



OREGON INDEPENDENT AGGREGATE ASSOCIATION

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MSHA

OFFICE OF STANDARDS, REGULATIONS, AND VARIANCES

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TO WHOM IT MAY CONCERN,

**WE HAVE CONCERNS REGARDING THE THE MSHA PROPOSED RULE FOR THE
CRITERIA AND PROCEDURES FOR ASSESSMENT OF CIVIL PENALTIES.
PLEASE CONSIDER OUR QUESTIONS AND COMMENTS.**

**WILL THE NEW FORMAT OF THE CITATIONS RESULT IN A GREATER
LIKELIHOOD OF SIGNIFICANT AND SUBSTANTIAL CITATIONS ISSUED TO MINE
OPERATORS?**

**HOW WILL THE NEW NEGLIGENCE DESIGNATIONS AFFECT THE ISSUANCE OF
104(D) CITATIONS AND ORDERS AND CATEGORIZATION OF "FLAGRANT"
VIOLATIONS?**

**UNDER THE PROPOSED RULE AND, SPECIFICALLY, BECAUSE OF THE
PROPOSED 20% PENALTY REDUCTION ON UNCONTESTED CITATIONS, WHAT
WILL HAPPEN TO THE INFORMAL CONTEST PROCESS THAT IS HANDLED
THROUGH THE DISTRICT OFFICE PERSONNEL?**

**WILL FILING A CONFERENCE REQUEST REMOVE OPERATORS FROM
QUALIFICATION FOR THE ADDITIONAL 20% REDUCTION IN PENALTY?**

**YOU PROPOSE REDUCING THE LIKELIHOOD OF OCCURRENCE DESIGNATIONS
FROM 5 OPTIONS TO 3. HAVE YOU CONSIDERED DROPPING IT TO 2: EITHER
AN ACCIDENT HAPPENED OR AN ACCIDENT DID NOT HAPPEN?**

AB72-COMM-22

YOU CREATE AND FOSTER A CLOUD OF AMBIGUITY WHEN YOU TALK ABOUT INFAMOUS "GREY AREAS" OF MSHA ENFORCEMENT. NONE OF US ARE ABLE TO "LOOK INTO A CRYSTAL BALL" AND DETERMINE THE FUTURE YET YOUR ENFORCEMENT RELIES CONSTANTLY ON WHAT "MIGHT" HAPPEN OR WHAT IS "REASONABLY LIKELY" (PROPOSED) TO OCCUR. THIS IS WHY OPERATORS MUST BE CONSTANTLY AT ODDS WITH YOUR INSPECTORS. NOW THAT YOU HAVE ESTABLISHED PATTERN OF VIOLATIONS WE MUST FIGHT EVERY ONE OF THE CITATIONS THAT WE BELIEVE ARE BASED ON POSSIBILITIES RATHER THAN ON OCCURRENCES.

YOU COMPLAIN THAT MSHA EXPERIENCES A HIGH VOLUME OF CHALLENGES TO CITATIONS. THERE IS A REASONABLE EXPLANATION FOR THAT: MANY OPERATORS BELIEVE THAT MANY CITATIONS WRITTEN ARE BOGUS OR OVERBLOWN. THE PROPOSED RULE CHANGE THAT OFFERS IF A MINE DOES NOT CONTEST ISSUED CITATIONS, PROMPTLY ABATES THE CITED CONDITIONS, AND PAYS THE PENALTIES BEFORE ANY CITATION OR ORDER BECOMES FINAL, THEN THE OPERATOR IS ELIGIBLE FOR AN ADDITIONAL 20% REDUCTION, ON TOP OF THE ALREADY EXISTING 10% GOOD FAITH REDUCTION (IF ELIGIBLE) IS AN ADMISSION THAT YOUR ENFORCEMENT IS OFF TRACK.

YOU DO NOT OFFER THIS 30% MAXIMUM PENALTY REDUCTION IF THE OPERATOR CONTESTS CITATIONS AND MSHA DOES NOT ADDRESS HOW INFORMAL (10 DAY) CONFERENCES MAY AFFECT AN OPERATOR'S ABILITY TO QUALIFY FOR THE REDUCTION.

BASED ON EVIDENCE OF THE NUMBER AND DOLLAR AMOUNTS OF MSHA CITATIONS RISING STEADILY OVER THE LAST YEARS, ISN'T THIS AKIN TO A SUPER MARKET JACKING UP PRICES THEN HOLDING A "HUGE 30% OFF EVERYTHING" SALE (BUT ONLY ONE PER CUSTOMER)?

LIMITING ALJs' ABILITY TO CHANGE PENALTIES TAKES AWAY THE LAST VESTIGES OF OVERSIGHT TO MSHA. CURRENTLY, A REVIEW BY A SEPARATE AND IMPARTIAL DECISION MAKER IS THE LAST AVAILABLE OPTION FOR AN OPERATOR. IF MSHA ALSO CONTROLS THE APPEAL PROCESS IT EFFECTIVELY KILLS THAT PROCESS.

OUR MEMBERS ARE VERY CONCERNED ABOUT THE EROSION OF OUR CONSTITUTIONAL RIGHTS AS AMERICAN CITIZENS.

WE REPRESENT SMALL FAMILY OWNED BUSINESSES AND SAFETY IS ABSOLUTELY A TOP PRIORITY FOR ALL OF US; WE CARE ABOUT OUR EMPLOYEES WHETHER RELATED BY BLOOD OR FRIENDSHIP AND WE WORK ALONG SIDE OUR PEOPLE. WE AGREE THAT IMPROVEMENTS CAN BE MADE TO MSHA BUT WE CANNOT SEE THAT THE CURRENT PROPOSED RULES WOULD BE CONSIDERED AN IMPROVEMENT.

SINCERELY,

OREGON INDEPENDENT AGGREGATE ASSOCIATION

MARY McNATT, DIRECTOR

