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Received 10/23/06  
MSHA/OSRV

October 23, 2006

Ms. Patricia Silvey  
Director, Office of Standards, Regulations and Variance  
Mine Safety and Health Administration  
1100 Wilson Boulevard, Suite 2350  
Arlington, VA 22209-3939

RE: RIN 1219-AB51, MSHA Proposed Changes to Monetary Penalty System

Dear Ms. Silvey:

I appreciate the opportunity to provide comments to you on MSHA's proposed changes to its penalty calculation system, and respond to comments offered in writing and at MSHA's public hearings. I concur with comments submitted by Professor Patrick McGinley of West Virginia University Law School, and Davitt McAteer. I have no economic interest in the outcome of this rulemaking.

I was pleased to learn that Mrs. Debbie Hamner and Ms. Sara Bailey testified at the Charleston, WV hearing. They speak with expertise about the impact on families and a community when mines have failed safety and health programs, and the limitations of MSHA's current enforcement system. Paying an MSHA penalty should not be cheaper than fixing the hazards, but under the current system it often is. If implemented, this proposal would enhance the penalty component of MSHA's enforcement system, and for that reason I endorse most of it.

**I agree with:**

● **MSHA's assertion that the purpose of monetary penalties should be "to maximize the incentive for mine operators to prevent and correct hazardous conditions."** It is exactly the same reason that traffic law enforcement agencies give steep penalties for exceeding the speed limit or violating other traffic safety laws. Most drivers don't mean to put themselves and others at risk when the speed on the highway, but they violate the speed limit because there are other competing forces that seem more important at the time (e.g., arriving on time to their destination.) It is human nature, and the reason most of us, from time to time, need the threat of a monetary penalty to shape our behavior. The same situation occurs at workplaces, with production and other forces influencing management and miners behavior. Sometimes, the fastest way to get something done is not the safest, and management will condone or encourage expedience over safety. This combination of

human nature and economic pressure is why a mine safety and health enforcement system is so important, in particular for mine operators who are willing to take risk with their workers' health and safety.

Some commenters have asserted that MSHA penalties are not an incentive for safety. I agree but only because the current penalties of a few hundred dollars (and in many cases just \$60) are meaningless and thus not an incentive to change behavior. After just a few minutes using MSHA's data retrieval system, there is example after example of mine operators receiving small penalties for repeated violations of the same standard. At one mine, for example,<sup>1</sup> during the first six months of 2006, this mine operator received 245 citations, for serious problems such as accumulation of combustible material (30 citations), roof control problems (28 citations), and improper ventilation controls (24 citations). Almost half of the 245 citations were assessed penalties of \$60, which is equivalent to \$42 per day for the six month period. No wonder there is no incentive to fix the problems---hiring a couple of more miners to assess the mine continually and fix these hazards would certainly cost more than \$42 per day. At some ground silica operations, miners have been chronically exposed to respirable crystalline silica yet the operators continue to receive \$50, \$55, and \$60 penalties. If I was someone in business strictly to make money, why would I invest in new dust controls on bagging machines or other equipment, if a couple of times a year I simply pay a \$60 fine. As Debbie Hamner, widow of Sago miner George Junior Hamner, said "Fixing the problem should be cheaper than paying the fines."

● **MSHA's proposal to delete the single penalty.** I believe this will eliminate the perception by mine operators that "single penalties" are insignificant. I believe that all citations (S&S and non-S&S) should be assessed in either the regular or special assessment systems. MSHA should be able to evaluate the mine operator's history and negligence, and the gravity of the hazard when calculating a civil penalty. I disagree with commenters who state that non-S&S violations are trivial matters and deserving of nominal penalties. Citations for overexposing workers to respirable crystalline silica may be classified as non-S&S, but it is certainly not an insignificant if you are the worker who eventually develops silicosis or lung cancer. Citations for failing to have a person trained in first-aid may seem like a frivolous matter and are often classified as non-S&S. Yet, this exact violation proved grave for coal miner David Sherman Morris Jr. when he died on December 30, 2005 when he failed to receive proper first-aid.

Some commenters are quick with the rhetoric about "nit-picky" or "paperwork" violations, but we know from experience that accurate records, good housekeeping, and meaningful training are important ingredients in an effective workplace safety and health program. They should not be discounted as insignificant and it is proper to consider all citations through the regular or special assessment system.

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<sup>1</sup> Mine ID: 3301159, Ohio Valley Coal Company, Powhatan No. 6 Mine

● **MSHA's proposal to increase from 30 to 88 the potential number of penalty points assessed for gravity.** MSHA needs this enforcement tool, especially for recalcitrant mine operators who disregard the health and safety (and lives) of the miners who work for them. This is a much needed change in the penalty point system.

● **MSHA's proposal to reduce the good faith credit from 30 percent to 10 percent.** A 30 percent credit is too much of a reward for simply doing what the law requires a mine operator to do.

I also agree with:

● **MSHA's proposal to assign more penalty points for moderate and high negligence, and reckless disregard.**

● **MSHA's proposal to expand the types of violations considered for special assessments.**

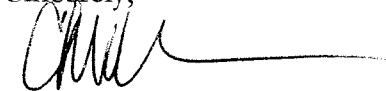
I disagree with:

● **MSHA's policy of considering only sub-sections of standards when evaluating repeat violations.** MSHA should have the flexibility to consider any violation of a major standard (e.g., 56.6202) as a repeat violation even if the mine operator has not been cited for the exact subsection in the past 24 months. If, for example, a mine operator was cited for 56.6202(a)(2) and during a subsequent accident investigation he is cited for 56.6202(a)(4), MSHA should be able to consider this a repeat violation because the operator clearly has a systemic safety problem related to the condition and operation of vehicles containing explosive materials.

● **MSHA's proposal to reduce the time period for considering a mine operator's history.** I believe the 24-month period should be retained. Because some mining operations are intermittent and some hazards seasonal, a 24-month period is necessary to evaluate accurately a mine operator's history for the purpose of considering repeat violations.

As I send you this letter, I learned that another miner lost his life today, bringing to 65 the number of workers killed at mining operations this year. I understand the pressure that MSHA officials are under to respond to the concerns of mining companies, and I know you hear their opinions loud and clear. I hope, however, you will ultimately put the lives and health of miners at the forefront in your decisions about this rule, realizing that working miners are your most important constituents.

Sincerely,



Celeste Monforton, MPH