

# PUBLIC SUBMISSION

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

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Criteria and Procedures for Assessment of Civil Penalties

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Comment from beaten and beaten again , NA

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## Submitter Information

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## General Comment

Increasing the penalty costs is NOT the way to help miners improve safety across the US. And, this proposal will most assuredly do just that. Fewer options for inspectors to "check" WILL mean that more S&S citations are written, more higher negligence citations are written, and greater and greater penalty amounts and fines will result. It becomes a never ending cycle: citations this inspection lead to a larger VPID next inspection, which leads to more costs for the citations written, even if they 'decrease' in severity (which will be nearly impossible, given the lack of less severe boxes available to check).

People may think that mine operators are "just whining"... Perhaps we are, but we are 'whining' about facing an increasingly difficult regulatory environment, with constantly changing rule interpretations. It is difficult to predict if your mine is "in compliance" with MSHA, because what was acceptable to an inspector in March may be an S&S to a different inspector in August. Mine operators spend thousands, even hundreds of thousands of dollars, to "correct" issues that AREN'T EVEN WRONG, simply because MSHA has the power to arbitrarily decide that X is no longer good enough, or that Y is not how they interpret the standard.

How can you run a business, when an inspector with the ability to shut you down until they are satisfied tells you plainly 'I don't care what the courts have ruled, you will change this today or else'? My plant alone has spent more than \$100,000 to create "guards" where MSHA standards plainly and unequivocally state do not require them. Why do we do that? Because if we don't, MSHA will shut the mine down, and we will lose millions. Giving MSHA even more monetary

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power simply increases their ability to blackmail an operation into doing it their way or else.

Operators want a safe workplace. We want a system where we can understand what is required of us, plainly and simply. If you asked ten MSHA inspectors, TODAY, what exactly constituted an S&S violation, you would get 12 different answers. If this proposal goes through, you won't even have that much of a narrow definition. What will an S&S become? Whatever the inspector, and MSHA, want it to be. Clarity? Consistency? all gone.

Mine operators want a level playing field. We want it across all mines (it would be wonderful if a guarding violation in Alaska weren't business as usual in Alabama), we want it across the years we operate (We would like a situation that is perfectly acceptable in 2007 to not suddenly be 'completely unacceptable' two years later). We would like to be judged similarly to our peers outside the industry.

MSHA wants to increase fines and penalties to mine operators, because... because they can, apparently. But being in the mining business already puts a company in the most highly penalized monetary situation in the US. In December of 2013, an employee was caught in a conveyor and crushed to death. OSHA cited the company at fault for \$6000. In March of 2014, an employee was caught in an earth/rock slide, and killed. OSHA cited the company for \$14000. In May of 2014, an employee was killed when they fell 120 foot off the side of a platform. OSHA cited the company \$7000.

Three dead human beings. OSHA citations to the companies totaled \$27,000. One mine company was cited \$20,000 for not having a paper record of a ground test. Another mine was cited \$25,000 for not having an emergency stop device on a vacuum hose. Another citation was issued for \$50,000, because a work area was not kept "clean and orderly".

No one died. No one was injured. No one was even close to injured, and yet, without injury or harm to any miner, MSHA racked up nearly \$100,000 in citations against mine operators. Three dead human beings, OSHA thinks are worth \$27000. No injuries, no harm, no miners hurt in any way, and MSHA calculates \$100,000.

Mines have even been cited for having a sign that stated "Smoking OR open flames are prohibited in this area" because the regulation states that the signs must say "Smoking AND open flames are prohibited in this area". Is it whining to say that the signage, despite the lack of legally proper conjunction, achieved the same effect? Is it whining to say that this single violation cost the company well over \$5,000 in penalties?

How about focusing your future efforts on improvements to leveling the playing field, decreasing ambiguity, and increasing consistency among inspectors? it would be time much better spent!