RIN 1219-AB51

COMMENTS ON CRITERIA AND PROCEDURES FOR PROPOSED ASSESSMENT OF CIVIL PENALTIES

DEPARTMENT OF LABOR 30 CFR PART 100

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The Doe Run Company, Southeast Missouri Mining & Milling Division (SEMO), P.O. Box 500, Viburnum, Missouri, 65566

The Doe Run Company operates six underground metal mines; Viburnum #29 MSHA ID 23-00495, Viburnum #35 MSHA ID 23-01800, Buick MSHA ID 23-00457, Brushy Creek MSHA ID 23-00499, Fletcher MSHA ID 23-00409 and Sweetwater MSHA ID 23-00458 in Southeast Missouri, employing over 700 miners in the extraction and beneficiation of lead, zinc and copper ores.

Doe Run would like to comment on the proposed changes of assessments of civil penalties as identified above.

Doe Run Comment Points:

1) MSHA should withdraw unmandated aspects of proposal
   a. MINER Act only requires:
      i. $200,000 penalty for "flagrant" violation
      ii. $2,000 penalty for 104(d)(1)
      iii. $4,000 penalty for 104(d)(2)
      iv. 15 minute notification 104(f) – penalty ranges from $5,000 to $60,000
2) Amend 15-minute rule – special conditions of environment or miner may require attention instead of making a phone call – rescue or first aid more critical than call. Suggested language as to when the clock starts: Death of miner is confirmed, Entrapment of miner is confirmed, and Seriously injured miner is located and treated. This needs further definition and consideration, if nothing else, the language needs to be clear as to when the clock begins and address the issue of priorities, especially treatment of injured miner(s).
3) Larger operators being penalized more based on hours, new formula doubles points for larger operators. This appears to be discriminatory toward operators who have more employees, thus work more hours.
4) Single penalty assessment should be retained for minor violations such as paperwork, training records, etc.; the formula used only on S & S citations. Significant and Substantial violations need to have a different level of

response and attention. They should have penalties derived from the formula, not the minor violations resulting from paperwork errors.

5) Negligence points in formula should not change for "moderate", only for "high" and "reckless disregard". "Moderate" negligence is highly subjective, depending on the definition of each inspector. There is much less question with regard to "high" and "reckless disregard" definitions and these are the classifications that should have formula points changed.
6) Penalty points for "repeat violations" needs to be better defined. Proposal calls for points to be added if same standard citation is repeated more than 5 times in 15 month period. Same citation can be used for variety of conditions, and a number of citations can be used for the same condition, depending on inspector. This can create an artificial history of repeat violations if a variety of conditions or situations are cited at the same standard.
7) Controlling entity. Keep accountability at level that manages conditions and behaviors at the local level.
8) Decrease in assessment based on "good faith" being reduced from 30% to 10%. This change certainly would not encourage the proper response to violations or citations. The decrease for "good faith" should remain at 30%.
9) Time allowed to request conference being reduced from 10 days to 5 days. The result of this change could be that everyone will request all citations to be conferenced at the closeout. Doe Run is sure that MSHA does not have that intent. Often times employees need to be interviewed, information obtained, counsel sought and other items completed before deciding to formally conference a citation. By reducing the amount of time available to gather that information and make those decisions, it may actually increase the number of citations conferenced and put more burden on the agency for resolution. If anything should be done with the time limit on conferencing citations, the window of opportunity should be increased from 10 days to 15 days, to mirror the procedure of OSHA.
10) Litigation may increase due to shortened time for requesting conference and higher penalties. This will damage "partnership" attitude and collaborative efforts. Doe Run is concerned that some of the proposed changes could create a more adversarial relationship between MSHA and industry, which will not necessarily improve safety for the workers.

It would seem that industry and MSHA have developed a more constructive approach to addressing concerns within the industry, such as improving risk analysis, developing best practices to control safety and health hazards to prevent injuries, improving training, sharing resources when possible to resolve technical issues, improving mine rescue capabilities, and looking for any opportunity to improve the safety culture, attitude and results. Doe Run is concerned that these proposed changes could jeopardize that attitude of cooperation and commitment.

Doe Run suggests that MSHA should review the comments received on these proposals, whether at the public hearings or submitted in writing, and then invite stakeholders to

participate in discussions that will result in changes that will result in improved safety in the workplace. And that should be the goal of everyone involved.

Doe Run appreciates the opportunity to comment on these proposed changes.

Respectfully submitted,

Sincerely,

Signed/dm

Denis Murphy
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Safety Manager