

2632

RECEIVED

Tate, Michele

From: SPRINGER Bruce [BRUCE.SPRINGER@essroc.com]

2007 SEP 21 PM 1:50

Sent: Wednesday, September 19, 2007 3:27 PM

To: RegComments@state.pa.us

INDEPENDENT REGULATORY
REVIEW COMMISSION

Subject: 25 PA Code Chs 209 & 209a Comments on Proposed Rulemaking

Attached for review by the Environmental Quality Board are:

My Comments on the Proposed Rulemaking, and

A one page Summary of my comments for distribution in the agenda packet to each member of the Board.

Bruce B. Springer

Director of Safety
Essroc Cement Corp.
3251 Bath Pike
Nazareth, PA 18064
1.610.837.3327

Essroc Cement Corp.

CONFIDENTIALITY NOTE: This message is intended exclusively for the party or parties to whom it is addressed. This communication may contain information that is proprietary, privileged or confidential or otherwise legally exempt from disclosure. If you are not one of the named addressees, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately by e-mail and delete/destroy all copies of the message. Any views or opinions presented in this email are solely those of the author and might not represent those of Essroc Cement Corp.

WARNING: Although Essroc Cement Corp. has taken reasonable precautions to ensure no viruses are present in this e-mail, the company cannot accept responsibility for any loss or damage arising from the use of this email or attachments.

11/11/11

Summary of Comments on Proposed Rulemaking – 25 PA. Code Chs. 209 and 209a

Bruce B. Springer, Director of Safety
Essroc Cement Corp., 3251 Bath Pike, Nazareth, PA 18064

2007 SEP 21 PM 1:50

INDEPENDENT REGULATORY
REVIEW COMMISSION

§ 209a.42 Accident reporting.

Objections: The accident notification requirements stipulated in §209a.42(b) of the Proposed Rulemaking are made unnecessarily burdensome for both mine operators and the PADEP by the definition of "an accident" that is included in §209a.42(a)(2). This definition will require immediate notification of any injury that is reportable under 30 CFR § 50.20 regardless of whether or not the associated incident is of a serious nature. This definition of "accident" does not serve the purposes of the 1-hour notification requirement.

Suggestions: In the interest of providing for both prompt notification of serious incidents (accidents) and the reporting of all occupational injuries for analysis and record keeping, the following revisions are suggested:

- Restore the language of §209a.42(a)(2) to read:
 - (2) An injury to an individual at a mine which has a reasonable potential to cause death.
- Modify §209a.42(c) to read:
 - (1) In the event of an accident or incident that results in an occupational injury occurring at a mine, an operator shall send to the Department a copy of the completed Mine Accident, Injury and Illness Report Form 7000-1 required by 30 CFR 50.20 (relating to preparation and submission of MSHA Report Form 7000-1--Mine Accident, Injury, and Illness Report).
 - (2) An occupational injury is an injury to a miner which occurs at a mine for which medical treatment is administered, or which results in loss of consciousness, inability to perform all job duties on any day after an injury, temporary assignment to other duties or transfer to another job.
 - (3) For purposes of defining occupational injuries the following provisions of 30 CFR Part 50 are incorporated by reference:
 - i. 30 CFR § 50.20-2 Criteria – "Transfer to another job."
 - ii. 30 CFR § 50.20-3 Criteria – Differences between medical treatment and first aid.

§ 209a44 Access to records.

Objections: The Access to Records stipulated in § 209a44 is too general. As defined, such access has the potential to lead to inconsistencies between the Department's standards and the MSHA standards and is likely to result in confusion in the field regarding the application of those standards. It is also more intrusive because it leaves open the possibility for interpretation that could expand the scope of access to documents and records beyond those required by adopted 30 CFR standards.

Suggestions: In order to align the Department's access to records with the preceding elements of the Proposed Rulemaking, the following language is suggested for § 209a44.

The Department shall have access to review and copy all maps, plans, notifications, reports, training records, program descriptions, documents or other records that are required by the sections of 30 CFR Parts 50, 56 and 77 that are incorporated by reference in this rule (relating to notification, investigation, reports and records of accidents, injuries, illnesses, employment, and coal production in mines; safety and health standards--surface metal and nonmetal mines; and mandatory safety standards, surface coal mines and surface work areas of underground coal mines).

9171



September 19, 2007

Environmental Quality Board
Rachel Carson State Office Building, 16th Floor
400 Market Street
Harrisburg, PA 17101-2301

Via Email transmission to: RegComments@state.pa.us

RE: PROPOSED RULEMAKING - 25 PA CODE CHS. 209 AND 209a

Dear Sirs:

I applaud the efforts of the Pennsylvania Department of Environmental Protection to craft a set of surface mining safety regulations that will help to enhance the safety of miners in our state. The regulations that were adopted by the agency will serve to enable more effective involvement of DEP staff in the safety process at our operations.

In my review of the Proposed Rulemaking published on September 1, 2007 I identified two sections of the proposed rule that concern me. My objections, comments supporting those objections, and suggestions related to those two sections are detailed below.

A one page summary of these comments was transmitted with this correspondence.

§ 209a.42. Accident reporting.

Objections:

The accident notification requirements stipulated in §209a.42(b) of the Proposed Rulemaking are made unnecessarily burdensome for both mine operators and the PADEP by the definition of "an accident" that is included in §209a.42(a)(2).

This definition will require immediate notification of any injury that is reportable under 30 CFR § 50.20 regardless of whether or not the associated incident is of a serious nature.

The purpose of the 1-hour notification requirement is to enable the Department provide prompt support to the industry and to initiate timely investigations of serious mine incidents. This expanded definition of "accidents" that require such notification does not serve this purpose.

Comments:

The language of §209a.42(a)(2) uses the non-fatal elements of the definition of an "occupational injury" from 30CFR§50.2(e) to describe one of the types of incidents that are to be considered as "accidents" that require 1-hour notification to the PADEP. It reads:

"(2) An injury to a miner which occurs at a mine for which medical treatment is administered, or which results in loss of consciousness, inability to perform all job duties on any day after an injury, temporary assignment to other duties or transfer to another job."

Operators would be required to notify the PADEP within 1 hour of injuries such as a blackened thumbnail that is drilled to release accumulated blood, a laceration to a workers leg that requires 4 sutures to close, or a sprained ankle that results in the reassignment of a worker to duties that

eliminate the need to climb ladders. PADEP staff will be required to receive and act upon these notifications.

In the "Proposed Surface Mine Safety Revisions" distributed to stakeholder meeting participants by PADEP staff on January 17, 2007 (email from Patricia Davenport) §209a.42(a) read:

(a) Unless the context clearly indicates otherwise, as used in this Subchapter an accident is an incident that results in:

- (1) A death of an individual at a mine.
- (2) An injury to an individual at a mine which has a reasonable potential to cause death.
- (3) An entrapment of an individual for more than thirty minutes. ...

With this language, §209a.42(a)(2) defined a serious incident for which prompt notification would be appropriate and to which PADEP would be reasonably expected to respond.

It appears that §209a.42(a)(2) was modified to expand the scope of the reporting under §209a.42(c) to require operators to send copies of MSHA Form 7000-1 to PADEP for all "occupational injuries" as defined by 30CFR§50.2(e) and 30CFR§50.20.

Suggestions:

In the interest of providing for both prompt notification of serious incidents (accidents) and the reporting of all occupational injuries for analysis and record keeping, the following revisions are suggested:

- Restore the language of §209a.42(a)(2) to read:

- (2) An injury to an individual at a mine which has a reasonable potential to cause death.

- Modify §209a.42(c) to read:

- (1) In the event of an accident or incident that results in an occupational injury occurring at a mine, an operator shall send to the Department a copy of the completed Mine Accident, Injury and Illness Report Form 7000-1 required by 30 CFR 50.20 (relating to preparation and submission of MSHA Report Form 7000-1--Mine Accident, Injury, and Illness Report).
- (2) An occupational injury is an injury to a miner which occurs at a mine for which medical treatment is administered, or which results in loss of consciousness, inability to perform all job duties on any day after an injury, temporary assignment to other duties or transfer to another job.
- (3) For purposes of defining occupational injuries the following provisions of 30 CFR Part 50 are incorporated by reference:
 - i. 30 CFR § 50.20-2 Criteria -- "Transfer to another job."
 - ii. 30 CFR § 50.20-3 Criteria -- Differences between medical treatment and first aid.

§ 209a44. Access to records.

Objections:

The Access to Records stipulated in § 209a44 is too general. As defined, such access has the potential to lead to inconsistencies between the Department's standards and the MSHA standards and is likely to result in confusion in the field regarding the application of those standards. It is also more intrusive because it leaves open the possibility for interpretation that could expand the scope of access to documents and records beyond those required by adopted 30 CFR standards.

Comments:

The Department adopted by reference a selection of Federal Mine Safety and Health regulations to modernize Pennsylvania's standards. The referenced standards were selected to address the most significant risk to surface miners in the Commonwealth. Additional criteria for the selection of referenced standards communicated by Department representatives addressed the intention to match the scope of adopted standards to the technical capabilities of the inspection force.

As presented in the Proposed Rulemaking, § 209a44 effectively adopts by reference all of the regulations of 30 CFR Parts 50, 56, and 77. This is counter to the stated intentions of this rulemaking.

Suggestions:

In order to align the Department's access to records with the preceding elements of the Proposed Rulemaking the following language is suggested for § 209a44.

The Department shall have access to review and copy all maps, plans, notifications, reports, training records, program descriptions, documents or other records that are required by the sections of 30 CFR Parts 50, 56 and 77 that are incorporated by reference in this rule (relating to notification, investigation, reports and records of accidents, injuries, illnesses, employment, and coal production in mines; safety and health standards--surface metal and nonmetal mines; and mandatory safety standards, surface coal mines and surface work areas of underground coal mines).

Thank you for the opportunity to provide these comments and suggestions.

Respectfully,

Bruce B. Springer
Director of Safety

(610) 837-3327
Bruce.Springer@Essroc.com

