

## **MSHA Enforcement and Litigation Issues**

*By Thomas A. Paige  
EMLF Conference – March 2010*

1. Significant and substantial -

- a. Lifelines - Cumberland Coal Company, Docket No. PENN 2008-189 (pending before Commission).
- b. Safeguards - Wolf Run Mining Company, Docket No. WEVA 2008-204 (pending before Commission)
- c. Part 50.10 Reporting - Wolf Run Mining Company, Docket No. WEVA 2008-1417 (pending before ALJ).

2. Flagrant Violations -

- a. 117 violations assessed as flagrant with an average penalty of \$153,332 (113 to production operators; 4 to contractors).
- b. 101 outstanding before the FMSHRC.
- c. 16 resolved (9 sustained – 4 by settlement/5 by default; 7 modified - 2 by vacature/5 by penalty reduction).
- d. Standards sustained (first four by settlement; average for all is \$135,655):

Standard	Penalty
56.15006	\$157,400
57.3360	\$220,000
57.20001	\$129,500
75.400	\$ 85,000
75.220(a)(1)	\$150,200
75.220(a)(1)	\$147,300
77.404(a)	\$118,200
77.1605	\$118,200
77.1606(c)	\$ 95,100

3. Pattern of Violations (Section 104(e) of the Mine Act, 30 CFR Part 104, other guidance) -

- a. POV is designed to address “perfunctory abatement” and to break the “cycle of violation, citation, and abatement without restoring the mine to a safe and healthful work place.” 55 FR 31128-01, 31128, 31131 (July 1990).
- b. “As experience with [POVs] increases, the Secretary may find it necessary to modify the criteria, and the Committee intends that the Secretary continually evaluate the criteria for this purpose.” S. Rep. No. 95-181, 95<sup>th</sup> Cong., 1<sup>st</sup> Sess. 32, 33, reprinted in Senate Subcommittee on Labor, Committee on Human Resources, 95<sup>th</sup> Cong., 2<sup>nd</sup> Sess., Legislative History of the Federal Mine Safety and Health Act of 1977, at 620, 621 (1978).
- c. Congress intended that the Secretary retain the discretion to apply Section 104(e) in a manner that is flexible and appropriate in the circumstances she encounters. See Joint Brief of the Secretary of Labor and Aracoma Coal Company, page 15, n 6 (filed in Aracoma Coal Company, Docket No. CENT 2006-654, pending before Commission).