Report of:

2019 National Ready Mixed Concrete Association
Regulatory Enforcement Survey

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**Introduction**

The Regulatory Enforcement Survey was conducted by the Safety, Environment and Operations (SEO) Department of the National Ready Mixed Concrete Association (NRMCA). Over the last number of years there has been an unprecedented increase in the amount of regulations being promulgated by federal regulatory agencies. Due to this increase, the regulation’s impact on ready mixed concrete producers is reasonably high. This survey is meant to gauge regulatory action within the industry to determine what, if any, regulatory trends on specific issues, issue types, and geographic regions may exist. This information, which was submitted anonymously and confidentially, will help NRMCA to better tailor its actions to address and/or combat any such issues, and to keep a finger on the pulse of when, where, how and why regulatory agencies are targeting and/or levying enforcement actions against the industry. NRMCA thanks all who participated in the survey and this year’s survey sponsor Fritz-Pak.

**2019 Regulatory Enforcement Survey**

The 2019 Regulatory Enforcement Survey form was sent to NRMCA members on the Board of Directors (BOD), SEO Committee and Government Affairs Committee, as well as made available to the entire NRMCA membership. The survey was sent out via email to the BOD and Committees from January 2019 through February 2019, with the full NRMCA membership also having access. The survey consisted of ten multiple-choice type questions, with the ability to add comments as necessary. The survey was designed to be as short as possible to allow for easy submission. The survey responses represent data for calendar year 2018. Survey participants were instructed to answer the survey questions to the extent available, if all questions could not be answered.
Survey Responses

In its fourth year, the annual survey was again open to all NRMCA member companies. NRMCA received 62 total submissions. Results of the survey are compiled nationally. Responses came from all eight geographical regions, with roughly one third from the Southeastern region.

Table 1: Geographical Distribution of Survey Responses by Percent
**Company Size**

**Question: What size company do you represent (annual cubic yards)?**

New to the survey this year, this question aimed to determine what size companies were not only participating, but what, if any, regulatory targeting was occurring for large versus small sized companies. The company size, consistent with the standard NRMCA measurement, relies on how many cubic yards of concrete a company produces annually. The survey clearly shows that the majority of companies participating and reporting regulatory action are companies mainly producing between 500,000 and 3,999,999 cubic yards of concrete annually (categories B and C).

**Table 2: Geographical Distribution of Survey Responses by Percent**
**Occupational Function**

*Question: What functional area do you work in?*

The near majority of respondents noted their role as being in management or an executive, other respondents identified as either environmentally or safety focused (39% and 35% respectively), with roughly 10% as strictly operational personnel (a decline of 2% from the previous year’s survey). About 16% of respondents surveyed identified as either sales, finance, legal or human resources focused.

**Table 3: Respondent Occupational Focus**

![Bar chart showing respondent occupational focus](chart.png)
Plant/Company-Wide Regulatory Action Awareness

Question: Are you aware of any plant or company-wide regulatory action? If yes, in which area(s)?

For the fourth year, less than fifty percent of respondents answered that they are aware of some sort of regulatory action at either one of their ready mixed concrete plants or throughout their company. This differs from the previous three surveys that signaled more than a majority of respondents were aware of regulatory action. For this year, of those that are aware of regulatory action, the largest regulatory arena, consistent with past years, reported on by far was for environmental issues (U.S. Environmental Protection Agency or EPA). Second on the list of regulatory action awareness was Safety/Health issues (Occupational Safety and Health Administration or OSHA). Commercial Motor Vehicles (CMVs) issues, or rather regulatory items under the jurisdiction of the Federal Motor Carrier Safety Administration (FMCSA) came next. The next regulatory awareness categories listed differ from the previous three years. Next in line are Community Complaints (10%), Third-Party Lawsuits (8%) (environmental lawsuits), Labor/Employment (5%) (such as those stemming from the Department of Labor or the National Labor Relations Board (NLRB), then Internal Revenue Service (2%). Previously, the Labor/Employment category was listed fourth in ranking. Lastly, dissimilar to previous years, 52% respondents noted that they aren’t aware of any regulatory action on any level, in any of the regulatory areas. The regulatory awareness data is a clear departure from the last three years.

Table 4: Regulatory Awareness Responses
Plant/Company-Wide Regulatory Action Citations

Question: If you have seen plant or company-wide regulatory action, how much was paid just in total citations?

This specific question is new to the survey this year. The question aims to ascertain how much companies appear to be paying in citations for violations on a general scale. While the data received this year is not able to be measured against previous years, moving forward it likely sets an industry baseline for determining what may constitute an appropriate average agency citation. Respondents were asked to manually enter in the citation amounts observed in each of the seven categories listed in Table 4.

Respondents that answered this question, roughly 42%, overwhelmingly listed environmental and safety/health as being the categories with the most citations and with citations. Total amounts paid on these citations ranged from $0 up to $100,000. There were a few respondents noting that while there may not have been any financial obligations, there were requirements to correct the violations. Despite there being a wide spectrum of amounts paid, or requirements from the citing agency, the median citation amount paid for environmental citations was $7,000; safety/health was $4,250. Notable inclusions were mentions of over $100,000 in citations for hours of service violations for commercial motor vehicles and in the third-party lawsuit category fines of up to $2,000,000.

The data represented from this new question paint a clear picture of citation amounts matching the concern and activity level observed on the environmental regulatory front. As well, it appears that the uptick in concern for third-party lawsuits (as noted in Table 7) is likely warranted given that fines to date have been paid in the millions of dollars, well above the thousands and even hundreds of thousands of dollars more commonly seen in the other categories.
Plant/Company-Wide Regulatory Action Costs Associated with Citations

Question: If you have received citations, approximately how much was paid above the citation amount (i.e. legal fees, compliance assistance, infrastructure changes, training, equipment purchases, etc.)?

This specific question as well, is new to the survey this year. Often when a company is faced with a citation for a regulatory violation, it is unlikely that only the citation will need to be paid. More often than not, excess costs come after paying a citation in order to come into compliance. This question aims to identify the true cost to companies facing regulatory violations, including paying the fine amount and added compliance costs. As noted below, the amounts paid for citations are subsequently compounded by the added compliance costs.

Roughly half of respondents answered this question, with most identifying the added costs above citation payments attributed to environmental (57%) and safety/health (47%). Ranking as a tie for third were commercial motor vehicles and third-party lawsuits, 14.29% each. Community complaints were listed next as having the most associated costs at 10%. While citations detailed above appear to come in a number of different amounts or methods, the amount totals paid above and beyond citation totals, largely started at $5,000 and increased from there. Similar to the citation scenarios outlined above for total citation payments, one respondent stated that costs were at “$100,000 and climbing.” While another in the same category listed costs at $500,000. The amounts spent for compliance in this section, while generally starting at a higher amount, show an average of compliance costs for the environmental category at $12,500, for safety/health $23,000, for commercial motor vehicles $1,000, and for third-party lawsuits $300,000.

As mentioned earlier, the added compliance costs above and beyond citations with a monetary component increase the true cost of citations considerably. In a number of scenarios, the final cost for both citation and after-the-fact compliance remediation more than doubled the cost of the original citation, dwarfing the initial violation amount. Again, while this question is new to the survey and thus lacks previous year’s data to compare it to, the survey’s data confirms what has long been argued with federal regulators, that the true cost of a citation no matter how small, is not representative of what companies regularly have to commit in order to be compliant.
**Frequency of Regulatory Inspections**

*Question: How frequently are your ready mixed concrete plants inspected by either a state or federal regulatory auditor?*

Based on the survey results, and nearly identical to the last two years’ data, it appears that regulatory inspections as a whole continue to consistently be limited to once a year or infrequently. Responses show that regulatory inspections occur for nearly 44% of NRMCA members once a year and over 37% of members see an inspector infrequently. A number of write-in responses stated that inspection time frames for plants were regularly random, based on employee complaints or “triggered by certain events.” More frequent inspections however, occur for roughly 10% of the industry. This data remains slightly unchanged compared to previous years’ data and responses, however a minor decline in the frequency of inspections is occurring.

Table 5: Regulatory Inspections Responses
**Change in Regulatory Action**

*Question: Have you noticed any change in regulatory action over the past 12 months?*

Almost two-thirds of respondents’ submissions show that there has been little to no change with regard to regulatory inspections or other changes. However, there also clearly are members who have seen an increase in regulatory actions. Similar to previous years, 30% of respondents placed an increase in regulatory action in 2018 at 30.7%. Given these numbers, the reasons for the differences most likely include varied regulatory enforcement on both the state and federal level through electronic means, in addition to on-site, physical enforcement inspections. Other reasons likely include increased third-party litigation and temporary regional or localized enforcement focuses (i.e. respiratory crystalline silica monitoring due to new silica rule and water management violations).

**Table 6: Change in Regulatory Action**
Regulatory Concerns

Question: Regulatory wise, what are you most concerned about?

As stated earlier, the continued trend of regulatory issues concerning NRMCA members can significantly be said to be environmental issues. Similar to previous years’ responses, it is fair to say that environmental regulations are most worrisome to nearly 65% of NRMCA members, down about 10% from previous years. Similar to previous years’ reasoning, the heightened concern may be explained by a combination of two items. First, there has been an extraordinary amount of environmental regulations either proposed or finalized in the last ten years; and second, it’s been noted that a delta exists between what a regulation is supposed to achieve and how to remain compliant with it. These two issues together, unfortunately may be bringing about a lack of certainty or understanding, causing the industry some anxiety. On the health and safety side, over 41% of NRMCA members are most concerned about safety and health regulations, similar to previous year’s results. Again, this category could also be falling victim to similar instances such as environmental. Regulations originating from the FMCSA most concern 26% of members, also the same as previous years. Labor and employment most concerns 17.7% of members. This is an increase of 7% from previous year, which oddly doesn’t correlate to it being ranked lower as a category of regulatory action listed in Table 4. However, it is important to note that respondents clearly are anxious about Third-Party Lawsuits and Community Complaints, as they both are showing large increases from previous years, roughly 23% and 19% respectively; whereas in previous years, they both were identified as single digit concerns. Lastly, just fewer than 2% of members responding are most concerned with tax issues.

Table 7: Responses on Regulatory Concerns
Environmental Regulations Concerns

Question: Previously, environmental regulations have seen an overwhelming concern. Please rank the following specific issue areas that you have concern with (1st having the most concern).

Overwhelmingly, and not so surprising, respondents again listed water issues as being their number one environmental regulatory concern. While truck washing/rinse off were listed as their category and ranked high, it’s understandable since these activities are also associated with water issues. Listed as second, were regulatory inspections, which were ranked as third in previous years. More surprisingly though, is the ranking of reporting and recordkeeping as third, since in previous years it has barely been in the top five. Listed as fourth most concerning were air issues. Again, a surprise since air issue in the previous surveys were listed as the second issue behind water issues, consistently. As surmised in previous years, concerns over water issues can likely be tied to their often-complicated nature and the abundance of water used in the production of ready mixed concrete and related operations. Lastly, as seen in other portions of the survey, both Third-Party Lawsuits and Community Complaints are not to be ignored as they both were ranked much higher than previous years for their concern.

Table 8: Environmental Areas of Regulatory Concern
Compliance Costs

Question: Have your regulatory compliance costs changed in the last 12 months?

The survey responses for this question continue to show a significance for the industry. In previous years nearly 62% of members report an increase in the cost they incur to comply with regulations. This year’s survey shows only a 40% increase. As with previous years’ results, it would be negligent not to mention that questions around the meaning of compliance costs have been raised. Some respondents understood the question as relating to increased compliance costs directly stemming from new regulations, while others related it to incurring greater compliance costs that inherently may come with the expansion or growth of business. NRMCA does not see either interpretation as more correct, but simply as objective and subjective responses from industry members and are relevant to the survey and overall final analysis. Furthermore, there was also a sizeable amount of the industry that has seen no change in compliance costs, roughly 52%, a large increase from previous years’ responses of roughly 30%. Roughly 2% of responses noted a decrease in compliance costs, while close to 8% might not keep track of such information. The data here appears to show an overall slight decrease in the cost of compliance, and a large number of members showing no change from previous years.

Table 9: Changes in Compliance Costs Responses
Summary

The 2019 Regulatory Enforcement Survey, while somewhat similar to previous years’ results, highlights the disproportionate levels of lack of enforcement actions versus the increase in compliance costs compared to the large number of new regulations in the past ten years that have either been finalized or proposed. However, the largest take away from the data that has not been seen in previous years is a noticeable decline in enforcement activity and inspections. This trend likely is a direct result of there being a new Administration in the White House and a new Congress with new priorities since the last survey was conducted. As well, this decline is likely directly related to continued decreases in federal funding for myriad federal regulatory agencies since 2017. However, despite this decline in enforcement activity and inspections, it may however be responsible for the increase in third-party lawsuit concerns, activity and large sums paid for related violations.

NRMCA thanks all who participated in the survey and this year’s survey sponsor Fritz-Pak.