

NEVADA

Mining Association

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April 4, 2011

OFFICERS Ms. April E. Nelson
Acting Director

CHAIRMAN Office of Standards, Regulations, and Variances
John Mudge Mine Safety and Health Administration
1100 Wilson Boulevard, Room 2350
CHAIRMAN ELECT Arlington, Virginia 22209-3939

VICE CHAIRMAN
Greg Lang RE: RIN 1219-AB73; Comments on MSHA's Proposed Rule for Pattern of Violations

PAST CHAIRMAN
Bill Goodhard Dear Ms. Nelson:

PRESIDENT The Nevada Mining Association submits the following comments regarding the proposed
Tim Crowley Pattern of Violation (POV) rulemaking.

DIRECTORS The NVMA is comprised of operating mining companies; exploration companies; suppliers of
Michael Brown industry equipment, goods and services; counselors and consultants; and individuals interested in
Doug Taylor the well-being of the industry. The Association's objective is to maintain a business and operating
Bruce Hansen environment that will encourage exploration for the development and production of minerals in
Mary Kaye Cashman Nevada using safe and environmentally conscious methods.
Mary Beth Donnelly

Don Deines While the NVMA supports the goals the POV regulations have to protect health and safety of
Randy Griffin miners, the Association opposes the elimination of due process. Further, we maintain the proposed
Duane Peck regulations do not clearly show all criteria that will be used to determine POV.
Bill Zisch
Cindy Jones

Dennis McHarness With the proposal to eliminate the notice of approaching a POV, it becomes essential that
John Burrows the criteria for determining a POV are clearly defined. Posting the criteria on the web and
Nigel Bain eliminating any notice of impending action is insufficient. Doing so places a greater burden on
James T. O'Neil, Jr operators and small remote mining operations.
Tony Sanchez
Paul Thomsen

Jeff Thompson Should significant and substantial (S&S) violations be used as the criteria for POV then the
John Burrows agency must clarify what constitutes an S&S violation. Currently, it is up the inspector to determine
Paul Huet whether a citation could result in a serious accident. Too much autonomy is ultimately given to one
Steve Antonini inspector with no checks or balances in place. An operator has no opportunity to show any
Dan Anderson mitigating circumstances before being placed on POV. Furthermore, not having the chance to have
the citation reviewed by a higher authority prior to being placed on POV would violate the Fifth
Amendment of the U.S. Constitution stating "No person shall...nor be deprived of life, liberty, or
property, without due process of law..."

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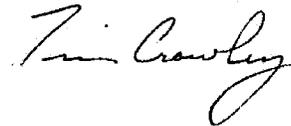
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The Association's comments regarding termination of notice are generally the same as above. Without review and relief by either a field office supervisor or district manager prior to the final issuance of the S&S violation, it may become impossible to get off the pattern of violation status.

The NVMA recommends that the agency develop POV criteria that is meaningful to both the industry and MSHA, and avoid placing unnecessary burdens on the companies with effective safety and health programs. Finally the NVMA urges the agency to establish a committee made up of representatives from industry, MSHA, and the DOL to develop POV criteria for mines.

The NVMA supports enhancing regulations to improve safety and looks forward to working with MSHA to make meaningful changes to the proposed regulations that accomplish this essential goal.

Sincerely,

A handwritten signature in cursive script that reads "Tim Crowley". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

Tim Crowley
President