



JUL 06 2010

MEMORANDUM FOR ELLIOT P. LEWIS

Assistant Inspector General for Audit

FROM:

JOSEPH A. MAIN

Assistant Secretary of Labor for
Mine Safety and Health

Handwritten signature of Joseph A. Main in black ink.

SUBJECT:

MSHA's 10-day Response to OIG's Alert Memorandum: MSHA
Set Limits on the Number of Potential Pattern of Violation Mines
to be Monitored Report No. 05-10-004-06-001

Thank you for the opportunity to respond to your Alert Memorandum, *MSHA Set Limits on the Number of Potential Pattern of Violation Mines to be Monitored*. I welcome the independent analysis provided by the Office of Inspector General (OIG) to improve the fundamentally flawed pattern of violation (POV) process that was put in place by the previous administration. As you are aware, the pattern of violations process, including the potential pattern of violations (PPOV) screening process that the OIG is currently investigating is no longer in use, and I can assure you that this process will not be used again.

We have reviewed the alert memorandum and are providing the Mine Safety and Health Administration's (MSHA) 10-day response as requested in your memorandum of June 23, 2010. In immediate response to your memo, I requested that MSHA inspect every one of the producing coal and metal and nonmetal mines that were listed by the OIG as having not been placed in PPOV status following an initial screening that identified them as PPOV eligible. As a result, MSHA conducted inspections at 14 mines during the week of June 28, 2010, and issued 63 104(a) citations, of which 26 were S&S, and 1 order. The remaining 6 mines from the list of '21' (2 were repeat mines), are either in non-producing, temporarily idled or abandoned status.

Your memorandum highlighted your concern that "mines were removed for reasons other than appropriate consideration of the health and safety conditions at those mines." We agree that this may have been the case in certain mines and we are committed to make sure that this will not be the case in the future. Our review of the mines identified in your Alert Memorandum indicated that there were, in addition, a number of factors taken into consideration following the initial screening, consistent with previously established policy. Some mines were not put into PPOV status because there was a change in ownership. The POV program focuses on mine operators; thus a bona fide change in ownership resulted in the initiation of a new time period for consideration of violations. In another instance, the OIG incorrectly identified a mine that it said did not receive a PPOV notice letter. The PPOV notice was sent but withdrawn on July 17,

2008, due to the decision by the Federal Mine Safety and Health Review Commission to reopen certain citations and that these affected citations would no longer be treated as final orders of the Commission for pattern purposes. Information about each of the mines included in your Alert Memorandum is included in the attachment.

Our review of the PPOV screenings in question found that although mines were previously excluded from POV oversight and not placed in potential POV status, the District Managers were notified of all mines meeting the screening criteria in effect at that time, and scores were provided for each mine. As such, District managers were made aware that these mines were problematic and of their screening scores.

The memorandum stated that MSHA did not "...subject these mines to the enhanced oversight that accompanies potential POV status..." MSHA continued to conduct a broad array of inspection activities at these mines to protect the safety and health of the miners. MSHA also has had significant inspector presence at all these mines since the decisions not to place them in PPOV status. An attachment to this memo details the number of inspection activities, including regular safety and health inspections, spot inspections, technical inspections and other investigations, as well as the inspector time on-site at each of these producing mines since the 2009 screenings and the decisions not to place them in PPOV status. There have been no fatalities at these mines since the mines were removed from the potential POV list 2009.

The alert memorandum indicated that MSHA "... does not have evidence that they had reduced their rate of significant and substantial violations. As a result, miners may have been subjected to increased safety risks." MSHA district managers continually monitor operator compliance and S&S rates of mines under their jurisdiction. MSHA does have relevant evidence that we will be happy to provide to you if you request it.

The career leadership at MSHA was following the existing policies in place prior to my arrival at MSHA. I do not agree with these policies. Going forward, decisions about PPOV and POV enforcement actions will be based solely on what is best for the safety and health of the miners, within legal and regulatory constraints.

Under the POV system in place during the time frame addressed by the audit, placing a mine within PPOV status required a significant time investment from key staff. Listed below are some details on the requirements for supervising and monitoring the PPOV process established during the prior administration. The process involved oversight and review responsibilities for headquarters personnel, District Managers, Assistant District Managers, Field Office Supervisors, Staff Assistants, Conference and Litigation Representatives (CLRs), and inspectors. This oversight and review was not only directed at the mine operator, but also at MSHA's citation process, and included:

- Preparing written notification to the mine operator, reviewing initial written responses from the operator, evaluating enforcement data regarding the mine, and preparation of headquarters acknowledgement letters;
- Meeting with the mine operator and miners representatives;
- Reviewing the mine operator's action plan to reduce S&S violations;
- Ongoing evaluation and monitoring of the mine through inspections and inspection oversight, which could include field office supervisors making weekly visits during the 90-day evaluation period and review of weekly POV updates;
- Participating in meetings with operators to evaluate the mine's progress;
- Conducting detailed citation evaluations to ensure that if POV status was triggered that the underlying citations were properly written;
- Increasing CLR review of citations, including conferences with the operator, as well as written and oral communication between the CLR, the inspectors and the District Manager to ensure that any potential case against a pattern violator was based on properly written citations; and
- Working with headquarters and the regional and MSH-Division Solicitors on the merits of the S&S citations issued under POV.

Action Plan

As noted above, in immediate response to your memo, I requested that MSHA perform special inspections at every one of the producing coal and metal and nonmetal mines that were listed by as having not been put into PPOV status after the initial screening found them eligible. As a result, MSHA conducted inspections at 14 mines during the week of June 28, 2010, and issued 63 104(a) citations, of which 26 were S&S, and 1 order. The remaining six mines from the list of '21' (two were repeat mines), are either in non-producing, temporarily idled or abandoned status.

I share your concern that district managers were asked to limit the number of mines to be placed in potential POV status, especially in MSHA's District 4 in southern West Virginia which has the highest concentration of coal mines in the country. The better response, in my opinion, would have been to split District 4, so that all the mines that need attention can receive attention. This is a position that we are advocating and exploring to address the workload issued in District 4.

The fundamental problem here is that the POV system is badly broken. That is why we are fully committed to fixing the system as quickly as possible. First, we are attempting to determine all policies that have guided this program since its inception. This information will be of benefit as we rewrite the existing MSHA policies governing POV prior to the next round of POV decisions later this year. This will ensure that the first POV determinations under my watch will be handled differently. Second, we announced in April our intention to rewrite the POV regulations. While that won't be done by October, we are working to provide this longer term improvement. Third, we

will continue to work with Congress to provide a legislative fix to the POV system. We do not believe the current system reflects Congress' intentions and have been working with Congressional representatives to fix this problem. Attached is a copy of Proposed Legislative Changes to Protect the Safety of All Workers and Prevent Future Disasters prepared by the offices of the Senate Committee on Health, Education, Labor and Pensions the House Committee on Education and Labor Senator Rockefeller and Representative Rahall. The recently introduced Mine Safety and Health Act of 2010 proposes changes to address the problems with the current law regarding POV mines.

We intend, going forward, that MSHA will never be placed in a situation where a mine operator avoids being placed on a POV because MSHA lacks resources. However, MSHA, like all law enforcement agencies, must continue to use professional judgment and discretion in utilizing the resources it has. Appropriate resource utilization will involve the creation of a screening system that will identify mines that chronically fail to implement proper health and safety controls. The mines that are screened into a pool for consideration will then be carefully examined in order to confirm the accuracy of the data used and to assure that their current conditions merit inclusion in this enhanced enforcement program. We do not anticipate that all mine operators crossing a certain quantitative or formulaic threshold for POV consideration will *always* be placed in POV status. Rather, our expectation is that there will be legitimate case-by-case situations where mine operators are not placed on a POV because of qualitative and human factors that present mitigating circumstances. For example, such mitigating circumstances might include a mine operator with a recently-implemented safety program that legitimately improves mine safety or one that has substantially changed its safety performance for the better despite its POV score that was based on historical practices.

It is critical that MSHA focus its POV enhanced inspection resources on those mine operators that have chronically failed to protect the safety and health of the miners and that continue to put miners at risk. In cases where mines are screened into a pool for POV consideration, excluding mine operators from POV must be a matter of *informed* rather than arbitrary consideration. A final determination should require both a screening and confirmatory process, including a review of other factors as described above (significant changes in health and safety at mines, change of ownership, etc.) to assure the correct mines are selected. MSHA will make every effort to ensure as transparent a process as possible.

As with all issues you are examining related to the POV, we strongly encourage your auditors to engage MSHA officials in open and ongoing dialogue regarding the factors that should be involved in screening mines for POV consideration and ultimately placing a mine in POV status. We appreciate the willingness and commitment expressed by your office to work with MSHA and provide information throughout this review process.

that will be helpful in designing the screening process. The assistance of your office will help assure that the re-designed process will provide greater protection to the nation's miners.

If you have any questions, please contact Brent Carpenter (202) 693-9782 or Melinda Pon (202) 693-9516.

Attachments

Attachment: Mines noted by the Inspector General as having met initial screening criteria for PPOV consideration that were not put in PPOV status

District 3, Bridgeport, WV Field Office

**** Sentinel Mine (4604168), Wolf Run Mining Company, International Coal Group Inc.***

Following the February 2009 screening the mine implemented proactive efforts to reduce the noncompliance in the areas of rock dusting and electrically-related violations. The mine has succeeded in significantly reducing its S&S rate.

Sentinel Mine received 123 inspection events including five regular health and safety inspections, 94 103(i) spot inspections (for excessive methane), nine technical inspections, four hazard complaint investigations, and six non-injury/non-fatal accident investigations. MSHA has had 780 inspection days at this mine (3897.75 on-site inspection hours) and there have been no fatalities at this mine since the mine was not placed in PPOV status following the February 2009 screening[†].

A spot inspection was conducted on June 28, 2010, and no violations were found.

Broad Run Mine (4609136), Big River Mining LLC, Coalfield Transport, Inc.

Broad Run Mine is currently in non-producing status. Broad Run was identified as a PPOV mine in February 2009 and again in September 2009. MSHA did not provide a PPOV notice letter to the operator in the September 2009 cycle because the mine had taken proactive steps to reduce its S&S rate, repeat violations and elevated negligence actions. Before Broad Run went into non-producing status, the mine received 14 inspection events including four regular safety and health inspections, two hazard complaint investigations, one non-injury accident investigation, and five technical inspections. MSHA has had 334 inspection days at this mine (1665.25 on-site inspection hours) since September 2009, and there have been no fatalities since the mine was not placed in PPOV status following the February 2009 screening.

District 4, Logan, WV Field Office

**** No. 1 Mine (4605978), Jacob Mining LLC, Wolford Jeffrey***

Although identified in the February 2009 for PPOV consideration, this mine was not put in PPOV status at that time. Since then, No. 1 Mine had a change of ownership on July 2, 2009. The mine is now Bronzite III, Consol Energy Inc. The POV program focuses on mine operators; thus a bona fide change in ownership results in the initiation of a new time period for consideration of violations.

* Mines identified by OIG as not on PPOV status due to resource limits. Two mines repeated (Copley Trace Surface Mine and Deep Mine No. 8)

† All inspection data as of June 15, 2010.

Bronzite III received eight inspection events including three regular health and safety inspections, two spot inspections and one technical inspection. MSHA has had 44 inspection days at this mine (216.50 on-site inspection hours) since the ownership change and there have been no fatalities since this mine was not placed in PPOV status following the February 2009 screening.

No violations were found during a spot inspection conducted on June 28, 2010.

***Coalburg No. 2 Mine (4608570), Rio Group, Inc., Richard H. Abraham**

Following the February 2009 screening, Coalburg No. 2 substantially reduced its S&S violation rate.

Coalburg No. 2 Mine received 10 inspection events including six regular health and safety inspections, two spot inspections, one hazard complaint investigation one technical inspection, and an impact inspection. MSHA conducted an impact inspection at Coalburg No. 2 Mine during the week of April 19 – 23, 2010, and issued a total of seven enforcement actions, including two S&S citations. MSHA has had 174 inspection days at this mine (868.25 on-site inspection hours) and there have been no fatalities since the mine was not put in PPOV status following the February 2009 screening.

A spot inspection was conducted on June 28, 2010, and three 104(a) citations were issued (one was S&S).

***Copley Trace Surface Mine (4608704), Argus Energy WV, LLC, James H. Booth**

Copley Trace mine was identified for PPOV consideration in the February 2009 and September 2009 screenings. Following the September 2009 screening Copley Trace Surface Mine's S&S rate was essentially stable.

This surface mine received five inspection events including two regular health and safety inspections, one spot inspection and two hazard complaint investigations since the February 2009 screening. MSHA has had 80 inspection days at this mine (399 on-site inspection hours) and there have been no fatalities since the mine was not placed in PPOV status following the February 2009 screening.

A spot inspection conducted on June 28, 2010, resulted in the issuance of one 104(a) S&S citation.

***Pond Creek Mine No. 1 (4608715), KWV Operations LLC, Robert Helton**

Pond Creek Mine No. 1 was identified in February 2009 for PPOV consideration. Following the February 2009 screening, the mine reduced its S&S rate.

Pond Creek Mine No. 1 received 10 inspection events including five regular health and safety inspections, two technical inspections, and one hazard complaint investigation. MSHA has had 73 inspection days at this mine (363 on-site inspection hours). There

have been no fatalities since the mine was not put in PPOV status following the February 2009 screening.

A spot inspection was conducted on June 28, 2010, and four 104(a) citations were issued (two of which were S&S).

***Deep Mine No. 8 (4608994), Argus Energy WV, LLC, James H. Booth**

Deep Mine No. 8 received PPOV notification letters during two previous PPOV screenings in November 2007 and May 2008. The mine achieved the S&S goals for the respective November 2007 and May 2008 PPOV cycles. The PPOV screening process again identified the mine for PPOV consideration in February 2009. MSHA did not provide a PPOV notice letter in February 2009 in light of the mine's previous PPOV status and S&S reductions. An additional consideration was that the screening used the two-year history but also included the six months that the operator developed and implemented the action plan. Following the February 2009 screening, Deep Mine No. 8 Mine's S&S rate increased.

Deep Mine No. 8 has received nine inspection events including five regular health and safety inspections, one hazard complaint investigation, one non-injury/non-fatal accident investigation and one Part 50 audit. MSHA has had 170 inspection days at this mine (848 on-site inspection hours) and there have been no fatalities since not being placed in PPOV status following the February 2009 screening.

A spot inspection conducted on June 28, 2010 resulted in three 104(a) citations (one was S&S) and one order.

Surface No. 1 (4608249), Stollings Truck Co., Inc., Rhonda Marcum

Surface No. 1 was identified for PPOV consideration mine in the February 2009 and September 2009 screenings. The mine was placed in PPOV status during the February 2009 cycle and achieved the necessary S&S reduction for this period. MSHA did not provide a PPOV notice letter to the operator in the September 2009 cycle because the mine had taken proactive steps to reduce its S&S rate. Following the February 2009 screening, Surface No. 1's S&S rate declined substantially.

Surface No. 1 Mine received four inspection events, including two regular safety and health inspections and one spot inspection. MSHA has spent 34 inspection days (167.25 on-site inspection hours) at this mine since September 2009, and there have been no fatalities at this mine since being placed in PPOV status following the February 2009 screening.

A spot inspection conducted June 29, 2010, identified no violations.

District 4, Madison, WV Field Office

****Black Castle Mining Co. (4607938), Elk Run Coal Co., Massey Energy***

Black Castle Mining was identified for PPOV consideration in February 2009. Following the February 2009 screening, Black Castle's S&S rate decreased substantially.

Since the screening, Black Castle Mine received 13 inspection events, including three regular health and safety inspections, three spot inspections, three hazard complaint investigations, and two non-injury/non-fatal accident investigations. MSHA has had 169 inspection days at this mine (840.75 on-site inspection hours) and there have been no fatalities at this mine since not being placed in PPOV status following the February 2009 screening.

A spot inspection was conducted on June 28, 2010, and two 104(a) citations were issued (one of which was S&S).

****Justice #1 (4607273), Independence Coal Co., Massey Energy***

Justice #1 was identified as for PPOV consideration in November 2007 and in February 2009. In November 2007, Justice #1 was placed in PPOV status and achieved the S&S goal for the PPOV cycle. When it was identified again in the February 2009 screening, the mine was not issued a PPOV notification letter. Following the February 2009 screening, Justice #1's S&S rate increased.

Justice #1 received 90 inspection events including five regular health and safety inspections, 73 103(i) spot inspections (for excessive methane), four spot inspections, two technical inspections, four hazard complaint investigations, four non-injury accident investigations and one Part 50 audit. MSHA has had 485 inspection days at this mine (2,423 on-site inspection hours) and there have been no fatalities at this mine since it was not placed in PPOV status following the February 2009 screening.

Justice was one of the mines targeted by MSHA as part of the April 2010 special impact inspections. MSHA conducted an impact inspection at Justice #1 Mine during the week of April 19 – 23, 2010 and issued 42 enforcement actions, including 25 S&S citations.

A spot inspection was conducted at this mine on July 1, 2010 and eight citations were issued (one was S&S). On June 19, 2010, the mine was issued a 103(k) order and shut down due to a roof fall on the slope (primary escapeway); the 103(k) order was terminated on July 1, 2010.

Allegiance Mine (4608735), Independence Coal Co., Massey Energy

Allegiance Mine was not placed in PPOV status following the September 2009 screening. At the time, the operator had recently placed the mechanized mining unit in non-producing status and had made recent significant improvements to the overall ventilation of this mine.

Allegiance Mine received four inspection events, including three regular health and safety inspections and one non-injury accident investigation. MSHA has had 167 inspection days (833.75 on-site inspection hours) and there have been no fatalities at this mine since it was not placed in PPOV status following the September 2009 screening.

A spot inspection conducted on June 29, 2010, resulted in the issuance of one S&S citation.

District 4, Princeton, WV Field Office

Mine No. 6 (4609084), Harvest-Time Coal Inc., Dick J. Plaster

Although identified in the February 2009 for PPOV consideration, this mine was not put in PPOV status at that time. Since then, Mine No. 6 changed on March 6, 2009. The mine is now Laurel Fork Mine, Consol Energy Inc. MSHA was notified of the change of ownership after the Coal Administrator received the initial potential POV screening list of mines from the Assessments Director. The POV program focuses on mine operators; thus a bona fide change in ownership results in the initiation of a new time period for consideration of violations.

The mine is in non-producing status; there are no miners working and there is no mining activity (pumping only). MSHA has had 10 inspection days (49.25 onsite inspection hours) at this mine since the ownership change. A spot inspection conducted on June 29, 2010 found no violations.

District 5, Norton, VA Field Office

No. 2 (4407081), Regent Allied Carbon Energy, Inc., Ervin Stillner

The June 2008 screening identified this mine as a potential repeat PPOV mine. The mine was previously placed in PPOV status during the December 2007 cycle and the mine achieved the S&S goal and significantly reduced its S&S rate. The screening uses the two year history but also includes the six months that the operator developed and implemented the action plan. Enforcement data from Jan 1, 2008 to June 9, 2008 indicated only 18% of violations were S&S.

The six month review cycle was too short to allow company's plan of action to be fully implemented and evaluated, thus it was not put into PPOV status again.

No. 2 Mine received 34 inspection events, including seven regular safety and health inspections, 23 spot inspections, two technical inspections, and one hazard complaint investigation. MSHA had 184 inspection days at this mine (919.75 onsite inspection hours) and there have been no fatalities at this mine since June 2008.

A spot inspection was conducted on June 30, 2010. As a result of this inspection, 11 104(a) citations were issued (two were S&S). No high negligence citations or orders were written.

District 7, Barbourville, KY Field Office

RB#10 (1518267), Manalapan Mining Company, Inc., Ben Bennett

RB#10 was placed on PPOV in December 2007 and achieved the S&S goal during this cycle. When the February 2009 screening identified RB#10 for PPOV consideration, the mine was worked out, production had ceased, and equipment had been removed from the mine. The mine is in abandoned status.

District 8, Vincennes, IN Field Office

Hazleton Mine (1202324), White River Coal, Inc., Bronco Energy Fund, Inc.

The screening in December 2007 identified Hazleton Mine for PPOV consideration. However, the mine ceased production on August 31, 2007; equipment was removed from the section, and the mine began sealing on December 17, 2007. The mine is currently in temporarily idled status.

District 9, Aztec, NM Field Office

McKinley Mine (2900096), Chevron Mining, Chevron Corporation

The OIG is incorrect when it identified McKinley Mine as a mine that did not receive a PPOV notice letter. McKinley Mine received a PPOV notice letter on June 12, 2008. The PPOV notice was withdrawn on July 17, 2008, due to a decision by the Federal Mine Safety and Health Review Commission to reopen certain citations and that these affected citations would no longer be treated as final orders of the Commission for pattern purposes. The operator was advised that MSHA would not proceed further with the implementation of the pattern procedure under 30 C.F.R. Part 104 at the McKinley Mine and the operator was encouraged to continue to take the remedial measures implemented in response to the pattern notice. The mine has since been put in non-producing status.

King 1 (0500266), GCC Energy LLC, GCC of America

As a result of the February 2009 screening, King 1 Mine was issued a PPOV notice letter. The mine's underground workings were permanently sealed on February 20, 2009, and the operator sent a letter to MSHA dated March 9, 2009, that the mine would be abandoned. The mine remains in abandoned status.

Metal/Nonmetal Mines

Northcentral District, Marquette MI Field Office

Empire Mine (2001012), Empire Iron Mining Partnership, Inland Steel Industries-Cleveland Cliffs

Empire Mine was identified for PPOV consideration in June 2008. MSHA did not provide a PPOV notice letter to the operator in the June 2008 cycle because the mine had taken proactive steps to reduce its S&S rate.

Empire Mine received 21 inspection events, including three regular safety and health inspections, two spot inspections, two technical inspections, and four hazard complaint investigations. MSHA has been on-site 365 inspection days at this mine (1821.25 on-site hours). There have been no fatalities at this mine since it was not put in PPOV status following the June 2008 screening.

A spot inspection of the Empire Mine was started on June 28, 2010. As a result of this inspection, 19 104(a) citations were issued (eight were S&S). One high negligence citation was written.

Southeastern District, Lexington KY Field Office

Kosmos Cement Co. (1504469), CEMEX INC., Cemex S A

Kosmos Cement Co was identified for PPOV consideration in November 2007 and June 2008. In November 2007, Kosmos was placed in PPOV status and achieved the S&S goal for the PPOV cycle. MSHA did not provide a PPOV notice letter to the operator in the June 2008 cycle because a review of relevant citations issued during the more recent 12-month period revealed that they should not have been issued as S&S. A recalculation of the violation frequency showed that Kosmos Cement did not meet the PPOV S&S criteria.

Kosmos Cement plant received 15 inspection events, including four regular safety and health inspections, one technical inspection, one hazard complaint investigation, one fatal injury accident investigation, and one non-injury/non-fatal accident investigation. MSHA has had 84 inspection days at this mine (419.75 onsite hours) and one fatality has occurred at this mine since June 2008. Specifically, on August 23, 2009, a miner suffered what appeared to be a fatal heart attack while at work. The incident was investigated and considered to not be related to his work duties, and has not been charged as a mining fatality.

MSHA initiated a spot inspection of the Kosmos Cement plant on June 29, 2010. As a result of this inspection, 11 104(a) citations were issued (eight were S&S). One citation was classified as high negligence.

Proposed Legislative Changes to Protect the Safety of All Workers and Prevent Future Disasters

Prepared by the offices of:

Senator Tom Harkin
Chairman, Senate HELP Committee

Senator Patty Murray
Chairwoman, Subcommittee on Employment and
Workplace Safety

Senator Jay Rockefeller*

Representative George Miller
Chairman, House Committee on Education and Labor

Representative Lynn Woolsey
Chairwoman, Subcommittee on Workforce Protections

Representative Nick Rahall

An alarming series of tragedies has befallen our nation's workplaces in recent months. In the wake of the recent disaster at the Upper Big Branch Mine, there was substantial public outcry about the mine's disturbing safety record, and the systemic barriers that prevented these recurring safety problems from being addressed. Similar concerns have been raised in other industries in the aftermath of workplace fatalities. Some of these deaths received national attention – like the explosion at the Tesoro refinery in Washington or the Kleen Energy facility in Connecticut – but the vast majority get little attention beyond affected family and friends.

This concept paper outlines legislative proposals that would address these serious concerns – increasing incentives for mine operators and other employers to comply with safety laws, empowering workers to speak up about safety concerns, and giving MSHA the tools it needs to put unsafe mines back on track. It is the hope of the authors that this paper can form the basis of productive discussions with Congressional colleagues and interested stakeholders, and can be the starting point for bipartisan legislation that will protect all our workers and prevent future disasters by improving compliance with mine and occupational safety and health laws.

Putting Mines with Deteriorating Safety Records Back on Track

- ***Change MSHA's "pattern of violations" process from a primarily punitive to a rehabilitative process, wherein mines with significantly degraded safety records are given remedial safety plans and must meet benchmarks demonstrating that they are making progress on safety issues.***

The "pattern of violations" system was intended to be the most important tool to address mines with recurring safety problems. Unfortunately, this tool cannot be effectively utilized under current law. In addition, the harshly punitive nature of the current system does not serve the goal of helping unsafe mines improve their performance and return to operations safely.

We propose that mines with a pattern of significant safety problems (withdrawal orders, flagrant violations, citations for "significant and substantial" violations, accidents and injuries, etc.) should be placed on "pattern of violation" status if their safety and compliance record falls below thresholds established by MSHA. These thresholds should be appropriate to the size and type of mine, and both the thresholds and the data that MSHA uses to evaluate mines should be made publicly

available on MSHA's website and updated regularly so that mines can track their status and take preventive measures to avoid being placed on pattern status.

When a mine meets the criteria and is placed on pattern status, miners must be withdrawn to protect their safety, and a remedial order should be issued by MSHA. This remedial order should outline steps that the mine must take to get its safety performance back on track, such as additional training for miners, additional safety personnel, or the creation of a health and safety management program. Miners must remain withdrawn until violations or unsafe conditions identified in the remedial order are remedied, and the operator has commenced or completed other safety actions as identified in the order. Once miners return to the mine, the mine should be in what is effectively a probationary period. The number of annual inspections should increase, and MSHA should periodically assess whether the mine is meeting prescribed safety benchmarks. Mines that meet these benchmarks for one year should be removed from pattern status. Mines that do not meet these benchmarks should face an increase in fines and penalties for safety violations, and potentially a renewed withdrawal order.

Giving MSHA Appropriate Enforcement Tools

- ***Give MSHA additional authority to order training.*** Even outside the pattern of violations context, there are also circumstances where additional training is the appropriate response to a safety concern. MSHA should have the authority to order such additional training in appropriate circumstances.
- ***Give MSHA authority to seek injunctions when there is a course of conduct that constitutes a continuing threat to the health and safety of miners.*** Currently, MSHA has limited authority to pursue injunctive relief in court when there are serial violations that present a risk to the health and safety of miners. MSHA should have the authority to pursue an injunction-stopping these bad practices or temporarily shutting down the mine when there is a course of conduct that constitutes a continuing hazard to the health and safety of miners.
- ***Clarify the definition of a "significant and substantial" violation.*** Currently there is no statutory definition of a significant and substantial violation. The law would benefit from additional clarity by defining a "significant and substantial violation" to include violations where there is "a reasonable possibility that such violation could result in injury, illness or death."
- ***Give MSHA expanded authority to subpoena documents and testimony.*** Currently, MSHA does not have the authority to subpoena documents or testimony from operators outside the context of a formal, public hearing. MSHA should have this authority in the context of investigations and inspections as well as public hearings.

Ensuring that Irresponsible Operators are Held Accountable

- ***Increase maximum criminal penalties.*** Currently, criminal violations of mine safety laws are a misdemeanor for a first offense. To provide a strong deterrent for such serious misconduct, the penalties for knowing violations of safety standards should be raised to the felony level, including providing felony penalties for miners, operators, and government officials who knowingly provide advance notice of an unannounced inspection.

- ***Increase maximum civil penalties.*** Raising maximum civil penalties for “significant and substantial” violations of mine safety laws would also be beneficial to ensure that operators have a strong economic incentive to comply with the law.
- ***Ensure that operators pay penalties in a timely manner.*** Currently, MSHA is trying to collect about \$27 million in unpaid penalties for fully adjudicated violations. Operators who accrue penalties that are affirmed by the Commission, but never paid, effectively get away with violating the law. MSHA should have the authority to withdraw miners from a mine that is more than 180 days in arrears on fully-adjudicated penalties, if that mine is not participating in a payment plan.

Protecting Workers Who Speak Out About Unsafe Conditions

- ***Strengthen protections for workers who speak out about unsafe conditions.*** Workers who go into a mine every day are in the best position to find safety hazards. It is essential that miners have the strongest possible protections to ensure that they can raise safety concerns on the job without fear of retaliation. We propose to strengthen existing whistleblower protections, including requiring one hour annually of “miner’s rights training” to inform workers of the law’s protections, giving miners an express right to refuse unsafe work, expanding the time limit for complaining about retaliation from 60 to 180 days, and authorizing punitive damages and criminal penalties for knowing retaliation against workers who raise safety concerns.
- ***Ensure that miners don’t lose pay for safety-related closures.*** Fear of losing a paycheck can also deter miners from raising safety issues. Miners should receive full pay when they are idled by a MSHA-initiated safety-related closure and cannot be re-assigned to work in an open portion of the mine.
- ***Ensure that miners can speak freely during investigations.*** The ability of miners to communicate openly with MSHA during investigations is key to uncovering and correcting safety problems. MSHA should have the ability to interview mine employees and other individuals with relevant information privately if the individual requests or consents to a private interview.

Increasing Accountability

- ***Provide for an independent investigation of the most serious accidents.*** Everyone benefits from having the best possible information about serious accidents, not only to learn about what went wrong, but also to learn whether government officials acted properly before the accident, in responding to the crisis, and in their subsequent investigation. We support requiring an independent investigation by a NIOSH-appointed team of independent experts for any accident involving 3 or more deaths.
- ***Ensure that all safety personnel are well-qualified.*** A key component of mine safety is ensuring that those responsible for the day-to-day safety decisions meet the highest standards of qualification. MSHA should institute a process to certify the qualifications of foremen, superintendents, and other high-level safety officials if there is not an adequate state-based certification process in place.

- ***Ensure that inspections are comprehensive and well-targeted.*** Inspections by MSHA are the cornerstone of our mine safety system, and MSHA's limited inspection resources should be well-distributed over all shifts and days of the week when mines are operating to protect all miners.
- ***Require pre-shift reviews of mine conditions, and communication to ensure that appropriate safety information is transmitted.*** Responsible practices and good communication is the first line of defense in keeping our mines safe. Operators should be required to institute a pre-shift review of mine conditions, and to implement a communication program to ensure that each miner is made aware of the current conditions of the mine at the start of his/her shift. This would be accomplished through required verbal communication between incoming and outgoing foreman, assistant foreman, and other officials responsible for safety conditions on each shift. These verbal communications should also be recorded in writing in a log.

Reducing Safety Risks

- ***Reduce the Risk of Coal Dust Explosions.*** It is essential to take all possible steps to reduce known risks to miner's safety. To reduce the risk of dangerous explosions, we must require greater amounts of rock dusting, mandate new monitoring technology to improve rock dust measurements, and require the study and subsequent use of continuous atmospheric monitoring systems.

Increasing Safety in Other Workplaces

- ***Provide similar protections in other workplaces covered under the Occupational Safety and Health Act.*** Unfortunately, mines are not our nation's only dangerous workplaces. All workers deserve to come home safe after work each day. Accordingly, we also support improving protections for workers in other workplaces by strengthening whistleblower protections, increasing criminal penalties where workers are killed due to a safety violation, updating civil penalties which have not been increased since 1990, preventing litigation from delaying the correction of hazards that could lead to serious injury or death, and providing greater rights for victims of accidents and their family members to participate in proceedings under the OSHAct.

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