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From: Marty Cerullo [mailto:MCerullo@cdwlaw.com]  
Sent: Thursday, June 08, 2006 11:35 AM  
To: zzMSHA-Standards - Comments to Fed Reg Group  
Subject: Interpretive Bulletin regarding Limited Liability Companies

Our law firm represents the Pennsylvania Anthracite Council, which is an industry trade group for anthracite deep miners, surface miners, suppliers of cogeneration feedstock, and various vendors to and supporters of the anthracite industry.

While it does not appear that LLCs are yet a commonly used form of business enterprise in the anthracite industry, nonetheless the Council wishes to express its concerns with respect to the Interpretive Bulletin published in the Federal Register on May 9, 2006.

We respectfully submit that the Interpretive Bulletin is an attempt to set forth an interpretive rule where what should be required in order to impose personal liability upon agents of LLCs is that Section 110(c) of the Federal Mine Safety & Health Act of 1997 be amended in order to extend its coverage to agents of LLCs.

The existing language of Section 110(c) referring to corporate operators is to be interpreted literally, and in a limited fashion. It is not subject to expansive interpretation by an Interpretive Bulletin.

There is at least one ruling of the Federal Mine Safety Health & Review Commission dating from the 1990's - the Pyro Mining Co. case - which refused to extend 110(c) liability to agents of a partnership, but ruled that the language should be read literally and limited to agents of corporations.

The contention in the Interpretive Bulletin that LLCs were not yet a commonly used legal entity at the time of the adoption of Section 110(c) does not empower the Secretary to issue the Interpretive Bulletin as published. Certainly, partnerships were commonly existing entities at the time of the adoption of Section 110(c), and yet in Pyro Mining the Commission did not rule that the statutory language could be read in an expansive fashion to extend to partnerships. The proffered logic in the Interpretive Bulletin - that Congress felt no need to include agents of partnerships because partners already have personal liability - is unavailing. First of all, any one partner who could be held personally liable for a civil penalty does not feel that same effect when the partnership suffers a civil penalty; he feels only his prorata share. So, there would be a reason to seek to deter partners. Secondly, agents of partnerships could extend beyond the owners.

More significantly, Section 110 of the Act was amended as recently as 1990, by which point LLCs were a relatively common form of legal entity, and yet Congress did not see fit at that time to expand the wording of the statute.

The Council appreciates the opportunity to submit comments and hopes that the Interpretive Bulletin will be reexamined prior to its being placed in effect on July 10. Any extension of the scope of Section 110(c) should be done by amending the Mine Act, not by Interpretive Bulletin.

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