Portland Cement Association

February 22, 2011

Ms. Elizabeth Murphy, Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Dear Ms. Murphy:

Re: RIN3235-AK83

The Portland Cement Association (PCA) is a trade association representing companies that produce portland cement in the United States and Canada. PCA's U.S. membership consists of twenty-five (25) companies operating ninety-seven (97) plants in thirty-six (36) states and distribution centers in all fifty (50) states servicing nearly every Congressional district. PCA members account for slightly more than ninety-seven percent (97.1%) of cement-making capacity in the United States and one hundred percent (100%) in Canada. PCA's members employ more than thirteen thousand (13,000) individuals at cement plants, and the industry is interested in the subject collection of information and its potential impact on cement company operations. PCA and its members appreciate the opportunity to share our information.

Portland cement is an essential construction material and a basic component of our nation's infrastructure. It is utilized in numerous markets, including the construction of highways, streets, bridges, airports, mass transit systems, commercial and residential buildings, dams, and water resource systems and facilities. The universal availability of portland cement ensures that concrete remains one of the world's most essential and widely used construction materials.

PCA member companies operate several hundred mining operations in the United States that are within the jurisdiction of the Mine Safety and Health Administration (MSHA). As noted, there are ninety-seven cement plants currently operating in the U. S., and there are several hundred additional discrete mine identification numbers where other types of construction materials are mined. MSHA's authorized representatives (AR) conduct facility-wide inspections at these operations at least two times each year. Furthermore, there are additional specialized inspections, such as inspections of all the electrical components and health surveys for airborne contaminants to which employees are exposed.

In the interest of providing an accurate picture to investors of a mine operator's compliance with MSHA standards, the disclosure requirements should be as thorough as possible in

communicating the current compliance status of the operation. The section 1503 provision appears to seek transparency in a mine operator's record as illustrated in some statistical measure of how many enforcement actions, penalties and fatalities are shown to occur at the issuers' facilities.

PCA offers specific recommendations that SEC disclosure requirements should include, such as:

1. Allow issuers to provide disclosure when a contested enforcement action or assessment has been reduced, vacated or otherwise modified so that the clearest picture of the most current federal safety and health standards' compliance of the issuer may be known to the investor or potential investor;
2. Follow the explicit language in Section 1503 and require issuers to report significant and substantial (S & S) enforcement actions, thereby excluding those enforcement actions not deemed to be of a significant and substantial nature;
3. Develop uniform language to describe categories of enforcement actions that will communicate the nature of the citations to investors, and make the language easily accessible to investors;
4. Exclude fatalities determined to be non-chargeable to issuers;
5. Allow issuers to voluntarily disclose paid assessments along with proposed assessments;
6. Permit issuers to exclude proposed assessments that are pending before the FMSHRC; and
7. Extend the filing period for form 8-K to ten calendar days.

The SEC should adopt the plain language of Section 1503 in the Dodd-Frank bill, and filers should have to report only S & S citations. Significant and substantial enforcement actions indicate that the AR believed, when the enforcement action was issued, that there existed a significant likelihood that a substantial injury or illness would occur if the cited condition or practice were allowed to continue. If lawmakers believed that all enforcement actions, including those enforcement actions categorized as not meeting the S & S standard, should be reported, then Dodd-Frank would require non S & S reports as well, since two broad categories of MSHA enforcement actions can be referred to as S & S and non S & S. Therefore, the SEC rule should mandate that only S & S enforcement actions be included in the disclosure reports.

In order to provide the best information available for investors on which to base their investment decisions, the SEC asks if it should allow issuers to exclude disclosure of orders, citations or violations that are dismissed or reduced below a reportable level. To transparently disclose the truest picture of an operation's MSHA compliance history, and the conditions and practices that exist at the regulated facility, the SEC should allow companies to include disclosures when the frequency and/or severity of MSHA enforcement actions is either raised or lowered, which indeed occurs. For example, mine operators, the Secretary of the Department of Labor (the

Secretary), and employees and their representatives have the opportunity to contest the validity and the assessment penalty of a citation or order. There is a sequential process in which this occurs:

- first a review of the citation with the inspector or his/her supervisor during a closeout conference;
- next a citation review with the conference litigation representative (CLR);
- finally a citation review with an administrative law judge presiding, and possible additional review in an appeals court.

At any point, the S & S can be removed, the "unwarrantable failure" designation can be removed or even sometimes added, or the enforcement actions may be vacated (nullified). The SEC must have a mechanism wherein disclosure reports reflect when enforcement actions have been reduced to non S & S status or vacated, or when assessment penalties have been lowered. Conversely, the SEC must also have a mechanism that requires operators to report when an enforcement action has been elevated from non S & S to S & S status, or when the "unwarrantable failure" designation has been added. Actions such as these, both lowering and raising severity of citations and orders, may not happen for weeks, months or even years; however, for the protection of investors, who may be employees of the mine operator, accuracy in reporting compliance with MSHA standards is of considerable significance.

In place of adding a new category that describes types of enforcement actions (the proposed rule discusses the 107(a) order specifically), the SEC should develop uniform language with the assistance of the Department of Labor's MSHA that describes categories of enforcement actions, and make the categorical explanations available to investors. To add another category, as SEC proposes, to disclosure reports that must be regularly filed and reported each time a regulated entity files the disclosure, unnecessarily creates paperwork for mine operators. While describing the categories of enforcement actions provides context by which investors can measure operators' compliance, the requirement that the categories be described in every filing seems excessive. The categories may be clearly explained in uniform language, which MSHA now possesses. The communication mechanism for the language could be the SEC or the MSHA website, or both. An asterisk on the investor report can point to the website.

SEC should exclude non-chargeable fatalities, which are those, for example, deemed as being caused by a medical condition as well as deaths caused by trespass or otherwise deemed non-chargeable by the MSHA's Fatality Review Commission. In MSHA's investigative reports that are published on the agency's website, there are sometimes notations that a previously-listed fatality has been deemed non-chargeable and therefore removed from the mine operator's historical record. Accordingly, the mine operator's compliance record is updated to reflect the new information, leading to accuracy in reporting accidents to the public. To include fatalities

that are not caused by a condition or practice of the mine operator or its employees misinforms investors and potential investors.

In requiring mine operators to report penalty assessments, the SEC should allow issuers to voluntarily provide a distinction between proposed penalties, which presumably are those required in the Dodd-Frank legislation, and paid penalties, possibly in the form of a footnote to the report. For example, consider that the total proposed penalty assessment for a group of ten citations at a facility is $10,000. The operator believes that five citations totaling $5,000 of individual assessment penalties of the original assessment amount are erroneously charged and therefore should be contested, but the operator agrees to pay $5,000 of the proposed assessment. After a hearing before an Administrative Law Judge (ALJ) with the Federal Mine Safety and Health Review Commission (FMSHRC), the contested $5,000 is reduced to $1,000, making the operator's paid penalties total $6,000. Investors have an interest in knowing these distinctions when making investment decisions.

Proposed assessments that are being contested should be excluded from reporting. If the SEC determines that a distinction should be made between proposed and paid penalty assessments by allowing issuers to voluntarily disclose the two separate amounts in the filing as suggested above, then the amount of proposed penalties in contest before the Commission provides questionably relevant information to investors since the contested amount in whole or in part, when adjudicated, will be paid and therefore included in some future disclosure report.

Extend the filing period for form 8-K from four business days to ten calendar days. Although there are several standards contained in Title 30 Code of Federal Regulations that require reports or notifications to be made to MSHA within a specific time period, the most common period seems to be ten days, as shown in Title 30 Code of Federal Regulations Part 100.6(b) and Part 50.20(a). Although companies may have comprehensive internal reporting guidelines for MSHA citations, the elevated enforcement actions such as those enumerated in Form 8-K reports may additional analysis by issuers.

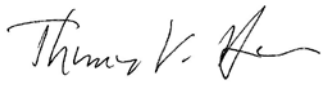
The disclosure requirements contained in the Dodd-Frank bill are meant to provide one set of reference points that investors may use to measure a company's performance as it relates to compliance with federal mine safety and health standards. In summary, the SEC should:

1. Allow issuers to provide disclosure when a contested enforcement action or assessment has been reduced, vacated or otherwise modified so that the clearest picture of the most current federal safety and health standards' compliance of the issuer may be known to the investor or potential investor;

2. Follow the explicit language in Section 1503 and require issuers to report S & S enforcement actions, thereby excluding those enforcement actions not deemed to be of a significant and substantial nature;
3. Develop uniform language to describe categories of enforcement actions that will communicate the nature of the citations to investors, and make the language easily accessible to investors;
4. Exclude fatalities determined to be non-chargeable to issuers;
5. Allow issuers to voluntarily disclose paid assessments along with proposed assessments;
6. Permit issuers to exclude proposed assessments that are pending before the FMSHRC; and
7. Extend the filing period for form 8-K to ten calendar days.

Please do not hesitate to contact me at 202-408-9494 or email tharman@cement.org if you have questions. Thank you for the opportunity to comment on the proposed regulation to implement section 1503 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Very truly yours,



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