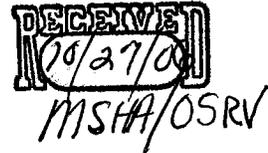


# Holliday Sand & Gravel Company

9660 Legler Road  
Lenexa, Kansas 66219

Phone: 913-438-0240  
email: [mrodell@hollidaysand.com](mailto:mrodell@hollidaysand.com)

October 17, 2006



MSHA  
Office of Standards, Regulations and Variances  
1100 Wilson Blvd. Room 2350  
Arlington, VA 22209-3939

Re: Comments on Proposed Penalty Rules

Dear Sir or Madam:

We respectfully submit the following comments regarding proposed changes in penalty rules which are designed to provide increased deterrents thereby improving safety and health for miners. Holliday Sand & Gravel operates ten surface sand and gravel mines in Kansas, Missouri and Oklahoma.

Please practice what you preach. Recent special sessions have been held to promote operators rewarding good safety behavior as opposed to negative consequences for their miners. Training and enforcement branches of MSHA should talk and determine how this effective and proven method of behavior modification should be applied to operators. If you MUST have all these factors we recommend penalties should also factor in positive safety behavior such as: the operator's investment in safety through safety training over and above the minimum, proof of the operator's diligent workplace inspections and corrections, workplace housekeeping, quality of equipment guarding, actual accident record and use of positive and negative enforcement with the miners.

Unfortunately, the existing factors for calculating fine amounts will encourage the wrong behaviors or no behavioral change at all (like big after the fact OSHA fines). Since the amount of the penalty will likely not be known at the time of the inspection closeout or anytime soon after, the cause/effect factor of this whole idea will be lost to anyone but upper management. A complex calculation of factors will leave everyone scratching their heads as what to do to improve safety. Rather, a "reduce the fine" mentality will develop rather than a fix the problem mentality. The operator will spend valuable time and resources to: 1) vigorously appeal all violations with all legal means available to improve the mine history, 2) subdivide his business into operating units with separate mine ID's to reduce it's size and therefore penalty amount, 3) use all available documentation to substantiate low negligence thereby reducing that factor, 4) file a lawsuit based on inaccurate assessment of ability to continue in business (as if this makes any sense at all as a reason to let someone off the hook), 5) argue to reduce the gravity of the violation – which almost always gets done, so why not spend time and energy on this, and 6) be

AB51-COMM-79

ready to show "super good faith" in rapid compliance after the fact - but does that actually prevent anything?

The point is no one will remember the details that affected the factors that made a huge fine. They will just be numbers on a form that shows up with the bill months later. Correlation at the mine location may not happen for months if at all.

Here's what we suggest:

Forget all these fancy factors and calculations. Make it simple, make it painful, make it predictable. Consider a traffic ticket. You don't wonder whether you'll get a \$5 ticket or a \$5000 ticket, do you? If it was that way, you're going to hope you get a \$5 traffic ticket and then call a lawyer when you get a \$5000 ticket. No one will drive differently or change their behavior. Now if you knew in advance you were going to get a \$500 fine for a violation you would make sure it doesn't happen!

Forget all this S&S vs. Non S&S stuff. This is a subjective game to try to determine if a violation is important. It waters down the standards and unless you play the history game who really cares whether they get a "non-S&S"? Does it make sense to cite violations that aren't likely to cause an accident? How many hours across the country are spent arguing the severity and likeliness? Let's use our efforts to avoid accidents and injuries instead of playing the game of preventing a history of insignificant "violations" rather than real violations. An example would be a frivolous citation for a guard that doesn't quite cover up every gap, versus a needed citation for no guard or a poor guard.

Let's keep it simple. The more subjectivity you place in the process – especially with the inspector - the more appeals and court time for everyone. What a misuse of time. Management sorely needs to get out there and check things out. MSHA personnel sorely need to get out there too rather than talking on the phone conferences.

Thank you for this opportunity to comment on proposed changes that we feel should be reconsidered and simplified.

Sincerely yours,  
Holliday Sand & Gravel Company



Michael Odell  
Vice President Production