

IME
institute of makers of explosives

The safety and security institute of the commercial explosives industry since 1913

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September 29, 2014

Mine Safety and Health Administration
Office of Standards, Regulations, and Variances
1100 Wilson Boulevard
Room 2350
Arlington, VA 22209-3939

RE: MSHA-2014-0009¹
Mine Safety and Health Administration

Dear Sir or Madam:

The Institute of Makers of Explosives (IME) appreciates the opportunity to comment on the Mine Safety and Health Administration's (MSHA) proposed changes to its criteria and procedures for assessing civil penalties.

Interest of the IME

IME² is a nonprofit association founded in 1913 to provide accurate information and comprehensive recommendations concerning the safety and security of commercial explosive materials. IME represents blasting companies that provide explosive materials for mining and drilling. In this capacity, IME members are subject to MSHA's civil penalty procedures.

Background

Mining and drilling with explosive materials is often hazardous work. Ensuring the safety of all miners and the general public is an important duty of MSHA. IME and our member companies often exceed federal safety requirements when producing, using, and transporting explosive materials. Many of IME members use safety equipment and procedures that are not currently required by state and federal laws. IME produces and publishes Safety Library Publications that set industry safety standards, many of which are applicable on mine sites. IME member companies pride themselves on these safety standards and understand and we look forward to opportunities to work with MSHA in support of its mission. However, MSHA's penalty system has proven unfairly burdensome to IME members.

Single Contractor I.D. System Comments

IME is concerned with MSHA's use of a single contractor Identification System (I.D.) system to determine civil penalty assessments. Many of IME's member companies have multiple operations in several different states. These parent companies are required to operate under one I.D. number. These operations may be

¹79 Fed. Reg. 44494 (July 31, 2014). <http://www.gpo.gov/fdsys/pkg/FR-2014-07-31/pdf/2014-17935.pdf>

² <http://www.ime.org/>

AB72-COMM-9

facilities that produce or distribute explosive materials to a mine site, or may be an onsite manufacturing or contractor blasting operations at a mine. MSHA does not assign a single I.D. number to mining companies that are similarly situated. Rather parent mining companies are issued an I.D. at each mine site.

Currently, MSHA assigns points for violations based on a company's I.D. number. Since every blasting company is assigned a single contractor I.D. number, these companies are at risk of appearing to operate less safely than the mines they serve. For example, if blasting company "A" receives a citation at two of mine company "B's" sites, MSHA will count this as two violations against company "A" but company "B" will appear to have only one violation. Additionally, company "A" runs the risk to being assessed for a "repeat" violations if the violation at each of company "B's" sites was the same, which triggers higher penalties. Finally, non-coal mines are inspected around 2 times a year, so it is quite possible that company be inspected or possibly cited multiple days in a row. One IME member has unofficially reported that they have already been inspected 40 time this year. The assignment of a single I.D. to contractors leads to these companies accruing more violation points more frequently than mining companies.

IME proposes that MSHA treat the commercial explosive industry similar to the way it treats the mining industry, i.e., by assigning each facility or operation or business unit with a separate I.D. number. This will ensure that blasting companies with multiple facilities across the United States do not unfairly receive or accumulate an inordinate number of safety violations.

Violation Category Change Comments

Additionally, MSHA's proposed violation category change is troubling to IME. IME is concerned with the reduction in penalty categories. This proposed change could lead to more severe penalties being issued or result in less area for legal relief or agreement. The current MSHA system has five negligence criterion categories ("none", "low", "moderate", "high", and "reckless"). The proposed system would reduce that system to three ("not negligence," "negligence," and "reckless"). This penalty category reduction leaves inspectors with fewer options to assign violations. The likely result will be that violations, other than "reckless" will be placed in a higher category. IME fears that this proposed system will lead to every violation being cited as more severe. This, combined with the MSHA's assignment of a single I.D. for contractors, exposes our members to unfair assessments compared to their mine site counterparts. IME cannot support these new proposed penalty categories unless MSHA's inequitable and burdensome single contractor I.D. number policy that is currently applied to the commercial explosives industry is also changed. IME does not understand the necessity of the proposed change nor how the proposed change provides any benefit to safety or the mining industry.

Conclusion

IME members work to create a safe and secure environment when blasting and take responsibility when they have violated MSHA requirements. However, blasting companies should not be held to a different standard for assigning and assessment penalties than mines themselves. This unfairly penalizes our member companies with operations in multiple locations. Furthermore, the new proposed penalty categories would likely make those penalties more severe.

IME would like to thank MSHA for the opportunity to comment. Please contact IME if additional information is needed on this timely and important issue.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. P. Kratz', with a long horizontal flourish extending to the left.

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