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MSHA/OSRV

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October 23, 2006

Ms. Patricia Silvey
Office of Standards, Regulations and Variance
Mine Safety and Health Administration
1100 Wilson Boulevard, Suite 2350
Arlington, VA 22209-3939
Fax: 202- 693-9441

RE: RIN 1219-AB51

Dear Ms. Silvey:

I was pleased to see the proposed rule to revise the criteria, point system and minimum fines associated with MSHA's penalty assessment system (71 *Federal Register* 53054). In a year when 63 miners have lost their lives at metal, non-metal and coal mining operations, and thousands of others have suffered injuries and illnesses, MSHA needs a more robust penalty system. As part of its overall comprehensive enforcement system, MSHA needs economically meaningful monetary penalties to stimulate the immediate elimination of health and safety hazards and deter noncompliance with the law. For a penalty system to be effective, it must bear a relationship to the value of the product being mined, in this case coal. Currently there is not such a relationship. This proposal is a step in the right direction.

Some commenters have argued that the penalty changes should only apply to coal mining operations. I disagree strongly. The nation's miners and their families deserve an effective enforcement system no matter if they work at a coal mine or a crushed stone quarry. I urge MSHA to reject the suggestions that safety and health hazards and serious violations of standards are limited to coal mines.

The proposed amendment should not be limited to the specific mandates contained in the MINER Act, and then appoint an advisory committee to study the issue. I disagree. Changes to the penalty system are needed now, not in 3, 5 or 10 years, after an industry-weighted advisory committee makes recommendations.

I agree with MSHA's proposal to assign more penalty points for increasing levels of negligence and increasing levels of gravity. This change is neither excessive nor unwarrantable.

I agree with MSHA's decision to increase the minimum penalty amount from \$60 to \$112, and eliminate the single penalty assessment. As MSHA noted in its proposal, there are many instances in which mine operators repeatedly violated safety and health standards, but were only assessed the single \$60 penalty. By assessing all penalties as either regular or special assessments, the agency will have a more accurate pool of data from which to consider repeat violations. It will also eliminate the perception that "single penalty" assessments are not important, and just a "cost of doing business."

The history and structure of the Mine Act penalty provisions include non-S&S violations as a significant and important part of the penalty scheme. Unfortunately some mine operators have inadequate safety and health programs—not the comprehensive prevention programs fitting for our nation's miners in the year 2006. Poorly kept maintenance records, incomplete equipment inspection records and the like are potentially indicative of a larger problem at the mine. MSHA enforcement staff should have the ability to consider non-S&S violations in this light, and these citations should be processed through the regular assessment process where history, repeat violations, negligence and gravity is considered.

I disagree with MSHA's proposal to reduce the time period from 24 months to 15 months for considering an operator's history of violations. MSHA should retain the 24-month period for two reasons: First, only final orders of the Review Commission are considered as part of an operator's history for the purpose of assigning points. Changing the time period from 24 months to 15 months creates the potential to exclude orders which are within the Commission process. Second, a number of mining operations are seasonal or intermittent. A minimum of 24 months is necessary to assess a mine operator's history of safe or unsafe work practices.

I disagree with the current MSHA policy of only considering sub-sections of standards (i.e., 56.1401(a)(2)) for the purpose of determining repeat violations. MSHA should have the discretion to consider violations of any subsection of a standard as a repeat violation of the full standard (i.e., 56.1401). For example, 56.1401(a)(2) requires that parking brakes on mobile equipment "...be capable of holding the equipment with its typical load on the maximum grade it

travels." If an operator later receives a citation for violating 56.1401(a)(3) which requires "all braking systems installed on the equipment shall be maintained in functional condition) MSHA should have the discretion to consider this a repeat violation. Two violations of 56.1401, especially within a short-time period (e.g., 6 months) may indicate a chronic problem with the mine operator's system for maintaining and inspecting the brakes on their mobile equipment. An MSHA inspector, supervisor or district manager should have the flexibility to recommend such citations for repeat violation penalty points.

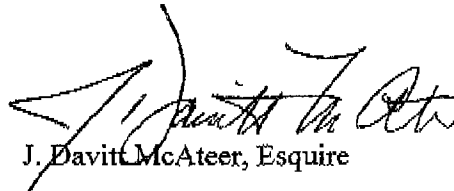
I agree with MSHA's proposal to reduce the "good faith" credit for prompt abatement of violations from 30 percent to 10 percent. By law, mine operators are required to correct violations of safety and health standards. A nominal 5-10 percent reduction would more appropriately balance the requirements of Section 110(i) for good faith credit with the Act's broader goal of an effective enforcement program with meaningful monetary penalties.

I agree with MSHA's proposal to delete the specific categories of violations for special assessment consideration. MSHA's enforcement staff should no longer be restricted by this list of eight. There are instances in which a regular assessment does not provide a sufficiently high penalty to be an effective deterrent. This change will give MSHA an important enforcement tool.

I agree with MSHA's proposal to reduce the time to request a meeting on a citation or order, from 10 days to 5 days. Five days is sufficient time to request a meeting, and it will accelerate the time period between receiving a citation and the associated monetary penalty.

Thank you for giving these comments your consideration.

Sincerely,



J. Davitt McAteer, Esquire