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Criteria and Procedures for Assessment of Civil Penalties, 30 CFR Part 100

Comment On: MSHA-2014-0009-0024
Criteria and Procedures for Assessment of Civil Penalties

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Comment from anon anon, NA

Submitter Information

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General Comment

With regard to changes in 100.3 e) Gravity Likelihood

MSHA proposes to reduce the number of categories from 5 to 3.

However, the problem is two-fold:
1) reducing categories without making clear definitions will not help anyone better understand or utilize the system.

The largest problem, not only with the proposal, but with the current system, is there is no consistent definition of how to estimate "likelihood". I think MSHA would spend their time better defining what makes a hazard "reasonably likely" to occur, rather than combine and rename the categories. What is the statistical definition of "unlikely"? When does something become "reasonably likely" to occur? For instance, if I play a game of slots in Vegas, is it reasonably likely that I will win? The actual odds of payout are typically better than 95%, and yet, I think most people would say the chances of them winning were unlikely. If a 95% chance to win your money back is "unlikely", then what becomes "likely"? How much of a chance of occurring is required? And if people believe winning 95 times out of a100 is unlikely, then what must they consider something that would only occur once in 10,000 times, or once in a million times?

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2) S&S categorization is dependent upon categorization of this section of the citation: how will expanding one of the components of S&S determination impact the future determination of S&S?

One of the Key components of S&S is the designation Reasonably likely (or above) and Lost Workdays. With "Reasonably likely" now an even more broad category, and with a significantly lower threshold to cross, what will define an S&S? A much lower level of likelihood will now cross the border, and create an S&S. Thus, more S&S. And, more S&S being issued will lead to more contestments, as mines strive to get adjustments before they impact and explode (future penalty under history, POV, etc).

Currently, most inspectors always check either Unlikely or Reasonably likely when assessing citations, and are encouraged more and more to check "reasonably likely". With the new proposed unlikely category also having 0% chance included, I believe that inspectors will likely check Reasonably Likely the majority of times. It opens too many doors in a contestment to ever check a box that contains the definition of "0% chance".

I propose that MSHA spend their energy on better DEFINING likelihood, rather than lowering the threshold for S&S citations, which is all this does. This is a back handed way of increasing penalty amounts, pushing mines into POV status, and punishing mine operators.