



NATURAL STONE COUNCIL MSHA/OSHA POSITION STATEMENT

May 11, 2012

The Natural Stone Council is comprised of 19 members from eleven different organizations representing every type of dimensional stone quarried and fabricated in the United States. The members include Allied Stone Industries, Building Stone Institute, Elberton Granite Association, Indiana Limestone Institute, Marble Institute of America, National Building Granite Quarries Association, National Slate Association, Natural Stone Alliance, New York State Bluestone Association, Northwest Granite Manufacturers Association, and Pennsylvania Bluestone Association. Collectively, all agree that employee safety is the first priority of the dimension stone industry.

The dimension stone industry is a major part of the nation's economy. According to MSHA's latest figures, in 2008 there were 4,380 stone mines directly employing 35,248 miners, and indirectly employing 78,975 people with an estimated annual payroll in excess of \$3.75 billion dollars a year. Our government should be responsive to the needs and concerns of this industry.

ISSUE:

Quarry operators have had increasing concerns with the regulatory practices of MSHA in regards to inconsistent and unpredictable enforcement efforts as well as disproportionate penalties and fines. This is largely due to MSHA's efforts to dramatically increase the volume and cost of citations written during an inspection regardless of the actual severity, or the likeliness of injury occurring. The agency's focus has shifted away from education and towards enforcement only. While enforcement should certainly be directed at finding and correcting safety hazards, many citations are interpreted to maximize the severity of the citations so that it results in the highest fines possible, whether or not any miner, employee or person in the mine is exposed to actual or imminent danger. One of the strongest arguments against current MSHA practice is the writing of citations based on what "could occur" rather than any actual experience with hazards. Dimension stone mines have had to comply with vaguely written, inconsistently enforced standards that lack clarity and purpose. Many regulations are not applicable to dimension stone operations and they do not improve the health and safety of workers. This burden is negatively affecting businesses in the stone industry, particularly given that the regulations were written over 50 years ago. Members of the Natural Stone Council need and want a sensible regulator/operator relationship.

PROBLEMS FOR THE DIMENSION STONE INDUSTRY:

- Inconsistent application of regulatory standards.
- Vaguely written or indeterminate standards that lead to subjective interpretations and increased citations.
- A 298% increase in assessed penalty amounts, 43% increase in S&S citations, and 22% increase in number of orders and citations from 2006 to 2010, shows that MSHA's emphasis has shifted from education to enforcement. The increase in penalties does not equate to a similar reduction in injuries. Please see supplied charts from MSHA.
- Citation conferencing and appeals process that offers little recourse for operators.
- Proposed reduction of allowable amount of respirable crystalline silica by half, despite the fact that the new amount is very difficult to measure and it is thought that the existing standard, if properly enforced, is sufficient to prevent silicosis.
- Dimensional stone industry mining is much safer than coal mining, yet dimensional stone suffers from all encompassing regulations and punitive citations and fines initiated as a result of underground coal mining accidents.
- Supervisors and employees are feeling threatened by the aggressive tactics of MSHA to possibly cite, fine and prosecute them as individuals for an unsafe act of an employee they supervise or work with.

ECONOMICS:

- The increased volume and amounts of citations are a burden to businesses. Money that could be spent to create jobs, invest in safety programs, or buy new equipment is spent on fines.
- Contesting citations can be difficult without the services of a lawyer, but legal costs many times are greater than the penalty amount, forcing winnable cases to be settled under MSHA's terms.
- Over regulation is causing some operators to get out of the business, reducing jobs and the tax base. MSHA is no longer a partner in creating safer work environments.

PROPOSED SOLUTIONS:

- With the help of the dimensional stone industry and others, MSHA should rewrite or eliminate vague standards to avoid misinterpretation and provide clarity for all consistent with safety issues that affect particular segments of the mining industry (i.e. coal versus stone).
- Train MSHA inspectors to consistently apply the regulations as written, and to use common sense and objectivity when evaluating gravity and negligence.
- Emphasize education. MSHA's purpose should be to ensure the health and safety of the nation's miners, by educating first and then citing uncorrected problems. Increased penalties do not make a safer workplace.
- Give operators "fair notice" warnings of changes in interpretations; allow operators to fix low risk problems (non S&S) on the spot without a citation being issued.
- Recognize the fact that human behavior can be a contributing factor in accidents and injuries, even if all employees are properly trained. The operator should not be solely responsible.
- Amend the conferencing process so that disputes are addressed in a more timely matter. Operators should not be denied the opportunity of due process; conferencing should be available on all citations.
- Confine the realm of authority of MSHA to the safety of mine employees, contractors, visitors, and customers on the active quarry/mine site.

ADDITIONAL:

In an effort to define the regulatory concerns of the dimensional industry, the Natural Stone Council sent a questionnaire to MSHA regulated member businesses. The following is a summary of the responses received from the ASI, BSI, EGA, NBGQA, NYSBA, and the PABA.

Summary:

1. Many examples were given where a citation was issued when previous inspections found no violation. These examples show the inconsistency of MSHA's enforcement that result from differing interpretations on the standards.
2. Several examples were provided of citations where the health risk was over stated to maximize the assessed penalty. These examples show that education is no longer the focus of the agency, and that it is now focused on generating income.

3. Some, but not all operators have experienced rude and arrogant behavior from MSHA inspectors. It seems to be individual inspectors and not an agency wide problem. More common is an attitude of distrust or a desire to write high dollar citations.
4. All the organizations have contacted their elected representatives about MSHA concerns. While many representatives have worked on the issue, no real change or reform has occurred to date.
5. In some circumstances MSHA inspectors have met privately with mine employees outside of works hours to solicit information relating to a citation.
6. Some supervisors have been threatened with civil and criminal prosecution by MSHA inspectors.
7. Everyone said MSHA should not have the right to demand employee records under the premise of a safety investigation. All feel that this is an invasion of privacy, breaks existing laws, and has nothing to do with safety.
8. All respondents are in agreement that vague MSHA rules and regulations are the greatest single complaint of the industry, and it does certainly affect the operator's ability to comply. This problem has caused many citations to be issued. Lack of objectivity and common sense are also contributing factors.
9. Some operators do feel that their rights have been infringed on, and some feel that their constitutional rights are being violated because of the limited recourse offered the business owner in the citation and contest conferencing process.
10. The majority of respondents agreed with statement "B": "MSHA is on a campaign to cite and fine to drive revenue under the guise of fostering employee safety and health," and that many businesses are assumed guilty until proven innocent. Included in the actual responses are some well written individual statements.
11. Many inspections are conducted over a period of several days, but the inspector would inspect for only several hours in a day and not in complete days, which adds to the overall burden to the operator.

This Position Paper is a working document and will be updated and revised as needed. For more information please contact the Natural Stone Council at: info@naturalstonecouncil.org.

ATTACHMENTS:

The following is 2002 to 2010 information from the MSHA website (www.msha.gov/) for Metal/Non-Metal mines showing:

(Figure 1) increased dollar amounts assessed for penalties;

(Figure 2) increased total citations and orders issued;

(Figure 3) elevated enforcement actions;

(Figure 4) a fatality rate that shows signs of levelling out;

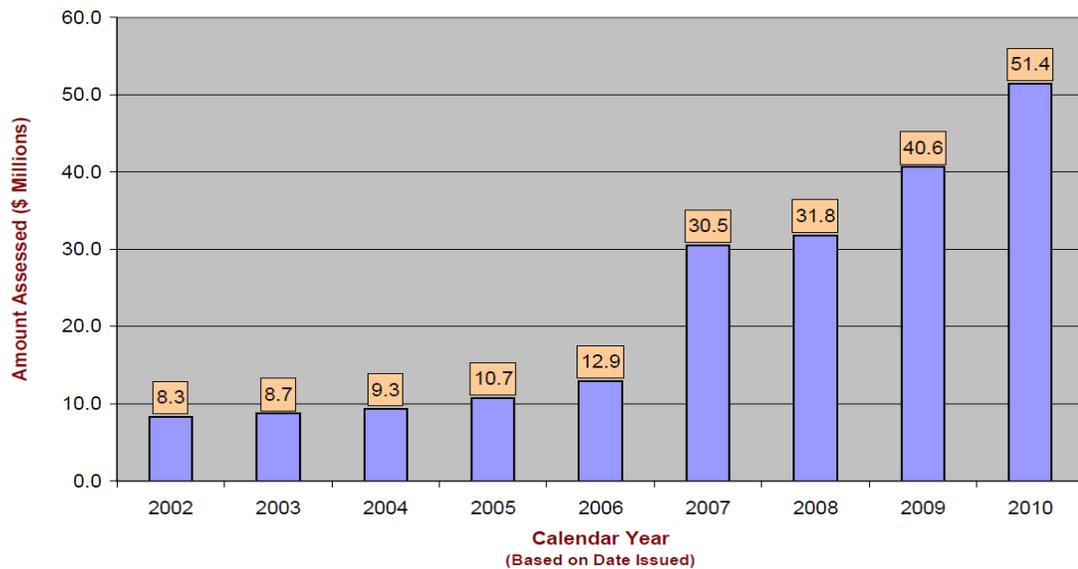
(Figure 5) decreasing injury rate (showing industry is getting safer and despite the fact that fines are increasing); and

(Figure 6) increasing percentage of S&S citations (fines typically assessed at higher amounts).

This information shows an effort to penalize the entire industry regardless of the actual safety record of individual operators. The good are penalized with the bad, and there is no positive reinforcement for compliance.

**MSHA FACT SHEET:
Total Dollar Amount Assessed¹
Metal/Non Metal Mines
CY 2002 - CY 2010**

**M/NM - Dollar Amount Assessed
CY 2002 - 2010**



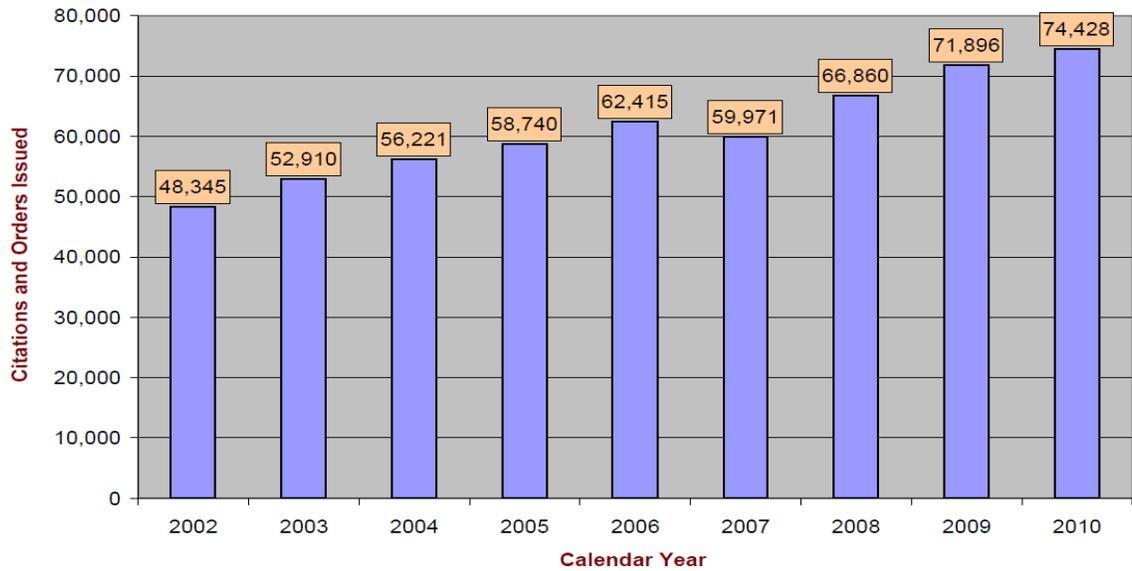
- The total dollar amount assessed by MSHA to MNM mines increased 519 percent from \$8.3 million in CY 2002 to \$51.4 million in CY 2010.
- The total dollar amount assessed by MSHA to MNM mines increased 298 percent from \$12.9 million in CY 2006 to \$51.4 million in CY 2010.

¹Based on date issued

Figure 1

**MSHA FACT SHEET:
Total Citations and Orders Issued
Metal/Non Metal Mines
CY 2002 - CY 2010**

**M/NM - Citations and Orders Issued
CY 2002 - 2010**

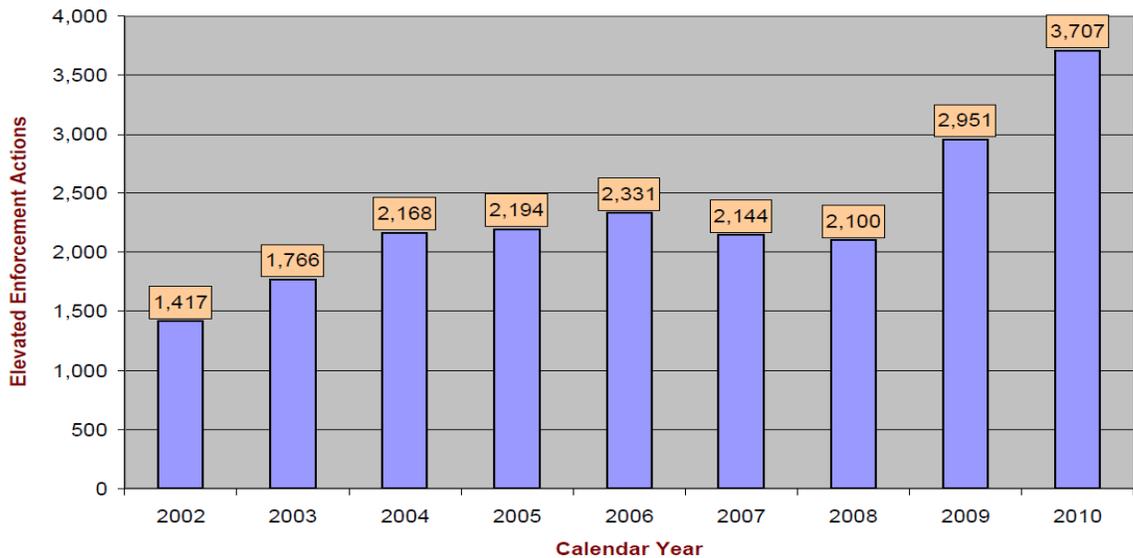


- The total amount of Citations and Orders issued by MSHA to MNM mines increased 54 percent from 48,345 in CY 2002 to 74,428 in CY 2010.
- The total amount of Citations and Orders issued by MSHA to MNM mines increased 19 percent from 62,415 in CY 2006 to 74,428 in CY 2010.

Figure 2

**MSHA FACT SHEET:
MSHA Elevated Enforcement Actions
Metal/Non Metal Mines
CY 2002 - CY 2010**

**M/NM - Elevated Enforcement Actions
CY 2002 - 2010**

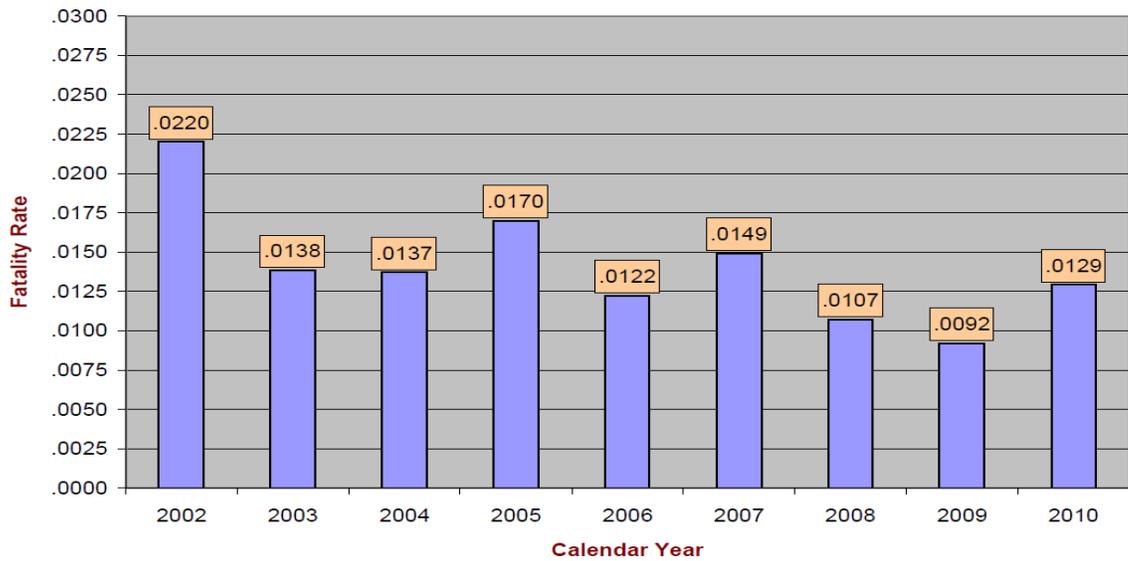


- The total amount of Elevated Enforcement Actions taken by MSHA for MNM mines increased 162 percent from 1,417 in CY 2002 to 3,707 in CY 2010.
- The total amount of Elevated Enforcement Actions taken by MSHA for MNM mines increased 59 percent from 2,331 in CY 2006 to 3,707 in CY 2010.

Figure 3

**MSHA FACT SHEET:
Mine Fatality Rate¹
Metal/Non Metal Mines
CY 2002 - CY 2010**

**M/NM - Fatality Rates
CY 2002 - 2010**



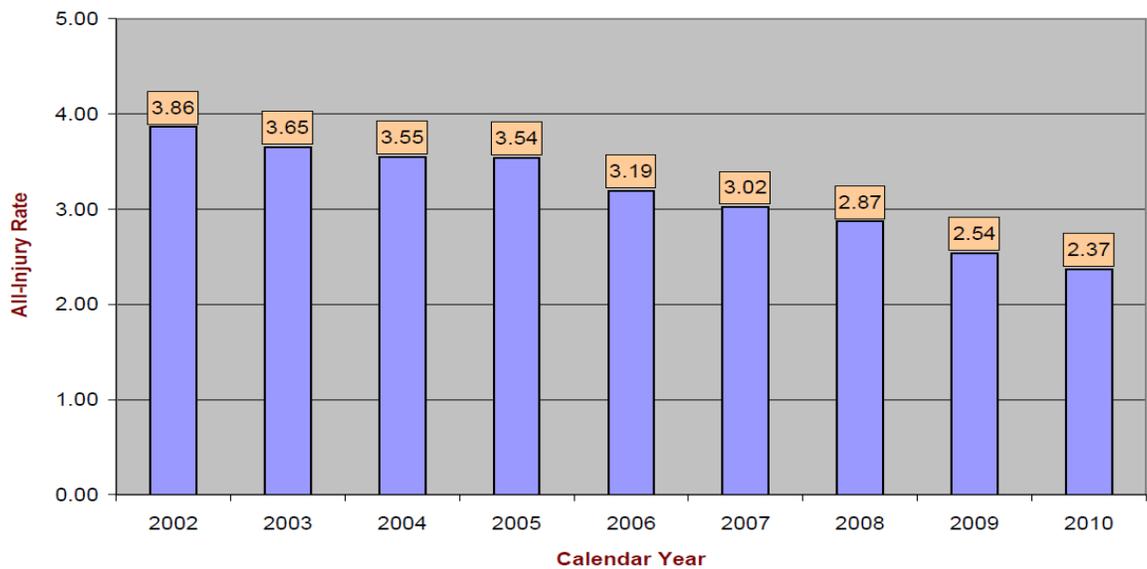
- The Fatality Rate for MNM mines decreased 41 percent from .0220 in CY 2002 to .0129 in CY 2010.
- The Fatality Rate for MNM mines increased 6 percent from .0122 in CY 2006 to .0129 in CY 2010.

¹Reported injuries per 200,000 hours worked.

Figure 4

**MSHA FACT SHEET:
Mine All-Injury Rate¹
Metal/Non Metal Mines
CY 2002 - CY 2010**

**M/NM - All-Injury Rates
CY 2002 - 2010**



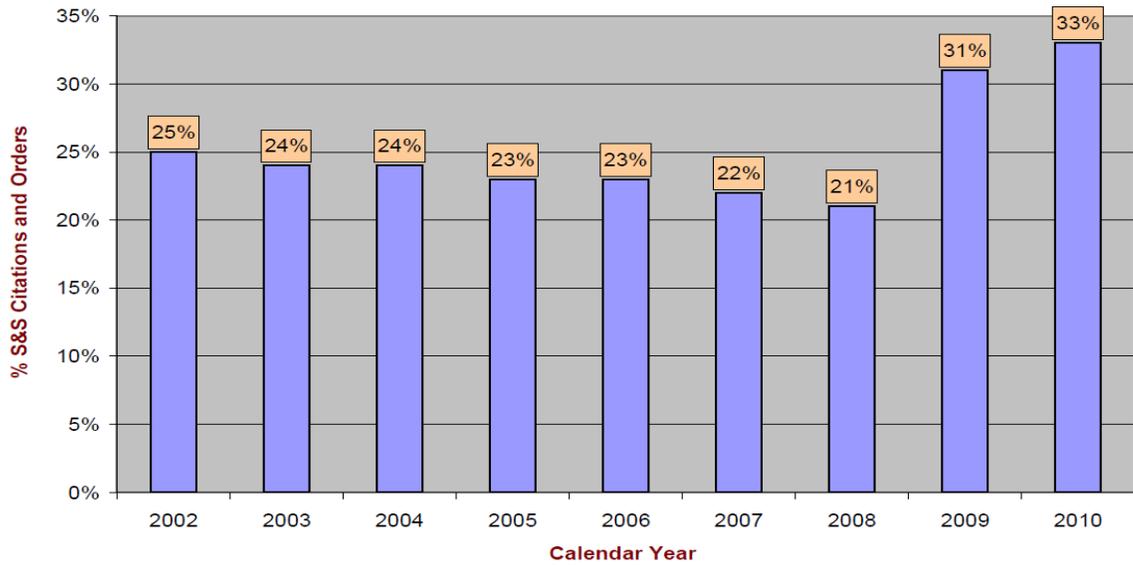
- The All-Injury Rate for MNM mines decreased 39 percent from 3.86 in CY 2002 to 2.37 in CY 2010.
- The All-Injury Rate for MNM mines decreased 26 percent from 3.19 in CY 2006 to 2.37 in CY 2010.

¹Reported injuries per 200,000 hours worked.

Figure 5

**MSHA FACT SHEET:
Percentage of "S & S" Citations and Orders
Metal/Non Metal Mines
CY 2002 - CY 2010**

**M/NM - % S&S Citations and Orders
CY 2002 - 2010**



- The percent of "S&S" citations and orders for MNM mines increased 32 percent from 25 percent in CY 2002 to 33 percent in CY 2010.
- The percent of "S&S" citations and orders for MNM mines increased 43 percent from 23 percent in CY 2006 to 33 percent in CY 2010.

Figure 6