COLORADO MINING ASSOCIATION

THE COLORADO MINING ASSOCIATION

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2014-2015
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July 21, 2014

Armand Southall
Regulatory Specialist, ONRR
P.O. Box 25165, MS 61030A
Denver, CO 80225

Re: Colorado Mining Association Comments on Proposed Rule to Amend Civil Penalty Regulations, RIN-1012-AA05

Submitted via: http://www.regulations.gov and U.S. mail

Dear Mr. Southall:

On May 20, 2014, the Office of Natural Resources Revenue ("ONRR") issued a Proposed Rule entitled "Amendments to Civil Penalty Regulations" 79 Fed. Reg. 28,862 (May 20, 2014). This rule would establish a comprehensive set of new civil penalty regulations applicable to royalty reporting and payment by federal and Indian coal and other solid mineral lessees.

The Colorado Mining Association (CMA) appreciates the opportunity to submit comments on this proposed rule change. CMA's 1,000 members include companies producing coal and minerals on both federal and Indian mineral leases.

The proposed rule has a number of serious flaws which include the following:

Exposing lessee to criminal violations and extreme penalties through an altered definition of "knowing or willful"

- The rule would redefine "knowing or willful" to mean "gross negligence". This risks the imposition of criminal penalties for unintentional mistakes.
- Further the rule imposes strict vicarious liability on the company for the acts of its employees or agents. An unintentional mistake or failure to comply with an agency email by a distant agent could result in criminal liability for the lessee.

Restricting an ALJs discretion and reducing due process

- The rule strips the ability of the lessee to obtain a stay of the accrual of penalties during administrative appeal. This denigrates due process by economically pressuring the defendant to capitulate.
- ONNR's discretion determines whether a petitioner has a right to a hearing by an ALJ. This could certainly be considered a conflict of interest.

- When a hearing does occur, ONNR can immediately file a motion for summary decision based upon an incomplete record again avoiding fair and proper due process for the lessee.
- The rule limits the ALJ's ability to reduce the penalty amount. Because of the accrual of daily fines and the sometimes slow reaction of ONNR, monetary penalties could easily reach an excessive level when compared to the severity of the violation.

Violates congressional intent by drastically increasing enforcement discretion

- Legislative history indicates that Congress in the past refused ONNRs request for "knowing or willful" penalties for any type of report violations and created a hierarchical system of civil penalties to insure fairness and due process. This rule seeks to override congressional intent.

In conclusion, CMA would support, along with other stakeholders, reasonable changes that are warranted and improve the program. However, the proposed rule as written should not be adopted. This rule reduces or eliminates due process and exposes lessees to excessive civil and criminal penalties. ONNR does not attempt to explain or justify the drastic and sometimes unlawful changes found in this proposal.

Should ONNR continue to believe that a rule is warranted; the current proposal should be withdrawn and redrafted after additional consultation with stakeholders. Thank you again for the opportunity to comment. Please direct any comments or questions to Stuart Sanderson at 303/575-9199 or ssanderson@coloradomining.org.

Sincerely,

Stuart A. Sanderson
President
Colorado Mining Association