspector observed a miner killing the engine of a front-end loader by cutting off its fuel after reaching into the engine compartment from the rear of the vehicle because the fuel shutoff switch in the cab was nonfunctional. To one photo of a machine he added this tagline: “CAT 950 front end loader believe homemade ROPS.”

At a Samoan operation, 54 CAV notices included, but were not limited to, the following:

- broken window and broken, deteriorated chairs, ladders and metal structures
- missing electrical cover plates
- lack of fall protection when working near the edge of the highwall
- no fire extinguisher during welding
- opening in the floor of the crusher work platform
- no hazard communication program, training plan, competent person or workplace examination system
- lack of continuity and resistance testing of the electrical grounding system

At many sites, the number of CAV notices would have been higher, but the inspector grouped them into categories; i.e., guarding, electrical, mobile equipment, etc.

While much of what inspectors found is within the control of operators, some problems clearly are not. A CNMI mine operator appealed for more time and help, claiming he “was starting to rebuild after the hurricane.” As paraphrased by the inspector, the operator complained he had not yet received certification so he could train his employees, and added, “Our office up town is still missing a roof from the hurricane. We can’t get workers due to they only receive a one year visa then they are deported and we have to start all over again. The local workers will not work due to the US government give them welfare that [is] usually more money and benefits than they can get working on the Island.” Another operator complained that months elapse before ordered parts arrive from the mainland. Non-English-speaking contract laborers from Asian nations present communications problems.

In what seems like an understatement, Main observed, “[t]here are some tough issues that have to be dealt with as far as the mining conditions that they have to come to terms with.”

Biggest Obstacles for MSHA

Main said MSHA’s biggest obstacle has been “getting everybody attuned that this Mine Act has to be applied.” His statement in part reflects an allegation by CNMI officials, since refuted, that MSHA lacked jurisdiction. Another hurdle is MSHA’s having had to wrestle with understanding “just what we’re dealing with there, and an understanding by them of what they need to do to get ready for Mine Act enforcement.” He said MSHA is still trying to identify mines, especially “mom and pop operations.” The agency is also anticipating an

extension of its reach to Micronesia, Palau, Marshall Islands and Minor Outlying Islands, since these areas appear in MSHA's DRS, although no mines are listed.

Because mine operators appear to have lobbied their political representatives to keep MSHA at bay, opposition from government officials would seem to be another potential roadblock. But Main essentially said no. "I am really thankful given the support we've had from the congressional representatives, the support we're having from the local governmental agencies and the growing recognition by the mining industry that, yea, this is coming." Indeed, the *Tribune* quoted CNMI's Labor Secretary Edith DeLeon Guerrero as stating that when it comes to worker safety, " 'any regulating department or agency is responsible to make sure they enforce their laws, whether it's at the federal level or the state level.' " Main said MSHA was trying to institute the same cooperative federal-state mining model in the islands as now exists in the U.S.

Although less an obstacle than a headache, perhaps even literally, a huge time change exists between the mainland and CNMI because the latter is located across the international date line. Saipan is 18 hours ahead of San Francisco and 21 hours ahead of Pago Pago, which is three hours behind San Francisco.

It remains to be seen how MSHA will administer the law in these Pacific territories. Options apparently are to set up offices on-site or operate out of the Western District's main office in California. Hawaii would also seem to be a possibility, but, interestingly, although the Western District has field stations and field offices in two western states, it has no administrative presence whatsoever in the Aloha State, despite the 38 active and intermittent mines present there, according to MSHA's website.

As for funding, MSHA is seeking an extra \$350,000 to support Mine Act enforcement in the western and southern Pacific regions in fiscal year 2017. The estimate is surely based in significant part on travel expenses incurred by staffers over the past year. From our FOIA request, we learned that the agency paid \$196,356 in travel expenses for 14 MSHA personnel to make 35 trips to the islands during a 13-month period that ended May 31. Nine personnel were from the Metal/Non-Metal Inspectorate, four from Educational Policy and Development (EPD) and one from Technical Support.

The per-person cost for dedicated trips to Saipan in CNMI and Samoa came to an average of about \$500 a day. Those exclusively to Guam came to \$527, an average influenced by a seven-day visit by the same metal/non-metal traveler, which cost the government \$782 a day. This person also billed the government \$710 a day for five days in Samoa. Although travelers were not identified by name in the FOIA, two of the four Pacific isle visits by this individual matched in-country dates reported by the local media for Western District Manager Andrews.

If past MSHA enforcement in the U.S. is prologue to what is to come, island metal/non-metal operators are in for a very bumpy ride indeed in the near future.

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Exclusive for OIAA Members!

Adele Abrams has offered to have a monthly drawing for one free hour of legal consultation services. The services will include a review of MSHA citations or general discussion via phone on any MSHA-related issues by one of her 10 MSHA-focused attorneys. We will randomly draw a member's name each month. The name of the winning company will be posted in that month's newsletter. **It will be the responsibility of the member to contact Adele's office for the hour of free legal consultation.** To do this you will call 301-595-3520 ask for Adele Abrams or you can contact her via e-mail at safetylawyer@aol.com to set up your consultation. Be sure to put "OIAA Consultation" in the subject line. You can find more information about Adele on her website www.safety-law.com. Our association is very fortunate to have this opportunity offered to us. This offer expires one year after the month it is posted in the newsletter.

CongratulationsFreres Lumber Co, Inc.

Freres Lumber Co, Inc., is the winner of the Adele Abrams free drawing for November 2016. Remember it is your responsibility to contact Adele.

2016 Board Meeting Schedule

**December 7th Annual Director Work Session (Closed Meeting)
KPD Insurance – Springfield, Oregon 10:00 AM**

All Board Members are requested to attend

At December Work Session the current Board of Directors will be discussing plans for the 2017 year. If you have a type of training or something else you would like the association to provide, please e-mail your comments to memberreply@oraggregate.com. Any and all suggestions are welcome.