



Concrete
Thinking
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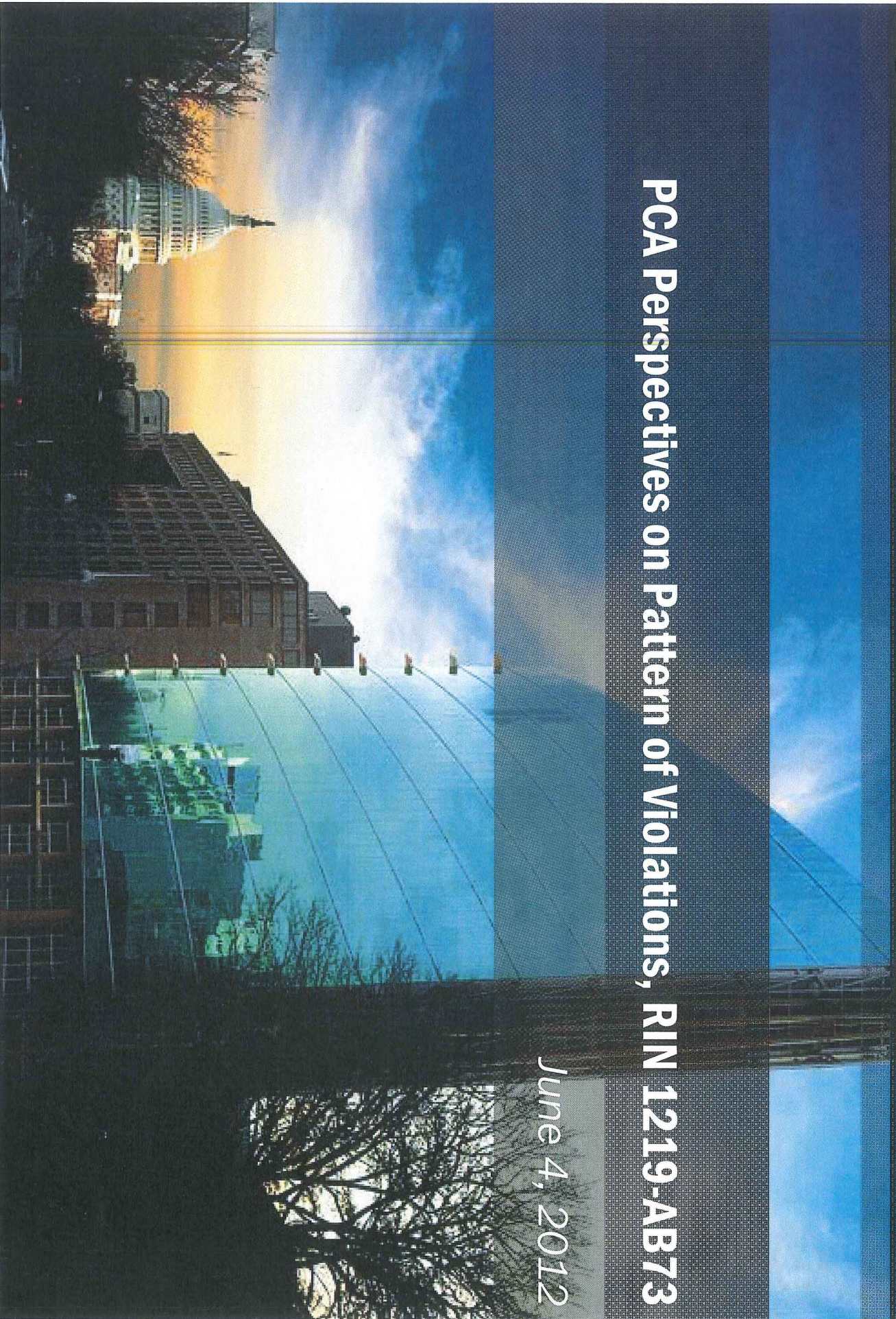
PCA

Portland Cement Association

OMB – PCA Meeting, June 4, 2012

PCA Perspectives on Pattern of Violations, RIN 1219-AB73

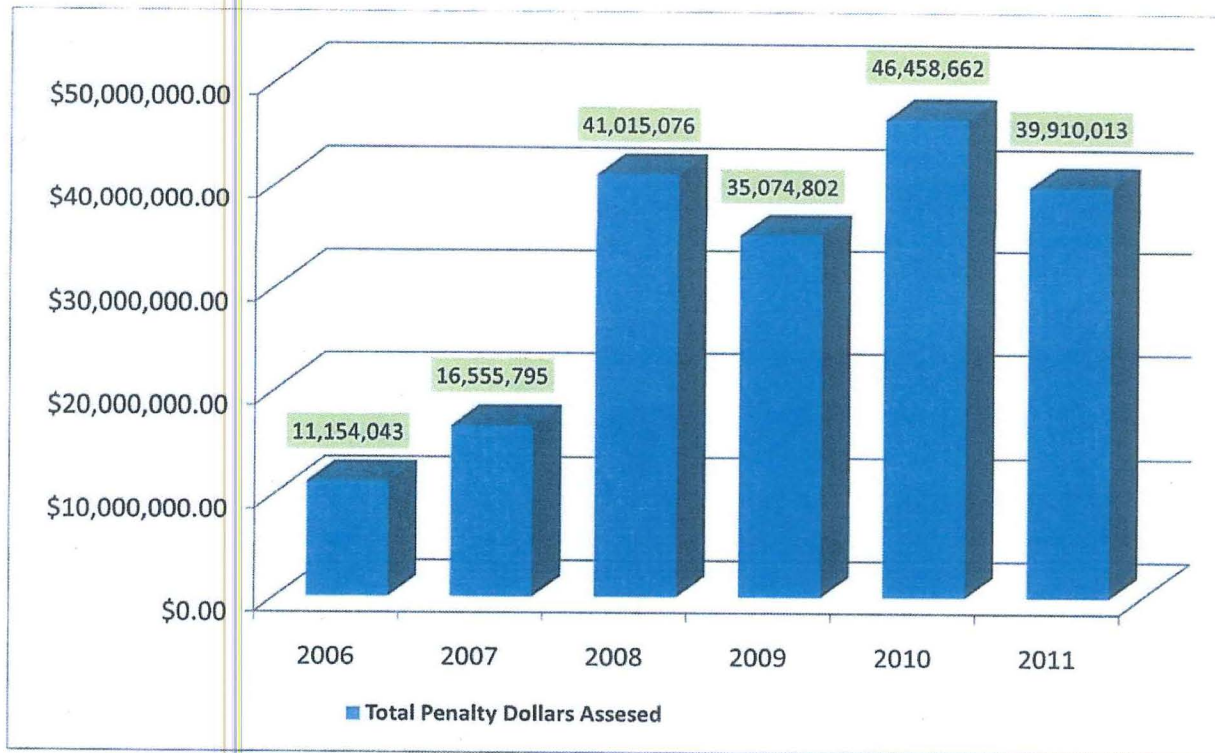
June 4, 2012



Overview

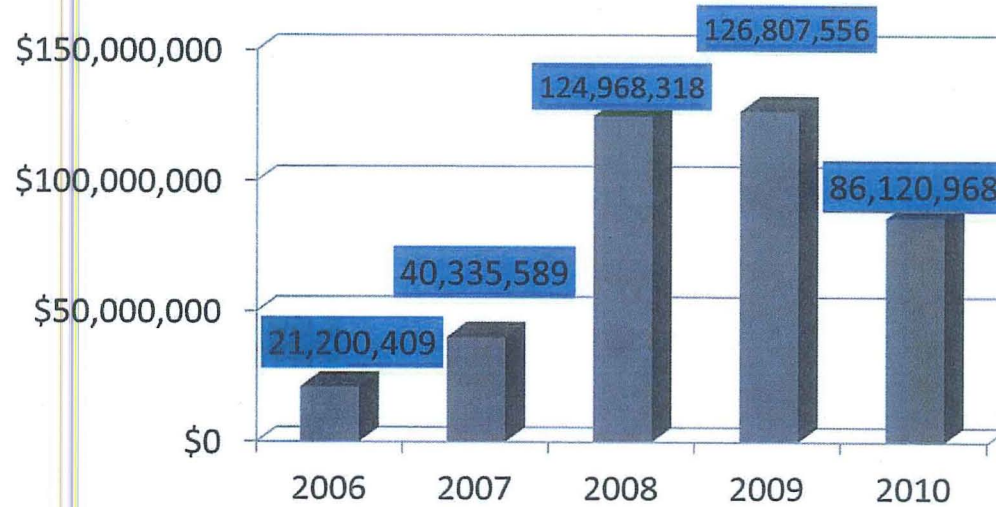
- Effects of 2007 revision of civil assessment penalties on contested citations and orders
- Importance of revising civil penalty assessment framework before revising POV
- Specific issues in POV proposal
- PCA recommendations for addressing POV

MSHA Combined Civil Penalty Assessments in Metal and Nonmetal



Revised Penalty Rule Became Effective April 23, 2007

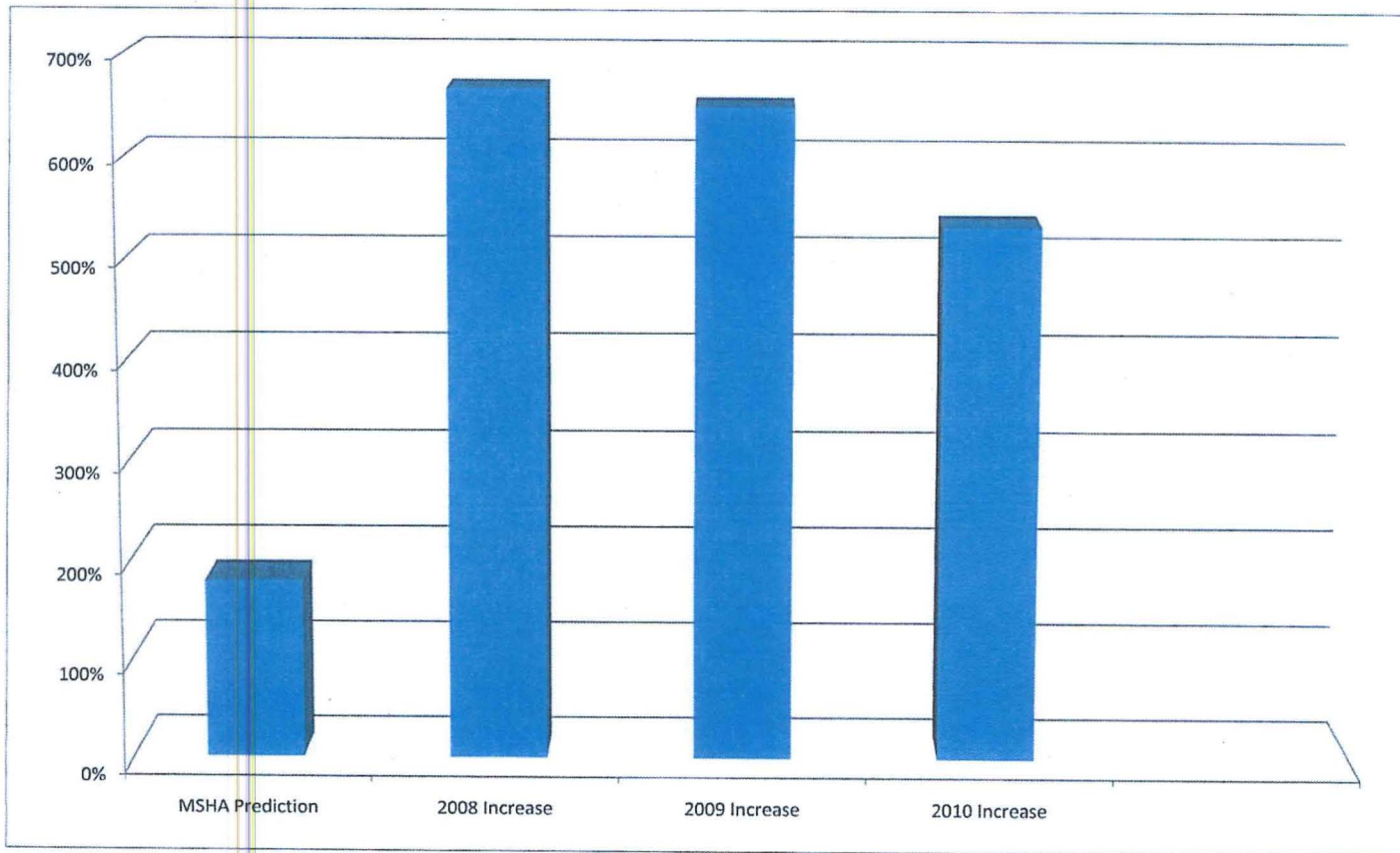
Increase in Penalty Assessments Coal



■ Total Penalty Dollars Assessed

* Data received from MSHA FOIA Response

Real Percentage Increase in All Assessed Penalties Relative to Baseline of \$24.9M



Importance of Revising Civil Penalty Assessments Before Revising POV

- MSHA standards are, for the most part, performance-oriented, which leads to disagreements between operators and MSHA, for example, about whether the citation is “significant and substantial” (S & S).
- With the S & S designation as the cornerstone of Section 104(e) enforcement (POV), consistency in citing conditions and practices is of the utmost importance.
- Although well-intended, MSHA’s POV rule fails to recognize that more effective training of inspectors is necessary to analyze factors that affect gravity and negligence determinations to accurately assess the merits of an enforcement action – i.e. whether the citation is S & S.

Two Key Issues in the POV Proposal

- MSHA proposes to remove the requirement that only *final orders* from the Commission are used to identify mines with a potential POV.
- MSHA proposes to remove the requirement for the agency to notify potential POV violators.

PCA Recommends:

- Most significantly, MSHA should revise civil penalty assessments before modifying POV procedures.
- MSHA should then analyze how modifications to civil penalty assessments affect POV procedures and the backlog at the Commission, and then review/revise POV procedures if warranted.



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Thank You!

June 4, 2012

