



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

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Oregon Independent Aggregate Association Newsletter

September 2019

Chairman's Message

Representatives from MSHA attended the OIAA Board meeting on September 18th including Curtis Roth, the new Assistant Western District Manager, and Randy Cardwell, Albany Field Office Supervisor. This follows on a commitment made in April by Brian Goepfert (Deputy Administrator for Metal/Nonmetal) from our meeting in Washington D.C. We appreciate MSHA making the effort to meet with OIAA members in person and hope it will lead to improved interactions with the industry.

Since Mr. Roth was not as familiar with the experiences some members have had during inspections, we spent some time explaining the inappropriate and abusive practices recently used by MSHA inspectors in the Northwest. This creates an atmosphere of mistrust and conflict, replacing the focus from promoting safety to one of managing financial damages. MSHA's mission is more easily accomplished if there is a level of trust maintained between the mine operators and inspectors. Mr. Roth agreed and indicated that Mr. Cardwell and he are available to contact if members have questions or if problems occur.

Mr. Roth mentioned a recent concern regarding electrical safety at mine sites and shared a recent Safety Alert regarding electrical accidents. For example, MSHA has found some sites using indoor-rated enclosures and junction boxes in outdoor environments. Please take the time to review your electrical infrastructure and make sure it is the right gear for the environment.

OIAA Scholarships – **DEADLINE EXTENDED** – We have extended the deadline to apply for the OIAA Scholarships this year. If you can believe it, no one applied yet this year! We offer 2 scholarships each year to people who are pursuing education in a field related to construction, aggregates, or forestry. This year's awards are named in honor of our own Mary McNatt, OIAA Treasurer and former Chair. Mary is also the owner of Davis Creek Rock Quarry near Silverton. Current members, employees of current member companies and their families can apply for these scholarships. Details and the application are provided in this newsletter.

Erick Staley
Chairman

The Benefit of Gathering Evidence when the Citation is issued

By: Matt DeAtley

September 2019

The saying, “it does not matter what is true; what matter is what you can prove in court” is an unfortunate reality when contesting MSHA citations. The Federal Mine Safety and Health Review Commission, MSHA’s court system, is set up to analyze and weigh supportable facts. From those facts, the judge can get an idea of the situation surrounding the citation and make a ruling. MSHA inspectors understand how this process works and, when issuing citations, take great care in gathering evidence to support their position. To successfully challenge a citation, mine operators need to take equally as great of care to gather evidence.

Why is it critical to gather evidence?

It is essential to understand how the court weighs the evidence to understand the importance of physical evidence when contesting a citation. The legal definition of evidence is “any matter of fact that a party uses to prove or disprove an issue in the case.” As with any legal case, the party bringing the claim has the burden of proving their case with evidence that meets the standard of proof. Most people relate the burden of proof and the standard of proof to criminal cases. The prosecution must prove (because they have the burden of proof) beyond a reasonable doubt (the standard of proof) that the defendant is guilty. Similarly, MSHA has the burden of proving that a violation existed. An MSHA case differs in that MSHA must only prove the violation existed by a preponderance of the evidence.

Proving an issue by the preponderance of the evidence does not mean one party has more evidence or that more of the total evidence weighs in favor of one party. The preponderance of the evidence is based on first, how convincing the evidence is, and second, the probable truth of the evidence. For example, an operator’s opinion alone, months after the citation was issued, is not very convincing and does not have anything supporting it as truth. Alternatively, pictures and written documentation of the violation, taken at the time the violation existed, provide convincing evidence and help defend the truth of the operator’s position.

What evidence should a mine operator gather?

There is not a specific piece of evidence an operator can look for, considering the vast array of situations that could lead to any one of many citations. Each citation has its own circumstances. Therefore, the evidence necessary to disprove the citation varies with each citation. Keep in mind, the goal of evidence is to support what you state as the truth or disprove what the inspector claimed. So, when considering what evidence you should gather, good questions to ask yourself are: What has inspector claimed is occurring? What am I saying is occurring? What can I show to support what I say is occurring? How can I disprove what the inspector is claiming?

Some general types of evidence apply to nearly every citation. Mine operators should gather this evidence during or immediately after the inspection. First, an operator should always take pictures of the violation before they fix it. We know the inspector will have pictures of the violation because pictures are generally the most convincing way for MSHA to prove a violation existed. We also know any pictures an inspector takes will highlight the violation from a perspective that makes the violation look as bad as possible. The best way to counter this is for the operator to provide their own pictures - at different angles - that illustrate the violation is not as bad as the inspector claims. The next general piece of evidence an operator should gather is written notes taken during or soon after the inspection. These notes keep the memory fresh and provide much more convincing evidence of the inspection events.

Other general types of evidence that can help are less time-sensitive and may be collected after the inspection. Documents such as workplace exams, employee time slips, work order forms, or equipment pre-operational exams can provide evidence of mitigating factors for certain citations.

Best Practices for Gathering Evidence.

As already mentioned, there is no one specific type of evidence that applies to every citation. However, generally, there are a few “best practices” for gathering evidence relating to a citation. First, take pictures. Pictures provide the most convincing evidence to support an operator’s position. Take pictures of the violation from all angles. Take pictures of the inspector taking pictures. Take pictures of the corrective actions taken.

Second, take notes. Take notes on all aspects of a citation and the facts surrounding them. Make sure to write down facts showing any mitigating circumstances or why an injury would be unlikely or impossible. Over the past few IOAA articles, I have discussed how inspectors judge and assign penalties. You may find it helpful to review those articles.

Finally, keep good records of all workplace exams, maintenance requests, repairs made, or what you are currently doing to remedy a situation. A word of warning: keeping such documents can be a double-edged sword. If a maintenance request or a workplace exam documents a hazard and it goes uncorrected, it can show knowledge and be a 110(c) Knowing Violation. However, used correctly, those documents can be evidence of substantial mitigating circumstances which operators can use to reduce or vacate a citation.

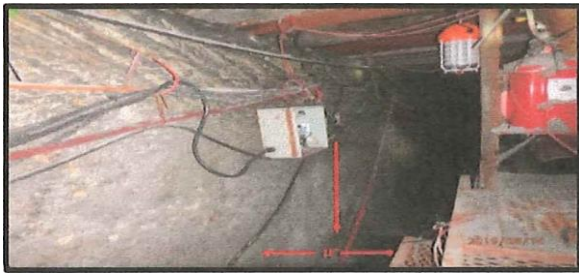


SAFETY ALERT



ELECTRICAL ACCIDENTS

The mining industry has experienced three electrical fatalities since August 7, 2019. The first fatal accident occurred when a 42-year-old electrician with 15 years of mining experience contacted an energized component of a 4,160 VAC electrical circuit. The victim was in the preparation plant's Motor Control Center (MCC) adjusting the linkage between the disconnect lever and the internal components of the 4,160 VAC panel that supplied power to the plant feed belt motors. The second fatal occurred on August 15, 2019, when a 44-year-old contract electrician, with 10 weeks of mining experience, was working inside a fire suppression system's electrical panel and contacted an energized 120 VAC conductor. The most recent fatal accident occurred on September 17, 2019. The preliminary investigation indicates that a miner was electrocuted while troubleshooting the electrical circuit for a scrubber on a 995 VAC continuous mining machine.



Best Practices

- Lock-out and tag-out the circuit before working on electrical equipment with your lock and tag.
- Never get in a hurry! Never work alone! Always think, plan, and communicate your intentions to others in the area to ensure the task can be completed without creating hazards.
- Train all miners including electricians on equipment they will work on or troubleshoot. It is important for miners to know how the electrical system and equipment in the mine is energized and where disconnecting devices are located.
- Always identify and control all hazardous energy sources before conducting any task and follow safe work procedures.
- Never troubleshoot energized high voltage circuits over 1,000 V. Always troubleshoot without power first. When it is necessary to troubleshoot an energized circuit, employ safeguarding measures to prevent hazards.
- After identifying the problem and entering an electrical enclosure or before performing electrical work make sure to: Locate the circuit breaker or load break switch and open it to de-energize the incoming power cable(s) or conductors. Locate the visual disconnect and open it to provide evidence that incoming power has been de-energized. Lock-out and tag-out the visual disconnect. Ground the de-energized conductors.
- Use properly rated personal protective equipment (PPE) when troubleshooting or testing energized circuits. This includes electrically rated gloves, meters with proper settings, non-contact voltage testers, insulated blankets or mats, and polycarbonate barriers to eliminate personnel exposure to hazardous energy during troubleshooting.



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 from Adele Abrams office

2019 Board Meeting Schedule

Our December Board Meeting has been cancelled

(we included this meeting information with our September meeting)

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

Deadline for the 2019 Scholarship Application Has been extended

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: October

15th 2019

Applicant will be selected for the school term starting September 2019