

# CALCIMA

California Construction and  
Industrial Materials Association

February 22, 2010

Mr. Joseph A. Main  
Assistant Secretary of Labor for Mine Safety and Health  
1100 Wilson Blvd., 21<sup>st</sup> Floor  
Arlington, Virginia 22209

Re: Change in MSHA Return Roller Guarding Policy

Dear Mr. Main:

The California Construction & Industrial Minerals Association (CalCIMA) is writing about our concerns with a change in MSHA policy regarding guarding of conveyor return rollers. CalCIMA is the trade association for aggregate, ready mixed concrete and industrial material producers in California. We have 100 company members representing over 500 production facilities in the state. Our members supply the materials to build roads, bridges, hospitals, schools, waterways, water purification systems, energy efficient light bulbs, and hybrid vehicle batteries.

The safety of workers has been and continues to be a primary concern for all CalCIMA members. California operators have extensive safety practices and training in place, and are uniquely regulated by both federal and state agencies. The association and its members meet every two months in a regional Holmes Safety Association with MSHA and Cal/OSHA representatives to keep informed on the latest developments in safety, education, and enforcement. Our members make a particular effort to work closely with MSHA and Cal/OSHA.

CalCIMA members are alarmed and concerned regarding a recent change in MSHA's interpretation of return roller guarding requirements in California. Starting late last year, a mine inspector from the Boulder City office started informally advising CalCIMA member plants that all return rollers adjacent to walkways over 20 inches above the walkway would have to be guarded. When the source of this change was queried at the Vacaville office, CalCIMA members were told there was no change in how return roller guarding was being interpreted and enforced.

In the month of January, several CalCIMA member mines were informally advised during their regular inspection that all return rollers along travelways less than seven feet that could be accessed by miners would have to be guarded. During the final week of January, and continuing into February, CalCIMA member operators have been receiving citations for failure to guard return rollers that are less than 7 feet above adjacent travelways, as well as areas being interpreted as "travelways", during regular inspections, as well as spot inspections in some cases specifically targeting return roller guarding.

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This is a momentous change in MSHA's interpretation of the requirement for guarding return rollers. No reason has been given to CalCIMA members as to why there has been a change in the return roller guarding requirements. Furthermore, MSHA provided no formal notice to operators of this change in the return roller guarding requirement. The impact of this change leaves CalCIMA members with literally tens of thousands of return rollers to be guarded at a time of limited resources--both economic and human.

For the past 30 plus years, MSHA inspectors have not viewed return rollers as moving machine parts that required guarding. The only exception has been where miners traveled under conveyors with exposed return roller less than 7 feet high, or where a miner was required to work in close proximity to an exposed return roller that posed a hazard to the miner. These areas have been addressed in the past and these return rollers have been guarded.

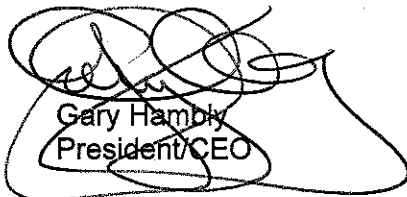
This change will require a tremendous capital expenditure on the part of operators to build and install the guards, as well as the subsequent maintenance and cleaning of the guards in the future. The safety of the miner overrides the cost of providing a safe work environment; however, we are questioning whether our limited resources be better spent in other areas, such as ensuring compliance with the newly released "Rules to Live By" standards.

*CalCIMA requests that enforcement of this new return roller guarding policy be suspended.* If MSHA now believes that guarding return rollers is necessary after 30 years of not enforcing return rollers as moving machine parts, the agency should publish the change as a proposed rule in the Federal Register. By following the formal rulemaking process, the agency will permit the regulated community an opportunity to comment on the change, MSHA will provide evidence of the risk and conduct a cost/benefit analysis, and MSHA will comply with the Administrative Procedure Act, 5 USC 551 et seq.

Also, a formal rule-making and implementation process would provide more opportunity for transparency, understanding of the goals and requirements by all parties, notice to operators, and training seminars by MSHA's technical and educational offices.

In conclusion, CalCIMA members hold the safety and protection of our miners in the highest regard. The purpose of this request is to ensure that we use our limited resources wisely to ensure the continued safety and protection of our miners. We look forward to your reply in this very important matter.

Sincerely,



Gary Hamby  
President/CEO

Cc: Neal Merrifield – Acting Administrator for Metal and Nonmetal Mine Safety and Health  
Gregory R. Wagner, M.D. – Deputy Assistant Secretary for Policy  
Michael A. Davis – Deputy Assistant Secretary for Operations  
Michael Hancher – Deputy Administrator of Metal and Nonmetal Mine Safety and Health  
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