Alpha Natural Resources

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October 19, 2006

Attention: Patricia Silvey, Acting Director
Office of Standards, Regulations and Variances

Re: Department of Labor
Mine Safety and Health Administration
Comments on 30 CFR Part 100
Criteria and Procedures for Proposed Assessment of civil Penalties

We offer the following comments on the Criteria and Procedures for Proposed Assessment of Civil Penalties printed in the Federal Register / Vol. 71. No 174 / Friday, September 8, 2006.

The rework of the points for the size and production to determine the penalty amount basically doubles the points (in most cases), and it would appear that a violation at a large operation is in some way more harmful than that of a smaller operation, or that improving safety, if that is the true intent of these changes, is more important for those miners at large operations. The information provided in the Background information reflects that it is the smaller operators that seem to be having the most trouble complying with the code as it is currently written and enforced, yet the larger operators are being impacted most by these changes.

We still see no sign of the "subjectivity" by individual inspectors being eliminated and the gray areas are getting larger and less defined rather than more defined. MSHA, and miners, would be better served by improving the objectivity of the inspection force, thereby improving the consistency of inspections at all operations. The potential exists for an inspector to issue citations based on his "opinion" simply because he does not like an operator or if an operator makes him mad—as discussed below, the operator has little or no means of recourse.

The conference procedures as they now stand are not equitable because the MSHA Conference Officer is a member of the same District work group as the Inspectors issuing the citations; how can he/she be expected to be totally objective and impartial? The conferencing procedures are given less weight as MSHA is asking for the option to deny a conference on certain violations. This is a major step in the wrong direction. The new rules note that we now only have 5 days to request a conference, which MSHA has the discretion to deny (with no definition as to why or why not), but there is no guidance as to what starts the 5 day count. Additionally, no time constraints are placed on MSHA for their response to the request for a conference, how soon the conference must be held (***if***,

in their generosity they see fit to *grant* us a conference), how soon a decision must be rendered after the conference is held, etc.

The increase in points for repeat violations is getting a lot of weight, especially with the addition of another criterion, Repeat Violations of the Same Standard. Again, a large mine with several belts or that has site-specific problem areas, such as roof control, spontaneous combustion, could potentially fall victim to this new criteria of additional points--there seems to be only a concentration making the fine larger rather than working on a solution.

The logic to reduce the window for looking at history seems to lack merit. If MSHA is going to put more weight on the points for history, the 24 month period seems to be a better measuring tool to get a better feel for what is going on at a particular facility or mine.

MSHA admits in black and white that "Higher Penalties for such operators may encourage them to comply with the Mine Act's requirement". By using the term "may", MSHA is really saying that this may not be the real answer to make the mines safer. The penalty system has been in place for quite some time—can MSHA not make an assessment of whether safety has been improved by this?

The degree of Negligence is so arbitrary and with an opportunity to fix something that has been broken for years, MSHA again complicates the issue rather that trying to correct a problem that has haunted them and industry for some time.

"The agency believes that deleting the single penalty provision will provide a greater incentive for mine operators to abate hazards". The single penalty provision is used mostly for non S & S violations; therefore this is just blowing smoke as in most cases this is not really determined to be a "hazard" in the first place.

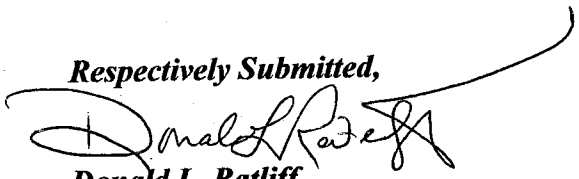
Now we see "flagrant" violations. Is this type of violation not already given a name and is it not enforced now under a d-citation? Why bring in new terms for old problems.

We seem to have minimums and maximums on almost all situations except for Unwarrantable Failures. Why would the cap that is placed on other special assessments of $220,000 not be applied to this section also? If $220,000 is the cap for the new "flagrant violation", I think it should also be the cap for Unwarrantable Failures.

MSHA lists under the Benefits section that "...reduced number of injuries and fatalities would result from increased compliance with MSHA's health and safety standards and regulations in response to higher penalty assessments". In all that we have seen since this spring, we still see no new regulations for training. The greatest percentage of injuries

(some estimates as high as 96%) is caused by individuals' behaviors; yet MSHA continues to look at conditions and not the miner. ***The Good Faith credit that we have used in the past appears to have been cut for no sound reason. A company who puts forth the extra effort in training and prevention, intended to eliminate at-risk behaviors, gets little credit for its efforts in this system.***

Respectively Submitted,



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