

Double Jeopardy Under the Federal Mine Safety and Health Act

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§ 7.01. Introduction.

This Chapter explores the basis for applying the Double Jeopardy Clause to civil penalty proceedings and criminal prosecutions under the Federal Mine Safety and Health Act of 1977 (Mine Act).⁽¹⁾

Criminal proceedings have become an increasingly frequent means of enforcing mine safety laws in recent years. Nevertheless, the case law applying constitutional protections such as the Double Jeopardy Clause in the Mine Act setting is largely undeveloped.⁽²⁾

Because of the Mine Act's complicated scheme imposing civil and criminal sanctions for the same or similar conduct,⁽³⁾ its potential for spawning double jeopardy issues is high. Whether and to what extent double jeopardy applies when the government initiates both civil and criminal proceedings for the same conduct has been a particularly thorny issue in the wake of the Supreme Court's decision five years ago in *United States v. Halper*.⁽⁴⁾

In *Halper*, the Court held that, under certain circumstances, the Double Jeopardy Clause bars the government from imposing a civil penalty on a defendant for conduct for which he has already been prosecuted criminally. The Court's holding was fact-specific, ostensibly governing only the "rare case" in which a "prolific but small-gauge offender [is subjected] to a sanction overwhelmingly disproportionate to the damages he has caused."⁽⁵⁾

But the decision suggests broader applicability under the general principle that, if a civil penalty serves a retributive or a deterrent purpose rather than a remedial one, double jeopardy can preclude the government from seeking both a civil penalty *and* a criminal sanction in separate proceedings for the same conduct.⁽⁶⁾

This Chapter examines the applicability of *Halper* and the Double Jeopardy Clause to penalties under §Ê110(c) of the Mine Act. It begins by surveying the principal civil and criminal penalty provisions of the

Mine Act, and reviews the general principles of double jeopardy in the context of the Mine Act. Next is a discussion of Supreme Court decisions beginning with *Helvering v. Mitchell*⁽⁷⁾ in 1938, and culminating in *Halper* in 1989, to demonstrate that, although *Halper* employs a penalty proportionality analysis (in lieu of the earlier decisions' use of statutory construction to determine when a given civil penalty is punitive rather than remedial), the prior analysis should retain its vitality unless (as with the Civil False Claims Act⁽⁸⁾ in *Halper*), there are no clear indicia of the purposes Congress intended to serve by imposing civil penalties. We then discuss the lower courts' struggle to transpose the analysis in *Halper*, which involved the unjust enrichment of a violator through defrauding the government, to cases involving no financial loss to the government or direct enrichment of the violator. The Mine Act is a case in point, because the government suffers no direct financial loss from a violation, nor does a violator realize a direct financial gain. A Mine Act civil penalty is not "remedial" – it neither compensates for a loss nor divests ill-gotten gains. As the legislative history demonstrates, and as judicial and administrative interpretations confirm, civil penalties under the Mine Act serve a *deterrent* (and hence punitive) purpose – ensuring compliance by discouraging violations. Thus for an offense under the Mine Act, double jeopardy should bar the imposition of both civil penalties and criminal sanctions, because each is a form of punishment. We conclude this article analyzing the Act's provision for individual civil and criminal penalties, §110(c),⁽⁹⁾

which heightens double jeopardy concerns because it exposes an individual to civil and criminal penalties for "knowingly" authorizing, ordering, or carrying out the same conduct.

[1] – The Mine Act's Penalty Scheme.

[a] – General.

Section 105 of the Mine Act contains the statutory provisions for penalizing violations of the Act and of mandatory health and safety standards promulgated by the Mine Safety and Health Administration (MSHA), as well as violations of, and failures and refusals to comply with, orders issued under the Act.⁽¹⁰⁾

Section 105 also prescribes penalties for certain other conduct, such as giving advance notice of an MSHA inspection, making false statements, violating standards relating to smoking, and selling non-complying equipment.⁽¹¹⁾

It targets individuals as well as companies, and provides for both civil and criminal penalties, depending upon factors such as the nature of the conduct and the economic status and culpability of the person charged.

[b] – Civil Penalties.

Section 110 of the Mine Act requires MSHA to propose a civil penalty against an operator for every alleged violation of the Act or MSHA's regulations, taking into account six factors:

- ¥ an operator's history of previous violations;
- ¥ the size of an operator's business;
- ¥ an operator's degree of negligence;
- ¥ the effect of the proposed penalty on an operator's ability to continue in business;
- ¥ the gravity of the violation; and