



A publication of the
Oregon Independent Aggregate Association
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www.oraaggregate.com

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Oregon Independent Aggregate Association Newsletter

May 2019

Be aware that DOGAMI and DEQ are placing increased emphasis on stormwater compliance. If your mine site releases stormwater to surface waters offsite, you should have a 1200-A NPDES general stormwater discharge permit. Oregon DEQ established the 1200-A permit to cover (most) mine sites. However, DOGAMI is the agency that actually conducts stormwater inspections at mines, reviews monitoring records, and otherwise administers the permits including communications with operators. If compliance issues are noted, and if in the opinion of DOGAMI the issues rise to the level of enforcement, DOGAMI will refer them to the DEQ for formal enforcement (e.g. fines).

Some members have recently received hefty fines for alleged out-of-compliance stormwater releases or missing/incomplete monitoring reports. If DOGAMI has sent you letters or inspection records noting compliance issues, be responsive and understand what the issues are. This may be a dramatic change in oversight for some operators compared to previous years. The 1200-A permit itself has not changed, but the administration of the permit might be very different for your site. (Side note: the current 1200-A permit actually expired in December 2017, but DEQ has “administratively” continued using the permit until a revised and updated permit is established. We are not aware of the status of the updated permit.)

Make sure you understand the requirements in the 1200-A general permit, which can be obtained from the DEQ website at <https://www.oregon.gov/deq/wq/wqpermits/Pages/Stormwater.aspx>. The required Stormwater Pollution Control Plan (SWPCP) should be up-to-date and reflect how your site manages stormwater. Scheduled monitoring should be performed and reported to DOGAMI each year (for now – We’ve heard the reporting might be quarterly in the pending updated permit).

If you need help, or if you have had a recent inspection or citation notice and have questions, let us know.

Erick Staley
Chairman

Following Article provided by Matt DeAttley

What is Negligence According to MSHA?

Last month, I focused on the MSHA definitions of the gravity of a citation and how knowing those definitions can assist a mine operator during an inspection. This month, I will continue with a related topic, the statutory definitions of the negligence of an MSHA citation. When mine operators know the definitions of negligence, they can ask informed questions regarding the accuracy of a citation and ensure that the inspector is accurately assessing the violation.

Citation Box 11 – Negligence

Negligence is defined by MSHA in § 100.3(d) of the Mine Act as “. . . conduct, either by commission or omission, which falls below a standard of care established under the Mine Act to protect miners against the risks of harm. Under the Mine Act, an operator is held to a high standard of care. A mine operator is required to be on the alert for conditions and practices in the mine that affect the safety or health of miners and to take steps necessary to correct or prevent hazardous conditions or practices. The failure to exercise a high standard of care constitutes negligence.”¹

This definition is, like many standards under the Mine Act, somewhat convoluted. This definition is saying that the Mine Act establishes the minimum standard of care through the health and safety standards, and the mine operator must be vigilant for any violations of the Mine Act. Further, the Mine Act is a “strict liability” statute — a mine operator’s liability under the Mine Act does not depend on actual negligence or intent to harm. Therefore, due to the definition of negligence and the strict liability nature of the Mine Act, MSHA automatically considers any violation negligent behavior. Whether there was intent to harm or even knowledge of the violation is irrelevant, except in cases where the operator could not have known about the violation.

If any violation of the Mine Act is negligent, the next question is: how negligent was the mine operator in allowing the violation to exist? To interpret this question, MSHA uses the five degrees of negligence defined in § 100.3(d):

- No Negligence – The operator exercised diligence and could not have known of the violative condition or practice.
- Low Negligence – The operator knew or should have known of the violative condition or practice, but there are considerable mitigating circumstances.
- Moderate Negligence – The operator knew or should have known of the violative condition or practice, but there are some mitigating circumstances.
- High Negligence – The operator knew or should have known of the violative condition or practice, and there are no mitigating circumstances.
- Reckless Disregard – The operator displayed conduct which exhibits the absence of the slightest degree of care.

Inspectors mark “No Negligence” when an operator is diligent in following the rules, and there is no way the operator could have known about the violation. This could arise when the violation occurs due to an unknown malfunction during the inspection, such as a back-up alarm suddenly stops working even though the equipment is well-kept or new. However, these are very rare occurrences!

The difference between “Low”, “Moderate”, and “High” Negligence hinges on the “mitigating circumstances” the operator can prove. Mitigating circumstances are actions that the operator has taken before the inspection to prevent or correct hazardous conditions or practices. Mitigating circumstances can be nearly anything, depending on the violation. Examples include ordering repair parts, posting warning signs, training on that specific issue, or restricting travel in

¹ 30 USC § 100.3(d).

certain areas. If an operator can show that they have done something to prevent or correct the hazard, then the inspector cannot write the citation as high negligence.

Inspectors mark “Reckless Disregard” when an operator knows or should know there is a serious hazard and does nothing to correct it. A reckless disregard citation is saying that the operator did not care if the violation existed or that the violation may injure miners. For example, allowing a hazard to exist uncorrected for an extended amount of time, repeated similar violations in the recent past, or knowledge of the hazard while taking no corrective actions can all go to showing reckless disregard. A citation marked reckless disregard will nearly always be a 104(d) citation.

How Does This Help?

Just like knowing the definitions of gravity, knowing the definitions of the different levels of negligence can help ensure the inspector is accurately evaluating the citation. As discussed, the difference between a “High Negligence” citation and a “Low Negligence” citation is based almost entirely on mitigating circumstances. Therefore, discussing facts surrounding a violation, specifically those that lessen the operator’s responsibility for the violation, can prompt an inspector to reduce the citation. If the operator can show even some small mitigating circumstances, a “High Negligence” designation has difficulty holding water.

This is another area where proper documentation is invaluable. If an operator documents when they discover an issue and what steps they have taken to resolve the issue, it is much harder to write a “High Negligence” citation. Showing when it was discovered can prove that the issue has not existed for an extended amount of time. Having documented proof of blocking off an area immediately and ordering parts can show that the operator was not negligent in allowing the violation to exist. Finally, if the inspector does not take this proof into consideration when writing the citation, a mine operator will be ready to contest it. Physical evidence is always stronger than spoken word and documentation made at the time the issue arises or is discovered will provide weighty evidence during conference.

About the Author:

Matt DeAtley is the fifth generation in a mining family and founded DeAtley Law, PLLC with the specific goal of assisting mine operators and contractors with MSHA Disputes. You can contact Matt at www.deatleylaw.com or by calling (208) 816-0625.



Class Dates for the year 2020 Part 46 have been scheduled

Roseburg class will be on March 9, 2020

Albany Class will be on March 10, 2020

Class Instructors will be Josh Schultz and Michael Peelish with Adele Abrams office.

SAFEPRO Class Information

The June 2019 Safepro Law class is going to be a great class. We only have 12 spots open. Our block of rooms with the Hilton Garden Inn in downtown Savannah can only be held until April 17. Adele L. Abrams, Esq., CMSP President from the law offices of Adele Abrams will be teaching at the Safepro institute this year. If you are in management, supervision in the mining industry this will be a great opportunity to get the latest answers to any questions you may have. This class will give you the knowledge coupled with your mining experience that allows you to be prepared for the imminent MSHA inspection. The Institute information will help you avoid bad citations and the knowledge to comply with the law. You will add value to yourself and your company by attending!

Spouses are welcome if your company allows you to bring them. Shopping in Savannah is considered excellent. Malls and quaint shoppes are within easy walking distance from the hotel. Walking and riding tours of the city can be arranged during the week you are here. If you have any questions or wish to register, just contact us at safeproinc.com. We want you to have a good time as well as a great learning experience. I look forward to seeing you Savannah Ga.

Yours in Safe Production

Dean

2019 Board Meeting Schedule

Our next meeting will be held on September 18, 2019
(Location to be announced)

*The Annual work session meeting will be held on December 11, 2019
(This meeting is closed to board members only)*

2019 Board of Directors

Erick Staley – Chairman
Roy Garrison – Vice Chairman
Mary McNatt- Treasurer
Kellie Ramar – Secretary
Melissa Mullins
Jerry Davidson
Bill Ruchti
Andrew Siegmund
Jim Jeffries
Dan Kauffman

Our 2019 Scholarship application is attached. Please pass along to your employees and families.



***THE OREGON INDEPENDENT AGGREGATE ASSOCIATION 2019
Davis Creek Rock Quarry Scholarship***

Oregon Independent Aggregate Association (OIAA) is proud to offer two annual scholarships to any deserving students pursuing a career related to the construction, aggregate and forestry industry. Areas of study are to include construction, construction management, engineering, geology, architecture, land use planning, forestry, heavy equipment repair and welding. This year's scholarship is named in honor of Mary McNatt, our Past Chairman and current Treasurer, who founded and continues to own Davis Creek Rock Quarry located in Silverton, Oregon.

Who May Apply?

The OIAA Scholarship is open to all current members, employees of current members and their families studying in the required fields as indicated above.

The academic institution may be a university, community college, private college or a trade school with recognized related courses of study. Scholarships will be applied toward full or part-time tuition and or educational material costs within one calendar year.

Your Personal Statement is the most important part of your application! When you prepare your Personal Statement, it's very helpful to tell the OIAA scholarship selection committee about your career goals in the required industries, personal goals, reasons for applying for this particular scholarship, and personal financial circumstances that pertain to your financial need. Your statement should be a minimum of one page and not more than two pages.

The OIAA Selection and Award Process

Applications will be directed to the scholarship selection committee. Scholarship recipients will be notified in writing by the OIAA and the recipient's name will be listed on the OIAA website. Those who do not receive scholarships will also be notified by mail.

Unless otherwise noted, the scholarships shall be in the amount of \$ 2,500.00 each as a onetime award.

All recipients will be required to write a short letter of thanks to the OIAA and present it in person at a designated Board Meeting. By attending such meeting you indicate your acceptance of the award and the terms of the scholarship.

Scholarships shall be awarded in compliance with applicable Oregon laws and OIAA policies related to non-discrimination on the basis of sex, race, age, color, national or ethnic origin, marital status, disability, religion, sexual orientation or veteran status.



Scholarship Application (2019)

(Office Use Only) Application Number _____

PERSONAL INFORMATION: (PLEASE PRINT OR TYPE)

Applicant's Name: _____

Date of Birth: _____

Address: _____

City: _____ State: _____ Zip code: _____

Phone: (____) _____ Alternate phone number (____) _____

E-mail address: _____

I. **ACADEMIC INFORMATION:** (PLEASE PRINT OR TYPE)

Name of High School: _____

Year of High School Graduation: _____

Current University, College or Trade School: _____

Address: _____

City: _____ State: _____ Zip Code _____

Phone (____) _____

Overall GPA: _____ Major: _____ Minor: _____

When do you expect to graduate? _____

II. **Extracurricular and or Community Information:**

List honors, awards, prizes or recognition you have received: _____

List school and or group activities (sports, clubs, committees, offices) that you have participated in:

List and describe your hobbies and interests: _____

III. WORK EXPERIENCE (INCLUDE ON A SEPARATE SHEET OF PAPER IF NEEDED)

What work experience have you had? _____

Would you be interested in work with a construction, aggregate projects or forestry company?

YES _____ NO _____ PART-TIME _____ SUMMER _____

IV. Remember to attach the following:

_____ A transcript of grades through the last grading period prior to the date of application.

_____ A letter of recommendation from a teacher, employer or other relevant acquaintance.

_____ Your Personal Statement as required in the Scholarship Guidelines.

I certify that the information on this application is complete and accurate to the best of my knowledge and belief.

Signature: _____ Date: _____

Please return you application to the attention of the application committee

Oregon Independent Aggregate Association

P.O. Box 571

Stayton, Oregon 97383

Application Deadline: September 15, 2019

Applicant will be selected for the school term starting September 2019