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MSHA/OSRV

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ELIZABETH S. CHAMBERLIN
General Manager

October 23, 2006

Patricia W. Silvey, Acting Director
Office of Standards, Regulations, and Variances
U.S. Department of Labor
Mine Safety and Health Administration (MSHA)
1100 Wilson Blvd., Room 2350
Arlington, Virginia 22209-3939

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

Dear Ms. Silvey:

CONSOL Energy Inc.¹ appreciates the opportunity to comment on the Notice of Proposed Rulemaking (NOPR) issued by the Mine Safety and Health Administration (MSHA) on September 8, 2006 (71 FR 53054).

CONSOL Energy adopts herein the well-reasoned comments of the National Mining Association (NMA) on the above – referenced proposed rulemaking and offers the following additional observations:

I. Congress recently addressed civil penalties when it amended the Mine Act through the Mine Improvement and New Emergency Response (MINER) Act of 2006. The MINER Act, § 8, increased the minimum penalties for certain violations and added new penalties for flagrant violations. Congress has spoken. The proposed rule goes far beyond the clear and unequivocal mandate of Congress and, by in large, is so severe so as to appear retaliatory. We would all be well served if MSHA abided by Congress' directive.

II. Toward that end, we request that MSHA abandon all aspects of this proposal not required by the MINER Act and proceed to implement the MINER Act civil penalty provisions as directed by Congress.

III. Should the agency elect to proceed with other aspects of the NOPR, the following revisions are suggested:

- retain the single penalty assessment;
- eliminate the controlling company consideration in penalty assessment;
- retain current negligence and gravity penalty point criteria;
- eliminate the new "repeat violation" criteria;
- retain the current special assessment criteria;
- retain the current "good faith" reduction for violations timely abated;
- eliminate the agencies ability to deny a conference; and
- retain the 10-day conference request period.

¹ CONSOL Energy is a multi-energy producer of coal, gas and electricity. CONSOL currently has 17 mining complexes located in the United States in Virginia, Pennsylvania, West Virginia, Kentucky and Utah.

IV. CONSOL Energy strongly endorses the NMA recommendation that an advisory committee, under the authority of Section 102 of the Act, be convened to provide recommendations to the Secretary on the relationship between the issuance of citations and reductions in fatality and injury rates. MSHA offers no analysis, and we are aware of none, that demonstrates that the proposed changes would result in fewer injuries or fatalities as compared to the existing framework. To the contrary, the proposed changes introduce more subjectivity into the process which, in turn, will lead to more inconsistency in the assessment of penalties. Such a result, CONSOL Energy submits, does not serve our workforce well.

V. Other commentators have highlighted the flawed nature of the proposal's escalating penalty scheme tied directly to an operator's size and violation numbers. CONSOL Energy suggests, instead, the use of a normalizing penalty assessment process based on violations per inspector shift, which places all operations on an even playing field.

VI. Make a meaningful change in the conferencing process by transferring responsibility for the conferencing process to an independent third party. Not only is there presently the appearance of the fox guarding the hen house, but obvious inequities exist under the current process where conferencing officers work for the District Manager and generally lack unilateral authority to vacate or make material changes to a citation or order.

SUMMARY

CONSOL Energy is committed to the operation of safe and healthy mines and facilities. Our most valued asset is our workforce and we are well-served by assuring that every one of them returns home to their families at the end of each working day. Safe mines are productive mines: safety and productivity are viewed in America's mining industry as complimentary, not competing, objectives.

These factors, not civil penalties, are the inducement for operators being proactive by taking measures to prevent safety and health hazards. The mining industry's safety record bears this out. Between 1990 and 2005, both injuries and fatalities have steadily declined. This progress has all occurred under the existing civil penalty framework.

Again, we thank the agency to comment on this regulatory proceeding and look forward to working with the agency to meet the spirit and intent of the MINER Act and to improve upon our recent trend of reduced fatalities and injury's at mining operations throughout our nation.

Respectfully submitted,

Elizabeth S. Chamberlin