

## **CRITICAL ENFORCEMENT AUTHORITY OF THE FEDERAL MINE SAFETY AND HEALTH ADMINISTRATION**

### **I. Enforcement Authority**

#### ***Citations***

- MSHA may issue a citation for violation of the 1977 Mine Act or for violation of a mandatory health or safety standard, rule, order or regulation. A citation requires that corrective action be taken by the mine operator to correct the condition or practice cited, but it does not result in the cessation of the activity or equipment at issue. A citation shall be issued with reasonable promptness, shall be in writing, and shall describe with particularity the nature of the violation, including reference to the statutory or regulatory provision alleged to have been violated. Further, "the citation shall fix a reasonable time for the abatement of the violation." Citations may be characterized as "significant and substantial."
  - The term "significant and substantial" refers to the gravity of, or the degree of hazard or risk posed by, the alleged violation. The Commission has held that "[a] violation is of such a nature as could significantly and substantially contribute to the cause and effect of a mine safety or health hazard if, based upon the particular facts surrounding that violation, there exists a reasonable likelihood that the hazards contributed to will result in an injury or illness of a reasonably serious nature."
- Additionally, MSHA may issue an unwarrantable failure citation for a violation that could significantly and substantially contribute to a health or safety hazard and resulted from a heightened degree of negligence, such as indifference to health and safety. This starts the cumulative enforcement action known as the "unwarrantable failure" withdrawal order chain which the operator remains on until there is an intervening inspection that reveals no further violations resulting from heightened negligence.
  - The term "unwarrantable failure" refers to the operator's degree of fault or negligence in causing a violation or allowing it to exist. The term has been defined by the Commission as "aggravated conduct constituting more than ordinary negligence"

#### ***Withdrawal Orders***

- A withdrawal order may be issued on the spot and without a hearing and results in the immediate closure of the area, equipment, or practice that is alleged to be in violation of the standards. All personnel associated with the condition or

practice must be withdrawn, except those persons necessary to correct the violation.

- Every withdrawal order issued requires that the inspector determine the "area affected" by the condition which depends on the nature and extent of the hazard specifically identified. Depending on the facts and circumstances, a withdrawal order could include, for example, a piece of equipment or area of a mine, or it could affect an entire mine depending on the nature and extent of hazard.
- Withdrawal orders may result from failure to abate a violation within the time prescribed under section 104(b).
- An unwarrantable failure withdrawal order may be issued subsequent to a section 104(d)(1) citation during the same inspection or within 90 days after issuance of such a citation if violations result from heightened negligence (and regardless of whether any serious hazard is presented) until a complete inspection of the mine reveals no further heightened negligence violations.
- MSHA has withdrawal order authority under section 104(e) of the Mine Act for significant and substantial violations following written notice from MSHA of a "pattern of violations." This is also a cumulative enforcement process that results in the issuance of a withdrawal order every time a violation is found to "significantly and substantially" contribute to a serious hazard until an entire inspection of the mine reveals no further "significant and substantial" violations.
- MSHA has the authority to issue a withdrawal order under section 107(a) if an imminent danger is found by an inspector, which is a condition or practice "which could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated." A finding of an imminent danger does not require a finding of a violation of a mandatory health or safety standard.
- MSHA may issue a withdrawal order for untrained miners under section 104(g) of the Mine Act which affects every miner deemed to have inadequate training and forces the withdrawal of such miners until they have received the required training.

## **II. Injunctive Authority**

- The 1977 Mine Act authorizes MSHA to pursue a civil action against an operator in federal district court seeking relief, including temporary or permanent injunctive relief or a restraining order. MSHA may seek such relief whenever a mine operator or its agent refuses to comply with any order or decision issued under the 1977 Mine Act; interferes with, hinders, or delays MSHA from carrying out its duties; refuses to allow an inspection or accident investigation; or refuses to provide other information or documents.

### **III. Penalty Assessments Criteria**

- A mine operator who receives a citation or a withdrawal order is subject to a maximum civil penalty of \$70,000, unless the violation is deemed to be "flagrant," which can result in a maximum civil penalty of \$220,000. "Flagrant" violations are "[a] reckless or repeated failure to make reasonable efforts to eliminate a known violation of a mandatory health or safety standard that substantially and proximately caused, or reasonably could have been expected to cause, death or serious bodily injury."
- Any operator who fails to correct a violation for which a section 104(a) citation has been issued may be assessed a civil penalty of not more than \$7,500 per day that the condition is allowed to continue unabated.
- MSHA must impose a minimum penalty of \$5,000 for failure to timely notify MSHA of an accident involving the death of an individual at the mine or an injury or entrapment of an individual at the mine which has a reasonable potential to cause death. And, minimum penalties must be assessed for unwarrantable failure violations at \$2,000 for citations or orders issued under section 104(d)(1) and \$4,000 for orders issued under section 104(d)(2).
- Civil and/or criminal penalties may be imposed by MSHA/DOJ on agents, officers and directors who knowingly authorize order or carry out violations of mandatory standards.
- Criminal penalties may be imposed on any person who knowingly falsifies a record or document required to be maintained under the 1977 Mine Act.