



# **Special Institute on Mine Safety and Health Law**

April 22-23, 2014 • Washington, DC



**Sponsored by the  
Energy & Mineral Law  
Foundation and the  
U.S. Department of Labor  
Held at the USDOL Auditorium  
U.S. Department of Labor  
200 Constitution Ave., NW  
Washington, DC**

## Program schedule

Tuesday, April 22, 2014

9:00 – 9:15 a.m. **Welcome**

- M. Patricia Smith, *USDOL, Solicitor of Labor*, Washington, DC
- Daniel W. Wolff, *Crowell & Moring LLP*, Washington, DC

9:15 – 10:15 a.m. **Pattern of Violations**

MSHA's Pattern of Violation (POV) rule became effective in 2013. A challenge to the rule is pending in the Sixth Circuit, and an enforcement case is pending before the Commission on interlocutory review. This panel will explore the mechanics of the POV rule and the current state of the law on various issues, including: establishing a pattern; final orders versus non-final orders; implications for POV if citations/orders used to meet the POV screening criteria are later modified; challenging the POV notice; availability of temporary relief available under Section 105(b)(2); and difficulties and challenges in litigating POV cases.

- Moderator: R. Henry Moore, *Jackson Kelly PLLC*, Pittsburgh, PA
- Panelist: Christopher W. Wittenauer, Vice Chair, Senior Counsel, *Peabody Energy Corporation*, St. Louis, MO
- Panelist: Robert H. Beatty, *Dinsmore & Shohl, LLP*, Morgantown, WV
- Panelist: Douglas N. White, *USDOL, Office of the Associate Regional Solicitor*, Arlington, VA

10:15 – 10:30 a.m. **Break**

10:30 – 11:45 a.m. **Criminal Investigations and Prosecutions**

What are the criminal provisions of the Mine Act? What other provisions of the federal criminal code apply in the mining context? What are the most commonly prosecuted provisions/standards of the Mine Act? What constitutional issues arise? This panel will delve into these and other issues related to Mine Act criminal investigations and prosecutions.

- Moderator: Jerry Feingold, *USDOL, Office of the Solicitor*, Arlington, VA
- Panelist: Randy Ramseyer, *USDOJ*, Assistant U.S. Attorney, Western District of Virginia, Abingdon, VA
- Panelist: Jared Bennett, *USDOJ*, Assistant U.S. Attorney, Chief of Civil Division, District of Utah, Salt Lake City, Utah
- Panelist: Phillip T. Inglima, *Crowell & Moring LLP*, Washington, DC

11:45 a.m. – 12:30 p.m. **Hot Issues in Commission Litigation**

This panel will look at recent litigation issues, including: 1) the meaning of S&S after *Cumberland Coal* (D.C. Cir. 2013) and other recent decisions; and 2) Section 105(c) developments.

- Moderator: Derek Baxter, *USDOL, Office of the Solicitor*, Arlington, VA
- Panelist: Mark E. Heath, *Spilman Thomas & Battle, PLLC*, Charleston, WV
- Panelist: Jeffrey K. Phillips, *Steptoe & Johnson PLLC*, Lexington, KY
- Panelist: Mary Kathryn Cobb, *USDOL, Office of the Solicitor*, Dallas, TX

12:30 – 2:00 p.m. **Lunch (on your own)**

2:00 – 2:30 p.m. **Keynote speaker: MSHA Looking Ahead**

- Joseph A. Main, Assistant Secretary of Labor, *USDOL*, Washington, DC

2:30 – 3:20 p.m. **MSHA Inspection/Investigation Authority, Part A: The Scope of MSHA's Authority Under 103(a) and (h)**

The Seventh Circuit issued its decision in *Big Ridge* in 2013, affirming MSHA's authority to obtain medical and other documents in connection with a "Part 50" audit conducted pursuant to 30 C.F.R. § 50.41. What does *Big Ridge* say and what are the broader implications in the non-audit context? This panel will search for answers to these and other questions related to this issue.

- Moderator: Daniel W. Wolff, *Crowell & Moring LLP*, Washington, DC
- Panelist: Alexander Macia, *Spilman Thomas & Battle, PLLC*, Charleston, WV
- Panelist: Adele L. Abrams, *Law Office of Adele L. Abrams, P.C.*, Beltsville, MD
- Panelist: Robin A. Rosenbluth, *USDOL, Office of the Solicitor*, Arlington, VA
- Panelist: Charlie Lord, *USDOL, Office of the Solicitor*, Arlington, VA

3:20 – 3:40 p.m.           **Break**

3:40 – 4:30 p.m.           **MSHA Inspection/Investigation Authority, Part B: The Scope of MSHA's  
Accident Response and Control Order Authority**

This panel will review Sections 103(j) and 103(k) of the Mine Act in light of *Performance Coal Company* (D.C. Cir. 2011) and *Pattison Sand and Gravel* (8th Cir. 2012), including the difference between Section 103(j) and Section 103(k) orders; the scope of authority under each provision; availability of temporary relief available under Section 105(b)(2); judicial modification of Section 103(k) orders; and other issues.

- Moderator: Timothy Williams, *USDOL, Office of the Associate Regional Solicitor*, Denver, CO
- Panelist: Michael O. McKown, Senior Vice President, Secretary and General Counsel, *Murray Energy Corporation*, St. Clairsville, OH
- Panelist: Christopher G. Peterson, *Jackson Kelly PLLC*, Denver, CO
- Panelist: Joshua P. Falk, *USDOL, Office of the Solicitor*, Arlington, VA

4:30 – 5:30 p.m.           **Tips for Commission Practitioners**

This panel of administrative law judges and administrators from the Federal Mine Safety and Health Review Commission will discuss procedural matters of general applicability and interest.

- Panelist: Hon. Robert J. Lesnick, Chief ALJ, *FMSHRC*, Washington, DC
- Panelist: Hon. Margaret A. Miller, ALJ, *FMSHRC*, Denver, CO
- Panelist: Hon. Janet G. Harner, ALJ, *FMSHRC*, Pittsburgh, PA
- Panelist: Hon. Thomas P. McCarthy, ALJ, *FMSHRC*, Washington, DC
- Panelist: Hon. Alan Paez, ALJ, *FMSHRC*, Washington, DC
- Panelist: Michelle Williams, Hearing Office Director, *FMSHRC*, Washington, DC

6:00 p.m.                   **Reception**

*Wednesday, April 23, 2014*

9:00 – 9:45 a.m.           **Ventilation Plan Approval and Litigation Process**

The Seventh Circuit issued its decision in *Mach Mining* in 2013, and a *writ of certiorari* is pending with the Supreme Court. This panel will discuss the implications of *Mach Mining* for ventilation, roof control, and other plans.

- Moderator: John M. Williams, *Rajkovich, Williams, Kilpatrick & True, PLLC*, Lexington, KY
- Panelist: Christopher D. Pence, *Hardy Pence PLLC*, Charleston, WV
- Panelist: Suzanne F. Dunne, *USDOL, Office of the Associate Regional Solicitor*, Chicago, IL
- Panelist: Edward Waldman, *USDOL, Office of the Solicitor*, Arlington, VA

9:45 – 10:45 a.m.       **Flagrant Violations**

What is a repeated flagrant violation? What is a reckless flagrant violation? What evidence is sufficient to establish a flagrant violation? There are many unanswered questions concerning flagrant violations that will be explored.

- Moderator: Noelle Holladay True, *Rajkovich, Williams, Kilpatrick & True, PLLC*, Lexington, KY
- Panelist: Jonathan R. Ellis, *Steptoe & Johnson, PLLC*, Charleston, WV
- Panelist: Jason Grover, *USDOL, Office of the Solicitor*, Arlington, VA
- Panelist: Mary Beth Zamer, *USDOL, Office of the Associate Regional Solicitor*, Nashville, TN

10:45 – 11:00 a.m.       **Break**

11:00 a.m. – 12:15 p.m.      **Refuge Alternatives**

Refuge alternatives are a relatively recent requirement under the Mine Act, and approved components were recently required at the beginning of this year. It is appropriate to discuss the state of the technology, the state of the law, and other issues concerning refuge alternatives, including purging of harmful gases; apparent temperatures; and portability/placement of refuge alternatives.

- Moderator: Edward M. Green, *Crowell & Moring LLP*, Washington, DC
- Panelist: Guy W. Hensley, Senior Corporate Counsel, *Walter Energy, Inc.*, Birmingham, AL
- Panelist: Stephen Turow, *USDOL, Office of the Solicitor*, Arlington, VA
- Panelist: Wesley Shumaker, P.E., *USDOL, MSHA Technical Support*, Tridelfhia, WV
- Panelist: Jeff Kohler, Ph.D., Associate Director for Mining, *NIOSH*, Pittsburgh, PA

12:15 – 2:00 p.m.              **Lunch on your own**

2:00 – 4:00 p.m.              **Commission Oral Argument at the DOL Auditorium**

*McCoy Elkhorn Coal Corp. v. Secretary* (KENT 2008-260, et al), and *Jason Robinson, Employed by McCoy Elkhorn Coal Corp. v. Secretary* (KENT 2009-1154).

- Arguing for the Secretary: Cheryl C. Blair-Kijewski, *USDOL, Office of the Solicitor*, Arlington, VA
- Arguing for McCoy Elkhorn and Jason Robinson: Melanie J. Kilpatrick, *Rajkovich, Williams, Kilpatrick & True, PLLC*, Lexington, KY

***Program Committee***

- Program Chair: Daniel W. Wolff, *Crowell & Moring LLP*, Washington, DC.
- Jonathan R. Ellis, *Steptoe & Johnson, PLLC*, Charleston, WV
- Guy W. Hensley, *Walter Energy, Inc.*, Birmingham, AL
- Suzan E. Moore, *Alpha Natural Resources, Inc.*, Bristol, VA
- Thomas A. Paige, *USDOL, Office of the Solicitor*, Arlington, VA
- Christopher G. Peterson, *Jackson Kelly PLLC*, Denver, CO
- Heidi W. Strassler, *USDOL, Office of the Solicitor*, Arlington, VA
- Noelle Holladay True, *Rajkovich, Williams, Kilpatrick & True, PLLC*, Lexington, KY
- Eric R. Waller, *Patriot Coal Services, LLC*, Charleston, WV
- Cole A. Wist, *Holland & Hart LLP*, Denver, CO
- Christopher W. Wittenauer, *Peabody Energy Corporation*, St. Louis, MO



# Yes, I want to attend the Mine Safety & Health Law Special Institute

Registration fee includes all educational sessions, meeting materials on a CD and Tuesday evening hosted reception sponsored by EMLF member law firms.

<i>Registration fees</i>	<i>Early Bird (by April 10)</i>	<i>After April 10</i>
General Registration Fee.....	\$525 .....	\$625 .....
EMLF Members.....	\$425 .....	\$525 .....
Government Employees/Non-profit Organizations .....	\$225 .....	\$325 .....

First Name \_\_\_\_\_ M.I. \_\_\_\_ Last Name \_\_\_\_\_ Badge name \_\_\_\_\_

Organization/Firm \_\_\_\_\_ Title \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Daytime Phone \_\_\_\_\_ Fax # \_\_\_\_\_

Email Address \_\_\_\_\_ Guest \_\_\_\_\_

State(s) for CLE Credits? \_\_\_\_\_ Do you need AAPL Credit? \_\_\_\_\_

**Fees:**

Conference registration \$ \_\_\_\_\_

Total \$ \_\_\_\_\_

Conference accreditation is pending from states with mandatory Continuing Legal Education and with the AAPL. Please indicate on your registration form where you are seeking credit. Application will be made for 520 minutes of continuing education, excluding the keynote address and the oral arguments before the FMSHRC. In states which calculate 50 minutes as a CLE hour, this will be 10.4 hours of CLE. In states which calculate 60 minutes for a CLE hour, this will be 8.66 hours of CLE credit. Complete information for reporting your credits will be available at the conference. Additional fees may be required for certain states/organizations.

You may pay by \_\_\_\_\_ check or \_\_\_\_\_ credit card. EMLF accepts MasterCard, VISA or American Express.

Card # \_\_\_\_\_ Expiration date \_\_\_\_\_

Signature \_\_\_\_\_ CVV code (security code) \_\_\_\_\_

### Cancellation policy

Registration refunds less \$75 will be made for cancellations received by April 10. No refunds will be made thereafter, but substitutions can be made at any time. Persons not entitled to a refund will receive the CD containing speaker materials.

### Three ways to register

- If registering online, go to [www.emlf.org](http://www.emlf.org)
- If registering by fax, call 859.226.0485
- If registering by mail, send form and payment to EMLF, 340 South Broadway, Suite 101, Lexington, KY 40508

EMLF has not blocked hotel guest rooms for this educational event. Go to [Washington.org](http://Washington.org), the official tourism site of Washington, DC – <http://washington.org>.