

September 2, 2016

Mine Safety and Health Administration
Office of Standards, Regulations, and Variances,
201 12th Street South, Suite 4E401,
Arlington, Virginia 22202-5452

**Re: Comments on Work Place Exam Proposed Rules/ Docket No. MSHA-2014-0030 and RIN
1219-AB87**

To Whom It May Concern:

On behalf of PCS Phosphate Company, Inc. and White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate-White Springs (hereafter collectively "PCS"), please find enclosed comments on the Mine Safety and Health Administration's ("MSHA") proposed revisions to the workplace examination regulations at 30 CFR §56.18002 and §57.180002.

As an operator of phosphate and limestone mines, PCS has significant concerns with the practical implementation of the proposed revisions as well as the unnecessary administrative burdens they will have on our operations and employees. If adopted, the proposed changes would require significant managerial and administrative changes at tremendous additional expense to PCS as well as require considerable production downtime for our mining operations. Indeed, we estimate downtime to our operations of up to 20%, which will result in multi-million dollar implications annually.

Despite this added burden, cost and lost production, what we do not see is how the proposed revisions would result in any tangible or material safety benefit to the workplace examinations that are already undertaken pursuant to existing MSHA requirements. Instead, it is our position that the current rule is appropriately protective, without being unnecessarily burdensome. The existing rule requires that "a competent person designated by the operation shall examine each working place at least once per shift for conditions which may adversely affect safety or health" and then promptly initiate corrective action to correct such conditions." Further, the rule requires the operator to maintain records of the examination and that if an imminent danger is identified, that it must be brought to the immediate attention of management and all persons withdrawn from the affected area. In compliance with these requirements, we designate competent employees to conduct workplace exams each shift as part of our operations and we prepare records of such examinations. If imminent hazards are identified, workers are withdrawn, management is notified and corrective actions are undertaken.

Notwithstanding, our position that the current rule remains appropriate, we do have specific comments on MSHA's approach in the proposed rules:

I. Pre-shift Examinations

The revisions MSHA has proposed would for the first time require that "before miners begin work" that a competent person examine the working place at least once each shift. We think this change to a "pre-shift" examination is unnecessary as a practical matter and would result in considerable mining downtime to our operations as well as extensive overtime costs.

Indeed, PCS does not understand how this new "pre-start" examination will be implemented when a mine operates on a 24/7 schedule like many of our operations. There is not a shutdown time between shifts. Instead, under the current rule, we perform these examinations during each shift. We think this practical consideration for 24/7 operations needs to be factored in. Otherwise, we estimate that we would have to reduce our operating time by 2-4 hours per day to conduct these inspections pre-shift given the large areas that must be covered by our operations. At our mine in Aurora, North Carolina, for example, we have over 100 miles of roads connecting over 400 acres of active mine areas. To conduct pre-shift exams, we estimate the value of lost production downtime at the mine to be between \$56 million and \$113 million per year (or \$173,000 to \$346,000 per day) at the Aurora facility alone. Comparable downtime losses would be incurred by our White Springs, Florida mine and our limestone mine in Weeping Water, Nebraska.

As such, we think that if MSHA proceeds with any revisions to the workplace examination rules, it needs to include practical revisions such as:

- A. Expressly authorizing that: 1) outgoing shift personnel can perform pre-shift exams and/or 2) exams can be conducted a set amount of time before a shift starts (example: 2-3 hours before). Clarity on this point is very important so that operators can ensure compliance while still having flexibility in 24/7 operations.
- B. Permitting use of routine inspections and reporting of hazardous conditions that we already conduct on an on-going basis at our operations as pre-shift exams. We should be able to utilize these standard operating procedures as an inspection at shift change.
- C. Recognizing that examination of areas such as roads and inactive mining locations can take longer than a shift to conduct and as such should be excluded from any pre-shift exam requirements.

II. Prompt Notification

The proposed revisions, if adopted, would also require "prompt" notification to miners in affected areas of "any adverse conditions". As a logistical matter, this overly broad revision will be nearly impossible to manage and/or comply with on a broad mine site with thousands of employees and contractors. For example, at our Aurora mine alone, on any given shift, there are between 250 to 320

workers in various areas of the mine. Prompt notification to all such employees even if they are not in an affected area could take considerable time and resources which again will result in operational downtime and lost revenue for our operations.

Instead, as the current rule requires, if a condition may adversely affect safety and health, prompt action to correct such condition remains the appropriate response. Corrective action should be the focus of mining operations, not ensuring unnecessarily broad notification. Further, if an imminent danger condition is identified, the rule would still require immediate management notification and withdrawal of employees.

Again, if MSHA proceeds with revisions, we believe practical revisions on this point need to be made including:

- A. Recognizing that physical warnings (i.e., signage and barricades, or markings) put into place in response to a condition will suffice as notification both to workers in the area as well as those outside their assigned duty location.
- B. Verbal notification including radio broadcasts are sufficient to advise of such conditions.

III. Recordkeeping

The additional recordkeeping proposed under the rule revisions is also unnecessary and unduly burdensome. We also think that the change in rule will actually have negative impacts on safety culture across the mining sector. To ensure that the administrative burdens associated with the changes in recordkeeping are met, operators will likely define “competent persons” to be supervisors or site management. This will be a change in practice from PCS’s current culture at its Aurora and White Springs mines where all employees are trained to perform workplace examinations in support of the safety culture we are fostering. Moving this responsibility to management or supervisors will signal a shift to other workers that they do not share the responsibility for identifying safety issues. We think that this would be counterproductive to what MSHA is actually seeking.

Further, with respect to the new recordkeeping requirements, we estimate that it would require between 6-7 full-time people to manage and compile this information on a daily basis, the impact of which would be in the range of \$300K to \$350K annually to our operations. Finally, we have concerns about how consistently these new changes will be interpreted across Field Offices and Districts. We can see significant discrepancies leading to varying enforcement exposure for regulated operators.

Given these comments, PCS respectfully requests that MSHA reconsider making revisions to the current rule. If, however, MSHA does proceed, it should at the very minimum take operator comments, like ours, into consideration so as to address the practical impacts of this rule to avoid the costly burdens and downtime.

PCS thanks MSHA for this opportunity to comment. Should it have any questions, please do not hesitate to contact, Jeremy Pierce at (252) 322- 8201 or David Deplato at (386) 397-8820.

Regards,

A handwritten signature in blue ink, appearing to read 'M. Johnson', is positioned above the typed name.

Mark Johnson, General Manager- Aurora Facility
PCS Phosphate Company, Inc.