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2 West Virginia coal mines formerly owned by Massey Energy receive PPOV notices from MSHA after record-keeping audits reveal unreported accidents *Administrative law judge confirms federal agency's request for audit information*

ARLINGTON, Va. – The U.S. Department of Labor's Mine Safety and Health Administration has issued notices of a potential pattern of violations to Randolph Mine operated by Inman Energy and Justice No. 1 Mine operated by Independence Coal Co. Inc., both underground coal mines in Boone County, W.Va., that were formerly owned by Massey Energy.

The two mines did not receive PPOV notices during the last screening round in November 2010, but they, along with three other mines then owned by Massey Energy and two owned by Peabody Energy, were the subject of audits to determine whether they had failed to report injuries that would have affected their selection under the existing criteria.* Both Massey Energy and Peabody Energy refused to turn over accident, injury and illness data to MSHA.

The matter ended up before the Federal Mine Safety and Health Review Commission. Administrative Law Judge Kenneth R. Andrews found that MSHA's demand for audit information is a constitutionally "reasonable exercise of government responsibility over public welfare where it is related to occupational health and safety. MSHA's authority to conduct audits is necessary to effectively protect miners from the broad range of accidents, injuries and illnesses that are inherent risks in mining."

Alpha Natural Resources Inc. recently acquired Massey Energy and agreed to provide records for five of its mines, including Randolph and Justice. MSHA's audit revealed that those two mines failed to report or inaccurately reported a total of 24 injuries, resulting in 1,125 lost days of work.

On June 13, MSHA requested in writing that Peabody Energy provide the required information for its Air Quality No. 1 Mine in Knox County, Ind., to avoid daily civil penalties. When Peabody failed to comply, MSHA started assessing penalties in the amount of \$4,000 per day beginning on June 23. The daily penalties will continue until all of the audit information is provided to MSHA.

"One of the factors the agency considers before issuing a PPOV notice is the mine's accident and injury history," said Joseph A. Main, assistant secretary of labor for mine safety and health. "Refusal to provide this information to MSHA prevents the agency from determining whether a mine meets the PPOV screening criteria."

Section 104(e) of the federal Mine Safety and Health Act of 1977 provides that mine operators with a pattern of significant and substantial violations be subject to closure orders for areas of the mine affected by those violations until the mine receives a clean inspection. Under current regulations, MSHA uses a screening process to determine whether a mine has a potential pattern of violations. A mine operator found to have a potential pattern of violations is given a period of time to reduce violations before MSHA uses its authority under 104(e) to issue closure orders.

* Thirty-nine mines originally were subject to the audit process and, as a result of audit findings that disclosed under-reporting of injuries, Maple Coal Co.'s Maple Eagle No. 1 Mine was moved to PPOV status.

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