Canyon Fuel Company, LLC

A Subsidiary of Wolverine Fuels, LLC

MEMORANDUM

Date: April 30, 2019

To: David G. Zatezalo, Assistant Secretary for Mine Safety and Health Administration

From: Canyon Fuel Company, LLC

Reg Reform COMM - 086-1

Subject: MSHA Regulatory and Procedural Changes

In effort to address the need for MSHA regulation and procedural review, the following information has been compiled with input from the management team at each of our underground operations:

1. **Accountability:** Mine operators are required to comply with all MSHA standards. In many cases, the operator is complying with the standard, but because the inspector is interpreting the standard differently, a citation is issued. In these events, the operator is guilty until proven innocent during the citation conference; however, by the time the citation is vacated, the operator has already spent time and resources to meet the demands of the inspector to terminate the citation. MSHA personnel should be held to the same standard and comply with their policy manual. Inspectors who continually have contested violations vacated or changed should be held accountable. Additionally, the operator should have the right to contest the citation before the time and resources are already spent without the risk of being issued a failure to abate order or reprisal from inspector. The adversarial nature of certain inspectors often make it difficult for MSHA and the operator to cooperate and get buy-in to safety at the mine level. Cooperation and mutual respect, from the MSHA Supervisors down to full-time inspectors, would go a long way in getting miners to believe in the concept of safety versus the police tactics that put them on edge every time an inspector shows up.

2. **Citation Conferences with CLR:** As noted above, when an inspector issues a citation, the operator is guilty until proven innocent during the citation conference; however, by the time the citation is vacated, the operator has already spent time and resources to meet the demands of the inspector to terminate the citation. When an operator chooses to conference a citation based on the validity of the violation or the way the violation has been marked, the operator should have a fair and impartial conference litigation officer who has the authority to vacate or change a violation based on the facts presented to him/her. Having the CLR report to the District Manager where the violation was written takes away the due process and impartiality.

   Additionally, on multiple occasions, citation conferences have been submitted to all appropriate parties, including Field Office Supervisors and subsequently the issuing inspector will email/submit a change to the citation, in what can only be seen as a response to seeing the operator's reason for the citation conference. This does not foster cooperation and mutual respect between mine operators and MSHA. If citations need to be changed after the conference request is made, the citation was incorrect and should be vacated.

3. **Expertise:** MSHA specialists and supervisors, like any other professional, should engage and make decisions only in areas in which they are trained, certified and competent. It is perceived that MSHA representatives acting outside their area of expertise has led to an abundance of poorly written citations and often those decisions may have a negative impact on the health and safety of the workforce. A certified electrician is required to do electrical maintenance work, but a non-electrically certified inspector can inspect an electrical installation and issue a citation without having knowledge or expertise

about the installation. Similarly, engineering plans require require a Professional Engineer to design and stamp, but a non-engineer inspector can make a determination that the plan unsafe and require unnecessary and costly changes to mine plans and operations.

4. **Consistency:** MSHA inspectors receive training from MSHA supervisors regularly; however, this training is not consistent across Field Offices in the same District, and commonly the training given to inspectors is enforcement training focused on finding ways of issuing a citation to a generalized standard. The disparity seen between work groups and Districts is noticeable and it seems each District has their own agenda for requiring operators to conform to their interpretations by stating that their particular interpretation came down from headquarters. MSHA inspector training should be subject to third party approval and shared with operators to allow for knowledge share and a check and balance system between operator and inspectors.

5. **Immediate Notification 30 CFR Part 50.10:** The immediate notification time limit of 15 minutes can often be impossible to comply with. If an emergency situation is occurring, an operator should have the ability to respond to the emergency and save lives, not worry about how much time has passed since the "operator knows or should know that an accident has occurred". Increasing the time limit to 1 hour would allow the operator time to focus on the event, gather correct information, and activate appropriate assets including MSHA.

6. **Numerous Inspectors at Mine Sites:** During a work week, there are usually 2 inspectors assigned full-time to a mine and 2 or more additional inspectors will show up on the same shifts. Four or more inspectors on a single work shift is unreasonable for the operator to have to accommodate with transportation and personnel to travel with inspectors. Each inspector travels in an individual government vehicle to the mine site with limited on-site parking and they stagger their arrival throughout the morning hours, often saying that they did not know the other inspectors would be at the mine. Even a safety department consisting of 4 safety professionals becomes reactive to 3 or more inspectors in a single shift, as opposed to a proactive approach that drives safety and compliance.

7. **Hazard Complaints:** The threshold for a hazard complaint that is frivolous is so easily met that virtually anyone who has been terminated could file a complaint. Operators are automatically guilty based on investigators' assumptions for the hazard complaint. No one wants coal miners to be treated unfairly, but there should be a better way to evaluate hazard complaint cases on their merits. Assuming an operator is guilty is not a fair process.

8. **Respirable Dust Regulations – 30 CFR Part 70:**
   a. One issue with the CPDM is the TE Temp fault that occurs at the first or last minute of the shift, which will void the sample being taken. It is impossible to determine how warm or cold the temperature is underground versus the outside temperature. When you must send two pumps in on a longer shift, the 2nd pump gets cold especially during the winter months and will fault.
   b. Operators should be allowed to run multiple ODO samples at the same time in the MMU's which get their air from the same air course. This would help get the sampling done in a more efficient manner per quarter.
   c. The Operator should be allowed to run an engineering sample on a CPDM in conjunction with the MSHA gravimetric required sampling, as this would be a useful tool for the operator. If the sample went out of compliance, the operator would have a better understanding of what the problem might be from the results of the CPDM engineering sample. Currently, operators must wait a week or more for the results of the gravimetric and then try to find and fix a problem.
   d. MSHA should reduce the number of samples necessary to meet sampling requirements. Fifteen viable samples for DO's and ODO's is a burden placed on our miners with no additional health protection benefit. Sampling for each DO or ODO should be reduced to 5 viable sample. Otherwise, suspend the use of CPDM's until technology of a smaller, lighter, less cumbersome sampling device

can be developed. We are placing our miners at risk with the amount of mining equipment, sampling equipment, personal protective equipment, and health equipment a miner must wear.

e. MSHA should raise the dust standard back to 2.0 mg/m3 for DO's, ODO's, DA's and DWP, and alsoraise the belt intake air to the standard of 1.0 mg/m3, which still provides protection from excessive respirable dust.

9. **Refuge chambers – 30 CFR 75.1506(c)(1)**:
   a. The law requiring refuge chambers within 1000' of the face should be modified. In 10 years of having refuge chambers in underground coal mines in the United States, not one has been used. Refuge chambers are a huge expense to the operator depending on size of mine and the required number of refuge chambers for travel distances. With the refuge chamber having to be maintained within 1000' of the face, operators are forced to move the chambers every week and sometimes multiple times a week, which causes additional exposure to our underground miners. MSHA even requires language in the Emergency Response Plans that declares refuge chambers should be the last resort in an emergency. We would prefer this law be rescinded or have the law state that the refuge chamber be located at the head of the working section.
   b. The required upgrades as of Jan. 1, 2019 to increase the amount of space for each miner in the refuge chamber is again a huge expense to the operator, especially in light of the fact that none have ever been used. We suggest no more required upgrades to refuge chambers.

10. **Number of rock dust samples required in the inspector's handbook. 75.403**: The number of required samples taken by MSHA inspectors in each quarter should be left to the inspector's training and experience; not a pre-set number even if the area is well rock dusted. Additionally, if an inspector takes a sample and it comes back below 80%, adequate time should be given for the operator to be able to apply more rock dust before the inspector can go and take another sample in the same area. MSHA inspectors are known for finding a bad rock dust location and going back to take more samples knowing they have a higher likelihood of being less than 80%, before the operator can re-dust area. One rock dust sample below 80% is not representative of the entire mine.

11. **Weekly exams on seals – 30 CFR 75.364(b)(4):** For seals that have been in place for more than one year and have a history of being inert or are directly vented to the return, the examination schedule should be modified to be examined once every 6 months. A large amount of both inspector and mine examiner time is spent examining seals that have a history of being inert with no changes.

12. **General or Catch-all Violations:** If there is not a rule to cover the violation, inspectors should not use another one to cover it. 77.205 is a rule for travelways at surface installations, but that is primarily used to write handrails on mobile equipment. There is a section of Part 77 that covers mobile equipment and the handrails should be written there. 75.400 is the most cited violation in MSHA because accumulations can deposit anywhere inside a coal mine. This general accumulation rule should be listed in the different sections of the CFR and cited according to location or equipment. Serious consideration should be given to ensuring laws are written to address the problem, not catch all in one.

13. **Dust Certifications:** With respect to certification of miners on CPDM and Gravimetric dust pumps, the initial class should be taken from an MSHA course. However, for the 3-year recertification of the miners, an individual at the mine trained in dust should have the ability to recertify those individuals, which would be a better use of time and resources for all involved. With rotating shifts, it becomes burdensome to get recertification done because not everybody will be able to attend, so a mine must have an MSHA EFS trainer come several times for recertifying individuals. With someone trained at the mine, they could recertify individuals on days that would be more beneficial to them without trying to find a day that works for both the mine and the MSHA EFS trainer.

14. **Deluge Alarms - 30 CFR Part 75.1103-3:** The law concerning audible and visual alarm at the belt drive is out dated. When the deluge system is tripped, it has an audible and visual alarm at the surface monitor room. This monitor room is maned 24/7 so there is no need to have the audible and visual alarm required at the drive.

15. **Pillar of coal 600' examination - 30 CFR 75.364(b)(1):** this section of the law is out dated. If the air is on the same split of air, we should be required to travel the air course on either side of pillar and not have to travel completely around pillar.

16. **Other Safeguards 30 CFR 75.1403:** Safeguards are written on a particular incident and are later used and modified to continually place the operator on notice for other instances that are barely related to the initial safeguard. In addition, safeguards written to the previous operator are held in place for that mine identification number regardless of what has changed in the mine since the initial extended time period for that operation. The interpretation of the general criteria in 75.1403-1 needs serious consideration for a second look. Safeguards should be written on a specific condition and the operator at the time of the condition. Safeguard should also have an expiration date. Some safeguards have been in place for decades, technology has changed, and safety has increased since issuance.

17. **PIB P14-04:** This document removed expiration dates for all MSHA directives. The policy should be rescinded, and directives should have time limits. This would allow directives to be analyzed at their end date to see if they remain valid based on their relevance to current industry conditions. This would ensure that obsolete directives would be cancelled.

18. **HazCom Labelling (Part 47):** When a portable container is not labelled, and it is obvious as to its contents. This can be a "paperwork" citation with no real hazard.

19. **Diesel Regs:** Light duty diesel should not be covered by MSHA. It would be reasonable that the latest tier of EPA engines should be used when engines are replaced, or new equipment is purchased. Removing a perfectly good fuel cap on a dodge truck and replacing it with a spring-loaded cap that leaks can be a poor choice. Cutting a perfectly good battery cable in half to install a circuit breaker is also not a good idea.

20. **Complete Mine Inspection:** A complete inspection of all items and areas is too much to be require each quarter. A percentage of many inspection areas or equipment can be done each quarter to accomplish 100% each year. As an example:
    - 25% of diesel equipment inspected each quarter
    - 25% of electrical installations inspected each quarter
    - 25% of self-rescuers and caches inspected each quarter
    - A continuation of rock dust survey samples taken in new development from previous quarter. Not a complete mine rock dust survey sample taken each quarter.

21. **Mine Plan Approval Process:** Revise the mine plan review and approval process:
    MSHA controls mine plans but has no accountability. Even though mine plans are "operator plans", MSHA enforcement dictates mine plan content through denial until templates and rules-of-thumb are met. Potentially, misinformed personnel determine plan content based on a "more is better" approach. Establish timelines to drive timely reviews of mine plan submittals.

    Prior to the District Manager denying a plan, require MSHA to afford the mine operator the opportunity for a face-to-face conference, like the Part 100 Citation/Order conferencing process, to further support the submittal and /or to provide additional information for consideration. When a plan submittal is ultimately denied, the District Manager should specify the deficiencies in writing and "factually" support his/her decision to deny the plan.