

## Chapter 12

# Surf’s Up: The Tidal Wave of Changes in Mine Safety Law Since 2006

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§ 12.01.     **Introduction.<sup>1</sup>**

The year 2006 was a pivotal one for coal mine safety. In rapid succession, the industry dealt with twelve fatalities at the Sago Mine from a lightning strike into a sealed out area of the mine, two deaths in a fire at Aracoma, and an explosion at the Darby Mine in Kentucky with multiple fatalities. Shortly thereafter in 2009, the Crandall Canyon mine in Utah collapsed, resulting in nine deaths — six in the initial outburst and three in rescue efforts. Then, the worst mine disaster in 40 years occurred in 2010 at the Upper Big Branch Mine in West Virginia, killing 29 miners.

This series of events beginning in 2006 has caused a tidal wave of change in mine safety law and practice. Since that time, the Mine Safety and Health Administration (MSHA), through approximately eight different methods, has successfully taken many well-established precedents and changed them. In other cases, new or little used enforcement tools are now being frequently employed. Such change has left operators reeling. In

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<sup>1</sup> The authors would like to thank Kate Lacy, first year law student at West Virginia University College of Law, for her work in helping prepare this chapter.

fact, in the past three years, the number of citations increased by 30,000 as penalties skyrocketed from \$17.4 million to \$111 million for coal operators. Along with the drastic increase in the penalty amount, the percent of penalties contested climbed from 5-10 percent to 25-30 percent over the course of four years, the majority of which can be tied to the increased number of assessments. Additionally, increased inspections and new causes of action have greatly raised the costs of mining coal.<sup>2</sup>

This chapter examines the tools employed by MSHA and results to date, as well as how MSHA has changed law in the following ways: (1) through wholesale rewrites of existing regulations or entirely new regulations; (2) redefinition and expansion of definitions; (3) utilization of rarely used statutory sections and regulatory rewrites; (4) use of litigation to change existing case law; (5) expansion in the use of traditional criminal statutes and theories; (6) expanded use of the Plan Approval Process and Plan Revocations; and (7) use of new laws passed since 2007.

## **§ 12.02. Change Has Come By Wholesale Rewrites of Existing or New Regulations.**

### **[1] — Proximity Devices.**

Although no final rule has yet been established requiring the implementation of proximity devices, in August 2011 MSHA published a Notice of Proposed Rulemaking. The final rule stage was scheduled for May, but has been delayed. The proposed rule's goal is to "strengthen the protections for miners by reducing the potential for pinning, crushing, and striking accidents in underground coal mines."<sup>3</sup>

The key provisions "require mine operators to install proximity detection systems on continuous mining machines in underground [ ] mines according to a phased-in schedule for newly manufactured and existing equipment."<sup>4</sup>

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<sup>2</sup> Statistics for 2012 show a slight drop in these numbers, primarily attributable to a decrease in the number of mines.

<sup>3</sup> Proximity Detection Systems for Continuous Mining Machines in Underground Coal Mines, 76 Fed. Reg. 169 at 54163 (proposed Aug. 31, 2011) (to be codified at 30 C.F.R. pt. 75).

<sup>4</sup> *Id.* at 54164.