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October 20, 2006

Mine Safety and Health Administration
Office of Standards, Regulations, and Variances
1100 Wilson Boulevard
Room 2350
Arlington, VA 22209-3939

Re: RIN 1219-AB51
Criteria and Procedures for Proposed Assessment of Civil Penalties

Dear Sir or Madam:

On the behalf of the member companies of the Colorado Mining Association (CMA), I am submitting comments on MSHA's proposed regulation, 30 CFR Part 100 entitled "Criteria and Procedures for Proposed Assessment of Civil Penalties." We appreciate the opportunity to comment on the proposed regulation.

Members of CMA believe that the proposed regulation is misguided in its efforts to improve mine safety. With rare exception, there is no correlation between compliance (as measured by the number of citations and orders issued) and safety (as measured by the number of recordable injuries). In many cases, mines with exceptional safety performance have less than stellar performance when strictly measured by the number of citations issued. As such, CMA supports regulations that recognize excellent safety performance when determining civil penalty assessments for citations issued to mine operators and contractors.

Additional comments are as follows:

- The proposed tables in 30 CFR 100.3(b) inappropriately penalizes larger operators, simply based upon the tonnage produced or the amount of hours worked, depending upon type of operation (coal mine, metal/nonmetal, or contractor). Larger operators typically have proven and effective safety programs designed to reduce injuries and to enhance miner safety. Despite having these safety programs in place, the proposed regulation will allow MSHA to significantly increase a fine for any citation issued to the operator simply because of the size of their operation. This penalizes larger operators despite their significant efforts in reducing injuries and potential hazards.

  In addition, large coal mine operators are penalized twice, first for their size based upon annual coal production, and secondly for the size of the controlling entity. Metal/nonmetal operations and contractors do not incur penalty points for the controlling entity. For parity within the mining industry, coal mine operators should not be penalized more simply because they are owned by or have a vested interest of a larger company.

It is inappropriate for MSHA to assess a large company literally thousands of dollars more than it would assess a smaller company for an identical citation. For example, a citation with identical gravity, violations per inspector day, repeat violation history, and number of persons affected where the assessed penalty points totaled 100, a small company would pay $2,748 whereas a large operator would be required to pay $13,609 because of the additional twenty penalty points attributed to the size of the operation. In this example, a 395% increase in penalty is inappropriate and unjustified. For a large coal mine operator, five additional penalty points would be added for a total of 125, converting to $20,302, a 639% increase simply due to being a large operator.

Although the Federal Mine Safety and Health Act of 1977, sections 105(b) and 110(i), and 30 CFR 100.3 requires MSHA to evaluate the "appropriateness of the penalty to the size of the business," an alternative would be to reduce the amount of points assessed simply based upon the size of the operator. For example, a large coal mine or metal/non metal mine could be assessed one extra penalty point to comply with the 1977 Act, rather than the 20 points proposed in Table 1 or Table 3. In addition, no penalty points should be assessed based upon the controlling entity.

- CMA is concerned that due to the excessive fines associated with the citations, mine operators will place unneeded resources in evaluating and contesting many citations, simply based upon the fine. These resources would be better spent on employee training and safety program development and implementation.

- CMA supports using a 15 month citation history rather than 24 months to determine the history of previous violations as stated in 30 CFR 100.3(c). This shorter time period is a more realistic picture of an operator's compliance efforts.

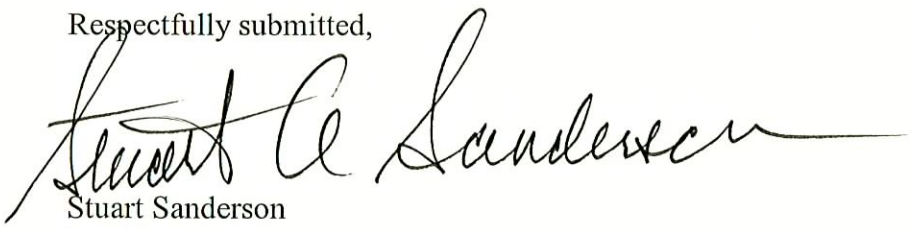
- CMA opposes reducing the operator's good faith abatement credit from 30% to 10% as outlined in 30 CFR 100.3(f). MSHA should continue to recognize the good faith efforts of operators. By cutting the penalty reduction allowed to operators, MSHA is failing to recognize diligent efforts. Using the concept of changing behavior by a stick or a carrot, the proposed regulation changes the stick to a club with unnecessary and excessive fines, and takes away 66% of the carrot. CMA suggests that the 30% reduction in good faith efforts remain as currently approved for diligent operators. There is clearly no justification for the reduced percentage.

- CMA opposes the modification to 30 CFR 100.6(b) that would reduce the time frame in which safety and health conferences must be requested. The primary purpose of the safety and health conference is to review mitigating circumstances that may or may not have been known when the citation was issued. Due to the varying work schedules, vacations, and other scheduled days away from work, employees or affected personnel may be away from the mine site for at least five days after the citation was issued. This absence prevents an operator from obtaining all of the necessary information needed for a safety and health conference. CMA is also concerned that shortening the time frame will result in unnecessary requests for safety and health conferences since operators will request conferences even if all of the necessary information has not yet been obtained. This is an unnecessary burden upon both the operator and MSHA. CMA supports leaving the time frame for a safety and health conference at 10 days.

- CMA opposes MSHA's proposal to remove the single penalty assessment. The legislative history clearly shows the need for such assessments when trivial and mere compliance citations are issued. Citations such as failing to punch an inspection tag on a fire extinguisher when the inspection was made, a lid off a garbage can with food scraps, and similar type compliance issues should not result in a several thousand dollar fine simply due to one's inattention to detail. Combining those citations that have real potential to cause injury with those that have little to no reasonable likelihood to result in an injury is counterproductive if the overall intended goal of the proposed regulation is to reduce miner injuries. CMA supports retaining a single penalty assessment for those citations where there is no reasonable likelihood that a serious injury would occur due to the conditions related to the citation.

In addition to the comments above, CMA supports the comments of the National Mining Association and associated member companies. CMA appreciates the opportunity for submitting these comments.

Respectfully submitted,



Stuart Sanderson
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