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ALJ rules that MSHA has right to review records in mine operator's custody *Massey Energy, Peabody Coal Co. ordered to turn over accident, injury, illness data*

ARLINGTON, Va. – The U.S. Department of Labor's Mine Safety and Health Administration today announced that Administrative Law Judge Kenneth R. Andrews with the Federal Mine Safety and Health Review Commission has ruled in the agency's favor in two separate but similar cases brought by Massey Energy and Peabody Energy, respectively. The cases concern the controlling companies' refusal to turn over accident, injury and illness data during audits conducted by MSHA between October and December 2010. These audits were conducted in an effort to determine if specific mines met the criteria that would make them eligible to receive notifications of a potential pattern of violations. Eight mines were cited for refusing to provide the necessary records.

In the Peabody case, Andrews agreed with MSHA that the agency has a right to review records maintained by the operator that are "relevant and necessary" to determine compliance with accident, injury and illness reporting requirements. He rejected the operator's argument to withhold the records based on their "sensitive and private" nature. In so doing, he concluded that such a disclosure to a public health agency such as MSHA is a "reasonable exercise of government responsibility" and that MSHA's "interest in promoting mine safety far outweighs any interest the mine operators may have in privacy." In the Massey case, MSHA argued that the role of 30 Code of Federal Regulations § 50 in advancing miner safety and health cannot be overstated, as it identifies the aspects of mining that require intensified attention with respect to health and safety legislation. Part 50 regulations cover the primary reporting and record-keeping obligations for mine operators, including as these relate to accidents, injuries, illnesses and quarterly employment.

The two mines in the Peabody Energy suit are Big Ridge Inc.'s Willow Lake Portal and Peabody Midwest Mining LLC's Air Quality #1 Mine. However, Willow Lake Portal previously was placed on potential POV status based on injuries it had properly reported and successfully reduced its violations during the evaluation period. The six mines in the Massey Energy suit are Independence Coal Co. Inc.'s Justice # 1 Mine, Inman Energy Corp.'s Randolph Mine, Process Energy's Mine # 1, Spartan Mining Co.'s Road Fork # 51, Road Fork Development Co.'s Love Branch South Mine and Knox Creek Coal Corp.'s Coal Creek Prep Plant. The judge's decisions affirm the violations and orders that MSHA issued to the operators for their failure to provide the requested records.

"This move has unnecessarily delayed MSHA's review of the POV process for seven of these mines," said Joseph A. Main, assistant secretary of labor for mine safety and health. "Mine operators should be aware that we are not going to rely on what they report to make such critical determinations. We will check those records ourselves."

Of the 32 mines at which audits were completed, MSHA issued more than 100 citations for irregularities in reporting and/or record keeping. As a result of those findings, Maple Coal Co.'s Maple Eagle No. 1 Mine was moved to potential POV status. The mine operation initially was not flagged as a candidate for a potential POV due to under-reporting of injuries. The subsequent audit found 12 unreported or under-reported injuries and 241 unreported lost workdays.

Reporting and record keeping regulations found in the C.F.R. Part 50 establish obligations on mine operators that enable MSHA to perform key functions, including rapid response in emergency accident situations, identification of troubled mines with recurring and serious safety problems, and efficient allocation of agency enforcement and rulemaking resources based on the most current information about the hazards that miners may encounter. MSHA is authorized to inspect and/or copy any information the agency thinks may be relevant and necessary to determine compliance with reporting requirements, including medical, employment and other company records.

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