



Criminal Liability Under the Federal Mine Safety and Health Act of 1977: Some Thoughts of a Nonspecialist on Intent, Parallel Prosecutions and Statutory Interpretation

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Synopsis

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§ 9.01. Introduction.

Every mine operator is more than familiar with the assessment of civil penalties under the Federal Mine Safety and Health Act of 1977 ("the Act").¹ It is a fact of life for operators in the mining industry that they will be inspected by the Mine Safety and Health Administration (MSHA), that they will receive citations or orders, and that civil penalties will be assessed for the violations MSHA alleges in those citations and orders.²

What is not a fact of life, but is a growing concern, is that operators and some of their employees will be criminally prosecuted under the

1 30 U.S.C. § 801 et seq.

2 The author gratefully acknowledges the assistance of Stephen G. Allen of Buchanan Ingersoll's Lexington, Kentucky office in the preparation of this chapter.

various provisions of the Act. The institution of a criminal investigation, not to mention the actual imposition of criminal penalties, can have a devastating impact upon an operator and its management employees. The monetary penalties can range up to \$500,000 for each count if the death of an employee is involved.³ The penalties also may include probation.⁴ Special conditions may be imposed in any probation.⁵ Imprisonment can be as much as five years for each count.

There have been an increasing number of criminal prosecutions over the last five years. This would appear to be part of a general societal trend towards the increased use of criminal sanctions and the erosion of protections afforded to criminal defendants.

This chapter will discuss some of the similarities and differences between criminal and civil sanctions. It is not intended to be a comprehensive review of all the issues related to criminal prosecution under the Act. It is intended to raise some concerns about the impact of criminal prosecutions on individuals, to address some recent case law developments on the issue of parallel prosecutions, and to highlight what may be the most significant difference between criminal and civil prosecutions, *i.e.*, the unavailability to the government of the argument that the Secretary of Labor's or MSHA's interpretation of the Act or the standards is entitled to deference.

§ 9.02. Criminal Sanctions in the Act.

Section 110(d) of the Act⁶ is the basic provision for bringing a criminal action against a mine operator and provides as follows:

Any operator who willfully violates a mandatory health or safety standard, or knowingly violates or fails or refuses to comply with an order issued under section 104 and section

³ See 18 U.S.C. § 3551, 3571.

⁴ 18 U.S.C. §§ 3561, 3563.

⁵ For example, one of the conditions of probation may be to preclude the defendant from engaging in the type of work which resulted in the prosecution, *i.e.*, requiring the defendant to "get out of the business." See, *e.g.*, United States v. Elliott, No. 89-4018 (1989) reported in 19 O.S.H. Rep. (BNA) 716 (September 20, 1989).

⁶ 30 U.S.C. 820(d).