



News Release

Printer-Friendly Version

MSHA News Release: [12/07/2007]
Contact Name: Amy Louviere or Matthew Faraci
Phone Number: (202) 693-9423 or x9406
Release Number: 07-1857-NAT

Significant safety improvements following warning notices to mine operators

Second round of potential pattern of violation letters sent to 20 operators

ARLINGTON, Va. — The U.S. Department of Labor's Mine Safety and Health Administration (MSHA) announced today that six of the eight mine operations that received written warnings last June for exhibiting a potential pattern of violations have met or exceeded the necessary criteria for reducing violation rates.

"The operators that received the first letter in June knew they needed to make serious changes to improve their safety records, and change they did," said Richard E. Stickler, assistant secretary of labor for mine safety and health.

"But their work is not yet done," he added. "We strongly encourage these mine operators to continue to improve their compliance records until their mines are violation free, and we will continue to conduct our inspections in a rigorous fashion.

MSHA closely monitored the seven mines' compliance records for 90 days. In order to be removed from consideration for this round of pattern of violations notices, operations needed to reduce their S&S violation frequency rate for the 90-day review period by 30 percent or to levels below the national average.

Table with 2 columns: Operator name and S&S violation rate. Lists 10 operators and their respective violation rate reductions or statuses.

Federal regulations require that MSHA review at least annually the compliance records of each mine to identify those with potential patterns of violations. Going forward, MSHA intends to conduct at least two screenings per year to identify mines that exhibit potential patterns of violations.

12/5/07 letters completed 12/6/07 delivered

**U.S. Department of Labor**

Mine Safety and Health Administration  
3837 S. US Hwy. 25E  
Barbourville, Kentucky 40906-9206



December 6, 2007

Tim Frasure, President  
Shamrock #18 Series  
Shamrock Coal Company, Inc.  
1374 HWY 192 East  
London, KY 40741

Dear Mr. Frasure:

In accordance with Section 104(e) of the Federal Mine Safety and Health Act of 1977 (Mine Act) and 30 CFR Part 104, the Mine Safety and Health Administration (MSHA) has conducted a pattern of violation (POV) screening of compliance records for the Shamrock #18 Series mine, MSHA ID No. 15-02502 for the 24-months ending September 30, 2007. A POV screening is used to determine if Section 104(e) is applicable to a particular mine. If implemented, Section 104(e) requires all subsequent violations designated as Significant and Substantial (S&S) be issued as closure orders with all persons withdrawn from the affected area except those necessary to correct the violation. An operator can be removed from Section 104(e) sanctions only after an inspection of the entire operation results in no significant and substantial violations.

This letter is your notification that a potential pattern of violations exists at the Shamrock #18 Series mine. This notification is based upon the initial screening and pattern criteria review, which were conducted in accordance with 30 CFR Parts 104.2 and 104.3 respectively. A Pattern of Violation Review report is enclosed as Attachment A. This report details the methodology utilized for the initial screening and pattern criteria review and summarizes your mine's performance relative to the criteria.

Prior to MSHA implementing Section 104(e) sanctions at the Shamrock Series #18 mine, you are provided the opportunity, not to exceed 20 days from the date of this notification, to take any or all of the following steps:

Review all documents upon which the pattern of violations evaluation is based and provide additional mitigating information.

Submit a written request for a conference with me (I shall hold any conference within 10 days of a request).

Provide a written plan to me indicating that you will institute a corrective action program to avoid repeated significant and substantial violations at the operation.

Please note that current regulation 30 C.F.R. Part 104.4(d) requires that you post a copy of this letter on the mine bulletin board until you are notified of MSHA's final determination with respect to your status pursuant to Section 104(e) of the Mine Act. If you implement a corrective action program, MSHA will conduct a complete inspection of the Shamrock #18 Series mine. This inspection may start as soon as January 1, 2008. I will analyze the results of this complete inspection and other on-site enforcement activities conducted during the corrective action period to evaluate whether the Shamrock #18 Series mine has effectively reduced the occurrence of S&S violations during the review period. Therefore, I encourage you to implement a corrective action program as soon as practicable. If, during the review period, the Shamrock #18 Series Mine achieves a reduction in the S&S violation frequency rate to 12.33 S&S violations per 100 inspection hours, the Shamrock #18 Series mine will not be issued a pattern of violations notice during this POV review cycle.<sup>1</sup>

If you implement a corrective action program which does not reduce the rate of S&S violations to the levels set forth in the paragraph above, pursuant to 30 C.F.R. Section 104.5(b), I will submit an evaluation report to the Administrator for Coal Mine Safety and Health within 120 days from the date of this notification. If you choose not to implement a program to reduce S&S violations, I will submit the report of the evaluation to the Administrator within 60 days from the date of this notification.

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<sup>1</sup> However, mines which have implemented a successful corrective action plan during the 90 day evaluation period will be considered along with all other mines for potential pattern of violation notices during the next and subsequent review cycles. In the case of the Shamrock #18 Series mine, it was issued 17.62 S&S violations per 100 inspection hours during the 24-month review period, in this review cycle 11.43 percentage points higher than the national average of 6.19 S&S violation per 100 inspection hours for underground mines. To ensure the Shamrock #18 Series mine is not exhibiting a potential Pattern of Violations when the next evaluation is conducted, the Shamrock #18 Series mine should have an S&S violation rate at or near the national rate. MSHA is required to conduct evaluations at least annually but can conduct the evaluations more frequently.

In both cases, a copy of the report of evaluation will be provided to you 10 days before the report is sent to the Administrator. Both you and the miner's representative will have 10 days from the receipt of the report to submit written comments to the Administrator.

Within 30 days of receipt of my report to the Administrator, the Administrator will issue a decision as to whether the Shamrock #18 Series mine is to be issued a Notice of a Pattern of Violations. A copy of the decision will be provided to you and the representative of the miners.

If the Administrator decides to issue a Notice of Pattern of Violations, I will issue the Notice of Pattern of Violations to you and the representative of the miners.

Following issuance of a Notice of Pattern of Violations, I will initiate appropriate inspection activities to ensure that the Shamrock #18 Series mine is inspected in its entirety during the following 90-day time frame and each succeeding inspection cycle until the Pattern of Violation order is terminated.

If upon any inspection after the issuance of the Pattern of Violations Notice an authorized representative finds any violation of a mandatory health or safety standard which could significantly and substantially contribute to the cause and effect of a safety or health hazard, the inspector shall issue an order requiring the withdrawal of all persons in the area affected by the violation except those persons listed in 104(c) of the Mine Act. All persons except as listed in 104(c) of the Mine Act shall also be prohibited from entering that area until the inspector determines that such violation has been abated.

Termination of a Pattern of Violations notice shall occur when an inspection of the entire operation results in no significant and substantial violations of the Mine Act.

You may request an inspection of the entire operation or portions of the operation at any time. No advance notice of the inspection shall be provided and MSHA will determine the scope of each inspection. Partial inspections covering the entire operation within the 90-day period will constitute an inspection of the entire operation for the purposes of termination of a Pattern of Violations Notice.

Please contact me at (606) 546-5123 to if you have any questions regarding this matter. Additional mitigating information, requests for a conference and/or a written plan to institute a corrective action program should be sent to me at: 3837 S US HWY 25 E, Barbourville, KY 40906.

Sincerely,

  
District Manager

Attachment

Cc: Miners Representative

## ***Pattern of Violations Screening Criteria and Scoring Model***

Mine ID: 1502502  
 Mine Name: Shamrock #18 Series  
 Mine Type: Underground

Numbers for  
 Shamrock #18 Series  
 Mine

At least ten S&S Citations/Orders, at mines classified as Surface and Facility, issued during the 24 month review period.	N/A
At least twenty S&S Citations/Orders, at mines classified as Underground, issued during the 24 month review period.	227
At least two "elevated enforcement" actions, [i.e. type action is 104 (b), 104 (d) or 107(a)], issued during the 24 month review period.	3
The ratio of S&S Citation/Orders issued in the most recent 12 months of the review period to the number of S&S Citations/Orders issued during the previous 12 months of the review is 70% or greater.	150%
The mines' rate of S&S Citations/Orders issued per 100 inspection hours during the 24 month review period is equal to or greater than 125% of the National rate of S&S Citations/Orders issued per 100 inspection hours for that mine type and classification.	233%
The number of S&S Citation/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification.	Industry: 7.74 This Mine: 24.52
Or	
The number of elevated enforcement Citations/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification.	Industry: 0.68 This Mine: 0
A minimum of two "elevated enforcement" final orders of the Commission, [i.e. type action is 104 (b), 104 (d) or 107(a)] during the 24 month review period.	2
At least one S&S 104 (d) issuance that became a final order of the Commission during the 24 month review period.	1
At least ten S&S Citations/Orders, at mines classified as Surface or Facility, that are final orders of the Commission during the 24 month review period.	N/A
At least twenty S&S Citations/Orders, at mines classified as Underground, that are final orders of the Commission during the 24 month review period.	183

## ***Pattern of Violations Screening Criteria and Scoring Model***

Mine ID: 1502502  
 Mine Name: Shamrock #18 Series  
 Mine Type: Underground

Numbers for  
 Shamrock #18 Series  
 Mine

### ***Scores***

a. The number of S&S citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period plus	14.2
b. the number of 104(b) (failure to abate) orders issued per 100 Inspection Hrs. for failure to abate an S&S issuance that became final during the 24 month review period and multiplying by a factor of 5; plus	0.4
c. the number of 104(d) (unwarrantable failure) citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period and multiplying by a factor of 5; plus	0.4
d. the number of 107(a) (imminent danger) orders issued per 100 Inspection Hrs. during the 24 month review period and multiplying by a factor of 5.	0
Subtotal:	15

### ***Increases to the Subtotal***

e. 5%-20% for operations with injury rates above the national average for the same mine type and industry grouping as follows:	0
f. 5%-20% for operations with injury severity rates (number of days lost X 200,000 divided by the total work hours reported) above the national average for the same mine type and industry grouping as follows:	0
g. 5%-20% for operations with citations and orders issued per 100 inspection hours (VPIH) above the 24-month national average for the same mine type and industry grouping as follows:	1.5

The final weighted score must be greater than or equal to the average weighted score for all active mines of the same mine type and industry classification.

Industry: 5.3

This mine: 16.5

### ***30 CFR §104.3***

At least five S&S citations of the same standard that became final orders of the Commission during the most recent 12 months.

75.400 cited 16 times

**U. S. Department of Labor**

DEC 06 2007

Mine Safety and Health Administration  
100 Bluestone Road  
Mount Hope, WV 25880-1000



Mr. Gerald Swanson  
Superintendent  
Rivers Edge Mine  
Rivers Edge Mining Inc.  
600 Laidley Tower  
Charleston, WV 25324

Dear Mr. Swanson:

In accordance with Section 104(e) of the Federal Mine Safety and Health Act of 1977 (Mine Act) and 30 CFR Part 104, the Mine Safety and Health Administration (MSHA) has conducted a pattern of violation (POV) screening of compliance records for the Rivers Edge Mine, MSHA ID No. 46-08890 for the 24-months ending September 30, 2007. A POV screening is used to determine if Section 104(e) is applicable to a particular mine. If implemented, Section 104(e) requires all subsequent violations designated as Significant and Substantial (S&S) be issued as closure orders with all persons withdrawn from the affected area, except those necessary to correct the violation. An operator can be removed from Section 104(e) sanctions only after an inspection of the entire operation results in no significant and substantial violations.

This letter is your notification that a potential pattern of violations exists at the Rivers Edge Mine. This notification is based upon the initial screening and pattern criteria review, which were conducted in accordance with 30 CFR Parts 104.2 and 104.3 respectively. A Pattern of Violation Review report is enclosed as Attachment A. This report details the methodology utilized for the initial screening and pattern criteria review and summarizes your mine's performance relative to the criteria.

Prior to MSHA implementing Section 104(e) sanctions at the Rivers Edge Mine, you are provided the opportunity, not to exceed 20 days from the date of this notification, to take any or all of the following steps:

Review all documents upon which the pattern of violations evaluation is based and provide additional mitigating information.

Submit a written request for a conference with me (I shall hold any conference within 10 days of a request).

Provide a written plan to me indicating that you will institute a corrective action program to avoid repeated significant and substantial violations at the operation.

Please note that current regulation 30 C.F.R. Part 104.4(d) requires that you post a copy of this letter on the mine bulletin board until you are notified of MSHA's final determination with respect to your status pursuant to Section 104(e) of the Mine Act.

If you implement a corrective action program, MSHA will conduct a complete inspection of the Rivers Edge Mine. This inspection may start as soon as January 1, 2008. I will analyze the results of this complete inspection and other on-site enforcement activities conducted during the corrective action period to evaluate whether the Rivers Edge Mine has effectively reduced the occurrence of S&S violations during the review period. Therefore, I encourage you to implement a corrective action program as soon as practicable. If, during the review period, the Rivers Edge Mine achieves a reduction in the S&S violation frequency rate to 7.56 S&S violations per 100 inspection hours, the Rivers Edge Mine will not be issued a pattern of violations notice during this POV review cycle.<sup>1</sup>

If you implement a corrective action program which does not reduce the rate of S&S violations to the levels set forth in the paragraph above, pursuant to 30 C.F.R. Section 104.5(b), I will submit an evaluation report to the Administrator for Coal/Metal and Nonmetal Mine Safety and Health within 120 days from the date of this notification. If you choose not to implement a program to reduce S&S violations, I will submit the report of the evaluation to the Administrator within 60 days from the date of this notification.

In both cases, a copy of the report of evaluation will be provided to you and the representative of the miners, if applicable, 10 days before the report is sent to the

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<sup>1</sup> However, mines which have implemented a successful corrective action plan during the 90 day evaluation period will be considered along with all other mines for potential pattern of violation notices during the next and subsequent review cycles. In the case of the Rivers Edge Mine, it was issued 10.80 S&S violations per 100 inspection hours during the 24-month review period, in this review cycle -- 4.61 percentage points higher than the national average of 6.19 S&S violation per 100 inspection hours for underground bituminous coal mines. To ensure the Rivers Edge Mine is not exhibiting a potential Pattern of Violations when the next evaluation is conducted, the Rivers Edge Mine should have an S&S violation rate at or near the national rate. MSHA is required to conduct evaluations at least annually but can conduct the evaluations more frequently.

Administrator. Both you and the miners representative, where applicable, will have 10 days from the receipt of the report to submit written comments to the Administrator.

Within 30 days of receipt of my report to the Administrator, the Administrator will issue a decision as to whether the Rivers Edge Mine is to be issued a Notice of a Pattern of Violations. A copy of the decision will be provided to you and the representative of the miners if applicable.

If the Administrator decides to issue a Notice of Pattern of Violations, I will issue the Notice of Pattern of Violations to you. A copy of the notice will also be provided to the representative of miners, where applicable.

Following issuance of a Notice of Pattern of Violations, I will initiate appropriate inspection activities to ensure that the Rivers Edge Mine is inspected in its entirety during the following 90-day time frame and each succeeding inspection cycle until the Pattern of Violation order is terminated.

If upon any inspection after the issuance of the Pattern of Violations Notice an authorized representative finds any violation of a mandatory health or safety standard which could significantly and substantially contribute to the cause and effect of a safety or health hazard, the inspector shall issue an order requiring the withdrawal of all persons in the area affected by the violation except those persons listed in 104(c) of the Mine Act. All persons except as listed in 104(c) of the Mine Act shall also be prohibited from entering that area until the inspector determines that such violation has been abated.

Termination of a Pattern of Violations notice shall occur when an inspection of the entire operation results in no significant and substantial violations of the Mine Act.

You may request an inspection of the entire operation or portions of the operation at any time. No advance notice of the inspection shall be provided and MSHA will determine the scope of each inspection. Partial inspections covering the entire operation within the 90-day period will constitute an inspection of the entire operation for the purposes of termination of a Pattern of Violations Notice.

Please contact me at (304) 877-3900 if you have any questions regarding this matter. Additional mitigating information, requests for a conference and/or a written plan to institute a corrective action program should be sent to me at: Robert G. Hardman, District Manager for Coal District 4, 100 Bluestone Road, Mount Hope, WV 25880-1000.

Sincerely,

A handwritten signature in black ink that reads "Robert G. Hardman". The signature is written in a cursive style with a large initial "R".

Robert G. Hardman  
District Manager

Attachment

## ***Pattern of Violations Screening Criteria and Scoring Model***

Mine ID: 4608890  
 Mine Name: Rivers Edge Mine  
 Mine Type: Underground

	Numbers for Rivers Edge Mine Mine
At least ten S&S Citations/Orders, at mines classified as Surface and Facility, issued during the 24 month review period.	N/A
At least twenty S&S Citations/Orders, at mines classified as Underground, issued during the 24 month review period.	143
At least two "elevated enforcement" actions, [i.e. type action is 104 (b), 104 (d) or 107(a)], issued during the 24 month review period.	17
The ratio of Citation/Orders issued in the most recent 12 months of the review period to the number of Citations/Orders issued during the previous 12 months of the review is 70% or greater.	144%
The mines' rate of S&S Citations/Orders issued per 100 inspection hours during the 24 month review period is equal to or greater than 125% of the National rate of S&S Citations/Orders issued per 100 inspection hours for that mine type and classification.	143%
The number of S&S Citation/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification.	Industry: 7.74 This Mine: 11.87
Or	
The number of elevated enforcement Citations/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification.	Industry: 0.68 This Mine: 0
A minimum of two "elevated enforcement" final orders of the Commission, [i.e. type action is 104 (b), 104 (d) or 107(a)] during the 24 month review period.	8
At least one S&S 104 (d) issuance that became a final order of the Commission during the 24 month review period.	7
At least ten S&S Citations/Orders, at mines classified as Surface or Facility, that are final orders of the Commission during the 24 month review period.	N/A
At least twenty S&S Citations/Orders, at mines classified as Underground, that are final orders of the Commission during the 24 month review period.	121

## Pattern of Violations Screening Criteria and Scoring Model

Mine ID: 4608890  
Mine Name: Rivers Edge Mine  
Mine Type: Underground

Numbers for Rivers  
Edge Mine Mine

### Scores

a. The number of S&S citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period plus	9.1
b. the number of 104(b) (failure to abate) orders issued per 100 Inspection Hrs. for failure to abate an S&S issuance that that became final during the 24 month review period and multiplying by a factor of 5; plus	0
c. the number of 104(d) (unwarrantable failure) citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period and multiplying by a factor of 5; plus	2.6
d. the number of 107(a) (imminent danger) orders issued per 100 Inspection Hrs. during the 24 month review period and multiplying by a factor of 5.	0.4
Subtotal:	12.1

### Increases to the Subtotal

e. 5%-20% for operations with injury rates above the national average for the same mine type and industry grouping as follows:	0.6
f. 5%-20% for operations with injury severity rates (number of days lost X 200,000 divided by the total work hours reported) above the national average for the same mine type and industry grouping as follows:	0
g. 5%-20% for operations with citations and orders issued per 100 inspection hours (VPIH) above the 24-month national average for the same mine type and industry grouping as follows:	0.6

The final weighted score must be greater than or equal to the average weighted score for all active mines of the same mine type and industry classification.

Industry: 5.3

This mine: 13.4

### 30 CFR §104.3

At least five S&S citations of the same standard that became final orders of the Commission during the most recent 12 months.

75.400 cited 6 times

**U.S. Department of Labor**

Mine Safety and Health Administration  
3837 S. US Hwy. 25E  
Barbourville, Kentucky 40906-9206



December 6, 2007

Mr. David Partin, Superintendent  
RB #10  
Manalapan Mining Company, Inc.  
8174 East Highway 72  
Pathfork, KY 40863

Dear Mr. Partin:

In accordance with Section 104(e) of the Federal Mine Safety and Health Act of 1977 (Mine Act) and 30 CFR Part 104, the Mine Safety and Health Administration (MSHA) has conducted a pattern of violation (POV) screening of compliance records for the RB #10 Mine, MSHA ID No. 15-18267 for the 24-months ending September 30, 2007. A POV screening is used to determine if Section 104(e) is applicable to a particular mine. If implemented, Section 104(e) requires all subsequent violations designated as Significant and Substantial (S&S) be issued as closure orders with all persons withdrawn from the affected area except those necessary to correct the violation. An operator can be removed from Section 104(e) sanctions only after an inspection of the entire operation results in no significant and substantial violations.

This letter is your notification that a potential pattern of violations exists at the RB #10 Mine. This notification is based upon the initial screening and pattern criteria review, which were conducted in accordance with 30 CFR Parts 104.2 and 104.3 respectively. A Pattern of Violation Review report is enclosed as Attachment A. This report details the methodology utilized for the initial screening and pattern criteria review and summarizes your mine's performance relative to the criteria.

Prior to MSHA implementing Section 104(e) sanctions at the RB #10 mine, you are provided the opportunity, not to exceed 20 days from the date of this notification, to take any or all of the following steps:

Review all documents upon which the pattern of violations evaluation is based and provide additional mitigating information.

Submit a written request for a conference with me (I shall hold any conference within 10 days of a request).

Provide a written plan to me indicating that you will institute a corrective action program to avoid repeated significant and substantial violations at the operation.

Please note that current regulation 30 C.F.R. Part 104.4(d) requires that you post a copy of this letter on the mine bulletin board until you are notified of MSHA's final determination with respect to your status pursuant to Section 104(e) of the Mine Act.

If you implement a corrective action program, MSHA will conduct a complete inspection of the RB #10 mine. This inspection may start as soon as January 1, 2008. I will analyze the results of this complete inspection and other on-site enforcement activities conducted during the corrective action period to evaluate whether the RB #10 mine has effectively reduced the occurrence of S&S violations during the review period. Therefore, I encourage you to implement a corrective action program as soon as practicable. If, during the review period, the RB #10 mine achieves a reduction in the S&S violation frequency rate to 17.30 S&S violations per 100 inspection hours, the RB #10 mine will not be issued a pattern of violations notice during this POV review cycle.<sup>1</sup>

If you implement a corrective action program which does not reduce the rate of S&S violations to the levels set forth in the paragraph above, pursuant to 30 C.F.R. Section 104.5(b), I will submit an evaluation report to the Administrator for Coal Mine Safety and Health within 120 days from the date of this notification. If you choose not to implement a program to reduce S&S violations, I will submit the report of the evaluation to the Administrator within 60 days from the date of this notification.

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<sup>1</sup> However, mines which have implemented a successful corrective action plan during the 90 day evaluation period will be considered along with all other mines for potential pattern of violation notices during the next and subsequent review cycles. In the case of the RB #10 mine, it was issued 24.71 S&S violations per 100 inspection hours during the 24-month review period, in this review cycle 18.52 percentage points higher than the national average of 6.19 S&S violation per 100 inspection hours for underground mines. To ensure the RB #10 mine is not exhibiting a potential Pattern of Violations when the next evaluation is conducted, the RB #10 mine should have an S&S violation rate at or near the national rate. MSHA is required to conduct evaluations at least annually but can conduct the evaluations more frequently.

In both cases, a copy of the report of evaluation will be provided to you 10 days before the report is sent to the Administrator. You will have 10 days from the receipt of the report to submit written comments to the Administrator.

Within 30 days of receipt of my report to the Administrator, the Administrator will issue a decision as to whether the RB #10 mine is to be issued a Notice of a Pattern of Violations. A copy of the decision will be provided to you.

If the Administrator decides to issue a Notice of Pattern of Violations, I will issue the Notice of Pattern of Violations to you.

Following issuance of a Notice of Pattern of Violations, I will initiate appropriate inspection activities to ensure that the RB #10 mine is inspected in its entirety during the following 90-day time frame and each succeeding inspection cycle until the Pattern of Violation order is terminated.

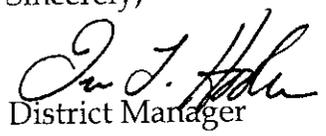
If upon any inspection after the issuance of the Pattern of Violations Notice an authorized representative finds any violation of a mandatory health or safety standard which could significantly and substantially contribute to the cause and effect of a safety or health hazard, the inspector shall issue an order requiring the withdrawal of all persons in the area affected by the violation except those persons listed in 104(c) of the Mine Act. All persons except as listed in 104(c) of the Mine Act shall also be prohibited from entering that area until the inspector determines that such violation has been abated.

Termination of a Pattern of Violations notice shall occur when an inspection of the entire operation results in no significant and substantial violations of the Mine Act.

You may request an inspection of the entire operation or portions of the operation at any time. No advance notice of the inspection shall be provided and MSHA will determine the scope of each inspection. Partial inspections covering the entire operation within the 90-day period will constitute an inspection of the entire operation for the purposes of termination of a Pattern of Violations Notice.

Please contact me at (606) 546-5123 to if you have any questions regarding this matter. Additional mitigating information, requests for a conference and/or a written plan to institute a corrective action program should be sent to me at: 3837 S US HWY 25 E, Barbourville, KY 40906.

Sincerely,

  
District Manager

Attachment

## ***Pattern of Violations Screening Criteria and Scoring Model***

Mine ID: 1518267  
 Mine Name: RB #10  
 Mine Type: Underground

	Numbers for RB #10 Mine
At least ten S&S Citations/Orders, at mines classified as Surface and Facility, issued during the 24 month review period.	N/A
At least twenty S&S Citations/Orders, at mines classified as Underground, issued during the 24 month review period.	144
At least two "elevated enforcement" actions, [i.e. type action is 104 (b), 104 (d) or 107(a)], issued during the 24 month review period.	10
The ratio of Citation/Orders issued in the most recent 12 months of the review period to the number of Citations/Orders issued during the previous 12 months of the review is 70% or greater.	125%
The mines' rate of S&S Citations/Orders issued per 100 inspection hours during the 24 month review period is equal to or greater than 125% of the National rate of S&S Citations/Orders issued per 100 inspection hours for that mine type and classification.	327%
The number of S&S Citation/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification.	Industry: 7.74 This Mine: 34.2
Or	
The number of elevated enforcement Citations/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification.	Industry: 0.68 This Mine: 0.5
A minimum of two "elevated enforcement" final orders of the Commission, [i.e. type action is 104 (b), 104 (d) or 107(a)] during the 24 month review period.	3
At least one S&S 104 (d) issuance that became a final order of the Commission during the 24 month review period.	2
At least ten S&S Citations/Orders, at mines classified as Surface or Facility, that are final orders of the Commission during the 24 month review period.	N/A
At least twenty S&S Citations/Orders, at mines classified as Underground, that are final orders of the Commission during the 24 month review period.	81

## ***Pattern of Violations Screening Criteria and Scoring Model***

Mine ID: 1518267  
 Mine Name: RB #10  
 Mine Type: Underground

Numbers for RB #10  
 Mine

### ***Scores***

a. The number of S&S citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period plus	13.9
b. the number of 104(b) (failure to abate) orders issued per 100 Inspection Hrs. for failure to abate an S&S issuance that that became final during the 24 month review period and multiplying by a factor of 5; plus	0.9
c. the number of 104(d) (unwarrantable failure) citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period and multiplying by a factor of 5; plus	1.7
d. the number of 107(a) (imminent danger) orders issued per 100 Inspection Hrs. during the 24 month review period and multiplying by a factor of 5.	0
Subtotal:	16.5

### ***Increases to the Subtotal***

e. 5%-20% for operations with injury rates above the national average for the same mine type and industry grouping as follows:	0.8
f. 5%-20% for operations with injury severity rates (number of days lost X 200,000 divided by the total work hours reported) above the national average for the same mine type and industry grouping as follows:	0
g. 5%-20% for operations with citations and orders issued per 100 inspection hours (VPIH) above the 24-month national average for the same mine type and industry grouping as follows:	1.6

Industry: 5.3

The final weighted score must be greater than or equal to the average weighted score for all active mines of the same mine type and industry classification.

This mine: 18.9

### ***30 CFR §104.3***

At least five S&S citations of the same standard that became final orders of the Commission during the most recent 12 months.

75.370(a)(1) cited 6 times

**U. S. Department of Labor**

Mine Safety and Health Administration  
100 Bluestone Road  
Mount Hope, WV 25880-1000



DEC 06 2007

Mr. Harold Osborne  
Superintendent  
Twilight Mtr Surface Mine  
Progress Coal  
HC 78, Box 1796  
Madison, WV 25130

Dear Mr. Osborne:

In accordance with Section 104(e) of the Federal Mine Safety and Health Act of 1977 (Mine Act) and 30 CFR Part 104, the Mine Safety and Health Administration (MSHA) has conducted a pattern of violation (POV) screening of compliance records for the Twilight Mtr Surface Mine, MSHA ID No. 46-08645 for the 24-months ending September 30, 2007. A POV screening is used to determine if Section 104(e) is applicable to a particular mine. If implemented, Section 104(e) requires all subsequent violations designated as Significant and Substantial (S&S) be issued as closure orders with all persons withdrawn from the affected area, except those necessary to correct the violation. An operator can be removed from Section 104(e) sanctions only after an inspection of the entire operation results in no significant and substantial violations.

This letter is your notification that a potential pattern of violations exists at the Twilight Mtr Surface Mine. This notification is based upon the initial screening and pattern criteria review, which were conducted in accordance with 30 CFR Parts 104.2 and 104.3 respectively. A Pattern of Violation Review report is enclosed as Attachment A. This report details the methodology utilized for the initial screening and pattern criteria review and summarizes your mine's performance relative to the criteria.

Prior to MSHA implementing Section 104(e) sanctions at the Twilight Mtr Surface Mine, you are provided the opportunity, not to exceed 20 days from the date of this notification, to take any or all of the following steps:

Review all documents upon which the pattern of violations evaluation is based and provide additional mitigating information.

Submit a written request for a conference with me (I shall hold any conference within 10 days of a request).

Provide a written plan to me indicating that you will institute a corrective action program to avoid repeated significant and substantial violations at the operation.

Please note that current regulation 30 C.F.R. Part 104.4(d) requires that you post a copy of this letter on the mine bulletin board until you are notified of MSHA's final determination with respect to your status pursuant to Section 104(e) of the Mine Act.

If you implement a corrective action program, MSHA will conduct a complete inspection of the Twilight Mtr Surface Mine. This inspection may start as soon as January 1, 2008. I will analyze the results of this complete inspection and other on-site enforcement activities conducted during the corrective action period to evaluate whether the Twilight Mtr Surface Mine has effectively reduced the occurrence of S&S violations during the review period. Therefore, I encourage you to implement a corrective action program as soon as practicable. If, during the review period, the Twilight Mtr Surface Mine achieves a reduction in the S&S violation frequency rate to 21.11 S&S violations per 100 inspection hours, the Twilight Mtr Surface Mine will not be issued a pattern of violations notice during this POV review cycle.<sup>1</sup>

If you implement a corrective action program which does not reduce the rate of S&S violations to the levels set forth in the paragraph above, pursuant to 30 C.F.R. Section 104.5(b), I will submit an evaluation report to the Administrator for Coal/Metal and Nonmetal Mine Safety and Health within 120 days from the date of this notification. If you choose not to implement a program to reduce S&S violations, I will submit the report of the evaluation to the Administrator within 60 days from the date of this notification.

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<sup>1</sup> However, mines which have implemented a successful corrective action plan during the 90 day evaluation period will be considered along with all other mines for potential pattern of violation notices during the next and subsequent review cycles. In the case of the Twilight Mtr Surface Mine, it was issued 30.16 S&S violations per 100 inspection hours during the 24-month review period, in this review cycle --24.98 percentage points higher than the national average of 5.18 S&S violation per 100 inspection hours for bituminous coal surface mines. To ensure the Twilight Mtr Surface Mine is not exhibiting a potential Pattern of Violations when the next evaluation is conducted, the Twilight Mtr Surface Mine should have an S&S violation rate at or near the national rate. MSHA is required to conduct evaluations at least annually but can conduct the evaluations more frequently.

In both cases, a copy of the report of evaluation will be provided to you and the representative of the miners, if applicable, 10 days before the report is sent to the Administrator. Both you and the miners representative, where applicable, will have 10 days from the receipt of the report to submit written comments to the Administrator.

Within 30 days of receipt of my report to the Administrator, the Administrator will issue a decision as to whether the Twilight Mtr Surface Mine is to be issued a Notice of a Pattern of Violations. A copy of the decision will be provided to you and the representative of the miners if applicable.

If the Administrator decides to issue a Notice of Pattern of Violations, I will issue the Notice of Pattern of Violations to you. A copy of the notice will also be provided to the representative of miners, where applicable .

Following issuance of a Notice of Pattern of Violations, I will initiate appropriate inspection activities to ensure that the Twilight Mtr Surface Mine is inspected in its entirety during the following 90-day time frame and each succeeding inspection cycle until the Pattern of Violation order is terminated.

If upon any inspection after the issuance of the Pattern of Violations Notice an authorized representative finds any violation of a mandatory health or safety standard which could significantly and substantially contribute to the cause and effect of a safety or health hazard, the inspector shall issue an order requiring the withdrawal of all persons in the area affected by the violation except those persons listed in 104(c) of the Mine Act. All persons except as listed in 104(c) of the Mine Act shall also be prohibited from entering that area until the inspector determines that such violation has been abated.

Termination of a Pattern of Violations notice shall occur when an inspection of the entire operation results in no significant and substantial violations of the Mine Act.

You may request an inspection of the entire operation or portions of the operation at any time. No advance notice of the inspection shall be provided and MSHA will determine the scope of each inspection. Partial inspections covering the entire operation within the 90-day period will constitute an inspection of the entire operation for the purposes of termination of a Pattern of Violations Notice.

Please contact me at (304) 877-3900 if you have any questions regarding this matter.

Additional mitigating information, requests for a conference and/or a written plan to institute a corrective action program should be sent to me at: Robert G. Hardman, District Manager for Coal District 4, 100 Bluestone Road, Mount Hope, WV 25880-1000.

Sincerely,

A handwritten signature in cursive script that reads "Robert G. Hardman". The signature is written in dark ink and is positioned above the printed name.

Robert G. Hardman  
District Manager

Attachment

## **Pattern of Violations Screening Criteria and Scoring Model**

Mine ID: 4608645  
 Mine Name: Twilight Mtr Surface Mine  
 Mine Type: Surface

Numbers for Twilight  
 Mtr Surface Mine  
 Mine

At least ten S&S Citations/Orders, at mines classified as Surface and Facility, issued during the 24 month review period. 102

At least twenty S&S Citations/Orders, at mines classified as Underground, issued during the 24 month review period. N/A

At least two "elevated enforcement" actions, [i.e. type action is 104 (b), 104 (d) or 107(a)], issued during the 24 month review period. 12

The ratio of Citation/Orders issued in the most recent 12 months of the review period to the number of Citations/Orders issued during the previous 12 months of the review is 70% or greater. 169%

The mines' rate of S&S Citations/Orders issued per 100 inspection hours during the 24 month review period is equal to or greater than 125% of the National rate of S&S Citations/Orders issued per 100 inspection hours for that mine type and classification. 495%

The number of S&S Citation/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification. Industry: 7.24  
This Mine: 45.45

Or

The number of elevated enforcement Citations/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification. Industry: 0.76  
This Mine: 1.82

A minimum of two "elevated enforcement" final orders of the Commission, [i.e. type action is 104 (b), 104 (d) or 107(a)] during the 24 month review period. 8

At least one S&S 104 (d) issuance that became a final order of the Commission during the 24 month review period. 8

At least ten S&S Citations/Orders, at mines classified as Surface or Facility, that are final orders of the Commission during the 24 month review period. 78

At least twenty S&S Citations/Orders, at mines classified as Underground, that are final orders of the Commission during the 24 month review period. N/A

## Pattern of Violations Screening Criteria and Scoring Model

Mine ID: 4608645  
Mine Name: Twilight Mtr Surface Mine  
Mine Type: Surface

Numbers for Twilight  
Mtr Surface Mine  
Mine

### Scores

a. The number of S&S citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period plus	23.1
b. the number of 104(b) (failure to abate) orders issued per 100 Inspection Hrs. for failure to abate an S&S issuance that that became final during the 24 month review period and multiplying by a factor of 5; plus	0
c. the number of 104(d) (unwarrantable failure) citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period and multiplying by a factor of 5; plus	11.8
d. the number of 107(a) (imminent danger) orders issued per 100 Inspection Hrs. during the 24 month review period and multiplying by a factor of 5.	0
Subtotal:	34.9

### Increases to the Subtotal

e. 5%-20% for operations with injury rates above the national average for the same mine type and industry grouping as follows:	0
f. 5%-20% for operations with injury severity rates (number of days lost X 200,000 divided by the total work hours reported) above the national average for the same mine type and industry grouping as follows:	0
g. 5%-20% for operations with citations and orders issued per 100 inspection hours (VPIH) above the 24-month national average for the same mine type and industry grouping as follows:	7

The final weighted score must be greater than or equal to the average weighted score for all active mines of the same mine type and industry classification.

Industry: 5.3

This mine: 41.9

### 30 CFR §104.3

At least five S&S citations of the same standard that became final orders of the Commission during the most recent 12 months.

77.404(a) cited 10 times

**U. S. Department of Labor**

Mine Safety and Health Administration  
100 Bluestone Road  
Mount Hope, WV 25880-1000



DEC 06 2007

Mr. Rick Hodge  
Superintendent  
Upper Big Branch Mine-South  
Performance Coal Company  
P.O. Box 69  
Naoma, WV 25140

Dear Mr. Hodge:

In accordance with Section 104(e) of the Federal Mine Safety and Health Act of 1977 (Mine Act) and 30 CFR Part 104, the Mine Safety and Health Administration (MSHA) has conducted a pattern of violation (POV) screening of compliance records for the Upper Big Branch Mine-South, MSHA ID No. 46-08436 for the 24-months ending September 30, 2007. A POV screening is used to determine if Section 104(e) is applicable to a particular mine. If implemented, Section 104(e) requires all subsequent violations designated as Significant and Substantial (S&S) be issued as closure orders with all persons withdrawn from the affected area, except those necessary to correct the violation. An operator can be removed from Section 104(e) sanctions only after an inspection of the entire operation results in no significant and substantial violations.

This letter is your notification that a potential pattern of violations exists at the Upper Big Branch Mine-South. This notification is based upon the initial screening and pattern criteria review, which were conducted in accordance with 30 CFR Parts 104.2 and 104.3 respectively. A Pattern of Violation Review report is enclosed as Attachment A. This report details the methodology utilized for the initial screening and pattern criteria review and summarizes your mine's performance relative to the criteria.

Prior to MSHA implementing Section 104(e) sanctions at the Upper Big Branch Mine-South, you are provided the opportunity, not to exceed 20 days from the date of this notification, to take any or all of the following steps:

Review all documents upon which the pattern of violations evaluation is based and provide additional mitigating information.

Submit a written request for a conference with me (I shall hold any conference within 10 days of a request).

Provide a written plan to me indicating that you will institute a corrective action program to avoid repeated significant and substantial violations at the operation.

Please note that current regulation 30 C.F.R. Part 104.4(d) requires that you post a copy of this letter on the mine bulletin board until you are notified of MSHA's final determination with respect to your status pursuant to Section 104(e) of the Mine Act.

If you implement a corrective action program, MSHA will conduct a complete inspection of the Upper Big Branch Mine-South. This inspection may start as soon as January 1, 2008. I will analyze the results of this complete inspection and other on-site enforcement activities conducted during the corrective action period to evaluate whether the Upper Big Branch Mine-South has effectively reduced the occurrence of S&S violations during the review period. Therefore, I encourage you to implement a corrective action program as soon as practicable. If, during the review period, the Upper Big Branch Mine-South achieves a reduction in the S&S violation frequency rate to 8.10 S&S violations per 100 inspection hours, the Upper Big Branch Mine-South mine will not be issued a pattern of violations notice during this POV review cycle.<sup>1</sup>

If you implement a corrective action program which does not reduce the rate of S&S violations to the levels set forth in the paragraph above, pursuant to 30 C.F.R. Section 104.5(b), I will submit an evaluation report to the Administrator for Coal/Metal and Nonmetal Mine Safety and Health within 120 days from the date of this notification. If you choose not to implement a program to reduce S&S violations, I will submit the report of the evaluation to the Administrator within 60 days from the date of this notification.

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<sup>1</sup> However, mines which have implemented a successful corrective action plan during the 90 day evaluation period will be considered along with all other mines for potential pattern of violation notices during the next and subsequent review cycles. In the case of the Upper Big Branch Mine-South, it was issued 11.57 S&S violations per 100 inspection hours during the 24-month review period, in this review cycle -- 5.38 percentage points higher than the national average of 6.19 S&S violation per 100 inspection hours for underground bituminous coal mines. To ensure the Upper Big Branch Mine-South is not exhibiting a potential Pattern of Violations when the next evaluation is conducted, the Upper Big Branch Mine-South should have an S&S violation rate at or near the national rate. MSHA is required to conduct evaluations at least annually but can conduct the evaluations more frequently.

In both cases, a copy of the report of evaluation will be provided to you and the representative of the miners, if applicable, 10 days before the report is sent to the Administrator. Both you and the miners representative, where applicable, will have 10 days from the receipt of the report to submit written comments to the Administrator.

Within 30 days of receipt of my report to the Administrator, the Administrator will issue a decision as to whether the Upper Big Branch Mine-South is to be issued a Notice of a Pattern of Violations. A copy of the decision will be provided to you and the representative of the miners if applicable.

If the Administrator decides to issue a Notice of Pattern of Violations, I will issue the Notice of Pattern of Violations to you. A copy of the notice will also be provided to the representative of miners, where applicable.

Following issuance of a Notice of Pattern of Violations, I will initiate appropriate inspection activities to ensure that the Upper Big Branch Mine-South is inspected in its entirety during the following 90-day time frame and each succeeding inspection cycle until the Pattern of Violation order is terminated.

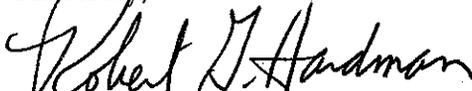
If upon any inspection after the issuance of the Pattern of Violations Notice an authorized representative finds any violation of a mandatory health or safety standard which could significantly and substantially contribute to the cause and effect of a safety or health hazard, the inspector shall issue an order requiring the withdrawal of all persons in the area affected by the violation except those persons listed in 104(c) of the Mine Act. All persons except as listed in 104(c) of the Mine Act shall also be prohibited from entering that area until the inspector determines that such violation has been abated.

Termination of a Pattern of Violations notice shall occur when an inspection of the entire operation results in no significant and substantial violations of the Mine Act.

You may request an inspection of the entire operation or portions of the operation at any time. No advance notice of the inspection shall be provided and MSHA will determine the scope of each inspection. Partial inspections covering the entire operation within the 90-day period will constitute an inspection of the entire operation for the purposes of termination of a Pattern of Violations Notice.

Please contact me at (304) 877-3900 if you have any questions regarding this matter. Additional mitigating information, requests for a conference and/or a written plan to institute a corrective action program should be sent to me at: Robert G. Hardman, District Manager for Coal District 4, 100 Bluestone Road, Mount Hope, WV 25880-1000.

Sincerely,

A handwritten signature in black ink that reads "Robert G. Hardman". The signature is written in a cursive style with a large, stylized initial "R".

Robert G. Hardman  
District Manager

Attachment

## ***Pattern of Violations Screening Criteria and Scoring Model***

Mine ID: 4608436  
 Mine Name: Upper Big Branch Mine-South  
 Mine Type: Underground

Numbers for Upper  
 Big Branch Mine-  
 South Mine

At least ten S&S Citations/Orders, at mines classified as Surface and Facility, issued during the 24 month review period.	N/A
At least twenty S&S Citations/Orders, at mines classified as Underground, issued during the 24 month review period.	204
At least two "elevated enforcement" actions, [i.e. type action is 104 (b), 104 (d) or 107(a)], issued during the 24 month review period.	26
The ratio of Citation/Orders issued in the most recent 12 months of the review period to the number of Citations/Orders issued during the previous 12 months of the review is 70% or greater.	122%
The mines' rate of S&S Citations/Orders issued per 100 inspection hours during the 24 month review period is equal to or greater than 125% of the National rate of S&S Citations/Orders issued per 100 inspection hours for that mine type and classification.	153%
The number of S&S Citation/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification.	Industry: 7.74 This Mine: 11.26
Or	
The number of elevated enforcement Citations/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification.	Industry: 0.68 This Mine: 0
A minimum of two "elevated enforcement" final orders of the Commission, [i.e. type action is 104 (b), 104 (d) or 107(a)] during the 24 month review period.	9
At least one S&S 104 (d) issuance that became a final order of the Commission during the 24 month review period.	3
At least ten S&S Citations/Orders, at mines classified as Surface or Facility, that are final orders of the Commission during the 24 month review period.	N/A
At least twenty S&S Citations/Orders, at mines classified as Underground, that are final orders of the Commission during the 24 month review period.	100

**Pattern of Violations Screening Criteria and Scoring Model**

Mine ID: 4608436  
 Mine Name: Upper Big Branch Mine-South  
 Mine Type: Underground

Numbers for Upper  
 Big Branch Mine-  
 South Mine

**Scores**

a. The number of S&S citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period plus	5.7
b. the number of 104(b) (failure to abate) orders issued per 100 Inspection Hrs. for failure to abate an S&S issuance that that became final during the 24 month review period and multiplying by a factor of 5; plus	1.1
c. the number of 104(d) (unwarrantable failure) citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period and multiplying by a factor of 5; plus	0.9
d. the number of 107(a) (imminent danger) orders issued per 100 Inspection Hrs. during the 24 month review period and multiplying by a factor of 5.	0.6
Subtotal:	8.3

**Increases to the Subtotal**

e. 5%-20% for operations with injury rates above the national average for the same mine type and industry grouping as follows:	0
f. 5%-20% for operations with injury severity rates (number of days lost X 200,000 divided by the total work hours reported) above the national average for the same mine type and industry grouping as follows:	0
g. 5%-20% for operations with citations and orders issued per 100 inspection hours (VPIH) above the 24-month national average for the same mine type and industry grouping as follows:	0

The final weighted score must be greater than or equal to the average weighted score for all active mines of the same mine type and industry classification.

Industry: 5.3  
 This mine: 8.2

**30 CFR §104.3**

At least five S&S citations of the same standard that became final orders of the Commission during the most recent 12 months. 75.400 cited 5 times

12/6/07 letter completed 12/6/07 delivered

**U.S. Department of Labor**

Mine Safety and Health Administration  
3837 S. US Hwy. 25E  
Barbourville, Kentucky 40906-9206



December 6, 2007

Johnny Smiddy, Superintendent  
Mine No. 11  
National Coal Corporation  
241 Myers Street  
Jacksboro, TN 37757

Dear Mr. Smiddy:

In accordance with Section 104(e) of the Federal Mine Safety and Health Act of 1977 (Mine Act) and 30 CFR Part 104, the Mine Safety and Health Administration (MSHA) has conducted a pattern of violation (POV) screening of compliance records for the No. 11 Mine, MSHA ID No. 4003237 for the 24-months ending September 30, 2007. A POV screening is used to determine if Section 104(e) is applicable to a particular mine. If implemented, Section 104(e) requires all subsequent violations designated as Significant and Substantial (S&S) be issued as closure orders with all persons withdrawn from the affected area except those necessary to correct the violation. An operator can be removed from Section 104(e) sanctions only after an inspection of the entire operation results in no significant and substantial violations.

This letter is your notification that a potential pattern of violations exists at the No. 11 Mine. This notification is based upon the initial screening and pattern criteria review, which were conducted in accordance with 30 CFR Parts 104.2 and 104.3 respectively. A Pattern of Violation Review report is enclosed as Attachment A. This report details the methodology utilized for the initial screening and pattern criteria review and summarizes your mine's performance relative to the criteria.

Prior to MSHA implementing Section 104(e) sanctions at the No. 11 Mine, you are provided the opportunity, not to exceed 20 days from the date of this notification, to take any or all of the following steps:

Review all documents upon which the pattern of violations evaluation is based and provide additional mitigating information.

Submit a written request for a conference with me (I shall hold any conference within 10 days of a request).

Provide a written plan to me indicating that you will institute a corrective action program to avoid repeated significant and substantial violations at the operation.

Please note that current regulation 30 C.F.R. Part 104.4(d) requires that you post a copy of this letter on the mine bulletin board until you are notified of MSHA's final determination with respect to your status pursuant to Section 104(e) of the Mine Act.

If you implement a corrective action program, MSHA will conduct a complete inspection of the No. 11 Mine. This inspection may start as soon as January 1, 2008. I will analyze the results of this complete inspection and other on-site enforcement activities conducted during the corrective action period to evaluate whether the No. 11 Mine has effectively reduced the occurrence of S&S violations during the review period. Therefore, I encourage you to implement a corrective action program as soon as practicable. If, during the review period, the No. 11 Mine achieves a reduction in the S&S violation frequency rate to 7.13 S&S violations per 100 inspection hours, the No. 11 Mine will not be issued a pattern of violations notice during this POV review cycle.<sup>1</sup>

If you implement a corrective action program which does not reduce the rate of S&S violations to the levels set forth in the paragraph above, pursuant to 30 C.F.R. Section 104.5(b), I will submit an evaluation report to the Administrator for Coal Mine Safety and Health within 120 days from the date of this notification. If you choose not to implement a program to reduce S&S violations, I will submit the report of the evaluation to the Administrator within 60 days from the date of this notification.

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<sup>1</sup> However, mines which have implemented a successful corrective action plan during the 90 day evaluation period will be considered along with all other mines for potential pattern of violation notices during the next and subsequent review cycles. In the case of the No. 11 Mine, it was issued 10.19 S&S violations per 100 inspection hours during the 24-month review period, in this review cycle 4.00 percentage points higher than the national average of 6.19 S&S violation per 100 inspection hours for underground mines. To ensure the No. 11 Mine is not exhibiting a potential Pattern of Violations when the next evaluation is conducted, the No. 11 Mine should have an S&S violation rate at or near the national rate. MSHA is required to conduct evaluations at least annually but can conduct the evaluations more frequently.

In both cases, a copy of the report of evaluation will be provided to you 10 days before the report is sent to the Administrator. You will have 10 days from the receipt of the report to submit written comments to the Administrator.

Within 30 days of receipt of my report to the Administrator, the Administrator will issue a decision as to whether the No. 11 Mine is to be issued a Notice of a Pattern of Violations. A copy of the decision will be provided to you.

If the Administrator decides to issue a Notice of Pattern of Violations, I will issue the Notice of Pattern of Violations to you.

Following issuance of a Notice of Pattern of Violations, I will initiate appropriate inspection activities to ensure that the No. 11 Mine is inspected in its entirety during the following 90-day time frame and each succeeding inspection cycle until the Pattern of Violation order is terminated.

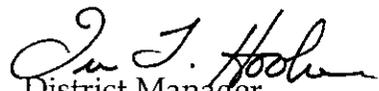
If upon any inspection after the issuance of the Pattern of Violations Notice an authorized representative finds any violation of a mandatory health or safety standard which could significantly and substantially contribute to the cause and effect of a safety or health hazard, the inspector shall issue an order requiring the withdrawal of all persons in the area affected by the violation except those persons listed in 104(c) of the Mine Act. All persons except as listed in 104(c) of the Mine Act shall also be prohibited from entering that area until the inspector determines that such violation has been abated.

Termination of a Pattern of Violations notice shall occur when an inspection of the entire operation results in no significant and substantial violations of the Mine Act.

You may request an inspection of the entire operation or portions of the operation at any time. No advance notice of the inspection shall be provided and MSHA will determine the scope of each inspection. Partial inspections covering the entire operation within the 90-day period will constitute an inspection of the entire operation for the purposes of termination of a Pattern of Violations Notice.

Please contact me at (606) 546-5123 to if you have any questions regarding this matter. Additional mitigating information, requests for a conference and/or a written plan to institute a corrective action program should be sent to me at: 3837 S US HWY 25 E, Barbourville, KY 40906.

Sincerely,

  
District Manager

Attachment

## ***Pattern of Violations Screening Criteria and Scoring Model***

Mine ID: 4003237  
 Mine Name: Mine No. 11  
 Mine Type: Underground

Numbers for Mine No.  
11 Mine

At least ten S&S Citations/Orders, at mines classified as Surface and Facility, issued during the 24 month review period.	N/A
At least twenty S&S Citations/Orders, at mines classified as Underground, issued during the 24 month review period.	104
At least two "elevated enforcement" actions, [i.e. type action is 104 (b), 104 (d) or 107(a)], issued during the 24 month review period.	2
The ratio of Citation/Orders issued in the most recent 12 months of the review period to the number of Citations/Orders issued during the previous 12 months of the review is 70% or greater.	102%
The mines' rate of S&S Citations/Orders issued per 100 inspection hours during the 24 month review period is equal to or greater than 125% of the National rate of S&S Citations/Orders issued per 100 inspection hours for that mine type and classification.	135%
The number of S&S Citation/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification.	Industry: 7.74 This Mine: 12.27
Or	
The number of elevated enforcement Citations/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification.	Industry: 0.68 This Mine: 0.36
A minimum of two "elevated enforcement" final orders of the Commission, [i.e. type action is 104 (b), 104 (d) or 107(a)] during the 24 month review period.	2
At least one S&S 104 (d) issuance that became a final order of the Commission during the 24 month review period.	1
At least ten S&S Citations/Orders, at mines classified as Surface or Facility, that are final orders of the Commission during the 24 month review period.	N/A
At least twenty S&S Citations/Orders, at mines classified as Underground, that are final orders of the Commission during the 24 month review period.	77

## ***Pattern of Violations Screening Criteria and Scoring Model***

Mine ID: 4003237  
Mine Name: Mine No. 11  
Mine Type: Underground

Numbers for Mine No.  
11 Mine

### **Scores**

a. The number of S&S citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period plus	7.5
b. the number of 104(b) (failure to abate) orders issued per 100 Inspection Hrs. for failure to abate an S&S issuance that that became final during the 24 month review period and multiplying by a factor of 5; plus	0
c. the number of 104(d) (unwarrantable failure) citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period and multiplying by a factor of 5; plus	0.5
d. the number of 107(a) (imminent danger) orders issued per 100 Inspection Hrs. during the 24 month review period and multiplying by a factor of 5.	0.5
Subtotal:	8.5

### ***Increases to the Subtotal***

e. 5%-20% for operations with injury rates above the national average for the same mine type and industry grouping as follows:	1.7
f. 5%-20% for operations with injury severity rates (number of days lost X 200,000 divided by the total work hours reported) above the national average for the same mine type and industry grouping as follows:	0
g. 5%-20% for operations with citations and orders issued per 100 inspection hours (VPIH) above the 24-month national average for the same mine type and industry grouping as follows:	0.4

The final weighted score must be greater than or equal to the average weighted score for all active mines of the same mine type and industry classification.

Industry: 5.3

This mine: 10.7

### ***30 CFR §104.3***

At least five S&S citations of the same standard that became final orders of the Commission during the most recent 12 months.

75.517 cited 7 times



December 6, 2007

Mr. Richard Harris  
General Superintendent  
McElroy Mine  
McElroy Coal Company  
RD 1  
Glen Easton, WV 26039

Dear Mr. Harris:

In accordance with Section 104(e) of the Federal Mine Safety and Health Act of 1977 (Mine Act) and 30 CFR Part 104, the Mine Safety and Health Administration (MSHA) has conducted a pattern of violation (POV) screening of compliance records for the McElroy Mine, MSHA I.D. No. 46-01437 for the 24-months ending September 30, 2007. A POV screening is used to determine if Section 104(e) is applicable to a particular mine. If implemented, Section 104(e) requires all subsequent violations designated as Significant and Substantial (S&S) be issued as closure orders with all persons withdrawn from the affected area except those necessary to correct the violation. An operator can be removed from Section 104(e) sanctions only after an inspection of the entire operation results in no significant and substantial violations.

This letter is your notification that a potential pattern of violations exists at the McElroy Mine. This notification is based upon the initial screening and pattern criteria review, which were conducted in accordance with 30 CFR Parts 104.2 and 104.3 respectively. A Pattern of Violation Review report is enclosed as Attachment A. This report details the methodology utilized for the initial screening and pattern criteria review and summarizes your mine's performance relative to the criteria.

Prior to MSHA implementing Section 104(e) sanctions at the McElroy Mine, you are provided the opportunity, not to exceed 20 days from the date of this notification, to take any or all of the following steps:

Review all documents upon which the pattern of violations evaluation is based and provide additional mitigating information.

Submit a written request for a conference with me (I shall hold any conference within 10 days of a request).

Provide a written plan to me indicating that you will institute a corrective action program to avoid repeated significant and substantial violations at the operation.

Please note that current regulation 30 C.F.R. Part 104.4(d) requires that you post a copy of this letter on the mine bulletin board until you are notified of MSHA's final determination with respect to your status pursuant to Section 104(e) of the Mine Act.

If you implement a corrective action program, MSHA will conduct a complete inspection of the McElroy Mine. This inspection may start as soon as January 1, 2008. I will analyze the results of this complete inspection and other on-site enforcement activities conducted during the corrective action period to evaluate whether the McElroy Mine has effectively reduced the occurrence of S&S violations during the review period. Therefore, I encourage you to implement a corrective action program as soon as practicable. If, during the review period, the McElroy Mine achieves a reduction in the S&S violation frequency rate to 7.74 S&S violations per 100 inspection hours, the McElroy Mine will not be issued a pattern of violations notice during this POV review cycle.<sup>1</sup>

If you implement a corrective action program which does not reduce the rate of S&S violations to the levels set forth in the paragraph above, pursuant to 30 C.F.R. Section 104.5(b), I will submit an evaluation report to the Administrator for Coal Mine Safety and Health within 120 days from the date of this notification. If you choose not to implement a program to reduce S&S violations, I will submit the report of the evaluation to the Administrator within 60 days from the date of this notification.

In both cases, a copy of the report of evaluation will be provided to you the representative of the miners 10 days before the report is sent to the Administrator. Both you and the representative of the miners will have 10 days from the receipt of the report to submit written comments to the Administrator.

Within 30 days of receipt of my report to the Administrator, the Administrator will issue a decision as to whether the McElroy Mine is to be issued a Notice of a Pattern of Violations. A copy of the decision will be provided to you and the representative of the miners.

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<sup>1</sup> However, mines which have implemented a successful corrective action plan during the 90 day evaluation period will be considered along with all other mines for potential pattern of violation notices during the next and subsequent review cycles. In the case of the McElroy Mine, it was issued 9.97 S&S violations per 100 inspection hours during the 24-month review period in this review cycle -2.23 percentage points higher than the national average of 7.74 S&S violations per 100 inspection hours for underground bituminous coal mines. To ensure the McElroy Mine is not exhibiting a potential Pattern of Violations when the next evaluation is conducted, the McElroy Mine should have an S&S violation rate at or near the national rate. MSHA is required to conduct evaluations at least annually but can conduct the evaluations more frequently.

If the Administrator decides to issue a Notice of Pattern of Violations, I will issue the Notice of Pattern of Violations to you. A copy of the notice will also be provided to the representative of miners.

Following issuance of a Notice of Pattern of Violations, I will initiate appropriate inspection activities to ensure that the McElroy Mine is inspected in its entirety during the following 90-day time frame and each succeeding inspection cycle until the Pattern of Violation order is terminated.

If upon any inspection after the issuance of the Pattern of Violations Notice an authorized representative finds any violation of a mandatory health or safety standard which could significantly and substantially contribute to the cause and effect of a safety or health hazard, the inspector shall issue an order requiring the withdrawal of all persons in the area affected by the violation except those persons listed in 104(c) of the Mine Act. All persons except as listed in 104(c) of the Mine Act shall also be prohibited from entering that area until the inspector determines that such violation has been abated.

Termination of a Pattern of Violations notice shall occur when an inspection of the entire operation results in no significant and substantial violations of the Mine Act.

You may request an inspection of the entire operation or portions of the operation at any time. No advance notice of the inspection shall be provided and MSHA will determine the scope of each inspection. Partial inspections covering the entire operation within the 90-day period will constitute an inspection of the entire operation for the purposes of termination of a Pattern of Violations Notice.

Please contact me at (304) 225-6801 to if you have any questions regarding this matter. Additional mitigating information, requests for a conference and/or a written plan to institute a corrective action program should be sent to me at: [cornett.bob@dol.gov](mailto:cornett.bob@dol.gov).

Sincerely,



Bob E. Cornett  
District Manager

Attachment

## ***Pattern of Violations Screening Criteria and Scoring Model***

Mine ID: 4601437  
 Mine Name: McElroy Mine  
 Mine Type: Underground

	Numbers for McElroy Mine Mine
At least ten S&S Citations/Orders, at mines classified as Surface and Facility, issued during the 24 month review period.	N/A
At least twenty S&S Citations/Orders, at mines classified as Underground, issued during the 24 month review period.	783
At least two “elevated enforcement” actions, [i.e. type action is 104 (b), 104 (d) or 107(a)], issued during the 24 month review period.	71
The ratio of S&S Citation/Orders issued in the most recent 12 months of the review period to the number of S&S Citations/Orders issued during the previous 12 months of the review is 70% or greater.	98%
The mines’ rate of S&S Citations/Orders issued per 100 inspection hours during the 24 month review period is equal to or greater than 125% of the National rate of S&S Citations/Orders issued per 100 inspection hours for that mine type and classification.	130%
The number of S&S Citation/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification.	Industry: 7.74 This Mine: 9.97
Or	
The number of elevated enforcement Citations/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification.	Industry: 0.68 This Mine: 0.9
A minimum of two “elevated enforcement” final orders of the Commission, [i.e. type action is 104 (b), 104 (d) or 107(a)] during the 24 month review period.	24
At least one S&S 104 (d) issuance that became a final order of the Commission during the 24 month review period.	18
At least ten S&S Citations/Orders, at mines classified as Surface or Facility, that are final orders of the Commission during the 24 month review period.	N/A
At least twenty S&S Citations/Orders, at mines classified as Underground, that are final orders of the Commission during the 24 month review period.	327

**Pattern of Violations Screening Criteria and Scoring Model**

Mine ID: 4601437  
 Mine Name: McElroy Mine  
 Mine Type: Underground

Numbers for McElroy  
 Mine Mine

**Scores**

a. The number of S&S citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period plus	4.1
b. the number of 104(b) (failure to abate) orders issued per 100 Inspection Hrs. for failure to abate an S&S issuance that that became final during the 24 month review period and multiplying by a factor of 5; plus	0.2
c. the number of 104(d) (unwarrantable failure) citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period and multiplying by a factor of 5; plus	1.1
d. the number of 107(a) (imminent danger) orders issued per 100 Inspection Hrs. during the 24 month review period and multiplying by a factor of 5.	0.2
Subtotal:	5.6

**Increases to the Subtotal**

e. 5%-20% for operations with injury rates above the national average for the same mine type and industry grouping as follows:	0
f. 5%-20% for operations with injury severity rates (number of days lost X 200,000 divided by the total work hours reported) above the national average for the same mine type and industry grouping as follows:	0
g. 5%-20% for operations with citations and orders issued per 100 inspection hours (VPIH) above the 24-month national average for the same mine type and industry grouping as follows:	0

The final weighted score must be greater than or equal to the average weighted score for all active mines of the same mine type and industry classification.	Industry: 5.3
	This mine: 5.6

**30 CFR §104.3**

At least five S&S citations of the same standard that became final orders of the Commission during the most recent 12 months.	75.400 cited 22 times
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**U. S. Department of Labor**

DEC 06 2007

Mine Safety and Health Administration  
100 Bluestone Road  
Mount Hope, WV 25880-1000



Mr. Chris Blanchard  
President  
Brushy Eagle  
Marfork Coal Company, Inc.  
Packsville Road  
Whitesville, WV 25209

Dear Mr. Blanchard:

In accordance with Section 104(e) of the Federal Mine Safety and Health Act of 1977 (Mine Act) and 30 CFR Part 104, the Mine Safety and Health Administration (MSHA) has conducted a pattern of violation (POV) screening of compliance records for the Brushy Eagle Mine, MSHA ID No. 46-08315 for the 24-months ending September 30, 2007. A POV screening is used to determine if Section 104(e) is applicable to a particular mine. If implemented, Section 104(e) requires all subsequent violations designated as Significant and Substantial (S&S) be issued as closure orders with all persons withdrawn from the affected area except those necessary to correct the violation. An operator can be removed from Section 104(e) sanctions only after an inspection of the entire operation results in no significant and substantial violations.

This letter is your notification that a potential pattern of violations exists at the Brushy Eagle Mine. This notification is based upon the initial screening and pattern criteria review, which were conducted in accordance with 30 CFR Parts 104.2 and 104.3 respectively. A Pattern of Violation Review report is enclosed as Attachment A. This report details the methodology utilized for the initial screening and pattern criteria review and summarizes your mine's performance relative to the criteria.

Prior to MSHA implementing Section 104(e) sanctions at the Brushy Eagle Mine, you are provided the opportunity, not to exceed 20 days from the date of this notification, to take any or all of the following steps:

Review all documents upon which the pattern of violations evaluation is based and provide additional mitigating information.

Submit a written request for a conference with me (I shall hold any conference within 10 days of a request).

Provide a written plan to me indicating that you will institute a corrective action program to avoid repeated significant and substantial violations at the operation.

Please note that current regulation 30 C.F.R. Part 104.4(d) requires that you post a copy of this letter on the mine bulletin board until you are notified of MSHA's final determination with respect to your status pursuant to Section 104(e) of the Mine Act.

If you implement a corrective action program, MSHA will conduct a complete inspection of the Brushy Eagle Mine. This inspection may start as soon as January 1, 2008. I will analyze the results of this complete inspection and other on-site enforcement activities conducted during the corrective action period to evaluate whether the Brushy Eagle Mine has effectively reduced the occurrence of S&S violations during the review period. Therefore, I encourage you to implement a corrective action program as soon as practicable. If, during the review period, the Brushy Eagle Mine achieves a reduction in the S&S violation frequency rate to 9.03 S&S violations per 100 inspection hours, the Brushy Eagle Mine will not be issued a pattern of violations notice during this POV review cycle.<sup>1</sup>

If you implement a corrective action program which does not reduce the rate of S&S violations to the levels set forth in the paragraph above, pursuant to 30 C.F.R. Section 104.5(b), I will submit an evaluation report to the Administrator for Coal/Metal and Nonmetal Mine Safety and Health within 120 days from the date of this notification. If you choose not to implement a program to reduce S&S violations, I will submit the report of the evaluation to the Administrator within 60 days from the date of this notification.

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<sup>1</sup> However, mines which have implemented a successful corrective action plan during the 90 day evaluation period will be considered along with all other mines for potential pattern of violation notices during the next and subsequent review cycles. In the case of the Brushy Eagle Mine, it was issued 12.90 S&S violations per 100 inspection hours during the 24-month review period, in this review cycle -- 6.71 percentage points higher than the national average of 6.19 S&S violation per 100 inspection hours for {mine type and classification} mines. To ensure the Brushy Eagle Mine is not exhibiting a potential Pattern of Violations when the next evaluation is conducted, the Brushy Eagle Mine should have an S&S violation rate at or near the national rate. MSHA is required to conduct evaluations at least annually but can conduct the evaluations more frequently.

In both cases, a copy of the report of evaluation will be provided to you and the representative of the miners, if applicable, 10 days before the report is sent to the Administrator. Both you and the miners representative, where applicable, will have 10 days from the receipt of the report to submit written comments to the Administrator.

Within 30 days of receipt of my report to the Administrator, the Administrator will issue a decision as to whether the Brushy Eagle Mine is to be issued a Notice of a Pattern of Violations. A copy of the decision will be provided to you and the representative of the miners if applicable.

If the Administrator decides to issue a Notice of Pattern of Violations, I will issue the Notice of Pattern of Violations to you. A copy of the notice will also be provided to the representative of miners, where applicable.

Following issuance of a Notice of Pattern of Violations, I will initiate appropriate inspection activities to ensure that the Brushy Eagle Mine is inspected in its entirety during the following 90-day time frame and each succeeding inspection cycle until the Pattern of Violation order is terminated.

If upon any inspection after the issuance of the Pattern of Violations Notice an authorized representative finds any violation of a mandatory health or safety standard which could significantly and substantially contribute to the cause and effect of a safety or health hazard, the inspector shall issue an order requiring the withdrawal of all persons in the area affected by the violation except those persons listed in 104(c) of the Mine Act. All persons except as listed in 104(c) of the Mine Act shall also be prohibited from entering that area until the inspector determines that such violation has been abated.

Termination of a Pattern of Violations notice shall occur when an inspection of the entire operation results in no significant and substantial violations of the Mine Act.

You may request an inspection of the entire operation or portions of the operation at any time. No advance notice of the inspection shall be provided and MSHA will determine the scope of each inspection. Partial inspections covering the entire operation within the 90-day period will constitute an inspection of the entire operation for the purposes of termination of a Pattern of Violations Notice.

Please contact me at (304) 877-3900 if you have any questions regarding this matter. Additional mitigating information, requests for a conference and/or a written plan to institute a corrective action program should be sent to me at: Robert G. Hardman, District Manager for Coal District 4, 100 Bluestone Road, Mount Hope, WV 25880-1000.

Sincerely,

A handwritten signature in black ink that reads "Robert G. Hardman". The signature is written in a cursive style with a large initial "R".

Robert G. Hardman  
District Manager

Attachment

## ***Pattern of Violations Screening Criteria and Scoring Model***

Mine ID: 4608315  
 Mine Name: Brushy Eagle  
 Mine Type: Underground

	Numbers for Brushy Eagle Mine
At least ten S&S Citations/Orders, at mines classified as Surface and Facility, issued during the 24 month review period.	N/A
At least twenty S&S Citations/Orders, at mines classified as Underground, issued during the 24 month review period.	95
At least two "elevated enforcement" actions, [i.e. type action is 104 (b), 104 (d) or 107(a)], issued during the 24 month review period.	5
The ratio of Citation/Orders issued in the most recent 12 months of the review period to the number of Citations/Orders issued during the previous 12 months of the review is 70% or greater.	122%
The mines' rate of S&S Citations/Orders issued per 100 inspection hours during the 24 month review period is equal to or greater than 125% of the National rate of S&S Citations/Orders issued per 100 inspection hours for that mine type and classification.	171%
The number of S&S Citation/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification.	Industry: 7.74 This Mine: 10.58
Or	
The number of elevated enforcement Citations/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification.	Industry: 0.68 This Mine: 0.48
A minimum of two "elevated enforcement" final orders of the Commission, [i.e. type action is 104 (b), 104 (d) or 107(a)] during the 24 month review period.	3
At least one S&S 104 (d) issuance that became a final order of the Commission during the 24 month review period.	1
At least ten S&S Citations/Orders, at mines classified as Surface or Facility, that are final orders of the Commission during the 24 month review period.	N/A
At least twenty S&S Citations/Orders, at mines classified as Underground, that are final orders of the Commission during the 24 month review period.	72

## Pattern of Violations Screening Criteria and Scoring Model

Mine ID: 4608315  
Mine Name: Brushy Eagle  
Mine Type: Underground

Numbers for Brushy  
Eagle Mine

### Scores

a. The number of S&S citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period plus	9.8
b. the number of 104(b) (failure to abate) orders issued per 100 Inspection Hrs. for failure to abate an S&S issuance that that became final during the 24 month review period and multiplying by a factor of 5; plus	1.4
c. the number of 104(d) (unwarrantable failure) citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period and multiplying by a factor of 5; plus	0.7
d. the number of 107(a) (imminent danger) orders issued per 100 Inspection Hrs. during the 24 month review period and multiplying by a factor of 5.	0
Subtotal:	11.9

### Increases to the Subtotal

e. 5%-20% for operations with injury rates above the national average for the same mine type and industry grouping as follows:	0.6
f. 5%-20% for operations with injury severity rates (number of days lost X 200,000 divided by the total work hours reported) above the national average for the same mine type and industry grouping as follows:	0.1
g. 5%-20% for operations with citations and orders issued per 100 inspection hours (VPIH) above the 24-month national average for the same mine type and industry grouping as follows:	0.6

The final weighted score must be greater than or equal to the average weighted score for all active mines of the same mine type and industry classification.

Industry: 5.3

This mine: 13.1

### 30 CFR §104.3

At least five S&S citations of the same standard that became final orders of the Commission during the most recent 12 months.

75.517 cited 8 times

**U.S. Department of Labor**

**Mine Safety and Health Administration  
135 Gemini Circle, Suite 212  
Birmingham, AL 35209**



December 6, 2007

Mr. Ricardo Quiroga  
Facility Manager  
Kosmos Cement  
Cemex  
15301 Dixie Highway  
Louisville, KY 40272

Dear Mr. Quiroga:

In accordance with Section 104(e) of the Federal Mine Safety and Health Act of 1977 (Mine Act) and 30 CFR Part 104, the Mine Safety and Health Administration (MSHA) has conducted a pattern of violation (POV) screening of compliance records for the Kosmos Cement Co. Mine, MSHA ID No. 1504469 for the 24-months ending September 30, 2007. A POV screening is used to determine if Section 104(e) is applicable to a particular mine. If implemented, Section 104(e) requires all subsequent violations designated as Significant and Substantial (S&S) be issued as closure orders with all persons withdrawn from the affected area except those necessary to correct the violation. An operator can be removed from Section 104(e) sanctions only after an inspection of the entire operation results in no significant and substantial violations.

This letter is your notification that a potential pattern of violations exists at the Kosmos Cement Co. Mine. This notification is based upon the initial screening and pattern criteria review, which were conducted in accordance with 30 CFR Parts 104.2 and 104.3 respectively. A Pattern of Violation Review report is enclosed as Attachment A. This report details the methodology utilized for the initial screening and pattern criteria review and summarizes your mine's performance relative to the criteria.

Prior to MSHA implementing Section 104(e) sanctions at the Kosmos Cement Co. mine, you are provided the opportunity, not to exceed 20 days from the date of this notification, to take any or all of the following steps:

Review all documents upon which the pattern of violations evaluation is based and provide additional mitigating information.

Submit a written request for a conference with me (I shall hold any conference within 10 days of a request).

Provide a written plan to me indicating that you will institute a corrective action program to avoid repeated significant and substantial violations at the operation.

Please note that current regulation 30 C.F.R. Part 104.4(d) requires that you post a copy of this letter on the mine bulletin board until you are notified of MSHA's final determination with respect to your status pursuant to Section 104(e) of the Mine Act.

If you implement a corrective action program, MSHA will conduct a complete inspection of the Kosmos Cement Co. mine. This inspection may start as soon as January 3, 2008. I will analyze the results of this complete inspection and other on-site enforcement activities conducted during the corrective action period to evaluate whether the Kosmos Cement Co. mine has effectively reduced the occurrence of S&S violations during the review period. Therefore, I encourage you to implement a corrective action program as soon as practicable. If, during the review period, the Kosmos Cement Co. mine achieves a reduction in the S&S violation frequency rate to 16 S&S violations per 100 inspection hours, the Kosmos Cement Co. mine will not be issued a pattern of violations notice during this POV review cycle.<sup>1</sup>

If you implement a corrective action program which does not reduce the rate of S&S violations to the level set forth in the paragraph above, pursuant to 30 C.F.R. Section 104.5(b), I will submit an evaluation report to the Administrator for

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<sup>1</sup> However, mines which have implemented a successful corrective action plan during the 90 day evaluation period will be considered along with all other mines for potential pattern of violation notices during the next and subsequent review cycles. In the case of the Kosmos Cement Co. mine, it was issued 22.9 S&S violations per 100 inspection hours during the 24-month review period, in this review cycle 16.11 percentage points higher than the national average of 6.75 S&S violation per 100 inspection hours for Surface/Facility mines. To ensure the Kosmos Cement Co. mine is not exhibiting a potential Pattern of Violations when the next evaluation is conducted, the Kosmos Cement Co. mine should have an S&S violation rate at or near the national rate. MSHA is required to conduct evaluations at least annually but can conduct the evaluations more frequently.

Coal/Metal and Nonmetal Mine Safety and Health within 120 days from the date of this notification. If you choose not to implement a program to reduce S&S violations, I will submit the report of the evaluation to the Administrator within 60 days from the date of this notification.

In both cases, a copy of the report of evaluation will be provided to you and the representative of the miners, if applicable, 10 days before the report is sent to the Administrator. Both you, and the miners' representative, where applicable, will have 10 days from the receipt of the report to submit written comments to the Administrator.

Within 30 days of receipt of my report to the Administrator, the Administrator will issue a decision as to whether the Kosmos Cement Co. mine is to be issued a Notice of a Pattern of Violations. A copy of the decision will be provided to you and the representative of the miners if applicable.

If the Administrator decides to issue a Notice of Pattern of Violations, I will issue the Notice of Pattern of Violations to you. A copy of the notice will also be provided to the representative of miners, where applicable.

Following issuance of a Notice of Pattern of Violations, I will initiate appropriate inspection activities to ensure that the Kosmos Cement Co. mine is inspected in its entirety during the following 90-day time frame and each succeeding inspection cycle until the Pattern of Violation order is terminated.

If upon any inspection after the issuance of the Pattern of Violations Notice an authorized representative finds any violation of a mandatory health or safety standard which could significantly and substantially contribute to the cause and effect of a safety or health hazard, the inspector shall issue an order requiring the withdrawal of all persons in the area affected by the violation except those persons listed in 104(c) of the Mine Act. All persons except as listed in 104(c) of the Mine Act shall also be prohibited from entering that area until the inspector determines that such violation has been abated.

Termination of a Pattern of Violations notice shall occur when an inspection of the entire operation results in no significant and substantial violations of the Mine Act.

You may request an inspection of the entire operation or portions of the operation at any time. No advance notice of the inspection shall be provided and MSHA will determine the scope of each inspection. Partial inspections covering the entire operation within the 90-day period will constitute an inspection of the entire operation for the purposes of termination of a Pattern of Violations Notice.

Please contact me at (205) 290-7294 if you have any questions regarding this matter. Additional mitigating information, requests for a conference and/or a written plan to institute a corrective action program should be sent to me at:

Mine Safety and Health Administration  
135 Gemini Circle, Suite 212  
Birmingham, AL 35209

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Davis". The signature is fluid and cursive, with a large loop at the end.

Michael Davis  
District Manager  
Southeastern District

Attachment

## ***Pattern of Violations Screening Criteria and Scoring Model***

Mine ID: 1504469  
 Mine Name: KOSMOS CEMENT CO.  
 Mine Type: Facility

	Numbers for KOSMOS CEMENT CO. Mine
At least ten S&S Citations/Orders, at mines classified as Surface and Facility, issued during the 24 month review period.	58
At least twenty S&S Citations/Orders, at mines classified as Underground, issued during the 24 month review period.	N/A
At least two “elevated enforcement” actions, [i.e. type action is 104 (b), 104 (d) or 107(a)], issued during the 24 month review period.	2
The ratio of S&S Citation/Orders issued in the most recent 12 months of the review period to the number of S&S Citations/Orders issued during the previous 12 months of the review is 70% or greater.	278%
The mines’ rate of S&S Citations/Orders issued per 100 inspection hours during the 24 month review period is equal to or greater than 125% of the National rate of S&S Citations/Orders issued per 100 inspection hours for that mine type and classification.	342%
The number of S&S Citation/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification.	Industry: 5.58 This Mine: 30.28
Or	
The number of elevated enforcement Citations/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification.	Industry: 0.78 This Mine: 2.52
A minimum of two “elevated enforcement” final orders of the Commission, [i.e. type action is 104 (b), 104 (d) or 107(a)] during the 24 month review period.	2
At least one S&S 104 (d) issuance that became a final order of the Commission during the 24 month review period.	1
At least ten S&S Citations/Orders, at mines classified as Surface or Facility, that are final orders of the Commission during the 24 month review period.	41
At least twenty S&S Citations/Orders, at mines classified as Underground, that are final orders of the Commission during the 24 month review period.	N/A

**Pattern of Violations Screening Criteria and Scoring Model**

Mine ID: 1504469  
 Mine Name: KOSMOS CEMENT CO.  
 Mine Type: Facility

Numbers for  
 KOSMOS CEMENT  
 CO. Mine

**Scores**

a. The number of S&S citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period plus	16.2
b. the number of 104(b) (failure to abate) orders issued per 100 Inspection Hrs. for failure to abate an S&S issuance that that became final during the 24 month review period and multiplying by a factor of 5; plus	0
c. the number of 104(d) (unwarrantable failure) citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period and multiplying by a factor of 5; plus	2
d. the number of 107(a) (imminent danger) orders issued per 100 Inspection Hrs. during the 24 month review period and multiplying by a factor of 5.	2
Subtotal:	20.2

**Increases to the Subtotal**

e. 5%-20% for operations with injury rates above the national average for the same mine type and industry grouping as follows:	1
f. 5%-20% for operations with injury severity rates (number of days lost X 200,000 divided by the total work hours reported) above the national average for the same mine type and industry grouping as follows:	0.1
g. 5%-20% for operations with citations and orders issued per 100 inspection hours (VPIH) above the 24-month national average for the same mine type and industry grouping as follows:	2

The final weighted score must be greater than or equal to the average weighted score for all active mines of the same mine type and industry classification.

Industry: 8  
 This mine: 23.2

**30 CFR §104.3**

At least five S&S citations of the same standard that became final orders of the Commission during the most recent 12 months.	56.20003(a) cited 6 times
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**\*Mine ID:** 1504469  
**Mine Name:** KOSMOS CEMENT CO.  
**Operator:** CEMEX INC.  
**Controller Name:** Cemex S A  
**Primary SIC Desc:** Cement  
**Secondary SIC Desc:** N/A  
**Type of Company:**  
**Ownership Date:** 02/14/03

**District:** Southeastern District  
**Field Office:** Lexington KY Field Office  
**County, State:** Jefferson, KY  
**Mine Facility:**  
**Mine Status:** Active  
**Mine Status Date:** 05/21/79

Violation History

Calendar Year	104a S&S	104a Non S&S	% S&S	104b	104g1	104d1	104d2	107a	103k	Totals
2000	10	14	41.67%	-	-	-	-	-	-	24
2001	18	42	30.00%	-	-	1	-	2	-	63
2002	27	19	58.70%	-	-	-	-	-	-	46
2003	14	32	30.43%	-	-	-	-	1	-	47
2004	14	16	46.67%	-	-	-	-	-	-	30
2005	19	64	22.89%	-	-	2	-	1	-	86
2006	3	18	14.29%	-	-	3	-	1	-	25
2007	64	81	44.14%	-	2	3	-	3	-	153
	<b>169</b>	<b>286</b>		<b>0</b>	<b>2</b>	<b>9</b>	<b>0</b>	<b>8</b>	<b>0</b>	<b>474</b>

**U. S. Department of Labor**

DEC 06 2007

Mine Safety and Health Administration  
100 Bluestone Road  
Mount Hope, WV 25880-1000



Mr. Doug Bender  
Superintendent  
Justice #1  
Independence Coal Company, Inc.  
HC 78, Box 1800  
Madison, WV 25130

Dear Mr. Bender:

In accordance with Section 104(e) of the Federal Mine Safety and Health Act of 1977 (Mine Act) and 30 CFR Part 104, the Mine Safety and Health Administration (MSHA) has conducted a pattern of violation (POV) screening of compliance records for the Justice #1 Mine, MSHA ID No. 46-07273 for the 24-months ending September 30, 2007. A POV screening is used to determine if Section 104(e) is applicable to a particular mine. If implemented, Section 104(e) requires all subsequent violations designated as Significant and Substantial (S&S) be issued as closure orders with all persons withdrawn from the affected area, except those necessary to correct the violation. An operator can be removed from Section 104(e) sanctions only after an inspection of the entire operation results in no significant and substantial violations.

This letter is your notification that a potential pattern of violations exists at the Justice #1 Mine. This notification is based upon the initial screening and pattern criteria review, which were conducted in accordance with 30 CFR Parts 104.2 and 104.3 respectively. A Pattern of Violation Review report is enclosed as Attachment A. This report details the methodology utilized for the initial screening and pattern criteria review and summarizes your mine's performance relative to the criteria.

Prior to MSHA implementing Section 104(e) sanctions at the Justice #1 mine, you are provided the opportunity, not to exceed 20 days from the date of this notification, to take any or all of the following steps:

Review all documents upon which the pattern of violations evaluation is based and provide additional mitigating information.

Submit a written request for a conference with me (I shall hold any conference within 10 days of a request).

Provide a written plan to me indicating that you will institute a corrective action program to avoid repeated significant and substantial violations at the operation.

Please note that current regulation 30 C.F.R. Part 104.4(d) requires that you post a copy of this letter on the mine bulletin board until you are notified of MSHA's final determination with respect to your status pursuant to Section 104(e) of the Mine Act.

If you implement a corrective action program, MSHA will conduct a complete inspection of the Justice #1 Mine. This inspection may start as soon as January 1, 2008. I will analyze the results of this complete inspection and other on-site enforcement activities conducted during the corrective action period to evaluate whether the Justice #1 Mine has effectively reduced the occurrence of S&S violations during the review period. Therefore, I encourage you to implement a corrective action program as soon as practicable. If, during the review period, the Justice #1 Mine achieves a reduction in the S&S violation frequency rate to 8.28 S&S violations per 100 inspection hours, the Justice #1 Mine will not be issued a pattern of violations notice during this POV review cycle.<sup>1</sup>

If you implement a corrective action program which does not reduce the rate of S&S violations to the levels set forth in the paragraph above, pursuant to 30 C.F.R. Section 104.5(b), I will submit an evaluation report to the Administrator for Coal/Metal and Nonmetal Mine Safety and Health within 120 days from the date of this notification. If you choose not to implement a program to reduce S&S violations, I will submit the report of the evaluation to the Administrator within 60 days from the date of this notification.

In both cases, a copy of the report of evaluation will be provided to you [and the representative of the miners if applicable] 10 days before the report is sent to the

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<sup>1</sup> However, mines which have implemented a successful corrective action plan during the 90 day evaluation period will be considered along with all other mines for potential pattern of violation notices during the next and subsequent review cycles. In the case of the Justice #1 Mine, it was issued 11.83 S&S violations per 100 inspection hours during the 24-month review period, in this review cycle -- 5.64 percentage points higher than the national average of 6.19 S&S violation per 100 inspection hours for underground bituminous coal mines. To ensure the Justice #1 Mine is not exhibiting a potential Pattern of Violations when the next evaluation is conducted, the Justice #1 Mine should have an S&S violation rate at or near the national rate. MSHA is required to conduct evaluations at least annually but can conduct the evaluations more frequently.

Administrator. Both you and the miners representative, where applicable, will have 10 days from the receipt of the report to submit written comments to the Administrator.

Within 30 days of receipt of my report to the Administrator, the Administrator will issue a decision as to whether the Justice #1 Mine is to be issued a Notice of a Pattern of Violations. A copy of the decision will be provided to you and the representative of the miners if applicable.

If the Administrator decides to issue a Notice of Pattern of Violations, I will issue the Notice of Pattern of Violations to you. A copy of the notice will also be provided to the representative of miners, where applicable.

Following issuance of a Notice of Pattern of Violations, I will initiate appropriate inspection activities to ensure that the Justice #1 Mine is inspected in its entirety during the following 90-day time frame and each succeeding inspection cycle until the Pattern of Violation order is terminated.

If upon any inspection after the issuance of the Pattern of Violations Notice an authorized representative finds any violation of a mandatory health or safety standard which could significantly and substantially contribute to the cause and effect of a safety or health hazard, the inspector shall issue an order requiring the withdrawal of all persons in the area affected by the violation except those persons listed in 104(c) of the Mine Act. All persons except as listed in 104(c) of the Mine Act shall also be prohibited from entering that area until the inspector determines that such violation has been abated.

Termination of a Pattern of Violations notice shall occur when an inspection of the entire operation results in no significant and substantial violations of the Mine Act.

You may request an inspection of the entire operation or portions of the operation at any time. No advance notice of the inspection shall be provided and MSHA will determine the scope of each inspection. Partial inspections covering the entire operation within the 90-day period will constitute an inspection of the entire operation for the purposes of termination of a Pattern of Violations Notice.

Please contact me at (304) 877-3900 if you have any questions regarding this matter. Additional mitigating information, requests for a conference and/or a written plan to institute a corrective action program should be sent to me at: Robert G. Hardman, District Manager for Coal District 4, 100 Bluestone Road, Mount Hope, WV 25880-1000.

Sincerely

A handwritten signature in cursive script that reads "Robert G. Hardman". The signature is written in black ink and is positioned above the printed name and title.

Robert G. Hardman  
District Manager

Attachment

## ***Pattern of Violations Screening Criteria and Scoring Model***

Mine ID: 4607273  
 Mine Name: Justice #1  
 Mine Type: Underground

	Numbers for Justice #1 Mine
At least ten S&S Citations/Orders, at mines classified as Surface and Facility, issued during the 24 month review period.	N/A
At least twenty S&S Citations/Orders, at mines classified as Underground, issued during the 24 month review period.	330
At least two "elevated enforcement" actions, [i.e. type action is 104 (b), 104 (d) or 107(a)], issued during the 24 month review period.	34
The ratio of Citation/Orders issued in the most recent 12 months of the review period to the number of Citations/Orders issued during the previous 12 months of the review is 70% or greater.	155%
The mines' rate of S&S Citations/Orders issued per 100 inspection hours during the 24 month review period is equal to or greater than 125% of the National rate of S&S Citations/Orders issued per 100 inspection hours for that mine type and classification.	157%
The number of S&S Citation/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification.	Industry: 7.74 This Mine: 15.29
Or	
The number of elevated enforcement Citations/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification.	Industry: 0.68 This Mine: 0.92
A minimum of two "elevated enforcement" final orders of the Commission, [i.e. type action is 104 (b), 104 (d) or 107(a)] during the 24 month review period.	15
At least one S&S 104 (d) issuance that became a final order of the Commission during the 24 month review period.	11
At least ten S&S Citations/Orders, at mines classified as Surface or Facility, that are final orders of the Commission during the 24 month review period.	N/A
At least twenty S&S Citations/Orders, at mines classified as Underground, that are final orders of the Commission during the 24 month review period.	242

**Pattern of Violations Screening Criteria and Scoring Model**

Mine ID: 4607273  
 Mine Name: Justice #1  
 Mine Type: Underground

Numbers for Justice  
 #1 Mine

**Scores**

a. The number of S&S citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period plus	8.7
b. the number of 104(b) (failure to abate) orders issued per 100 Inspection Hrs. for failure to abate an S&S issuance that that became final during the 24 month review period and multiplying by a factor of 5; plus	0.5
c. the number of 104(d) (unwarrantable failure) citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period and multiplying by a factor of 5; plus	2
d. the number of 107(a) (imminent danger) orders issued per 100 Inspection Hrs. during the 24 month review period and multiplying by a factor of 5.	0.2
Subtotal:	11.4

**Increases to the Subtotal**

e. 5%-20% for operations with injury rates above the national average for the same mine type and industry grouping as follows:	0
f. 5%-20% for operations with injury severity rates (number of days lost X 200,000 divided by the total work hours reported) above the national average for the same mine type and industry grouping as follows:	0
g. 5%-20% for operations with citations and orders issued per 100 inspection hours (VPIH) above the 24-month national average for the same mine type and industry grouping as follows:	0.6

The final weighted score must be greater than or equal to the average weighted score for all active mines of the same mine type and industry classification.

Industry: 5.3  
 This mine: 11.9

**30 CFR §104.3**

At least five S&S citations of the same standard that became final orders of the Commission during the most recent 12 months.

75.1725(a) cited 9 times



Mr. Donald Bowen  
Superintendent  
Excel Mining LLC  
Mine No. 3  
HC 67 Box 615 SR 1439 Wolf Creek Rd.  
Pilgrim, KY 41250

Dear Mr. Bowen:

In accordance with Section 104(e) of the Federal Mine Safety and Health Act of 1977 (Mine Act) and 30 CFR Part 104, the Mine Safety and Health Administration (MSHA) has conducted a pattern of violation (POV) screening of compliance records for Mine No. 3, MSHA ID No. 15-08079 for the 24-months ending September 30, 2007. A POV screening is used to determine if Section 104(e) is applicable to a particular mine. If implemented, Section 104(e) requires all subsequent violations designated as Significant and Substantial (S&S) be issued as closure orders with all persons withdrawn from the affected area except those necessary to correct the violation. An operator can be removed from Section 104(e) sanctions only after an inspection of the entire operation results in no significant and substantial violations.

This letter is your notification that a potential pattern of violations exists at Mine No. 3. This notification is based upon the initial screening and pattern criteria review, which were conducted in accordance with 30 CFR Parts 104.2 and 104.3 respectively. A Pattern of Violation Review report is enclosed as Attachment A. This report details the methodology utilized for the initial screening and pattern criteria review and summarizes your mine's performance relative to the criteria.

Prior to MSHA implementing Section 104(e) sanctions at the mine, you are provided the opportunity, not to exceed 20 days from the date of this notification, to take any or all of the following steps:

Review all documents upon which the pattern of violations evaluation is based and provide additional mitigating information.

Submit a written request for a conference with me (I shall hold any conference within 10 days of a request).

Provide a written plan to me indicating that you will institute a corrective action program to avoid repeated significant and substantial violations at the operation.

Please note that current regulation 30 C.F.R. Part 104.4(d) requires that you post a copy of this letter on the mine bulletin board until you are notified of MSHA's final determination with respect to your status pursuant to Section 104(e) of the Mine Act.

If you implement a corrective action program, MSHA will conduct a complete inspection of the mine. This inspection may start as soon as January 1, 2008. I will analyze the results of this complete inspection and other on-site enforcement activities conducted during the corrective action period to evaluate whether the mine has effectively reduced the occurrence of S&S violations during the review period. Therefore, I encourage you to implement a corrective action program as soon as practicable. If, during the review period, the mine achieves a reduction in the S&S violation frequency rate to 7.17 S&S violations per 100 inspection hours, the mine will not be issued a pattern of violations notice during this POV review cycle.<sup>1</sup>

If you implement a corrective action program which does not reduce the rate of S&S violations to the levels set forth in the paragraph above, pursuant to 30 C.F.R. Section 104.5(b), I will submit an evaluation report to the Administrator for Coal Mine Safety and Health within 120 days from the date of this notification. If you choose not to implement a program to reduce S&S violations, I will submit the report of the evaluation to the Administrator within 60 days from the date of this notification.

In both cases, a copy of the report of evaluation will be provided to you 10 days before the report is sent to the Administrator. You will have 10 days from the receipt of the report to submit written comments to the Administrator.

Within 30 days of receipt of my report to the Administrator, the Administrator will issue a decision as to whether the mine is to be issued a Notice of a Pattern of Violations. A copy of the decision will be provided to you.

If the Administrator decides to issue a Notice of Pattern of Violations, I will issue the Notice of Pattern of Violations to you.

Following issuance of a Notice of Pattern of Violations, I will initiate appropriate inspection activities to ensure that the mine is inspected in its entirety during the

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<sup>1</sup> However, mines which have implemented a successful corrective action plan during the 90 day evaluation period will be considered along with all other mines for potential pattern of violation notices during the next and subsequent review cycles. In the case of Mine No.3, it was issued 10.24 S&S violations per 100 inspection hours during the 24-month review period, in this review cycle - 4.05 percentage points higher than the national average of 6.19 S&S violations per 100 inspection hours for underground mines. To ensure the mine is not exhibiting a potential Pattern of Violations when the next evaluation is conducted, the mine should have an S&S violation rate at or near the national rate. MSHA is required to conduct evaluations at least annually but can conduct the evaluations more frequently.

following 90-day time frame and each succeeding inspection cycle until the Pattern of Violation order is terminated.

If upon any inspection after the issuance of the Pattern of Violations Notice an authorized representative finds any violation of a mandatory health or safety standard which could significantly and substantially contribute to the cause and effect of a safety or health hazard, the inspector shall issue an order requiring the withdrawal of all persons in the area affected by the violation except those persons listed in 104(c) of the Mine Act. All persons except as listed in 104(c) of the Mine Act shall also be prohibited from entering that area until the inspector determines that such violation has been abated.

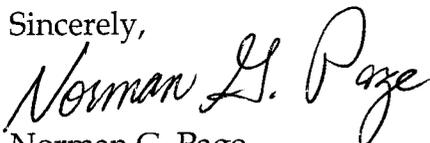
Termination of a Pattern of Violations notice shall occur when an inspection of the entire operation results in no significant and substantial violations of the Mine Act.

You may request an inspection of the entire operation or portions of the operation at any time. No advance notice of the inspection shall be provided and MSHA will determine the scope of each inspection. Partial inspections covering the entire operation within the 90-day period will constitute an inspection of the entire operation for the purposes of termination of a Pattern of Violations Notice.

Please contact me at (606) 432-0943 if you have any questions regarding this matter. Additional mitigating information, requests for a conference and/or a written plan to institute a corrective action program should be sent to me at:

Mine Safety and Health Administration  
100 Fae Ramsey Lane  
Pikeville, KY 41501

Sincerely,



Norman G. Page  
District Manager

Attachment

## Attachment A

### ***Pattern of Violations Screening Criteria and Scoring Model***

Mine ID: 1508079  
Mine Name: Mine No 3  
Mine Type: Underground

	Numbers for Mine No 3 Mine
At least ten S&S Citations/Orders, at mines classified as Surface and Facility, issued during the 24 month review period.	N/A
At least twenty S&S Citations/Orders, at mines classified as Underground, issued during the 24 month review period.	405
At least two "elevated enforcement" actions, [i.e. type action is 104 (b), 104 (d) or 107(a)], issued during the 24 month review period.	20
The ratio of Citation/Orders issued in the most recent 12 months of the review period to the number of Citations/Orders issued during the previous 12 months of the review is 70% or greater.	110%
The mines' rate of S&S Citations/Orders issued per 100 inspection hours during the 24 month review period is equal to or greater than 125% of the National rate of S&S Citations/Orders issued per 100 inspection hours for that mine type and classification.	136%
The number of S&S Citation/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification.	Industry: 7.74 This Mine: 10.84
Or	
The number of elevated enforcement Citations/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification.	Industry: 0.68 This Mine: 0.89
A minimum of two "elevated enforcement" final orders of the Commission, [i.e. type action is 104 (b), 104 (d) or 107(a)] during the 24 month review period.	4
At least one S&S 104 (d) issuance that became a final order of the Commission during the 24 month review period.	2
At least ten S&S Citations/Orders, at mines classified as Surface or Facility, that are final orders of the Commission during the 24 month review period.	N/A
At least twenty S&S Citations/Orders, at mines classified as Underground, that are final orders of the Commission during the 24 month review period.	342

**Attachment A**

***Pattern of Violations Screening Criteria and Scoring Model***

Mine ID: 1508079  
Mine Name: Mine No 3  
Mine Type: Underground

Numbers for Mine No  
3 Mine

**Scores**

a. The number of S&S citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period plus	8.6
b. the number of 104(b) (failure to abate) orders issued per 100 Inspection Hrs. for failure to abate an S&S issuance that that became final during the 24 month review period and multiplying by a factor of 5; plus	0.3
c. the number of 104(d) (unwarrantable failure) citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period and multiplying by a factor of 5; plus	0.3
d. the number of 107(a) (imminent danger) orders issued per 100 Inspection Hrs. during the 24 month review period and multiplying by a factor of 5.	0
Subtotal:	9.2

***Increases to the Subtotal***

e. 5%-20% for operations with injury rates above the national average for the same mine type and industry grouping as follows:	0
f. 5%-20% for operations with injury severity rates (number of days lost X 200,000 divided by the total work hours reported) above the national average for the same mine type and industry grouping as follows:	0
g. 5%-20% for operations with citations and orders issued per 100 inspection hours (VPIH) above the 24-month national average for the same mine type and industry grouping as follows:	0.5

The final weighted score must be greater than or equal to the average weighted score for all active mines of the same mine type and industry classification.

Industry: 5.3  
This mine: 9.6

***30 CFR §104.3***

At least five S&S citations of the same standard that became final orders of the Commission during the most recent 12 months.

75.370(a)(1) cited 16 times

DEC 06 2007



Mr. Dale Lusk  
Superintendent  
No. 65  
Double Bonus Coal Company  
PO Box 414  
Pineville, WV 24874

Dear Mr. Lusk:

In accordance with Section 104(e) of the Federal Mine Safety and Health Act of 1977 (Mine Act) and 30 CFR Part 104, the Mine Safety and Health Administration (MSHA) has conducted a pattern of violation (POV) screening of compliance records for the No. 65 Mine, MSHA ID No. 46-09020 for the 24-months ending September 30, 2007. A POV screening is used to determine if Section 104(e) is applicable to a particular mine. If implemented, Section 104(e) requires all subsequent violations designated as Significant and Substantial (S&S) be issued as closure orders with all persons withdrawn from the affected area, except those necessary to correct the violation. An operator can be removed from Section 104(e) sanctions only after an inspection of the entire operation results in no significant and substantial violations.

This letter is your notification that a potential pattern of violations exists at the No. 65 Mine. This notification is based upon the initial screening and pattern criteria review, which were conducted in accordance with 30 CFR Parts 104.2 and 104.3 respectively. A Pattern of Violation Review report is enclosed as Attachment A. This report details the methodology utilized for the initial screening and pattern criteria review and summarizes your mine's performance relative to the criteria.

Prior to MSHA implementing Section 104(e) sanctions at the No. 65 Mine, you are provided the opportunity, not to exceed 20 days from the date of this notification, to take any or all of the following steps:

Review all documents upon which the pattern of violations evaluation is based and provide additional mitigating information.

Submit a written request for a conference with me (I shall hold any conference within 10 days of a request).

Provide a written plan to me indicating that you will institute a corrective action program to avoid repeated significant and substantial violations at the operation.

Please note that current regulation 30 C.F.R. Part 104.4(d) requires that you post a copy of this letter on the mine bulletin board until you are notified of MSHA's final determination with respect to your status pursuant to Section 104(e) of the Mine Act.

If you implement a corrective action program, MSHA will conduct a complete inspection of the No. 65 Mine. This inspection may start as soon as January 1, 2008. I will analyze the results of this complete inspection and other on-site enforcement activities conducted during the corrective action period to evaluate whether the No. 65 Mine has effectively reduced the occurrence of S&S violations during the review period. Therefore, I encourage you to implement a corrective action program as soon as practicable. If, during the review period, the No. 65 Mine achieves a reduction in the S&S violation frequency rate to 7.05 S&S violations per 100 inspection hours, the No. 65 Mine will not be issued a pattern of violations notice during this POV review cycle.<sup>1</sup>

If you implement a corrective action program which does not reduce the rate of S&S violations to the levels set forth in the paragraph above, pursuant to 30 C.F.R. Section 104.5(b), I will submit an evaluation report to the Administrator for Coal/Metal and Nonmetal Mine Safety and Health within 120 days from the date of this notification. If you choose not to implement a program to reduce S&S violations, I will submit the report of the evaluation to the Administrator within 60 days from the date of this notification.

In both cases, a copy of the report of evaluation will be provided to you and the representative of the miners, if applicable, 10 days before the report is sent to the

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<sup>1</sup> However, mines which have implemented a successful corrective action plan during the 90 day evaluation period will be considered along with all other mines for potential pattern of violation notices during the next and subsequent review cycles. In the case of the No. 65 Mine, it was issued 10.07 S&S violations per 100 inspection hours during the 24-month review period, in this review cycle -- 3.88 percentage points higher than the national average of 6.19 S&S violation per 100 inspection hours for underground bituminous coal mines. To ensure the No. 65 Mine is not exhibiting a potential Pattern of Violations when the next evaluation is conducted, the No. 65 Mine should have an S&S violation rate at or near the national rate. MSHA is required to conduct evaluations at least annually but can conduct the evaluations more frequently.

Administrator. Both you and the miners representative, where applicable, will have 10 days from the receipt of the report to submit written comments to the Administrator.

Within 30 days of receipt of my report to the Administrator, the Administrator will issue a decision as to whether the No. 65 mine is to be issued a Notice of a Pattern of Violations. A copy of the decision will be provided to you and the representative of the miners if applicable.

If the Administrator decides to issue a Notice of Pattern of Violations, I will issue the Notice of Pattern of Violations to you. A copy of the notice will also be provided to the representative of miners, where applicable.

Following issuance of a Notice of Pattern of Violations, I will initiate appropriate inspection activities to ensure that the No. 65 Mine is inspected in its entirety during the following 90-day time frame and each succeeding inspection cycle until the Pattern of Violation order is terminated.

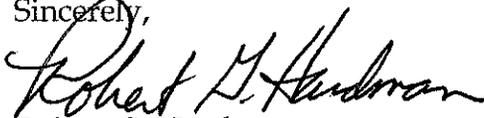
If upon any inspection after the issuance of the Pattern of Violations Notice an authorized representative finds any violation of a mandatory health or safety standard which could significantly and substantially contribute to the cause and effect of a safety or health hazard, the inspector shall issue an order requiring the withdrawal of all persons in the area affected by the violation except those persons listed in 104(c) of the Mine Act. All persons except as listed in 104(c) of the Mine Act shall also be prohibited from entering that area until the inspector determines that such violation has been abated.

Termination of a Pattern of Violations notice shall occur when an inspection of the entire operation results in no significant and substantial violations of the Mine Act.

You may request an inspection of the entire operation or portions of the operation at any time. No advance notice of the inspection shall be provided and MSHA will determine the scope of each inspection. Partial inspections covering the entire operation within the 90-day period will constitute an inspection of the entire operation for the purposes of termination of a Pattern of Violations Notice.

Please contact me at (304) 877-3900 if you have any questions regarding this matter. Additional mitigating information, requests for a conference and/or a written plan to institute a corrective action program should be sent to me at: Robert G. Hardman, District Manager for Coal District 4, 100 Bluestone Road, Mount Hope, WV 25880-1000.

Sincerely,

A handwritten signature in cursive script that reads "Robert G. Hardman". The signature is written in black ink and is positioned above the printed name.

Robert G. Hardman  
District Manager

Attachment

## ***Pattern of Violations Screening Criteria and Scoring Model***

Mine ID: 4609020  
 Mine Name: No 65  
 Mine Type: Underground

Numbers for No 65  
 Mine

At least ten S&S Citations/Orders, at mines classified as Surface and Facility, issued during the 24 month review period. N/A

At least twenty S&S Citations/Orders, at mines classified as Underground, issued during the 24 month review period. 88

At least two "elevated enforcement" actions, [i.e. type action is 104 (b), 104 (d) or 107(a)], issued during the 24 month review period. 18

The ratio of Citation/Orders issued in the most recent 12 months of the review period to the number of Citations/Orders issued during the previous 12 months of the review is 70% or greater. 441%

The mines' rate of S&S Citations/Orders issued per 100 inspection hours during the 24 month review period is equal to or greater than 125% of the National rate of S&S Citations/Orders issued per 100 inspection hours for that mine type and classification. 133%

The number of S&S Citation/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification. Industry: 7.74  
This Mine: 16.72

Or

The number of elevated enforcement Citations/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification. Industry: 0.68  
This Mine: 4.89

A minimum of two "elevated enforcement" final orders of the Commission, [i.e. type action is 104 (b), 104 (d) or 107(a)] during the 24 month review period. 5

At least one S&S 104 (d) issuance that became a final order of the Commission during the 24 month review period. 1

At least ten S&S Citations/Orders, at mines classified as Surface or Facility, that are final orders of the Commission during the 24 month review period. N/A

At least twenty S&S Citations/Orders, at mines classified as Underground, that are final orders of the Commission during the 24 month review period. 49

## Pattern of Violations Screening Criteria and Scoring Model

Mine ID: 4609020  
Mine Name: No 65  
Mine Type: Underground

Numbers for No 65  
Mine

### Scores

a. The number of S&S citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period plus	5.6
b. the number of 104(b) (failure to abate) orders issued per 100 Inspection Hrs. for failure to abate an S&S issuance that that became final during the 24 month review period and multiplying by a factor of 5; plus	1.1
c. the number of 104(d) (unwarrantable failure) citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period and multiplying by a factor of 5; plus	0.6
d. the number of 107(a) (imminent danger) orders issued per 100 Inspection Hrs. during the 24 month review period and multiplying by a factor of 5.	1.1
Subtotal:	8.4

### Increases to the Subtotal

e. 5%-20% for operations with injury rates above the national average for the same mine type and industry grouping as follows:	0
f. 5%-20% for operations with injury severity rates (number of days lost X 200,000 divided by the total work hours reported) above the national average for the same mine type and industry grouping as follows:	0
g. 5%-20% for operations with citations and orders issued per 100 inspection hours (VPIH) above the 24-month national average for the same mine type and industry grouping as follows:	0

The final weighted score must be greater than or equal to the average weighted score for all active mines of the same mine type and industry classification.

Industry: 5.3

This mine: 8.5

### 30 CFR §104.3

At least five S&S citations of the same standard that became final orders of the Commission during the most recent 12 months.

75.400 cited 7 times

12/5/07 letter completed 12/6/07 delivered

U.S. Department of Labor

Mine Safety and Health Administration  
3837 S. US Hwy. 25E  
Barbourville, Kentucky 40906-9206



December 6, 2007

G. Harrison Hill, President  
D&C Mining Corporation  
P.O. Box 148  
Fries, VA 24330

Dear Mr. Hill:

In accordance with Section 104(e) of the Federal Mine Safety and Health Act of 1977 (Mine Act) and 30 CFR Part 104, the Mine Safety and Health Administration (MSHA) has conducted a pattern of violation (POV) screening of compliance records for the D&C Mining Corporation, MSHA ID No. 15-18182 for the 24-months ending September 30, 2007. A POV screening is used to determine if Section 104(e) is applicable to a particular mine. If implemented, Section 104(e) requires all subsequent violations designated as Significant and Substantial (S&S) be issued as closure orders with all persons withdrawn from the affected area except those necessary to correct the violation. An operator can be removed from Section 104(e) sanctions only after an inspection of the entire operation results in no significant and substantial violations.

This letter is your notification that a potential pattern of violations exists at the D&C Mining Corporation. This notification is based upon the initial screening and pattern criteria review, which were conducted in accordance with 30 CFR Parts 104.2 and 104.3 respectively. A Pattern of Violation Review report is enclosed as Attachment A. This report details the methodology utilized for the initial screening and pattern criteria review and summarizes your mine's performance relative to the criteria.

Prior to MSHA implementing Section 104(e) sanctions at the D&C Mining Corporation, you are provided the opportunity, not to exceed 20 days from the date of this notification, to take any or all of the following steps:

Review all documents upon which the pattern of violations evaluation is based and provide additional mitigating information.

Submit a written request for a conference with me (I shall hold any conference within 10 days of a request).

Provide a written plan to me indicating that you will institute a corrective action program to avoid repeated significant and substantial violations at the operation.

Please note that current regulation 30 C.F.R. Part 104.4(d) requires that you post a copy of this letter on the mine bulletin board until you are notified of MSHA's final determination with respect to your status pursuant to Section 104(e) of the Mine Act.

If you implement a corrective action program, MSHA will conduct a complete inspection of the D&C Mining Corporation. This inspection may start as soon as January 1, 2008. I will analyze the results of this complete inspection and other on-site enforcement activities conducted during the corrective action period to evaluate whether the D&C Mining Corporation has effectively reduced the occurrence of S&S violations during the review period. Therefore, I encourage you to implement a corrective action program as soon as practicable. If, during the review period, the D&C Mining Corporation achieves a reduction in the S&S violation frequency rate to 14.33 S&S violations per 100 inspection hours, the D&C Mining Corporation will not be issued a pattern of violations notice during this POV review cycle.<sup>1</sup>

If you implement a corrective action program which does not reduce the rate of S&S violations to the levels set forth in the paragraph above, pursuant to 30 C.F.R. Section 104.5(b), I will submit an evaluation report to the Administrator for Coal Mine Safety and Health within 120 days from the date of this notification. If you choose not to implement a program to reduce S&S violations, I will submit the report of the evaluation to the Administrator within 60 days from the date of this notification.

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<sup>1</sup> However, mines which have implemented a successful corrective action plan during the 90 day evaluation period will be considered along with all other mines for potential pattern of violation notices during the next and subsequent review cycles. In the case of the D&C Mining Corporation, it was issued 20.46 S&S violations per 100 inspection hours during the 24-month review period, in this review cycle 14.28 percentage points higher than the national average of 6.19 S&S violation per 100 inspection hours for underground mines. To ensure the D&C Mining Corporation is not exhibiting a potential Pattern of Violations when the next evaluation is conducted, the D&C Mining Corporation should have an S&S violation rate at or near the national rate. MSHA is required to conduct evaluations at least annually but can conduct the evaluations more frequently.

In both cases, a copy of the report of evaluation will be provided to you 10 days before the report is sent to the Administrator. You will have 10 days from the receipt of the report to submit written comments to the Administrator.

Within 30 days of receipt of my report to the Administrator, the Administrator will issue a decision as to whether the D&C Mining Corporation is to be issued a Notice of a Pattern of Violations. A copy of the decision will be provided to you.

If the Administrator decides to issue a Notice of Pattern of Violations, I will issue the Notice of Pattern of Violations to you.

Following issuance of a Notice of Pattern of Violations, I will initiate appropriate inspection activities to ensure that the D&C Mining Corporation is inspected in its entirety during the following 90-day time frame and each succeeding inspection cycle until the Pattern of Violation order is terminated.

If upon any inspection after the issuance of the Pattern of Violations Notice an authorized representative finds any violation of a mandatory health or safety standard which could significantly and substantially contribute to the cause and effect of a safety or health hazard, the inspector shall issue an order requiring the withdrawal of all persons in the area affected by the violation except those persons listed in 104(c) of the Mine Act. All persons except as listed in 104(c) of the Mine Act shall also be prohibited from entering that area until the inspector determines that such violation has been abated.

Termination of a Pattern of Violations notice shall occur when an inspection of the entire operation results in no significant and substantial violations of the Mine Act.

You may request an inspection of the entire operation or portions of the operation at any time. No advance notice of the inspection shall be provided and MSHA will determine the scope of each inspection. Partial inspections covering the entire operation within the 90-day period will constitute an inspection of the entire operation for the purposes of termination of a Pattern of Violations Notice.

Please contact me at (606) 546-5123 to if you have any questions regarding this matter. Additional mitigating information, requests for a conference and/or a written plan to institute a corrective action program should be sent to me at: 3837 S US HWY 25 E, Barbourville, KY 40906.

Sincerely,

  
District Manager

Attachment

## ***Pattern of Violations Screening Criteria and Scoring Model***

Mine ID: 1518182  
 Mine Name: D & C Mining Corp,  
 Mine Type: Underground

Numbers for D & C  
 Mining Corp, Mine

At least ten S&S Citations/Orders, at mines classified as Surface and Facility, issued during the 24 month review period.	N/A
At least twenty S&S Citations/Orders, at mines classified as Underground, issued during the 24 month review period.	174
At least two "elevated enforcement" actions, [i.e. type action is 104 (b), 104 (d) or 107(a)], issued during the 24 month review period.	30
The ratio of Citation/Orders issued in the most recent 12 months of the review period to the number of Citations/Orders issued during the previous 12 months of the review is 70% or greater.	112%
The mines' rate of S&S Citations/Orders issued per 100 inspection hours during the 24 month review period is equal to or greater than 125% of the National rate of S&S Citations/Orders issued per 100 inspection hours for that mine type and classification.	271%
The number of S&S Citation/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification.	Industry: 7.74 This Mine: 17.22
Or	
The number of elevated enforcement Citations/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification.	Industry: 0.68 This Mine: 5.41
A minimum of two "elevated enforcement" final orders of the Commission, [i.e. type action is 104 (b), 104 (d) or 107(a)] during the 24 month review period.	15
At least one S&S 104 (d) issuance that became a final order of the Commission during the 24 month review period.	9
At least ten S&S Citations/Orders, at mines classified as Surface or Facility, that are final orders of the Commission during the 24 month review period.	N/A
At least twenty S&S Citations/Orders, at mines classified as Underground, that are final orders of the Commission during the 24 month review period.	77

## ***Pattern of Violations Screening Criteria and Scoring Model***

Mine ID: 1518182  
Mine Name: D & C Mining Corp,  
Mine Type: Underground

Numbers for D & C  
Mining Corp, Mine

### **Scores**

a. The number of S&S citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period plus	9.1
b. the number of 104(b) (failure to abate) orders issued per 100 Inspection Hrs. for failure to abate an S&S issuance that that became final during the 24 month review period and multiplying by a factor of 5; plus	3.5
c. the number of 104(d) (unwarrantable failure) citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period and multiplying by a factor of 5; plus	5.3
d. the number of 107(a) (imminent danger) orders issued per 100 Inspection Hrs. during the 24 month review period and multiplying by a factor of 5.	0
Subtotal:	17.9

### ***Increases to the Subtotal***

e. 5%-20% for operations with injury rates above the national average for the same mine type and industry grouping as follows:	0
f. 5%-20% for operations with injury severity rates (number of days lost X 200,000 divided by the total work hours reported) above the national average for the same mine type and industry grouping as follows:	0
g. 5%-20% for operations with citations and orders issued per 100 inspection hours (VPIH) above the 24-month national average for the same mine type and industry grouping as follows:	0.9

The final weighted score must be greater than or equal to the average weighted score for all active mines of the same mine type and industry classification.

Industry: 5.3

This mine: 18.8

### ***30 CFR §104.3***

At least five S&S citations of the same standard that became final orders of the Commission during the most recent 12 months.

75.400 cited 10 times

12-9-07 letter completed 12-6-07 letter delivered

**U.S. Department of Labor**

Mine Safety and Health Administration  
3837 S. US Hwy. 25E  
Barbourville, Kentucky 40906-9206



December 6, 2007

David Osborne, General Superintendent

#4

Bledsoe Coal Corporation

Rt. 2008 Box 351 A

Big Laurel, KY 40808

Dear Mr. Osborne:

In accordance with Section 104(e) of the Federal Mine Safety and Health Act of 1977 (Mine Act) and 30 CFR Part 104, the Mine Safety and Health Administration (MSHA) has conducted a pattern of violation (POV) screening of compliance records for the #4 Mine, MSHA ID No. 15-11065 for the 24-months ending September 30, 2007. A POV screening is used to determine if Section 104(e) is applicable to a particular mine. If implemented, Section 104(e) requires all subsequent violations designated as Significant and Substantial (S&S) be issued as closure orders with all persons withdrawn from the affected area except those necessary to correct the violation. An operator can be removed from Section 104(e) sanctions only after an inspection of the entire operation results in no significant and substantial violations.

This letter is your notification that a potential pattern of violations exists at the #4 Mine. This notification is based upon the initial screening and pattern criteria review, which were conducted in accordance with 30 CFR Parts 104.2 and 104.3 respectively. A Pattern of Violation Review report is enclosed as Attachment A. This report details the methodology utilized for the initial screening and pattern criteria review and summarizes your mine's performance relative to the criteria.

Prior to MSHA implementing Section 104(e) sanctions at the #4 Mine, you are provided the opportunity, not to exceed 20 days from the date of this notification, to take any or all of the following steps:

Review all documents upon which the pattern of violations evaluation is based and provide additional mitigating information.

Submit a written request for a conference with me (I shall hold any conference within 10 days of a request).

Provide a written plan to me indicating that you will institute a corrective action program to avoid repeated significant and substantial violations at the operation.

Please note that current regulation 30 C.F.R. Part 104.4(d) requires that you post a copy of this letter on the mine bulletin board until you are notified of MSHA's final determination with respect to your status pursuant to Section 104(e) of the Mine Act.

If you implement a corrective action program, MSHA will conduct a complete inspection of the #4 Mine. This inspection may start as soon as January 1, 2008. I will analyze the results of this complete inspection and other on-site enforcement activities conducted during the corrective action period to evaluate whether the #4 Mine has effectively reduced the occurrence of S&S violations during the review period. Therefore, I encourage you to implement a corrective action program as soon as practicable. If, during the review period, the #4 Mine achieves a reduction in the S&S violation frequency rate to 12.87 S&S violations per 100 inspection hours, the #4 Mine will not be issued a pattern of violations notice during this POV review cycle.<sup>1</sup>

If you implement a corrective action program which does not reduce the rate of S&S violations to the levels set forth in the paragraph above, pursuant to 30 C.F.R. Section 104.5(b), I will submit an evaluation report to the Administrator for Coal Mine Safety and Health within 120 days from the date of this notification. If you choose not to implement a program to reduce S&S violations, I will submit the report of the evaluation to the Administrator within 60 days from the date of this notification.

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<sup>1</sup> However, mines which have implemented a successful corrective action plan during the 90 day evaluation period will be considered along with all other mines for potential pattern of violation notices during the next and subsequent review cycles. In the case of the #4 Mine, it was issued 18.38 S&S violations per 100 inspection hours during the 24-month review period, in this review cycle 12.19 percentage points higher than the national average of 6.19 S&S violation per 100 inspection hours for underground mines. To ensure the #4 Mine is not exhibiting a potential Pattern of Violations when the next evaluation is conducted, the #4 Mine should have an S&S violation rate at or near the national rate. MSHA is required to conduct evaluations at least annually but can conduct the evaluations more frequently.

In both cases, a copy of the report of evaluation will be provided to you 10 days before the report is sent to the Administrator. You will have 10 days from the receipt of the report to submit written comments to the Administrator.

Within 30 days of receipt of my report to the Administrator, the Administrator will issue a decision as to whether the #4 Mine is to be issued a Notice of a Pattern of Violations. A copy of the decision will be provided to you.

If the Administrator decides to issue a Notice of Pattern of Violations, I will issue the Notice of Pattern of Violations to you.

Following issuance of a Notice of Pattern of Violations, I will initiate appropriate inspection activities to ensure that the #4 Mine is inspected in its entirety during the following 90-day time frame and each succeeding inspection cycle until the Pattern of Violation order is terminated.

If upon any inspection after the issuance of the Pattern of Violations Notice an authorized representative finds any violation of a mandatory health or safety standard which could significantly and substantially contribute to the cause and effect of a safety or health hazard, the inspector shall issue an order requiring the withdrawal of all persons in the area affected by the violation except those persons listed in 104(c) of the Mine Act. All persons except as listed in 104(c) of the Mine Act shall also be prohibited from entering that area until the inspector determines that such violation has been abated.

Termination of a Pattern of Violations notice shall occur when an inspection of the entire operation results in no significant and substantial violations of the Mine Act.

You may request an inspection of the entire operation or portions of the operation at any time. No advance notice of the inspection shall be provided and MSHA will determine the scope of each inspection. Partial inspections covering the entire operation within the 90-day period will constitute an inspection of the entire operation for the purposes of termination of a Pattern of Violations Notice.

Please contact me at (606) 546-5123 to if you have any questions regarding this matter. Additional mitigating information, requests for a conference and/or a written plan to institute a corrective action program should be sent to me at: 3837 S US HWY 25 E, Barbourville, KY 40906.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan J. Hoff". The signature is written in a cursive style with a long horizontal flourish extending to the right.

District Manager  
Attachment

## ***Pattern of Violations Screening Criteria and Scoring Model***

Mine ID: 1511065  
 Mine Name: #4  
 Mine Type: Underground

### Numbers for #4 Mine

At least ten S&S Citations/Orders, at mines classified as Surface and Facility, issued during the 24 month review period.	N/A
At least twenty S&S Citations/Orders, at mines classified as Underground, issued during the 24 month review period.	401
At least two "elevated enforcement" actions, [i.e. type action is 104 (b), 104 (d) or 107(a)], issued during the 24 month review period.	18
The ratio of Citation/Orders issued in the most recent 12 months of the review period to the number of Citations/Orders issued during the previous 12 months of the review is 70% or greater.	148%
The mines' rate of S&S Citations/Orders issued per 100 inspection hours during the 24 month review period is equal to or greater than 125% of the National rate of S&S Citations/Orders issued per 100 inspection hours for that mine type and classification.	243%
The number of S&S Citation/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification.	Industry: 7.74 This Mine: 22.12
Or	
The number of elevated enforcement Citations/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification.	Industry: 0.68 This Mine: 2.26
A minimum of two "elevated enforcement" final orders of the Commission, [i.e. type action is 104 (b), 104 (d) or 107(a)] during the 24 month review period.	6
At least one S&S 104 (d) issuance that became a final order of the Commission during the 24 month review period.	1
At least ten S&S Citations/Orders, at mines classified as Surface or Facility, that are final orders of the Commission during the 24 month review period.	N/A
At least twenty S&S Citations/Orders, at mines classified as Underground, that are final orders of the Commission during the 24 month review period.	288

## ***Pattern of Violations Screening Criteria and Scoring Model***

Mine ID: 1511065  
Mine Name: #4  
Mine Type: Underground

Numbers for #4 Mine

### **Scores**

a. The number of S&S citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period plus	13.2
b. the number of 104(b) (failure to abate) orders issued per 100 Inspection Hrs. for failure to abate an S&S issuance that that became final during the 24 month review period and multiplying by a factor of 5; plus	0.5
c. the number of 104(d) (unwarrantable failure) citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period and multiplying by a factor of 5; plus	0.2
d. the number of 107(a) (imminent danger) orders issued per 100 Inspection Hrs. during the 24 month review period and multiplying by a factor of 5.	0.7
Subtotal:	14.6

### ***Increases to the Subtotal***

e. 5%-20% for operations with injury rates above the national average for the same mine type and industry grouping as follows:	0
f. 5%-20% for operations with injury severity rates (number of days lost X 200,000 divided by the total work hours reported) above the national average for the same mine type and industry grouping as follows:	0
g. 5%-20% for operations with citations and orders issued per 100 inspection hours (VPIH) above the 24-month national average for the same mine type and industry grouping as follows:	1.5

The final weighted score must be greater than or equal to the average weighted score for all active mines of the same mine type and industry classification.

Industry: 5.3

This mine: 16

### ***30 CFR §104.3***

At least five S&S citations of the same standard that became final orders of the Commission during the most recent 12 months.

75.400 cited 30 times

12/6/07 letters completed 12/6/07 delivered

**U.S. Department of Labor**

Mine Safety and Health Administration  
3837 S. US Hwy. 25E  
Barbourville, Kentucky 40906-9206



December 6, 2007

James C. Justice II, President  
Bardo #1  
Bardo Mining, LLC  
N 19<sup>th</sup> Street, Extension  
Middlesboro, KY 40965

Dear Mr. Justice:

In accordance with Section 104(e) of the Federal Mine Safety and Health Act of 1977 (Mine Act) and 30 CFR Part 104, the Mine Safety and Health Administration (MSHA) has conducted a pattern of violation (POV) screening of compliance records for the Bardo #1 Mine, MSHA ID No. 15-18694 for the 24-months ending September 30, 2007. A POV screening is used to determine if Section 104(e) is applicable to a particular mine. If implemented, Section 104(e) requires all subsequent violations designated as Significant and Substantial (S&S) be issued as closure orders with all persons withdrawn from the affected area except those necessary to correct the violation. An operator can be removed from Section 104(e) sanctions only after an inspection of the entire operation results in no significant and substantial violations.

This letter is your notification that a potential pattern of violations exists at the Bardo #1 Mine. This notification is based upon the initial screening and pattern criteria review, which were conducted in accordance with 30 CFR Parts 104.2 and 104.3 respectively. A Pattern of Violation Review report is enclosed as Attachment A. This report details the methodology utilized for the initial screening and pattern criteria review and summarizes your mine's performance relative to the criteria.

Prior to MSHA implementing Section 104(e) sanctions at the Bardo #1 Mine, you are provided the opportunity, not to exceed 20 days from the date of this notification, to take any or all of the following steps:

Review all documents upon which the pattern of violations evaluation is based and provide additional mitigating information.

Submit a written request for a conference with me (I shall hold any conference within 10 days of a request).

Provide a written plan to me indicating that you will institute a corrective action program to avoid repeated significant and substantial violations at the operation.

Please note that current regulation 30 C.F.R. Part 104.4(d) requires that you post a copy of this letter on the mine bulletin board until you are notified of MSHA's final determination with respect to your status pursuant to Section 104(e) of the Mine Act.

If you implement a corrective action program, MSHA will conduct a complete inspection of the Bardo #1 Mine. This inspection may start as soon as January 1, 2008. I will analyze the results of this complete inspection and other on-site enforcement activities conducted during the corrective action period to evaluate whether the Bardo #1 Mine has effectively reduced the occurrence of S&S violations during the review period. Therefore, I encourage you to implement a corrective action program as soon as practicable. If, during the review period, the Bardo #1 Mine achieves a reduction in the S&S violation frequency rate to 9.32 S&S violations per 100 inspection hours, [this number will be the higher of the two possible goals - 30% reduction or reduction to the national rate] the Bardo #1 Mine will not be issued a pattern of violations notice during this POV review cycle.<sup>1</sup>

If you implement a corrective action program which does not reduce the rate of S&S violations to the levels set forth in the paragraph above, pursuant to 30 C.F.R. Section 104.5(b), I will submit an evaluation report to the Administrator for Coal Mine Safety and Health within 120 days from the date of this notification. If you choose not to implement a program to reduce S&S violations, I will submit the report of the evaluation to the Administrator within 60 days from the date of this notification.

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<sup>1</sup> However, mines which have implemented a successful corrective action plan during the 90 day evaluation period will be considered along with all other mines for potential pattern of violation notices during the next and subsequent review cycles. In the case of the Bardo #1 Mine, it was issued 13.31 S&S violations per 100 inspection hours during the 24-month review period, in this review cycle 7.13 percentage points higher than the national average of 6.19 S&S violation per 100 inspection hours for underground mines. To ensure the Bardo #1 Mine is not exhibiting a potential Pattern of Violations when the next evaluation is conducted, the Bardo #1 Mine should have an S&S violation rate at or near the national rate. MSHA is required to conduct evaluations at least annually but can conduct the evaluations more frequently.

In both cases, a copy of the report of evaluation will be provided to you 10 days before the report is sent to the Administrator. You will have 10 days from the receipt of the report to submit written comments to the Administrator.

Within 30 days of receipt of my report to the Administrator, the Administrator will issue a decision as to whether the Bardo #1 Mine is to be issued a Notice of a Pattern of Violations. A copy of the decision will be provided to you.

If the Administrator decides to issue a Notice of Pattern of Violations, I will issue the Notice of Pattern of Violations to you.

Following issuance of a Notice of Pattern of Violations, I will initiate appropriate inspection activities to ensure that the Bardo #1 Mine is inspected in its entirety during the following 90-day time frame and each succeeding inspection cycle until the Pattern of Violation order is terminated.

If upon any inspection after the issuance of the Pattern of Violations Notice an authorized representative finds any violation of a mandatory health or safety standard which could significantly and substantially contribute to the cause and effect of a safety or health hazard, the inspector shall issue an order requiring the withdrawal of all persons in the area affected by the violation except those persons listed in 104(c) of the Mine Act. All persons except as listed in 104(c) of the Mine Act shall also be prohibited from entering that area until the inspector determines that such violation has been abated.

Termination of a Pattern of Violations notice shall occur when an inspection of the entire operation results in no significant and substantial violations of the Mine Act.

You may request an inspection of the entire operation or portions of the operation at any time. No advance notice of the inspection shall be provided and MSHA will determine the scope of each inspection. Partial inspections covering the entire operation within the 90-day period will constitute an inspection of the entire operation for the purposes of termination of a Pattern of Violations Notice.

Please contact me at (606) 546-5123 to if you have any questions regarding this matter. Additional mitigating information, requests for a conference and/or a written plan to institute a corrective action program should be sent to me at: 3837 S US HWY 25 E, Barbourville, KY 40906.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Holden". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

District Manager

Attachment

## ***Pattern of Violations Screening Criteria and Scoring Model***

Mine ID: 1518694  
 Mine Name: Bardo #1  
 Mine Type: Underground

	Numbers for Bardo #1 Mine
At least ten S&S Citations/Orders, at mines classified as Surface and Facility, issued during the 24 month review period.	N/A
At least twenty S&S Citations/Orders, at mines classified as Underground, issued during the 24 month review period.	120
At least two "elevated enforcement" actions, [i.e. type action is 104 (b), 104 (d) or 107(a)], issued during the 24 month review period.	4
The ratio of Citation/Orders issued in the most recent 12 months of the review period to the number of Citations/Orders issued during the previous 12 months of the review is 70% or greater.	112%
The mines' rate of S&S Citations/Orders issued per 100 inspection hours during the 24 month review period is equal to or greater than 125% of the National rate of S&S Citations/Orders issued per 100 inspection hours for that mine type and classification.	176%
The number of S&S Citation/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification.	Industry: 7.74  This Mine: 13.66
Or	
The number of elevated enforcement Citations/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification.	Industry: 0.68  This Mine: 0.62
A minimum of two "elevated enforcement" final orders of the Commission, [i.e. type action is 104 (b), 104 (d) or 107(a)] during the 24 month review period.	2
At least one S&S 104 (d) issuance that became a final order of the Commission during the 24 month review period.	1
At least ten S&S Citations/Orders, at mines classified as Surface or Facility, that are final orders of the Commission during the 24 month review period.	N/A
At least twenty S&S Citations/Orders, at mines classified as Underground, that are final orders of the Commission during the 24 month review period.	90

## ***Pattern of Violations Screening Criteria and Scoring Model***

Mine ID: 1518694  
 Mine Name: Bardo #1  
 Mine Type: Underground

Numbers for Bardo  
 #1 Mine

### ***Scores***

a. The number of S&S citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period plus	10
b. the number of 104(b) (failure to abate) orders issued per 100 Inspection Hrs. for failure to abate an S&S issuance that that became final during the 24 month review period and multiplying by a factor of 5; plus	0.6
c. the number of 104(d) (unwarrantable failure) citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period and multiplying by a factor of 5; plus	0.6
d. the number of 107(a) (imminent danger) orders issued per 100 Inspection Hrs. during the 24 month review period and multiplying by a factor of 5.	0
Subtotal:	11.2

### ***Increases to the Subtotal***

e. 5%-20% for operations with injury rates above the national average for the same mine type and industry grouping as follows:	0
f. 5%-20% for operations with injury severity rates (number of days lost X 200,000 divided by the total work hours reported) above the national average for the same mine type and industry grouping as follows:	0
g. 5%-20% for operations with citations and orders issued per 100 inspection hours (VPIH) above the 24-month national average for the same mine type and industry grouping as follows:	0.6

The final weighted score must be greater than or equal to the average weighted score for all active mines of the same mine type and industry classification.	Industry: 5.3
	This mine: 11.7

### ***30 CFR §104.3***

At least five S&S citations of the same standard that became final orders of the Commission during the most recent 12 months.	75.400 cited 13 times
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**U. S. Department of Labor**

Mine Safety and Health Administration  
100 Bluestone Road  
Mount Hope, WV 25880-1000



DEC 06 2007

Mr. Bruce Short  
Superintendent  
Deep Mine No. 8  
Argus Energy WV, LLC  
PO Box 200  
Dunlow, WV 25511

Dear Mr. Short:

In accordance with Section 104(e) of the Federal Mine Safety and Health Act of 1977 (Mine Act) and 30 CFR Part 104, the Mine Safety and Health Administration (MSHA) has conducted a pattern of violation (POV) screening of compliance records for Deep Mine No. 8, MSHA ID No. 46-08994 for the 24-months ending September 30, 2007. A POV screening is used to determine if Section 104(e) is applicable to a particular mine. If implemented, Section 104(e) requires all subsequent violations designated as Significant and Substantial (S&S) be issued as closure orders with all persons withdrawn from the affected area, except those necessary to correct the violation. An operator can be removed from Section 104(e) sanctions only after an inspection of the entire operation results in no significant and substantial violations.

This letter is your notification that a potential pattern of violations exists at Deep Mine No. 8. This notification is based upon the initial screening and pattern criteria review, which were conducted in accordance with 30 CFR Parts 104.2 and 104.3 respectively. A Pattern of Violation Review report is enclosed as Attachment A. This report details the methodology utilized for the initial screening and pattern criteria review and summarizes your mine's performance relative to the criteria.

Prior to MSHA implementing Section 104(e) sanctions at Deep Mine No. 8, you are provided the opportunity, not to exceed 20 days from the date of this notification, to take any or all of the following steps:

Review all documents upon which the pattern of violations evaluation is based and provide additional mitigating information.

Submit a written request for a conference with me (I shall hold any conference within 10 days of a request).

Provide a written plan to me indicating that you will institute a corrective action program to avoid repeated significant and substantial violations at the operation.

Please note that current regulation 30 C.F.R. Part 104.4(d) requires that you post a copy of this letter on the mine bulletin board until you are notified of MSHA's final determination with respect to your status pursuant to Section 104(e) of the Mine Act.

If you implement a corrective action program, MSHA will conduct a complete inspection of Deep Mine No. 8. This inspection may start as soon as January 1, 2008. I will analyze the results of this complete inspection and other on-site enforcement activities conducted during the corrective action period to evaluate whether Deep Mine No. 8 has effectively reduced the occurrence of S&S violations during the review period. Therefore, I encourage you to implement a corrective action program as soon as practicable. If, during the review period, Deep Mine No. 8 achieves a reduction in the S&S violation frequency rate to 7.79 S&S violations per 100 inspection hours, Deep Mine No. 8 will not be issued a pattern of violations notice during this POV review cycle.<sup>1</sup>

If you implement a corrective action program which does not reduce the rate of S&S violations to the levels set forth in the paragraph above, pursuant to 30 C.F.R. Section 104.5(b), I will submit an evaluation report to the Administrator for Coal/Metal and Nonmetal Mine Safety and Health within 120 days from the date of this notification. If you choose not to implement a program to reduce S&S violations, I will submit the report of the evaluation to the Administrator within 60 days from the date of this notification.

In both cases, a copy of the report of evaluation will be provided to you and the representative of the miners, if applicable, 10 days before the report is sent to the

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<sup>1</sup> However, mines which have implemented a successful corrective action plan during the 90 day evaluation period will be considered along with all other mines for potential pattern of violation notices during the next and subsequent review cycles. In the case of Deep Mine No. 8, it was issued 11.13 S&S violations per 100 inspection hours during the 24-month review period, in this review cycle --4.94 percentage points higher than the national average of 6.19 S&S violation per 100 inspection hours for bituminous underground coal mines. To ensure Deep Mine No. 8 is not exhibiting a potential Pattern of Violations when the next evaluation is conducted, Deep Mine No. 8 should have an S&S violation rate at or near the national rate. MSHA is required to conduct evaluations at least annually but can conduct the evaluations more frequently.

Administrator. Both you and the miners representative, where applicable, will have 10 days from the receipt of the report to submit written comments to the Administrator.

Within 30 days of receipt of my report to the Administrator, the Administrator will issue a decision as to whether Deep Mine No. 8 is to be issued a Notice of a Pattern of Violations. A copy of the decision will be provided to you and the representative of the miners if applicable.

If the Administrator decides to issue a Notice of Pattern of Violations, I will issue the Notice of Pattern of Violations to you. A copy of the notice will also be provided to the representative of miners, where applicable.

Following issuance of a Notice of Pattern of Violations, I will initiate appropriate inspection activities to ensure that Deep Mine No. 8 is inspected in its entirety during the following 90-day time frame and each succeeding inspection cycle until the Pattern of Violation order is terminated.

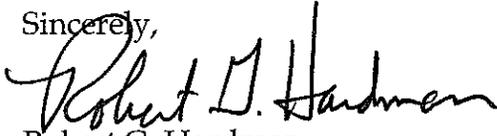
If upon any inspection after the issuance of the Pattern of Violations Notice an authorized representative finds any violation of a mandatory health or safety standard which could significantly and substantially contribute to the cause and effect of a safety or health hazard, the inspector shall issue an order requiring the withdrawal of all persons in the area affected by the violation except those persons listed in 104(c) of the Mine Act. All persons except as listed in 104(c) of the Mine Act shall also be prohibited from entering that area until the inspector determines that such violation has been abated.

Termination of a Pattern of Violations notice shall occur when an inspection of the entire operation results in no significant and substantial violations of the Mine Act.

You may request an inspection of the entire operation or portions of the operation at any time. No advance notice of the inspection shall be provided and MSHA will determine the scope of each inspection. Partial inspections covering the entire operation within the 90-day period will constitute an inspection of the entire operation for the purposes of termination of a Pattern of Violations Notice.

Please contact me at (304) 877-3900 if you have any questions regarding this matter. Additional mitigating information, requests for a conference and/or a written plan to institute a corrective action program should be sent to me at: Robert G. Hardman, District Manager for Coal District 4, 100 Bluestone Road, Mount Hope, WV 25880-1000.

Sincerely,

A handwritten signature in black ink that reads "Robert G. Hardman". The signature is written in a cursive style with a large, prominent initial "R".

Robert G. Hardman  
District Manager

Attachment

## ***Pattern of Violations Screening Criteria and Scoring Model***

Mine ID: 4608994  
 Mine Name: Deep Mine No. 8  
 Mine Type: Underground

	Numbers for Deep Mine No. 8 Mine
At least ten S&S Citations/Orders, at mines classified as Surface and Facility, issued during the 24 month review period.	N/A
At least twenty S&S Citations/Orders, at mines classified as Underground, issued during the 24 month review period.	65
At least two "elevated enforcement" actions, [i.e. type action is 104 (b), 104 (d) or 107(a)], issued during the 24 month review period.	5
The ratio of Citation/Orders issued in the most recent 12 months of the review period to the number of Citations/Orders issued during the previous 12 months of the review is 70% or greater.	289%
The mines' rate of S&S Citations/Orders issued per 100 inspection hours during the 24 month review period is equal to or greater than 125% of the National rate of S&S Citations/Orders issued per 100 inspection hours for that mine type and classification.	147%
The number of S&S Citation/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification.	Industry: 7.74 This Mine: 11.88
Or	
The number of elevated enforcement Citations/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification.	Industry: 0.68 This Mine: 0.88
A minimum of two "elevated enforcement" final orders of the Commission, [i.e. type action is 104 (b), 104 (d) or 107(a)] during the 24 month review period.	4
At least one S&S 104 (d) issuance that became a final order of the Commission during the 24 month review period.	2
At least ten S&S Citations/Orders, at mines classified as Surface or Facility, that are final orders of the Commission during the 24 month review period.	N/A
At least twenty S&S Citations/Orders, at mines classified as Underground, that are final orders of the Commission during the 24 month review period.	56

## **Pattern of Violations Screening Criteria and Scoring Model**

Mine ID: 4608994  
 Mine Name: Deep Mine No. 8  
 Mine Type: Underground

Numbers for Deep  
 Mine No. 8 Mine

### **Scores**

a. The number of S&S citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period plus	9.6
b. the number of 104(b) (failure to abate) orders issued per 100 Inspection Hrs. for failure to abate an S&S issuance that that became final during the 24 month review period and multiplying by a factor of 5; plus	0.9
c. the number of 104(d) (unwarrantable failure) citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period and multiplying by a factor of 5; plus	1.7
d. the number of 107(a) (imminent danger) orders issued per 100 Inspection Hrs. during the 24 month review period and multiplying by a factor of 5.	0.9
Subtotal:	13.1

### **Increases to the Subtotal**

e. 5%-20% for operations with injury rates above the national average for the same mine type and industry grouping as follows:	0.7
f. 5%-20% for operations with injury severity rates (number of days lost X 200,000 divided by the total work hours reported) above the national average for the same mine type and industry grouping as follows:	0
g. 5%-20% for operations with citations and orders issued per 100 inspection hours (VPIH) above the 24-month national average for the same mine type and industry grouping as follows:	0.7

The final weighted score must be greater than or equal to the average weighted score for all active mines of the same mine type and industry classification.

Industry: 5.3

This mine: 14.3

### **30 CFR §104.3**

At least five S&S citations of the same standard that became final orders of the Commission during the most recent 12 months.

75.400 cited 10 times

U.S. Department of Labor

Mine Safety and Health Administration  
P. O. Box 560  
Norton, Virginia 24273



December 6, 2007

Mr. Ervin Stiltner, President  
Regent Allied Carbon Energy, Inc.  
No. 2  
P.O. Box 1038  
Grundy, VA 24614

Dear Mr. Stiltner:

In accordance with Section 104(e) of the Federal Mine Safety and Health Act of 1977 (Mine Act) and 30 CFR Part 104, the Mine Safety and Health Administration (MSHA) has conducted a pattern of violation (POV) screening of compliance records for the No. 2 mine, MSHA ID No. 44-07081 for the 24-months ending September 30, 2007. A POV screening is used to determine if Section 104(e) is applicable to a particular mine. If implemented, Section 104(e) requires all subsequent violations designated as Significant and Substantial (S&S) be issued as closure orders with all persons withdrawn from the affected area except those necessary to correct the violation. An operator can be removed from Section 104(e) sanctions only after an inspection of the entire operation results in no significant and substantial violations.

This letter is your notification that a potential pattern of violations exists at the No. 2 mine. This notification is based upon the initial screening and pattern criteria review, which were conducted in accordance with 30 CFR Parts 104.2 and 104.3 respectively. A Pattern of Violation Review report is enclosed as Attachment A. This report details the methodology utilized for the initial screening and pattern criteria review and summarizes your mine's performance relative to the criteria.

Prior to MSHA implementing Section 104(e) sanctions at the No. 2 mine, you are provided the opportunity, not to exceed 20 days from the date of this notification, to take any or all of the following steps:

Review all documents upon which the pattern of violations evaluation is based and provide additional mitigating information.

Submit a written request for a conference with me (I shall hold any conference within 10 days of a request).

Provide a written plan to me indicating that you will institute a corrective action program to avoid repeated significant and substantial violations at the operation.

Please note that current regulation 30 C.F.R. Part 104.4(d) requires that you post a copy of this letter on the mine bulletin board until you are notified of MSHA's final determination with respect to your status pursuant to Section 104(e) of the Mine Act.

If you implement a corrective action program, MSHA will conduct a complete inspection of the No. 2 mine. This inspection may start as soon as January 1, 2008. I will analyze the results of this complete inspection and other on-site enforcement activities conducted during the corrective action period to evaluate whether the No. 2 mine has effectively reduced the occurrence of S&S violations during the review period. Therefore, I encourage you to implement a corrective action program as soon as practicable. If, during the review period, the No. 2 mine achieves a reduction in the S&S violation frequency rate to 12.90 S&S violations per 100 inspection hours, the No. 2 mine will not be issued a pattern of violations notice during this POV review cycle.<sup>1</sup>

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<sup>1</sup> However, mines which have implemented a successful corrective action plan during the 90 day evaluation period will be considered along with all other mines for potential pattern of violation notices during the next and subsequent review cycles. In the case of the No. 2 mine, it was issued 18.42 S&S violations per 100 inspection hours during the 24-month review period, in this review cycle --12.23 percentage points higher than the national average of 6.19 S&S violation per 100 inspection hours for underground mines. To ensure the No. 2 mine is not exhibiting a potential Pattern of Violations when the next evaluation is conducted, the No. 2 mine should have an S&S violation rate at or near the national rate. MSHA is required to conduct evaluations at least annually but can conduct the evaluations more frequently.

If you implement a corrective action program which does not reduce the rate of S&S violations to the levels set forth in the paragraph above, pursuant to 30 C.F.R. Section 104.5(b), I will submit an evaluation report to the Administrator for Coal Mine Safety and Health within 120 days from the date of this notification. If you choose not to implement a program to reduce S&S violations, I will submit the report of the evaluation to the Administrator within 60 days from the date of this notification.

In both cases, a copy of the report of evaluation will be provided to you 10 days before the report is sent to the Administrator. You will have 10 days from the receipt of the report to submit written comments to the Administrator.

Within 30 days of receipt of my report to the Administrator, the Administrator will issue a decision as to whether the No. 2 mine is to be issued a Notice of a Pattern of Violations. A copy of the decision will be provided to you.

If the Administrator decides to issue a Notice of Pattern of Violations, I will issue the Notice of Pattern of Violations to you.

Following issuance of a Notice of Pattern of Violations, I will initiate appropriate inspection activities to ensure that the No. 2 mine is inspected in its entirety during the following 90-day time frame and each succeeding inspection cycle until the Pattern of Violation order is terminated.

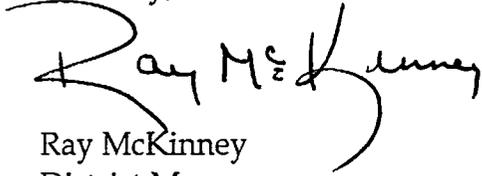
If upon any inspection after the issuance of the Pattern of Violations Notice an authorized representative finds any violation of a mandatory health or safety standard which could significantly and substantially contribute to the cause and effect of a safety or health hazard, the inspector shall issue an order requiring the withdrawal of all persons in the area affected by the violation except those persons listed in 104(c) of the Mine Act. All persons except as listed in 104(c) of the Mine Act shall also be prohibited from entering that area until the inspector determines that such violation has been abated.

Termination of a Pattern of Violations notice shall occur when an inspection of the entire operation results in no significant and substantial violations of the Mine Act.

You may request an inspection of the entire operation or portions of the operation at any time. No advance notice of the inspection shall be provided and MSHA will determine the scope of each inspection. Partial inspections covering the entire operation within the 90-day period will constitute an inspection of the entire operation for the purposes of termination of a Pattern of Violations Notice.

Please contact me at (276) 679-0230 if you have any questions regarding this matter. Additional mitigating information, requests for a conference and/or a written plan to institute a corrective action program should be sent to me at: **USDOL - MSHA - CMS&H, District 5, PO Box 560, Norton, VA 24273.**

Sincerely,

A handwritten signature in black ink that reads "Ray McKinney". The signature is written in a cursive style with a large, sweeping initial "R" and a long, trailing flourish at the end.

Ray McKinney  
District Manager

Attachment

## ***Pattern of Violations Screening Criteria and Scoring Model***

Mine ID: 4407081  
 Mine Name: No. 2  
 Mine Type: Underground

	Numbers for No. 2 Mine
At least ten S&S Citations/Orders, at mines classified as Surface and Facility, issued during the 24 month review period.	N/A
At least twenty S&S Citations/Orders, at mines classified as Underground, issued during the 24 month review period.	115
At least two "elevated enforcement" actions, [i.e. type action is 104 (b), 104 (d) or 107(a)], issued during the 24 month review period.	3
The ratio of Citation/Orders issued in the most recent 12 months of the review period to the number of Citations/Orders issued during the previous 12 months of the review is 70% or greater.	131%
The mines' rate of S&S Citations/Orders issued per 100 inspection hours during the 24 month review period is equal to or greater than 125% of the National rate of S&S Citations/Orders issued per 100 inspection hours for that mine type and classification.	244%
The number of S&S Citation/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification.	Industry: 7.74 This Mine: 17.05
Or	
The number of elevated enforcement Citations/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification.	Industry: 0.68 This Mine: 0
A minimum of two "elevated enforcement" final orders of the Commission, [i.e. type action is 104 (b), 104 (d) or 107(a)] during the 24 month review period.	3
At least one S&S 104 (d) issuance that became a final order of the Commission during the 24 month review period.	3
At least ten S&S Citations/Orders, at mines classified as Surface or Facility, that are final orders of the Commission during the 24 month review period.	N/A
At least twenty S&S Citations/Orders, at mines classified as Underground, that are final orders of the Commission during the 24 month review period.	107

**Pattern of Violations Screening Criteria and Scoring Model**

Mine ID: 4407081  
 Mine Name: No. 2  
 Mine Type: Underground

Numbers for No. 2  
 Mine

**Scores**

a. The number of S&S citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period plus	17.1
b. the number of 104(b) (failure to abate) orders issued per 100 Inspection Hrs. for failure to abate an S&S issuance that that became final during the 24 month review period and multiplying by a factor of 5; plus	0
c. the number of 104(d) (unwarrantable failure) citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period and multiplying by a factor of 5; plus	2.4
d. the number of 107(a) (imminent danger) orders issued per 100 Inspection Hrs. during the 24 month review period and multiplying by a factor of 5.	0
Subtotal:	19.5

**Increases to the Subtotal**

e. 5%-20% for operations with injury rates above the national average for the same mine type and industry grouping as follows:	0
f. 5%-20% for operations with injury severity rates (number of days lost X 200,000 divided by the total work hours reported) above the national average for the same mine type and industry grouping as follows:	0
g. 5%-20% for operations with citations and orders issued per 100 inspection hours (VPIH) above the 24-month national average for the same mine type and industry grouping as follows:	2

The final weighted score must be greater than or equal to the average weighted score for all active mines of the same mine type and industry classification.

Industry: 5.3

This mine: 21.5

**30 CFR §104.3**

At least five S&S citations of the same standard that became final orders of the Commission during the most recent 12 months.

75.400 cited 10 times



December 6, 2007

Mr. Charles D. Mullins  
Commonwealth Mining, LLC  
No. 1 Washer  
P.O. Box 190  
Appalachia, VA 24216

Dear Mr. Mullins:

In accordance with Section 104(e) of the Federal Mine Safety and Health Act of 1977 (Mine Act) and 30 CFR Part 104, the Mine Safety and Health Administration (MSHA) has conducted a pattern of violation (POV) screening of compliance records for the No. 1 Washer, MSHA ID No. 44-07029 for the 24-months ending September 30, 2007. A POV screening is used to determine if Section 104(e) is applicable to a particular mine. If implemented, Section 104(e) requires all subsequent violations designated as Significant and Substantial (S&S) be issued as closure orders with all persons withdrawn from the affected area except those necessary to correct the violation. An operator can be removed from Section 104(e) sanctions only after an inspection of the entire operation results in no significant and substantial violations.

This letter is your notification that a potential pattern of violations exists at the No. 1 Washer. This notification is based upon the initial screening and pattern criteria review, which were conducted in accordance with 30 CFR Parts 104.2 and 104.3 respectively. A Pattern of Violation Review report is enclosed as Attachment A. This report details the methodology utilized for the initial screening and pattern criteria review and summarizes your mine's performance relative to the criteria.

Prior to MSHA implementing Section 104(e) sanctions at the No. 1 Washer, you are provided the opportunity, not to exceed 20 days from the date of this notification, to take any or all of the following steps:

Review all documents upon which the pattern of violations evaluation is based and provide additional mitigating information.

Submit a written request for a conference with me (I shall hold any conference within 10 days of a request).

Provide a written plan to me indicating that you will institute a corrective action program to avoid repeated significant and substantial violations at the operation.

Please note that current regulation 30 C.F.R. Part 104.4(d) requires that you post a copy of this letter on the mine bulletin board until you are notified of MSHA's final determination with respect to your status pursuant to Section 104(e) of the Mine Act.

If you implement a corrective action program, MSHA will conduct a complete inspection of the No. 1 Washer. This inspection may start as soon as January 1, 2008. I will analyze the results of this complete inspection and other on-site enforcement activities conducted during the corrective action period to evaluate whether the No. 1 Washer has effectively reduced the occurrence of S&S violations during the review period. Therefore, I encourage you to implement a corrective action program as soon as practicable. If, during the review period, the No. 1 Washer achieves a reduction in the S&S violation frequency rate to 17.18 S&S violations per 100 inspection hours, No. 1 Washer will not be issued a pattern of violations notice during this POV review cycle.<sup>1</sup>

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<sup>1</sup> However, mines which have implemented a successful corrective action plan during the 90 day evaluation period will be considered along with all other mines for potential pattern of violation notices during the next and subsequent review cycles. In the case of the No. 1 Washer, it was issued 24.54 S&S violations per 100 inspection hours during the 24-month review period, in this review cycle -- 18.30 percentage points higher than the national average of 6.24 S&S violation per 100 inspection hours for facility mines. To ensure the No. 1 Washer is not exhibiting a potential Pattern of Violations when the next evaluation is conducted, the No. 1 Washer should have an S&S violation rate at or near the national rate. MSHA is required to conduct evaluations at least annually but can conduct the evaluations more frequently.

If you implement a corrective action program which does not reduce the rate of S&S violations to the levels set forth in the paragraph above, pursuant to 30 C.F.R. Section 104.5(b), I will submit an evaluation report to the Administrator for Coal Mine Safety and Health within 120 days from the date of this notification. If you choose not to implement a program to reduce S&S violations, I will submit the report of the evaluation to the Administrator within 60 days from the date of this notification.

In both cases, a copy of the report of evaluation will be provided to you 10 days before the report is sent to the Administrator. You will have 10 days from the receipt of the report to submit written comments to the Administrator.

Within 30 days of receipt of my report to the Administrator, the Administrator will issue a decision as to whether the No. 1 Washer is to be issued a Notice of a Pattern of Violations. A copy of the decision will be provided to you.

If the Administrator decides to issue a Notice of Pattern of Violations, I will issue the Notice of Pattern of Violations to you.

Following issuance of a Notice of Pattern of Violations, I will initiate appropriate inspection activities to ensure that the No. 1 Washer is inspected in its entirety during the following 90-day time frame and each succeeding inspection cycle until the Pattern of Violation order is terminated.

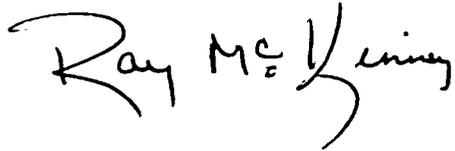
If upon any inspection after the issuance of the Pattern of Violations Notice an authorized representative finds any violation of a mandatory health or safety standard which could significantly and substantially contribute to the cause and effect of a safety or health hazard, the inspector shall issue an order requiring the withdrawal of all persons in the area affected by the violation except those persons listed in 104(c) of the Mine Act. All persons except as listed in 104(c) of the Mine Act shall also be prohibited from entering that area until the inspector determines that such violation has been abated.

Termination of a Pattern of Violations notice shall occur when an inspection of the entire operation results in no significant and substantial violations of the Mine Act.

You may request an inspection of the entire operation or portions of the operation at any time. No advance notice of the inspection shall be provided and MSHA will determine the scope of each inspection. Partial inspections covering the entire operation within the 90-day period will constitute an inspection of the entire operation for the purposes of termination of a Pattern of Violations Notice.

Please contact me at (276) 679-0230 if you have any questions regarding this matter. Additional mitigating information, requests for a conference and/or a written plan to institute a corrective action program should be sent to me at: USDOL - MSHA - CMS&H, District 5, PO Box 560, Norton, VA 24273.

Sincerely,

A handwritten signature in black ink that reads "Ray McKinney". The signature is written in a cursive style with a large, sweeping "R" and a distinct "Mc" in the middle.

Ray McKinney  
District Manager

Attachment

## ***Pattern of Violations Screening Criteria and Scoring Model***

Mine ID: 4407029  
 Mine Name: No 1 Washer  
 Mine Type: Facility

	Numbers for No 1 Washer Mine
At least ten S&S Citations/Orders, at mines classified as Surface and Facility, issued during the 24 month review period.	37
At least twenty S&S Citations/Orders, at mines classified as Underground, issued during the 24 month review period.	N/A
At least two "elevated enforcement" actions, [i.e. type action is 104 (b), 104 (d) or 107(a)], issued during the 24 month review period.	2
The ratio of Citation/Orders issued in the most recent 12 months of the review period to the number of Citations/Orders issued during the previous 12 months of the review is 70% or greater.	194%
The mines' rate of S&S Citations/Orders issued per 100 inspection hours during the 24 month review period is equal to or greater than 125% of the National rate of S&S Citations/Orders issued per 100 inspection hours for that mine type and classification.	335%
The number of S&S Citation/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification.	Industry: 7.77
	This Mine: 22.78
Or	
The number of elevated enforcement Citations/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification.	Industry: 0.68
	This Mine: 0
A minimum of two "elevated enforcement" final orders of the Commission, [i.e. type action is 104 (b), 104 (d) or 107(a)] during the 24 month review period.	2
At least one S&S 104 (d) issuance that became a final order of the Commission during the 24 month review period.	2
At least ten S&S Citations/Orders, at mines classified as Surface or Facility, that are final orders of the Commission during the 24 month review period.	42
At least twenty S&S Citations/Orders, at mines classified as Underground, that are final orders of the Commission during the 24 month review period.	N/A

**Pattern of Violations Screening Criteria and Scoring Model**

Mine ID: 4407029  
 Mine Name: No 1 Washer  
 Mine Type: Facility

Numbers for No 1  
 Washer Mine

**Scores**

a. The number of S&S citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period plus	27.9
b. the number of 104(b) (failure to abate) orders issued per 100 Inspection Hrs. for failure to abate an S&S issuance that that became final during the 24 month review period and multiplying by a factor of 5; plus	0
c. the number of 104(d) (unwarrantable failure) citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period and multiplying by a factor of 5; plus	6.6
d. the number of 107(a) (imminent danger) orders issued per 100 Inspection Hrs. during the 24 month review period and multiplying by a factor of 5.	0
Subtotal:	34.5

**Increases to the Subtotal**

e. 5%-20% for operations with injury rates above the national average for the same mine type and industry grouping as follows:	0
f. 5%-20% for operations with injury severity rates (number of days lost X 200,000 divided by the total work hours reported) above the national average for the same mine type and industry grouping as follows:	0
g. 5%-20% for operations with citations and orders issued per 100 inspection hours (VPIH) above the 24-month national average for the same mine type and industry grouping as follows:	6.9

The final weighted score must be greater than or equal to the average weighted score for all active mines of the same mine type and industry classification.

Industry: 6.7

This mine: 41.4

**30 CFR §104.3**

At least five S&S citations of the same standard that became final orders of the Commission during the most recent 12 months.

77.205(b) cited 9 times



December 6, 2007

Mr. Ram Tankersley, Manager Safety  
Black Dog Coal Corporation  
No. 2  
5703 Crutchfield Drive  
Norton, VA 24273

Dear Mr. Tankersley:

In accordance with Section 104(e) of the Federal Mine Safety and Health Act of 1977 (Mine Act) and 30 CFR Part 104, the Mine Safety and Health Administration (MSHA) has conducted a pattern of violation (POV) screening of compliance records for the No. 2 mine, MSHA ID No. 44-04946 for the 24-months ending September 30, 2007. A POV screening is used to determine if Section 104(e) is applicable to a particular mine. If implemented, Section 104(e) requires all subsequent violations designated as Significant and Substantial (S&S) be issued as closure orders with all persons withdrawn from the affected area except those necessary to correct the violation. An operator can be removed from Section 104(e) sanctions only after an inspection of the entire operation results in no significant and substantial violations.

This letter is your notification that a potential pattern of violations exists at the No. 2 mine. This notification is based upon the initial screening and pattern criteria review, which were conducted in accordance with 30 CFR Parts 104.2 and 104.3 respectively. A Pattern of Violation Review report is enclosed as Attachment A. This report details the methodology utilized for the initial screening and pattern criteria review and summarizes your mine's performance relative to the criteria.

Prior to MSHA implementing Section 104(e) sanctions at the No. 2 mine, you are provided the opportunity, not to exceed 20 days from the date of this notification, to take any or all of the following steps:

Review all documents upon which the pattern of violations evaluation is based and provide additional mitigating information.

Submit a written request for a conference with me (I shall hold any conference within 10 days of a request).

Provide a written plan to me indicating that you will institute a corrective action program to avoid repeated significant and substantial violations at the operation.

Please note that current regulation 30 C.F.R. Part 104.4(d) requires that you post a copy of this letter on the mine bulletin board until you are notified of MSHA's final determination with respect to your status pursuant to Section 104(e) of the Mine Act.

If you implement a corrective action program, MSHA will conduct a complete inspection of the No. 2 mine. This inspection may start as soon as January 1, 2008. I will analyze the results of this complete inspection and other on-site enforcement activities conducted during the corrective action period to evaluate whether the No. 2 mine has effectively reduced the occurrence of S&S violations during the review period. Therefore, I encourage you to implement a corrective action program as soon as practicable. If, during the review period, the No. 2 mine achieves a reduction in the S&S violation frequency rate to 8.43 S&S violations per 100 inspection hours, the No. 2 mine will not be issued a pattern of violations notice during this POV review cycle.<sup>1</sup>

If you implement a corrective action program which does not reduce the rate of S&S violations to the levels set forth in the paragraph above, pursuant to 30 C.F.R. Section 104.5(b), I will submit an evaluation report to the Administrator for Coal Mine Safety and Health within 120 days from the date of this

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<sup>1</sup> However, mines which have implemented a successful corrective action plan during the 90 day evaluation period will be considered along with all other mines for potential pattern of violation notices during the next and subsequent review cycles. In the case of the No. 2 mine, it was issued 12.05 S&S violations per 100 inspection hours during the 24-month review period; in this review cycle -- 5.86 percentage points higher than the national average of 6.19 S&S violation per 100 inspection hours for underground mines. To ensure the No. 2 mine is not exhibiting a potential Pattern of Violations when the next evaluation is conducted, the No. 2 mine should have an S&S violation rate at or near the national rate. MSHA is required to conduct evaluations at least annually but can conduct the evaluations more frequently.

notification. If you choose not to implement a program to reduce S&S violations, I will submit the report of the evaluation to the Administrator within 60 days from the date of this notification.

In both cases, a copy of the report of evaluation will be provided to you and the representative of the miners, 10 days before the report is sent to the Administrator. Both you and the miners' representative will have 10 days from the receipt of the report to submit written comments to the Administrator.

Within 30 days of receipt of my report to the Administrator, the Administrator will issue a decision as to whether the No. 2 mine is to be issued a Notice of a Pattern of Violations. A copy of the decision will be provided to you and the representative of the miners.

If the Administrator decides to issue a Notice of Pattern of Violations, I will issue the Notice of Pattern of Violations to you. A copy of the notice will also be provided to the representative of miners.

Following issuance of a Notice of Pattern of Violations, I will initiate appropriate inspection activities to ensure that the No. 2 mine is inspected in its entirety during the following 90-day time frame and each succeeding inspection cycle until the Pattern of Violation order is terminated.

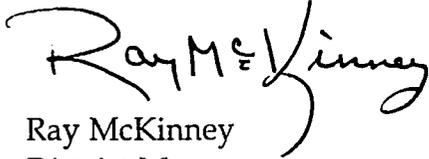
If upon any inspection after the issuance of the Pattern of Violations Notice an authorized representative finds any violation of a mandatory health or safety standard which could significantly and substantially contribute to the cause and effect of a safety or health hazard, the inspector shall issue an order requiring the withdrawal of all persons in the area affected by the violation except those persons listed in 104(c) of the Mine Act. All persons except as listed in 104(c) of the Mine Act shall also be prohibited from entering that area until the inspector determines that such violation has been abated.

Termination of a Pattern of Violations notice shall occur when an inspection of the entire operation results in no significant and substantial violations of the Mine Act.

You may request an inspection of the entire operation or portions of the operation at any time. No advance notice of the inspection shall be provided and MSHA will determine the scope of each inspection. Partial inspections covering the entire operation within the 90-day period will constitute an inspection of the entire operation for the purposes of termination of a Pattern of Violations Notice.

Please contact me at (276) 679-0230 if you have any questions regarding this matter. Additional mitigating information, requests for a conference and/or a written plan to institute a corrective action program should be sent to me at: USDOL-MSHA-CMS&H, District 5, PO Box 560, Norton, VA 24273.

Sincerely,

A handwritten signature in black ink that reads "Ray McKinney". The signature is written in a cursive style with a large, sweeping "M" and "K".

Ray McKinney  
District Manager

Attachment

cc: Miners' representative

## ***Pattern of Violations Screening Criteria and Scoring Model***

Mine ID: 4404946  
 Mine Name: No 2  
 Mine Type: Underground

	Numbers for No 2 Mine
At least ten S&S Citations/Orders, at mines classified as Surface and Facility, issued during the 24 month review period.	N/A
At least twenty S&S Citations/Orders, at mines classified as Underground, issued during the 24 month review period.	153
At least two "elevated enforcement" actions, [i.e. type action is 104 (b), 104 (d) or 107(a)], issued during the 24 month review period.	5
The ratio of Citation/Orders issued in the most recent 12 months of the review period to the number of Citations/Orders issued during the previous 12 months of the review is 70% or greater.	280%
The mines' rate of S&S Citations/Orders issued per 100 inspection hours during the 24 month review period is equal to or greater than 125% of the National rate of S&S Citations/Orders issued per 100 inspection hours for that mine type and classification.	160%
The number of S&S Citation/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification.	Industry: 7.74 This Mine: 7.89
Or	
The number of elevated enforcement Citations/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification.	Industry: 0.68 This Mine: 0.28
A minimum of two "elevated enforcement" final orders of the Commission, [i.e. type action is 104 (b), 104 (d) or 107(a)] during the 24 month review period.	2
At least one S&S 104 (d) issuance that became a final order of the Commission during the 24 month review period.	1
At least ten S&S Citations/Orders, at mines classified as Surface or Facility, that are final orders of the Commission during the 24 month review period.	N/A
At least twenty S&S Citations/Orders, at mines classified as Underground, that are final orders of the Commission during the 24 month review period.	147

## ***Pattern of Violations Screening Criteria and Scoring Model***

Mine ID: 4404946  
Mine Name: No 2  
Mine Type: Underground

	Numbers for No 2 Mine
<b>Scores</b>	
a. The number of S&S citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period plus	11.6
b. the number of 104(b) (failure to abate) orders issued per 100 Inspection Hrs. for failure to abate an S&S issuance that that became final during the 24 month review period and multiplying by a factor of 5; plus	0
c. the number of 104(d) (unwarrantable failure) citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period and multiplying by a factor of 5; plus	0.4
d. the number of 107(a) (imminent danger) orders issued per 100 Inspection Hrs. during the 24 month review period and multiplying by a factor of 5.	0.4
Subtotal:	12.4

### ***Increases to the Subtotal***

e. 5%-20% for operations with injury rates above the national average for the same mine type and industry grouping as follows:	0.6
f. 5%-20% for operations with injury severity rates (number of days lost X 200,000 divided by the total work hours reported) above the national average for the same mine type and industry grouping as follows:	0
g. 5%-20% for operations with citations and orders issued per 100 inspection hours (VPIH) above the 24-month national average for the same mine type and industry grouping as follows:	0.6

The final weighted score must be greater than or equal to the average weighted score for all active mines of the same mine type and industry classification.

Industry: 5.3

This mine: 13.6

### ***30 CFR §104.3***

At least five S&S citations of the same standard that became final orders of the Commission during the most recent 12 months.

75,400 cited 19 times

**U.S. Department of Labor**

Mine Safety and Health Administration  
100 Fae Ramsey Lane  
Pikeville, Kentucky 41501



Mr. James Pinson  
Superintendent  
Sidney Coal Co., Inc.  
Taylor Fork Energy  
115 North Big Creek Rd. Box 299  
Sidney, KY 41564

Dear Mr. Pinson:

In accordance with Section 104(e) of the Federal Mine Safety and Health Act of 1977 (Mine Act) and 30 CFR Part 104, the Mine Safety and Health Administration (MSHA) has conducted a pattern of violation (POV) screening of compliance records for Taylor Fork Energy, MSHA ID No. 15-18381 for the 24-months ending September 30, 2007. A POV screening is used to determine if Section 104(e) is applicable to a particular mine. If implemented, Section 104(e) requires all subsequent violations designated as Significant and Substantial (S&S) be issued as closure orders with all persons withdrawn from the affected area except those necessary to correct the violation. An operator can be removed from Section 104(e) sanctions only after an inspection of the entire operation results in no significant and substantial violations.

This letter is your notification that a potential pattern of violations exists at the Taylor Fork Energy mine. This notification is based upon the initial screening and pattern criteria review, which were conducted in accordance with 30 CFR Parts 104.2 and 104.3 respectively. A Pattern of Violation Review report is enclosed as Attachment A. This report details the methodology utilized for the initial screening and pattern criteria review and summarizes your mine's performance relative to the criteria.

Prior to MSHA implementing Section 104(e) sanctions at the mine, you are provided the opportunity, not to exceed 20 days from the date of this notification, to take any or all of the following steps:

Review all documents upon which the pattern of violations evaluation is based and provide additional mitigating information.

Submit a written request for a conference with me (I shall hold any conference within 10 days of a request).

Provide a written plan to me indicating that you will institute a corrective action program to avoid repeated significant and substantial violations at the operation.

Please note that current regulation 30 C.F.R. Part 104.4(d) requires that you post a copy of this letter on the mine bulletin board until you are notified of MSHA's final determination with respect to your status pursuant to Section 104(e) of the Mine Act.

If you implement a corrective action program, MSHA will conduct a complete inspection of the mine. This inspection may start as soon as January 1, 2008. I will analyze the results of this complete inspection and other on-site enforcement activities conducted during the corrective action period to evaluate whether the mine has effectively reduced the occurrence of S&S violations during the review period. Therefore, I encourage you to implement a corrective action program as soon as practicable. If, during the review period, the mine achieves a reduction in the S&S violation frequency rate to 9.87 S&S violations per 100 inspection hours, the mine will not be issued a pattern of violations notice during this POV review cycle.<sup>1</sup>

If you implement a corrective action program which does not reduce the rate of S&S violations to the levels set forth in the paragraph above, pursuant to 30 C.F.R. Section 104.5(b), I will submit an evaluation report to the Administrator for Coal Mine Safety and Health within 120 days from the date of this notification. If you choose not to implement a program to reduce S&S violations, I will submit the report of the evaluation to the Administrator within 60 days from the date of this notification.

In both cases, a copy of the report of evaluation will be provided to you 10 days before the report is sent to the Administrator. You will have 10 days from the receipt of the report to submit written comments to the Administrator.

Within 30 days of receipt of my report to the Administrator, the Administrator will issue a decision as to whether the mine is to be issued a Notice of a Pattern of Violations. A copy of the decision will be provided to you.

If the Administrator decides to issue a Notice of Pattern of Violations, I will issue the Notice of Pattern of Violations to you.

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<sup>1</sup> However, mines which have implemented a successful corrective action plan during the 90 day evaluation period will be considered along with all other mines for potential pattern of violation notices during the next and subsequent review cycles. In the case of the Taylor Fork Energy mine, it was issued 14.1 S&S violations per 100 inspection hours during the 24-month review period, in this review cycle - 7.91 percentage points higher than the national average of 6.19 S&S violations per 100 inspection hours for underground mines. To ensure the mine is not exhibiting a potential Pattern of Violations when the next evaluation is conducted, the mine should have an S&S violation rate at or near the national rate. MSHA is required to conduct evaluations at least annually but can conduct the evaluations more frequently.

Following issuance of a Notice of Pattern of Violations, I will initiate appropriate inspection activities to ensure that the mine is inspected in its entirety during the following 90-day time frame and each succeeding inspection cycle until the Pattern of Violation order is terminated.

If upon any inspection after the issuance of the Pattern of Violations Notice an authorized representative finds any violation of a mandatory health or safety standard which could significantly and substantially contribute to the cause and effect of a safety or health hazard, the inspector shall issue an order requiring the withdrawal of all persons in the area affected by the violation except those persons listed in 104(c) of the Mine Act. All persons except as listed in 104(c) of the Mine Act shall also be prohibited from entering that area until the inspector determines that such violation has been abated.

Termination of a Pattern of Violations notice shall occur when an inspection of the entire operation results in no significant and substantial violations of the Mine Act.

You may request an inspection of the entire operation or portions of the operation at any time. No advance notice of the inspection shall be provided and MSHA will determine the scope of each inspection. Partial inspections covering the entire operation within the 90-day period will constitute an inspection of the entire operation for the purposes of termination of a Pattern of Violations Notice.

Please contact me at (606) 432-0943 if you have any questions regarding this matter. Additional mitigating information, requests for a conference and/or a written plan to institute a corrective action program should be sent to me at:

Mine Safety and Health Administration  
100 Fae Ramsey Lane  
Pikeville, KY 41501

Sincerely,



Norman G. Page  
District Manager

Attachment

## Attachment A

### ***Pattern of Violations Screening Criteria and Scoring Model***

Mine ID: 1518381

Mine Name: Taylor Fork Energy

Mine Type: Underground

	Numbers for Taylor Fork Energy Mine
At least ten S&S Citations/Orders, at mines classified as Surface and Facility, issued during the 24 month review period.	N/A
At least twenty S&S Citations/Orders, at mines classified as Underground, issued during the 24 month review period.	205
At least two "elevated enforcement" actions, [i.e. type action is 104 (b), 104 (d) or 107(a)], issued during the 24 month review period.	12
The ratio of Citation/Orders issued in the most recent 12 months of the review period to the number of Citations/Orders issued during the previous 12 months of the review is 70% or greater.	96%
The mines' rate of S&S Citations/Orders issued per 100 inspection hours during the 24 month review period is equal to or greater than 125% of the National rate of S&S Citations/Orders issued per 100 inspection hours for that mine type and classification.	187%
The number of S&S Citation/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification.	Industry: 7.74 This Mine: 10.72
Or	
The number of elevated enforcement Citations/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification.	Industry: 0.68 This Mine: 0.26
A minimum of two "elevated enforcement" final orders of the Commission, [i.e. type action is 104 (b), 104 (d) or 107(a)] during the 24 month review period.	3
At least one S&S 104 (d) issuance that became a final order of the Commission during the 24 month review period.	2
At least ten S&S Citations/Orders, at mines classified as Surface or Facility, that are final orders of the Commission during the 24 month review period.	N/A
At least twenty S&S Citations/Orders, at mines classified as Underground, that are final orders of the Commission during the 24 month review period.	125

**Attachment A**

***Pattern of Violations Screening Criteria and Scoring Model***

Mine ID: 1518381  
Mine Name: Taylor Fork Energy  
Mine Type: Underground

Numbers for Taylor  
Fork Energy Mine

***Scores***

a. The number of S&S citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period plus	8.6
b. the number of 104(b) (failure to abate) orders issued per 100 Inspection Hrs. for failure to abate an S&S issuance that that became final during the 24 month review period and multiplying by a factor of 5; plus	0.3
c. the number of 104(d) (unwarrantable failure) citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period and multiplying by a factor of 5; plus	0.7
d. the number of 107(a) (imminent danger) orders issued per 100 Inspection Hrs. during the 24 month review period and multiplying by a factor of 5.	0
Subtotal:	9.6

***Increases to the Subtotal***

e. 5%-20% for operations with injury rates above the national average for the same mine type and industry grouping as follows:	0
f. 5%-20% for operations with injury severity rates (number of days lost X 200,000 divided by the total work hours reported) above the national average for the same mine type and industry grouping as follows:	0
g. 5%-20% for operations with citations and orders issued per 100 inspection hours (VPIH) above the 24-month national average for the same mine type and industry grouping as follows:	0.5

The final weighted score must be greater than or equal to the average weighted score for all active mines of the same mine type and industry classification.

Industry: 5.3

This mine: 10.1

***30 CFR §104.3***

At least five S&S citations of the same standard that became final orders of the Commission during the most recent 12 months.

75.400 cited 5 times