



November 9, 2006

Mine Safety and Health Administration
Office of Standards, Regulations, and Variances
1100 Wilson Blvd., Room 2350
Arlington, Virginia 22209-3939

(Submitted electronically to zzMSHA-Comments@dol.gov,
and at <http://www.regulations.gov>)

**RE: Criteria and Procedures for Proposed Assessment of Civil Penalties:
Proposed Rule (RIN 1219-AB51) (Reopened)**

The National Lime Association (NLA) is pleased to present additional comments on the Proposed Rule referenced above. NLA previously submitted comments on Oct. 23, and will generally not repeat their contents here.

The Oct. 26 notice asks for comments on several changes to the procedure for requesting health and safety conferences. NLA's members believe that conferences can be highly effective in resolving issues relating to citations, and that they can contribute to improved working relationships between MSHA and the regulated community. NLA is unaware of any significant problems with the current conference process. Indeed, in the Sept. 8 notice, the only reason given for reducing the period for requesting a conference was that "MSHA believes that the proposed reduction would result in a more effective civil penalty system because penalties would be assessed closer in time to the issuance of the citation." Aside from this conclusory statement, there was no indication that the current system has been ineffective in any way.

The new notice requests comments on a potential requirement that requests for a conference include a brief statement of the reason why each citation or order should be conferenced. The notice states that

...such a change would assure that parties requesting a conference focus on the issue to be discussed at the conference. In addition, this change would help expedite the conference process by providing the District Manager with necessary information prior to conducting the conference.

However, neither the proposed rule nor the Oct. 26 notice contains anything suggesting that there is currently any problem with the parties to conferences focusing on the relevant issues, or that District Managers have been unprepared for conferences. The existing rule already provides that "the official assigned to the case may contact the parties to discuss the issues involved prior to the conference." NLA believes that this is sufficient to "focus" the participants, since in the vast

majority of cases it will be clear to all parties what the key issues are. The proposed requirement simply adds an unnecessary paperwork requirement that burdens mine operators without providing any likely benefit.

The Oct. 26 notice also states that the proposed rule includes a requirement that requests for safety and health conferences be in writing. No such requirement is stated in proposed section 100.6, and the preamble indicates that with the exception of the shortening of the period to request a conference, the rule remains “substantively the same.” The current rule, which has similar language, clearly allows for telephonic requests, as made clear in MSHA’s Program Policy Manual. Furthermore, there is nothing in the rule preamble or in the Oct. 26 notice that suggests that there has been any problem with conference requests made by telephone. (Indeed, requiring requests to be made in writing will slow down rather than expedite the conference process, since, according to the Program Policy Manual, requests may be sent by regular mail and the date of the postmark determines the timeliness of the request.) Again, this requirement simply generates more unneeded paperwork.

As noted in its prior comments, NLA also opposes the proposal to reduce the time in which a conference may be requested from 10 days to 5 days. This short period will make it difficult for operators to have enough time to determine whether it makes sense to conference a particular violation. This would be even more onerous if operators must also draft a written statement of reasons within 5 days.

NLA can see no justification for measures that would be likely to discourage conferences. NLA believes it would be particularly unfortunate and counterproductive if MSHA were to deny conference requests based on technicalities in the form of the request. Indeed, any reduction in conferences as a result of such procedural requirements is likely merely to result in a higher number of contested citations, at a greater cost in time and resources to both MSHA and industry.

Accordingly, NLA urges MSHA to retain the current section 100.6 with no changes.

NLA appreciates the opportunity to comment on these important issues.

Very truly yours,

/s/

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