

Gentlemen,

2014 SEP 15 P 3: 08

I have several concerns with the new proposed penalty structure rule that was published in the Federal Register on July 31<sup>st</sup> My concerns are listed below:

**Violation History:**

"six repeat Violation of the same citable provision of a standard, which became final orders". Some of the citable provisions are so broad based that remaining at less than 6 repeat violations during the 15 month time period, at a large mine would become almost impossible. Example: 75:400 which is one of the most common written citations. It breath include, any condition the field inspector may deem as supporting combustion. This could be anything from a barely detectable sheen of oil on an oil tank of a machine to 1/32" float dust under a belt roller or even left over rock dust bags at a head drive that were emptied during the present shift but had not been picked up for disposal that same shift. A large 4 or more section mine will be on repeat violations in a very short time. Also, POV will be affected.

**Negligence**

The new definition of negligence being "the operator knew or should have known" is language that could trigger for 107A or 104 D citations. Will the new "negligent" category trigger 017A and 104 D much more frequently than with the old system?

**Gravity:**

With the reduction of categories of person affected being: no persons or 1 or more. It is not believable that citation would be written with no persons affected.

The severity criteria: Fatal should definitely be left as a category by itself. Grouping lost work day the same a fatal?? Not logical at all, just makes the citation look worse than it is.

The possible injury section will be reduced to 3 categories... again, will reasonable likely trigger an imminent danger order.

With reduced number of categories there will be more S&S citation triggered, which in turn will not achieve what MSHA has stated as an overall lowering of penalties.

**Discounts:**

I agree with reduction on good faith discount for abatement of a citation/ hazardous condition within the time specified by the inspector. I disagree with the 20% reduction for paying the citation before it becomes a final order. To me the contest is part of the checks and balance system on agency powers. Some operators will be lulled into getting a discount by paying the citations not realizing down the road, maybe 12 months later he find that citations under the same regulation have added up to 6. Then,

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receives a huge penalty assessed for the same type citation that was discounted a few months back. Now he finds in a repeat violation category with much larger penalties. POV will be affected also.

**Big concern** is that the Commission will have limitations set on them by MSHA. First if MSHA governs both the proposed and assessed penalties this would undermine the independence of the commission. Second by the narrowing of the fields on the citation will make it harder for the Commission to justify any reduction in penalty. This will undermine the power of the commission to be an independent reviewer of the citations and assess the penalty appropriate for evidence presented for that citation.

The proposal does not address, if the district conference will continue nor if a citation is conferenced it would disqualify the operator from the discount.

Thank you.