

Chapter 16

Pattern of Violations: The Changing Dynamic of Enforcement and Regulation Under the Mine Act

Mark E. Heath

Joseph D. Garcia

Spilman Thomas & Battle, PLLC

Charleston, West Virginia

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§ 16.01. Introduction.

Until recently, the pattern of violations (“pattern” or POV) provision in section 104(e) of the Mine Safety and Health Act of 1977 (Mine Act),

30 U.S.C. Section 814(e), was a seldom-used tool that provided the U.S. Department of Labor’s Mine Safety and Health Administration (MSHA) with leverage against mine operators who continuously violated the same standards of the Mine Act. The impact of POV on mine operators has increased ten-fold in the past few years and is likely to become even more prevalent in the future. Beginning in mid-2007 and up to present day, the Secretary of Labor (the Secretary) has heavily increased administrative use of pattern of violations against mine operators. On April 12, 2011, MSHA announced the issuance of the “first” pattern of violations notices since the beginning of the Mine Act.¹

Just this past year, the Secretary sought to enjoin a mine operator in federal court under a novel litigation strategy relating to the use of pattern of violations through section 108(a)(2) of the Mine Act. Furthermore, new changes to POV regulations have been proposed by the Department of Labor (DOL) that would lessen the burden on MSHA for proving and enforcing a pattern of violations against mine operators. This chapter will discuss the (Section 16.02) background and purpose of pattern of violations; (Section 16.03) the current statutory and regulatory framework in which the Department of Labor enforces pattern of violations; (Section 16.04) the changing enforcement procedures and tactics used by the DOL with regard to pattern of violations, including proposed regulations that are currently in the notice and comment stage; and (Section 16.05) concluding thoughts regarding the expected path of pattern of violations — the most lethal enforcement tool at MSHA’s disposal.

§ 16.02. Background and Purpose of Pattern of Violations.

In the regulations for pattern of violations, the Mine Act states that the purpose of POV is to restore safe and healthful conditions to mines with “an inspection history of recurrent S&S [significant and substantial] violations

¹ This was, in fact, not the first use. In 2008, a small mine belonging to National Coal in Tennessee was placed on pattern of violations and then removed shortly thereafter with a clean inspection.