

PUBLIC SUBMISSION

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Docket: MSHA-2014-0009

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

Comment On: MSHA-2014-0009-0090

Criteria and Procedures for Assessment of Civil Penalties, Proposed rule; extension of comment period; close of record.

Document: MSHA-2014-0009-0104

Comment from Alexander Hall, Aggregate Industries Management Inc.

Submitter Information

Name: Alexander Hall

Organization: Aggregate Industries Management Inc.

General Comment

See attached file(s)

Attachments

30 CFR Part 100, RIN 1219-AB72 - Concerns and Comments - AIUS

AB72-COMM-63

Date: 3/26/2015

To Whom It May Concern:

We are Holcim (US) Inc. and Aggregate Industries Management Inc. and write to raise major concerns over the Mine Safety and Health Administration's proposed Civil Penalties rule, 30 CFR Part 100, RIN: 1219-AB72.

Aggregate Industries Management Inc. is a member of the National Stone, Sand & Gravel Association, the world's largest mining association by product volume. NSSGA represents the crushed stone, sand and gravel industries and its member companies produce more than 90% of the crushed stone and 70% of the sand and gravel consumed annually in the United States, and the industry employs over 100,000 men and women. Our company, like many others in the industry, produces aggregates utilized for critical infrastructure projects including highways, bridges and mass transit, as well as environmental applications such as wastewater treatment, sewage control and drinking water facilities.

Holcim (US) Inc. and Aggregate Industries Management Inc. operate many hundreds of operations in the US which include 9 Cement Plants and 76 Quarries and Gravel Pits; we have a workforce in excess of 5,500 people in this country and employ approximately 80,000 people globally. As an organization, Health and Safety is our top priority and we maintain system and processes to ensure continuous improvement in this regard. We are committed to meeting MSHA standards and often exceed these requirements.

The proposed rule doesn't meet its stated goals. MSHA has stated that the proposed rule will increase consistency and reduce potential areas for dispute, but the proposal contains several key points of confusion that this rule would lead to more areas of dispute.

The proposed rule will likely result in dramatic increases in penalty assessments. Analyses of operator surveys comparing the penalty assessment for the same or similar citations have demonstrated that assessments will be between 50 and 80 percent higher under the proposed rule.

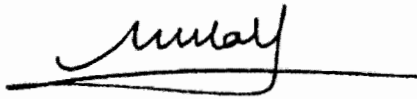
The proposed rule seeks to change to the scope of Part 100, such that it may purport to apply to both the proposal of penalties by MSHA and the assessment of penalties by the Federal Mine Safety and Health Review Commission. Such a provision is beyond the scope of MSHA's authority, and amounts to unsound policy.

The proposed rule proposes changes to "Negligence," which may have an adverse effect on the issue of an inspector's designation of "unwarrantable failure." Currently, an "unwarrantable failure" designation is accompanied by a negligence finding of either "high" or "reckless disregard." The proposed rule would eliminate the "high" negligence designation, which would likely lead to an increase in "reckless disregard" findings in order to support an inspector's declaration of "unwarrantable failure." An increase in "reckless disregard" will increase penalties, increase the number of violations potentially considered for flagrant status, and could have civil liability consequences.

The proposed rule does not include any provision for alternative dispute resolution such as merit-based conferencing. Also, the proposed rule does not address special assessments, which can be applied without explanation, and result in significantly increased penalties.

In closing, we urge MSHA to withdraw this proposed rule, and work with our industry and other stakeholders to craft a rule that is clear and that does not impede the operator's ability to manage for safety and compliance, does not impose an undue economic burden on our industry, does not raise the cost of aggregate products needed for the built environment, or limit the economic prosperity of the United States.

Sincerely,

A handwritten signature in black ink, appearing to read "Alexander Hall", with a long horizontal line extending to the right.

Alexander Hall
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