



**Mine Safety & Health Law
Special Institute**
Las Vegas Hilton Hotel
September 20, 2008
Las Vegas, Nevada

**Sponsored by the
Energy & Mineral Law Foundation
and the
Rocky Mountain
Mineral Law Foundation**

Program schedule

8:00 a.m. Registration Desk Opens
Refreshments

8:50-9:00 a.m. Welcome and Introductions

■ Mark E. Heath, Program Chair, *Spilman, Thomas & Battle PLLC*, Charleston, WV

9:00-9:30 a.m. Paradigm Shift: Mine Safety & Health Administration
(MSHA) Compliance, Enforcement, Penalties and Evidence Collection

This session covers what operators have to do to prepare a defense during the inspection process, including the time frames that must be followed.

■ Karen L. Johnston, *Jackson Kelly PLLC*, Denver, CO

9:30-10:15 a.m. Pattern of Violations and Significant and Substantial Violations

In the aftermath of the mining tragedies in West Virginia, Kentucky and Utah, MSHA has pledged to aggressively utilize the pattern of violations enforcement tool set out at Section 104e of the Federal Mine Safety and Health Act of 1977. This provision authorizes MSHA, when a pattern of repeated “significant and substantial” (S&S) violations are identified, to issue a pattern order which would result in every subsequent S&S violation producing a withdrawal order. Since developing specific criteria to identify such patterns in June 2007, MSHA has notified over two dozen mining operations that a “potential pattern” has been identified. This session discusses the ramifications of receiving a notification of a potential pattern of violations from MSHA, reviews the elements of an S&S finding, evaluates the specifics of the agency’s pattern criteria, and explores the options confronting operators who receive notification of a potential pattern. The speakers will provide insight from past pattern disputes, offer suggestions for avoiding MSHA’s pattern enforcement effort and discuss possible legal challenges should a pattern order ever be issued.

■ William K. Doran, *Ogletree, Deakins, Nash, Smoak & Stewart, P.C.*, Washington, DC

■ Robert Huston Beatty, Jr., *Dinsmore & Shohl, LLP*, Morgantown, WV

10:15-10:30 a.m. Refreshment Break

10:30 a.m.-noon Mine Crisis Management Panel

An unplanned incident that affects safety at any mining operation can quickly turn into a crisis. Congress and several state legislatures have enacted laws mandating crisis management plans, and it’s imperative that mine management have in place a plan tailored to its specific operations. Not only does this entail compliance with required safety procedures, consideration must be given to families, the media and the legal implications to mine management. This presentation by regulators, mine safety, and white-collar crime attorneys delves into the statutory requirements of crisis management plans and other legal and practical implications that mining operations must consider when a crisis occurs.

■ Marco M. Rajkovich, Rajkovich, *Williams, Kilpatrick & True, PLLC*, Lexington, KY

■ Laura E. Beverage, *Jackson Kelly PLLC*, Denver, CO

■ Mark E. Heath, *Spilman Thomas & Battle, PLLC*, Charleston, WV

■ Philip T. Inglima, *Crowell & Moring LLP*, Washington, DC

■ Mark Malecki, Counsel for Trial Litigation, Office of the Solicitor, *USDOL*, Arlington, VA

Noon Luncheon

■ Guest Speaker: The Honorable Michael F. Duffy, Chairman, *Federal Mine Safety and Health Review Commission*, Washington, DC

1:30-2:15 p.m. MSHA Jurisdiction

This session explores MSHA's enforcement against companies engaged in "other activities" while on property that may be part of a "mine," and enforcement against mine operators for violations of persons or companies over which the operator has no control, especially in situations where the mine property has multiple uses. Independent timber owners and operators, oil and gas well drillers, service companies and others receiving citations are being threatened with enforcement and their activities are being attributed to the mine operator.

- Margo S. Lopez, *Ogletree, Deakins, Nash, Smoak & Stewart, P.C.*, Washington, DC
- Daniel W. Wolff, *Crowell & Moring LLP*, Washington, DC
- Heidi Strassler, Deputy Associate Solicitor, Office of the Solicitor, *USDOL*, Arlington, VA

2:15-2:45 p.m. Defending Against Flagrant Violations

This session focuses on the grounds for issuance and some possible defenses available to operators defending against flagrant violations. The presentation considers the regulatory definition of a "flagrant violation" and discusses in detail MSHA's Procedure Instruction Letter explaining the difference between the "reckless failure" and "repeated failure" criteria. The penalties associated with flagrant violations, and some real life examples of the issuance of flagrant orders, will also be covered.

- Noelle Holladay True, *Rajkovich Williams Kilpatrick & True, PLLC*, Lexington, KY

2:45-3:00 p.m. Refreshment Break

3:00-3:30 p.m. Drug Testing in Mining: Fear and Loathing in the Minefields

This session covers the status of drug and alcohol testing in the mining industry. Some states and several companies are not waiting for MSHA guidelines – why should you? Views on how to allow re-employment of the rehabilitated will also be included.

- Anna M. Dailey, *Dinsmore & Shohl, LLP*, Charleston, WV

3:30-4:00 p.m. Update on Special Investigations

This session addresses how MSHA approaches Section 110C investigations arising from flagrant violations, their interview tactics (including attempts to go around counsel and circumvent interview sessions at mine sites), and effective strategies for managing defense of individuals in MSHA interviews. Because all Section 110C investigations are reviewed for possible criminal prosecution, now more than ever it is critical to protect clients' constitutional rights when working to rebut "high negligence" and "reckless disregard" allegations.

- Adele L. Abrams, *Law Office of Adele L. Abrams, P.C.*, Beltsville, MD

4:00-4:30 p.m. Regulation By Policy

Since the Sago mine accident, MSHA has taken actions to change regulatory requirements without engaging in notice and comment rulemaking, especially with respect to seals and emergency response plans. This discussion will address the remedies for such actions that are available to operators and the recent cases that have addressed this conduct by MSHA. It will focus on what actions the operator can take to address the imposition of requirements that are not contained in the Mine Act or in the regulations promulgated under it.

- R. Henry (Hank) Moore, *Jackson Kelly PLLC*, Pittsburgh, PA

4:30-5:00 p.m. New Mine Safety Legislation and Regulations

With operators still dealing with difficult provisions of the 2006 MINER Act and the prospects for additional and even more stringent legislation looming on the horizon, this presentation will focus on the challenging changes ahead for the industry. The spate of mine disasters in recent years and the investigations of MSHA by the Congress and others has also resulted in important changes in the way MSHA conducts its business; this presentation will also address these developments.

- Edward M. Green, *Crowell & Moring LLP*, Washington, DC

5:00-6:00 p.m. Reception for Registrants and Speakers



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

Name _____ Title _____

Organization/firm _____ Daytime phone _____

Address _____ Fax # _____

City, state, zip _____

Email address _____

Total Payment _____

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

Card # _____ Expiration date _____

Signature _____ CVV code (security code) _____

Registration information

Conference Registration

EMLF full institute registration fee includes all educational sessions, meeting materials, refreshment breaks and hosted reception. Luncheon fee is additional.

	<i>Through Aug. 15</i>	<i>After Aug. 15</i>
General Registration fee	\$375	\$475
EMLF/RMMLF Member fee	275	375
MINExpo Attendee	275	375
Government/NPO	175	275
Luncheon	45	45

Accommodations

EMLF has not blocked hotel guest rooms for this educational event. Go to the official Las Vegas tourism site at www.visitlasvegas.com/vegas/stay/index.jsp for their accommodations section. Or if you are registered to attend MINExpo, go to www.minexpo.com to access hotel information and make reservations.

Three ways to register

- If registering online, go to 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

Cancellation policy

Refunds less a \$75 administrative fee will be given for written registration cancellations received by September 3. No registration refunds will be made thereafter, but substitutions can be made without charge.

Mandatory CLE and Professional Credit

Conference accreditation is pending from states with mandatory Continuing Legal Education. Conference consists of 360 minutes (6 hours in 60-minute states and 7.2 hours in 50-minute states). Registrants may be required to reimburse EMLF for MCLE filing fees for certain states. Please list the states or organization where you will be seeking professional education credits:
