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 19th 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all subsequent violations designated as Significant and Substantial (S&S) be issued as closure orders with all persons withdrawn from the affected area except those necessary to correct the violation.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. [1]

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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[1] 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,

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