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VIA FACSIMILE
202-693-9441

MSHA Office of Standards,
Regulations and Variances
1100 Wilson Boulevard
Room 2350
Arlington, VA 22209-3939

Dear Sir or Madam:

Attached please find Jim Walter Resources, Inc.'s comments regarding MSHA's proposed civil penalty increases.

Sincerely,

Guy W. Hensley

GWH/br

attachment

AB51-COMM-42

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Comments of Jim Walter Resources, Inc.
To the
Mine Safety and Health Administration's Proposed Rule
Regarding Civil Penalty Regulations

I. Introduction

On September 8, 2006, MSHA proposed to broadly overhaul the civil penalty structure that it has used in various forms for nearly thirty years, giving the following three reasons as a basis therefor: (1) to implement new requirements of the Mine Improvement and New Emergency Response (MINER) Act of 2006; (2) to improve the efficiency of the civil penalty process; and (3) to improve the effectiveness of the civil penalty process. *71 Fed. Reg. 53054.* Ultimately, MSHA's stated goal is "to induce greater mine operator compliance with ... safety and health standards and regulations, thereby improving safety and health for miners." *Id.*

Jim Walter Resources, Inc. (JWR) has reviewed MSHA's proposed changes and related information and has concluded that MSHA's proposed rule is an inappropriate solution to an ill-defined and possibly illusory problem, and that all interested parties will be in worse positions after implementation of the proposed rule than they are currently. Therefore, JWR respectfully urges MSHA to either (a) withdraw this proposed rule until it can be further considered, or (b) make fundamental changes to the proposed rule so that the rule will accomplish everyone's goal of increased safety and health in an appropriate manner.

II. There is no rational basis for a broad overhaul of the civil penalty scheme applicable to the mining industry.

A. There is no mandate in the MINER Act for most of the proposed rules changes.

The MINER Act does not mandate a broad overhaul of the civil penalty regulations. Obviously, there is precious little legislative history on this new law, but nothing stated by the President in signing the MINER Act indicated such a mandate. Secretary Chao included no such announcement to this effect in her 6/15/2006 press release. Even MSHA's own online summary of the MINER Act fails to mention this purpose. In light of the importance to industry of this topic, complete silence from the federal government's legislative and executive branches on the broad overhaul of the civil penalty structure is "the curious incident of the dog in the night-time."[1]

The closest thing to a mandate that can be found in the MINER Act is the requirement of minimum penalties for unwarrantable citations and orders in Section 8, but the proposed rule is much more extensive, as it: raises penalties by virtually every metric; irregularly weights mandatory civil penalty factors; improperly double-counts some citations; eliminates the single penalty assessment; and slashes the good faith credit for rapid abatement, among other things. JWR will address each of these topics herein, but the end result of these changes to JWR will be an exponential increase in civil penalties, a doubling or tripling of everyone's litigation burden, and little (if any) positive net effect on miners' safety and health.

The proposed rule is so broad a set of changes that it even includes areas outside the civil penalty scheme. For example, MSHA proposes to cut the conference request period from ten days to five, a change that can only be to improve MSHA's internal

[1] Doyle, Silver Blaze, 1892.

efficiency.[2] It is difficult to understand how a five-day reduction would have any measurable effect on MSHA's internal efficiency, especially in light of the fact that the ten-day period currently in effect is much shorter than the number of days that elapse between the date a conference is request and the date the conference is conducted. How much of a benefit does subtracting a few days really provide? MSHA used to have thirty-three days to conduct a conference. *See, e.g., 43 Fed. Reg. 23514, 23516.* Much more than five days is lost waiting for that conference under the present rules, so it is curious that industry's rights should be halved simply because MSHA wants to be more internally efficient. There must be other, more targeted changes within the assessment system that can be improved without harming operators.

B. There is no valid factual basis for a broad overhaul of the civil penalty assessment regulations.

MSHA's asserted goal underlying the proposed rule is to induce mine operators to be more proactive in their approach to mine safety and health, thus reducing industry fatalities and improving miner safety and health. *71 Fed. Reg. 53054, 53056.* MSHA's evidence of the need for an increase in "inducement" from the current system is based upon two facts: (1)single penalty assessments for repeat violations of several standards at mines which have experienced fatal accidents recently, and (2)a rise in number of citations issued nation- and industry-wide over a two-year period.

First, JWR objects to the use of single penalty assessments for repeat violations of several standards at a few mines as a basis for radical changes to the current civil penalty scheme. Most mines did not have the fatalities at issue. Why should thousands of operators have their civil penalties increased on account of a handful of operators who

[2] MSHA originally proposed seven days. *See 43 Fed. Reg. 23514, 23516.*

have experienced "recent fatalities?" And how is a non-S&S citation related to miners' safety and health? By definition, a non-S&S citation (repeat or not) is issued for conditions that are not reasonably likely to result in an injury of a reasonably serious nature. Even in the current scheme, a non-S&S citation can be regularly or specially assessed if it is not timely abated, or if the operator is on a pattern of violations. These mechanisms have not been shown as failures in any way.

Second, MSHA points to a two-year increase in the number of citations issued nationwide and across all mining companies as indicating a need for the proposed changes. There is no way that a 13% increase (6.5% per year) in citations issued nation- and industry-wide over a two-year period indicates a need for increased "inducement." MSHA's figures show that single penalty assessments (targeted for elimination) rose the least, a mere 4.5% per year. Regular assessments increased 8% per year. Special assessments went up 50% per year, the only increase of the three categories that would even suggest further study. Even so, this scant information does not justify the broad-brush approach MSHA's dramatic proposal embodies. It should not be unduly burdensome for the agency to look at the issue with more granularity especially where, as here, drastic action is proposed as a result of a generalized approach.

C. At best, increasing civil penalties as proposed will only provide a limited benefit.

In addition to the fact that MSHA has failed to establish any basis in law or in fact for the proposed rule, MSHA also appears to overestimate the benefits of its changes. As other commenters have noted, many coal mining companies are concerned about the safety and health of their miners for reasons that have nothing to do with civil penalty

assessments. Operators are not perfect in compliance but most are trying very hard to comply, not for the sake of avoiding citations and orders but because the vast majority of operators care about their employees and believe that a safe and healthy mine is the wisest way to run a business. Similarly, the labor force would acknowledge that safety and health are of utmost importance, even though there are workers who do foolish things and take undue risks. Again, are the exceptions going to drive these rules changes? Civil penalty assessments are not (nor should they be) the primary motivation of industry and labor to reduce accidents and injuries, and MSHA's extreme changes to the civil penalty assessment rules overestimate their utility.

III. The proposed rules changes are arbitrary and capricious and would have a punitive – not a remediative – effect on JWR.

A. The proposed rules changes are arbitrary and capricious.

1. MSHA's increases are premised upon an arbitrary formula.

MSHA's PREA to the proposed rule admits that it used no quantitative proof that penalty increases will make the mines safer. MSHA only asserts a qualitative proof, namely, that increased penalties cause greater compliance, and greater compliance means safer mines. JWR has two main problems with such an assertion.

First, qualitative proof of the effect of penalty increases may exist. Twice before, in 1998 and in 2003, MSHA increased all civil penalties 10%. The first 10% increase, effective on June 22, 1998, was accompanied by an MSHA news release which quoted Assistant Secretary for Mine Safety and Health J. Davitt McAteer as saying, "This agency's primary focus has always been about achieving and maintaining safe and

healthy working conditions, and civil penalties play a role in that process ... . The new penalty level will provide mine operators with an added incentive to maintain their own commitment to safe and healthful work environments." In fact, in both cases, MSHA referred to the deterrent effect and encouraged compliance that would result from promulgation of the change. Did such an incentive result in greater compliance? Were the nation's mines safer and healthier? Is it possible to know? These questions should be addressed.

The second, and perhaps more serious, problem JWR has with the PREA is that it appears to derive all of its analysis from an assumed elasticity value. This elasticity value is premised on the assumption that a 10% increase in civil penalties should lead to a corresponding 3% decrease in citations. This particular value is unsupported by any data. Beyond the general qualitative supposition stated above, nothing in the PREA or the proposed rule suggests an appropriate value of any kind.

Obviously, MSHA's theory is not a straight-line graph, but did the 10% increases of 1998 or 2003 lead to a 3% decrease in citations in either case? Did two 10% increases result in a 6% drop in violations, and thus safer mines? What does the evidence show? MSHA could have performed a quantitative analysis on this information, but chose not to.

JWR applied the formulae of the PREA to its own values and discovered that on average for JWR, the frequency of a violation under the proposed rules would not be reduced from 1.0 to 0.86, but from 1.0 to 0.60. As such, MSHA's assumed reduction in frequency of violations differs substantially from JWR's result and is unrealistic. MSHA should address these discrepancies or change its formulae to conform to reality. In

JWR's view MSHA's substitution of a qualitative analysis (which did nothing to suggest the particular elasticity factor that was selected) for a quantitative analysis is improper rulemaking. If nothing else, since MSHA's analysis is based on an elasticity factor, and since that factor is arbitrary, the entire proposed rule must also be arbitrary.

2. The single penalty assessment provision should not be deleted.

Elimination of the single penalty assessment is capricious, and JWR opposes this change. The history of the Mine Act and its regulations doesn't suggest that this is a sensible change. It will cause time and other resources to be diverted from correcting hazardous conditions to non-hazardous ones. There is also no factual basis for asserting that the single penalty assessment has been a failed enforcement mechanism, either in terms of issuance or abatement. In terms of MSHA's internal efficiency, it should be the least time-consuming for the agency to process. In short, eliminating the single penalty assessment is one of the worst and least founded proposals in this rulemaking.

In originally promulgating the single penalty assessment at 30 C.F.R. § 100.4, MSHA stated that it "developed this provision to permit the mining community to focus its resources on those violations which have the greatest impact on miner safety and health." *47 FR 22286, 22291.* The agency continued: "MSHA believes that the single penalty provision will help achieve improved health and safety for miners by eliminating the need to spend disproportionate amounts of time reviewing and processing violations whose impact on safety and health is minimal. The primary focus of both MSHA and the mining community must be on the prevention and correction of conditions which pose a serious risk to the safety and health of miners." *Id. at 22292.*

The agency's rationale for the single penalty assessment was correct. Approximately two-thirds of the citations issued nationwide are non-S&S citations that are eligible for single penalty assessment. By definition, a non-S&S citation does not indicate a reasonably likely hazard to safety or health of a reasonably serious nature, yet MSHA is now proposing to make the assessments for those citations subject to the regular assessment formula. Only time will tell, but JWR is certain that, if its non-S&S citation assessments increase as a result, JWR will spend an inordinate amount of time and resources addressing non-hazardous conditions. Time and resources need to be spent addressing conditions that, if left uncorrected, would be reasonably likely to result in accidents involving injuries of a reasonably serious nature.

There is no factual basis for suggesting that elimination of the single penalty assessment is needed. According to MSHA's own rough statistics, Also, this category of assessments increased the least nation- and industry-wide between 2003 and 2005 – less than 5% per year. Any further inquiry by MSHA would have probably led to the revelation that citation numbers fluctuate from year to year, and that five percent over a two-year period among thousands of regulated entities is not suggestive of the need for a major change based on the issuance of non-S&S citations.

Furthermore, to identify some kind of problem such as operator indifference toward non-S&S citations, it would seem that there would need to be proof that many operators don't take abatement seriously. If that were the case, though, there are mechanisms already in place to address such a problem. MSHA has always had the option of changing an assessment from single penalty to regular (or special) (or a closure order) where the operator fails to timely abate the citation. Regularly assessing all non-

S&S citations would be treating all operators as though they failed to timely abate citations.

In sum, eliminating the single penalty assessment makes no sense and would be unsubstantiated by the evidence. The need for it is not suggested by legislative history. There is no open rebellion among operators against compliance relating to non-hazardous conditions. By and large, non-S&S citations are being timely abated, which suggests that operators take compliance seriously. At the same time, single penalty assessments keep priorities (and therefore resources) in perspective. Ultimately, though, MSHA has failed to show how eliminating the single penalty assessment would make mines safer. JWR opposes this arbitrary and capricious change.

3. MSHA's regular assessment formula changes will unevenly weight the mandatory civil penalty criteria.

The legislative history of the civil penalty regulations that were promulgated under the Mine Act has long established that the six factors that MSHA must consider in proposing a civil penalty are supposed to be equally weighted. *See, e.g., 43 Fed. Reg. 23514, 23515.* As a practical matter, though, there are only five factors to weigh due to the fact that the effect of a civil penalty on an operator's ability to continue in business is not normally considered as a factor. MSHA's proposed changes will skew the weighting of the five factors such that there will be an uneven balance. Nowhere is this more evident than the reduction of good faith credit.

Under the Mine Act, an operator's good faith in achieving rapid compliance after notification of a violation must be considered by MSHA's penalty assessment. This factor has historically been used to subtract from the penalty amount achieved via a sum

of the size, history, negligence, and gravity factors. Those four factors would theoretically represent one-quarter of the penalty sum each. If good faith is equally as important as the other four factors, then it should be worth 25% as a subtrahend, not ten percent.

The proposed rule also unevenly weighs the four factors of size, history, gravity, and negligence. First, there is no factual basis for MSHA's statement that "penalties assessed under the existing regulations are often too low to be an effective deterrent for noncompliance at some of the largest operations." 71 Fed. Reg. 53054, 53057. As other commenters have suggested, larger operations probably have greater compliance records per capita than smaller ones. Larger companies likely have more resources to devote to compliance and to training. Increasing penalties based upon sheer size, however, suggests the opposite. If MSHA is going to make such a change, it should at least have some factual information to support its belief.[3]

Second, JWR opposes the addition of a "repeat violations" category to the civil penalty formula. That category would unfairly double-count some citations and augment a civil penalty based merely on double-counting.[4] It also would result in overweighting the size criterion, because larger companies would naturally have more penalty points due to repeat violations than smaller companies would. For example, it would be virtually impossible for most larger operations to avoid maximum "repeat violation" points for 75.400, due to the size of such operations and the countless ways in which a large operation can violate that regulation. JWR does, however, support the reduction in

[3] Incidentally, JWR opposes increased penalty points based upon the size of the controlling entity. Out of 20,000 operators in the country, very few have controlling entities that are involved in compliance to a level that justifies such a consideration.

overall history considered from twenty-four months to fifteen months. As MSHA asserts, such a reduction would provide a more current indication of a mine's compliance.

JWR suggests that the quantity "violations per inspection day" ("VPID") is perhaps the least biased metric in the entire civil penalty formula. Regardless of the number of inspectors or enforcement discrepancies or the size of a company or its particular problems that occur or recur due to geological, behavioral or any number of other factors, the VPID gives the truest measure of an operator's compliance – how often the operator is getting cited for failing to comply with the regulations. It may be such a pure indicator of compliance that MSHA could use it to see whether companies are in fact increasing compliance or not, which in turn could suggest a wiser course of action than the one proposed. If MSHA does investigate this further, it will find that companies such as JWR have maintained a fairly constant VPID quotient over the years, regardless of a myriad of fluctuating circumstances.

Third, JWR objects to the overweighting of the gravity factors that MSHA's proposal would require. This would particularly be the case for S&S citations due to the thirty, forty, or fifty points assigned for the three highest categories of likelihood. For JWR, these point increases would roughly result in weighting the gravity factor in a range between 34% and 53%. JWR argues that gravity would be overweighted in such a scheme. Finally, although JWR does not have a particular objection to the proposed changes relating to the negligence criterion, JWR generally objects to the fact that MSHA appears to have not ensured that the factors are fairly weighted. Therefore, JWR respectfully requests that MSHA conduct this type of analysis.

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[4] For the record, in the event the "repeat violations" category is promulgated, JWR supports the limitation of repeat violations to the same exact standard, supports the use of VPID to achieve the "repeat violations"

B. The proposed rule would have a punitive – not a remediative – effect on JWR.

1. Between 2003 and 2005, the numbers of citations issued to JWR decreased.

As the attached Exhibit A shows, the number of citations issued to JWR decreased during the period 2003-2005. Exhibit B shows that the total amount of civil penalties also decreased, despite the fact that MSHA increased all civil penalties by 10% halfway through 2003. Using MSHA's analysis, these figures should indicate increasing compliance and safer and healthier workplaces for JWR's miners. MSHA has taken a broad brush of the entire mining industry, found slight increases nationwide and industrywide, and has reacted by promulgating a truly punishing set of regulatory changes. This approach is incredibly capricious because it fails to provide any analysis beyond a rough generalization. MSHA should analyze at least a sample of information for different kinds of operators. Like JWR's information, the results might teach away from the proposed rules changes.

It should also be noted that, as can be seen in Exhibit A, numbers of citations and assessments fluctuate from year to year, often in amounts greater than 8%. For example, JWR No. 5 Mine's citations increased 20% from 2003 to 2004, then decreased 20% from 2004 to 2005. Because MSHA has chosen not to analyze its own data further than the two-year history of the industry as a whole nationwide, it has acted with extreme hypersensitivity, attempting to justify drastic action based upon a purported problem that is ill-defined, if not illusory. In a word, this is quixotic.

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enhancement, and supports the idea that only S&S citations be counted for repeat violations purposes.

2. During the relevant time period, JWR has improved its safety and health compliance efforts.

Of course, a decrease in citation numbers at JWR, while laudable, is not an accurate barometer of JWR's safety and health efforts. Over the past several years, JWR has increased its focus on safety in ways that would never be appreciated by the rough granularity of MSHA's logic. JWR has staffed up its safety departments, particularly by hiring UMWA safety committeemen working at the mine who were already familiar with that mine and its workers and had already spent most of their careers as part of the safety and health solution. Additionally, JWR has exceeded the legal requirements for safety training. None of these changes are accounted for in MSHA's analysis.

3. During the relevant time period, JWR's increased focus on safety and health has yielded positive results.

As a direct result of its increased focus in recent years, JWR and its employees have benefited by maintaining an accident and injury rate that is consistently below the national average. JWR continues to expend maximum effort to ensure that its mines are as safe as they can be, a philosophy that would neither be enhanced nor encouraged by the increase in civil penalties that has been proposed. Apparently, MSHA has not considered how the safety and health statistics of the nation's miners have changed during the period of 2003-2005, which has likely caused MSHA some problems in defining a problem and proposing an effective solution.

C. Despite JWR's decrease in citations and improved safety and health, under the proposed rules JWR's civil penalties would increase by a

total factor of five to six times what they would have been without any changes to the rules.

JWR has taken all of its 2005 citations at its two mines that would be affected by these new rules[5] and applied the new rules to them. The results, shown in Exhibit C, are shocking increases in civil penalties – five to six times what they otherwise would have been. JWR No. 4 Mine had about $97,288 in civil penalties in 2005. Under the rules changes, the civil penalties would be $421,541. JWR No. 7 Mine had approximately $55,131 in civil penalties in 2005. When the new rules are applied, it becomes $286,389.[6]

As the attached Exhibit D shows, the proposed penalty increases are no less shocking where applied to a couple of exemplars that were issued on the same day at the same mine under the same standard (75.400) and applied to similar circumstances. In the first example, a non-S&S citation issued under 75.400 would increase from $60 to $807 (assuming moderate negligence, unlikely to cause lost workdays to one person). In the second example, an S&S citation issued under 75.400 would increase from $324 to $3,990 (assuming moderate negligence, reasonably likely to cause lost workdays to one person).

Obviously, these individual increases are greater than the five or six times the average assessment at JWR would be, but 75.400 is the most common type of coal citation issued, so these examples will not be rare. These examples also illustrate the penalizing effect to larger operations of maximum repeat violation penalty points,

[5] JWR's No. 5 Mine will be permanently closed by the time any civil penalty changes are in effect, so JWR has not calculated the effects of the rules changes on that mine.

especially for all 75.400 citations. JWR has found no 15-month period in its recent history in which it would not have received maximum penalty points for each 75.400 citation. The same could probably be said about most larger companies.

The repeat violations category is not the only noteworthy increase, however. It can also be seen that the two exemplars differ from each other by only one category – likelihood. In JWR's S&S citation example, "reasonable likelihood" points would increase from 5 to 30, which would increase the civil penalty by nearly $3,500 alone. A penalty scheme in which a single check box makes a $3,500 difference is manifestly unfair.

IV. Conclusion

Based upon the foregoing, JWR respectfully requests that MSHA withdraw this proposed rule until it can be further and more fully considered. If MSHA insists on promulgating the proposed changes, JWR requests that MSHA make drastic and fundamental changes to the proposed rule so that the rule will have a rational foundation, a reasoned construction, and a targeted focus, so that the rule will accomplish everyone's goal of encouraging increased safety and health in an appropriate manner.

[6] It should be noted that No. 7 Mine's assessments for S&S citations in 2005 were uncharacteristically low – if either of the 2003 or 2004 assessments were used, No. 7 Mine's penalties would have been around $639,000, for a two-mine total of over a million dollars!

EXHIBIT A
2003-2005 JWR CITATIONS

No. 4 Mine Citations
2003 325 (214 non-S&S, 111 S&S)
2004 385 (257 non-S&S, 128 S&S) (+19% change from 2003)
2005 333 (206 non-S&S, 127 S&S) (-14% change from 2004/+2% from 2003)

No. 5 Mine Citations
2003 458 (344 non-S&S, 114 S&S)
2004 426 (231 non-S&S, 195 S&S) (-7% from '03)
2005 280 (168 non-S&S, 112 S&S) (-34% from 2004/-39% from 2003)

No. 7 Mine Citations
2003 419 (276 non-S&S, 143 S&S)
2004 419 (251 non-S&S, 168 S&S) (0% from 2003)
2005 353 (232 non-S&S, 121 S&S) (-16% from each of 2003 and 2004)

Nos. 4 and 7 Mines Combined
2003 744 (490 non-S&S, 254 S&S)
2004 804 (739 non-S&S, 491 S&S) (+8% from 2003)
2005 686 (438 non-S&S, 248 S&S) (-15% from 2004/-8% from 2003)

Nos. 4, 5, and 7 Mines Combined
2003 1202 (834 non-S&S, 368 S&S)
2004 1230 (739 non-S&S, 491 S&S) (+2% from 2003)
2005 966 (606 non-S&S, 360 S&S) (-22% from 2004/-20% from 2003)

EXHIBIT B
2003-2005 JWR CITATION ASSESSMENTS

No. 4 Mine Citations
2003 $80,344 ($12,840 non-S&S, $67,504 S&S)
2004 $91,257 ($15,420 non-S&S, $75,837 S&S)
2005 $96,360 ($12,360 non-S&S, $84,000 S&S)

No. 5 Mine Citations
2003 $70,188 ($20,640 non-S&S, $49,548 S&S)
2004 $188,291 ($13,860 non-S&S, $174,431 S&S)
2005 $88,062 ($10,080 non-S&S, $77,982 S&S)

No. 7 Mine Citations
2003 $123,105 ($16,560 non-S&S, $106,545 S&S)
2004 $121,526 ($15,060 non-S&S, $106,466 S&S)
2005 $55,608 ($13,920 non-S&S, $41,688 S&S)

Nos. 4 and 7 Mines Combined
2003 $203,449 ($29,400 non-S&S, $174,049 S&S)
2004 $212,783 ($30,480 non-S&S, $182,303 S&S)
2005 $151,968 ($26,280 non-S&S, $125,688 S&S)

Nos. 4, 5, and 7 Mines Combined
2003 $273,637 ($50,040 non-S&S, $223,597 S&S)
2004 $400,894 ($44,160 non-S&S, $356,734 S&S)
2005 $240,030 ($36,360 non-S&S, $203,670 S&S)

EXHIBIT C
EFFECTS OF RULES CHANGES ON
CIVIL PENALTIES FOR JWR NOS. 4 AND 7 MINES

Effect of Proposed Penalty Calculation Change on MSHA Penalties at No.4 Mine for 2005				
	Existing Calculation	Proposed Calculation	Difference	% Change
Non S&S Citations	$ 13,496	$ 31,050	$ (17,554)	130%
S&S Citations	$ 83,792	$ 167,629	$ (83,837)	100%
Subtotal	$ 97,288	$ 198,679	$ (101,391)	104%
Repeat Violations Penalty				
Non S&S Citations	$ -	$ 27,635	$ (27,635)	
S&S Citations	$ -	$ 195,227	$ (195,227)	
Subtotal	$ -	$ 222,862	$ (222,862)	
Total	$ 97,288	$ 421,541	$ (324,253)	333%

Effect of Proposed Penalty Calculation Change on MSHA Penalties at No.7 Mine for 2005				
	Existing Calculation	Proposed Calculation	Difference	% Change
Non S&S Citations	$ 14,633	$ 38,570	$ (23,937)	164%
S&S Citations	$ 40,498	$ 110,464	$ (69,966)	173%
Subtotal	$ 55,131	$ 149,034	$ (93,903)	170%
Repeat Violations Penalty				
Non S&S Citations	$ -	$ 25,535	$ (25,535)	
S&S Citations	$ -	$ 111,820	$ (111,820)	
Subtotal	$ -	$ 137,355	$ (137,355)	
Total	$ 55,131	$ 286,389	$ (231,258)	419%

EXHIBIT D
CITATION ASSESSMENT CHANGE EXEMPLARS

Non-S&S Citation No. 7684968

Category	Old Points	New Points
Mine Size	9	18
Controlling Entity	4	4*
History of Violations	8	8
Repeat Violations	-	20
Negligence	15	20
Likelihood	2	10
Severity	3	5
Persons Affected	1	1
Total Points	-	86
Raw Penalty	$60	$897
Discounted Penalty	$60	$807

S&S Citation No 7684967

Category	Old Points	New Points
Mine Size	9	18
Controlling Entity	4	4*
History of Violations	8	8
Repeat Violations	-	20
Negligence	15	20
Likelihood	5	30
Severity	3	5
Persons Affected	1	1
Total Points	45	106
Raw Penalty	$463	$4,440
Discounted Penalty	$324	$3,996

* - Assuming no changes to controlling entity points