

News Release



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MSHA asks for preliminary injunction against Freedom Energy Mining Co. *Action against Massey-owned mine never before initiated in agency's history*

ARLINGTON, Va. – In an unprecedented legal move, the U.S. Department of Labor's Mine Safety and Health Administration today filed with the U.S. District Court for the Eastern District of Kentucky a motion for preliminary injunction against Freedom Energy Mining Co.'s Mine No. 1. Located in Pike County, Ky., Freedom's Mine No. 1 is owned by Massey Energy Co.

Section 108(a)(2) of the Federal Mine Safety and Health Act of 1977 provides for injunctive relief against noncompliant mine operators who habitually violate health and safety standards. In this particular case, Section 108(a)(2) calls for an injunction because Freedom Energy is engaged in a pattern of violation of the mandatory health and safety standards of the Mine Act, which constitutes a continuous hazard to the health and safety of the miners at Mine No. 1.

"Freedom Energy has demonstrated time and again that it cannot be trusted to follow basic safety rules when an MSHA inspector is not at the mine," said Joseph A. Main, assistant secretary of labor for mine safety and health. "If the court does not step in, someone may be seriously injured or die."

"Although this is the first time the department has utilized this legal remedy, it will not be the last," said Solicitor of Labor M. Patricia Smith. "The solicitor's office will work closely with MSHA to ensure that we use every tool possible to keep miners safe."

According to the brief MSHA filed, Freedom Energy is engaged in a pattern of failing to examine and maintain critical areas of its mining operations as evidenced by the quantity and gravity of violations in four critical spheres of safety: failure to clear the mine of excessive accumulations of coal dust; failure to protect the roof, face and ribs from falls and maintain an effective roof control plan; failure to test and maintain electrical equipment in a safe working condition so as to protect against fire or explosion; and failure to effectively ventilate the mine of noxious and explosive gases.

Freedom Energy Mine No. 1 lies in a particularly dangerous coal seam that liberates massive amounts of methane – approximately 1.8 million cubic feet every 24 hours – and is prone to roof falls. In the past two years, seven miners have been injured at this operation as a result of falling roof. Moreover, since Aug. 11, 2010, six major roof falls have occurred in the mine.

During the eight regular inspections conducted between July 2008 and June 2010, MSHA issued 1,952 citations and 81 orders (including 53 (d)(2) orders this year to Freedom Energy for violating critical safety standards including improper ventilation, failure to support the roof, failure to clean up combustible materials, failure to maintain electrical equipment and failure to conduct the necessary examination of work areas.

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US DEPARTMENT OF LABOR NEWS RELEASE – PAGE 2

On numerous occasions, MSHA district office officials have attempted to resolve serious safety issues at Freedom Energy, including meetings with upper mine management over recurring roof problems, ventilation and dust control issues, accumulations, electrical equipment maintenance and inadequate examinations. The inspections, citations and meetings with mine management have not resulted in changes in behavior. As such, MSHA is compelled to use its statutory authority to ask the federal court to temporarily shut down the mine until the safety issues are addressed.

If the U.S. District Court in Kentucky grants MSHA's motion as proposed for a preliminary injunction, Freedom Energy will be required to close its mine temporarily and take specific actions before it can re-open. Freedom must correct all hazardous conditions in its mine and establish a health and safety management program for approval by MSHA before resuming production. Under its safety and health management program it must, among other things, establish an effective training and communications program; ensure that high-level mine officials conduct additional examinations; take additional air readings in critical areas; withdraw all miners when violations are found and pay miners who are idled by such withdrawals.

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