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ARIZONA ATTORNEY GENERAL

February 27, 1985

Mr. James H. McCutchan
State Mine Inspector
705 West Wing, Capitol Building
Phoenix, Arizona 85007

Re: I85-028 (R84-201)

Dear Mr. McCutchan:

You have inquired whether the State Mine Inspector has jurisdiction to inspect batch plants and asphalt plants located on the same property as sand and gravel operations.^{1/} According to information you have provided, a "batch plant" is a facility that gathers a specific weight of sand, rock, fly ash and cement, and mixes these materials together in a drum or feeds them into a mixer truck, where water is added to form concrete. An "asphalt plant" is a facility that gathers a specific weight of sand, rock and hot asphalt, mixes them together in a drum and then discharges the mixture into an open truck for transport.

In Ariz. Atty. Gen. Op. 179-183, we concluded that the Mine Inspector did not have jurisdiction to inspect batch and asphalt plants that were not located on or adjacent to mining operations. You have now asked us to address under what

1. Your original request which was withdrawn was recently resubmitted.

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circumstances the Mine Inspector has jurisdiction over batch and asphalt plants that are, indeed, located on the same property as sand and gravel operations. For the reasons set forth below, we conclude that the Mine Inspector may inspect those plants which are "connected with" a mine, including sand and gravel operations.

A.R.S. § 27-124.B provides:

The inspector may at all hours enter and examine any part of any mine,^{2/} visit, investigate, and examine a plant or equipment connected therewith, or any part of the workings thereof. (Emphasis added.)

The term "connect" means "to join, fasten or link together, usually by means of something intervening." Webster's Third New International Dictionary 480 (3rd ed. 1976). For example, it has been judicially determined that a dam was "connected with" property to which a flume or other conveyance transported water. Plattsburg Gas & Electric Company v. Miller, 206 N.Y.S. 42 (1924). Another court concluded that two buildings were "connected" with each other by an enclosed passageway as well as common utility lines, and by both buildings' being used for an "integrated high school program of education." Pearl Assurance Company v. School District No. 1, 212 F.2d 778, 781 (10th Cir. 1954). It has also been held in a zoning case that the term "connected" does not "require physical propinquity," but rather "prescribe[s] close association with the primary permitted use." City of Concord v. New Testament Baptist Church, 382 A.2d 377, 379 (N.H. 1978).

If a batch plant or asphalt plant is physically attached to a mine, it would clearly be "connected with" the mine. If it is not physically attached, but in close proximity to the mine, and if it functions as part of an integrated enterprise of the mine operator, it could also be considered to be "connected with" the mine, under the foregoing interpretations. A case-by-case determination would need to be

2. "Mine" by definition includes sand and gravel operations.
A.R.S. § 27-301.3.

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made concerning whether a particular asphalt or batch plant,
which is not physically joined to a mine, is "connected with"
the mine.

Sincerely,



BOB CORBIN
Attorney General

BC/ERE/bl