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MSHA/OSRV

Natural building blocks for quality of life

Patricia W. Silvey, Acting Director
Office of Standards, Regulations and Variances
Mine Safety & Health Administration
US Department of Labor
1100 Wilson Blvd., Room 2350
Arlington, Virginia 22209-3939

Subject: RIN 1219-AB51 "Criteria and Procedures for Proposed Assessment of Civil Penalties"

VIA E-MAIL: zzMSHA-comments@dol.gov

Dear Ms. Silvey:

Graniterock appreciates the opportunity to submit additional comments for the record regarding the Mine Safety and Health Administration's (MSHA) "Criteria and Procedures for Proposed Assessment of Civil Penalties" rule proposed on September 8, 2006.

Graniterock is a building materials supplier and engineering contractor based in Watsonville, California. We would like to offer the following additional comments regarding the proposed change in the conference time frame and the single penalty assessment.

- 1) For those operators who do not agree with any part of the citation, their only relief will be to appeal the citation when they miss the shortened time frame to request an informal conference proposed by MSHA. I don't think it is too much of a stretch to project that more operators will miss the opportunity to conference a citation if the regulation is changed to the five-day request period. The result of this change will be a greater administrative and time burden on the operator, and on MSHA, to initiate and proceed through the appeal process.

MSHA's reason for reducing the request period for conferences is that it will result in a more effective civil penalty system because penalties would be assessed closer in time to the issuance of the citation. This is a weak reason and is made without consideration for the accuracy or validity of the citation. Furthermore, MSHA believes that all parties would be able to request a health and safety conference within the five-day request period. This comment is made without any supporting information and without consideration for the fact that the operator's personnel who review citations may not be available due to illness, vacations, etc. within this shortened time period.

- 2) With regard to the single penalty assessment, MSHA offers no information substantiating their claim that taking away the single penalty assessment, operators will have more incentive to focus on the prevention and correction of all hazardous conditions. We do not see how substantially increasing the penalties for the failure to document the inspection of a single fire extinguisher out of 300 on the mine property (generally classified as non-S&S), or have a missing cover of one garbage can on the property (generally classified as non-S&S), etc. will significantly improve the safety & health of the miners.

Also, the use of the single penalty assessment by an inspector allows him to fulfill his obligation to cite any violation of the regulations in cases where the hazard is unlikely (or in many cases highly unlikely) to cause any injury or illness. It is reasonably likely to assume that eliminating this method of citing an operator could lead to inspectors overlooking minor violations.

In conclusion, Graniterock disagrees that increased penalties will drive improved safety performance and that the penalty assessment process will lead to safety & health improvements in the mining industry. MSHA has not provided any information that supports the claim that increasing penalties will improve safety performance. We encourage MSHA to retain the current single penalty assessment and the ten-day conference request period. Thank you for the opportunity to make additional comments regarding the proposed rule.

Sincerely,

Michael Herges
Safety & Health Services Manager
Granite Rock Company