
From: Tammy Johnson <tjohnson@montanamining.org>
Sent: Monday, October 13, 2014 1:57 PM
To: zz MSHA Standards - Comments to Fed Reg Group
Subject: Docket Number MSHA-2014-0009, RIN 1219-AB72
Attachments: MMA comments re MSHA Civil Penalties Rule Final.pdf

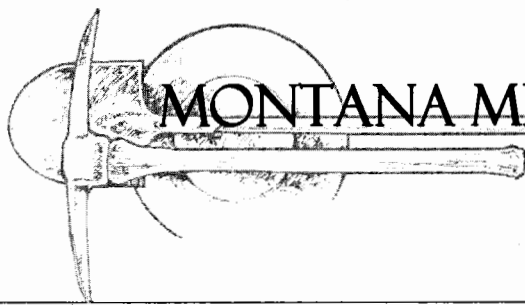
Good morning,

Please find attached comments from the Montana Mining Association (MMA) with regard to MSHA's Proposed Rule for Criteria and Procedure for Assessment of Civil Penalties. Thank you for your consideration. Please add/keep the MMA on your mailing/email list with regard to this specific rule and any future proposals or changes.

Sincerely yours,
Tammy Johnson

"Great ideas need landing gear as well as wings." – C.D. Jackson

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October 13, 2014

MSHA

Office of Standards, Regulations, and Variances

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Arlington, Virginia 22209-3939

Submitted via Electronic Mail: zzMSHA-comments@dol.gov

RE: Docket Number MSHA-2014-0009, RIN 1219-AB72

To Whom it May Concern:

The Mine Safety and Health Administration (MSHA) is proposing to amend its civil penalty regulation to "simplify the criteria, which will promote consistency, objectivity, and efficiency in the proposed assessment of civil penalties and facilitate the resolution of enforcement issues. The proposal would place a greater emphasis on the more serious safety and health conditions and provide improved safety and health for miners. MSHA is also proposing alternatives that would address the scope and applicability of its civil penalty regulation."

The Montana Mining Association supports and values the cooperative relationship between our member operators and MSHA. Our members work diligently to send employees home safe and sound to their families each and every day. MMA mine operators are focused on being accountable and proactive in addressing safety and health conditions at their mines. The results of our member's efforts are impressive and the MMA is proud of these achievements.

MSHA has seriously underestimated the scope of increased penalties in their analysis. Several Montana mining companies have performed a straight forward comparison and consistently see a 30%-60% increase in civil penalties under the proposed assessment criteria. One underground operator who received three citations from their last inspection would see a 260% increase if this new proposal is passed.

The penalty weight for S&S citations is so heavy that MSHA will surely see an increase in contested citations. Further, repeat violations are heavily weighted and it is an unfair and unrealistic system. Underground operators consistently receive citations under 30 CFR Part 57.3200 in their top three citations issued and generally they are written as S&S citations. The weight of the S&S and repeat citations will result in extraordinarily high civil penalties. Likewise, surface operations generally see their top ten citations rarely change which again will result in much higher civil penalties than MSHA is predicting. As these penalties increase so will the contesting rate of citations. MSHA states one of their goals is to reduce the congestion within the court system with regards to contested cases. When higher penalties were introduced in 2007, the numbers of contested cases begin to clog the court systems. MSHA is headed into a similar situation if this proposal is passed.

AB72-COMM-15

As stated in the Federal Register, MSHA has instituted special assessment penalties with "Rules To Live By" as a means to financially penalize operators not complying with what MSHA deems the most important standards to prevent fatalities. They have also instituted the impact inspections to target operators who have been deemed non-compliant. These additional enforcement tactics, according to MSHA, are reducing accidents and citations being issued across the mining industry. If so, where is the justification to further increase punitive penalties to the mining industry? As it stands today, we are a highly regulated, if not the most regulated, industry in the country and our current accident rates are at an all-time low.

According to the Bureau of Labor Statistics (BLS), Mining (NAICS code 212) had a total recordable incident rate of 2.8 for calendar year 2012. While we strive to drive this number lower each year, it should be noted that other "non-dangerous" industries have much higher incident rates. It perplexes our industry as to why MSHA continues to insist on stiffer financial penalties imposed on an industry that has proven to be a diligent and effective MSHA partner in assuring our workforce a safe work environment. As a comparison, according to the BLS, workers on golf courses (NAICS 71391) have a 70% higher accident rate than the mining industry, hotel employees (NAICS 7211) have an 89% higher accident rate than the mining industry and nursing home employees (NAICS 623) have accident rates 467% higher than our industry.

We are opposed to the 20% penalty reduction for citations that are not contested. We question the attempt to incentivize a person to not exercise a constitutional right to challenge their government. It is a fundamental and important right that should not be bartered away.

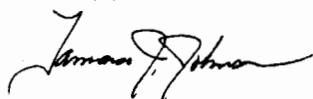
Concerning MSHA's proposal to modify Part 100.1 and 100.2 with respect to the authority of the Administrative Law Judges' (ALJ) ability to assess civil penalties, the MMA is adamantly opposed to the proposed modifications. . MSHA's proposal to remove the interpretive power of the Review Commission is contrary to the intention of Congress to balance the power of MSHA and the Review Commission. In fact, the ALJ was put into place to provide a neutral process to objectively weigh the evidence and ensure both MSHA and the Mine Operator are being treated fairly under the Mine Act. The fact that MSHA believes the contesting process is exacerbated by the industry or that lower penalties will result if citations are contested through the Commission is absurd. The financial/fiscal cost and manpower necessary to contest at the level of the Commission far outweighs the current or proposed civil penalties. Contesting at this level is only done when the mine operator believes they have been unjustly wronged and that a citation has a profound effect on its business. The process is critical and should not be dismantled.

The Montana Mining Association does not support MSHA -2014-0009, RIN 1219-AB72. MSHA has failed to justify the need for a change in the civil penalties process and has grossly underestimated the financial burden on the mining industry.

The Montana Mining Association is a trade association of mineral developers, producers, refiners and vendors from fifteen states, including Montana, and two Canadian Provinces. The mining industry is a major employer and taxpayer in Montana and we believe the continued viability and growth of our members' operations are significant factors in the economic health of our state and its citizens.

Thank you for your consideration.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Tamara J. Johnson", with a stylized flourish at the end.

Tamara J. Johnson, Executive Director