



July 14, 2009

Agency Burdened by Mountain of Unheard Mine Safety Cases, Needs Proper Funding

Dear Representative:

We are writing to bring your attention to an urgent matter facing the Federal Mine Safety and Health Review Commission (FMSHRC or mine safety commission), the independent agency charged with deciding administrative trial level and appellate mine safety violation cases. The FMSHRC is laboring under an enormous backlog – it will reach 13,000 cases this month – due to a surge in case filings in the last three years and a meager budget that has rendered the agency incapable of coping with the workload. It urgently needs additional funds to hire administrative law judges and other legal and administrative staff so it can efficiently hear and decide cases, including civil penalty determinations against mine operators that allegedly have violated improved safety standards which Congress mandated under the 2006 Mine Improvement and New Emergency Response Act (Miner Act).

Surge in case filings after passage of 2006 Miner Act

The pending 13,000 cases at FMSHRC represent a 600 percent increase since the passage of the Miner Act three years ago. With the Miner Act, Congress strengthened mine safety standards after a string of preventable tragedies, including the infamous January 2006 Sago coal mine explosion that trapped 13 miners below ground for two days and killed 12 of them.

Prior to the tragedy, the Sago mine owner was cited for numerous safety violations under the Federal Mine Safety and Health Act, yet it continued to operate in a way that endangered the lives of its coal miners. Consequently, under the new federal law, mining operators are now required to develop an emergency response plan for each mine they operate, and they face increased civil and criminal penalties for violating federal mining safety standards. Since 2006, the Mine Safety and Health Administration (MSHA) which operates under the U.S. Department of Labor also boosted its own enforcement and issued stricter safety regulations. The commission resolves disputes involving the civil penalties assessed against mine operators, and generally in such cases, addresses whether the violations occurred and the appropriateness of the proposed penalties.

Since the new requirements took effect, mine operators have taken a much more aggressive approach in challenging citations and penalties. From FY 2000 through FY 2005 the average number of cases filed was 2,307 per year. The caseload backlog at the end of 2005 was 1,589. In 2007, the commission received 4,097 new cases, and 4,115 cases went unresolved by year's end. By the end of 2008, 8,961 new cases were filed, and the commission had yet to hear 9,760 disputes. The commission projects that it will have over 15,000 pending cases by the end of FY 2009, and nearly 20,000 disputes will still be waiting by the end of FY 2010.

Agency's meager budget over the years exacerbated backlog

In the current 2009 fiscal year, the commission is operating on an \$8.6 million budget and with

ten administrative law judges. According to at least two FMSHRC officials, with these scant resources the commission will need at least five years to address the current backlog, excluding any new cases that arise during that time. Though it is operating under these burdensome circumstances, the commission, under the leadership of Chairman Michael Duffy has requested only \$9.8 million for FY 2010. Duffy, designated chairman by the previous administration and a former deputy general counsel for the mining industry's lobbying organization, the National Mining Association, has established a track record of submitting appropriations requests to Congress that are significantly lower than the actual amount needed for the commission to operate effectively. Despite the staggering caseload, Duffy recommended a budget of just \$8.6 million in FY 2009; and \$8 million in 2008.

To further demonstrate the impracticality of the budget request, the Occupational Safety and Health Review Commission (OSHRC) serves a function similar to that of the mine safety commission, but the OSHRC's budget has remained significantly higher in the past several years despite the fact that its workload is significantly smaller than the FMSHRC's. While the FMSHRC budget was \$8.6 million in 2009, the OSHRC was allotted \$11.1 million. Yet, the mine safety commission's case backlog since 2005 has averaged 6.5 times more than the OSHRC backlog. By the end of FY 2010, the mine safety commission's backlog (19,359 cases) is expected to be 26 times larger than the OSHRC's (739 cases), but its budget is expected to be \$2 million lower.

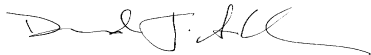
The House Appropriations Subcommittee FY2010 recommendation "absurdly unrealistic"

On July 10, 2009, the House Appropriations Subcommittee granted the commission's FY 2010 request of \$9.8 million. This amount is absurdly low, given the anticipated 20,000-case backlog, and will fail to adequately alleviate the commission's workload.

Companies attempt to use government delays to avoid penalty determinations

Another alarming aspect of this scenario is the fact that mine operators have sought to dismiss their cases and evade penalties proposed by the Department of Labor because the DOL failed to file documents within the Federal Mine Safety and Health Act deadlines. In five cases decided June 30, an administrative law judge denied the dismissal requests of three mine operators, citing the commission's caseload of "12,880 contest and civil penalty cases," the vast majority of which stem from DOL petitions. "Consequently, strict adherence...in the face of this unprecedented workload presently is not warranted," the judge wrote.¹ In these cases, the DOL had issued penalty assessments more than two years after the deadlines passed. It is imperative then that Congress act quickly to supplement the commission's resources so that the agency can adequately and fairly tackle its considerable workload.

Sincerely,



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¹ MSHA v. Five Star Mining, Inc., June 30, 2009; MSHA v. Black Panther Mining, LLC, June 30, 2009; MSHA v. Mountain Coal Co., L.L.C. June 30, 2009.