



3700 National Drive, Suite 210
Raleigh, NC 27612

June 17, 2013

Congress of the United States
Committee on Oversight and Government Reform
Subcommittee on Government Operations
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Sirs:

I am offering this written testimony along with corroborating evidence on behalf of the North Carolina Aggregates Association (NCAA) in regard to the role the Mine Safety and Health Administration (MSHA) plays in regulating metal/non-metal mining in North Carolina.

My name is Sam Bratton, and I am currently the President of the NCAA. The NCAA represents aggregate producers in the state of North Carolina, which has over 135 crushed stone and 500 sand and gravel operations. Each year, North Carolina produces approximately 84 million tons of crushed stone, sand and gravel, which equates to 10 tons annual per capita consumption. Over 50% of those tons are used for publicly funded projects. The mining industry in North Carolina provides direct employment to approximately 10,230 people with a total economic impact of \$3.5 billion per year. The industry provides the essential ingredient in all highway construction projects. One mile of a typical four-lane interstate highway with aggregate base requires about 38,000 tons.

I am also president of Wake Stone Corporation. Our company has four rock quarries in North Carolina and one in South Carolina. We have 122 employees with an average of 15 years with the company. My father, John Bratton (deceased), started the business in 1970. Both of my brothers, John and Ted, preceded me as president of the company. I have more than 26 years of experience in the mining industry and have held numerous positions in sales and production.

The NCAA is excited to have this opportunity to testify before the United States Congress on behalf of the aggregate mining industry in North Carolina. We have worked hard over the past several years corresponding and meeting with MSHA locally and nationally to influence change within MSHA. We have provided in this testimony several copies of correspondence with MSHA to prove our effort. We want to make sure Congress and MSHA know our members are not against safety or safety regulations. NCAA members believe safety is their number one priority. There is no doubt in my mind.

There certainly was a time in the aggregate mining industry when safety was lacking. But in today's business environment, producers are much more sophisticated and focused on safety. Proof of this commitment is the 2011 metal/non metal injury rate of 2.6 per 100 workers, which was lower than Coal, Construction, Manufacturing, Education/Health, Forestry/Logging, State and Local Government and MSHA who has an injury rate of 5.7 per 100 workers. In 2011, MSHA spent an average of \$1,392.10 on enforcement per mineworker. The Occupational Safety and Health Administration (OSHA) in the same period spent \$4.63 per worker, and OSHA industries have higher injury rates.

Our industry needs MSHA and wants to be regulated for safety. The regulation of safety makes us all better operators and employees in the mining industry. We do not propose the Committee do away with MSHA, but we strongly believe reform is needed within its ranks. MSHA regulates our industry with impunity and acrimony. The time has come for a balance between MSHA and the aggregate mining industry.

MSHA needs more accountability, transparency and better due process. There is significant room for improvement in the way they manage their agency. MSHA's inconsistent enforcement with no communication to the mining industry of vacated citations provides an environment ripe for the abuse of power. The process of contesting a citation can take years and thousands of dollars.

There are examples within my testimony of citations that should never have been written. These examples demonstrate MSHA's willful overreach with enforcement through excessive citations and fines. In 2006, MSHA assessed \$5.5 million in fines for all aggregate mines. In 2010, the total assessed by MSHA was \$20.4 million. The incident rate did decline in the same period from 3.41 to 2.33 per 200,000 hours worked, but it was trending down well before the increase in citations and fines. If you look at the graph in the statistics section, you will see no clear correlation between substantial increases in enforcement and the decline in the incident rate. I want to be clear our industry's goal is "zero injuries and incidents." We do not believe MSHA's continued excessive enforcement is the answer to reaching this goal.

Training is the number one safety tool. Joe Main, Assistant Secretary of Labor for Mine Safety and Health, has said himself that training is a top priority for MSHA. The mining industry needs training support. Training is the foundation of a strong safety program. But MSHA recently requested in their 2013 budget a \$5.0 million reduction in funding for the State Grants program be shifted to enforcement. The reduction of \$5.0 million to be shared among all 50 states does not appear significant, but it will devastate the North Carolina Department of Labor's Mine and Quarry Bureau miner safety training program. MSHA is statutorily required to fund the State Grants program up to \$10.0 million, but they have never funded the program to this level. A \$5.0 million reduction is over a 50% cut.

Our industry continually sees new interpretations of existing standards by MSHA, which in my mind is evidence inspectors cannot find traditional ways to cite operators, so they create new ways to adapt the regulations to increase the opportunity for citations. The most consistent example of overreach is when inspectors insist on inspecting equipment

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MSHA inspectors have disregarded their own regulations, which clearly state that an inspector shall not inspect a piece of equipment for defects if it is tagged out of service for repair. We continually see this happen and we continue to be issued citations. Why does MSHA not stop this practice that is in clear violation of their own standards? We believe there is an unwritten mandate within MSHA to aggressively write citations, and there is no consistent communication to inspectors regarding the vacation of their citations. With no system for industry to track contested citations, we cannot provide evidence to an inspector that his citation is unreasonable. It appears that MSHA wants to keep the industry from being informed so they can continue to write bad citations in an effort to see if they can establish precedent.

Another example is the multiple attempts by inspectors to cite mine operators for not having comprehensive new miner training for vendors, scientific workers, loggers, dump truck drivers or other visitors to mine property when these groups' activities on mine property have limited interaction with mine operations. The regulations clearly state site-specific training is sufficient for these workers. For instance, Wake Stone can no longer find a local logger to cut timber on quarry property. They do not want to deal with MSHA. We know of only one logger based in North Carolina that is willing to cut timber on mine property. Over zealous enforcement from MSHA has discouraged them from working on mine properties.

Our industry has been able to successfully challenge some of MSHA's overzealous enforcement, but at a cost of thousands of dollars and years of effort. Citations that are obviously not valid are upheld until overturned by an Administrative Law Judge and then MSHA maintains that ALJ rulings are not binding for MSHA when not ruling in their favor but binding when ruling in MSHA's favor. This very statement was made by the Southeast District Manager. MSHA cannot have it both ways.

A clear example of the lack of objective and fair due process is a notice that was released this week by the Southeast District Manager stating that all contested citations are to now be conferenced with the Field Office Supervisor (FOS). The FOS supervises and instructs his inspectors on what citations to write. There is very little chance an FOS will vacate a citation written by one of his own inspectors. It appears to me that this is the proverbial "fox guarding the hen house." While these type directives are issued, our industry is unable to provide input into the changes. We are simply told by MSHA what is right and wrong with no representation or input.

An example of overreach was when Wake Stone was cited a Significant and Substantial citation with an Imminent Danger Order for a customer truck driver climbing the side of the bed of his truck using three points of contact. After the citation was written, we showed the MSHA inspector, FOS, and District Manager a copy of an MSHA training video entitled "Customer and Delivery Truck Drivers Hazard Training," which demonstrated this practice as proper procedure. At that point, the MSHA FOS and

District Manager decided to disregard the video and not vacate the citation. The citation was eventually reduced but never vacated and it took over two years to accomplish this.

The NCAA has worked hard to establish a cooperative relationship with MSHA. The enclosed documentation of correspondence with specific citations is evidence of our efforts and frustration. We are so pleased to finally have the ability to speak before a Congressional Committee in order to bring about change to MSHA. The aggregates industry desires from MSHA the following goals:

1. Consistency
2. Transparency
3. Accountability
4. Fair Due Process of Contested Citations
5. Cooperation between the agency and industry
6. Differentiation of surface aggregate production from underground mining and all coal mining.
7. Performance based enforcement.
8. More Training Dollars

We believe these goals can be achieved by the following suggested changes:

1. Establish a three-member committee to review contested citations. The members should be a mine operator, MSHA representative, and an MSHA trained attorney and their rulings must be made public so they are held accountable.
2. Communicate all vacated citations to MSHA inspectors and mine operators. This should be done through a web-based system. We understand there can always be different conditions upon which the citation is written, but this information will lead to more accountability and consistency within the system.
3. Conduct a Process Audit of MSHA procedures. MSHA has not been held accountable because nobody wants to be seen as anti-safety. Our industry is very focused on safety. This is not about safety. It is about a government agency operating without the necessary accountability and transparency.
4. Focus on Training and a much more collaborative effort to assist mine operators with their safety programs.
5. MSHA must change how they view operators. They have consistently had an adversarial relationship with mine operators. MSHA sees themselves as the police and the mine operators are the criminals. We are viewed as guilty by MSHA and they believe they are charged with proving it.
6. Establish a performance based inspection process. Do not continue to treat all operators the same. If we are doing a good job, lower the inspection frequency and focus on those operators that need more enforcement. This performance based inspection process will lower costs and focus attention on those operators that need it.
7. More differentiation between coal mining and surface aggregate operations. Do not use a coal disaster as justification to increase enforcement on an unrelated portion of the mining industry. We are not coal and we do not mine underground.

Most of these of these can be implemented without additional costs, but if there were additional costs the industry would be willing to share in those costs

MSHA does not trust the private sector and the private sector does not trust MSHA. This is a very difficult relationship. As long as MSHA dictates the regulations without industry input, continues to write inconsistent and bad citations, and prevents operators from due process, then our relationship will continue to worsen. We respectfully request that Congress stand up to MSHA and make this agency regulate appropriately for the benefit of miner safety and the industry. We need MSHA and we need regulation, but we do not need it in the form it is administered today.

Sincerely,
NORTH CAROLINA AGGREGATES ASSOCIATION

A handwritten signature in blue ink, appearing to read "Samuel T. Bratton", is written over a light gray rectangular background.

Samuel T. Bratton
President