



ACNM Compliance Committee

"Educating the Industry on Compliance Expectations"



Volume I - June 2010

Last year, the Occupational Safety and Health Administration assembled a work group to evaluate the Agency's penalty policies. The general consensus of the group was that the Agency's penalties are too low to have an adequate deterrent effect. Below are some of the changes being made to the penalty calculation system?

- The avg. penalty for serious violation will increase to an avg. of \$3,000 to \$4,000
- The min. proposed penalty for a serious violation will be increased to \$500 up to \$7,000
- Timeframe for considering an employer's history of violations will expand from 3 to 5 yrs.
- An employer cited for any high gravity serious, willful, repeat or failure-to-abate violation within the previous 5 yrs. will receive a 10% increase in penalty, up to the statutory max.
- Any reduction in penalty over 30% will require approval from the Regional Administrator. An informal conference for penalty adjustments to an employer with an outstanding balance will no longer be allowed.
- A new penalty reduction structure will be established for employers with less than 250 employees.
- 10% good faith reduction for employers with a strategic partnership will be eliminated.

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A task force made up of members of the ACNM, Ready Mix Association, and the New Mexico Mining Association met with The Air Quality Bureau recently. The bureau began a process of revising the GCP2, GCP3 and GCP5 permits process. The task force joined the process to provide input in formulating revisions to the GCP regulations that addresses issues and concerns of industry.

One concern brought to the table was the issue of no night time traffic or loading activities allowed for aggregate and asphalt facilities. In short, the result was additional conditions were needed in order to haul material at night from or to your permitted crusher or asphalt facility. Although the Bureaus position was understandable, not all conditions and permits fit to these regulations. Recently, ACNM sent out the GCP Only Night Time Traffic Draft to all members. This draft includes the NSR based on individual permits.

Next being reviewed is a condition that may allow short term engine replacement when an incident occurs. This condition is outlined with specifics. Members are strongly encouraged to comment and send feedback before conditions become final to Richard Goodyear at Richard.Goodyear@state.nm.us.

Both conditions have and may continue to result in potential Notice of Violations and steep legal ramifications. Members are urged to reexamine permits to ensure conditions are being met. Should any comments or concerns arise the task force asks to address Mike Gibson at ACNM.

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E-Verify is a free, Internet-based system operated by The Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA). E-Verify allows participating employers to verify their employees' employment authorization within seconds.

E-Verify is mandatory for employers with federal contracts or subcontracts that contain the Federal Acquisition Regulation E-Verify Clause. The E-Verify Federal Contractor Rule will affect Federal Contractors who are awarded a new contract with the FAR E-Verify Clause (73 FR 67704) on or after September 8, 2009. Existing contracts may also be bilaterally modified to include the FAR E-Verify Clause. If applicable, enrollment must be done within 30 days of award date.

If your contract does not include the clause, you are **NOT** required to enroll, but you may participate voluntarily. Your Government Contracting Official, not the E-Verify Program will decide whether your Contract qualifies.

For more information on E-Verify go to:

- <http://www.uscis.gov>
- <http://www.justice.gov/crt/osc/html/Everify.php>
- <http://www.arnet.gov/far/>

HOT TOPICS

Safety

With over 880 violations, the #1 violation reported by MSHA in the 1st four months of 2010, with over 13% of all violations was the failure to provide guards to protect persons from contacting gears, sprockets, chains, drive, head, tail, take-up pulleys, flywheels, couplings, shafts, fans and similar moving parts that can cause injury

Environmental

Gas, Fuel and used oil tanks that are planned to be or have been located in one location for over 365 consecutive days must be registered with the local/state/federal agency responsible for administrating environmental quality

Labor

All members currently working or planning to work on NMDOT projects requiring the On-The-Job training program need to be aware that the NMDOT is sanctioning penalties for non compliance with this program. Fines have been levied to some members in excess of \$1000 and up.