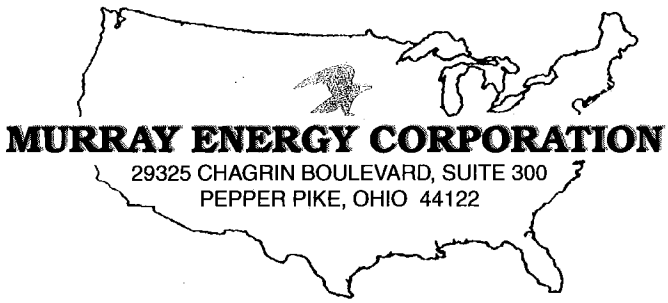

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October 12, 2006

Ms. Patricia W. Silvey
Acting Director
Mine Safety and Health Administration
Office of Standards, Regulations and Variances
1100 Wilson Boulevard, Room 2350
Arlington, Virginia 22209-3939

Re: Comments of Murray Energy Corporation ("Murray Energy") on Criteria and Procedures for Proposed Assessment of Civil Penalties 30 CFR Part 100 ("Proposed Rule")

Dear Ms. Silvey:

These comments to the Proposed Rule are being provided to the Mine Safety and Health Administration ("MSHA") pursuant to the notice contained in the Friday, September 8, 2006, Federal Register, Volume 71, Number 174, Page 53054.

Murray Energy is the second largest underground longwall mining company in the United States, and is one of the five (5) largest underground coal producers. By the end of next year, we will be producing about 33 million processed tons of coal annually with about 3,300 employees.

We take the safety of our employees as our absolute top commitment. It is our moral and ethical responsibility to protect the health and safety of our employees.

The Proposed Rule will be very harmful to the safety efforts of responsible operators. Civil penalties are not an incentive for safety nor do they have any positive effect on our, or any other responsible operator's, safety efforts.

We strongly urge MSHA to significantly modify the Proposed Rule and return to the prior penalty system to the extent possible.

Some of the provisions of the Proposed Rule are statutorily based and cannot be affected by rule making procedures. Our comments will be more aimed at the changes in which MSHA has some discretion and are subject to interpretation.

The changes, as a whole, are a misguided attempt to increase safety by punitive actions against operators. The result will be greatly increased civil penalties, in effect tripling them.

Our specific comments are as follows:

100.3(b) Appropriateness of the Penalty to the Size of Operator's Business.

MSHA has proposed to increase the penalty points for size from an old maximum of ten (10) to twenty (20) for mines over two (2) million tons of production. MSHA contends that is to make the monetary penalty proportional and therefore increase compliance.

This view is seriously flawed and discriminatory and will definitely be challenged in court. Large operations are inherently safer. This proposed change has the reverse effect of punishing size, which is generally a safety enhancer. The series of mine disasters that led to the MINER Act were at smaller mines. This is typical of the Proposed Rule and shows the disconnect between the reality at mining operations and the MSHA bureaucracy.

100.3(d) Negligence.

The old five (5) tier system determining points to be assigned for negligence was effective and has been retained by MSHA, but with the points for the upper three (3) tiers increased, and doubled at the level of "reckless disregard". Our view is that the increase should not apply to "moderate negligence", as that is not at a volitional stage of culpability and is subject to wide variation of interpretation.

100.3 (e) Gravity

MSHA has increased the potential from a maximum of 30 penalty points under the previous rule to 88 penalty points under the proposed rule. Historically, the gravity portion of a citation is the most frequently contested item by our company in health and safety conferences conducted with the agency. This is primarily due to the inspector's determination of the gravity being speculative in nature and subject to individual interpretation. This excessive increase in penalty points is unwarranted in potentially subjective areas.

100.3(f) Demonstrated Good Faith of the Operator in Abating Violations.

In this misguided section, MSHA actually decreases the beneficial effect of timely abatement of violations by operators. Previously, an operator could receive a reduction of 30% for timely abatement, now it is only 10%, a disincentive rather than an incentive to timely compliance.

100.3(g) Penalty Conversion Table.

This now sets a floor of $112.00 for a penalty. It is inappropriate to set such a floor for non-significant and substantial ("Non S & S") penalties and mere paperwork violations. This is the purpose for which the single penalty assessment was designed, but this has also been eliminated at Section 100.4 of the Proposed Rule. The deletion of the single penalty, and the floor of $112.00, will have the effect of merely increasing bureaucracy and inefficiency and will not have any real effect on safety compliance. The concentration of MSHA and the operator

should be on the elimination of potential S & S violations. The elimination of the single penalty causes the intention to be blurred. Lumping all violations, both S & S and Non S & S, into one category actually diminishes the emphasis on S & S.

This is further example of the lack of a practical approach of MSHA to real issues.

100.4 Unwarrantable Failure.

Much of the Proposed Rule in this area is designed to implement the statutory requirement of the MINER Act. As such, there is little discretion possible.

It is difficult to gauge the effect of one proposed change, the elimination of the list of specific categories that can be the basis of a special assessment. Our view is that this has not been a problem before so why change it, and that any change would probably lead to an increase in special assessments, which, if "flagrant", can be assessed at $220,000.00. This is an unacceptable combination, as it provides MSHA too much discretion.

100.6 Procedures for Review of Citations and Orders.

The time period for requesting a Health and Safety conference has been reduced from ten (10) days to five (5) days. There is no reason for the change.

The Rule goes on to incorporate certain statutory disclosures. MSHA predicts that, for each 10% increase in penalty for violations, there will be a 3% decrease in its probability of occurrence. This appears bogus, as compliance at responsible operations is not driven by penalty costs, but by other motivations. This is a cynical attitude by MSHA and indicates a punitive mind set, rather than safety mindedness.

Further, in the disclosure portion, MSHA states that the Proposed Rule is economically feasible for the mining industry because the anticipated expected increase in penalties will be $15.9 million, equal to 0.07% of coal mine sector revenue of $22.1 billion in 2004. This, again, shows a disconnect between the economic challenge faced especially by underground coal mines and the "understandings" of MSHA.

Thank you for this opportunity to present our comments on the Proposed Rules.

Regards,

MURRAY ENERGY CORPORATION

Michael O. McKown

Michael O. McKown
General Counsel

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