

A. General Discussion

Interwest Mining Company takes exception to the quote MSHA makes on page 53055 that states:

The intended purpose of civil penalties under the Mine Act is to “convince operators to comply with the Act’s requirements”.

Interwest Mining Company has a dedicated management staff that values the safety of its employees and goes to great lengths to provide their work force a safe work environment. Interwest Mining Company conducts a tremendous amount of safety training, utilizes monthly union/management safety committee meetings and audits to promote safety as well as countless amounts of physical condition audits/inspections every year. We believe that the key to managing safety is not by increased penalties but by holding individual employees accountable for their own safety. Statistics indicate that over 90% of all accidents are caused by employee behavior and for the most part are beyond the control of the mine operator. MSHA should evaluate the overall safety program in place at the mines, the training that is provided to miners, policies and procedures that are in place as well as other proactive safety efforts in place designed to be proactive and not reactive.

The proposed rule is designed to punish those operators who have better safety records and historically have received many 104(a) non S&S violations for items such as guards missing a bolt or for a fire extinguisher missing an inspection. Our mines have very few high negligence violations. In cases where a miner made a conscious choice to disregard a safety standard after receiving training, MSHA cites the operator as being in violation when clearly it was a personal choice that caused the accident.

**Determination of Penalty; Regular Assessment (100.3)**

- B. **Appropriateness of the penalty to the size of the operators business:** Interwest Mining Company does not believe that assessments should be made based on the size of the mine. A violation is a violation and if MSHA believes that injuries result from violations, then all operators should be equally assessed regardless of the size of the operator or its controlling entity.
- C. **History of Previous Violations** Interwest Mining Company believes that citations used to determine history of violations should be S&S citations only and not non-S&S citations.
- D. **Negligence** Interwest Mining Company has no comment on this section
- E. **Gravity** Interwest Mining Company has no comments on this section

- F. **Good Faith** Interwest Mining Company recommends that MSHA reconsider its proposal to decrease good faith efforts to 10% and allow good faith efforts to stay at 30%. Operators who are diligent in correcting violations should receive consideration. Not all violations are known to the operator and when an operator commits the resources to quickly abate a violation, a 10% reduction in the penalty does not correlate to the effort.
- G. **Gravity** Interwest Mining Company has no comments on this section
- H. **Effects on operators ability to remain in business** Interwest Mining Company has no comments on this section.
4. **Determination of Penalty: Single Penalty Assessment** Interwest Mining Company has no comments on this section.
5. **Unwarrantable Failure** Interwest Mining Company has no comments on this section
6. **Determination of Penalty: Special Assessment** Interwest Mining Company has no comments on this section.
7. **Procedures for Review of Citations and Orders; Procedures for Assessment of Civil Penalties and Conferences** Interwest Mining Company recommends that MSHA reconsider its proposal to revise the timeframe for requesting a conference. The current 10 day limit is an appropriate time frame that allows adequate time for determining if a conference should be requested. Because of the various shift schedules that exist it could be expected that a company would not be able to gather the required information to make the appropriate determination to conference a citation within the proposed 5 day time frame.

In summary, Interwest Mining Company believes there are serious problems with the proposed rule starting with penalizing larger operators who contribute greatly to the industry safety record being at its all time low through 2005. The large operators have continued to step up to the plate, time and time again for partnership projects, safety studies, etc. because they typically have outstanding safety records. Now, the larger companies are going to be punished because of their size. Does MSHA really believe that simply raising the monetary penalties will improve the safety record of the industry?