



October 18, 2006

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

Western Fuels-Colorado
P.O. Box 628
Nucla, Colorado 81424

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

Telephone 970/864-2165
Fax 970/864-2168

Dear Sir or Madam:

On the behalf of New Horizon Mine and Western Fuels-Colorado, LLC (WFC), I am submitting comments on MSHA's proposed regulation, 30 CFR Part 100 entitled "Criteria and Procedures for Proposed Assessment of Civil Penalties." WFC appreciates the opportunity to comment on the proposed regulation.

WFC believes that the proposed regulation is misguided in its efforts to improve mine safety. With few exceptions, 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, WFC 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:

- WFC is concerned that due to the excessive fines associated with the citations, we will be forced to use needed 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.
- WFC 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.
- WFC 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. WFC 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.

- WFC 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. WFC 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. WFC supports leaving the time frame for a safety and health conference at 10 days.
- WFC 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. WFC 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, WFC supports the comments of the Colorado Mining Association and the National Mining Association. Western Fuels-Colorado, LLC appreciates the opportunity for submitting these comments.

Respectfully submitted,



R. Lance Wade
Mine Manager