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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-2014-0009-0112
Comment from Jeff Perkins, NA

Submitter Information

Name: Jeff Perkins
Organization: NA

General Comment

To Whom It May Concern:

My name is Jeff Perkins and I am the Chief Operating Officer of Boxley Materials and I am writing to raise major concerns over the Mine Safety and Health Administrations proposed Civil Penalties rule, 30 CFR Part 100, RIN: 1219-AB72.

Boxley 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.

Boxley operates 9 surface mines in Virginia and West Virginia and employees over 200 people in these operations. We work safely every day and exceed MSHA safety standards. The proposed rule doesnt 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

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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 MSHAs authority, and amounts to unsound policy. The proposed rule proposes changes to Negligence, which may have an adverse effect on the issue of an inspectors 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 inspectors 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 operators 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

Jeff Perkins

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