



# Attorney General

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ARIZONA ATTORNEY GENERAL

June 25, 1985

The Honorable Bob Denny  
State Capitol - House Wing  
1700 West Washington  
Phoenix, Arizona 85007

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

Re: I85-082 (R85-079)

Dear Messrs. Denny and McCutchan:

Representative Denny has inquired whether the State Occupational Safety and Health Administration (State OSHA) has jurisdiction over batch plants or asphalt plants that are under the jurisdiction of the Mine Inspector by virtue of their being connected with a sand and gravel operation. Mr. McCutchan's office has asked which state agency has jurisdiction over the health and safety of employees on mining property. His office has also noted that a batch plant or asphalt plant adjacent to a sand and gravel mine is often under different ownership than the mine itself, and has inquired whether the extent of the State Mine Inspector's jurisdiction over such plants is dependent upon their being owned by the same entity which owns the mine.

All mine "operations" are subject to the provisions of Arizona Revised Statutes, Title 27, Chapter 3, (A.R.S. § 27-301 et seq.) A.R.S. § 27-302.A. Those provisions are enforced by the State Mine Inspector. A.R.S. § 27-302.B.

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The term "operation" includes plants that are "connected with" a mine.<sup>1/</sup> In Ariz. Atty. Gen. Op. 185-028 we noted that asphalt and batch plants that are physically attached to a sand and gravel mining operation are "connected with" that mine, but that a case-by-case determination is required to determine whether other asphalt or batch plants are "connected with" a mine. For example, if a batch plant or asphalt plant is adjacent to a sand and gravel mine and if the operation of the mine and the plant are so interdependent that they form one integral enterprise, the plant could be deemed "connected with" the mine, regardless of whether the mine and plant are owned by the same entity.

The Mine Inspector has jurisdiction both to prescribe standards affecting the safety and health of employees at plants "connected with" a mine, A.R.S. § 27-462.B<sup>2/</sup> and to enforce those standards, A.R.S. § 27-302.<sup>3/</sup>

State OSHA is specifically denied jurisdiction to regulate the working conditions of employees if the Mine Inspector has statutory authority to regulate their working conditions.

Nothing in this article [A.R.S. § 23-401, et seq.] shall apply to working conditions of employees with respect to which any state agency acting under . . . title 27, chapter 3, Arizona Revised Statutes [A.R.S. § 27-301, et seq.], exercises statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

A.R.S. § 23-402.

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1. The term "mine" is statutorily defined to include sand and gravel mining enterprises. A.R.S. § 27-301.3.

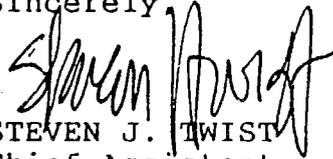
2. "The inspector shall administer this chapter and may adopt rules reasonably necessary to effectuate the provisions of this chapter [A.R.S. § 27-301 et seq., 'Operation of Mines']."

3. "The provisions of this chapter [A.R.S. § 27-301 et seq.] shall be enforced by the inspector." A.R.S. § 27-302.

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We conclude that State OSHA does not have jurisdiction over asphalt and batch plants that are under the jurisdiction of the State Mine Inspector because, as set forth above, the Mine Inspector "exercises statutory authority to prescribe [and] enforce standards or regulations affecting [the] occupational safety or health," A.R.S. § 23-402, of employees in those plants.

Sincerely,



STEVEN J. TWIST  
Chief Assistant  
Attorney General

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