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Criteria and Procedures for Assessment of Civil Penalties

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General Comment

Joe Main testified to Congress that one of the solutions to reduce the Contestment backlog was to make the evaluation and writing of citations by inspectors simpler and ultimately more objective, clear and consistent.

However, this proposal does nothing to help with that. In fact, it will increase the number of contests made, as operators find themselves even more pressed to push back against bad citations and onerous penalty costs, in order to stay in business.

If MSHA truly wishes to reduce contests by operators, then make citations more objective. Provide a set of clear, standard definitions, and remove the vagaries of allowing inspectors to decide if something is likely or unlikely, if this or that is enough to lower negligence, or whether "I had a cousin once, who heard of a guy who was killed using it that way" is a valid logical reason to make something "fatal". Use fact driven data, not supposition. Have them follow the rules that ARE clearly written, for example, on negligence, rather than ignoring them and assigning their own ideals.

If MSHA's goal is to reduce hazardous conditions, then give operators a reduction in citation cost when they immediately rectify the condition and remove the hazard. Period. Hazard cited, hazard abated, costs lowered. Don't promulgate a "20% discount if you don't question authority" rule, better train your agency to write good, solid citations. Stop rogue inspectors. Muzzle district managers who loudly proclaim, in public meetings, that "If my inspectors aren't writing

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a citation every hour, they aren't doing their job!"

With the proposal for 20% for not contesting, you aren't making the job safer (the hazard must be abated before MSHA leaves/closes the assessment anyhow), you are punishing companies who point out MSHA errors. This is a transparent attempt to punish companies who call out MSHA on poor inspectors and over-reaching citations. It's a false flag equivalency, and it's shameful that MSHA dresses up the issue with a safety blanket in order to shove it through the system, and batter mine operators.

If MSHA wants to reduce contests, then MSHA should consider these proposals.

Mines are already more heavily regulated and inspected than any other workplace in the US. More people die in grain silo accidents, than in mines. Even more shocking, more people die while CONDUCTING CHURCH BUSINESS than die in mines every year. Yet, we don't mandate twice annual or quarterly inspections of those operations, only mines. Mines aren't asking to be treated special, only to be treated the same as every other occupation and industry in the US.

How about this proposal: remove the mandated inspection criteria, and instead, allow your field offices to send inspectors to those mines that need the most inspection. Mines with accidents and injuries for example, well above the average. Allow mine inspectors to use judgement and common sense in inspections, and inspect, perhaps, 10% of the operation for a feel of the program and attitudes. If that 10% looks good, then close out and move on. If that 10% shows several issues, a poor attitude, a pattern of safety hazards, then stay longer, and inspect more thoroughly. This allows an inspector to better delegate his time and expertise to the miners who truly need him: those without strong safety systems, those in need of experienced miner expertise, etc.. But MSHA won't do this, because they don't trust their inspectors to make good, strong decisions like this. And honestly, if MSHA doesn't trust their inspectors, why should industry?

How about giving credits? For example, can we at least give a mine operation credits for programs that are shown to reduce safety hazards/risks? Mines with a full time safety manager should get a 10 or 25 point reduction, for example, on their assessments. If they have a seat belt program, they get 5 points credit/reduction. How about a mine that mandates employees wear fall protection harnesses (instead of the mandated fall safety belts, that MSHA requires be used)? Shouldn't they get a credit, for having a program shown and proven to reduce injuries?

Instead of focusing solely on compliance and penalty, become the MSHA of the 20th century, and become proactive. Give recognition, and rewards, to companies that excel. Provide incentives for companies to innovate.

Or, continue with the outdated thinking of the past, and keep beating everyone until moral improves.