U.S. Department of Labor

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

October 1, 2009

Mr. Charles L Hensley
Superintendent
Mine #15
McCoy Elkhorn Coal Corp.
1148 Longfork Road
Kimper, KY 41539

Dear Mr. Hensley:

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 Mine #15, MSHA ID No. 15-18775 for the 24-months ending August 31, 2009. 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all subsequent violations designated as Significant and Substantial (S&S) be issued as closure orders with all persons withdrawn from the affected area except those necessary to correct the violation.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 Mine #15. 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 #15, 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 #15. This inspection may start as soon as October 21, 2009. 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 #15 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 #15 achieves a reduction in the S&S violation frequency rate to 9.33 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 Mine #15 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 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 Mine #15, it was issued 13.33 S&S violations per 100 inspection hours during the 24-month review period, in this review cycle -- 114 percentage points higher than the national average of 6.22 S&S violation per 100 inspection hours for underground bituminous coal mines. To ensure the Mine #15 is not exhibiting a potential Pattern of Violations when the next evaluation is conducted, the Mine #15 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 Mine #15 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 #15 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 or no withdrawal order is issued by MSHA in accordance with section 104(e)(1) of the Act within 90 days of the issuance of the pattern letter.

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:

Norman G. Page
District Manager
Mine Safety and Health Administration
100 Fae Ramsey Lane
Pikeville, KY 41501

Sincerely,

Norman G. Page
District Manager

Attachment

Pattern of Violations Screening Criteria and Scoring Model

Mine ID: 1518775
Mine Name: Mine #15
Mine Type: Underground
Operator Name: McCoy Elkhorn Coal Corp.
District: DISTRICT 06
Field Office: Phelps KY Field Office

	Numbers for Mine #15
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.	413
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.	11
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.	89%
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.	214%
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: 5.6 This Mine: 8.3
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: 0.4 This Mine: 0.1
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.	197

Pattern of Violations Screening Criteria and Scoring Model

Mine ID: 1518775
Mine Name: Mine #15
Mine Type: Underground
Operator Name: McCoy Elkhorn Coal Corp.
District: DISTRICT 06
Field Office: Phelps KY Field Office

	Numbers for Mine #15
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	6.36
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	0.48
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:	6.8
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 final S&S citations and orders per 100 inspection hours (VPIH) above the 24-month national average for the same mine type and industry grouping as follows:	0.68
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: 3.3 This Mine: 7.5
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 28 Times

Pattern of Violations Screening Criteria and Scoring Model - 2009

A computer-generated report is run that retrieves data for the most recent 24 months available for every mine under MSHA's jurisdiction. Mines currently in an "Active" status (on the date the report is generated) are reviewed to determine if a potential Pattern of Violations may exist.

Initial Screening Criteria (30 CFR §104.2)

The following screening criteria are used to perform the initial screening required under 30 CFR §104.2. Mines meeting **all** of the following criteria are further screened to identify mines meeting appropriate specified criteria for the potential Pattern of Violations, among those listed in 30 CFR §104.3.

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

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

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.

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.

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.

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 **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.

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.

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

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.

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.

The information used to screen mines includes a **raw weighted score** for each operation meeting the above criteria as follows:

a. The number of S&S citations and orders issued per 100 Inspection Hrs. that became **final** during the 24 month review period times the weight assigned to this factor; plus

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

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

d. the number of 107(a) (imminent danger) orders issued[1] per 100 Inspection Hrs. during the 24 month review period and multiplying by a factor of 5.

This **raw weighted score** is increased by:

e. 5%-20% for operations with injury rates above the national average for the same mine type and industry grouping as follows:

Degree 1-4 Injury Rate Multipliers

IR Greater than Nat'l. Avg. and less than or equal to 2 times the Nat'l. Avg.	*IR Greater than 2 times the Nat'l. Avg. and less than or equal to 3 times the Nat'l. Avg.*	*IR Greater than 3 times the Nat'l. Avg. and less than or equal to 4 times the Nat'l. Avg.*	*IR Greater than 4 times the Nat'l. Avg.*
5%	***10%***	***15%***	***20%***

[1] Imminent Danger orders are not assessed and thus do not become "final orders" of the Commission. Therefore, the number of Imminent Danger orders issued is used in this score.

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:

Degree 1-4 Injury Severity Rate Multipliers

ISR Greater than Nat'l. Avg. and less than or equal to 2 times the Nat'l. Avg.	*ISR Greater than 2 times the Nat'l. Avg. and less than or equal to 3 times the Nat'l. Avg.*	*ISR Greater than 3 times the Nat'l. Avg. and less than or equal to 4 times the Nat'l. Avg.*	*ISR Greater than 4 times the Nat'l. Avg.*
5%	***10%***	***15%***	***20%***

g. 5%-20% for operations with ***final*** S&S citations and orders per 100 inspection hours (VPIH) above the 24-month national average for the same mine type and industry grouping as follows:

VPIH Multipliers

VPIH Greater than Nat'l. Avg. and less than or equal to 2 times the Nat'l. Avg.	*VPIH Greater than 2 times the Nat'l. Avg. and less than or equal to 3 times the Nat'l. Avg.*	*VPIH Greater than 3 times the Nat'l. Avg. and less than or equal to 4 times the Nat'l. Avg.*	*VPIH Greater than 4 times the Nat'l. Avg.*
5%	***10%***	***15%***	***20%***

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.

Pattern Criteria Screening (30 CFR §104.3)

30 CFR § 104.3 requires that one of the following pattern criteria be met: (1) a history of repeated significant and substantial violations of a particular standard; (2) a history of repeated significant and substantial violations of standards related to the same hazard; or (3) a history of repeated significant and substantial violations caused by unwarrantable failure to comply. Only citations and orders that are final may be considered in determining if these criteria have been met. For a Pattern of Violations review, mines must have at least five S&S citations of the same standard that became **final orders** of the Commission during the most recent 12 months.