AECOM's Comments on the Mine Safety & Health Administration's

Proposed Rule on Workplace Examinations in Metal/Nonmetal Mines

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On behalf of AECOM, we are pleased to submit the following comments on MSHA's proposal to modify its metal/nonmetal workplace examination standard, 30 CFR 56/57.18002, which is applicable to our contract operations at metal/nonmetal mines throughout the United States. The proposed rule appears in the June 8, 2016, *Federal Register.*

AECOM's Civil Construction and Mining Group, Energy Infrastructure & Construction division, is a single-source provider of lifecycle solutions including planning, design, procurement, construction, and operations and maintenance for the private sector and government agencies. In the mining industry, we provide planning and environmental, design, engineering and construction, infrastructure and mineral processing, closure and remediation for base and precious metals, industrial minerals, and energy fuels.

We currently have work activity at several mining sites including closure at the Questa, NM Chevron Mine, tailings impoundment work at Freeport McMoRan's Morenci Mine in Arizona, and contract mining at the Monsanto Silica Quarry in Soda Springs, ID. We conduct business as AECOM Energy & Construction, Inc. (formerly known as URS Energy & Construction, Inc.), classified as contractors. To give you a sense of our type of activity level, the Monsanto Silica Quarry operates as a Part 46 mine during May thru September, with plant/equipment maintenance occurring October thru April. During the active mining season we have approximately 17 employees and our workforce is reduced to 7 employees for winter maintenance.

Our workplace exams are conducted by a designated hourly employee in each area. We feel strongly that MSHA should not use an hourly worker's conduct of the workplace exam as an indication of management agent status for purposes of section 110(c) of the Mine Act. We also disagree with any requirement to specify that exams would have to be done within two hours of entry into the work area, as that is unduly restrictive -- particularly for contractors whose schedules of work may vary unpredictably -- and yields no quantifiable safety benefit by MSHA's own admission. We agree that the same definitions of "working place" (as clarified in MSHA's August 25, 2016, *Federal Register* notice) and of "competent person codified at 30 CFR 56/57.2 should be used for this standard.

In our company, each workplace examiner is task trained in hazard awareness, and it is our practice to instruct employees to conduct workplace examinations throughout the day, as hazards are not simply present at the start of the shift, and can arise at any time due to the dynamic work environment at mines. We are concerned that requiring all exams to be done at the start of each shift, or -- if exams had to be performed mainly by supervisors, as MSHA has suggested -- our employees may no longer be as

engaged in the detection of hazards as they would no longer share responsibility for addressing issues in real time.

With respect to documentation, AECOM has workplace exam books, in which we record identified hazards for the plant area, shop area and/or pit area if these are our active working places in a shift. Each employee has a hazard recognition form which is filled out and turned in when hazards are found. In addition to AECOM safety management oversight, our employees are also monitored by our clients' safety personnel.

While we strive to do complete, thorough examinations, AECOM does not believe that our clients (the production mine operators) should be held duly liable if our inspection is found to be inadequate or the documentation is flawed in some other way, as occurred in the recent *Sunbelt Rentals* FMSHRC case (July 2016). It makes no sense to require the mine operator to reinspect our work areas, then compare their findings to ours. If this is what MSHA envisions, it is unnecessarily duplicative and only creates a "gotcha" situation.

We oppose MSHA's proposal to require corrective actions for each identified hazard to be dated, signed, and included in the mandatory workplace examination record under 56/57.18002. While we do not oppose recording the hazards identified on the workplace exam forms, as an independent contractor who has an intermittent presence at the mines for which we work, it would be unduly burdensome, with no offsetting safety benefit, to be compelled to keep workplace exam forms open indefinitely, pending completion of all corrective actions, if we have left the mine for a period of time or a project ends before all listed hazards are fully abated. In some cases, corrections may be made after we leave the worksite, by the mine operator, which means that we would have to leave our mandatory records behind. This also increases the likelihood of forms being misplaced, destroyed, or altered in our absence. This could expose our company, and its workplace examiners, to both civil and criminal liability.

MSHA should be flexible and not dictate the format of records that document the examinations, and it should permit electronic signing or initialing of forms, rather than an original signature. We also suggest that MSHA reduce the paperwork retention period from the current 12 months to a new maximum period of 6 months, to lessen the paperwork burden that will expand significantly if every hazard and correction must be documented on multiple reports over multiple shifts on a daily basis.

With respect to the proposal to require documentation of all hazards identified, MSHA should not use this additional information as the basis for citations if the conditions were corrected in a timely manner, and MSHA should follow the self audit policy that its sister agency, OSHA, adopted years ago. Under this approach, in most circumstances audits will not be used to issue citations, as long as the conditions were corrected prior to the agency inspection. *See*

https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=FEDERAL_REGISTER&p_id=16434&p_search_type=CLOBTEXTPOLICY&p_search_str=self-audit.

When requiring miner notification of hazards under the revised rule, MSHA should provide flexibility, particularly for non-significant hazards, as to the method of notice. In some cases, verbal notice may be sufficient, while other situations may be resolved by putting up caution tape or temporary fencing or signage until the hazards can be corrected. The type of notice given should not need to be recorded on the form, nor should situations where miners are withdrawn due to the examiner observing an imminent danger situation.

Thank you for your consideration of our perspective on this important rulemaking.

Respectfully submitted:

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