



*Natural building blocks for quality of life*

February 28, 2011

Ms. Elizabeth M. Murphy  
Secretary  
United States Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549

Re: File No. S7-41-10  
Proposed Rules to Implement Section 1503 of the Dodd-Frank Wall Street Reform and  
Consumer Protection Act

Dear Ms. Murphy:

On behalf of the National Stone, Sand & Gravel Association (NSSGA), we provide the following comments on the proposed rule to implement the reporting requirements under Section 1503 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

By way of background, NSSGA is the world's largest mining association by product volume. Its member companies represent more than 92 percent of the crushed stone and 75 percent of the sand and gravel (or aggregates) produced annually in the U.S. and approximately 118,000 working men and women in the aggregates industry. During 2010, a total of nearly 1.9 billion metric tons of aggregates, valued at \$17 billion, were produced and sold in the United States. The aggregates industry has demonstrated a steadfast commitment to worker safety and health. For this reason, we've seen nine consecutive years of falling rates of injury and illness in the aggregates industry. Also, we've seen a continual decrease in number of fatalities amongst aggregates operator employees. Both are at historically low levels.

We are concerned with the rule proposal that would include the aggregates industry in a safety data reporting regime that we believe was intended by Section 1503 for operators of the more dangerous types of mines. Accordingly, we urge that the Commission use its discretion under Section 36(a)(1) of the Securities Exchange Act of 1934, as amended, to exclude the aggregates industry from this reporting.

The aggregates sector's safety and health record differs substantially from that of more dangerous sectors of the mining industry such as underground coal that seemed to spawn the legislative action that undergirds the mandate for this rule. The coal sector is the one in which the majority of multi-fatality mining industry disasters occur. And the comparison of levels of safety performance between aggregates and coal could not be more stark. The two sectors' respective rates of both injuries and fatalities consistently show aggregates out-performing coal.

Furthermore, it is worth noting that it has been more than a dozen years since an aggregates industry incident resulted in two fatalities. And, a disaster (i.e., an incident resulting in more than five fatalities) hasn't occurred in the aggregates industry in over 70 years.

Additionally, all of the data required for compliance with section 1503 of the Dodd-Frank Act already exists on the information-rich website maintained by the U.S. Mine Safety and Health Administration (MSHA). This information could be potentially utilized for multiple public purposes, including mine safety disclosure guidance under Section 1503.

Further, we regret that the proposal calls for the reporting of data on citations issued, versus citations that have been fully adjudicated. As you may know, the Federal Mine Safety & Health Act of 1977 calls for due-process rights of all mine operators so that an inspector's citation is not deemed to be official until it has successfully undergone full adjudication on behalf of the due process rights enjoyed by all mine operators.

The SEC's rule pre-dates President Obama's Executive Order No. 13563 of January 18, 2011 on "Improving Regulation and Regulatory Review," but NSSGA finds that provisions of the Executive Order clearly have applicability to the SEC's proposed rule. For instance, the Order states: "Where relevant...each agency shall identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. These approaches include warnings, appropriate default rules, and disclosure requirements as well as provision of information to the public that is clear and intelligible."

Finally, if the Commission decides that the aggregates industry should continue to be subject to this rulemaking and Section 1503, we would make the following suggestions:

- The law directing this rulemaking states that the data should be presented in "each periodic report" meaning that the reporting process should be repeated from period to period. But it does not state the length of the reporting period, which leaves us to believe that providing the data annually (on Form 10-K) should be sufficient. Reporting data annually rather than quarterly would also comply with Executive Order 13563 noted above;
- Presentation should be in table format and not in a tagged XBRL format since we believe it is unlikely that any actual benefit to investors would result from the presentation of this data in such a format;
- Citations to be reported should only be those not dismissed through the litigation process;
- Fatalities to be reported should only have be those that are "chargeable" to the industry (e.g., not heart attack victims) as established by MSHA;
- Because operators must report 107(a) orders (imminent danger) as well as notice of pattern of violation on all periodic reports (annually, we believe, on Form10-K), it is needlessly duplicative and burdensome for these same items to be reported on Form 8-K. Section 1503 does not state how soon a Form 8-K report must be filed after the designated items occur, so we suggest that a single 8-K report be filed each year in order to aggregate the information and allow it to be compiled concurrently with a company's

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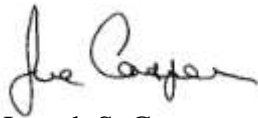
annual report on form 10-K. Formerly, the rules of the SEC provided for differing reporting schedules for certain items under Form 8-K. The types of Form 8-K reports filed to date under Section 1503 do not seem to us to demand the immediacy of the four-business-day reporting period warranted for the other, material items covered by Form 8-K or the burdensome disclosure controls required to satisfy a four-business-day reporting requirement. This reduction of duplicative efforts would comply with Executive Order 1563 noted above. It would also avoid confusing investors with repetitious reports on Form 8-K, as such reports are financially immaterial to the company;

- Because MSHA removed the informal conference for contesting unwarranted citations, this has caused a significant increase in the initiation of formal proceedings in order to argue the relative merits of citations and associated penalty assessments. It is unduly burdensome to provide details on each citation/order being contested; accordingly, operators should only have to report the number of legal actions initiated during the reporting period, in the tabular format noted above.

We appreciate the work done by the Securities and Exchange Commission to draft the proposed rules, and respectfully request favorable consideration of these comments.

Should you have any questions on this request please contact me at (703) 526-1074, or at [jcasper@nssga.org](mailto:jcasper@nssga.org). Thank you very much for your consideration of this request.

Sincerely,



Joseph S. Casper  
Vice President, Safety