

REDUCING THE GROWING BACKLOG OF CONTESTED MINE SAFETY CASES

HEARING

BEFORE THE

COMMITTEE ON

EDUCATION AND LABOR

U.S. HOUSE OF REPRESENTATIVES

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C O N T E N T S

	Page
Hearing held on February 23, 2010	1
Statement of Members:	
Kline, Hon. John, Senior Republican Member, Committee on Education and Labor:	
Letter, dated March 8, 2010, from the Industrial Minerals Association-North America	105
McMorris Rodgers, Hon. Cathy, a Representative in Congress from the State of Washington, prepared statement of	54
Miller, Hon. George, Chairman, Committee on Education and Labor	1
Prepared statement of	4
Questions submitted for the record	54
Additional submissions:	
Federal Mine Safety and Health Review Commission:	
Table: "Performance Measurement Matrix, Office of Administrative Law Judges"	95
Table: "Appropriations History"	96
Table: "Selected Workload Data"	97
Followup on MSHA ERP Stats	98
PowerPoint slides	99
Table: "Mine Operators Notified by MSHA of a Potential Pattern of Violations (POV)"	100
Letter, dated June 3, 2008, from the National Mining Association	102
Thompson, Hon. Glenn, a Representative in Congress from the State of Pennsylvania	5
Prepared statement of	5
Additional submissions:	
Statement of the National Stone, Sand & Gravel Association	108
Paper, dated January 25, 2010, "What About That Case Backlog?"	109
Statement of Witnesses:	
Jordan, Hon. Mary Lu, Chairman, Federal Mine Safety and Health Review Commission	16
Prepared statement of	18
Responses to questions for the record	55
Main, Joseph A., Assistant Secretary of Labor for Mine Safety and Health, U.S. Department of Labor	7
Prepared statement of	9
Responses to questions for the record	57
Additional materials submitted:	
Chart: "Proposed Civil Penalties v. Penalty Contest Rate"	59
Tables: FY2006–2009 assessment data	59
Tables: FY2008–2010 contested penalty data	60
Table: "Number of Violations Assessed and Contested by Operator FY2009"	61
Table: "Companies Contesting Largest Number of Citations"	63
Table: "Detail Summary by Mine"	64
Roberts, Cecil E., president, United Mine Workers of America	21
Prepared statement of	22
Watzman, Bruce, senior vice president, regulatory affairs, on behalf of the National Mining Association	25
Prepared statement of	26
Responses to questions for the record	94

REDUCING THE GROWING BACKLOG OF CONTESTED MINE SAFETY CASES

**Tuesday, February 23, 2010
U.S. House of Representatives
Committee on Education and Labor
Washington, DC**

The committee met, pursuant to call, at 10:00 a.m., in room 2175, Rayburn House Office Building, Hon. George Miller [chairman of the committee] presiding.

Present: Representatives Miller, Payne, Scott, Woolsey, Tierney, Kucinich, Holt, Bishop of New York, Loeb sack, Altmire, Hare, Shea-Porter, Fudge, Polis, Sablan, Titus, Platts, and Thompson.

Staff present: Aaron Albright, Press Secretary; Tylease Alli, Hearing Clerk; Andra Belknap, Press Assistant; Jody Calemine, General Counsel; Lynn Dondis, Labor Counsel, Subcommittee on Workforce Protections; Patrick Findlay, Investigative Counsel; David Hartzler, Systems Administrator; Broderick Johnson, Staff Assistant; Gordon Lafer, Senior Labor Policy Advisor; Sadie Marshall, Chief Clerk; Richard Miller, Senior Labor Policy Advisor; Revae Moran, Detailee, Labor; Alex Nock, Deputy Staff Director; Meredith Regine, Junior Legislative Associate, Labor; James Schroll, Junior Legislative Associate, Labor; Michele Varnhagen, Labor Policy Director; Michael Zola, Chief Investigative Counsel, Oversight; Mark Zuckerman, Staff Director; Kirk Boyle, Minority General Counsel; Ed Gilroy, Minority Director of Workforce Policy; Richard Hoar, Minority Professional Staff Member; Ryan Murphy, Minority Press Secretary; Jim Paretto, Minority Workforce Policy Counsel; Molly McLaughlin Salmi, Minority Deputy Director of Workforce Policy; Linda Stevens, Minority Chief Clerk/Assistant to the General Counsel; and Loren Sweatt, Minority Professional Staff Member.

Chairman MILLER [presiding]. A quorum being present, the committee will come to order.

The Education and Labor Committee meets this morning to examine how a growing backlog of contested mine safety cases at a small federal agency is putting our nation's miners at risk.

For years, this committee has worked to protect our miners while on the job. We have met many family members who have suffered the tragic loss of a loved one. On behalf of the committee, I promised that we would do everything we can to keep miners safe. I intend to keep that promise.

Since the tragedies like Sago, Darby, Crandall Canyon, both the Congress and the Mine Safety and Health Administration have worked to prevent similar disasters, in part by increasing enforcement. Inspections are up, as are citations and fines.

This stronger emphasis on safety is saving lives and reducing injuries. In 2006, 76 miners died on the job. In 2009, that figure was reduced to 35 fatalities—still 35 deaths too many, but we must recognize that it is a record low.

Despite the progress, some of the largest mining operations have responded by challenging these tougher sanctions at a staggering rate.

When MSHA, the Mine Safety Health Administration, cites the mine operator for a safety violation, the owners can appeal the violation to the Federal Mine Safety and Health Review Commission.

But with increased penalties for unsafe conditions, there are significant incentives for mine operators to abuse the appeals process.

The mining industry trots out a litany of excuses as to why their members are contesting nearly every health and safety violation. One excuse is that MSHA has ended an informal practice that allowed mines to chip away at their sanctions behind closed doors.

But as the industry's own testimony shows, the dramatic rise in mine operator appeals began the year before MSHA changed this policy. So the dramatic rise in appeals seem to be the result of something else.

What we do know is that delays from growing appeals are undermining MSHA's ability to impose tougher sanctions on the repeat violators.

Adjudication of appeals must be fair and timely. If cases are stuck for months or years in the Review Commission, MSHA cannot impose stronger penalties on the worst mine operators. As a result, miners' lives are in the cross hairs.

MSHA tells us that 48 mines with more than 6,000 miners would likely face tougher sanctions if not for the holdup of the Review Commission.

Mine operators can be subject to progressively steeper fines or even shut down if cited for multiple serious health and safety violations. And that is the way it should be. Mine operators who callously put their workers in harm's way must be held accountable.

Mines that have faced these steeper penalties in the past have responded by cleaning up their act. Future serious violations were cut by 72 percent when MSHA notified mines that they faced a potential closures for future additional violations.

However, blanket and indiscriminate appeals to the Review Commission allow irresponsible mine operators to avoid stiffer penalties. This may boost the owner's bottom line, but it delays—it delays and puts lives of miners at risk.

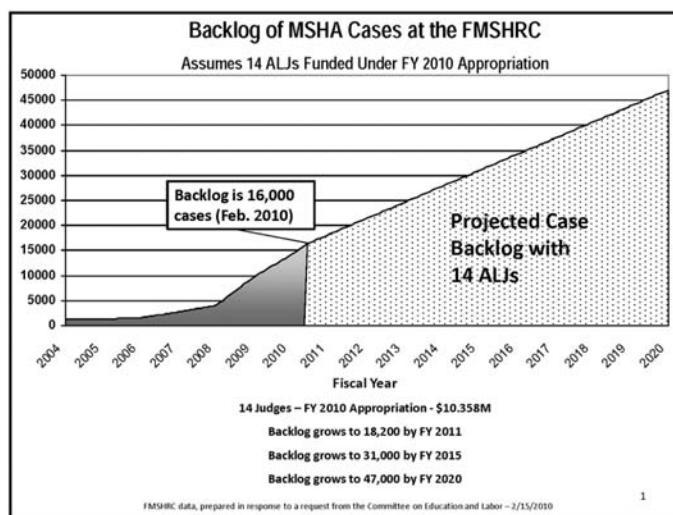
The facts indicate that certain mine operators are abusing their right to challenge a violation. In 2005, before increased penalties took effect, mine operators appealed one in three fines. Today, mine operators contest two-thirds of all fines. And some of the largest mine operators are challenging nearly every citation. These appeals are clogging the system.

In 2006, the Review Commission had a backlog of 2,100 cases. Today, the backlog has skyrocketed to 16,000 cases. These 16,000

cases—and that is what it looks like here—these 16,000 cases are awaiting adjudication.

They are also allowing mine operators—in some cases, the worst operators—to escape the liability for which they are—they are, in fact, liable and continue to put the miners in harm’s way. And they represent \$195 million in contested fines. And it is only growing.

Based upon estimates provided by the Review Commission, if current trends and funding of the agency remain the same, the backlog would spiral out of control to 47,000 cases by 2020. I think we can see that on the chart up here, what the status quo portends if you have the status quo both in challenges and in resources available to the agency.



This staggering case load would render the federal efforts to hold mine operators accountable meaningless. The Obama administration and Congress have already increased funding for the Review Commission to hire four additional administrative law judges, in addition to the 10 already seated.

In this year’s budget request, it has asked for four additional judges. This is a good start. However, more will have to be done to reduce the backlog in cases.

Today we will hear from the mining industry, the Chair of the Review Commission, MSHA and United Mine Workers about the causes and the consequences of the growing number of appeals for possible solutions.

It is unacceptable to let a backlog of mine safety cases threaten the real progress being made to protect the lives of those who go to work every day in our nation’s mines.

With that, I would like to recognize the senior Republican on the committee this morning, Mr. Thompson.

[The statement of Mr. Miller follows:]

**Prepared Statement of Hon. George Miller, Chairman, Committee on
Education and Labor**

The Education and Labor Committee meets this morning to examine how a growing backlog of contested mine safety cases at a small federal agency is putting our nation's miners at risk.

For years, this committee has worked to protect our miners while on the job. We have met many family members who have suffered the tragic loss of a loved one. On behalf of the committee, I promised that we would do everything we can to keep miners safe.

I intend to keep this promise. Since tragedies like Sago, Darby and Crandall Canyon, both Congress and the Mine Safety and Health Administration have worked to prevent similar disasters, in part by increasing enforcement. Inspections are up, as are citations and fines. This stronger emphasis on safety is saving lives and reducing injuries. In 2006, 76 miners died on the job. In 2009 that figure was reduced to 35 fatalities—still 35 deaths too many, but a record low.

Despite the progress, some of the largest mining operations have responded by challenging these tougher sanctions at a staggering rate. When MSHA cites a mine operator for a safety violation, the owners can appeal the violation to the Federal Mine Safety and Health Review Commission.

But, with increased penalties for unsafe conditions, there are significant incentives for mine operators to abuse this appeals process.

The mining industry trots out a litany of excuses on why their members are contesting nearly every health and safety violation. One excuse is that MSHA ended an informal practice that allowed mines to chip away at their sanctions behind closed doors.

But, as the industry's own testimony shows, the dramatic rise in mine operators' appeals began a year before MSHA changed this policy.

So, the dramatic rise in appeals seems to be the result of something else. What we do know is that delays from growing appeals are undermining MSHA's ability to impose tougher penalties on repeat violators.

Adjudication of appeals must be fair and timely.

If cases are stuck for months or years at the Review Commission, MSHA cannot impose stronger penalties for the worst mine operators. As a result, miners' lives are in the crosshairs. MSHA tells us that 48 mines with more than 6,000 miners would likely face tougher sanctions if not for the holdup at the Review Commission.

Mine operators can be subject to progressively steeper fines or even shut down if cited multiple serious health and safety violations. And that's the way it should be. Mine operators who callously put their workers in harm's way must be held accountable. Mines that have faced these steeper penalties in the past have responded by cleaning up their act. Future serious violations were cut by 72 percent when MSHA notified mines that they faced potential closures for additional violations.

However, blanket and indiscriminate appeals to the Review Commission allow irresponsible mine operators to avoid these stiffer penalties. This may boost the owner's bottom line, but delays put the lives of miners at risk. The facts indicate that certain mine operators are abusing their right to challenge a violation.

In 2005, before increased penalties took effect, mine operators appealed one in three fines.

Today, mine operators contest two-thirds of all fines. And some of the largest mine owners are challenging nearly every citation. These appeals are clogging the system. In 2006, the Review Commission had a backlog of 2,100 cases. Today, the backlog has skyrocketed to 16,000 cases. [PICK UP STACK OF CASES] The index of the 16,000 backlogged cases is 616 pages long and contains at least \$195 million in contested fines. And it is only growing. Based on estimates provided by Review Commission, if current trends and funding for the agency remain the same, the backlog would spiral out of control to 47,000 cases by 2020 as this chart shows. This staggering caseload will render federal efforts to hold bad mine operators accountable meaningless.

The Obama administration and Congress have already increased funding for the Review Commission to hire four new administrative law judges, in addition to the ten already seated. And in this year's budget request, the administration asked for four more.

This is a good start. However, more will have to be done to reduce the backlog of cases. Today, we will hear from the mining industry, the chair of the Review Commission, MSHA and United Mine Workers about the causes and consequences of the growing number of appeals, and possible solutions.

It is unacceptable to let a backlog of mine safety cases threaten the real progress being made to protect the lives of those who go to work in our nation's mines.

Mr. THOMPSON. Well, thank you, Chairman Miller.

Thank you to the panel for coming in to be a part of this important hearing, and good morning to everyone.

As lawmakers, we try and solve problems, and there is a tendency to believe that whatever challenges we face, the answer lies with more federal funding or additional rules and regulations. Yet we know it is a mistake to legislate a solution without fully understanding the challenge.

And so before we talk about reducing the backlog of contested mine safety cases, I would like to spend time this morning examining why we are seeing an increase in contested citations. I would also like to understand what it means for the mine owner and, most importantly, for the safety of the miners when a citation is contested.

For example, it is worth noting that even when a citation is contested, any identified safety hazards must be corrected.

And while there may be disputes about the category in which a citation falls, or the financial penalties levied as a result, there is—these reasonable disputes should not—and indeed, they do not—put the safety and health of the miners at risk.

Knowing that contested citations are not putting miners at risk, it is still reasonable for us to ask why we have seen an increase in the number of contested cases. One logical place to look is the legislative and regulatory changes that have taken place over the last several years.

Of course, we know Congress acted in a bipartisan fashion in 2006 to increase penalties for safety violations, especially for those of a repeated or egregious nature. The regulations implementing the civil penalties of the MINER Act were finalized in 2007.

Then in 2008, and again in 2009, the Mine Safety and Health Administration announced a series of policy changes that limit opportunities for mine operators to discuss citations without first initiating a full legal dispute of MSHA's findings.

In other words, legislative and regulatory changes are forcing mine operators to formally contest citations in order to provide more information to MSHA. It is no wonder we have seen an uptick in the number of citations that are challenged.

Is this a case of mine operators acting in bad faith? Some may try to make that claim today, but I would offer a different view. Rather, it appears mine operators are simply adapting to a punitive new regulatory environment that favors litigation and conflict over collaboration.

Now, I hope today's hearing examines both the causes and the consequences of the increases in contested MSHA citations, and I hope this committee proceeds with caution before we attempt to legislate in an area where legislation and regulation may actually be the cause rather than the solution to the problem.

Thank you, Mr. Chairman, and I yield back.

[The statement of Mr. Thompson follows:]

**Prepared Statement of Hon. Glenn Thompson, a Representative in
Congress From the State of Pennsylvania**

Thank you Chairman Miller, and good morning.

As lawmakers, we like to try and solve problems. There's a tendency to believe that whatever challenges we face, the answer lies with more federal funding or additional rules and regulations.

Yet we know it is a mistake to legislate a solution without fully understanding the challenge. And so, before we talk about reducing the backlog of contested mine safety cases, I'd like to spend time this morning examining why we're seeing an increase in contested citations. I'd also like to understand what it means for the mine owner and—most importantly—for the safety of miners when a citation is contested.

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Chairman MILLER. I thank the gentleman for his statement.

And pursuant to committee rule 7(c), all members may submit an opening statement in writing which will be made part of the permanent record.

And I would like to now welcome our witnesses to this committee hearing. Thank you for accepting our invitation to come and testify. I think the panel provides us the right parties to investigate this matter.

I know that suggestions have been made about this system from both the operators and from MSHA about items that are under consideration for changing. We look forward to hearing that from you.

Before we begin, I will say I am going to introduce you, and then we—in our lighting system, there will be a green light. You will get 5 minutes to tell us what you think are the most important parts of your testimony. Your written statement will be placed in the record in its entirety and any supporting documents that you have for your testimony.

When you have 1 minute remaining, an orange light will come on, and we would like you to start wrapping up your testimony. But we want to make sure that you feel that you get to complete it in a coherent fashion, so that you don't think you just have to stop when the red light comes on when your time is up. We want you to present your testimony in its best light.

Our first witness this morning will be Mr. Joe Main—who is the Assistant Secretary of Labor for the Mine Safety and Health Administration. He was confirmed by the Senate on October 21st, 2009. He began working in coal mines in 1967 and has more than 40 years of experience in mine health and safety.

In 1982 he was appointed administrator of the Occupational Health and Safety Department of the United Mine Workers of America, a position he held for 22 years.

Ms. Mary Lucille Jordan is the Chairman of the Federal Mine Safety and Health Review Commission, which provides administrative trial and appellate review for legal disputes arising under the Mine Act. She served as chair of the Commission from 1994 until 2001, and most recently as a Commissioner from 2001 until 2009.

Prior to joining the Commission, Ms. Jordan served as the senior staff attorney for the United Mine Workers of America from 1977 to 1994.

Mr. Cecil Roberts is the president of the United Mine Workers of America and has served in that capacity since 1995. After college, he worked for 6 years at the Carbon Fuels' Number 31 mine in Winifred, West Virginia.

In August of 2009, Mr. Roberts was reelected to his fourth term as president of the union.

Mr. Bruce Watzman is the senior vice president of regulatory affairs at the National Mining Association. He oversees public policy issues in Congress and relevant regulatory agencies that advance the health and safety performance of the U.S. mine industry and manufacturers that provide equipment to the industry.

Welcome to all of you.

And, Mr. Secretary, we are going to begin with you.

STATEMENT OF JOSEPH MAIN, ASSISTANT SECRETARY, MINE SAFETY AND HEALTH ADMINISTRATION, U.S. DEPARTMENT OF LABOR

Mr. MAIN. Thank you, Mr. Chairman. Is it on? Okay, thank you.

Chairman Miller, Ranking Member, members of the committee, I appreciate the opportunity to appear here on behalf of the U.S. Department of Labor Mine Safety and Health Administration to discuss the backlog of contested cases pending before the Federal Mine Safety and Health Review Commission.

I share your concern and have made this a top priority since my confirmation as the Assistant Secretary.

To successfully tackle the backlog, it is important to understand why it has developed. As you know well, tragedy struck in 2006 at the Sago Mine, Alma #1 mine in West Virginia and Darby Mine in Kentucky, claiming the lives of 19 miners.

In response, Congress enacted the MINER Act and increased funding of MSHA to ensure required miners' protections at all mines. MSHA also revised its penalty regulations in an effort to strengthen enforcement. As a result of these reforms, penalties increased, especially for serious and repeat violations, as did the number of violations that MSHA cited.

Since those changes, the percentage of violations that operators contest before the Commission has grown dramatically, from 7.4 percent in 2006 to more than 25 percent today, causing a backlog

of about 82,000 pending violations and \$210 million in contested penalties.

MSHA does not believe that litigating our way out of this backlog is the only long-term solution. And we are pursuing some changes within MSHA guided by several principles.

Reform should, one, improve the implementation of the Mine Act and mine safety and health, simplify the system, improve consistency in enforcement, and reduce the contest rate. And those are the four principal issues that we look at.

As we consider the backlog, we must note the tremendous improvement in mine safety since MSHA began—stepped up inspections and increased penalties. Mining deaths dropped to a record low in 2008 and again in—to an all-time low of 35 in 2009.

The number of deaths in underground coal mines last year fell to a record low of seven. And for an 8-month period in this country, we had not one single coal miner die on the job in underground coal mines. And I think that is historic.

No doubt, we must find solutions to the backlog, but we must never sacrifice our serious commitment to enforcement and mine safety and health. In terms of solutions, the industry's responsibility for mine safety is essential.

In most contested cases, there is no dispute a violation occurred. At issue is the severity of the violation. The best way to resolve the backlog is improved industry health and safety management programs. Mines with an effective compliance plan under rigorous inspections will receive fewer violations.

Next, I am looking at the role of conferences for MSHA and mine operators to review citations. The option to hold conferences prior to the operators contesting the penalty seems to be the best approach to resolve disputes over violations early in the process and keep those citations out of the backlog.

Opportunities also exist to resolve disputes over citations and orders at the time of the mine inspection, and we will encourage that.

Also, we must diminish the incentives for operators who appear to be developing a pattern of significant and substantial safety violations to contest simply to delay enforcement.

MSHA is announcing today its intention to review pending cases of operators with significant S&S citations and, where warranted, seek to expedite those cases so that the pattern of violations enforcement of the Mine Act is having the intended effect.

Consistency of enforcement is another critical factor reducing contest rates. Consistency requires concentrating on review and evaluation which we are undertaking in several areas.

MSHA's also considering how to implement operator or corporate-wide holistic settlements to reduce the backlog. A program of corporate-wide engagement would change the landscape of the contested case backlog.

Another possible reform would incentivize operators not to contest. Operators currently receive a 10 percent reduction in proposed penalties for prompt good faith abatement of citations. We are reviewing whether or not additional financial incentives would be of value or not.

The Commission is obviously an important partner in tackling the backlog. We endorse reforms under consideration to simplify

the settlement process, expand formal settlement conferences by judges and simplify Commission proceedings.

We believe the ideas presented here can reduce the current backlog issues and assist in preventing further backlog—cases in the backlog.

I look forward to working with the committee on this, and I am happy to answer any questions you have.

[The statement of Mr. Main follows:]

**Prepared Statement of Joseph A. Main, Assistant Secretary of Labor for
Mine Safety and Health, U.S. Department of Labor**

MR. CHAIRMAN, MR. RANKING MEMBER, AND MEMBERS OF THE COMMITTEE: I appreciate the opportunity to appear here today on behalf of the U.S. Department of Labor, Mine Safety and Health Administration (MSHA) to discuss a matter of serious concern—the growing backlog of contested citations for violations of health and safety standards awaiting resolution by the Federal Mine Safety and Health Review Commission (Commission). Upon my confirmation in October of last year, I knew that I was facing a significant and growing backlog. Since my first day on the job, I have been examining the causes of the existing backlog and, in conjunction with the Office of the Solicitor of Labor, exploring solutions.

When Congress passed the Federal Mine Safety and Health Act of 1977 (Mine Act), it declared that “the first priority and concern of all in the coal or other mining industry must be the health and safety of its most precious resource—the miner.”³⁵ The Mine Act recognized that mining in all its forms presents unique hazards for miners. The Act establishes health and safety standards for all mine operators to follow. It also mandates active oversight by MSHA through regular mine inspections. The Mine Act requires MSHA to inspect underground mines four times per year and surface mines two times per year. Congress also included in the Mine Act strong enforcement tools to ensure compliance with the safety and health standards mandated by the statute and the standards and regulations promulgated under it. At the same time, the law gives mine operators the right to contest MSHA’s use of those strong enforcement tools, including proposed civil penalties.

For the Mine Act to be effectively implemented the way Congress intended, contested penalty cases must be resolved in a timely way. Even though the case backlog has not affected MSHA’s ability to require operators to abate hazardous conditions, it has severely reduced the deterrent value that penalties were meant to have.

Current Backlog

To understand the backlog, it is important to look at how it has developed. From 2005 to 2009, the number of violations and penalties certainly rose, but the percentage of cases contested by the mining industry and the percentage of total penalties reflected in those contested cases rose even faster:

- In CY 2005, MSHA cited 128,000 violations and proposed \$24.9 million in penalties. That year, mine operators contested 6% of the violations, accounting for 29% of the proposed penalties proposed.
- In CY 2006, MSHA cited 140,000 violations and proposed \$35.1 million in penalties. That year operators contested 7% of violations representing 35% of the proposed penalties.
- In CY 2007, MSHA cited 145,000 violations and proposed \$74.5 million penalties. Operators contested 15% of violations that year, which represented 54% of the penalties proposed.
- In CY 2008, 174,000 violations were cited and MSHA proposed \$194.2 million in penalties. That year 24% of violations were contested by mine operators representing 69% of penalties proposed.
- In CY 2009 MSHA cited 175,000 violations and proposed \$141.2 million in penalties. Mine operators contested 27% of violations representing 66% of proposed penalties.¹

As the number of contested citations grew, MSHA and the Commission worked to increase the number of contested citations that became final, but did not keep pace with the growing number of citations that were contested:

¹There is a time lag between the time a citation is issued and the time a penalty is proposed. If one adjusts for that lag time, violations cited in CY 2005 represented \$28.1 million in penalties, CY 2006 citations represented \$42.8 million in penalties, CY 2007 citations represented \$129.4 million in penalties, CY 2008 citations represented \$143.2 million in penalties, and CY 2009 citations represent \$129.8 million in penalties.

- In 2005, 7,200 citations were contested and 7,182 citations became final.
- In 2006, 10,036 citations were contested and 6,071 citations became final.
- In 2007, 19,546 citations were contested and 7,574 citations became final.
- In 2008, 46,792 citations were contested and 13,456 citations became final.
- In 2009, 46,526 citations were contested and 20,393 citations became final.

As these numbers demonstrate, the number of cases that are contested has significantly outpaced the rate at which cases are being resolved. One factor in this increase is clearly an increase in the number of citations MSHA has issued and the amount of penalties proposed. With the passage of the MINER Act and MSHA's commitment to conduct all statutorily mandated inspections, there has been about a 30% increase in the number of citations issued. Strikingly, while the increase in citations rose 30%, the dollar value of associated penalties proposed in those years increased almost five-fold, from \$35 million in 2006 to an average of \$167.5 million per year in 2008 and 2009.

The backlog cannot be explained solely by the increase in the number of violations MSHA has cited. The increase in the percentage of contested citations has grown much faster than the rate of increase in citations. The percentage of citations that operators contested rose dramatically, from 7.4% in 2006, or about 10,000 citations, to an average of just over 25% per year in 2008 and 2009, more than 46,000 contested citations each year.

The system's inability to keep pace with the rate of contested cases has caused a backlog of some 82,000 violations and \$210 million in contested penalties pending before the Commission.² The backlog includes cases where MSHA and the operator have submitted a proposed settlement but are awaiting Commission approval, cases yet to be assigned a hearing date, cases scheduled for hearing or at hearing before an Administrative Law Judge (ALJ), and cases before the Commission on review. While most mine operators do not file notices of contest, a few operators are contesting a large percentage of their violations and proposed penalties, with some operators contesting up to 100% of the citations and proposed penalties they receive.

This increase in the number of contested citations has greatly increased the time it takes for a contested case to make its way through the process. For example, contested cases that became final in CY 2006 took an average of 374 days from the time the citation was issued until the time the case was resolved. In CY 2009, it took 587 days.

To successfully tackle the backlog, we must not only understand how it has developed over the past few years, it is also important to understand why it has developed. An examination of recent history provides the answers. As this Committee knows, tragedies struck the mining industry in 2006, starting with the mine explosion and disaster at the Sago Mine in West Virginia on January 2, 2006, where twelve miners lost their lives. It was followed by a deadly fire on January 19, 2006 at the Alma #1 mine in West Virginia that claimed two lives. A few months later on May 20, 2006 a disastrous explosion occurred at the Darby Mine in Eastern Kentucky, claiming the lives of five more miners.

In response, Congress enacted new legislation to improve mine safety and health. That legislation, the MINER Act, established a number of new safety requirements, including the use of enhanced mine communications and tracking technology, establishment of refuge areas, greater training of mine rescue teams, and other actions. Most relevant to our discussion today, the legislation also added minimum penalties of \$2,000 for unwarrantable failure citations or orders issued under section 104(d)(1) and \$4,000 for subsequent orders issued under 104(d)(2) of the Mine Act. It established penalties of up to \$220,000 for newly created "flagrant" violations—those involving "a reckless or repeated failure to make reasonable efforts to eliminate a known violation of a mandatory health or safety standard that substantially and proximately caused, or reasonably could have been expected to cause, death or serious bodily injury." The MINER Act also established penalties between \$5,000 and \$60,000 for a mine operator who fails to notify MSHA in a timely manner of a death or an injury or entrapment with a reasonable potential for causing death.

MSHA also exercised its regulatory authority to increase penalties for violations of other health and safety standards. Following the tragedies at Sago, Alma and Darby, MSHA's penalty structure came under increased scrutiny. The Agency received criticism that its penalty assessments were insufficient as a deterrent for mine operators to prevent safety and health hazards. In March of 2007, MSHA com-

²MSHA tracks contested matters before the Commission by citations. For each violation cited by a mine inspector an operator receives a citation. Multiple citations against a mine operator can be docketed in a single case, also called a "docket." While the Commission typically describes the contested case backlog and MSHA the contested violation backlog, they are the same disputed matters. MSHA does not dispute the Commission's 16,000 figure.

pleted rulemaking to revise its penalty assessment tables. These regulatory changes increased penalty amounts for most violations, and increased penalties substantially for serious hazards and for repeat violators.

Also in the wake of the Sago and Alma tragedies, Congress directed MSHA to enhance its inspection program. Congress increased MSHA funding for the specific purpose of ensuring the full compliance with the Mine Act's requirement that all mines receive regular annual inspections—four complete inspections per year for all underground mines and two complete inspections per year for surface mines. Congress took this action because MSHA was not achieving these mandated responsibilities.

MSHA used the funding to increase the number of mine inspectors. The result was both an increase in the number of inspections—up to mandated levels—and in the quality of those inspections. As a result, the number of inspections rose from 21,705 in CY 2007 to 23,882 in 2008, a 10% increase, and 21,999 in CY 2009, a 1% increase from CY 2007 levels. With the increase in inspections, the number of cited violations increased as well, up 20% in CY 2008 and CY 2009 from CY 2007 levels.

The increased funding was used to recruit additional mine inspectors, and pay overtime necessary to meet the 100% inspection mandate. It is important to note that during this period of 100% enforcement in 2008 and 2009, the mining industry achieved record improvements in mine safety. In 2008, mining deaths reached an all-time low of 52. That record was again broken in 2009.

Preliminary reports show that in 2009 a record low of 35 miners died as a result of mine accidents. The year 2009 also marked an important record in coal mining. The number of deaths in underground coal mines fell to a record low of 7—half the number of any previous year on record. For the first time, the number of mining deaths at underground coal mines was much lower than at surface coal mines. Just as historic is the fact that the underground coal mining industry experienced a period of 8 months—from October 2008 through June of 2009—in which no underground coal miner was killed in a mining accident.

Similarly, in metal and non-metal mining, the number of deaths at aggregates mines—stone, sand, gravel and limestone—fell to a record low of 8 in 2009. Given that the majority of mining deaths in the metal and nonmetal mining sectors have occurred in recent years at aggregates facilities, this reduction is also a remarkable achievement.

Measures Moving Forward

As we consider solutions to the backlog, we must be mindful of these improvements and MSHA's increased enforcement presence over the past few years when the industry achieved these safety records. However, while these safety records represent great strides forward in mine safety, we cannot lose sight of the fact that we continue to strive to prevent all miner deaths. Nor can we forget the grief and suffering of the families, friends and coworkers of the miners who died.

It is in the best interest of all affected—miners, mine operators, MSHA, the Solicitor of Labor, and the Federal Mine Safety and Health Review Commission—to effectively reduce the current backlog of cases and implement measures that will improve the process for contesting cases going forward.

Toward that end, MSHA and the Office of the Solicitor of Labor, which represents MSHA before the Commission, have given serious consideration to the backlog's causes and potential remedies. As a result, we have identified a number of structural changes that could help improve the contested case process. The goal of the changes under consideration must be both to reduce the current backlog and to reduce the rate of contested cases in order to prevent future backlogs.

The changes that we implement to address these goals will be guided by several principles: (1) improved implementation of the Mine Act and mine health and safety, (2) simplification of the contested case process, (3) improved consistency by MSHA inspectors and supervisors, and (4) creation of an environment where fewer cases enter the contest process.

The following is a review of the issues contributing to the backlog and solutions under consideration:

Industry Responsibility for Mine Safety

The Mine Act obligates MSHA inspectors to cite violations observed. A review of the disposition of violations cited to mine operators indicates that a relatively minimal number of citations and orders are found completely without merit and vacated by either MSHA or the Commission. The percentages of assessed citations and orders vacated or withdrawn was 0.4% in 2006, 0.5% in 2007, 0.5% in 2008 and 0.5% in 2009. In most of the contested cases before the Commission, the issue is not

whether a violation of a mandatory health or safety standard occurred. Instead the dispute is over the gravity of the violation and the operator's negligence.

Given that fact, the starting point for any analysis of the backlog is the obligation of mine operators to eliminate the conditions that lead to so many violations. With so many citations and orders issued, it is imperative that mine operators improve compliance. To do that, the mining industry must expand its health and safety management programs and more thoroughly and regularly identify problem areas, inspect mines and abate hazards in advance of MSHA inspections. If MSHA inspectors can inspect workplaces and find these conditions, mine management should be finding them as well. If mine operators would take greater ownership of mine safety and health, it would be beneficial for all involved. Workers will be safer, the number of violations will be reduced, and penalties will go down. Instead of paying fines to the government, companies can invest that money back into ensuring the optimum health and safety at their mining operations.

With much lower fines in the past, some mine operators may have considered MSHA fines to be a cost of doing business, and abdicated their obligation to identify and correct hazards at their mines and ensure a healthy and safe workplace prior to inspections by MSHA. The responsibility for identifying and remedying mine hazards needs to be shifted from MSHA inspectors back to the mine operators.

To encourage mine operators to take more responsibility for the safety and health of their workers, MSHA will evaluate ways to improve the use of effective mine safety and health management programs by mine operators, particularly those that may be subject to the application of the pattern of violations criteria pursuant to section 104(e) of the Mine Act. I firmly believe the best way to resolve the backlog problem is to take measures to ensure safer and healthier mines that, under rigorous and complete inspections, receive fewer citations and orders from MSHA because there are fewer violations to cite. This will require a collaborative approach with the mining industry.

MSHA will also work with the mining industry to develop training programs and materials to aid compliance by mine operators. Some of those are underway. For example, I am working with the National Stone, Sand and Gravel Association to expand such an initiative. My goal as Assistant Secretary is to change the paradigm in the mining industry so that mine operators are more proactively preventing hazards in their workplaces and fixing conditions that would be cited before a mine inspector even enters the property.

Simplification of Citations

In most of the contested cases before the Commission, the issue is not whether a violation occurred. Instead the dispute is over the gravity of the violation, the degree of mine operator negligence, and other factors. Currently, when writing a citation, a mine inspector determines the likelihood of injury from the violation, the severity of an injury if one occurred, and the number of persons affected by the hazardous condition, and decides whether the violation is significant and substantial. In addition, the inspector determines the operator's degree of negligence. These determinations are then used under the regulations to propose penalties based on statutory criteria. We are considering how to make the evaluation and writing of citations by inspectors simpler and ultimately more objective, clear and consistent. Any simplification would consider the effect on the number of issues that mine operators most often contest.

Mine Operator Conference Requests with MSHA

Under MSHA regulations a mine operator may request a safety and health conference for any citation, although MSHA may exercise discretion whether it grants such requests. Historically, MSHA has held safety and health conferences when requested by the mine operator to discuss and resolve disputes over violations. MSHA generally grants these requests and determines the nature of the conference. MSHA considers all relevant information presented with respect to each citation that is conferenced. Conferences generally consist of a discussion of the specific findings by the inspector regarding the seriousness of the violation, including the degree of negligence, likelihood of occurrence, severity of injury or illness if injury occurred, and the number of miners potentially affected by the cited hazard. For each of these issues there are categories that have points assigned for each category. For example there are five degrees of negligence ranging from no negligence to reckless disregard, with progressively higher points assigned to higher degrees of negligence. Those points are used in a formula to propose a civil penalty amount for the violation. Until February 2008, MSHA held these conferences prior to the assessment of

the civil penalty.³ Once the MSHA health and safety conferences were concluded, MSHA's Office of Assessments would assign a penalty, taking into consideration any revisions MSHA enforcement personnel made to the evaluation of the violation. This conferencing process resulted in the mine operator filing no penalty contest if they were satisfied with the results of the conference.

Disputes resolved during health and safety conferences do not require approval by the Commission. In addition, uncontested citations and orders automatically become final orders of the Commission. Some mine operators, however, filed contests even after participating in an MSHA conference. Possible reasons for this behavior include disagreement with MSHA's position at the conference, or a desire to further reduce the seriousness of the violation to lower its impact on the operator's violation history, which can both increase future fines and cause MSHA to target the operator for scrutiny as an operator with a potential "pattern of violations." Another possible reason is that, with changes in penalties, operators still wished to contest penalties after discovering the dollar amount of the proposed assessment.

In March 2009 MSHA implemented the Enhanced Safety and Health Conference, which was designed to reinstate early conferences to settle cases but still delayed conferencing until after a civil penalty was proposed and formally contested by the mine operator. This significantly added to the Commission's caseload because proposed penalties that are formally contested, even if settled, must proceed through the Commission process and be reviewed and approved by an ALJ.

After a review of the conferencing process it appears that the best approach is to hold the MSHA health and safety conference, if requested by the mine operator, prior to MSHA issuing a proposed penalty assessment, and provide the mine operator with an estimated penalty amount based on the standard assessment formula. The MSHA field conferencing and litigation representatives (CLRs) and potentially other personnel would review the facts of the violation and the inspector's determination of negligence, likelihood of occurrence, etc., as before. The resolution of these cases does not require Commission approval unless they are later contested. MSHA will implement this change through policy.

In addition to these changes, opportunities exist in the current system for operator and miner communication with MSHA to resolve disputes over citations. MSHA holds a "closeout" inspection meeting at the completion of each mine inspection to discuss the cited violations with the operator and any miners' representatives. This provides the mine operator and miners' representatives an opportunity to discuss the violations directly with the MSHA inspector.

Additionally, mine management and miners' representatives are permitted—and encouraged—to travel on the inspections at the mine. MSHA is examining how to maximize the use of these processes as a tool to resolve factual disputes about citations that later arise in the litigation process.

Review of the Pattern-of-Violations Process

We are also reviewing the current pattern of violation criteria contained in 30 C.F.R. Part 104. The criteria used for determining that an operator has a potential pattern of violations include a mine's history of significant and substantial (S&S) violations of a particular standard, history of S&S violations related to a particular hazard, and history of S&S violations caused by an unwarrantable failure to comply with health and safety standards. Once a potential pattern is found, an operator has a notice period to reduce the number of S&S violations at its mine. If the operator fails to reduce the number of violations, under Section 104(e) of the Mine Act, MSHA is required to first issue a notice that a pattern exists, and then require the withdrawal of all miners from any area of the mine where a significant and substantial violation has been cited.

Currently, when applying the criteria for finding a potential pattern of violations, MSHA only considers violations that have become final orders of the Commission. Citations and orders that are under contest, no matter how egregious, are not considered when enforcing the pattern of violation section of the Mine Act. We believe some operators contesting S&S violations may be doing so because it delays the finding of a pattern, adding to the backlog and delaying MSHA from using this enhanced enforcement tool at their mines. As a result, there are operations that might be on a potential pattern of violations, but the backlog has prevented their cases from becoming final orders.

³In February 2008 MSHA suspended most health and safety conferences, effectively deferring discussions until after the proposed penalty. In March 2009 MSHA formally created an "Enhanced Health and Safety Conference" that deferred all conference requests until after a penalty was proposed.

It is important that we remove the incentive for operators with repeated S&S safety violations at their mine to contest violations simply to delay enforcement. Delay in addressing S&S hazardous conditions puts miners at risk, is at odds with the purpose of the Mine Act and mission of MSHA, and is unacceptable. MSHA is considering a review of the pattern of violation process to determine whether our current approach is the best one for providing timely protection for miners working at mines with high levels of S&S violations.

MSHA will also consider whether the implementation and use of health and safety management programs for operators with these kinds of serious violations might also play a role in improving the pattern of violations process. Mine operators with a pattern of violations obviously do not maintain effective mine safety and health management programs; otherwise they would not have accumulated the violations that result in their placement on a potential pattern of violations. MSHA will study the use of such programs and their potential to both reduce the number of violations entering the system and improve mine safety and health.

Even without any changes to the pattern of violation criteria, we believe that under the current system we can take action to reduce the incentive for operators with S&S violations to file contests simply to delay fixing a systematic pattern of serious safety and health hazards. MSHA is announcing today its intention to review pending cases of those operators with significant numbers of S&S citations, and where warranted, seek to expedite those cases so that the pattern of violations enforcement scheme of the Mine Act is given its intended effect and miners are not left at continued risk from delays caused by the backlog.

While this backlog will not be fixed overnight, we will take these steps to make sure operators that should be under scrutiny for having a potential pattern of serious health and safety violations get that scrutiny. We also believe that this strategy will remove the incentive of operators who may choose to contest cases simply for the purpose of delaying a pattern of violations finding.

Consistency

Some operators complain MSHA has not been consistent in its application of enforcement decisions involving health and safety standards, and that enforcement of the standards and evaluation of cited conditions varies from inspector to inspector. Consistency of enforcement is critical and requires constant training and review. Consistency in the application of the laws, rules and regulations enforced and administered by MSHA is an issue I have been studying closely. MSHA's workforce has changed significantly over the past few years. A substantial number of highly experienced mine inspectors have retired and been replaced by new inspectors. For example, about 55% of the current coal mine inspectors have been hired since July 2006. In Metal and Nonmetal, about 37% of inspectors were hired during that same period. Although new hires go through extensive training of up to two years and apprentice with a journeyman inspector before they can begin unsupervised inspection duties, even the most experienced of these new inspectors have only been conducting federal mine inspections for a couple of years.

The significant turnover in MSHA's inspectorate coincided with the significant changes in the law brought about by the 2006 enactment of the MINER Act. The MINER Act required MSHA's inspectors to quickly get up to speed on new standards regarding mine communications and tracking devices, emergency response plans, sealing abandoned areas in underground coal mines, use of belt air to ventilate coal mines, and mine rescue teams and emergency refuge chambers and alternatives. As I mentioned earlier, MSHA also revised its penalty tables in this period, substantially increasing fines. These changes can create a potential for inconsistent application of the Mine Act—and we are evaluating how to maintain and improve our consistency where necessary.

Consistency requires ongoing training and review. To help with consistency, MSHA is developing training programs for its supervisors with the goal that inspectors will be held accountable for writing citations based on solid facts and evidence, and based on sustainable legal determinations. We want to ensure that inspectors are issuing citations for workplace hazards that can be supported before the Commission. To that end, we are collaborating with the Office of the Solicitor in developing these training programs and course material. We want to ensure that inspectors are writing "good paper," and are not issuing citations for conditions where there is no violation or where there is a lack of evidence to support the inspector's findings.

Consistency also requires training of Conference Litigation Representatives (CLRs), the MSHA personnel who handle most of the contested cases in the litigation process. It is vital that CLRs evaluate citations under the same training and criteria as the inspectors who write the citations.

Finally, we must also provide appropriate training and guidelines to all MSHA field supervisors, including District Managers and Assistant District Managers, who have significant oversight responsibility for MSHA's enforcement program. Once trained for consistency, we must ensure that MSHA personnel are also managed for consistency.

With consistent training of inspectors and CLRs, and supervisory responsibility established in this effort as well, we hope to ensure inspectors write meritorious citations and develop an evidentiary record to support their prosecution. This improved consistency will give MSHA and the Office of the Solicitor stronger cases to litigate, which over time should help reduce the number of contested cases.

Fewer Cases in the System

Any system of reforms will have to result in fewer cases entering the contest system. MSHA does not believe that litigating our way out of this backlog is the best long-term solution. Instead, an approach that includes incentives to reduce the number of contested cases while reducing the exposure of miners to safety and health hazards is the best solution, and the solution that best implements the Mine Act.

Among the most important reforms, MSHA is considering how we might implement operator or corporate-wide holistic settlements to reduce the backlog. A review of cases currently pending before the Commission shows that 10 corporations and the companies within their control account for 39% of all contested violations currently in the backlog. A program of corporate-wide engagement with these companies to reduce contested cases while improving mine safety and health could completely change the landscape of the contested case backlog.

Over the years the mining industry's approach to safety and health has shifted. Mining operators have switched over time to a reactive approach, relying on MSHA inspectors to identify safety and health hazards, and treating citations as a cost of doing business instead of having comprehensive safety and health programs of their own. MSHA is currently considering how the implementation of comprehensive safety programs approved by MSHA could serve as an incentive to reduce contested citations, and more importantly, as a means to improve safety by requiring operators to focus resources on improving safety rather than litigating citations.

Additionally, we could consider providing incentives for operators that do not contest. Operators currently receive a 10 percent reduction in proposed civil penalties for prompt, good faith abatement of the violations cited. Prior to 2007, MSHA applied a 30% reduction for prompt, good faith abatement. We are reviewing whether some type of additional financial incentive could be implemented to reduce the number of contested cases. MSHA will carefully review the potential benefits of any such approach. A critical component of any such review would be an analysis of the appropriate level of reduction or discount, whether and how such a discount would actually reduce the number of contested cases, the residual effects on uncontested cases of such a discount, and whether certain serious violations should be excluded from any incentive program.

Outreach

To complement the enforcement provisions of the Mine Act, MSHA is working to improve stakeholder outreach and education. MSHA recently launched two major initiatives to curb mining deaths and solicited the support and cooperation of the mining industry stakeholders. One is the "End Black Lung—Act Now" campaign which is aimed at ending the black lung disease in coal mining. The second is the fatality prevention program called "Rules to Live By," which targets the most common causes of mining deaths. These initiatives have been rolled out with the support of the mining industry, labor organizations and other stakeholders. Since my confirmation, I have met with several stakeholders in coal and metal—non metal industries including company CEO's and other executives as well as a number of industry associations and organizations to discuss ways to improve mine safety and health and compliance with the Mine Act. While these indirectly impact the backlog, this component of communication and education with the industry and other stakeholders is essential to our success as an agency.

Possible Commission Reforms

In addition to what I have outlined, there are several critical reforms that are within the purview of the Federal Mine Safety and Health Review Commission (Commission). For example, we endorse reforms that will increase the speed with which settlements are approved. Once a case is contested, any settlement must be approved by the Commission. A part of the backlog consists of cases that MSHA and the operator have agreed to settle, but the settlement agreement is pending before the Commission awaiting approval. We endorse efforts by the Commission to focus on settlement approvals and simplifying the process for getting a settlement ap-

proved. We also think consideration should be given to expanding the use of settlement conferences over which a judge presides.

Additionally, MSHA believes the Commission should consider the use of simplified trial proceedings. Currently MSHA and SOL devote considerable resources to the pre-trial discovery process and other case preparation for matters which usually settle. A simplified trial process for certain categories of cases would have a significant impact on the time and resources it takes for cases to proceed to trial. The Department of Labor fully endorses consideration of reforms, and is prepared to provide technical support to the Commission in order to implement these reforms as quickly as possible.

Finally, we think it would be appropriate for the Commission to consider whether there are procedural reforms applicable to all types of cases that could streamline the process and reduce the number of contested cases. For example, uniform disclosures by MSHA of its evidence in support of a citation and by an operator of its grounds and supporting evidence for contesting a citation could create an incentive for the parties to evaluate their positions early in the process.

Conclusion

We believe that the ideas presented here can help reduce the current backlog issues and assist in preventing further case backlogs going forward. We are hopeful that our work will allow MSHA to meet its statutory mandates and continue an effective enforcement program that provides an appropriate deterrent to mine operators while assuring that MSHA enforcement cases are aggressively litigated. We are committed to taking all necessary steps to address the backlog because it is an obstacle to ensuring the highest level of safety for our nation's miners. I look forward to working with the Committee to tackle this critical problem and I am happy to answer your questions.

Chairman MILLER. Thank you.
Ms. Jordan?

STATEMENT OF MARY LU JORDAN, CHAIRMAN, FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Mr. Chairman, Mr. Ranking Member and members of the committee, thank you for the opportunity to testify on the case backlog currently facing the Commission.

My name is Mary Lu Jordan, and I am Chairman of the Federal Mine Safety and Health Review Commission.

The Commission is an independent adjudicatory agency that provides trial and appellate review of the legal disputes that arise under the Federal Mine Safety and Health Act of 1977.

The Commission's administrative law judges decide the cases at the trial level, and the five-member Commission provides the appellate review.

When I became Chairman last August, I was confronted with a growing case load that was a dramatic departure from the trend that had previously existed. For example, during the 4 years from fiscal 2002 through 2005, the case load ranged from approximately 1,300 to 1,500 cases.

In comparison, during the subsequent 4 years, from fiscal year 2006 through 2009, the case load climbed from approximately 2,700 to over 14,000 cases. Currently, there is a backlog of approximately 16,000.

Comparing the new case filings during these same two periods is also instructive. From fiscal year 2002 to 2005, the annual number of new cases filed increased from about 2,100 to 2,400.

The figures after that paint a different picture. Case filings went from 3,300 new cases in fiscal year 2006 up to approximately 9,200 new cases in fiscal year 2009.

The influx of new cases has led to a slower disposition. The vast majority of the Commission cases result in settlements. The settlement motions are reviewed by a judge who issues an order approving or disapproving the proposed resolution.

The average number of days it took to dispose of these settlement cases increased from 178 days in fiscal 2006 to 401 days in fiscal year 2009.

When I became Chairman, I learned that the increase in new cases had created a bottleneck in case assignments. By the time the cases could be assigned by the chief judge, they were already a year old.

With the assistance of some contract clerical help, we have made progress in reducing the number of cases waiting to be assigned. However, unclogging the assignment process meant that the bulge of backlogged cases would now move to the judges' desks.

Judges' dockets have increased dramatically. From fiscal year 2004 to 2008, each judge's docket averaged 176 cases. Today in fiscal year 2010, the number of cases assigned to each judge has risen to an average of 746.

Under our budget for fiscal year 2010, the Commission plans to add four new judges to our current roster of 10. We also plan to add four law clerks and additional clerical assistants. These measures will allow us to slow the rate of the growth of our backlog.

The President's 2011 budget request of \$13.1 million will allow the Commission to stop the backlog from increasing. We will be able to bring our total judges to 18 and plan to hire enough law clerks so that each judge can have the assistance of a clerk and share an administrative assistant.

In addition to increased staffing, we are looking at all of our processes to see what we can streamline. Within the next few days, the Commission will publish an amendment to the procedural rules.

We will require the parties to submit a draft settlement order when they file their motions to settle with our judges, and these will be required to be filed electronically.

We are also contemplating things like a calendar call where judges take a bundle of cases with a particular operator, meet with the parties and try and resolve as many as they can.

We are looking at whether we can simplify or even eliminate some of the pleadings that the parties currently file with us.

And we are enthusiastic about looking at the possibility of initiating a simplified procedures process, similar to that used by OSHRC, wherein things like discovery and post-trial briefs are severely limited.

We are keenly aware of Congress' concern that the penalty provisions of the Mine Act cannot operate as an effective deterrent if there is an unduly long period between the violation and the payment of the penalty.

Indeed, the legislative history of the Mine Act that created the Commission emphasized that, "to be effective and to induce compliance, civil penalties once proposed must be assessed and collected with reasonable promptness and efficiency."

Moreover, unless the case processing mechanisms operate efficiently, operators who dispute MSHA's interpretation of a standard

may not know in a timely manner whether their practices comply with the standard or not.

We recognize that several important enforcement provisions of the Mine Act depend upon a determination of an operator's history, and these provisions are not applicable until the violation becomes final, which occurs only at the completion of the Commission's review process. Thus, if case decisions are delayed, the ability of MSHA to effectively enforce the act may be inhibited.

Thank you.

[The statement of Ms. Jordan follows:]

**Prepared Statement of Hon. Mary Lu Jordan, Chairman,
Federal Mine Safety and Health Review Commission**

MR. CHAIRMAN, MR. RANKING MEMBER, AND MEMBERS OF THE COMMITTEE: Thank you for the opportunity to testify on the case backlog currently facing the Federal Mine Safety and Health Review Commission. My name is Mary Lu Jordan, and I am Chairman of the Commission. On behalf of the Commission, I am very grateful to this Committee for its recognition of the increased case backlog facing our agency, and for its interest in identifying solutions to ensure the speedy adjudication of mine safety cases.

The Federal Mine Safety and Health Review Commission is an independent adjudicatory agency that provides administrative trial and appellate review of legal disputes arising under the Federal Mine Safety and Health Act of 1977 (the "Mine Act"). The majority of cases that come before the Commission involve civil penalties proposed by the Department of Labor's Mine Safety and Health Administration ("MSHA") to be assessed against mine operators. The Commission is responsible for deciding whether the alleged violations of the Mine Act or a mandatory safety regulation issued by MSHA occurred, as well as the appropriateness of the proposed penalties. Other types of cases heard by the Commission include contests of MSHA orders to close a mine for health or safety reasons, miners' charges of discrimination based on their complaints regarding health or safety, and miners' requests for compensation after being idled by a mine closure order.

The Commission's administrative law judges decide cases at the trial level. The five-member Commission provides administrative appellate review. Currently, we have four Commissioners. A fifth Commissioner has been nominated to serve by the President, and his nomination is pending before the Senate.

When I became Chairman last August, I was confronted with a growing caseload—a dramatic departure from the steady caseload trend that existed during my first term as Chairman (from 1994 until 2001), and for the several years following when I served as a Commissioner.

For example, during the four years from FY 2002 through FY 2005, the caseload ranged from approximately 1300 to 1500 cases. In comparison, during the subsequent four years, from FY 2006 through FY 2009, the caseload climbed from approximately 2,700 to over 14,000 cases. Currently, there is a backlog of approximately 16,000 cases.

A comparison of new case filings during these same two time periods is also instructive. From FY 2002 to FY 2005, the annual number of cases filed showed only a minimal increase, going from about 2,100 to 2,400 new cases per year. The figures after that paint a completely different picture, with case filings going from 3,300 new cases in FY 2006 up to approximately 9,200 new cases in FY 2009.

What prompted this unprecedented number of new cases? While we cannot answer that question with complete certainty, we believe that certain statutory and regulatory changes that occurred within the last four years have played a role in this influx of new cases.

First, as a result of the Sago, Aracoma and Darby mine disasters in 2006, Congress enacted the Mine Improvement and New Emergency Response Act of 2006 (the "MINER Act"), which was signed into law on June 15, 2006. The MINER Act established new and stronger civil sanctions for violations of the Mine Act, including minimum penalties for an operator's unwarrantable failure to comply with the statute or mandatory safety and health standards, and a new penalty for "flagrant conduct" by a mine operator.

Second, in response to the MINER Act, MSHA in March 2007 revised its civil penalty regulations, which resulted in significant increases in the amounts of money assessed in civil penalties proposed by the agency. In addition, in June 2007, MSHA announced an initiative to more vigorously enforce the provision of the Mine Act

that permits mine closure orders to be issued when an operator has a pattern of recurrent significant and substantial (“S&S”) violations at a mine. These types of violations generally involve more dangerous situations than other citations.

While it is difficult to know with complete certainty the implications of these individual events on the Commission’s caseload, we do know that the result of this influx of new cases has led to a slower disposition for most of our cases. The vast majority of our cases result in settlements. These settlements must be reviewed by a judge who must then issue an order approving or disapproving the proposed resolution. The average number of days it took to dispose of these cases increased from 178 days in FY 2006 to 401 days in FY 2009.

When I became Chairman, I learned that the tremendous increase in new cases had created a bottleneck in the case assignment phase of our process. By the time cases could be assigned by the Chief Judge, they were already a year old. The Chief Judge and I discussed ways that the process could be streamlined. We realized that, as we unclogged the assignment process, we would need some additional clerical help to get the assignment orders out to the parties and to create the case files. We brought in temporary contractors to help the docket office accomplish this. Due in large part to the assistance of contract clerical help, we have made progress in reducing the number of cases waiting to be assigned to a judge.

Unclogging the assignment phase meant that the bulge of backlogged cases would now move down the pipeline to the judges’ desks. Judges’ dockets have increased dramatically. From FY 2004 to FY 2008, each judge’s docket averaged 176 cases. That number jumped to 366 cases in FY 2009. To date in FY 2010, the number of cases assigned to each judge has risen to an average of 746.

The Commission’s judges are hardworking and conscientious, and they are understandably concerned about the delays this increased caseload may cause. However, because of the number of incoming cases, some judges have felt the need to issue a prehearing order advising the parties that their case would not be set for hearing for at least a year.

Under the Commission’s budget for FY 2010, the Commission plans to add four new administrative law judges to our current roster of 10 judges. We also plan to add four law clerks to our current staff of five clerks (these are law school graduates who assist the judges). We will also be hiring four additional clerical assistants. The Commission has started the competitive procurement process with GSA for additional space to accommodate the anticipated increase in staff for FY 2010. These measures will allow us to slow the rate of growth of our backlog, although the backlog will continue to grow throughout FY 2010. We will also be adopting a number of procedures that would allow the new judges to tackle the case backlog without significant impacting DOL or its Solicitor’s Office, such as having current judges concentrate on writing decisions for hearings which have already been held and also having new judges focus on the backlog of settlements.

The President’s 2011 budget request of \$13.105 million, representing a 27 percent increase, will allow the Commission to stop the backlog from increasing. We will be able to add four more judges, which will bring our total to 18. We also plan to hire nine additional law clerks so that each judge will have the assistance of a law clerk, and each judge would share an administrative assistant with another judge.

But more resources are only part of the answer. In addition to increased staffing, we have, over the last several years, reviewed and are continuing to examine our entire case adjudication system to determine how we can streamline procedures via administrative and rulemaking changes. We are identifying specific points where unnecessary delays occur, and formulating solutions to address each of these problems.

We examined our caseload and determined that approximately 20% of our cases involved a challenge to the underlying MSHA enforcement action—the issuance of a citation or order. These are commonly called “contest cases.” Since an operator almost always subsequently files a case challenging the penalty related to that enforcement action, the contest case is usually subsumed into the penalty case. Consequently, we announced a policy in August 2007 under which the Chief Administrative Law Judge automatically stays each of these contest cases until its accompanying civil penalty is proposed by the Secretary. At that point, the contest case and the civil penalty case are consolidated and assigned to a judge. (If the operator needs an expedited hearing on the contest case, it can file a motion with the Chief Administrative Law Judge to lift the automatic stay). Because of our policy of staying cases, we no longer have to issue orders in the contest cases, which are duplicative to those filed in the parallel penalty proceeding.

Because over 90% of Commission cases are ultimately settled and the statute requires that settlements be reviewed and approved by a judge, much of the Commission’s resources is used to process settlement motions and issue orders approving

settlement. Within the next few days, the Commission will publish an amendment to its procedural rules requiring the parties to submit a draft settlement order when they file a motion to approve settlement in most cases. The rule will require most of these submissions to be filed electronically. The implementation of this rule will reduce the amount of time that it takes for the Commission to dispose of settlement motions and provide the Commission with valuable experience in its move towards an electronic filing system.

We are also contemplating a “calendar call” system, wherein one judge is assigned numerous cases from the same operator, and meets with the parties with a goal of settling as many cases as possible, if appropriate. This system was used successfully by a former Commission Chief Judge many years ago, and we believe the time may be ripe to reinstate this program.

Revisions to our procedural rules have also been discussed with an eye towards streamlining the adjudication process and eliminating unnecessary filings. We are investigating whether we should eliminate the requirement that an operator file an answer to the formal penalty petition, which the Secretary files with the Commission. We will need to weigh the potential for streamlining the processing of cases against the potential for encouraging more cases to enter the system. We are also exploring ways to simplify or even eliminate the penalty petition that the Secretary files with the Commission.

We are enthusiastic about initiating a “simplified procedures” process similar to the one in effect at the Occupational Safety and Health Review Commission. In cases placed on this track, which would be the simpler cases the Commission receives, discovery and post-trial briefs could be severely limited, and interlocutory review might be abolished. We have begun the research and discussion necessary to embark on a rulemaking regarding such a system.

Additionally, we are considering changes to our procedures for those cases which will not be placed on the “simplified procedures” track. These changes would be partially based on the Federal Rules of Civil Procedure. They could include such things as utilizing uniform Pre-Hearing Orders, requiring parties to make initial disclosures of basic information early in the litigation process, and standardizing pre-trial conferences with the judge. We are also focusing on procedural changes that would not require DOL or mine operators to expend significant additional resources.

In FY 2008, the Commission upgraded to a new electronic case tracking system, which provides the Commission the ability to track the various stages of each case that it receives. Another potential project involves the electronic filing of cases and case documents. The Commission is currently reviewing requirements for the electronic filing process to determine the best approach for implementing such a system.

We will continue to explore modifications to our procedural rules and case management procedures that might enable cases to move more quickly through the Commission. We are committed to examining any and all ideas that can assist in adjudicating cases more quickly.

We are keenly aware of Congress’ concern that the penalty provisions of the Mine Act cannot operate as an effective deterrent if there is an unduly long period of time between the violation and the payment of a penalty. Indeed, the legislative history of the Mine Act emphasizes that “[t]o be effective and to induce compliance, civil penalties, once proposed, must be assessed and collected with reasonable promptness and efficiency.” S. Rep. No. 95-181, at 43 (1977), reprinted in Senate Subcomm. on Labor, Comm. on Human Res., Legislative History of the Federal Mine Safety and Health Act of 1977, at 631 (1978).

Moreover, Congress intended that the case processing mechanism operate efficiently so that operators who dispute MSHA’s interpretation of a standard may obtain a speedy resolution. With a large and growing backlog of cases at the Commission, operators often do not know in a timely manner whether their practices comply with mandatory safety standards or violate them.

We recognize that several important enforcement provisions of the Mine Act depend upon a determination of an operator’s history of violations. These include the amount of the penalty, and possible withdrawal orders for a pattern of violations that could significantly and substantially contribute to a safety or health hazard. These provisions are not applicable until a violation becomes “final,” which occurs only at the completion of the Commission’s review process. Thus, if case decisions are delayed, the ability of MSHA to effectively enforce the Act may be inhibited.

Over the years this Committee has played a key role in ensuring miner safety. I look forward to working with you to remedy this problem, and thank you once again for this opportunity to testify on this issue.

Chairman MILLER. President Roberts, welcome.

**STATEMENT OF CECIL ROBERTS, PRESIDENT,
UNITED MINE WORKERS OF AMERICA**

Mr. ROBERTS. Well, thank you very much, once again, for having the opportunity to appear before this committee.

Obviously, you know, it is a much better atmosphere today than it was in 2006, and I wanted to commend this committee for the actions that were taken in 2006 in the face of those terrible disasters at Sago and Aracoma, at Darby, and in the face of many widows and orphans coming here to testify in a very volatile situation.

UMWA argued at that time that good laws, enforcement of those laws, fines for violating the laws, and more inspectors would drop the number of fatalities in the nation's coal mines. I want to point out a couple of things, if I may.

In 2006, when we were all here trying to determine what to do about the tragedies that were occurring, \$35 million in penalties were assessed, and we had 47 coal miners die in the nation's coal mines that year.

In 2009, we had \$141 million in penalties assessed, four times higher, and we had the lowest number of fatalities in 2009 in the history of coal mining in the United States of America.

That is not something that just happened. It was because of the actions that Congress took, looking at these fatalities and making a determination that the government should be a full partner in mine health and safety.

That is not the first time that has happened. If you go back to the original 1969 Coal Mine Health and Safety Act, the 25 years preceding that act, 12,000 coal miners died in the nation's coal mines—in the 25 years after the passage of that act, fewer than 3,000.

So I report to the committee that I don't think there is any doubt that strong laws and enforcement of those laws protect the coal miners of the United States, which was the goal of this committee when we came together in 2006 in a very bipartisan way, and also in 1969 when Congress initially acted and then followed up in 1977.

So we have higher fines, and we have enforcement, and let me take a moment, if I might, to commend Undersecretary Main for the job that he has done and Chairman Jordan for the job that she has done in their capacity of trying to protect the coal miners in the United States.

And let's, first of all, understand that is our first obligation, from my perspective here. When we look at the number of cases and we talk about well, how do we deal with all these cases, which is something very appropriate, also our goal should be well, how do we protect the coal miners first. That is who we should put out front.

And it is true that when penalties are assessed whenever violations are found, the operator is required to abate those violations. But understand, Congress' intent here when you wrote the 2006 law was to make sure those operators who continued to violate the law were dealt with.

And if you have an operator at a particular mine or a series of mines who continues to violate the law, Congress wrote into the act a way to deal with that, and that is you look at the history of that particular operator, and then that operator may face a more seri-

ous challenge here when there is a pattern of violations imposed on that particular operator.

And you can take any particular situation where—that has led to tragedy in the United States of America—any of those tragedies in 2006 that we talked about at length, perhaps the Crandall Canyon situation we talked about here at length in 2007—and there were a series of violations that should have been dealt with or could have been dealt with.

What has happened here is the system has been clogged to a certain degree here, where the pattern of violations is not really in the law when the system doesn't work.

The pattern of violations was placed in here so that if a particular operator, a particular mine, was continually violating the law, there was a process for MSHA to identify that and MSHA to act to make sure that operator complied with the law. And it works.

Whenever any operator has been—as certain operators have been placed on a pattern of violations, we have seen those operators correct the situation.

There is a way to remedy all of this: not have any violations. And I know that is probably impossible, but there are some operators in the United States of America—let me commend the industry, too, while I am at it, and that probably is a little unusual for me in my capacity, but the industry has spent enormous sums of money to comply with the 2006 act.

But we still have certain mines and we still have certain operators who need a more stringent enforcement mechanism applied, and that is why when you clog up the system with all of these violations and appealing all of these cases—let's understand something. There are some operators appealing 91 percent of every penalty assessed them.

Does anyone in this room today, whether sitting on this panel or up on the front here, or behind me, believe that all 91 percent of those are legitimate? Of course they are not.

So why are they doing this? Because they do not want to eventually have a history or a pattern here established so that MSHA will come down more harshly with them and make them comply with the laws.

Thank you.

[The statement of Mr. Roberts follows:]

**Prepared Statement of Cecil E. Roberts, President,
United Mine Workers of America**

Thank you for this opportunity to appear before your Committee. As President of the United Mine Workers of America ("UMWA"), I represent the union that has been an unwavering advocate for miners' health and safety for 120 years.

This Committee has played a significant role in advancing miners' health and safety. I would like to express my appreciation to the leadership of this Committee for your efforts to protect and enhance the health and safety of all miners. Your continued oversight is critical to ensuring miners will go home safely at the end of their shift each and every day.

Today we are focusing on the difficulties confronting the Federal Mine Health and Safety Review Commission and the serious backlog of cases before the Commission. Neither the increased caseload, nor the Commission's growing backlog, shows any signs of abating. In fact, unless immediate and significant remedial action is taken to address this problem, the Commission's backlog will render meaningless many of the reforms Congress clearly intended to address with its passage of the MINER

Act. This is because the higher penalty structure was intended to make penalties more meaningful, not just a cost of doing business.

So what do we do to correct this problem? If Congress wants to realize the full benefits that it intended with the enhanced penalty structure in the 2006 MINER Act, then the system must be re-aligned so that operators are not rewarded for routinely contesting citations and penalties, and the Commission must be adequately funded so that it can handle its caseload on a timely basis.

Since passage of the 2006 MINER Act, and the modified penalty structure it imposed for violations of Mine Health and Safety laws, the penalties MSHA assesses has increased significantly. Indeed, for 2006, MSHA assessed about \$35 million in penalties, while for 2009 assessed penalties rose to about \$141 million.

At the same time that the amount of assessed penalties increased, so did both the number and the rate of contested cases. Most of the increase is attributable to the coal industry, as opposed to metal/non-metal: for each of the five years immediately before the MINER Act (2000-2005), only 5-7% of coal mine civil penalties lead to cases being contested before the Commission, whereas for the last three years (2007-2009), the rate has dramatically increased to 18%, 30% and 31%, respectively. While an increase in contested cases was anticipated based on the MSHA's improved enforcement and the higher penalty structure the MINER Act required, the scale of that increase exceeded those expectations.

The Union and coal miners hailed the passage of the MINER Act as the dawn of a new day to improving coal mine health and safety. However, those increased protections are being subverted by the huge contested rate that has overwhelmed the government's ability to deal with its caseload, and MSHA's practice of reducing assessments when operators contest them. While operators are entitled to their due process, we cannot accept the status quo whereby some operators continue to abuse the system such that the government is not able to effectively carry out the directives of the MINER Act. As it stands, miners' health and safety is adversely affected by the operators' high contested rates and the related backlog of cases at the Commission.

The existing system rewards operators that file contests. While this is not a new development, with the new and higher penalty structure, operators have increasingly availed themselves of the contest procedure as a means of reducing the costs attributable to their mine health and safety violations. This happens in many ways. One example is that when contested citations are tied up in the Commission backlog, there is delay to the enhanced penalties that are supposed to apply for repeat violations. While the intent was to motivate operators to NOT have repeat violations, instead they are able to avoid the higher penalties by delaying a final order that would show the repeat violation. Likewise, this Administration's willingness to utilize—for the first time—MSHA's powerful "pattern of violations" enforcement tool becomes frustrated when citations are caught up in the Commission's backlog. MSHA's determination that a mine has a "pattern of violations" carries much more serious consequences, and a mine must have an inspection free of S & S (significant and substantial) violations in order to get off of the "pattern." Again, having delay in the resolution of alleged violations diminishes MSHA's ability to use the full panoply of its enforcement tools. You must also recognize that many of these violations are quite serious—the kind of violations that have contributed to mine fires, explosions and the deaths of coal miners.

If MSHA would identify mines that might be subjected to higher penalties for repeat violations or for a "pattern," and the Commission would move these cases more quickly through a priority system, some of these incentives would be reduced. This, we would encourage.

Another problem is that when operators challenge MSHA citations and proposed penalty assessments, they routinely get their penalties reduced. This can occur at the MSHA "conference," as well as once a case is referred to litigation. And it's not because the citations were not valid in the first place, as some operators claim. Instead, the reductions generally occur because the mine inspector who issued the citation rarely can attend the conference to explain the reason for the citations, leaving the conferencing officer with no first-hand knowledge of the conditions cited. The operators, on the other hand, regularly send their representatives to conferences to dispute the validity and gravity of the citations that were issued. As a result, conferencing officers frequently reduce or abate citations. That the underlying citations are generally valid is supported by trial results: for penalties related to S & S and unwarrantable failure citations—the two most common categories—that were litigated before a Commission ALJ in FY 2009, only 4-11% were dismissed or withdrawn.

If MSHA will re-instate the conference system it previously utilized, as we understand it is considering, we would encourage it to provide a better means for the in-

spectors to be able to support their citations, preferably with the inspector participating, too. We think it would also be helpful if an attorney from the Solicitor's Office would be assigned to work with conferencing officers to help them identify the litigation strengths and weaknesses before any adjustments would be made. Finally, to the extent there are agreements made at the conference level, it would be essential that any matters resolved at conference then be deemed fully and finally resolved. Settlement motions should be jointly submitted to the ALJs, instead of just by the Solicitor's office.

For cases not resolved at conference, penalties have often been further reduced: not only will the Solicitor's office offer to reduce the penalties in order to settle, but the Commission ALJs frequently reduce the proposed penalties. It is extraordinarily rare for an MSHA attorney to seek, or a Commission Judge to impose, penalties higher than MSHA's Office of Assessments initially recommend. Yet there is no reason why this shouldn't also occur when the facts support a higher assessment. This should happen when, for example, it turns out that more miners were actually exposed to the hazard, or the gravity was higher than the inspector initially indicated on the citation.

We have previously expressed concerns about the ability of mine operators to abuse the conference system, and our concerns about operator abuse have been validated insofar as the data shows that many operators request a conference for virtually every citation MSHA issues. And why shouldn't they? There is nothing to defer or penalize operators for doing so. In fact, internal company documents the Senate HELP Committee obtained during its investigation into the Crandall Canyon disaster established that Murray Energy purposely pursued such a strategy. From the contested rates of other operators, we believe that other companies are employing this same tactic, too. Accordingly, we supported MSHA's decision in early 2008 to stop routinely conferencing citations until after it assesses the penalty. Even without regular pre-penalty conferences, just some operators' action of routinely contesting citations and penalties constitutes the largest portion of the Commission's backlog.

As of August 2009, there were 688 penalty contests that have been pending for at least three (3) years, 877 penalty contests pending for between two (2) and three (3) years, 19,864 penalty contests pending for one (1) to two (2) years, and 42,122 that were filed within one year.

The Commission backlog has increased rapidly over the last few years. As the Commission's 2007-2012 Strategic Plan noted: the legislative and regulatory changes of the MINER Act were expected to increase the Commission's caseload. When that Strategic Plan was prepared, the Commission had already experienced a "dramatic rise in the number of contest cases, * * * and expect[ed] that its workload will increase significantly from prior years, thus making it more challenging to attain the Commission's goal of timely adjudication." Regrettably, although the increased caseload was both expected and realized, until this year the Commission did not attempt to increase its cadre of ALJs to handle its growing workload. While the Commission has had certain time-lines for processing its cases, those no longer bear any relationship to reality. However, getting timely resolution of these disputes is critical to miners' health and safety. One possible tool would be to adopt procedures like the OSHA Review Commission's "Simplified Proceedings;" we support having the Commission determine whether using such procedures would be appropriate for mine safety cases.

To address the immediate problem, many more Administrative Law Judges will be needed, along with support staff to maximize their efficiency. We are pleased that the FY10 budget included funding for 4 more ALJs, and that the President's FY 11 budget seeks funding for 18 ALJs. However, we firmly believe that still more will be needed to arrest and reverse the problem. Thus, we would recommend that the additional ALJs (and staff) be brought on as soon as possible through a supplemental authorization B so the problem doesn't get much worse and completely out of hand.

Finally, with the increased rate of contested cases, MSHA also faces new challenges: it will need additional staff to prepare and defend its cases, both at conferences and at administrative hearings.

We applaud the significantly reduced rate of fatal accidents in the mining industry that distinguished 2009 from other recent years, as well as our more distant mining history. We also support the Obama administration's MSHA that is focusing on enhancing enforcement to reduce the accident rate even further. We now urge you to work with us to ensure that the enhanced penalty structure Congress provided in the MINER Act of 2006 is not frustrated, but utilized to further improve miners' health and safety.

Thank you for allowing us to address this important issue, and for your continued commitment to miners' health and safety.

Chairman MILLER. Thank you.
Mr. Watzman?

**STATEMENT OF BRUCE WATZMAN, SENIOR VICE PRESIDENT
FOR REGULATORY AFFAIRS, NATIONAL MINING ASSOCIATION**

Mr. WATZMAN. Thank you, Mr. Chairman and members of the committee, for the opportunity to appear today.

Before turning to the specific topic of the hearing, we thought it would be appropriate to discuss the progress the industry continues to make to achieve the goal that all of us share, and that is eliminating accidents and injuries in this industry and what gave rise to the MINER Act that we all supported.

In the last 4 years the industry has embarked on an aggressive, multifaceted program to foster continued improvement and excellence in mine safety and health performance. We continue to see the benefits of those efforts with 2009 being the safest year in the history of mining.

Additionally and importantly, 85 percent of U.S. mines operated the entire year without a single lost-time accident. We continue to make progress, but more must be done and we recognize that.

We are working with companies to foster the implementation of risk management processes, and we have launched a risk-based safety awareness campaign targeting known hazards.

We initially focused attention on selected areas of mining—operations with the highest accident rates—and then built voluntary awareness programs around them.

The effort began last year with three separate safety awareness programs highlighting the importance of staying alert, the dangers of moving machinery and the hazards of unsafe driving on mine property. The program featured a variety of tools that were shared and disseminated throughout the entire mining industry.

Going forward, we envision a larger effort to ensure that best practices and procedures and information on promising technologies and techniques for reducing accidents on the job are disseminated throughout the industry.

Mr. Chairman, as reflected in the scheduling of this hearing, the rate at which operators have been formally contesting enforcement actions continues to garner increased attention and scrutiny.

Some believe this reflects an attempt by operators to backlog the system and delay the payment of civil penalties. Still others maintain that this is an expected outcome of the changes that MSHA has implemented since 2006, changes that dramatically altered the enforcement landscape.

While honest people can disagree as to what gave rise to this, there is one fact that is not in dispute. These actions do not jeopardize miner safety and health.

Upon issuance of a citation, the Mine Act requires the operator to abate the violation that gave rise to—abate the condition that gave rise to the violation. This requirement is separate and distinct from the operator's decision to challenge the validity of the citation.

Importantly, from the perspective of miners' safety and health, the conditions that gave rise to the issuance of the citation have been corrected long before the operator is given his day in court and in spite of the outcome of the litigation.

We believe the clear policy decisions made by the previous Assistant Secretary for MSHA are the major contributors to the dramatic increase in the Commission's case load.

These administrative actions created an irrational process which increased the number of citations at the same time it eliminated the informal process for conferencing them, forcing operators into a time-consuming, expensive adjudicatory process that does nothing to increase miner safety.

Appended to our testimony is a time line that documents the increase in safety contests and overlays MSHA's policy actions, and we think that there is a clear relationship between the two.

Our written submittal details the actions that MSHA took and how these have impacted operator rights in the decision-making process. We all recognize that there are steps that can be taken to improve the conditions that gave rise to the backlog and these can be administered and implemented administratively without the need for legislation.

Many mirror the steps that were outlined in the Assistant Secretary's testimony this morning, and we should move expeditiously to see that they are implemented to address this situation as quickly as possible.

Thank you, Mr. Chairman.

[The statement of Mr. Watzman follows:]

**Prepared Statement of Bruce Watzman, Senior Vice President,
Regulatory Affairs, on Behalf of the National Mining Association**

Mr. Chairman, members of the Committee, I am Bruce Watzman, Sr. Vice President, Regulatory Affairs for the National Mining Association (NMA). Thank you for providing us this opportunity to share our thoughts regarding the Mine Safety and Health Administration (MSHA) and Federal Mine Safety and Health Review Commission (Commission) citation and assessment process. Before turning to the specific topic for this hearing, we thought it would be appropriate to discuss the progress the industry continues to make to achieve the goal that all of us share—eliminating accidents and illness in the industry.

In the last four years the industry has embarked on an aggressive, multi-faceted program to foster continued improvement and excellence in mine safety and health performance. We continue to see the benefit of these efforts as American mines operated all of 2009 with fewer fatalities than ever before. Perhaps significantly, 2009 was the second consecutive year of record mine safety performance, besting the previous record set in 2008. Additionally, 86 percent of U.S. mines operated the entire year without a single lost-time accident. This is an important indicator as fewer serious injuries typically lead to fewer fatalities. We continue to make progress, but recognize that continuous improvement is the only acceptable goal for an industry dedicated to excellence and to the health and safety of every worker it employs.

Some are already asking what brought about this improvement, and how do we continue this trend. Some point to the agency's more rigorous enforcement, but most agree that citations alone cannot instill a safety culture that makes accident prevention a top priority throughout mining. Others point to enactment of the MINER Act but that action, while important, dealt largely with post-accident requirements, not with measures to prevent accidents.

We believe the more convincing explanation for improved mine safety lies closer to home. It began with the mining community's thoughtful review and response to the very visible tragedies in 2006 that resulted in multiple fatalities. No longer did industry leaders believe that business-as-usual safety practices would bring every miner home safely after every day. Rather, they concluded that we needed to add to our previous safety and accident prevention process with new thinking about

safety, as well as an even stronger commitment to safety. This began early in 2006 with the creation of the independent Mine Safety Technology and Training Commission, which was designed to study mine safety practices both here and abroad. The Commission concluded that a new safety paradigm was necessary—one based on better risk management. The model was simple: identify the high-risk areas of each mine, and then allocate safety resources and training based on those risks.

Building on the Commission's recommendations, we've worked with companies to foster the implementation of risk management processes, and we've launched a risk-based safety awareness campaign targeting known hazards. We initially focused attention on selected areas of mining operations with the highest accident rates, and then built voluntary awareness programs around each one. The effort began last year with three separate safety awareness programs highlighting the importance of staying alert, the dangers of moving machinery and the hazards of unsafe driving. The program features a variety of tools to build awareness of each high-risk area. Interestingly, these match some of Assistant Secretary Main's concerns in his recently announced "Rules to Live By" initiative.

Going forward we envision a larger effort to ensure that best practices and procedures and information on promising techniques and technologies for reducing accidents on the job are shared throughout mining. For example, we're exploring how to catalogue and share the programs and procedures employed by the winners of the annual Sentinels of Safety awards—the oldest known occupational safety award competition, jointly sponsored by MSHA and NMA.

Enforcement Policies and Assessments

Mr. Chairman, as reflected in the scheduling of this hearing, the rate at which mine operators have been formally contesting enforcement actions, including citations and withdrawal orders issued by MSHA has and continues to garner increased scrutiny. Some believe this higher rate reflects an attempt by some operators to backlog the adjudicatory system and delay the payment of civil penalties. Still, others maintain this is an expected outcome of the changes MSHA has implemented since 2006—changes that have dramatically altered the enforcement landscape. While honest and reasonable people can disagree as to the underlying cause for this, one fact that is not in dispute is that these actions in no way jeopardize miner safety and health.

Section 104(a) of the Federal Mine Safety and Health Act of 1977 requires the Secretary to issue a citation to an operator when he or his authorized representative "believes that an operator * * * has violated this Act, or any mandatory health or safety standard * * *." More importantly, the section requires the inspector to "fix a reasonable time for the abatement of the violation," and Section 104(b) requires the inspector to issue a closure order if the operator fails to abate an alleged violation within the time set by the inspector. This requirement is distinct from an operator's decision to challenge the validity of the citation, and any challenge in no way relieves the operator's obligation to abate the condition that gave rise to the citation. Importantly, from the perspective of miner safety and health, the conditions that gave rise to issuance of the citation have been corrected long before the operator is given his day in court and in spite of the outcome from the litigation. A mine operator's duty to abate alleged violation, before legal review of the validity of the citation, stands in stark contrast with the suspension of that duty for all other employers who are covered by the Occupational Safety and Health Act and given a day-in-court before contested violations are abated.

As you are well aware, the number of enforcement actions issued to mine operators by MSHA has risen significantly, and the penalties for violations have as well. The regulations upon which inspectors base enforcement actions are predominately comprised of performance based standards. These standards are interpreted using "a reasonably prudent person standard." As a result, the interpretation of the standards is based on individual circumstances and can vary from inspector to inspector. The interpretation may also vary the between inspector and operator based on the facts peculiar to the alleged infraction. The penalty amounts assessed are not only based on the exercise of the inspector's enforcement discretion in alleging a violation of a standard, but also on the inspector's conclusions with respect to a number of other factors (all of which are discretionary based his or her interpretation of the circumstances surrounding an alleged violation). These factors can have a profound impact on penalty amounts, and include likelihood of occurrence, severity of injury, degree of negligence, and the, number of persons affected by the allegations, to mention only a few of the penalty calculation factors. (See Items 10 and 11 on the Mine Citation/Order form, Attachment 1).

Beyond the interpretive differences that may exist between and operator and inspector, we believe that clear policy choices made by the previous Assistant Sec-

retary for MSHA are the major contributors to the dramatic increase in the Commission's caseload. These administrative actions created an irrational process which increased the number of citations at the same time it eliminated an informal procedure for contesting them, forcing operators into a time-consuming, expensive adjudicatory process that does nothing to increase mine safety. The actions leading to this are detailed on the timeline attached to this statement (Attachment 2). In sum these are:

- The new Part 100 civil penalty rules (See attachments 3&4 which illustrate the magnitude of these changes);
- Failure to maintain an effective "close-out" conference at the end of each inspection day;
- The loss of an effective safety and health conference process;
- The loss of an independent conference decision process;
- Timing and grouping of proposed assessments; and
- MSHA's heightened Pattern of Violation criteria and focus.

I. History of Enforcement Actions (The Initial System)

Mine Safety and Health Administration regulations in 30 C.F.R. Part 100.6 provide for an informal resolution of questions regarding enforcement actions. This history timeline begins with the adoption of the Alternative Case Resolution Initiative (ACRI).

In 1994, during the Clinton Administration, ACRI was developed with MSHA and the Office of the Solicitor joining together and designating Conference/Litigation Representatives (CLR). The CLR was an inspector trained by the Solicitor to handle the informal conferences that the District Manager was required to conduct. (As a practical matter, the previous conferences were usually conducted by a field supervisor, who represented the District Manager.) By 2001, the CLRs were handling all the safety and health conferences and about 35 percent of the total number of cases that operators contested (the Solicitor placed limits on what type of cases the CLRs could handle). An MSHA Fact Sheet (95-9) has the following quote:

Mine operators may also seek informal conferences following the issuance of the citation or order under 30 C.F.R. Part 100.6. The CLRs in Coal Districts and Supervisory Mine Inspectors in Metal/Nonmetal Districts primarily serve on behalf of the District Manager and meet with the operator to attempt an informal resolution of the dispute before a civil penalty is assessed.

This widely recognized and highly commended program is one of the few times that non-lawyers have represented a Cabinet-level official in a legal proceeding. As of Aug. 30, 2001, MSHA has trained over 100 enforcement personnel to act as CLRs for the ACRI program and there are CLRs designated in each MSHA district office. The CLRs are currently responsible for processing approximately 35 percent of the total number of cases contested by mine operators.

MSHA and the mining community are reaping the benefits of the ACRI program. The CLRs efforts have reduced formal litigation, improved relations between MSHA and the mining community, improved communications between MSHA's inspectors and the legal community, and has permitted the dedication of legal resources to more complex and serious cases. (Emphasis added)

As noted, this system worked reasonably well. Some key points as to why the conferences seemed to work include:

1. The request for a safety and health conference had to be made within a 10-day period.
2. Most CLRs did not require the operator to list in writing the arguments to be presented at the conference.
3. Non-Significant & Substantial (non-serious) violations were assessed at a set dollar value regardless of the inspector evaluation. Few non-S & S violations ever went to conference and very few ever were entered in the ALJ system.
4. In many instances the CLRs were used by the District Managers as "instructors of the law" so that changes in evaluations were passed through the MSHA system as a teaching tool to reduce improper enforcement. Conversely, the same applied to operators who learned why a violation was appropriately evaluated in a certain manner and how its impact on safety could be used to train employees on preventative actions * * *
5. The CLR made decisions based on the facts of the case presented at the safety and health conference.

Unfortunately, despite these positive attributes, this system was abandoned in favor of one that has fostered the outcomes that gave rise to this hearing.

II. The Interim System

Beginning early in the last decade, MSHA embarked on a “new hiring” process to replace retiring inspectors. This, combined with decisions made in response to criticism of the agency’s failure to meet its statutory obligations, resulted in the issuance of countless enforcement actions of questionable validity. In sum the agency initiated several actions that, when viewed in total, wrecked the previous safety and health conference system and gave rise to the situation we find ourselves in today. The following timeline of administrative actions shows the evolution of today’s flawed system:

Oct. 26, 2006

- MSHA publishes the standard that is intended to be used for determining flagrant violations. (PIL I06-III-04 now released as PIL I08-III-02) Repeat history is defined as the third allegation of unwarrantable failure of the same standard in 15 months.

April 27, 2007

- The new Part 100 civil penalty regulations are released. Assessments for violation are dramatically increased. In addition the single price penalty for non-serious, non-S&S violations is dropped. (Attachments 2 and 3 document the significance of these changes for hypothetical, but routinely issued violations, under the old and new penalty formulas).

June 14, 2007

- MSHA issues its first list of Pattern of Violation (POV) mines. Two of the many selection requirements are: two elevated enforcement actions and 10 (surface) or 20 (underground) S & S violations in a 24-month period.
- Note that on Dec. 7, 2007; June 17, 2008; March 16 2009; and Oct. 7, 2009, additional lists of mines that were categorized as potential POV mines were released.

Oct. 4, 2007

- MSHA announces the “100 percent” plan for meeting mandatory inspection requirements. CLRs, who were already postponing citation conferences, were now assigned to inspections.

Feb. 4, 2008

- MSHA issues PIL I08-III-1. This PIL essentially formalizes the end to manager’s conferences. Informally, prior to this date, and for most of 2007, conferences were not being scheduled. After this date, all the previously requested but unscheduled conferences were placed in the administrative system.

III. Other Informational Dates

- During the time the system for conferencing violation was being abandoned by MSHA the following actions were occurring in the field:

2005–2008

- Enforcement Actions 69,072 174,473
- Assessed penalties \$15.4 \$194.3m
- Elevated enforcement actions 1905 6081

In sum, the amount of enforcement time at the mines increased, resulting in more violations at the same time MSHA dropped its conferencing system.

So, at the same time that the agency increased enforcement it initiated and published its “Pattern of Violation” evaluations, essentially terminated the informal conferencing system, transferring all outstanding conference requests to the Commission and forcing operators to follow one new path forward—a formal hearing with the Commission for all newly written enforcement actions.

Essentially, the agency abandoned its 30-year history of seeking early, informal discussion and resolution of enforcement actions at a time when penalties and enforcement severity was increasing.

IV. Present System

On March 27, 2009, MSHA published a new model for conferences. Rather than conducting an informal conference prior to receiving an assessment and filing with the Commission, the new system requires the operator to wait until an assessment is received and file after the enforcement action in question is docketed. Now all conferences will take place only after civil penalties are proposed and timely contested. This means that an operator eager to avoid litigation through the conference process must contest the citation, file a written request for a conference within 10 days, wait for a period of at least four to six weeks, receive the proposed penalty

assessment, contest the penalty within 30 days of receipt and then have a conference within 90-days, unless an extension is requested (usually by MSHA).

In short, all of the enforcement actions that in the previous conference system would not have reached the Commission are now included as part of the total number of docketed enforcement actions and each such case will remain on the list of contested cases until resolved. The delay created by MSHA's changes to the contest system increases the number of cases that are being challenged through the ALJ system, and it's likely that this number will continue to increase.

The system also creates other bottlenecks that need to be addressed:

- The new system requires the operator to wait for the assessment and to formally contest those violations with which he disagrees. The Solicitor is then required to respond, and the operator may then be required to formally respond (generally through attorneys). In some districts, the CLR routinely asks for a 90-day stay so that an attempt to settle the case can be made, as is contemplated in the new conference system.

- All of the enhanced conferences require some type of legal paperwork to the Commission to finalize whatever agreement is reached. Again, the more informal pre-assessment system did not include this requirement. Clearly the informal system allowed for a more nimble system where the operator and CLR could resolve a larger amount of cases without burdening the Commission.

- The requirement to contest a citation(s) within 30 days of receipt of the penalty often results in operators' challenging all of the enforcement actions issued by an inspector within a docket due to the sheer volume and the limited time available to examine the allegations underlying each enforcement action and the components that affect penalty assessments.

Conclusion

The conditions that gave rise to the "back-log" necessitating this hearing can be fixed administratively without legislation. However, doing so requires all parties to recognize that:

- All conditions affecting mine safety are abated by the operator within the time set by the inspector and prior to adjudication of the dispute.

- The convergence of increased enforcement actions, coupled with the unofficial and then official cessation of safety and health manager's conferences, set in motion a significant increase in litigated cases. Unfortunately, operators today have no option but the Commission for contesting enforcement actions. That was the unfortunate but inevitable result of a policy decision made by MSHA to enable CLRs to assist in fulfilling the prior Assistant Secretary's "100 percent" inspection plan.

- During the time conferences were unavailable (February 2008 to March 2009) MSHA issued a policy on flagrant violation standards, four patterns of violation cycle letters and a new penalty system under Part 100. Also, we believe an evaluation of violation in many districts would show a pattern of increased gravity that subsequently increased the penalties to a point where a challenge was necessary. Filing for a formal hearing using attorneys and cluttering the "Commission" system is the only avenue available for an operator.

Changes Should be Made in the System

The following are suggested changes that would help unlock the logjam at the "Commission":

- MSHA should improve the training of inspectors and enforcement authorities for recognizing and evaluating a violation. The number of enforcement actions being modified is a clear indication that inspectors are not being properly trained or supervised on how to evaluate a citation.

While we have not seen 2009 end-of-year data, we are aware that information provided to the Committee illustrates that through June 2009 a significant percent of enforcement actions and their accompanying assessments were being reduced via the settlement process. This indicates to us the need for better training and supervision of the inspectorate.

Putting this into perspective, if police in your Congressional districts were writing traffic citations that were incorrectly evaluated at a fairly significant rate you would likely be questioning the training for these officers and stress the need to correct the system. You would not be questioning why your constituents were requesting hearings in traffic court. The industry situation is much the same. MSHA is not using the changes in evaluations as a teaching tool for inspectors. Frustratingly, operators are forced to re-contest many of the same factual situations that were originally cited or evaluated incorrectly and after challenge by the operator at great time and expense. Unfortunately, operators often endure a costly and time-consuming adjudication process only to be re-cited or miscalculated again.

- Revert to the informal conference (pre-assessment). This conference was timelier and, because it was informal generated minimal paperwork compared to the more time-consuming, formal system in place today. Unfortunately, many current cases are now handed to counsel due to the requirement for a timely response to a “Commission” deadline.


- Provide the CLR’s autonomy from the managers in their district. We have long advocated a different reporting scheme for the CLR’s. Having them report, as is currently the case, to the District Manager introduces unnecessary conflict. MSHA should create a separate office where the CLR could report to a more independent review.

- Provide more realistic timeframes for operator’s to respond to agency notices. The current 30-day response time is insufficient, necessitating operators to initiate enforcement action challenges merely to protect themselves from responding to individual actions because time has expired. Concurrent with this MSHA should reform the manner in which it bundles dockets to ensure they include only the enforcement actions and related proposed civil penalties from the same inspection.

- Mandate that the CLR and ALJ decisions be used as training tools for inspectors so that better evaluations are completed by inspectors. Having to “re-litigate” settled issues because information is not shared on a timely basis across the agency unnecessarily adds to the Commission backlog and drains scarce resources.

Mr. Chairman thank you again for providing us the opportunity to appear.

Attachment 1

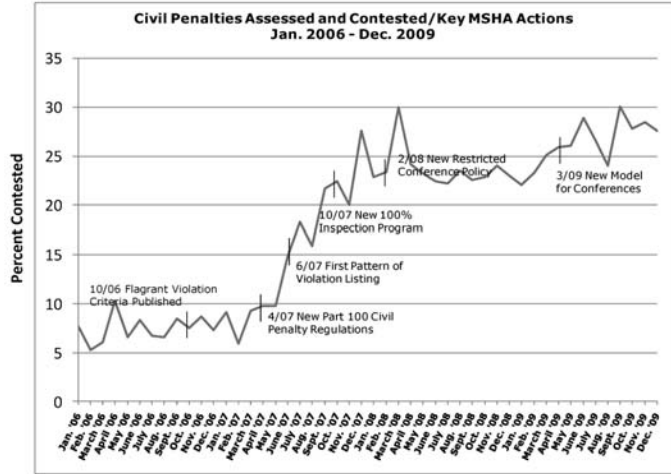
Mine Citation/Order		U.S. Department of Labor Mine Safety and Health Administration		
Section I-Violation Data				
1. Date	Mo Da Yr	2. Time (24 Hr. Clock)	3. Citation/ Order Number	
4. Served To			5. Operator	
6. Mine			7. Mine ID <small>(Contractor)</small>	
8. Condition or Practice			8a. Written Notice (103g) <input checked="" type="checkbox"/>	

See Continuation Form (MSHA Form 7000-3a)

9. Violation	A. Health Safety Other <input checked="" type="checkbox"/>	B. Section of Act <input type="checkbox"/>	C. Part/Section of Title 30 CFR	
Section II-Inspector's Evaluation				
10. Gravity:				
A. Injury or illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input type="checkbox"/>				
C. Significant and Substantial: Yes <input type="checkbox"/> No <input type="checkbox"/> D. Number of Persons Affected:				
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action		13. Type of Issuance (check one) Citation <input type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/>		
14. Initial Action				
A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>		E. Citation/ Order Number		F. Dated Mo Da Yr
15. Area or Equipment				
16. Termination Due				
A. Date Mo Da Yr		B. Time (24 Hr. Clock)		
Section III-Termination Action				
17. Action to Terminate				
18. Terminated				
A. Date Mo Da Yr		B. Time (24 Hr. Clock)		
Section IV-Automated System Data				
19. Type of Inspection (activity code)		20. Event Number		21. Primary or Mill
22. Signature				23. AR Number

MSHA Form 7000-3, Mar 85 (Revised)

Attachment 2



Attachment 3

Hypothetical non-S&S violation of 30 CFR § 75.400 - Accumulation of combustible materials.

Coal dust, including float coal dust deposited on rock-dusted surfaces, loose coal, and other combustible materials, shall be cleaned up and not be permitted to accumulate in active workings, or on diesel-powered and electric equipment therein.

Penalty point categories from 30 CFR § 100.3:		Old Civil Penalty Rule <i>Penalty Points</i>	New Civil Penalty Rule <i>Penalty Points</i>
Table I	Size of Coal Mine	10	15
Table II	Size of Controlling Entity – Coal Mine	5	10
Table VI	History of Previous Violations – Mine Operators	20	25
Table VIII	History of Previous Violations – Repeat Violations	<i>n/a</i>	20
Table X	Negligence	15	20
Table XI	Gravity: Likelihood	2	10
Table XII	Gravity: Severity	7	10
Table XIII	Persons Potentially Affected	8	16
<i>Total Penalty Points</i>		<i>67</i>	<i>126</i>
Civil Penalty Assessment		\$5,342	\$21,993

Assumptions used in this example:

- (1) This is a Section 104(a) citation that is regularly assessed.
- (2) Table I – The coal mine is producing more than 2,000,000 tons per year.
- (3) Table II – The coal mine’s controlling entity is producing more than 10,000,000 tons of coal per year.
- (4) Table VI – The mine operator has an overall history of Violations Per Inspection Day (VPID) that is greater than 2.1.
- (5) Table VIII – The mine operator’s number of Repeat Violations Per Inspection Day (RPID) is over 1.0.
- (6) Table X – The mine operator’s negligence is evaluated as “moderate.”
- (7) Table XI – The likelihood of occurrence is evaluated as “unlikely.”
- (8) Table XII – The severity of injury *if the event were to occur* is evaluated as “permanently disabling.”
- (9) Table XIII – The number of persons *potentially affected if the event were to occur* is evaluated as “9.”
- (10) The 10% reduction in penalty for the demonstrated good faith of the operator in abating the violation has been ignored.

Attachment 4

Hypothetical S&S violation of 30 CFR § 56.20003(a) - Housekeeping.*At all mining operations-- (a) Workplaces, passageways, storerooms, and service rooms shall be kept clean and orderly:*

Penalty point categories from 30 CFR § 100.3:		Old Civil Penalty Rule <i>Penalty Points</i>	New Civil Penalty Rule <i>Penalty Points</i>
Table III	Size of Metal and Nonmetal Mine	10	11
Table IV	Size of Controlling Entity – Metal/Nonmetal	5	10
Table VI	History of Previous Violations – Mine Operators	20	25
Table VIII	History of Previous Violations – Repeat Violations	n/a	20
Table X	Negligence	20	35
Table XI	Gravity: Likelihood	5	30
Table XII	Gravity: Severity	3	5
Table XIII	Persons Potentially Affected	1	1
<i>Total Penalty Points</i>		<i>64</i>	<i>137</i>
Civil Penalty Assessment		\$4,521	\$50,787

Assumptions used in this example:

- (1) This is a Section 104(a) citation that is regularly assessed.
- (2) Table III – The mine has 1,500,000 hours worked per year.
- (3) Table IV – The mine's controlling entity has more than 10,000,000 hours worked per year.
- (4) Table VI – The mine operator has an overall history of Violations Per Inspection Day (VPID) that is greater than 2.1.
- (5) Table VIII – The mine operator's number of Repeat Violations Per Inspection Day (RPID) is over 1.0.
- (6) Table X – The mine operator's negligence is evaluated as "high."
- (7) Table XI – The likelihood of occurrence is evaluated as "reasonably likely".
- (8) Table XII – The severity of injury *if the event were to occur* is evaluated as "lost work days or restricted duty."
- (9) Table XIII – The number of persons *potentially affected if the event were to occur* is evaluated as "1."
- (10) The 10% reduction in penalty for the demonstrated good faith of the operator in abating the violation has been ignored.

Chairman MILLER. Thank you. Thank you very much for all of your testimony.

Mr. Watzman, you stated, I think, this morning and previously that you believe that the change in the conference policy in 2008 is the—is really the genesis for the change in the contesting.

Mr. WATZMAN. I think that it is the combination of all the factors, Mr. Chairman. It was the change in the Part 100 regulations. It was the elimination or the termination of the informal conference process.

Let me give you one example to explain that. One of our operators had 200 conference requests pending with a conference officer at the time the agency decided to terminate the informal conference process.

Those 200 pending requests were immediately transferred to the Review Commission and became part of the backlog. So I don't think we can point at one single factor and say that, in and of itself, is what caused what we confront—what we are experiencing today.

Chairman MILLER. Ms. Jordan, you have been on the Commission for some time now. When you look at the impact of that decision, and you look at the increased enforcement, do you partition this in a different fashion, or do you have a different comment on this?

Ms. JORDAN. The impact of the decision that Mr. Watzman referenced of transferring the 200 cases to the Commission?

Chairman MILLER. Well, the change in the conference policy. So you would have had a preliminary conference. Those now had to go into the formal process. You didn't get to take your first bite at the apple and then later go—

Ms. JORDAN. Right. Well, of course, the Commission and myself personally—I am not that familiar with the details of how the conferencing has worked. The parties engage in that before the matter comes to the Commission.

I would say that to the extent there is a process out there that allows the parties to resolve the disputes and would eliminate some matters coming to our door, that would be helpful.

Chairman MILLER. Mr. Main? Secretary Main?

Mr. MAIN. Yes, I think with the conferencing—in one of my old jobs—

Chairman MILLER. The mic. You have to speak—or just pull it closer to you, if you will, please.

Mr. MAIN. Can you hear me? Yes, there is a lot of history with the conferencing process. I dealt with it many years ago and with regard to the current set of circumstances, I don't think there is any question that if an issue is resolved through the conference before it gets to the contesting stage, those will not be part of the backlog.

And one of the things we recommend is to go back and look at that, but under a more careful process than was in place before.

Chairman MILLER. With all due respect, the process that was in place before looked a little bit like an old boys' club.

Mr. MAIN. Well—

Chairman MILLER. You kind of had a set pattern here of penalties and a set pattern of violations, and you could deal them out, and then you—some moved on and some didn't. Or if you didn't like the—how that was dealt, you sort of got a second bite at the apple.

And it seems to me that the—that was the pattern of enforcement that the Congress expressed concern about.

Mr. MAIN. I think if you look—and I don't disagree with that. But I think if you look at the current process, when we look at the high rate of reductions in penalties, I think we could make the same issue with the current process.

And I think what I have looked at is that we need a better system here that, at the end of the day, that we look at good paper coming out that never goes into the contest side from the MSHA side, and that we look at a system that doesn't favor a mine operator looking at the settlement rate and say, "Gee, for 40-some cents I can send a letter into MSHA, wait 2 years, and get about a 47 percent rate."

And I think putting all those things in context, we still have some of that same problem with the current system. So looking at taking the best pieces out, creating a conferencing process that at the end of the day is not a Monty Hall process, is not a wheeler-dealer, is actually just clarifying the facts, and we would not look at those same set of facts in the second round.

And I think that is what was going on before. There was a conferencing process to look at those set of facts, the quality of that paper, it goes back in an offer, you conference it, then review it again, looking at those same set of facts—to me, that is a little bit crazy.

So I think that needs to get fixed, and you only have that one opportunity to look at that one set of facts. And if you don't get them resolved then, you go to the litigation process.

Chairman MILLER. Thank you.

Let me, in my remaining time, just raise one question. The allegation is made here that people are—or the challenges are made—the contesting is made because some mine operators are concerned that they will end up in a pattern of violations as described in the law and in the regulations, so if they can keep the adjudication from taking place, they don't face that sanction.

The experience is with operators that have faced that sanction that afterwards violations were cut by about 72 percent. I mean, the sanction obviously had a huge impact on how they operated the mines after that event took place.

Mr. Watzman has said that this backlog doesn't place miners in jeopardy. It doesn't have any impact on their health. And yet if you have what some—one of our reviews suggested there may be 40—in excess of 40 companies, with maybe 6,000 miners, who if the adjudications became final they could end up in a pattern of violations.

So we are suggesting that perhaps this process is protecting those with the worst mine records and those with the most serious violations. That sounds like a real bad deal for the miners who are working in those particular mines, and they sort of become part of the mosaic of the total contested violations.

And I am worried that we are losing our focus here, because we now have thousands and thousands of contests that have sort of created a camouflage and prohibited the worst mine operators from being brought to justice, if you will, and to protect the lives of those miners who are going—those 6,000 miners who are going into those mines every day.

Mr. MAIN. Mr. Chairman, I don't disagree with what you say. I think that if you would say that the system, the way that it is, is not having any adverse impact on enforcement, that is just not true.

To say that, you have to take Section 104 out of the Mine Act, which is the pattern of violations section. And it was designed for the purpose of getting to those operators that had consistently violated—serious violations in the—you know, of the mine—or in the mine.

And the backlog is preventing MSHA from utilizing that tool of the Mining Act. And I think the consequence there is that mines have the ability to continue that pattern unabated unless we can go in and figure out a way to use the pattern.

We believe that we need to put those cases at the head of the pack, to go in—regardless of what is going on with the backlog, and regardless of how many cases there are, we need to start pulling those cases out fairly quickly and moving those to the Commission and getting them resolved, so we can effectively implement Section 104 of the Mine Act.

Chairman MILLER. Because the two things can't be true. You can't have this dramatic reduction in violations of the worst operators when they are confronted with a pattern of violations, and the

continuation of operators who quite possibly would qualify for that sanction continuing to just do business—

Mr. MAIN. Yes.

Chairman MILLER [continuing]. In the usual—in the usual manner. Thank you.

Mr. Thompson?

Mr. THOMPSON. Thank you, Mr. Chairman.

Once again, thanks, panel, for your testimony. As a grandson of a surface coal miner, I appreciate the work that you do.

And, Assistant Secretary, you—your statistics—you know, we are here talking about the effectiveness of the MINER Act and all the, you know, changes since then.

And, Mr. Roberts, I appreciate your work in terms of the individual safety of coal miners and, you know, it really comes down, in fact, on this.

I would have to say, based on your testimony—I have heard that—I was very pleased to hear, Assistant Secretary, in terms of—you know, you laid out in terms of the decline in—the all-time low, where we are at.

And I think that is—obviously, I think that has to be an important indicator in terms of the effectiveness of what we have seen, and that being—and just—I appreciate that information that you shared.

Mr. Watzman, one of the concerns that mine operators are highlighting is the need for consistency. You know, it would appear that everyone wants to operate by the rules, but the rules appear to keep changing without any explanation.

Now, a recent article from the law firm of Dinsmore & Shohl outlines a problem with the change in the interpretation of reportable roof falls. Now, how do you believe MSHA can improve their communications with mine operators about changing interpretations?

Mr. WATZMAN. Well, unfortunately, I think from the industry's perspective a lack of consistency has been one of the hallmarks of MSHA's regulatory and enforcement over time. I think it is recognized by everyone—and in fact, the comments of the Assistant Secretary this morning when he talked about writing good paper and not issuing bad paper is a reflection of that.

We need to have better processes, better open communication, better dialogue and better training for all the parties to have an understanding of what gives rise to these conditions.

MSHA over the last few years has hired hundreds of new inspectors. They come into the job with not the experience that the previous inspectorate did. They approach it differently.

Unfortunately, we work in an area where things are not black and white all the time. They are often times gray. And there is a great amount of subjectivity introduced into this process.

I think many of the steps that the Assistant Secretary talked about this morning will eliminate the inconsistency that exists across the industry and hopefully over time will lessen the disputes that have resulted from that.

Mr. THOMPSON. Your testimony suggested that the closing inspection meetings have become less productive over time. However, MSHA points to this as one of the better ways to communicate disputes with citations issued.

How can the industry and the agency work together to ensure that these are productive meetings that improve worker safety and health in the long run?

Mr. WATZMAN. Well, this, again, has to do with communication and training, how the MSHA inspector is conducting his job when he is at the mine site and, quite honestly, how the mine operator representatives are interacting with the MSHA inspector.

It doesn't advance safety and health at all if there is no dialogue between the parties. When an inspector completes his inspection, goes out to his vehicle, fills out citation forms, walks into the mine office and hands them to the mine operator's representative, that is doing nothing to advance miner safety and health, and that is creating a confrontational environment between the two.

We need to overcome those hurdles, and I think that, you know, we are moving in the direction of doing just that.

Mr. THOMPSON. Okay, thank you.

Chairwoman Jordan, with the money from fiscal year 2010 appropriations, the Commission will hire, as you mentioned in your testimony, four more administrative law judges, and you have requested additional funds for five judges in the fiscal 2011 budget request.

Now, at this time, the Commission has offices in Washington and Denver, Colorado. Do you know where the individuals that you are hiring will be working, and will there be equal placement in the west to handle the cases there?

Ms. JORDAN. Well, at this point, we would be able to place some in our D.C. office as we start to hire, and we will be adding some to the—our Denver office, which is the one you referred to.

And then we will be looking at opening up an additional office which will probably be in the metropolitan area here. There are some benefits to be obtained with that decision, we found.

Mr. THOMPSON. I mean, what criterion are you using to determine where the proper placement is to make sure that, you know, the personnel are on the ground strategically to be able to address this work backlog?

Ms. JORDAN. Well, we are looking at all of our procedures to see what we can simplify. As I indicated, we are going to have—and we are going to have parties file a draft order when they file their motions to settle, whereas now the judges—the Commission has to create the order when it issues the approval or disapproval of the settlement.

And we are going to have these filed electronically, which will also allow us to start to monitor how we can expand and improve electronic filing processes.

In regard to your mention about judges—you know, access by the west, we are looking at—we always want to provide access, and no matter where the judges are located, I mean, they travel to the parties to hold their hearings.

Also, in the past, some judges have set up—I don't know what you would call it. I mean, it is kind of referred to as a calendar call. A couple of judges that are now retired—and we have been talking to them to see how they did that, and how effective it was—the former chief judge—to gather a lot of cases and go out to a location, wherever the parties were, and sit down.

People were told to be ready to talk about 30, 40 cases at once, sat down and, you know, they really had to focus on them and really—we would try and resolve as many of them as they could. And if they didn't resolve, the judge would usually—those they didn't resolve they would usually pass off to another judge so that it would be fair.

The parties, you know, having maybe disclosed some information in the course of trying to settle them, wouldn't be going before the same decision-maker.

And you know, on the other hand, if the judge, as he put it to us, you know, gave his eye roll, that kind of gave the attorneys there the ability to go back to their parties and say, "Well, this case, you know, isn't a good one, I think we better resolve this."

And so we are—you know, we are looking at exploring that and, really, whatever procedures we can think of to help expedite matters.

Mr. THOMPSON. Thank you.

Chairman MILLER. Mr. Scott?

Mr. SCOTT. Thank you. Thank you, Mr. Chairman.

Ms. Jordan, you have a 16,000-case backlog. I think a more significant focus would be on how long it takes to actually resolve a case with the backlog from the time it comes in till the time it is settled.

What is a reasonable time to take to resolve a case?

Ms. JORDAN. Well, you know, that really depends on the complexity of the case. I mean, we have some cases that, frankly—they are resolved before they are even assigned to a judge, and the parties have filed a motion to settle, and it gets assigned to a judge, and the judge can review those motions.

On the other hand, you have cases that have many challenges to the underlying violation, the seriousness, the negligence, whether there were accidents involved, disasters, so those—you know, those would take a longer time.

Mr. SCOTT. Well, how long are these cases taking, just a routine case going through—because of the backlog, how much time is added to the—to that because of the backlog?

Ms. JORDAN. Well, we have seen—the category of cases that does make up our largest category, the cases that are disposed of ultimately through settlement—we have seen an increase in time go from about 170-some-odd days 4 years ago, on average, to almost 400 days on average now to dispose of them.

Mr. SCOTT. Okay. Now, if you had—if you wanted to hire more judges, that costs money, but of course you are processing claims, picking up funds. Would the funds collected more than pay for the judges?

Ms. JORDAN. Well, for instance, I mean, I guess that is one aspect of thinking about it. The current cases that are ready to be settled, where the parties have already agreed to settle and motions to settle are pending—the proposed penalty amounts in those cases, I think, is—comes to a little over \$7 million.

However, that is the amount that MSHA initially proposed. And usually by the time the case gets resolved and settled, it is a portion of that. I mean, if you applied the figure that is the average that MSHA settled a case in 2009, which I think is about 55 per-

cent of what they originally proposed, you would be looking at about \$4.2 million.

Mr. SCOTT. Does the lack of—several people mentioned the lack of pre-judgment interest. What do other regulatory agencies like OSHA—do they have pre-judgment interest?

Ms. JORDAN. I don't know.

Mr. SCOTT. Secretary Main, you indicated that you are going to be reinstating the pretrial conferences. Is there any administrative or legislative barrier to reinstating that?

Mr. MAIN. No, there is not, and do you want me to explain a little bit about that one?

Mr. SCOTT. Well, I think with a pretrial conference you can settle a lot of them without a trial, and you are not doing that, so they are just—apparently just going to trial. And you need—you are talking about reinstating the process?

Mr. MAIN. Well, actually, there is a process that is in place that was moved to occur after the contest was filed. We are looking at taking that process and moving it back to a point prior to the contest—

Mr. SCOTT. Okay. Is there any—

Mr. MAIN [continuing]. Of the—

Mr. SCOTT [continuing]. Legislative or regulatory barrier to doing that?

Mr. MAIN. This was done by policy before. We expect policy to do it.

Mr. SCOTT. Okay.

And, Mr. Roberts, can you just talk generally about the safety implications of this huge backlog?

Mr. ROBERTS. Yes. Thank you very much, Congressman. I appreciate that. I think it was touched on by Chairman Miller and responded to by Undersecretary Main to a degree. But let me just do it by example, if I could.

Let's assume that we were all in here prior to the Sago explosion talking about the Sago mine and all the violations that had been issued there. That was a topic of this committee.

And they had been placed, perhaps, under this more stringent inspection regimen—regime. There is a possibility that—we don't know—that Sago would not have occurred.

Today, as we look around the country, there is a number of these mines that have been issued incidents, violations and unwarrantable failures, citations. It is true, as Mr. Watzman say, they have to correct those.

But the idea of this is that you have got a repeat offender over and over and over again. And something needs to be done more stringent than every other coal mine in the United States faces.

That calls into action MSHA to go in and say, "Look, you are facing—understand what happens here when you are placed under this order. You are facing closure here if you do not correct this violation—these violations."

Seventy-two percent reduction in violations at those operations where that has been imposed. What is happening—that is not part of the law right now because all of this is tied up. All these incidents, violations, all these citations are tied up in this 16,000-case backlog. So a tool that Congress gave to MSHA is non-existent.

Mr. SCOTT. Mr. Chairman, I just want to point out that we are talking about 500 cases per judge per year. And I understand that the new judges that we are going to get will keep up with the cases coming in but do nothing about the backlog, and the backlog, at 500 per judge, is 32 years with—

Chairman MILLER. Yes, we are sort of at a—we sort of ended up at a steady state with the backlog.

Mr. SCOTT. Well, we need to chip away at that.

Chairman MILLER. Yes.

Mr. SCOTT. So I think some temporary assistance may be appropriate. Thank you very much, Mr. Chairman.

Chairman MILLER. Thank you.

Mr. Hare?

Mr. HARE. Thank you, Mr. Chairman.

Thank you all for coming.

And you know, Mr. President, let me just—you know, you will have to pardon my crude artwork, because I couldn't find the chart. I had some folks from the industry come in. I don't know if you can see this, but the top is injuries going down, and the complaint was too many citations or visits and things.

And when they left my office, I got to thinking, "Well, wait a minute here. Less deaths and injuries, more stringent, you know, overviews and citations." So I think in—I think the industry was trying to make the case for me, and I should—you know, I thank them for that.

But I have to tell you that it just seems to me that given the hearings—and you know, I was here, Mr. President, when you talked about the things that have happened with miners. And I have miners in the southern part of my district.

And you know, I don't think any of us—any of us believe that it is acceptable to send miners in when it is not safe. But would you agree that because of the citations, inspections—those kinds of things have made it safer for your members to be able to go in and—and go to work and come home and be safe with their families?

Mr. ROBERTS. I don't think there is any question. As I said in my opening statement, I think any time that Congress has acted, the proof is always there. You can look at the 1969 Coal Mine Health and Safety Act.

You can look at what Congress did. And Congress should take a great deal of pride in the actions that they took in 2006. Injuries are down. Fatalities are down. That was what we all wanted when we came here in 2006.

Mr. HARE. Mr. Watzman, when a large mining company has contested 88 percent, I am told, of nearly 2,600 violations in 2009, they have advised this committee that due to the progressive penalty policy and the size of future penalties, it can "no longer justify just taking whatever MSHA dishes out regardless of its legitimacy."

Now, let me, again, repeat that. I want to underscore that—regardless of the legitimacy of the claim. So in the view of the NMA, it—the penalties should be contested by mine operators regardless of legitimacy?

Mr. WATZMAN. No, and I—

Mr. HARE. Would you concur with that?

Mr. WATZMAN. No, I don't, Congressman, and I—and I don't know the specifics of the case you are talking about, and I can't speak to it. But I think you have to look at the multitude of factors that go into play here.

Let me give you an example. When an operator receives a—an assessment notice from MSHA, they have 30 days to make a decision as to whether or not they are going to contest that. They may receive 20, 30, 50 assessment notices in the form of one docket.

They have 30 days to go back to the mine, to meet with their people, to decide on each and every one of those, "Do we pay it? Do we contest it?" Unfortunately, we are operating in a system today where contesting has, to some degree, become the default setting.

They contest the citations. They meet that 30-day requirement. And then they logically go through each one of those and make a determination, "Do I continue to contest that individual citation, or do I pay that citation?"

So I think there is a filtering process, if you will, that occurs after they file the notice to contest.

Mr. HARE. Your testimony also states—and I agree with you—that many mine operators do work hard to protect the safety of the workers that they have.

But there have been some major mining companies that don't seem to be on the same page with you. Nine of 56 mine operators who were notified by MSHA that they would face withdrawal orders under a pattern of violations have been notified more than once, and one was notified on three separate occasions.

So in your view, is a repeated notice of a pattern of violations consistent with the proactive approach of mine operators to protect safety of the people in these mines?

Mr. WATZMAN. I think we all recognize the pattern of violations is in the—in the law for a very valid reason. It is the most severe enforcement tool that the agency has in its arsenal.

But there are steps that can be taken to, and in fact, force action on the part of the operators even before they reach a point of a pattern. When an order is issued under the act, that requires that miners be removed from that portion of the mine until the condition that gave rise to the concern is addressed.

So I don't want you to have the impression that because of this backlog no enforcement actions are taking place, nor are operators addressing and improving the conditions underground. That is just not the case.

There are tools available to the agency. They utilize them routinely. And operators respond accordingly.

Mr. HARE. Just going back, Mr. President—I don't want to belabor you here too much, but it says—I just want to know, on mine safety—has mine safety been impacted by the backlog of over 16,000 cases, in your opinion—of the Review Commission?

Because I mean, what I am trying to—what I am trying to find out—maybe the panel can answer this. What is the absolute single best thing we can do if the—to protect miners being safe in—because this is a very difficult job, at best, to do.

And I certainly wouldn't want to do it, to be honest with you. It is dangerous work.

Mr. ROBERTS. Well, thank you very much for your concern for miners of this nation. The safety is impacted. It is impacted by the fact that some of these companies and some of their mines would be under a pattern of violations as we speak had they not appealed every single one of these citations, or at least 91 percent of them in some cases.

If they were under a pattern of violations, they would be getting enhanced inspections by MSHA. They would be under an order that if they did not comply with the law their mine would be shut down.

Because of the backlog here, that is a tool that has been taken out of the hands of the undersecretary here. So those miners who are working in those particular mines where a pattern of violations would have been issued otherwise are at greater risk than they would be had we not had this backlog of cases that has taken place since 2006.

Mr. HARE. Thank you, Mr. Chairman.

Chairman MILLER. Mr. Loeb sack?

Mr. LOEBSACK. Thank you, Mr. Chairman. Thank you for having this hearing today.

I will be, I think, pretty brief. But I do have in front of me—I am from Iowa, and we used to have a lot of active coal mines in south central Iowa. John L. Lewis has a long history, actually, connected to Iowa.

I have in front of me a map that is registered mineral production sites, and we have a lot of clay pits. We have a lot of gypsum quarries, limestone, and sand and gravel pits—not coal mines as such.

I want to broaden this out just a little bit, if I may, since I am from Iowa, and I have heard from a number of folks who operate quarries, limestone and other kinds of quarries.

I want to ask Mr. Secretary—maybe you have some information on this. And obviously, if you can't get this to me today, I would like to get it from you in writing. But in general, can you speak at all about the rates of contest, notice of violations, for mines such as rock quarry, limestone, sand and gravel or aggregate, as opposed to coal mines?

I understand coal mines are the focus today, but can you speak to those other kinds of pits and limestone and other kinds of pits and quarries?

Mr. MAIN. Thank you. Yes, I actually met with some of your representatives, I think, this last week when I was out in the Midwest meeting with the—some of the quarry aggregate folks, and had some discussions about the—you know, the Mine Act and about the implementation of the Mine Act regulations and penalties.

And you know, one of the things that I talked to them about, as I talk to everybody about, in the country, on how we fix this problem, how we move forward, is that if you look at the data, what it tells you is less than one-half of 1 percent of the violations issued by MSHA inspectors are vacated or thrown out.

That means almost every violation that they issue is a violation, so—but I say let's start the conversation from that point and talk through what we really need to do to fix this problem. And it gets to some other discussions that have been here today about having improvement and compliance.

We believe, and we are going to be moving forward in part of our initiatives—is to press for improved health and safety programs to be in place in mines, because I can tell you from what I see as Assistant Secretary, we are not getting the job done in terms of the industry obligation.

MSHA is there as an auditor to see what the agency—or the operator does. It is not there to fireboss or inspect your mine.

So our first mission here is to get the—a change of culture here in this—in this mining industry where we have the mining industry understanding their responsibility is to do examinations, to identify violations that exist, correct those to protect the miners.

And that was some of the same discussions I have had with some of the aggregate operators throughout the country.

And in terms of the clean paper, I think that, you know, one of the things that I look at is the conferencing process and how we can resolve this—is that there needs to be a clear understanding of what this paper is.

We are going to work toward that effort, and I think we are pretty close to it with what we do. But I think the industry—and that is one of the things here I want to do, is give a good education about what good paper is, so we can take some of this mystery out as we have the conferences and settle some of these cases before they ever get to Commission Chairman Jordan and at the Commission.

We are also interested in talking about how we can improve mine safety programs with regard to training outreach, and we are doing some of those. As a matter of fact, the aggregates industry joined us with the Rules to Live By program that we just launched. And we have had discussions that—where we go.

So I think if you look at—the first step in solving this problem is who has—what is the problem and who has ownership of that problem. The problem is we have got far too many citations being issued. They are being pretty well accepted as a citation or order by the process, with less than one-half of 1 percent being tossed out.

And the ownership has to start with the mining industry to say, “We are going to start cleaning this up.” And we need to look at ways to help facilitate that.

Mr. LOEBSACK. Thank you.

Thank you. I yield back the balance of my time, Mr. Chair. Thank you.

Chairman MILLER. Congresswoman Woolsey?

Ms. WOOLSEY. Thank you, Mr. Chairman.

I have a two-part question, and it is pretty much on the same subject, and it is—Chairwoman Jordan and any of you that know the answer to this, to expand on it, what are going—what will our challenges be in finding the appropriate number of judges that are talented and experienced and willing to come to work for the agency to handle 500 to 700 cases a year?

Is this going to be easy as pie, or is it going to take a long time, or next year at this time are we going to be sitting here with not having accomplished very much because, guess what, we only hired two judges or—and prosecutors as well?

So what major challenges will you come up against?

Ms. JORDAN. Well, speaking for the Commission, we have started down the road of hiring. We are interviewing. We have hired one judge.

It will be challenging, but we think that we provide, I guess, an attractive place to have judges come work. The work is interesting. It is collegial. And we will, you know, just make all the efforts we can to get the judges on board.

It will be challenging, but I think not impossible.

Ms. WOOLSEY. Where will you find these judges? Are they all over the country? Are they at the universities?

Ms. JORDAN. Oh, they are all over the country. Typically, we hire a judge who has often been a judge for the Social Security Administration.

The Social Security Administration really hires many judges each year off a list of people who are qualified to be hired as an ALJ, and that provides, I guess, so to speak, almost a training ground for a lot of judges. They go to work for Social Security as a judge, and then they go to work for other agencies from that position.

And so we generally look—you know, look to the sitting judges there for our hiring.

Ms. WOOLSEY. How long does it take to recruit this one judge that you have—

Ms. JORDAN. Well—

Ms. WOOLSEY. Have you made an offer?

Ms. JORDAN. Yes, we have.

Ms. WOOLSEY. Okay.

Ms. JORDAN. This didn't take very long. I mean, this individual was actually familiar with the Commission and had worked in a different capacity as a counsel previously and was currently working at another federal agency as an administrative law judge.

Ms. WOOLSEY. So how many judges do we have to hire now and with the new budget?

Ms. JORDAN. Well, in 2010 we are looking at hiring four additional—four judges, so we are looking at three more, and we—

Ms. WOOLSEY. And then—

Ms. JORDAN [continuing]. Are engaged in interviewing and our—the chief judge is very actively involved in that process.

Ms. WOOLSEY. And the President's budget allows for how many more?

Ms. JORDAN. In 2010 it would be four, and in 2011 an additional four.

Ms. WOOLSEY. Four?

Ms. JORDAN. Yes.

Ms. WOOLSEY. I thought it went into the teens.

Well, Secretary Main, if Congress were to provide more resources so that we could start working on that backlog, how many judges will we need and prosecutors in order to eliminate the backlog in, let's say, 3 years?

Mr. MAIN. Yes, I think that the—Chairman Jordan probably—in terms of the judge and staffing that is needed on the Commission side, probably has a better handle on that.

What we look at is the resources that we have to have to get the job done. And you know, currently, you know, some of the discus-

sions have been raised here today about the processes that may be put into place, the simplification of the hearing process, the OSHA-style quick trial processes, and the reduction of discovery of case development.

Those things, I think, are as important as some of the numbers we are talking about, because depending on how the Commission moves forward, I think it will have an impact on how we have to move forward with our resources, if we get into some of those more limited discussions.

We have made some adjustments in the 2011 budget for some increases of resources to do that both in—excuse me, the Solicitor of Labor and at MSHA. But it is sort of trying to figure out what the Commission has planned to do with the judges they put on, in light of these other discussions with trying to simplify a lot of this process.

Ms. WOOLSEY. So does anybody have any idea of what it would cost us to eliminate the backlog, how many more judges we would need, 3 years, 5 years? Has anybody worked that out?

Ms. JORDAN. Well, Congresswoman, we were asked to work that out and provide that information. If we assume that we operated under the 2010 budget as granted and then the 2011 budget request as proposed by the President, going from there we would need—if we went up to 26 judges, for instance, in fiscal year 2012, we could get the backlog down by September of 2014.

Alternatively, looking at a more immediate intensive intervention, you could be considering—it would take additional money in 2010, for instance, to go up to 18 judges to hold the backlog constant, to stop from rising. That would require going up to 18 judges.

And then going up to 26 judges would allow the backlog to go down and be eliminated in January of 2013, which would be 3 years.

Ms. WOOLSEY. Okay. Thank you very much.

Mr. Chairman, Mr. Watzman had something.

Mr. WATZMAN. Ms. Woolsey, if I might very quickly—and I can't, you know, talk—tell you how many judges it would take, but I think we should be looking beyond just the mere hiring of judges.

I think, as I—as reflected in my testimony, we believe that because of the elimination of the pre-assessment conference process, because that was eliminated, many of these matters moved up to the Commission that would not have otherwise.

As the Assistant Secretary reinstates the conference process, the informal conference process, I don't know if there is a procedure in place to have these taken from—these cases removed from the Commission and placed back into the informal conference process.

But we need to be exploring options in addition to the hiring of more judges. We need to be exploring other options, other creative options, if you will, that will allow this backlog to be worked out. I think we are making a mistake if we focus singularly on just hiring more judges.

Ms. WOOLSEY. Well, like possibly settling cases at 50 percent of the original assessed amount, just to make it happen? That is not the way we should be doing this.

I yield, Mr. Chairman.

Chairman MILLER. Mr. Payne?

Mr. PAYNE. Thank you very much.

And you know, this issue of mine safety has been with us as long as I can remember. As a young paper boy delivering a newspaper, I used to read about, you know, mine accidents.

And John L. Lewis was the first person, other than the President of the United States, that I heard about because this issue—and of course, I don't know how many canaries died but, you know, we used to always see that being what happens in a mine. It seems kind of primitive that you had to have a canary to make sure that everything was all right or not all right.

But perhaps on that issue that Ms. Woolsey raised, Mr. Roberts, what do you think about the response we heard from Mr. Watzman?

Mr. ROBERTS. I think I need to make a couple points, if I might. I think there is a—perhaps the committee might believe that there is—these cases go from the mine straight up to a judge, and that is just not the case.

In 2008 when the informal process was eliminated, there was what was known in the industry now as an enhanced conference. What that means is throughout the United States there are various MSHA districts that fall under the guidance of Secretary Main.

And for instance, there is an office in Mount Hope, West Virginia. If an operator is issued a citation, the only distinction to be made right now between the informal process that used to be an opportunity to go down to MSHA as soon as the inspector cited you for something.

Understand at the time the citation is issued, no one knows what the dollar and cent amount of that citation will be. That is determined by another branch of MSHA.

Now the only distinction to be made is you can go now, once you know what the fine will be. There will be a number of citations issued by that MSHA inspector upon an inspection. At the time that you know what that dollar and cent amount is, kind of like getting a speeding ticket and someone tells you it is \$100, you know and you can go down and argue you weren't speeding if you want to.

You can go down to the various district offices and say, "I would like to have an enhanced conference." The time limits that were talked about here before can be changed to give you more time so this process can take place. There are meetings in the MSHA district offices to discuss those fines.

In many instances, those fines are reduced. And sometimes those cases are settled, and sometimes they are not. The real problem here—and this is my view of this—is there is nothing to lose here. There is nothing to lose here.

It is like you having an electric bill, a gas bill, that you have to pay and the utility company said, "Take that money and go to Las Vegas and see how you do, and if you don't—and if you lose, you don't have to worry about anything other than the amount of money that you owed us to start with."

So as you go down the process, why wouldn't you appeal this? You have been issued a significant fine, perhaps. You can go

through this process. And the only thing that can happen is that it will be reduced.

And if you look at the statistics and try to put them together and understand those statistics, it works. You are going to get your fine reduced somewhere along the process here.

So there is absolutely no reason for every coal operator who would choose to do so—and some don't, and they should be commended—to appeal this through the process and send it up to the Review Commission.

The only thing that is going to happen here is you are going to pay less money or the same amount of money.

Mr. PAYNE. You are absolutely right and, as a matter of fact, it seems like in law in general, in bargaining, whether it is plea bargaining or whatever, you know, the prosecutors tend to downgrade the charges in order to get a plea.

And so you have got nothing to lose, as you mention, by going through—a matter of fact, in most instances, the reverse. You have got a lot to gain.

I just wonder also, Mr. Roberts, the—you mention about repeat offenders. You know, in anything, three strikes, you are out. You stay in jail for life. What kind of process is there currently for the current repeat offenders? Do they just get another fine, or are they—and keep going on about their business?

I mean, we find that in the meat industry. You know, if they send food to a school that is no good, they say, "Oh, it is no good. That is bad. You shouldn't do it." And they keep getting a contract from the U.S. Department of Agriculture. What is it here?

Mr. ROBERTS. There is a very serious process here that has been stymied. That process is called a pattern of violations, and it is a very serious situation for any co-operator at any mine to have a pattern of violations issued, as Mr.—I almost called him Joe; I better not do that—as the Undersecretary pointed out.

However, you cannot be under a pattern of violations until you have had all of your days in court. And we currently see 16,000 cases sitting here.

And until those cases are determined one way or the—another, there are mine operators right today who would be under a pattern of violations, more serious inspection regime, and they would have to go a quarter without any S&S violations, which are the most serious ones, to get out from under that.

Because of this process and 16,000 cases sitting there, that has been taken out of the law, something Congress placed in the law.

Mr. PAYNE. Well, my time has expired. But I really appreciate that, and I recall a terrific potential mine tragedy in South Africa where hundreds and hundreds and hundreds of miners were trapped, all of whom were able to be rescued, I think, other than one or two, by virtue of mine safety procedures that they had in South Africa.

And then in 2005 and 2006 here in our country we saw the same kind of—on a smaller scale, with tremendous losses. And so to me, progress is not keeping up with where it ought to be.

Thank you.

Chairman MILLER. Thank you.

Mr. Polis?

Mr. POLIS. Thank you.

My district goes right up against Lake County and Leadville where in 2007 they announced they were going to reopen the molybdenum mine. Then of course, with the global recession and prices decreasing in 2009 they changed that, and we hope that it will open at some point.

But my question is—it was referenced in the testimony that the primary issue here is the backlog and that the increase in judges should be able to deal with the case work going forward.

But my question is, assuming that we have a significant recovery in this country—and of course, that recovery will affect the basic prices of commodities, and our Congress has been very instrumental in promoting a recovery through the American Reinvestment Act, stimulating demand for consumer products, many of which have origins in the earth—what would be the impact in a resurgence in the mining industry and therefore claims on the going-forward piece, as opposed to the backlog piece, if we return to levels of employment in the industry that we have seen historically during boom times?

Ms. JORDAN. Well, we have done our calculations assuming that we would have 9,200 cases incoming. We have sort of looked at that.

We have leveled off a bit for the last year or so, but under the scenario that you have described I guess it could be foreseeable that there would be additional mining, additional enforcement and additional cases coming in even higher than that amount.

Mr. POLIS. So is the 9,200 based on sort of the trend of the last few years, or are there also—do you also look at what could happen during kind of robust economic recoveries, you know, and an increase in commodity prices and growth of the industry?

Ms. JORDAN. We looked at it based on just the last couple years—

Mr. POLIS. Okay.

Ms. JORDAN [continuing]. That is what we have had coming in.

Mr. POLIS. So how would we be situated going forward if, in fact, we have a robust recovery and the numbers are, you know, above that? How would we be situated on the going forward piece?

Ms. JORDAN. Well, I think the backlog would just continue to grow.

Mr. POLIS. Including some of the new claims that would then become part of the backlog?

Ms. JORDAN. Pardon me?

Mr. POLIS. Some of the new claims would then become part of the backlog under that scenario?

Ms. JORDAN. Yes. Yes, they would.

Mr. POLIS. Okay.

I yield back. Thank you.

Chairman MILLER. Thank you.

Ms. Titus?

Ms. TITUS. Thank you, Mr. Chairman.

I represent Nevada. And of course, Nevada is built on mining. We call ourselves the Silver State, but we actually produce 77 percent of the gold, and we are—only employ over 12,000 people directly in mining—that is—the average job pays about \$77,000; that

is a good job—and then about 52,000 more people in related industries that serve mining.

So this is a very important issue for us. And I think the backlog like we have does a disservice to everybody involved, especially for the people who actually work in the mines.

The Nevada Association of Mining feels that the backlog can be attributed to several things. And one of the things you mentioned a little before I got here—and I would like for you to elaborate on it, if you don't mind—is the elimination of the pre-contest informal conferences.

And they also cite the ability that they used to have which was to be able to discuss some of the problems with field office supervisors before they turned into cases.

I understand the problem of two bites of the apple, but could you address a little bit what your plans are, if you are going to put these back in place and how you deal with that issue?

Mr. MAIN. Yes, and let me explain what the plan is here so everybody would get a better appreciation for what we would like to do.

As I take a look at the current process, we have cases that may otherwise be resolved if a conference was held to clean up a set of facts and be resolved without impacting the backlog—that are now part of the backlog, because under the current process those cannot be reviewed until after the contest has been filed.

In looking at how we fix two problems here—one is getting those out of the backlog, and really straightening out this 47 percent issue that bothers me I think as much as it does about anybody else—is to have some firmness in about how we do that.

I view those conferences to be nothing more than sorting out the facts to make sure that the paper that the inspector wrote is a valid piece of paper. And if we have erroneously issued that paper, then we should deal with it there. And that conference would clean up the mystery here about the good and bad paper.

I don't think there is a lot of bad paper in the process, but at the end of the day that is how that would work. So there would be a quicker opportunity for the mine operators to sit down. It is not to negotiate settlements. It is to look at sets of facts.

And once those sets of facts are finalized, for that conferencing process that is over. And I think the two bites of the apple issue that we have been dealing with in the past was that process in some form would take place, and then we would have the conference or discussion over the same set of facts after that conference closed, and basically sometimes with the same people looking at the same set of facts.

I think that is a little crazy myself. So if we do this as a one-shot deal, we clean up the errors in the paper. And if there is a decision by the mine operator to contest, then they would go into the litigation pile. We would clean up, you know, hopefully, both of those at the same time.

But that is the process that we are looking at doing. And at the end of the day, fixing this expectation bit, as Mr. Roberts—or President Roberts pointed out, that you just file a—a matter of contest and your expectation is you are going to get, you know, 40-some

percent cut in your fine. We got to fix that. We got to fix that expectation.

The expectation is whenever we have a case that doesn't get resolved at those conferences that there is going to be a stiff response by those representing this agency and the litigation process and to reduce that expectation of a big discount, because I think that is—you know, that is something that we have to deal with here in fixing this.

Ms. TITUS. Could I just also ask you, when the—when these go for appeal and for consideration to the court, are all the different kinds of mines just lumped together, or you have gold mine cases with uranium cases, and silver, and coal and all—does it make any sense to look at some kind of better organization there—that would feed cases along in the different areas if they didn't all have to follow the same patterns?

Mr. MAIN. Let me tell you a conversation I have had with the industry. If you want to slow down that process, contest everything, because basically what you are going to do is you are going to tie up all the folks who sit down and resolve these.

And I think we have got to get to a point that the number of contested cases we see in the ranges of 80, 90 percent—I think there is something else that drives that. That is bogging down the process to even have conferences.

So what happens is if you bog down that process, then you may force the folks who are reviewing this to do a lot more than they would normally do at the time.

I think there is—when I looked at the records, there was something like 40-plus mining companies that had contested over 80 percent of the—of the violations that they received. And that does clog up more than just the backlog with the Commission. It clogs up MSHA's ability to actually have a—you know, a review of the facts that the mine operator wants to submit in the conferences.

Ms. TITUS. Okay.

Thank you, Mr. Chairman.

Chairman MILLER. Thank you.

If I might, on a second round here, there is no question that this is a difficult needle to thread. I wouldn't want anybody to walk away from the witness table or from this hearing and believe that somehow the suggestion is we go back to the old system.

That system was clearly found wanting by the Congress on a bipartisan basis, and this bill was hammered out over a considerable period of time with the involvement of the industry, with the involvement of MSHA, and the mine workers and other interested parties, in a conscious decision—I didn't actually agree with the final bill because I was worried about the time lines—but a conscious decision to change the previous system that was leading—which, you know, we had an accident rate and we had a system that was unacceptable, certainly to the miners, but also to the Congress.

And I think that part of the burden here is shared by the Congress. We said we wanted a tougher system. We wanted a more exacting system. We wanted to make sure that violations did not go unreported, that there would be enough inspectors, that the inspec-

tion—that the undergrounds would be inspected four times. And that is now being complied with.

An amazing number of citations are being issued—I mean, I don't know, about 15 per inspection, it looks like, per mine. I think the mining industry has some obligation here in terms of what are they doing to change the number of citations in terms of the operation of those mines.

But Congress, if we want this backlog addressed, and we want to adhere to the policy, we are also going to have to put some additional resources into the Commission to make sure that, in fact, this can be done on a fair and timely basis.

And I am concerned—and I think you heard from members of Congress—the idea that you can just sort of settle out here at some point at 47 percent—you know, it is sort of a better return on your money than junk bonds but probably safer than Treasuries in terms of your ability to collect it. That is not a situation that you want to have happen.

And I also would want to impress upon you that—I know it is denied, but I think you have a conscious decision, collectively or independently, by those who run the risk of being cited for a pattern of violations here clogging up the system and trying to postpone that day when they have to meet that judgment.

That judgment has turned out to work to the benefit in terms of reducing the violations of where those miners, as I pointed out before, work in those particular mines.

This question of bad paper—I appreciate we have new—you know, we have—we are not the first agency that has turnover because of people retiring and all the rest of that.

But you are talking about—in S&S penalty decisions, about 4 percent have been withdrawn or vacated, so it can't be that much bad paper on the—and by the time you get to the Commission, it is 1 percent of the remainders that are left.

And on the unwarrantable failures, it is about 10 percent. So you know, and that is pretty consistent over the last 5 or 6 years. And so I think the idea that somehow that is driving this process is interesting, but I don't think it is terribly accurate.

I think there is another decision-making process among the operators about challenging this for other reasons that I have made out that may have more impact on this decision.

And again, the MINER Act anticipated increased inspections on a regular basis and increased enforcement and tougher penalties. So you know, I appreciate people don't want the tougher penalties. They don't want to pay more. That is the law, and that was well argued about the increase in those penalties during the development of that law.

My having said all that doesn't make your task any easier, but I want to make sure that we don't start to suggest that somehow we want to go back—we would like to get the accident rate even lower this year and next year. I mean, that is the goal.

And I think you are right that you have got to start to develop programs with the industry beyond what we have now, but the industry has got to take some burden.

If you are continuing to get these kinds of citations, I think you have got to ask how is it that you are doing business where this

continues. After four inspections, if you are continuing to get that level of citations, I think you have got a problem.

Mr. Thompson?

Mr. THOMPSON. Well, Mr. Chairman, thank you. Thank you for this hearing.

And thank you to the panel. You know, with the safeguards that were put in place, we have—and I know the focus of this hearing was to talk about the backlog of cases.

But frankly, when you look at the all-time records in subsequent years in terms of safety, I think that speaks to a level of effectiveness of what was put in place, and so as I hope going forward we see increased use of our natural resources and more employment, actually, and jobs in this area.

And one time my congressional district had not just surface but subsurface mines. Unfortunately, that industry is almost extinct in much of Pennsylvania today for many reasons, and so I certainly hope as we look forward going forward that we could look at, you know, ways of doing things more efficiently and with keeping that—safety as our number one issue.

So I want to just thank the panel for your testimony today and for joining us.

And with that, I will yield back.

Chairman MILLER. Thank you.

I just want to—one clarification. I think when Chairwoman Jordan answered the question—I think her answer was—on this question of pre-judgment interest, have you considered that, or what—

Mr. MAIN. Yes.

Chairman MILLER [continuing]. What is allowed or not allowed?

Mr. MAIN. That is something that would have to be created, as I understand it. And it would probably have to be created through legislation.

Chairman MILLER. Legislation—

Mr. MAIN. Yes.

Chairman MILLER [continuing]. Would be the response to that.

Mr. MAIN. Yes.

Chairman MILLER. Okay.

Secondly, Chairwoman Jordan, when you responded on the budget request that will—for 2011, you will be at eight—will be up at 18 judges with that request, is that correct?

Ms. JORDAN. Yes, that is correct.

Chairman MILLER. And that sort of comes close to sort of a steady state in the backlog, so that is not acceptable, and this is—this speaks to the Congress and the administration putting resources into this.

It looks to me like you have to get to somewhere around 26 judges before you can start to make a serious dent absent these other—if you just take the current situation, absent the changes that Mr. Main has talked about, absent the changes that some of the industry have suggested.

Hopefully, those can be worked out within the underlying law and the intent of the underlying law, but I would hope that also—not to be redundant of my previous remarks, but the industry has

got to accept some of the responsibility for the reduction in the issuing of citations.

Again, it is not like we have this massive rejection rate. And I think the Congress has got to accept the—some of the additional burden for the reduction of that backlog. I mean, you are just not going to be able to work judges to such a level that you can do that if you don't have the proper resources.

So we all have our work to do here, and thank you very much for your contributions to this hearing. This is, again, a matter that I certainly take very seriously. We made our commitment as Chair of this committee and as members of this committee, and we expect to follow through on it, and we look forward to continuing to work with you.

Thank you.

Without objection, members will have 14 days to submit additional materials or questions for the hearing record.

And without objection, the hearing is adjourned.

[The statement of Mrs. McMorris Rodgers follows:]

Prepared Statement of Hon. Cathy McMorris Rodgers, a Representative in Congress From the State of Washington

Over the last year—and in particular over the last few months—we've witnessed first hand the impact that regulatory burdens are having on the private sector. From a lack of job creation to a lack of credit to stagnant growth, many industries have been smothered by this onslaught of regulation. The mining industry is no exception.

Increased regulations imposed on mine operators—from bureaucratic requirements for publication in the Federal Register to the requirements imposed in contested mine safety cases—are stifling an industry already plagued by negative publicity.

What many forget is that the mining industry plays a critical role in providing greater energy security as well as economic security to our nation. We should be encouraging its expansion not limiting it.

To that end, I am interested in how the 2009 Procedure Instruction Letter (PIL) requiring mine operators to contest a citation before reconciling disrupted the existing system creating the back log seen today at the Mine Safety and Health Review Commission (MSHRC). Further, I will be interested in how the Mine Safety and Health Administration (MSHA) intends to resolve the problems created by the PIL.

As all the parties involved in this problem seek solutions, a first step should be trying to obtain additional information in a non-adversarial setting in order to dispense with as many citations as possible prior to bring these before MSHRC. Reducing the backlog is a worth goal, but maintaining high standards for the safety and health of miners should be the priority and we should not lose sight of that priority.

[Questions submitted for the record and their responses follow:]

[VIA EMAIL],
U.S. CONGRESS,

Washington, DC, February 26, 2010.

Hon. MARY LUCILLE JORDAN, *Chairman*,
Federal Mine Safety and Health Review Commission, 601 New Jersey Avenue, NW,
Washington, DC.

DEAR CHAIRMAN JORDAN: Thank you for testifying at the Committee's hearing, "Reducing the Growing Backlog of Contested Mine Safety Cases" held on Tuesday, February 23, 2010.

I have a few additional questions to which I would like you to provide written responses for the hearing record:

1. What is the total value of the penalties currently being contested by mine operators (i.e., the total dollar value of all penalties included in the Review Commission's backlog of approximately 16,000 cases)?

2. How does the current amount under contest compare to the aggregate amount of the Review Commission's budget since the date of the Review Commission was created in 1977?

3. By what amount would the Review Commission's budget have to be increased annually, including the costs of additional support staff (such as law clerks and administrative overhead), if additional Administrative Law Judges (ALJs) were added to its staff as follows:

- a. If four (4) ALJs were added?
- b. If six (6) ALJs were added?
- c. If eight (8) ALJs are added?
- d. If twelve (12) ALJs are added?

4. Has the Mine Act's objective of deterring safety violations been weakened because the Review Commission's backlog has delayed the collection of penalties and the resolution of contested cases in a reasonable period of time?

Please send your written response to the Committee by COB on Tuesday, March 9th—the date on which the hearing record will close. If you have any questions, please contact the Committee at 202-225-3725. Once again, we greatly appreciate your testimony at this hearing.

Sincerely,

GEORGE MILLER, *Chairman.*

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION,
601 NEW JERSEY AVE., NW, SUITE 9500,
Washington, DC, March 4, 2010.

Hon. GEORGE MILLER, *Chairman,*
Committee on Education and Labor, U.S. House of Representatives, 2181 Rayburn
House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: I very much appreciated the opportunity to testify at the Committee's hearing "Reducing the Growing Backlog of Contested Mine Safety Cases," which was held on February 23, 2010. I am now providing responses for the hearing record to the questions posed in your letter to me dated February 26, 2010.

1. *What is the total value of the penalties currently being contested by mine operators (i.e., the total dollar value of all penalties included in the Review Commission's backlog of approximately 16,000 cases)?*

The total value of the penalties currently being contested by mine operators is approximately \$195 million. That figure represents the amount proposed by the Secretary.

2. *How does the current amount under contest compare to the aggregate amount of the Review Commission's budget since the date the Review Commission was created in 1977?*

The aggregate amount of the Review Commission's budget since 1978 (the first date for which figures are available) through 2010 is \$186 million.

3. *By what amount would the Review Commission's budget have to be increased annually, including the costs of additional support staff (such as law clerks and administrative overhead), if additional Administrative Law Judges (ALJs) were added to its staff [assumed to be currently 14 judges] as follows:*

- a. If four (4) ALJs were added? [for a total of 18 judges]: \$ 2.747 million
- b. If six (6) ALJs were added? [for a total of 20 judges]: \$ 3.547 million
- c. If eight (8) ALJs are added? [for a total of 22 judges]: \$ 4.347 million
- d. If twelve (12) ALJs are added? [for a total of 26 judges]: \$ 5.947 million

4. *Has the Mine Act's objective of deterring safety violations been weakened because the Review Commission's backlog has delayed the collection of penalties and the resolution of contested cases in a reasonable period of time?*

One of Congress' basic premises in enacting the Mine Act was that penalties should be collected as close in time to the violation as possible. To the extent this is delayed, it undermines the deterrent value of the penalty. Also, we recognize that several important enforcement provisions of the Mine Act, such as pattern of violations, depend upon a determination of an operator's history, and these provisions are not applicable until the violation becomes final, which occurs only at the completion of the Commission's review process. Thus, if case decisions are delayed, the ability of MSHA to effectively enforce the Act may be inhibited.

Thank you for the opportunity to provide supplemental information to the hearing record.

Sincerely,

MARY LU JORDAN,
Chairman.

[VIA EMAIL AND FAX],
U.S. CONGRESS,
Washington, DC, February 26, 2010.

Hon. JOE MAIN, *Assistant Secretary,*
Occupational Safety and Health Administration, U.S. Department of Labor, 200
Constitution Avenue, NW, Washington, DC.

DEAR ASSISTANT SECRETARY MAIN: Thank you for testifying at the Committee's hearing, "Reducing the Growing Backlog of Contested Mine Safety Cases" held on Tuesday, February 23, 2010.

I have a few additional questions to which I would like you to provide written responses for the hearing record:

1. What was the Mine Safety and Health Administration's (MSHA) actual costs and staffing in FY 09 to support the disposition of contested cases before the Federal Mine Safety and Health Review Commission (Review Commission)? What are the expected FY 10 costs and staffing to support the disposition of contested cases before the Review Commission?

2. What was the Department of Labor's actual costs and staffing for the Office of the Solicitor to work on contested MSHA cases for FY 09? What are the expected costs for FY 10?

3. During the hearing, you noted that 40 companies are responsible for 80 percent of the citations contested. Please provide a list of these companies, including the name of the parent companies, the states in which they are located, their subsidiaries, the number of contested citations, and the names and types of their mines.

4. Would MSHA support the idea of a legislative change to allow the agency to assess and collect pre-judgment interest from mine operators on penalties?

5. In the increase provided to DOL in its FY 2010 budget for the Office of the Solicitor, how much of the additional funds provided will be used to hire new staff for the Office of the Solicitor to work on MSHA cases? Will this be sufficient to support the addition of 4 ALJs at the Review Commission as proposed in the President's budget request?

6. In your testimony, you stated that MSHA plans to reinstate the pre-contest conferences with mine operators. Do you expect a reduction in the number of contested cases from the reinstatement of these pre-penalty conferences over a 1 year period? What percent reduction do you anticipate?

7. What kinds of contests will be reduced from pre-penalty contests?

Please send your written response to the Committee by COB on Tuesday, March 9th—the date on which the hearing record will close. If you have any questions, please contact the Committee at 202-225-3725. Once again, we greatly appreciate your testimony at this hearing.

Sincerely,

GEORGE MILLER, *Chairman.*

[VIA EMAIL AND FAX],
U.S. CONGRESS,
Washington, DC, March 5, 2010.

Hon. JOE MAIN, *Assistant Secretary,*
Occupational Safety and Health Administration, U.S. Department of Labor, 200
Constitution Avenue, NW, Washington, DC.

DEAR ASSISTANT SECRETARY MAIN: Thank you for testifying at the Committee's hearing, "Reducing the Growing Backlog of Contested Mine Safety Cases" held on Tuesday, February 23, 2010.

Committee Members had additional questions for which they would like written responses from you for the hearing record.

Congressman Kline asks the following questions:

1. How many citations are in the system awaiting an enhanced safety and health conference?

2. Can you provide this information by MSHA district and in date order with the oldest citation in the district conference backlog?

3. When do you anticipate the backlogged cases entering the conference process?

4. Has MSHA Headquarters established a benchmark time period for a conference to be held from a date certain once it is placed into the system until the conference is held?

Please send your written response to the Committee by COB on Tuesday, March 9th—the date on which the hearing record will close. If you have any questions,

please contact the Committee at 202-225-3725. Once again, we greatly appreciate your testimony at this hearing.

Sincerely,

GEORGE MILLER, *Chairman.*

Responses From Mr. Main to Questions Submitted for the Record

1. *What was the Mine Safety and Health Administration's (MSHA) actual costs and staffing in FY 09 to support the disposition of contested cases before the Federal Mine Safety and Health Review Commission (Review Commission)? What are the expected FY 10 costs and staffing to support the disposition of contested cases before the Review Commission?*

Answer: In FY 2009, MSHA spent approximately \$7 million and 53 FTE in support of adjudicating contested cases before the Federal Mine Safety and Health Review Commission (Commission). With the current process unchanged, MSHA estimates the cost of this support to increase to \$7.9 million and 61 FTE in FY 2010. This cost estimate is based upon wide array of support functions and vastly different compensation rates. For instance, a Conference Litigation Officer (CLR) has an annual cost of roughly \$150,000 while the cost of an administrative support staffer is approximately \$75,000.

2. *What was the Department of Labor's actual costs and staffing for the Office of the Solicitor to work on contested MSHA cases for FY 09? What are the expected costs for FY 10?*

Answer: The cost for the Office of the Solicitor (SOL) to handle work on contested MSHA cases for FY 2009 was approximately \$9,600,000. In FY 2009, SOL utilized a total of approximately 58 FTE to handle contested MSHA cases. In FY 2010, based on actual data from the first quarter of the fiscal year, SOL estimates that it will devote approximately \$12,100,000 to handling contested MSHA cases, using approximately 72 FTE.

3. *During the hearing, you noted that 40 companies are responsible for 80 percent of the citations contested. Please provide a list of these companies, including the name of the parent companies, the states in which they are located, their subsidiaries, the number of contested citations, and the names and types of their mines.*

Answer: I believe you are referring to my testimony in response to a question where I stated that over 40 companies have contested 80% or more of the violations issued to them. That data is attached. As I also noted in my written testimony, 10 companies are responsible for almost 40% of all contested cases pending before the Commission. I have also attached a report with the requested information for the 40 companies with the largest number of contested citations in CY 2009, which includes the 10 companies I referred to in my testimony. As you can see, these 40 companies accounted for 57.8% of violations contested in CY 2009 and have contested 65.5% of proposed penalty amounts.

4. *Would MSHA support the idea of a legislative change to allow the agency to assess and collect pre-judgment interest from mine operators on penalties?*

Answer: MSHA has considered this idea but would need additional information about the framework and scope of contemplated legislation. For instance, because the vast majority of cases currently settle prior to trial, legislation that awarded prejudgment interest if the government prevails on the merits of a contested citation would only apply to the less than 5% of citations in which MSHA prevails at trial or obtains a default judgment that has not been pre-paid. Under the current system and with the current number of cases that proceed to trial, this type of legislative change would not have a significant impact.

Prejudgment interest could, however, affect settlement decision-making in that it would remove the financial incentive for an operator who contests a large number of meritorious citations simply to delay payment. It is difficult to determine the extent to which the time-value of money is a motivating factor in an operator's behavior, or how prejudgment interest would affect that behavior. Currently MSHA settles contested cases for an average reduction greater than the amount that an operator would be required to pay in pre-penalty interest. Consequently, while prejudgment interest could reduce the financial incentive to contest, it would not tip the balance in favor of not contesting for operators who believe they can negotiate a penalty reduction under the current system.

5. *In the increase provided to DOL in its FY 2010 budget for the Office of the Solicitor, how much of the additional funds provided will be used to hire new staff for the Office of the Solicitor to work on MSHA cases? Will this be sufficient to support*

the additional of 4 ALJs at the Review Commission as proposed in the President's budget request?

Answer: SOL estimates that approximately \$2,500,000 in additional resources and approximately 14 additional FTE will be used to handle Commission cases in FY 2010. Last year, SOL provided to the Committee estimates of the number of FTE that would be necessitated by additional Commission ALJ's. However, it is important to note that those estimates were based on the current case handling system, which does not take into account any of the significant case handling and processing reforms and other management changes at the Commission that are being actively considered. Furthermore, those estimates were for all of FY 2010. SOL cannot at this point estimate the impending increase in workload that will be generated in the remainder of FY 2010 by 4 additional Commission ALJ's because of a number of variables: 1) when will each judge arrive, 2) whether the work pattern of the Commission will be redistributed so that there is more work done that does not require SOL involvement, 3) whether other case-processing reforms will be put into practice during FY 10, and 4) case processing reforms and other management changes that the Commission is actively considering. SOL will distribute its FY10 appropriated resources to handle the Commission-related cases.

6. In your testimony, you stated that MSHA plans to reinstate the pre-contest conferences with mine operators. Do you expect a reduction in the number of contested cases from the reinstatement of these pre-penalty conferences over a 1 year period? What percent reduction do you anticipate?

Answer: It was not my intent to suggest that MSHA will return the conferencing processes of the past. MSHA does not intend to reinstate the pre-contest system in its previous form. At its core, the conferencing will have one thing in common with the previous system—it will occur prior to an operator being required to contest proposed penalties, so that resolvable cases do not needlessly enter the contested case backlog where settlements need to be approved by the Commission and take considerable time to resolve. Beyond that, the specific procedures are still under development based on a review of what has worked previously and what has not. Any new procedure will be subject to ongoing review and evaluation, and will be amended to reflect experience and maximize the effectiveness of the process.

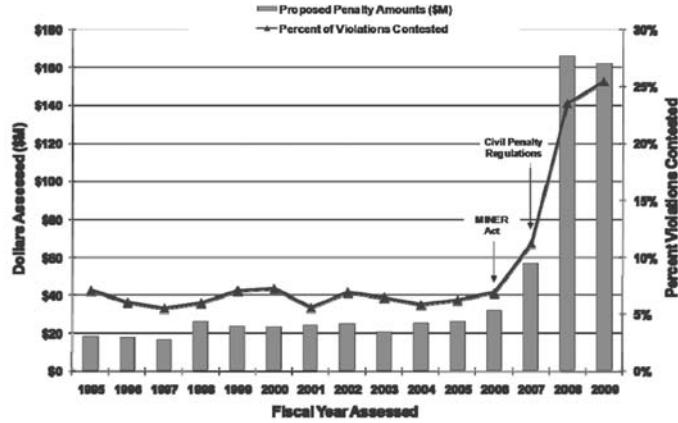
While we expect a reduction in the number of contested cases from the use of pre-penalty conferencing, it is difficult to predict a percentage reduction given all the possible variables introduced by the various reforms under consideration by both MSHA and the Commission.

7. What kind of contests will be reduced from pre-penalty conferences?

Answer: We anticipate that cases resolved in the pre-penalty conferencing MSHA is developing would be those in which the operator presents a legal position or evidence demonstrating that, in light of the record as a whole, the citation in question is not justified or is not adequately supported by evidence. Other types of pre-contest resolutions would be subject to guidelines MSHA plans to develop.

[Additional materials submitted from Mr. Main follow:]

Proposed Civil Penalties v. Penalty Contest Rate



FY Assessed	(1)		(2)		(3)	
	No. of Violations Assessed Civil Penalties	Total Proposed Penalties	No. of Assessed Civil Penalties Contested	Total Proposed Penalties Contested	Percentage of Violations Contested	Percentage of Proposed Penalty Dollars Contested
2006	131,796	\$31,746,787	9,124	\$10,432,027	7%	33%
2007	130,424	\$57,006,125	14,675	\$27,763,957	11%	49%
2008	180,242	\$165,952,819	42,411	\$110,923,513	24%	67%
2009	181,534	\$161,882,468	46,168	\$109,021,819	25%	67%

FY Assessed	No. of Assessed Civil Penalties Contested and Final (as of 1/15/2010)	(4)		Final Contested Penalties as % of Original Proposed Penalty	No. of Assessed Civil Penalties Contested and Final and Reduced (as of 1/15/2010)	Total Original Proposed Penalties Contested and Final (as of 1/15/2010)	Total Final Penalties for those Contested and Final and Reduced (as of 1/15/2010)	Final Contested and Reduced Penalties as a % of Original Proposed Penalty
		Total Original Proposed Penalties Contested and Final (as of 1/15/2010)	Total Final Proposed Penalties Contested and Final (as of 1/15/2010)					
2006	8,077	\$9,348,368	\$5,479,708	59%	4,352	\$7,166,911	\$3,868,690	54%
2007	12,414	\$20,006,772	\$12,313,413	62%	7,021	\$15,839,077	\$7,693,359	49%
2008	20,981	\$39,782,906	\$25,707,968	65%	12,494	\$32,916,489	\$14,074,938	43%
2009	1,888	\$2,778,628	\$1,884,009	68%	1,081	\$2,256,737	\$894,619	40%

- (1) Total Number of Violations: this is the number (and \$) of violations assessed a civil penalty each FY.
- (2) Total Number of Contested Violations: this is the number (and \$) of penalty contests for violations assessed in each FY.
- (3) The percentage of cases that go into litigation: this is the *No. of Assessed Civil Penalties Contested* divided by *No. of Violations Assessed Civil Penalties*
- (4) Total Number of Contested Citations that are Written Down (i.e. penalty reduced): this is the number (and \$) of penalty contests for violations assessed in each FY and later contested and reduced. The \$ amount is the original proposed assessments and the total assessments after being "written down".

Contested Penalty Data - FY 2006-2010
(preliminary data through December 31, 2009)

All Penalty Decisions						
Decision Fiscal Year	Number of Penalties (citations/orders) Decided	Original Proposed Assessment Amounts	Proposed Assessment Amounts After Decision	Percent Change in Assessment Amounts	Avg. Days from Issue to Contest	Avg. Days from Issue to Decision
2006	6,657	7,273,125.00	4,209,355.45	-42%	160	216
2007	6,504	8,122,792.00	5,301,770.85	-35%	154	245
2008	12,852	\$19,682,415	\$11,736,247	-40%	142	205
2009	16,228	\$33,855,225	\$17,806,275	-47%	141	428
2010*	6,552	\$11,950,142	\$6,400,488	-46%	110	453

S&S Penalty Decisions												
Decision Fiscal Year	Number of Penalties (citations/orders) Decided	Original Proposed Assessment Amounts	Proposed Assessment Amounts After Decision	Percent Change in Assessment Amounts	No. with S&S Changed to Non-S&S	Original Proposed Assessment Amounts	Proposed Assessment Amounts After Decision	No. Vacated or Withdrawn	Original Proposed Assessment Amounts	Avg. Days from Issue to Contest	Avg. Days from Contest to Decision	Avg. Days from Issue to Decision
2006	4,014	6,728,952.00	3,847,332.49	-43%	321	172,750.00	57,526.50	242	655,442.00	164	215	379
2007	4,119	7,082,090.00	4,566,667.70	-36%	608	513,137.00	181,856.00	201	446,397.00	150	249	403
2008	7,109	\$16,758,344	\$9,781,401	-42%	1,124	\$1,859,772	\$668,587	305	\$1,021,445	152	312	464
2009	9,010	\$29,875,344	\$15,352,346	-49%	1,527	\$3,769,111	\$1,107,471	353	\$1,450,126	146	434	580
2010*	3,811	\$10,439,959	\$5,404,154	-48%	625	\$1,411,189	\$372,548	83	\$291,475	115	470	585

Unwarrantable Failure Penalty Decisions												
Decision Fiscal Year	Number of Penalties (citations/orders) Decided	Original Proposed Assessment Amounts	Proposed Assessment Amounts After Decision	Percent Change in Assessment Amounts	No. with 104(d) Changed to 104(j)	Original Proposed Assessment Amounts	Proposed Assessment Amounts After Decision	No. Vacated or Withdrawn	Original Proposed Assessment Amounts	Avg. Days from Issue to Contest	Avg. Days from Contest to Decision	Avg. Days from Issue to Decision
2006	728	3,918,375.00	2,061,284.61	-47%	77	659,271.00	238,603.80	62	423,691.00	246	282	527
2007	677	3,715,030.00	2,402,263.50	-36%	121	829,970.00	391,532.50	60	233,940.00	255	333	588
2008	873	\$6,020,321	\$3,496,442	-42%	153	\$852,550	\$396,462	62	\$710,667	256	393	648
2009	962	\$10,354,500	\$4,785,616	-54%	182	\$1,965,740	\$568,088	106	\$848,181	259	484	743
2010*	235	\$2,960,558	\$1,369,512	-53%	41	\$424,519	\$108,603	24	\$152,763	243	495	737

Fatal Accident Penalty Decisions									
Decision Fiscal Year	Number of Penalties (citations/orders) Decided	Original Proposed Assessment Amounts	Proposed Assessment Amounts After Decision	Percent Change in Assessment Amounts	No. Vacated or Withdrawn	Original Proposed Assessment Amounts	Proposed Assessment Amounts After Decision	Avg. Days from Issue to Contest	Avg. Days from Issue to Decision
2006	81	2,298,755.00	1,108,371.00	-52%	11	492,440.00	303	383	686
2007	85	\$1,871,813.00	\$1,239,492.50	-34%	23	268,789.00	261	470	731
2008	57	\$1,680,743	\$1,098,556	-34%	7	\$84,954	239	498	735
2009	40	\$1,218,813	\$609,394	-50%	10	\$94,810	376	503	879
2010*	11	\$427,030	\$248,600	-42%	0	\$0	228	503	732

High Negligence Penalty Decisions												
Decision Fiscal Year	Number of Penalties (citations/orders) Decided	Original Proposed Assessment Amounts	Proposed Assessment Amounts After Decision	Percent Change in Assessment Amounts	No. with Negligence Modified Down	Original Proposed Assessment Amounts	Proposed Assessment Amounts After Decision	No. Vacated or Withdrawn	Original Proposed Assessment Amounts	Avg. Days from Issue to Contest	Avg. Days from Contest to Decision	Avg. Days from Issue to Decision
2006	1,201	4,593,692.00	2,460,381.52	-46%	78	218,316.00	52,232.20	90	518,050.00	218	248	464
2007	1,306	4,943,195.00	2,940,218.66	-37%	168	833,722.00	383,766.58	133	311,333.00	211	297	509
2008	1,833	\$8,822,179	\$4,864,472	-45%	281	\$1,331,000	\$527,687	150	\$798,278	193	356	548
2009	2,083	\$14,359,389	\$6,906,232	-52%	291	\$2,417,521	\$605,624	172	\$843,965	197	462	659
2010*	724	\$5,220,629	\$2,522,721	-52%	122	\$793,601	\$182,011	38	\$182,530	172	487	659

Reckless Disregard Penalty Decisions												
Decision Fiscal Year	Number of Penalties (citations/orders) Decided	Original Proposed Assessment Amounts	Proposed Assessment Amounts After Decision	Percent Change in Assessment Amounts	No. with Negligence Modified Down	Original Proposed Assessment Amounts	Proposed Assessment Amounts After Decision	No. Vacated or Withdrawn	Original Proposed Assessment Amounts	Avg. Days from Issue to Contest	Avg. Days from Contest to Decision	Avg. Days from Issue to Decision
2006	63	468,113.00	265,198.00	-39%	4	26,025.00	450	9	10,965.00	281	351	612
2007	53	422,465.00	246,622.00	-42%	13	62,600.00	34,495.00	9	\$1,905.00	257	297	554
2008	52	\$466,448	\$342,788	-27%	3	\$16,900	\$9,150	4	\$16,225	315	379	694
2009	73	\$1,416,573	\$522,264	-63%	2	\$4,901	\$2,264	17	\$169,001	253	446	699
2010*	9	143,061.00	\$1,401.00	-94%	3	100,887.00	21,052.00	0	0	228	439	667

Contested Penalties - Number and percentage of penalty contests
(as of January 21, 2010)

Age Category	Number of Penalty Contests Pending	Percent of Penalty Contests Pending
3 or more years since contest	654	0.9%
2 or more years but less than 3 years since contest	2,910	3.8%
1 or more years but less than 2 years since contest	27,039	35.4%
Less than 1 year since contest	45,684	59.9%
Total	76,287	

Number of Violations Assessed and Contested by Operator FY 2009
(Limited to mine operators with a minimum of 30 contested violations and 40% contest rate)

<i>Mine Operator</i>	<i>Controller</i>	<i>Coal or MNM</i>	<i>Violations Assessed</i>	<i>Violations Contested</i>	<i>Percent Contested</i>
Tinker-Watkins Sand & Gravel Inc	Robert W Watkins	M	53	53	100%
Justice Energy Inc	James C Justice II	C	51	51	100%
Development Services Inc	John H Wellford	C	49	49	100%
Rocky Point Rock, Inc.	James T Tinin	M	45	45	100%
Pugh Brothers Construction, Inc.	Bradley A Pugh	M	45	45	100%
Thrasher Inc	Albert Thrasher	M	41	41	100%
Tripple H Coal, LLC	Bert D Hatmaker	C	38	38	100%
Bob Bak Construction	Bob Bak	M	38	38	100%
Hubbard Sand & Gravel	Carl P Zorn	M	35	35	100%
Bella Sand LLC	Enrico F DiGregorio	M	32	32	100%
North Florida Rock Ltd	Fred M. Webb	M	30	30	100%
Dynamic Energy Inc	Mechel Oao	C	64	63	98%
Pay Car Mining Inc	James C Justice II	C	156	153	98%
T & T Contracting Inc.	Rick Taylor	M	39	38	97%
Justice Highwall Mining, Inc	James C Justice II	C	36	35	97%
Andrew Noel Construction Inc	Andrew F Noel	M	31	30	97%
Bluestone Coal Corporation	James C Justice II	C	86	83	97%
Warcreek, Inc.	William R Ward, John B Ward	C	54	52	96%
West Texas Rock Resources, LLC	Randall D Smith	M	42	40	95%
Ember Contracting Inc	Randy Gilkerson	C	131	123	94%
D K Quarries Inc	Dan Kauffman	M	39	36	92%
Keystone Service Industries Inc	Mechel Oao	C	50	46	92%
American Coal Company	Robert E Murray	C	1,029	941	91%
Eagle Creek Mining LLC	John M Potter, Thomas A Potter	C	93	85	91%
Saint-Gobain Proppants	St Gobain	M	100	91	91%
Barrick Goldstrike Mines Inc	Barrick Gold Corp	M	229	208	91%
Heidman Mining LLC	R. Alex Johnson	C	76	69	91%
South Central Coal Company, Inc.	Bobby G Meadows Jr	C	157	142	90%
The Ohio Valley Coal Company	Robert E Murray	C	313	283	90%
Frontier Coal Company	Mechel Oao	C	160	144	90%
Texas Architectural Aggregate Inc	Joe R Williams Jr	M	49	44	90%
Williams & Sons Slate & Tile Inc	Anthony J Williams; Robert D Williams	M	57	51	89%
Kamph Rock Crushing Company Inc	John F Kamph	M	37	33	89%
KenAmerican Resources Inc	Robert E Murray	C	688	584	87%
Premier Chemicals LLC	Premier Chemicals LLC	M	54	47	87%
Charles F Lee & Sons Inc	Marvin G Lee	M	44	38	86%
R & R Mining Inc	Willis Ring	C	50	43	86%
American Energy Corporation	Robert E Murray	C	279	238	85%
Buzzi Unicem USA	Buzzi Unicem S P A	M	171	144	84%
Kangley Sand & Gravel	Don Merlino; Gary Merlino	M	38	32	84%
Giant Cement Company	Cementos Portland Valderrivas S A	M	158	133	84%
Sequoia Energy LLC	James C Justice II	C	113	95	84%
Iddings Quarry	David E Iddings	M	45	37	82%
Manalapan Mining Co., Inc.	Ben Bennett	C	738	606	82%
Bear River Zeolite Co	John C Lawrence	M	54	44	81%
NBR Sand	David J Durrett; Lewie Byers	M	41	33	80%

Number of Violations Assessed and Contested by Operator FY 2009
(Limited to mine operators with a minimum of 30 contested violations and 40% contest rate)

<i>Mine Operator</i>	<i>Controller</i>	<i>Coal or MNM</i>	<i>Violations Assessed</i>	<i>Violations Contested</i>	<i>Percent Contested</i>
Johnson-Floyd Coal Company LLC	Paul C Combs; Shirley W Combs	C	39	31	79%
West Ridge Resources Inc	Andalex Resources B V	C	300	234	78%
Ruscat Enterprises, Inc.	Howard Russell Morris	C	126	98	78%
Celite Corp	Imerys S A	M	95	73	77%
Bell County Coal Corporation	James River Coal Company	C	311	238	77%
L. G. Everist, Inc.	L G Everist Inc	M	68	51	75%
Almatis Inc	Almatis Holdings 1 BV	M	52	37	71%
Dixie Fuel Company LLC	Joseph T Bennett	C	47	33	70%
Tarmac America LLC	Titan Cement Company S A	M	110	77	70%
U S Borax Inc	Rio Tinto Group	M	99	69	70%
Brody Mining LLC	Brody Trust	C	628	436	69%
Argus Energy WV LLC	James H Booth	C	503	349	69%
Dorchester Enterprises, Inc.	Richard Gilliam	C	165	114	69%
ISP Minerals Inc	ISP Minerals Incorporated	M	87	60	69%
S Coal Company	Geraldine P Turner	C	111	75	68%
Oak Grove Resources LLC	Cleveland-Cliffs Inc	C	709	477	67%
Riverside Cement Co	Texas Industries Inc	M	116	78	67%
Moltan Company	Cheryl Followell	M	93	61	66%
Riverton Investment Corp.	Italcementi Spa	M	52	34	65%
ST. LAWRENCE ZINC COMPANY, LLC	Ortizinc	M	176	113	64%
Left Fork Mining Co Inc	Ben Bennett	C	496	318	64%
Tech Leasing & Rebuild, Inc.	Willard H. Cook	C	161	103	64%
Blue Haven Energy, Inc.	Howard Russell Morris	C	58	37	64%
Associated Contracting LLC	Rifle Coal Company; Anthony Frederick	C	98	62	63%
Double Bonus Coal Company	Mechel Oao	C	233	146	63%
Brooks Run Mining Company LLC	Alpha Natural Resources LLC	C	469	289	62%
Liggett Mining LLC	Stanley R Ditty	C	546	332	61%
Florida Rock Industries Inc.	Vulcan Materials Company	M	61	37	61%
Nyrstar Tennessee Mines, Strawberry Plains LLC	Tennessee Zinc Company LLC	M	121	73	60%
RoxCoal, Inc.	Citicorp Venture Capital Ltd	C	633	381	60%
Haynes Materials	Thomas R Haynes; Paul J Haynes	M	54	32	59%
Armstrong Coal Company	Armstrong Energy Corporation LLC	C	498	293	59%
EP Minerals, LLC	Eagle-Picher Industries Inc	M	63	37	59%
Chafin Branch Coal Co LLC	International Resources LLC	C	87	51	59%
Big Laurel Mining Corporation	Richard Gilliam	C	176	103	59%
Mullite Company Of America	Imerys S A	M	77	45	58%
Hidden Splendor Resources Inc	Alexander H Walker III	C	351	205	58%
The Feldspar Corporation	Imerys S A	M	57	33	58%
Inman Energy	Massey Energy Company	C	341	197	58%
Highland Mining Company LLC	Peabody Energy	C	776	446	57%
Tri County Coal, LLC	Gary J Ronald; Archibald C Parker	C	54	31	57%
McElroy Coal Company	CONSOL Energy Inc	C	1,065	611	57%
Pleasant View Mining Company Inc	Gary E Peyton	C	164	94	57%
Shamrock Coal Company Inc	James River Coal Company	C	414	232	56%
Infinity Energy Incorporated	James C Justice II	C	255	142	56%
Ohio County Coal Company LLC	Patriot Coal Corporation	C	335	185	55%
Rockhouse Creek Development, LLC	International Resources LLC	C	598	330	55%
Essroc Cement	Italcementi Spa	M	305	168	55%
Rosebud Mining Company	J Clifford Forrest III	C	1,060	572	54%
Emerald Coal Resources LP	Foundation Coal Corporation	C	434	234	54%

Number of Violations Assessed and Contested by Operator FY 2009
(Limited to mine operators with a minimum of 30 contested violations and 40% contest rate)

Mine Operator	Controller	Coal or MNM	Violations Assessed	Violations Contested	Percent Contested
National Cement Company Of California Inc	Vicat S A	M	128	69	54%
North Star Mining Inc.	Carl Kirk	C	156	84	54%
Speed Mining, LLC	Patriot Coal Corporation	C	859	457	53%
Matrix Energy LLC	James H Booth	C	225	119	53%
Parkwood Resources, Inc.	John P Garcia	C	157	83	53%
Fox Knob Coal Co, Inc.	Robert B Gabbard	C	78	41	53%
Bluff Spur Coal Corporation	Richard Gilliam	C	270	141	52%
Pinnacle Mining Company, LLC	Cleveland-Cliffs Inc	C	638	332	52%
Osaka Mining Corporation	Richard Gilliam	C	195	100	51%
Double Take Mining Company Inc	Edward A Asbury	C	102	52	51%
Eagle Coal Company Inc	James H Booth	C	85	43	51%
A & M Coal Co., Inc.	Anthony K Dotson; Mark Dotson	C	209	105	50%
Cloverlick Coal Company LLC	Richard Gilliam	C	132	66	50%
U.S. Silver - Idaho, Inc.	U S Silver Corporation	M	67	33	49%
Independence Coal Company Inc	Massey Energy Company	C	741	363	49%
Hopkins County Coal LLC	Alliance Resource Partners LP	C	500	243	49%
Kingwood Mining Company LLC	Alpha Natural Resources LLC	C	321	156	49%
Guest Mountain Mining Corporation	Richard Gilliam	C	175	85	49%
Bledsoe Coal Corporation	James River Coal Company	C	520	251	48%
AMFIRE Mining Company LLC	Alpha Natural Resources LLC	C	346	167	48%
Stillhouse Mining, LLC	Richard Gilliam	C	214	103	48%
Mountain Edge Mining, Inc.	Douglas M Epling	C	659	314	48%
Webster County Coal LLC	Alliance Resource Partners LP	C	739	351	47%
Quecreek Mining Inc.	Citicorp Venture Capital Ltd	C	64	30	47%
Lafarge Building Materials Incorporated	Lafarge S A	M	329	153	47%
Morse Brothers Inc	MDU Resources Group Inc	M	78	36	46%
Bandmill Coal Corp	Massey Energy Company	C	113	51	45%
Appolo Fuels Inc	Gary Asher	C	67	30	45%
Alden Resources LLC	James Cox	C	142	63	44%
Aracoma Coal Company	Massey Energy Company	C	436	188	43%
North Fork Coal Corporation	Richard Gilliam	C	267	115	43%
CORTEZ JOINT VENTURE	Barrick Gold Corp	M	79	34	43%
GCC Energy LLC	GCC of America	C	186	80	43%
Elk Run Coal Co	Massey Energy Company	C	1,188	501	42%
XMV, Inc.	William G Skewes	C	450	188	42%
Advent Mining LLC	Chester M Thomas	C	421	174	41%
Rex Coal Co, Inc	Joseph T Bennett	C	177	73	41%
Big Ridge Inc	Peabody Energy	C	1,010	414	41%
Mill Branch Coal Corporation	Richard Gilliam	C	162	66	41%
Excel Mining LLC	Alliance Resource Partners LP	C	938	380	41%
Dana Mining Company LLC	GenPower Holdings LP, James L Laurita Jr	C	176	71	40%
Cobra Natural Resources LLC	Alpha Natural Resources LLC	C	367	147	40%

COMPANIES CONTESTING LARGEST NUMBER OF CITATIONS

[Calendar Year 2009]

Controlling Company	Number of Violations Contested	Proposed Penalty Amounts Contested	Company Violations Contested as Percentage of All Violations Contested	Company Penalty Dollars Contested as Percentage of All Dollars Contested
All Mining	46,822	\$93,306,588
C02508 Massey Energy Company	3,741	\$10,486,334	8.0%	11.2%
C00692 CONSOL Energy Inc	2,173	\$7,324,052	4.6%	7.8%
C13408 Robert E Murray	1,963	\$2,349,683	4.2%	2.5%
0071611 Patriot Coal Corporation	1,509	\$3,530,080	3.2%	3.8%
C15833 Peabody Energy	1,322	\$8,639,575	2.8%	9.3%
C07082 Richard Gilliam	1,243	\$1,492,963	2.7%	1.6%
C13562 James River Coal Company	1,199	\$1,603,334	2.6%	1.7%
0041211 Alpha Natural Resources LLC	1,197	\$1,394,723	2.6%	1.5%
C15455 Alliance Resource Partners LP	1,116	\$2,099,117	2.4%	2.2%
C00015 Ben Bennett	890	\$450,855	1.9%	0.5%

COMPANIES CONTESTING LARGEST NUMBER OF CITATIONS—Continued
[Calendar Year 2009]

Controlling Company	Number of Violations Contested	Proposed Penalty Amounts Contested	Company Violations Contested as Percentage of All Violations Contested	Company Penalty Dollars Contested as Percentage of All Dollars Contested	
C04355	James C Justice II	808	\$951,236	1.7%	1.0%
M00106	Cleveland-Cliffs Inc	802	\$1,365,155	1.7%	1.5%
C11194	James H Booth	616	\$919,458	1.3%	1.0%
0085759	Mechel Oao	524	\$545,498	1.1%	0.6%
C07485	J Clifford Forrest III	506	\$726,866	1.1%	0.8%
0045307	International Coal Group Inc (ICG)	432	\$1,994,416	0.9%	2.1%
0069031	International Resources LLC	387	\$836,211	0.8%	0.9%
0059869	Coalfield Transport Inc	377	\$1,532,049	0.8%	1.6%
M02063	Lafarge S A	375	\$797,654	0.8%	0.9%
0041669	Wexford Capital LLC	366	\$1,013,846	0.8%	1.1%
M09149	Cemex S A	365	\$591,368	0.8%	0.6%
C15843	Citicorp Venture Capital Ltd	362	\$443,365	0.8%	0.5%
0059129	Brody Trust	358	\$941,087	0.8%	1.0%
M00004	Heidelberg Cement AG	352	\$690,650	0.8%	0.7%
0066691	Armstrong Energy Corporation LLC	345	\$529,971	0.7%	0.6%
C15194	Douglas M Epling	344	\$489,002	0.7%	0.5%
0044281	Foundation Coal Corporation	337	\$1,250,425	0.7%	1.3%
M06246	Barrick Gold Corp	287	\$440,929	0.6%	0.5%
M00165	Newmont Mining Corp	278	\$802,317	0.6%	0.9%
M00452	Rogers Group Inc	258	\$202,248	0.6%	0.2%
C00992	Walter Energy Incorporated	250	\$945,616	0.5%	1.0%
M06982	Buzzi Unicem S P A	247	\$295,758	0.5%	0.3%
M11763	Imerys S A	242	\$477,250	0.5%	0.5%
C14311	Donald Blankenberger	240	\$1,176,146	0.5%	1.3%
M13214	Cementos Portland Valderrivas S A	216	\$397,432	0.5%	0.4%
0071891	Vulcan Materials Company	215	\$101,309	0.5%	0.1%
M00199	Italcementi Spa	213	\$200,797	0.5%	0.2%
C00286	TECO Energy Inc	211	\$371,078	0.5%	0.4%
0041055	James H Booth	203	\$123,742	0.4%	0.1%
0085453	Metinvest B V	203	\$288,185	0.4%	0.3%
Total for 40 Companies Contesting the Most Citations		27,072	\$60,811,780	57.8%	65.2%

DETAIL SUMMARY BY MINE

Company/Mine Operator/Mine Name/Mine Type/State	No. of Violations Assessed	Penalty Dollars Assessed	No. of Violations Contested	Penalty Dollars Contested
Alliance Resource Partners LP	3,616	\$2,820,486	1,116	\$2,099,117
Excel Mining Llc	962	\$618,506	228	\$438,463
Mine No 2; Underground Coal; State—KY	35	\$34,119	18	\$30,205
Mine No 3; Underground Coal; State—KY	524	\$290,689	114	\$197,433
Preparation Plant; Facility Coal; State—KY	31	\$9,343	3	\$1,830
Van Lear Mine; Underground Coal; State—KY	372	\$284,355	93	\$208,995
Gibson County Coal LLC	447	\$676,180	157	\$585,858
Gibson Mine; Underground Coal; State—IN	447	\$676,180	157	\$585,858
Hopkins County Coal Llc	438	\$185,995	187	\$135,431
East Volunteer; Facility Coal; State—KY	15	\$1,804	3	\$452
Elk Creek Mine; Underground Coal; State—KY	405	\$181,761	176	\$133,625
Smith Mine; Surface Coal; State—KY	16	\$2,230	8	\$1,354
West Volunteer; Surface Coal; State—KY	2	\$200		
MC Mining LLC	21	\$2,892		
Preparation Plant; Facility Coal; State—KY	21	\$2,892		
Mettiki Coal LLC	20	\$2,377		
Mettiki General; Facility Coal; State—MD	20	\$2,377		
Mettiki Coal WV, LLC	218	\$87,390	13	\$13,839

DETAIL SUMMARY BY MINE—Continued

Company/Mine Operator/Mine Name/Mine Type/State	No. of Violations Assessed	Penalty Dollars Assessed	No. of Violations Contested	Penalty Dollars Contested
Mountain View Mine; Underground Coal; State—WV	218	\$87,390	13	\$13,839
River View Coal LLC	15	\$1,981	6	\$1,005
River View Facilities; Facility Coal; State—KY	5	\$576	1	\$176
River View Mine; Underground Coal; State—KY	10	\$1,405	5	\$829
Tunnel Ridge, LLC	6	\$839	1	\$176
Tunnel Ridge Mine; Underground Coal; State—WV	6	\$839	1	\$176
Warrior Coal LLC	402	\$231,715	107	\$144,646
Cardinal; Underground Coal; State—KY	386	\$218,075	102	\$132,269
Warrior Preparation Plant; Facility Coal; State—KY	16	\$13,640	5	\$12,377
Webster County Coal Llc	675	\$712,592	265	\$577,746
Dotiki Mine; Underground Coal; State—KY	675	\$712,592	265	\$577,746
White County Coal, LLC	412	\$300,019	152	\$201,953
Pattiki; Underground Coal; State—IL	412	\$300,019	152	\$201,953
Alpha Natural Resources LLC	3,207	\$1,968,873	1,197	\$1,394,723
AMFIRE Mining Company LLC	323	\$235,164	181	\$207,405
Armstrong Co Surface; Surface Coal; State—PA	2	\$1,126	1	\$1,026
Brockway Tipple; Facility Coal; State—PA	1	\$100		
Cambria Pitt 001; Surface Coal; State—PA	1	\$176		
Clearfield Co. Strips; Surface Coal; State—PA	3	\$1,504	1	\$1,304
Clymer Prep Plant; Facility Coal; State—PA	2	\$276		
Dora 8; Underground Coal; State—PA	57	\$49,738	23	\$43,210
Gillhouser Run Mine; Underground Coal; State—PA	41	\$20,939	21	\$18,323
Madison Mine; Underground Coal; State—PA	98	\$74,292	62	\$68,448
Nolo; Underground Coal; State—PA	76	\$60,712	48	\$51,867
Ondo Extension Mine; Underground Coal; State—PA	41	\$26,038	24	\$22,964
Portage Plant; Facility Coal; State—PA	1	\$263	1	\$263
Black Dog Coal Corporation	46	\$13,671	8	\$7,589
No 2; Underground Coal; State—VA	46	\$13,671	8	\$7,589
Brooks Run Mining Company LLC	536	\$332,987	342	\$307,042
Bens Creek No 1 Mine; Underground Coal; State—WV	59	\$8,188	27	\$4,124
Brooks Run Processing Plant No 1; Facility Coal; State—WV	5	\$728	1	\$176
Cucumber Mine; Underground Coal; State—WV	164	\$216,929	150	\$214,161
Mine No 5; Underground Coal; State—WV	23	\$4,928	4	\$1,507
Poplar Ridge No 1 Deep Mine; Underground Coal; State—WV	60	\$17,773	28	\$14,158
Saylor Mine; Underground Coal; State—WV	31	\$3,417	6	\$841
Seven Pines; Surface Coal; State—WV	7	\$762	1	\$100
War Branch No 1 Mine; Underground Coal; State—WV	61	\$34,477	58	\$33,906
Wyoming No 1; Underground Coal; State—WV	36	\$9,777	12	\$6,338
Wyoming No 2; Underground Coal; State—WV	90	\$36,008	55	\$31,731
Cobra Natural Resources LLC	240	\$152,091	101	\$112,835
Black Bear Preparation Plant; Facility Coal; State—WV	38	\$6,509		
Mountaineer Alma A Mine; Underground Coal; State—WV	197	\$143,765	98	\$111,218
Plant #1; Facility Coal; State—WV	5	\$1,817	3	\$1,617
Coral Energy Services LLC	1	\$585	1	\$585
Coral Energy; Facility Coal; State—PA	1	\$585	1	\$585
Cumberland Coal Resources, LP	77	\$54,902	20	\$34,104
Cumberland Mine; Underground Coal; State—PA	77	\$54,902	20	\$34,104
Dickenson-Russell Coal Company, LLC	640	\$368,023	181	\$211,654
Cherokee Mine; Underground Coal; State—VA	238	\$190,306	97	\$125,198
Laurel Mountain; Underground Coal; State—VA	230	\$101,190	31	\$39,833
Mc Clure River Plant; Facility Coal; State—VA	20	\$3,751	4	\$1,449
Moss #3 Plant; Facility Coal; State—VA	14	\$2,014		
Roaring Fork No 4; Underground Coal; State—VA	138	\$70,762	49	\$45,174
Emerald Coal Resources LP	98	\$90,629	49	\$81,062
Emerald Mine No 1; Underground Coal; State—PA	98	\$90,629	49	\$81,062
Enterprise Mining Company LLC	313	\$158,763	43	\$67,121
Big Branch West Surface Mine; Surface Coal; State—KY	12	\$2,175		
Big Branch; Surface Coal; State—KY	9	\$1,537		
Mine #8; Underground Coal; State—KY	158	\$99,592	40	\$65,566
Mine #9A; Underground Coal; State—KY	119	\$53,113	1	\$1,203
Pioneer Preparation Plant; Facility Coal; State—KY	12	\$2,046	2	\$352
Roxana Prep Plant; Facility Coal; State—KY	3	\$300		
Gallatin Materials LLC	1	\$100		

DETAIL SUMMARY BY MINE—Continued

Company/Mine Operator/Mine Name/Mine Type/State	No. of Violations Assessed	Penalty Dollars Assessed	No. of Violations Contested	Penalty Dollars Contested
Mississippi Lime Company—Verona Plant; Facility Stone; State—KY	1	\$100		
Herdon Processing Company LLC	1	\$100		
Keystone No 2 Plant; Facility Coal; State—WV	1	\$100		
Kepler Processing Company LLC	15	\$1,748		
Kepler No. 1 Prep Plant; Facility Coal; State—WV	15	\$1,748		
Kingston Mining Inc	52	\$24,517	17	\$18,414
Kingston No 1; Underground Coal; State—WV	21	\$6,633	3	\$3,314
Kingston No. 2; Underground Coal; State—WV	31	\$17,884	14	\$15,100
Kingston Processing Inc	11	\$6,197	6	\$2,877
Kingston Plant; Facility Coal; State—WV	11	\$6,197	6	\$2,877
Kingwood Mining Company LLC	71	\$50,132	29	\$41,162
Whitetail Kittanning Mine; Surface Coal; State—WV	67	\$49,247	28	\$40,577
Whitetail Preparation Facility; Facility Coal; State—WV	4	\$885	1	\$585
Litwar Processing Company, LLC	4	\$563	2	\$363
Lick Branch Impoundment; Surface Coal; State—WV	2	\$363	2	\$363
Litwar Preparation Plant; Facility Coal; State—WV	2	\$200		
Paramont Coal Company Virginia, LLC	429	\$139,428	89	\$62,920
88 Strip; Surface Coal; State—VA	9	\$1,753	2	\$685
Deep Mine #25; Underground Coal; State—VA	82	\$45,348	7	\$14,145
Deep Mine #26; Underground Coal; State—VA	221	\$69,445	58	\$39,814
Deep Mine #35; Underground Coal; State—VA	69	\$11,955	15	\$4,809
Deep Mine 37; Underground Coal; State—VA	16	\$3,072	6	\$2,055
Deep Mine 41; Underground Coal; State—VA	6	\$600		
Lovers Gap #3; Surface Coal; State—VA	9	\$3,112	1	\$1,412
Red Onion Surface Mine; Surface Coal; State—VA	4	\$2,475		
South Fork; Surface Coal; State—VA	1	\$100		
Toms Creek Complex; Facility Coal; State—VA	12	\$1,568		
Premium Energy LLC	48	\$56,201	45	\$55,794
Mine No 1; Surface Coal; State—WV	48	\$56,201	45	\$55,794
RAG COAL WEST INCORPORATED	20	\$6,283	1	\$1,530
Belle Ayr Mine; Surface Coal; State—WY	18	\$5,869	1	\$1,530
Eagle Butte Mine; Surface Coal; State—WY	2	\$414		
Rivereagle Corporation	1	\$100		
Rivereagle Corporation; Facility Coal; State—KY	1	\$100		
Riverside Energy Company, LLC	1	\$100		
Bens Creek No 1 Mine; Underground Coal; State—WV	1	\$100		
Rockspring Development Inc	210	\$238,623	71	\$158,991
Camp Creek Mine; Underground Coal; State—WV	201	\$233,694	67	\$155,158
Camp Creek Processing; Facility Coal; State—WV	9	\$4,929	4	\$3,833
Simmons Fork Mining Inc	3	\$452		
Paynter Branch Surface Mine; Surface Coal; State—WV	3	\$452		
Twin Star Mining Inc	45	\$7,813		
No 1 Loading Dock; Facility Coal; State—VA	26	\$4,023		
No 2 Surface; Surface Coal; State—VA	19	\$3,790		
White Flame Energy, Inc	21	\$29,701	11	\$23,275
No 9 Surface; Surface Coal; State—WV	21	\$29,701	11	\$23,275
Armstrong Energy Corporation LLC	538	\$575,131	345	\$529,971
Armstrong Coal Company, Inc	538	\$575,131	345	\$529,971
Armstrong Prep and Dock Facility; Facility Coal; State—KY	10	\$1,984	4	\$1,384
Big Run Mine; Underground Coal; State—KY	411	\$549,776	305	\$515,978
Eastfork Surface Mine; Surface Coal; State—KY	4	\$1,712	1	\$1,412
Midway Coal Handling Facility; Facility Coal; State—KY	16	\$1,788	4	\$538
Midway Mine; Surface Coal; State—KY	15	\$3,168	2	\$568
Parkway Mine Surface Facilities; Facility Coal; State—KY	5	\$624	3	\$424
Parkway Mine; Underground Coal; State—KY	77	\$16,079	26	\$9,667
Barrick Gold Corp	499	\$608,022	287	\$440,929
Barrick Gold U S Inc	33	\$34,420	4	\$6,913
Bald Mountain Mine; Surface Metal; State—NV	33	\$34,420	4	\$6,913
Barrick Goldstrike Mines Inc	194	\$272,916	173	\$240,550
Goldstrike Mine; Surface Metal; State—NV	72	\$46,213	72	\$46,213
Meikle Mine; Underground Metal; State—NV	84	\$218,300	64	\$186,034
Mill/Autoclave Operations; Facility Metal; State—NV	34	\$6,103	33	\$6,003

DETAIL SUMMARY BY MINE—Continued

Company/Mine Operator/Mine Name/Mine Type/State	No. of Violations Assessed	Penalty Dollars Assessed	No. of Violations Contested	Penalty Dollars Contested
Roaster Operations; Facility Metal; State—NV	4	\$2,300	4	\$2,300
Barrick Turquoise Ridge Incorporated	151	\$219,035	57	\$137,811
GETCHELL MINE; Underground Metal; State—NV	3	\$300		
Turquoise Ridge Mine; Underground Metal; State—NV	148	\$218,735	57	\$137,811
CORTEZ JOINT VENTURE	84	\$67,723	42	\$53,790
BARRICK CORTEZ UNDERGROUND; Underground Metal; State—NV	23	\$3,891	9	\$2,126
Barrick Cortez; Surface Metal; State—NV	61	\$63,832	33	\$51,664
Golden Sunlight Mines Inc	23	\$8,704	11	\$1,865
Golden Sunlight Mine Inc; Surface Metal; State—MT	23	\$8,704	11	\$1,865
Homestake Mining Company of California	13	\$5,124		
Ruby Hill Mine; Surface Metal; State—NV	13	\$5,124		
Pinson Mining Company	1	\$100		
Pinson Underground; Underground Metal; State—NV	1	\$100		
Ben Bennett	1,169	\$483,894	890	\$450,855
Left Fork Mining Co	538	\$214,218	340	\$190,035
Prep Plant; Facility Coal; State—KY	50	\$14,540	41	\$13,640
Straight Creek #1 Mine; Underground Coal; State—KY	488	\$199,678	299	\$176,395
Manalapan Mining	631	\$269,676	550	\$260,820
Cm&E #3; Surface Coal; State—KY	31	\$10,454	21	\$9,454
P-1; Underground Coal; State—KY	190	\$57,757	173	\$56,040
Prep Plant; Facility Coal; State—KY	26	\$4,008	24	\$3,808
RB #10; Underground Coal; State—KY	46	\$13,650	40	\$13,050
RB #11; Underground Coal; State—KY	6	\$897	6	\$897
RB #12; Underground Coal; State—KY	157	\$69,320	140	\$66,932
RB #4; Underground Coal; State—KY	17	\$4,770	14	\$4,470
RB #5; Underground Coal; State—KY	158	\$108,820	132	\$106,169
Brody Trust	533	\$975,194	358	\$941,087
Brody Mining LLC	533	\$975,194	358	\$941,087
Brody Mine No 1; Underground Coal; State—WV	533	\$975,194	358	\$941,087
Buzzi Unicem S P A	375	\$336,420	247	\$295,758
Alamo Cement Company Ltd	13	\$1,350	11	\$1,150
1604 QUARRY & PLANT; Facility Stone; State—TX	13	\$1,350	11	\$1,150
Alamo Concrete Products Ltd	20	\$3,365	13	\$2,638
Barrett Base Pit; Surface Stone; State—TX	4	\$427		
SOUTH-TEX QUARRY; Surface SandAndGravel; State—TX	6	\$1,668	6	\$1,668
VARMICON QUARRY; Surface Stone; State—TX	5	\$590	2	\$290
WEIR PLANT; Surface Stone; State—TX	5	\$680	5	\$680
Buzzi Unicem USA	175	\$168,073	163	\$164,591
Bennett's Lake Quarry; Surface Stone; State—TN	2	\$1,080		
INDEPENDENCE QUARRY & MILL; Facility Stone; State—KS	1	\$308		
Selma Plant Quarry & Mill; Facility Stone; State—MO	154	\$161,063	154	\$161,063
Signal Mountain Cement Co; Facility Stone; State—TN	18	\$5,622	9	\$3,528
Buzzi Unicem USA (Mid-Atlantic) Inc	13	\$3,444		
Hercules Cement LP; Facility Stone; State—PA	13	\$3,444		
Lone Star Industries Inc	150	\$159,107	56	\$126,298
Lone Star Industries; Facility Stone; State—IN	42	\$41,333	16	\$30,680
LONE STAR PRYOR PLT MILL & QY; Surface Stone; State—OK	35	\$13,531	23	\$4,947
Lone Star Quarry & Mill; Facility Stone; State—MO	6	\$70,517	1	\$70,000
MARYNEAL QUARRY AND MILL; Facility Stone; State—TX	64	\$23,688	15	\$10,871
Oglesby Cement Plant; Facility Stone; State—IL	3	\$10,038	1	\$9,800
VARMICON PARTNERSHIP, Ltd	4	\$1,081	4	\$1,081
VARMICON QUARRY; Surface Stone; State—TX	4	\$1,081	4	\$1,081
Cementos Portland Valderrivas S A	303	\$477,163	216	\$397,432
Dragon Products Company, LLC	90	\$63,992	54	\$46,744
MADAWASKA PLANT; Surface SandAndGravel; State—ME	16	\$3,102	16	\$3,102
THOMASTON CEMENT PLANT; Facility Stone; State—ME	74	\$60,890	38	\$43,642
Giant Cement Holding Co	160	\$342,132	153	\$332,974
Giant Cement Company; Facility Stone; State—SC	160	\$342,132	153	\$332,974
Keystone Cement Company	53	\$71,039	9	\$17,714
KEYSTONE CEMENT COMPANY; Facility Stone; State—PA	53	\$71,039	9	\$17,714
Cemex S A	1,419	\$1,465,826	365	\$591,368
Cemex	6	\$648		

DETAIL SUMMARY BY MINE—Continued

Company/Mine Operator/Mine Name/Mine Type/State	No. of Violations Assessed	Penalty Dollars Assessed	No. of Violations Contested	Penalty Dollars Contested
West Salem Aggregate; Surface SandAndGravel; State—OR	6	\$648		
Cemex Puerto Rico	49	\$134,993		
CANTERA CANAS; Surface Stone; State—PR	6	\$1,958		
Florida Lime; Facility Stone; State—PR	18	\$43,876		
Ponce Cement Plant; Facility Stone; State—PR	25	\$89,159		
Cemex California Cement LLC	130	\$276,878	44	\$200,084
Black Mountain Quarry; Facility Stone; State—CA	91	\$250,340	40	\$194,747
Victorville Cement Plant; Facility Stone; State—CA	39	\$26,538	4	\$5,337
Cemex Construction Materials Atlantic LLC	30	\$5,818		
Bardstown Quarry; Surface Stone; State—KY	3	\$716		
Bowling Green South Quarry; Surface Stone; State—KY	3	\$338		
Cumberland Quarry; Surface Stone; State—KY	8	\$1,482		
HARLAN QUARRY; Surface Stone; State—KY	8	\$2,482		
Hartford Quarry; Surface Stone; State—KY	2	\$200		
Pineville Quarry; Surface Stone; State—KY	6	\$600		
CEMEX CONSTRUCTION MATERIALS LP	155	\$99,816	22	\$37,321
Red Hill; Surface SandAndGravel; State—CA	9	\$3,285		
Azusa Quarry; Surface SandAndGravel; State—CA	6	\$824		
CEMEX—Paiute Pit; Surface SandAndGravel; State—NV	36	\$35,532	9	\$14,539
CEMEX—Sierra Stone Quarry; Surface SandAndGravel; State— NV	22	\$25,862	8	\$19,884
Clayton Plant; Surface Stone; State—CA	2	\$307		
Eliot Plant; Surface SandAndGravel; State—CA	21	\$10,558		
Lapis Plant; Surface SandAndGravel; State—CA	3	\$1,771		
Lemoncove Plant; Surface SandAndGravel; State—CA	4	\$1,401		
Moorpark Quarry; Surface SandAndGravel; State—CA	6	\$627		
Norman Sand Mine; Surface SandAndGravel; State—NC	13	\$4,017		
Patterson Plant; Surface SandAndGravel; State—CA	15	\$6,197	5	\$2,898
Redlands Quarry; Surface SandAndGravel; State—CA	3	\$376		
Rockfield Plant; Surface SandAndGravel; State—CA	5	\$5,067		
Sunol Plant; Surface SandAndGravel; State—CA	10	\$3,992		
CEMEX Construction Materials Pacific LLC	15	\$1,909		
Canby Pit; Surface Stone; State—OR	3	\$485		
CEMEX—Sierra Stone Quarry; Surface SandAndGravel; State— NV	6	\$824		
Everett Pit & Plant; Surface SandAndGravel; State—WA	5	\$500		
Mayhew Plant; Surface SandAndGravel; State—CA	1	\$100		
CEMEX Construction Materials South LLC	217	\$60,236	13	\$18,288
CEMEX—MCCORMICK; Surface SandAndGravel; State—AZ	3	\$350		
CEMEX—19TH AVE; Surface SandAndGravel; State—AZ	9	\$1,719		
CEMEX—59TH AVENUE; Surface SandAndGravel; State—AZ	2	\$200		
CEMEX—BEELINE; Surface SandAndGravel; State—AZ	1	\$634		
CEMEX—BUCKEYE; Surface SandAndGravel; State—AZ	5	\$527		
CEMEX—CAMP VERDE; Surface SandAndGravel; State—AZ	3	\$861		
CEMEX—CASA GRANDE; Surface SandAndGravel; State—AZ	14	\$3,574		
CEMEX—COOLIDGE; Surface SandAndGravel; State—AZ	7	\$1,099		
CEMEX—CORTARO WET; Surface SandAndGravel; State—AZ	7	\$1,961		
CEMEX—GLENDALE; Surface SandAndGravel; State—AZ	4	\$1,279		
CEMEX—GLOBE/BIXBY; Surface SandAndGravel; State—AZ	5	\$517		
CEMEX—GRAY MOUNTAIN; Surface Stone; State—AZ	2	\$200		
CEMEX—HWY 95; Surface SandAndGravel; State—AZ	8	\$1,425		
CEMEX—JOMAX; Surface SandAndGravel; State—AZ	1	\$100		
CEMEX—MAGUIREVILLE; Surface SandAndGravel; State—AZ	2	\$655		
CEMEX—MARICOPA; Surface SandAndGravel; State—AZ	1	\$100		
CEMEX—MESA; Surface SandAndGravel; State—AZ	6	\$688		
CEMEX—NOGALES; Surface SandAndGravel; State—AZ	3	\$300		
CEMEX—PIMA; Surface SandAndGravel; State—AZ	2	\$290		
CEMEX—PRESCOTT/FAIN; Surface SandAndGravel; State—AZ	13	\$3,035		
CEMEX—QUEEN CREEK; Surface SandAndGravel; State—AZ	3	\$300		
CEMEX—SACATON; Surface SandAndGravel; State—AZ	3	\$443		
CEMEX—SHEEPHILL PLANT; Surface Stone; State—AZ	3	\$300		
CEMEX—SIERRA VISTA; Surface SandAndGravel; State—AZ	3	\$327		
CEMEX—SUN CITY; Surface SandAndGravel; State—AZ	12	\$1,729		

DETAIL SUMMARY BY MINE—Continued

Company/Mine Operator/Mine Name/Mine Type/State	No. of Violations Assessed	Penalty Dollars Assessed	No. of Violations Contested	Penalty Dollars Contested
CEMEX—WEST PLANT #72; Surface SandAndGravel; State—AZ	7	\$1,008		
CEMEX—WEST VALLEY; Surface SandAndGravel; State—AZ	4	\$400		
CEMEX—WINKLEMAN; Surface Nonmetal; State—AZ	3	\$362		
EAST LOOP 375 SAND PLT; Surface SandAndGravel; State—TX ..	9	\$1,916		
Fort Calhoun Stone East Quarry; Surface Stone; State—NE	10	\$1,396		
LA LUZ PIT; Surface SandAndGravel; State—NM	4	\$490		
MC KELLIGON CANYON; Surface Stone; State—TX	35	\$28,729	13	\$18,288
McCombs Quarry; Surface SandAndGravel; State—TX	9	\$1,340		
Rinker Materials Bullhead; Surface SandAndGravel; State—AZ ..	5	\$534		
TORO QUARRY; Surface Stone; State—TX	5	\$1,048		
VADO QUARRY; Surface Stone; State—NM	4	\$400		
CEMEX INC	711	\$709,027	260	\$309,115
474 Sand Mine; Surface SandAndGravel; State—FL	13	\$4,821	6	\$1,853
ALICO ROAD QUARRY; Surface Stone; State—FL	1	\$100		
Balcones Plant; Facility Stone; State—TX	3	\$424	1	\$224
Balcones Quarry; Surface Stone; State—TX	9	\$2,386		
Brooksville Quarry; Surface Stone; State—FL	2	\$276		
CARD SOUND QUARRY; Surface Stone; State—FL	4	\$4,373	4	\$4,373
Cemex Const Materials Atlantic, LLC; Facility Stone; State—OH	6	\$2,413		
Center Hill Mine; Surface Stone; State—FL	11	\$1,370	4	\$670
City Point Terminal; Facility Stone; State—FL	2	\$290		
Clinchfield Plant Cemex Incorporated; Facility Stone; State—GA	80	\$64,512	10	\$33,371
Davenport Sand Mine; Surface SandAndGravel; State—FL	11	\$2,202	10	\$2,102
DEERFIELD SAND; Surface SandAndGravel; State—SC	2	\$216		
Demopolis Plant Cemex Inc; Facility Stone; State—AL	19	\$10,894		
FEC QUARRY; Surface Stone; State—FL	19	\$4,714	7	\$939
Gator Sand Mine; Surface SandAndGravel; State—FL	1	\$100	1	\$100
Inglis Quarry; Surface Stone; State—FL	1	\$100		
Jim Houk Mine #1; Underground Stone; State—PA	80	\$60,145	25	\$22,430
Knoxville Cement Plant Cemex Inc; Facility Stone; State—TN	84	\$259,712	1	\$31,988
Kosmos Cement Battletown Quarry; Surface Stone; State—KY ...	5	\$538		
KOSMOS CEMENT CO.; Facility Stone; State—KY	12	\$3,619	1	\$745
Krome Quarry; Surface Stone; State—FL	8	\$1,690	1	\$334
Lake Wales Sand Mine; Surface SandAndGravel; State—FL	1	\$100	1	\$100
Lyons Cement Plant Cemex Inc; Facility Stone; State—CO	23	\$2,930	3	\$463
Miami Cement Plant; Facility Stone; State—FL	171	\$99,598	157	\$98,170
Odessa Cement Plant Cemex Incorporated; Facility Stone; State—TX	39	\$84,040	13	\$58,455
PALMDALE SAND MINE; Surface SandAndGravel; State—FL	11	\$1,397		
Rio Colorado Materials; Surface SandAndGravel; State—TX	5	\$680		
S C L Quarry; Surface Stone; State—FL	1	\$100		
Tulley Mine; Surface SandAndGravel; State—FL	1	\$100		
Wampum Plant Cemex Inc.; Facility Stone; State—PA	86	\$95,187	15	\$52,798
Desarrollos Multiples Insulares	19	\$125,928		
Gravero Lirios; Surface SandAndGravel; State—PR	19	\$125,928		
Florida Crushed Stone Co	19	\$15,947	6	\$5,867
Brooksville South Cement Plant; Facility Stone; State—FL	19	\$15,947	6	\$5,867
Pacific Rock Products, LLC	28	\$16,681	13	\$12,413
Canby Pit; Surface Stone; State—OR	2	\$200		
English Pit; Surface SandAndGravel; State—WA	8	\$3,428	4	\$2,229
Fisher Quarry; Surface Stone; State—WA	14	\$12,653	9	\$10,184
Lewisville Pit; Surface SandAndGravel; State—WA	3	\$300		
Portable Screening Plant; Surface SandAndGravel; State—WA ...	1	\$100		
Rinker Materials Corp	6	\$2,284		
Everett Pit & Plant; Surface SandAndGravel; State—WA	2	\$710		
Granite Falls Quarry; Surface SandAndGravel; State—WA	4	\$1,574		
Rinker Materials Of Florida Inc	3	\$300		
474 Sand Mine; Surface SandAndGravel; State—FL	1	\$100		
Baymeadows Terminal; Surface Stone; State—FL	2	\$200		
RINKER MATERIALS WESTERN INC	6	\$1,373		
Red Hill; Surface SandAndGravel; State—CA	1	\$873		
Cache Creek Quarry; Surface SandAndGravel; State—CA	4	\$400		
Guernsey Quarry; Surface Stone; State—WY	1	\$100		

DETAIL SUMMARY BY MINE—Continued

Company/Mine Operator/Mine Name/Mine Type/State	No. of Violations Assessed	Penalty Dollars Assessed	No. of Violations Contested	Penalty Dollars Contested
RMC Pacific Materials	25	\$13,988	7	\$8,280
Bonny Doon Quarry; Surface Stone; State—CA	5	\$1,938		
Davenport Cement Plant; Facility Stone; State—CA	18	\$11,850	7	\$8,280
Davenport Sand Mine; Surface SandAndGravel; State—FL	1	\$100		
Tulley Mine; Surface SandAndGravel; State—FL	1	\$100		
Citicorp Venture Capital Ltd	623	\$489,000	362	\$443,365
Elk Lick Energy Inc	25	\$23,395	18	\$22,605
Roytown Deep Mine; Underground Coal; State—PA	25	\$23,395	18	\$22,605
Pbs Coals Inc	40	\$21,857	17	\$16,425
Cambria Fuel Plant; Facility Coal; State—PA	5	\$674		
Mine No 1; Surface Coal; State—PA	7	\$14,599	3	\$11,489
Shade Creek Plant; Facility Coal; State—PA	28	\$6,584	14	\$4,936
Quecreek Mining Inc	33	\$35,904	17	\$33,621
Quecreek #1 Mine; Underground Coal; State—PA	33	\$35,904	17	\$33,621
Rox Coal Inc	525	\$407,844	310	\$370,714
Agustus; Underground Coal; State—PA	160	\$151,245	102	\$141,631
Geronimo; Underground Coal; State—PA	24	\$19,132	11	\$17,586
Horning Deep Mine; Underground Coal; State—PA	3	\$699	1	\$499
Kimberly Run; Underground Coal; State—PA	149	\$92,178	88	\$81,659
Miller Mine; Underground Coal; State—PA	70	\$57,409	34	\$48,696
Quecreek #1 Mine; Underground Coal; State—PA	72	\$45,369	47	\$41,355
Roytown Deep Mine; Underground Coal; State—PA	47	\$41,812	27	\$39,288
Cleveland-Cliffs Inc	1,199	\$1,822,425	802	\$1,365,155
Northshore Mining Company	164	\$26,313	3	\$648
Northshore Mine; Surface Metal; State—MN	25	\$2,922		
Northshore Mining Company; Facility Metal; State—MN	139	\$23,391	3	\$648
Oak Grove Resources, LLC	621	\$1,528,735	527	\$1,122,407
Concord Mine; Facility Coal; State—AL	34	\$18,597	32	\$18,397
Oak Grove Mine; Underground Coal; State—AL	587	\$1,510,138	495	\$1,104,010
Pinnacle Mining Company, LLC	414	\$267,377	272	\$242,100
Green Ridge #1 Mine; Underground Coal; State—WV	76	\$50,659	56	\$47,247
Green Ridge #2; Underground Coal; State—WV	2	\$200	2	\$200
Pinnacle Mine; Underground Coal; State—WV	301	\$211,194	201	\$192,648
Pinnacle Preparation Plant; Facility Coal; State—WV	35	\$5,324	13	\$2,005
Coalfield Transport Inc	1,075	\$1,756,684	377	\$1,532,049
Big River Mining LLC	676	\$1,373,209	270	\$1,285,385
Broad Run Mine; Underground Coal; State—WV	676	\$1,373,209	270	\$1,285,385
Clearwater Processing LLC	10	\$1,796	4	\$1,188
Broad Run Prep Plant; Facility Coal; State—WV	10	\$1,796	4	\$1,188
Mach Mining, LLC	348	\$372,107	101	\$244,173
Mach #1 Mine; Underground Coal; State—IL	348	\$372,107	101	\$244,173
MaRyan Mining LLC	36	\$7,907		
Shay #1 Mine; Underground Coal; State—IL	36	\$7,907		
M-Class Mining LLC	4	\$1,565	2	\$1,303
MC#1 Mine; Underground Coal; State—IL	4	\$1,565	2	\$1,303
Meigs Processing LLC	1	\$100		
Buckeye Plant; Facility Coal; State—OH	1	\$100		
CONSOL Energy Inc	6,274	\$9,034,640	2,173	\$7,324,052
Central Ohio Coal Company	4	\$400		
Muskingum Mine; Surface Coal; State—OH	4	\$400		
Consol of Kentucky Inc	347	\$156,513	63	\$76,098
Big Branch No 1 Belt Mine; Underground Coal; State—WV	12	\$2,341		
Bronzite III; Underground Coal; State—WV	22	\$4,337	1	\$807
Bronzite; Underground Coal; State—WV	47	\$25,620	5	\$5,964
Jones Fork E-3; Underground Coal; State—KY	174	\$78,851	37	\$36,774
Jones Fork Prep Plant; Facility Coal; State—KY	14	\$2,218		
Miller Creek Preparation Plant #1; Facility Coal; State—WV	19	\$13,966	10	\$11,488
Minway Surface; Surface Coal; State—WV	6	\$1,648		
MT-13/500; Surface Coal; State—WV	15	\$21,925	9	\$20,965
MT-34; Surface Coal; State—WV	5	\$1,109		
MT-41; Underground Coal; State—WV	33	\$4,498	1	\$100
Consol Pennsylvania Coal Company	829	\$1,113,804	278	\$824,921
Bailey Mine; Underground Coal; State—PA	528	\$465,518	108	\$221,531

DETAIL SUMMARY BY MINE—Continued

Company/Mine Operator/Mine Name/Mine Type/State	No. of Violations Assessed	Penalty Dollars Assessed	No. of Violations Contested	Penalty Dollars Contested
Enlow Fork Mine; Underground Coal; State—PA	301	\$648,286	170	\$603,390
Consol Pennsylvania Coal Company LLC	27	\$9,667	5	\$3,861
Bailey Mine; Underground Coal; State—PA	22	\$9,034	4	\$3,753
Enlow Fork Mine; Underground Coal; State—PA	5	\$633	1	\$108
Consolidation Coal Company	3,649	\$4,386,311	1,097	\$3,321,062
Big Fork Mine; Underground Coal; State—VA	6	\$600		
Blacksville #1; Facility Coal; State—WV	1	\$100		
Blacksville No 2; Underground Coal; State—WV	687	\$535,381	216	\$418,420
Buchanan Mine #1; Underground Coal; State—VA	843	\$1,253,000	250	\$879,535
Central Repair Shop; Facility Coal; State—WV	3	\$300		
Emery Mine; Underground Coal; State—UT	164	\$238,713	72	\$219,739
Ireland River Loading Facility; Facility Coal; State—WV	5	\$652	2	\$276
Laurel Fork Mine; Underground Coal; State—WV	1	\$100		
Loveridge No 22; Underground Coal; State—WV	636	\$1,118,904	167	\$892,175
Reclamation No 061; Surface Coal; State—OH	1	\$100		
Rend Lake; Facility Coal; State—IL	5	\$1,213	1	\$585
Robinson Run No 95; Underground Coal; State—WV	662	\$791,370	197	\$571,863
Shoemaker Mine; Underground Coal; State—WV	635	\$445,878	192	\$338,469
Eighty Four Mining Company	125	\$103,720	30	\$61,493
Mine 84; Underground Coal; State—PA	125	\$103,720	30	\$61,493
Fola Coal Company LLC	115	\$101,756	27	\$63,270
Bridge Fork Surface Mine No 1; Surface Coal; State—WV	7	\$2,266		
Peach Orchard Prep Plant & Ld Fac; Facility Coal; State—WV ...	12	\$1,734		
Surface Mine No 2; Surface Coal; State—WV	94	\$97,556	27	\$63,270
Winoc Preparation Plant; Facility Coal; State—WV	2	\$200		
Greenon Coal Company	1	\$100		
Greenon Coal Company; Facility Coal; State—WV	1	\$100		
Island Creek Coal Company	1	\$100		
Elk Creek Plant; Facility Coal; State—WV	1	\$100		
Keystone Coal Mining Company	7	\$1,661		
Keystone Cleaning Plant; Facility Coal; State—PA	7	\$1,661		
Little Eagle Coal Company, L.L.C	107	\$33,892	13	\$11,168
Lick Branch Mine No 2; Underground Coal; State—WV	11	\$4,486		
Little Eagle Mine No 1; Underground Coal; State—WV	5	\$500		
Rocklick Coalburg Deep Mine; Underground Coal; State—WV	91	\$28,906	13	\$11,168
Mc Elroy Coal Company	1,021	\$3,113,980	650	\$2,953,800
McElroy Mine; Underground Coal; State—WV	1,021	\$3,113,980	650	\$2,953,800
Southern Ohio Coal Company	1	\$100		
Meigs #31 Mine; Facility Coal; State—OH	1	\$100		
Southern West Virginia Resources LLC	37	\$12,336	10	\$8,379
Big Branch No 1 Belt Mine; Underground Coal; State—WV	21	\$9,603	10	\$8,379
Miller Creek Preparation Plant #1; Facility Coal; State—WV	10	\$1,000		
Minway Surface; Surface Coal; State—WV	6	\$1,733		
Terry Eagle Coal Company Llc	3	\$300		
Preparation Plant No 1; Facility Coal; State—WV	3	\$300		
Donald Blankenberger	835	\$1,711,861	240	\$1,176,146
Black Panther Mining LLC	45	\$13,541	8	\$6,211
Oaktown Fuels Mine No 1; Underground Coal; State—IN	40	\$12,100	7	\$5,577
Oaktown Fuels Mine No 2; Underground Coal; State—IN	5	\$1,441	1	\$634
Five Star Mining Inc	790	\$1,698,320	232	\$1,169,935
Prosperity Mine; Underground Coal; State—IN	790	\$1,698,320	232	\$1,169,935
Douglas M Epling	639	\$619,424	344	\$489,002
Legacy Resources, LLC	28	\$71,125	14	\$56,391
Synergy Surface Mine No 1; Surface Coal; State—WV	28	\$71,125	14	\$56,391
MOUNTAIN EDGE MINING, INC	611	\$548,299	330	\$432,611
Cheyland Dock; Facility Coal; State—WV	1	\$150		
Coalburg No. 1 Mine; Underground Coal; State—WV	222	\$204,966	133	\$170,562
Dorothy No 3 Mine; Underground Coal; State—WV	250	\$241,395	159	\$207,126
Sugar Maple Mine; Underground Coal; State—WV	73	\$23,331	24	\$9,253
Sweet Birch; Underground Coal; State—WV	65	\$78,457	14	\$45,670
Foundation Coal Corporation	1,025	\$1,476,004	337	\$1,250,425
Cumberland Coal Resources, LP	162	\$184,185	42	\$151,481
Cumberland Mine; Underground Coal; State—PA	162	\$184,185	42	\$151,481

DETAIL SUMMARY BY MINE—Continued

Company/Mine Operator/Mine Name/Mine Type/State	No. of Violations Assessed	Penalty Dollars Assessed	No. of Violations Contested	Penalty Dollars Contested
Emerald Coal Resources LP	232	\$644,625	117	\$617,855
Emerald Mine No 1; Underground Coal; State—PA	232	\$644,625	117	\$617,855
Freeport Mining, LLC	1	\$100		
Freeport Mine; Underground Coal; State—PA	1	\$100		
Kingston Mining Inc	112	\$70,902	28	\$46,779
Kingston No 1; Underground Coal; State—WV	45	\$17,452	5	\$6,126
Kingston No. 2; Underground Coal; State—WV	67	\$53,450	23	\$40,653
Kingston Processing Inc	19	\$5,482	2	\$2,335
Kingston Plant; Facility Coal; State—WV	19	\$5,482	2	\$2,335
Laurel Creek Company, Inc	64	\$63,689		
Mine No 8; Underground Coal; State—WV	2	\$2,369		
No 1; Underground Coal; State—WV	31	\$29,756		
No 5; Underground Coal; State—WV	7	\$8,969		
No 6; Underground Coal; State—WV	24	\$22,595		
Odel Processing Inc	4	\$1,173		
Dingess Processing Complex; Facility Coal; State—WV	1	\$873		
Odel Processing Laurel Loadout; Facility Coal; State—WV	3	\$300		
RAG COAL WEST INCORPORATED	44	\$28,267	3	\$10,903
Belle Ayr Mine; Surface Coal; State—WY	9	\$2,004		
Eagle Butte Mine; Surface Coal; State—WY	35	\$26,263	3	\$10,903
Rivereagle Corporation	2	\$200		
Rivereagle Corporation; Facility Coal; State—KY	2	\$200		
Rockspring Development Inc	384	\$477,281	145	\$421,072
Camp Creek Mine; Underground Coal; State—WV	355	\$471,354	145	\$421,072
Camp Creek Processing; Facility Coal; State—WV	29	\$5,927		
Simmons Fork Mining Inc	1	\$100		
Ewing Fork No. 1 Surface Mine; Surface Coal; State—WV	1	\$100		
Heidelberg Cement AG	1,429	\$1,187,466	352	\$690,650
Cadman (Black Diamond) Inc	4	\$1,048		
Cadman Black Diamond; Surface SandAndGravel; State—WA	4	\$1,048		
Cadman (Rock) Inc	9	\$5,115		
Cadman High Rock Quarry; Surface Stone; State—WA	5	\$3,680		
SKY RIVER PIT; Surface SandAndGravel; State—WA	4	\$1,435		
Cadman Inc	9	\$3,884		
Cadman (Redmond); Surface SandAndGravel; State—WA	4	\$599		
Cadman Longview (Gold Bar) Pit; Surface SandAndGravel; State—WA	1	\$100		
North Bend; Surface Stone; State—WA	4	\$3,185		
Calaveras Materials Inc	17	\$4,348		
Hughson Pit & Mill; Surface SandAndGravel; State—CA	4	\$978		
River Rock Pit & Mill; Surface SandAndGravel; State—CA	7	\$2,669		
San Andreas Plant; Surface Stone; State—CA	6	\$701		
Hanson Aggregates BMC Inc	149	\$54,393	52	\$31,104
Berlin Plant; Surface SandAndGravel; State—NJ	8	\$2,264	5	\$1,750
Cedar Lake Plant; Surface SandAndGravel; State—NJ	5	\$1,388	2	\$1,080
Dredge Thaddus Carr; Facility SandAndGravel; State—PA	4	\$400	2	\$200
Lower Burrell Plant; Surface SandAndGravel; State—PA	8	\$1,299	1	\$150
Newport Plant; Surface SandAndGravel; State—NJ	32	\$7,657	20	\$5,457
Ottsville Quarry; Surface Stone; State—PA	2	\$462	1	\$362
Penns Park Quarry; Surface Stone; State—PA	7	\$3,866	5	\$3,566
Rich Hill Underground Mine & Plant; Underground Stone; State—PA	16	\$9,558	4	\$7,448
Springfield Pike Mine & Plant; Underground Stone; State—PA	27	\$13,294	2	\$7,189
Torrance Mine (UG); Underground Stone; State—PA	11	\$2,929	2	\$668
Upper Township Plant; Surface SandAndGravel; State—NJ	9	\$1,440	6	\$1,140
Whitney Plant (UG); Underground Stone; State—PA	20	\$9,836	2	\$2,094
Hanson Aggregates Davon, LLC	28	\$4,946	8	\$2,158
AA Limestone; Surface Stone; State—KY	5	\$1,817	1	\$687
EAGLE CRUSHED STONE; Surface Stone; State—OH	3	\$300	1	\$100
HIGHLAND STONE; Surface Stone; State—OH	8	\$800	1	\$100
PIKETON SAND & GRAVEL; Surface SandAndGravel; State—OH ..	4	\$408	1	\$100
PLUM RUN STONE; Surface Stone; State—OH	8	\$1,621	4	\$1,171
Hanson Aggregates Mid-Pacific, Inc	27	\$3,988		

DETAIL SUMMARY BY MINE—Continued

Company/Mine Operator/Mine Name/Mine Type/State	No. of Violations Assessed	Penalty Dollars Assessed	No. of Violations Contested	Penalty Dollars Contested
Clayton; Surface Stone; State—CA	4	\$427		
Marina Vista Plant; Surface SandAndGravel; State—CA	4	\$450		
Oakland Marine Plant; Surface SandAndGravel; State—CA	1	\$100		
Santa Margarita Quarry; Surface SandAndGravel; State—CA	5	\$1,531		
Sisquoc Rock Plant; Surface SandAndGravel; State—CA	13	\$1,480		
Hanson Aggregates Midwest, Inc	101	\$18,080	22	\$6,698
Angola Sand & Gravel; Surface SandAndGravel; State—IN	3	\$300		
Ardmore Stone Quarry; Surface Stone; State—IN	4	\$400		
Atkins Mine; Surface Stone; State—IN	2	\$200		
Bloomville Stone Quarry; Surface Stone; State—OH	3	\$300		
Coopers Lane Mine; Surface Stone; State—IN	2	\$200		
FLEMINGSBURG QUARRY; Surface Stone; State—KY	8	\$1,197	3	\$670
Franklin Quarry & Mill; Surface Stone; State—KY	1	\$100		
Harding Street Quarry—Surface; Surface Stone; State—IN	7	\$1,548	5	\$1,348
Harding Street Quarry—Sand & Gravel; Surface Stone; State—IN	1	\$100		
Laurel Quarry; Surface Stone; State—KY	9	\$1,253	2	\$446
Limedale Quarry; Surface Stone; State—IN	1	\$100		
Lower Huntington Quarry; Surface Stone; State—IN	2	\$200		
Milner Quarry; Surface Stone; State—IN	3	\$300		
MT. VERNON MINE & MILL; Underground Stone; State—KY	7	\$2,155		
Putnamville Quarry; Surface Stone; State—IN	3	\$300		
Russellville Quarry & Mill; Surface Stone; State—KY	2	\$2,229	1	\$1,944
SANDUSKY QUARRY; Surface Stone; State—OH	11	\$1,862	2	\$845
Scott County Quarry; Surface Stone; State—IN	1	\$100		
SYLVANIA STONE QUARRY; Surface Stone; State—OH	1	\$100		
Tyrone Mine & Mill; Underground Stone; State—KY	5	\$1,464		
Upton Quarry; Surface Stone; State—KY	4	\$563	3	\$463
Versailles Quarry; Surface Stone; State—IN	2	\$227		
Wagner Quarries; Surface Stone; State—OH	6	\$707	4	\$507
WATERVILLE STONE QUARRY; Surface Stone; State—OH	8	\$1,675	2	\$475
WOODBURN II; Surface Stone; State—IN	5	\$500		
Hanson Aggregates New York, Inc	75	\$9,676	12	\$2,932
Clarendon; Surface SandAndGravel; State—NY	9	\$916	2	\$200
GENEVA PLANT; Surface Stone; State—NY	7	\$754	5	\$554
Honeoye Falls Plant; Surface Stone; State—NY	4	\$400		
Jamesville Plant; Surface Stone; State—NY	7	\$700		
JORDANVILLE PLANT; Surface Stone; State—NY	8	\$1,361	2	\$761
OGDENSBURG PLANT; Surface Stone; State—NY	4	\$417		
Oriskany Falls Plant; Surface Stone; State—NY	10	\$1,534	1	\$634
Phelps Mine; Surface SandAndGravel; State—NY	6	\$1,074	1	\$540
Poland Plant; Surface SandAndGravel; State—NY	5	\$659	1	\$243
Skaneateles Plant; Surface Stone; State—NY	6	\$759		
St Johnsville Plant; Surface Stone; State—NY	2	\$217		
Stafford Quarry; Surface Stone; State—NY	2	\$385		
VICTOR (P444); Surface SandAndGravel; State—NY	2	\$200		
Watertown Plant; Surface Stone; State—NY	3	\$300		
Hanson Aggregates Of Arizona, Inc	39	\$10,362	9	\$4,100
AGUA FRIA PIT-RIVER RANCH; Surface SandAndGravel; State—AZ	4	\$400		
Clarkdale Plant #24; Surface SandAndGravel; State—AZ	2	\$227	1	\$100
Plant #35 51st Ave-Pit; Surface SandAndGravel; State—AZ	8	\$4,886	3	\$2,080
Yavapai Plant #22; Surface SandAndGravel; State—AZ	25	\$4,849	5	\$1,920
Hanson Aggregates Pacific Southwest Inc	49	\$8,580	2	\$351
CARROLL CANYON ROCK PLANT; Surface SandAndGravel; State—CA	12	\$1,484		
EAGLE VALLEY QUARRY; Surface SandAndGravel; State—CA	4	\$400		
EL CAJON QUARRY; Surface Stone; State—CA	1	\$100		
INLAND ROCK PLANT; Surface SandAndGravel; State—CA	12	\$2,931		
IRWINDALE ROCK PLANT; Surface SandAndGravel; State—CA	14	\$2,857	2	\$351
LAKESIDE AGGREGATE PLANT; Surface SandAndGravel; State—CA	1	\$100		
Santee Rock Plant; Surface Stone; State—CA	5	\$708		
Hanson Aggregates Pennsylvania LLC	34	\$9,353	2	\$734

DETAIL SUMMARY BY MINE—Continued

Company/Mine Operator/Mine Name/Mine Type/State	No. of Violations Assessed	Penalty Dollars Assessed	No. of Violations Contested	Penalty Dollars Contested
Bloomsburg Quarry; Surface Stone; State—PA	2	\$217		
Curtain Gap Quarry; Surface Stone; State—PA	1	\$100		
Downingtown Quarry; Surface Stone; State—PA	4	\$1,045		
Glen Mills; Surface Stone; State—PA	5	\$1,195		
Lake Ariel Quarry; Surface SandAndGravel; State—PA	3	\$1,287		
Milton Plant; Surface Stone; State—PA	3	\$300		
Montoursville Sand & Gravel; Surface SandAndGravel; State— PA	1	\$100		
Oak Hall Quarry; Surface Stone; State—PA	2	\$2,636		
Pine Creek Quarry; Surface Stone; State—PA	8	\$1,866	2	\$734
SALONA PLANT; Surface Stone; State—PA	1	\$100		
Stroudsburg Quarry; Surface Stone; State—PA	4	\$507		
Hanson Aggregates PMA Inc	4	\$799		
Dredge Thaddus Carr; Facility SandAndGravel; State—PA	1	\$100		
Torrance Mine (UG); Underground Stone; State—PA	3	\$699		
Hanson Aggregates, LLC	109	\$29,376	17	\$4,794
Arena Plant; Surface SandAndGravel; State—TX	6	\$924		
Brazos Plant; Surface SandAndGravel; State—TX	4	\$400		
Bridgeport Plant; Surface Stone; State—TX	3	\$300		
Bristol Sand & Gravel; Surface SandAndGravel; State—TX	4	\$400		
Burnet Plant; Surface Stone; State—TX	1	\$138		
Davis Plant; Surface Stone; State—OK	10	\$1,258	1	\$100
EAGLE LAKE PLANT; Surface SandAndGravel; State—TX	3	\$317		
Eagle Mills Plant; Surface SandAndGravel; State—AR	13	\$2,411	5	\$617
Honest Ridge Plant; Surface Stone; State—TX	5	\$554		
LAKE BRIDGEPORT QUARRY; Surface Stone; State—TX	11	\$1,852		
LITTLE RIVER PLANT; Surface SandAndGravel; State—AR	12	\$2,654	6	\$1,820
Newberry Springs Plant; Surface Stone; State—CA	3	\$1,494		
SERVTEX PLANT; Surface Stone; State—TX	7	\$1,148		
Spring Plant; Surface SandAndGravel; State—TX	1	\$100		
Stafford Plant; Surface SandAndGravel; State—TX	6	\$13,007	2	\$1,614
WHITNEY; Surface SandAndGravel; State—TX	17	\$1,939	1	\$263
Woodlands Plant; Surface SandAndGravel; State—TX	3	\$480	2	\$380
Hanson Aggregates, Southeast	115	\$33,614	41	\$17,767
ANDERSON QUARRY; Surface Stone; State—SC	6	\$676		
Athens Quarry; Surface Stone; State—GA	4	\$427		
BREWER SAND; Surface SandAndGravel; State—SC	5	\$734	3	\$534
Crabtree Quarry; Surface Stone; State—NC	6	\$1,187	6	\$1,187
Elliott Sand & Gravel; Surface SandAndGravel; State—NC	7	\$1,116	3	\$716
Fayette County Quarry; Surface Stone; State—GA	4	\$545	1	\$207
Gainesville Quarry; Surface Stone; State—GA	6	\$1,022		
Gardner Quarry; Surface Stone; State—NC	13	\$3,703	13	\$3,703
Habersham Quarry; Surface Stone; State—GA	1	\$100		
HOLLY SPRINGS QUARRY; Surface Stone; State—NC	8	\$1,414	8	\$1,414
JEFFERSON QUARRY; Surface Stone; State—SC	1	\$828		
Lithonia/Pine Mountain Quarry; Surface Stone; State—GA	7	\$1,196		
Lowrys Quarry; Surface Stone; State—SC	1	\$100		
Marlboro Sand & Gravel; Surface SandAndGravel; State—SC	5	\$645		
Monroe County Quarry; Surface Stone; State—GA	4	\$490		
NEVERSON QUARRY; Surface Stone; State—NC	4	\$1,094	2	\$894
Pelham Quarry; Surface Stone; State—SC	4	\$510	1	\$176
ROCKY MOUNT QUARRY; Surface Stone; State—NC	11	\$7,783	1	\$6,600
Rougemont Quarry; Surface Stone; State—NC	1	\$100		
Sandy Flat Quarry; Surface Stone; State—SC	4	\$1,025	1	\$138
Sparta Quarry; Surface Stone; State—GA	5	\$1,478		
Toccoa Quarry; Surface Stone; State—GA	5	\$4,840		
Walton Co. Quarry; Surface Stone; State—GA	3	\$2,601	2	\$2,198
Hanson Material Service	71	\$12,910	10	\$2,330
Algonquin Sand & Gravel; Surface SandAndGravel; State—IL	7	\$874		
Babcock Quarry; Surface Stone; State—IN	1	\$117		
Fairmount Quarry; Surface Stone; State—IL	1	\$100		
Federal Quarry; Surface Stone; State—IL	8	\$2,705		
Lincoln Quarry; Surface Stone; State—IL	4	\$708		

DETAIL SUMMARY BY MINE—Continued

Company/Mine Operator/Mine Name/Mine Type/State	No. of Violations Assessed	Penalty Dollars Assessed	No. of Violations Contested	Penalty Dollars Contested
Monon Quarry; Surface Stone; State—IN	5	\$652		
Morris Sand & Gravel; Surface Stone; State—IL	1	\$100		
Nokomis Quarry; Surface Stone; State—IL	11	\$1,455		
Romeo Quarry; Surface Stone; State—IL	3	\$1,069		
Thornton Quarry; Surface Stone; State—IL	25	\$4,537	9	\$2,213
Ward Stone; Surface Stone; State—IN	5	\$593	1	\$117
Hanson Permanente Cement Inc	1	\$108		
Lehigh Permanente Quarry; Surface Stone; State—CA	1	\$108		
Lehigh Cement Company	370	\$809,996	111	\$525,795
EVANSVILLE PLANT; Facility Stone; State—PA	39	\$68,792	23	\$35,103
Leeds Plant; Facility Stone; State—AL	134	\$335,365	81	\$301,066
Lehigh Cement Co.; Facility Stone; State—PA	25	\$13,026		
Lehigh Cement Company Mitchell; Facility Stone; State—IN	35	\$19,654		
Mason City Plant; Facility Stone; State—IA	112	\$360,841	5	\$182,057
UNION BRIDGE MD; Facility Stone; State—MD	23	\$12,118	2	\$7,569
Waco Plant; Facility Stone; State—TX	2	\$200		
Lehigh Northeast Cement Company	50	\$49,433	1	\$3,405
Cementon Plant & Quarry; Facility Stone; State—NY	20	\$15,044	1	\$3,405
Glens Falls Plant; Facility Stone; State—NY	28	\$34,189		
Glens Falls Quarry; Surface Stone; State—NY	2	\$200		
Lehigh Northwest Cement Company	3	\$390		
Lehigh Northwest Cement Company; Facility Stone; State—WA ..	3	\$390		
Lehigh Southwest Cement	142	\$111,996	64	\$88,382
Lehigh Permanente Cement Co.; Facility Stone; State—CA	46	\$47,819	24	\$45,395
Lehigh Permanente Quarry; Surface Stone; State—CA	21	\$2,398	3	\$424
Redding Plant; Surface Stone; State—CA	31	\$10,154	23	\$8,943
Tehachapi Plant; Facility Stone; State—CA	44	\$51,625	14	\$33,620
Mays Landing Sand & Gravel	1	\$190		
DORCHESTER PLANT; Surface SandAndGravel; State—NJ	1	\$190		
Mission Valley Rock Company	9	\$3,581		
Sunol Plant; Surface SandAndGravel; State—CA	9	\$3,581		
U S Brick	13	\$1,300	1	\$100
Anson Mine; Surface Nonmetal; State—NC	1	\$100		
Caddo Plant & Pits; Surface Nonmetal; State—LA	1	\$100	1	\$100
CORUNNA PLANT; Surface Nonmetal; State—MI	4	\$400		
Gulf Mine; Surface Nonmetal; State—NC	1	\$100		
Richland County Mines; Surface Nonmetal; State—SC	4	\$400		
SAMPSON MINE II; Surface Nonmetal; State—NC	1	\$100		
Union Cty; Surface Nonmetal; State—NC	1	\$100		
Imerys S A	587	\$603,050	242	\$477,250
Celite Corp	58	\$88,205	36	\$73,426
Fernley Plant; Surface Nonmetal; State—NV	4	\$476	2	\$276
Kenite Plants 1 & 2; Surface Nonmetal; State—WA	5	\$3,685		
Kenite Quarry; Surface Nonmetal; State—WA	6	\$2,059		
Lompoc Plant; Surface Nonmetal; State—CA	43	\$81,985	34	\$73,150
Ecca Calcium Products Inc	4	\$1,596		
CALCIUM CARBONATE PLANT/MILL; Facility Stone; State—MD	4	\$1,596		
Harborlite Corp	19	\$3,038		
Antonito Plant; Surface Nonmetal; State—CO	6	\$894		
No Agua Mine & Mill; Surface Nonmetal; State—NM	5	\$826		
Superior Pit & Mill; Surface Nonmetal; State—AZ	8	\$1,318		
Imerys Carbonates LLC	124	\$105,591	17	\$42,004
Imerys Sylacauga Operations; Surface Stone; State—AL	124	\$105,591	17	\$42,004
Imerys Clays Inc	69	\$25,206	21	\$13,142
Deepstep Land and Mines; Surface Nonmetal; State—GA	2	\$200		
Deepstep Road Plant; Surface Nonmetal; State—GA	39	\$17,972	20	\$12,808
Sandersville Calcine Plant; Facility Nonmetal; State—GA	28	\$7,034	1	\$334
Imerys Kaolin Inc	10	\$2,732		
Dry Branch Plant; Facility Nonmetal; State—GA	10	\$2,732		
Imerys Marble Incorporated	48	\$12,689	8	\$2,378
Imerys Marble Inc Mine #4; Underground Stone; State—GA	5	\$792	2	\$492
Imerys Marble Inc; Surface Stone; State—AZ	1	\$100		
Imerys Marble Inc; Surface Stone; State—NY	3	\$300		

DETAIL SUMMARY BY MINE—Continued

Company/Mine Operator/Mine Name/Mine Type/State	No. of Violations Assessed	Penalty Dollars Assessed	No. of Violations Contested	Penalty Dollars Contested
Marble Hill Plants; Facility Stone; State—GA	19	\$7,342		
New York Mine; Underground Stone; State—GA	11	\$2,107	4	\$992
Whitestone Plants; Facility Stone; State—GA	9	\$2,048	2	\$894
Kentucky-Tennessee Clay Company	39	\$9,491	13	\$6,019
Crenshaw Mine and Plant; Surface Nonmetal; State—MS	2	\$200		
Gleason Mills and Mines; Facility Nonmetal; State—TN	3	\$300	1	\$100
Graves County Mines; Surface Nonmetal; State—KY	2	\$200		
Kentucky-Tennessee Clay Company; Surface Nonmetal; State—GA	31	\$8,691	12	\$5,919
K-T Clay Company; Surface Nonmetal; State—SC	1	\$100		
Kings Mountain Minerals, Inc	9	\$976		
Battleground Mill; Surface Nonmetal; State—NC	1	\$100		
Moss Mine & Mill; Surface Nonmetal; State—NC	8	\$876		
K-T Feldspar Corporation	10	\$71,524	6	\$71,124
K-T Feldspar Corporation; Facility Nonmetal; State—NC	10	\$71,524	6	\$71,124
Mullite Company Of America	81	\$173,507	47	\$167,404
Barbour County Mines; Surface Nonmetal; State—AL	1	\$100		
MACON COUNTY MINES; Surface Nonmetal; State—GA	1	\$100	1	\$100
MULCOA PLANT #1; Facility Nonmetal; State—GA	20	\$61,624	15	\$60,938
MULCOA PLANT NO 2; Facility Nonmetal; State—GA	52	\$106,630	29	\$103,267
PLANT 5; Surface Nonmetal; State—GA	7	\$5,053	2	\$3,099
The Feldspar Corporation	116	\$108,495	94	\$101,753
Feldspar Corp-Siloam Washing Plant; Surface Nonmetal; State—GA	1	\$100		
Plant #1; Facility Nonmetal; State—NC	81	\$64,490	70	\$62,872
The Feldspar Corporation-Main Plant; Facility Nonmetal; State—GA	32	\$43,705	24	\$38,881
Wiseman Sullins/Chalk; Surface Nonmetal; State—NC	2	\$200		
International Coal Group Inc (ICG)	3,293	\$3,478,055	432	\$1,994,416
Anker WV Mining Co Inc	780	\$1,096,513	190	\$805,314
Imperial Mine; Underground Coal; State—WV	146	\$124,792	28	\$78,140
Sago Mine; Underground Coal; State—WV	62	\$19,289	4	\$4,249
Sawmill Run Preparation Plant; Facility Coal; State—WV	34	\$6,433		
Sentinel Mine; Underground Coal; State—WV	514	\$942,506	158	\$722,925
Sentinel Preparation Plant; Facility Coal; State—WV	24	\$3,493		
I.C.G.HAZARD,LLC	708	\$969,927	58	\$567,478
County Line Mine; Surface Coal; State—KY	1	\$392		
East Mac & Nellie; Surface Coal; State—KY	40	\$14,786	3	\$4,714
FIRST CREEK MINE #1; Underground Coal; State—KY	38	\$60,144	3	\$54,700
Flint Ridge Mine #2; Underground Coal; State—KY	375	\$731,746	43	\$442,060
Flint Ridge Mine; Underground Coal; State—KY	49	\$79,046	3	\$54,553
Flint Ridge Prep Plant; Facility Coal; State—KY	33	\$4,587		
Kentucky River Loading; Facility Coal; State—KY	29	\$8,591		
Middle Fork Surface; Surface Coal; State—KY	38	\$33,660	2	\$8,223
Rowdy Gap Mine; Surface Coal; State—KY	27	\$11,182	4	\$3,228
Thunder Ridge Mine; Surface Coal; State—KY	28	\$13,053		
Tip Top Mine; Surface Coal; State—KY	29	\$6,567		
Vicco Mine; Surface Coal; State—KY	21	\$6,173		
ICG ADDCAR Systems, LLC	35	\$11,722	16	\$7,455
ADDCAR System 11 HWM Serial No 23011; Surface Coal; State—VA	11	\$3,096	6	\$1,527
ADDCAR System 16 HWM Serial No. 23016; Surface Coal; State—TN	5	\$796		
ADDCAR System 18 HWM Serial No 23018; Surface Coal; State—WY	11	\$5,562	4	\$4,040
ADDCAR Systems 13 HWM Serial No 23013; Surface Coal; State—KY	4	\$1,230	2	\$850
ADDCAR Systems 20 HWM Serial No. 23020; Surface Coal; State—IN	4	\$1,038	4	\$1,038
ICG Beckley, LLC	267	\$341,710	67	\$198,738
Beckley Pocahontas Mine; Underground Coal; State—WV	260	\$341,010	67	\$198,738
Beckley Pocahontas Plant; Facility Coal; State—WV	7	\$700		
ICG East Kentucky, LLC	55	\$25,807		

DETAIL SUMMARY BY MINE—Continued

Company/Mine Operator/Mine Name/Mine Type/State	No. of Violations Assessed	Penalty Dollars Assessed	No. of Violations Contested	Penalty Dollars Contested
Blackberry Creek Mine; Surface Coal; State—KY	12	\$2,832		
Mount Sterling Branch; Surface Coal; State—KY	22	\$20,169		
Phelps Coal Tipple (T-2); Facility Coal; State—KY	1	\$100		
Sandlick Loadout; Facility Coal; State—KY	18	\$2,494		
Taylor Deep Mine; Underground Coal; State—KY	2	\$212		
ICG Eastern LLC	20	\$4,365		
Birch River Mine; Surface Coal; State—WV	13	\$3,558		
Birch River Plant; Facility Coal; State—WV	7	\$807		
ICG Illinois LLC Viper Mine	365	\$413,792	42	\$137,183
Viper Mine; Underground Coal; State—IL	365	\$413,792	42	\$137,183
ICG Knott County, LLC	725	\$397,189	18	\$140,941
Apollo Mine; Underground Coal; State—KY	2	\$200		
Calvary Mine; Underground Coal; State—KY	125	\$56,540		
Classic Mine; Underground Coal; State—KY	157	\$64,660		
Clean Energy Mine; Underground Coal; State—KY	19	\$81,422	2	\$72,090
Raven Mine #1; Underground Coal; State—KY	205	\$133,521	15	\$62,393
Raven Mine #2; Underground Coal; State—KY	111	\$47,783	1	\$6,458
Raven Prep Plant; Facility Coal; State—KY	11	\$1,331		
Slone Branch; Underground Coal; State—KY	76	\$9,562		
Supreme Energy Prep Plant; Facility Coal; State—KY	19	\$2,170		
Patriot Mining Company Inc	5	\$1,163		
Patriot Mining Company Inc; Surface Coal; State—WV	2	\$787		
Patriot Rail & River Terminal; Facility Coal; State—WV	3	\$376		
Powell Mountain Energy LLC	293	\$205,537	36	\$132,730
Mayflower Preparation Plant; Facility Coal; State—VA	23	\$2,497		
Middlesplint Mine; Underground Coal; State—VA	1	\$100		
Mine #1; Underground Coal; State—KY	269	\$202,940	36	\$132,730
Upshur Property Inc	9	\$1,232		
Upshur Complex; Facility Coal; State—WV	9	\$1,232		
Vindex Energy Corporation	31	\$9,098	5	\$4,577
Carlos Surface; Surface Coal; State—MD	2	\$434		
Frostburg Blend Yard; Facility Coal; State—MD	2	\$276		
Jackson Mountain; Surface Coal; State—MD	6	\$2,829	1	\$1,530
Vindex Douglas; Surface Coal; State—MD	9	\$3,968	3	\$2,784
Vindex Energy; Facility Coal; State—WV	8	\$1,191	1	\$263
Vindex Loadout; Facility Coal; State—WV	4	\$400		
International Resources LLC	668	\$876,689	387	\$836,211
Chafin Branch Coal Co LLC	61	\$34,152	32	\$30,100
Lower Pete Branch Alma Mine; Surface Coal; State—WV	5	\$612		
Snap Creek No 1 Surface; Surface Coal; State—WV	56	\$33,540	32	\$30,100
Rockhouse Creek Development Corp	603	\$841,614	353	\$805,388
No 3; Underground Coal; State—WV	106	\$106,667	48	\$96,067
No. 2; Underground Coal; State—WV	88	\$26,850	42	\$20,819
No. 3-A Mine; Underground Coal; State—WV	39	\$7,348	20	\$5,381
No. 6; Underground Coal; State—WV	91	\$371,103	62	\$367,602
No. 8; Underground Coal; State—WV	270	\$326,286	180	\$313,237
No. 9; Underground Coal; State—WV	9	\$3,360	1	\$2,282
Snap Creek Mining LLC	4	\$923	2	\$723
No 1 Load-Out; Facility Coal; State—WV	4	\$923	2	\$723
Italcementi Spa	367	\$261,359	213	\$200,797
Essroc Cement Corp	294	\$226,373	180	\$188,678
Essroc Cement; Facility Stone; State—IN	118	\$139,680	106	\$128,983
Essroc Cement Corp—Bessemer PA; Facility Stone; State—PA ..	56	\$17,410		
Essroc Cement Corp Plant #3; Facility Stone; State—PA	7	\$2,290	6	\$1,264
Essroc Cement Corp; Facility Stone; State—IN	30	\$18,107	20	\$16,223
Essroc Cement Corp; Facility Stone; State—MI	17	\$5,911	1	\$1,657
Nazareth Plant 2; Facility Stone; State—PA	2	\$227	2	\$227
Nazareth Plant 1; Facility Stone; State—PA	64	\$42,748	45	\$40,324
Essroc San Juan Inc	22	\$15,612		
Cantera Espinosa; Facility Stone; State—PR	22	\$15,612		
Riverton Investment Corp	51	\$19,374	33	\$12,119
Essroc Cement Corp.; Facility Stone; State—WV	47	\$18,440	32	\$11,485
Essroc Cement Corp.; Surface Stone; State—VA	4	\$934	1	\$634

DETAIL SUMMARY BY MINE—Continued

Company/Mine Operator/Mine Name/Mine Type/State	No. of Violations Assessed	Penalty Dollars Assessed	No. of Violations Contested	Penalty Dollars Contested
J Clifford Forrest III	909	\$796,720	506	\$726,866
Rosebud Mining Company	908	\$796,620	506	\$726,866
Beaver Valley; Underground Coal; State—PA	19	\$21,060	15	\$20,001
Bigler Prep Plant; Facility Coal; State—PA	9	\$1,148	1	\$162
Clementine Mine; Underground Coal; State—PA	85	\$103,173	61	\$98,773
Darmac No. 2 Mine; Underground Coal; State—PA	26	\$18,456	18	\$17,459
Dutch Run; Underground Coal; State—PA	49	\$20,758	31	\$18,159
Harmony Mine; Underground Coal; State—PA	9	\$1,867	2	\$1,080
Heilwood; Underground Coal; State—PA	60	\$22,665	17	\$17,457
Lady Jane Plant; Facility Coal; State—PA	2	\$768	1	\$308
Little Toby Mine; Underground Coal; State—PA	27	\$118,748	16	\$116,681
Logansport Mine; Underground Coal; State—PA	74	\$117,650	63	\$114,971
Logansport Preparation Plant; Facility Coal; State—PA	12	\$2,741	4	\$1,423
Lowry Mine; Underground Coal; State—PA	73	\$40,061	37	\$34,852
Maintenance Shop; Facility Coal; State—PA	11	\$2,749	7	\$2,349
Mc Ville Prep Plant; Facility Coal; State—PA	20	\$21,762	14	\$20,389
Mine 78 Preparation Plant; Facility Coal; State—PA	5	\$945		
Mine 78; Underground Coal; State—PA	87	\$74,904	50	\$69,427
Penfield Mine; Underground Coal; State—PA	51	\$58,097	29	\$54,981
Tom's Run Mine; Underground Coal; State—PA	81	\$47,690	44	\$42,396
Tracy Lynne; Underground Coal; State—PA	39	\$51,799	27	\$39,005
Tusky Prep; Facility Coal; State—OH	9	\$900		
Tusky; Underground Coal; State—OH	98	\$23,108	29	\$14,568
Twin Rocks Mine; Underground Coal; State—PA	62	\$45,571	40	\$42,425
Western Allegheny Energy, LLC	1	\$100		
Knob Creek; Underground Coal; State—PA	1	\$100		
James C Justice II	1,463	\$1,249,416	808	\$951,236
A & G Coal Corp	85	\$19,526		
Job #15 Surface; Surface Coal; State—VA	1	\$634		
Kellyview Loadout Facility; Facility Coal; State—VA	16	\$2,367		
Preacher Creek Strip; Surface Coal; State—VA	24	\$9,016		
Prep Plant #1; Facility Coal; State—VA	17	\$2,324		
Sigmon Strip #23; Surface Coal; State—VA	1	\$100		
Strip #11; Surface Coal; State—VA	1	\$334		
Strip #12; Surface Coal; State—VA	11	\$2,499		
Strip #13; Surface Coal; State—VA	2	\$307		
Strip #14; Surface Coal; State—VA	8	\$1,545		
Strip #24; Surface Coal; State—VA	3	\$300		
Strip #8; Facility Coal; State—VA	1	\$100		
Bluestone Coal Corp	27	\$121,623	27	\$121,623
No 6 Strip; Surface Coal; State—WV	4	\$2,353	4	\$2,353
Pinnacle Creek Strip; Surface Coal; State—WV	21	\$59,170	21	\$59,170
Pinnacle Ridge Surface Mine; Surface Coal; State—WV	1	\$100	1	\$100
Red Fox Surface Mine; Surface Coal; State—WV	1	\$60,000	1	\$60,000
Bluestone Industries Inc	4	\$400	4	\$400
Central Shop; Facility Coal; State—WV	4	\$400	4	\$400
Double Bonus Coal Company	93	\$46,539	43	\$24,747
No 65; Underground Coal; State—WV	93	\$46,539	43	\$24,747
Dynamic Energy Inc	22	\$42,249	21	\$42,149
Coal Mountain No 1 Surface; Surface Coal; State—WV	21	\$42,149	21	\$42,149
McDonald Fork Impoundment; Surface Coal; State—WV	1	\$100		
Four Star Resources LLC	16	\$2,296	6	\$1,296
Harlan Strip #1; Surface Coal; State—KY	16	\$2,296	6	\$1,296
Frontier Coal Company	85	\$26,806	84	\$26,706
Double Camp No. 1; Underground Coal; State—WV	85	\$26,806	84	\$26,706
Infinity Energy Incorporated	208	\$105,452	142	\$96,400
Infinity #1; Surface Coal; State—KY	28	\$6,000	27	\$5,415
Infinity #2; Surface Coal; State—KY	2	\$619	2	\$619
Infinity #3; Surface Coal; State—KY	41	\$64,675	33	\$63,173
Infinity #4; Underground Coal; State—KY	76	\$24,639	62	\$22,873
Pine Mountain Prep Plant; Facility Coal; State—KY	61	\$9,519	18	\$4,320
Justice Energy Inc	23	\$43,815	23	\$43,815
Red Fox Surface Mine; Surface Coal; State—WV	23	\$43,815	23	\$43,815

DETAIL SUMMARY BY MINE—Continued

Company/Mine Operator/Mine Name/Mine Type/State	No. of Violations Assessed	Penalty Dollars Assessed	No. of Violations Contested	Penalty Dollars Contested
Justice Highwall Mining, Inc	1	\$392	1	\$392
No 3 Miner; Surface Coal; State—WV	1	\$392	1	\$392
Kentucky Fuel Corporation	10	\$1,062		
Hazard Star Loadout; Facility Coal; State—KY	10	\$1,062		
Keystone Service Industries Inc	38	\$226,834	34	\$226,434
Keystone No 1 Preparation Plant; Facility Coal; State—WV	38	\$226,834	34	\$226,434
Liggett Mining LLC	438	\$343,544	245	\$213,446
Liggett #1; Surface Coal; State—KY	30	\$7,889	15	\$6,025
Liggett #3; Underground Coal; State—KY	121	\$80,379	53	\$70,270
Liggett #5; Underground Coal; State—KY	250	\$227,897	157	\$118,119
Liggett #6; Underground Coal; State—KY	37	\$27,379	20	\$19,032
M & P Services, Inc	4	\$3,810	1	\$3,224
Red Fox Load-Out; Facility Coal; State—WV	4	\$3,810	1	\$3,224
NuFac Mining Company, Inc	26	\$38,083	6	\$31,389
Buckeye Mine; Underground Coal; State—WV	25	\$37,983	6	\$31,389
Nu Fac Mine; Underground Coal; State—WV	1	\$100		
Pay Car Mining Inc	68	\$85,972	68	\$85,972
No 58; Underground Coal; State—WV	68	\$85,972	68	\$85,972
Premium Coal Company Inc	52	\$12,457	8	\$2,474
#1 Surface-002 Section; Surface Coal; State—TN	5	\$786		
No 1 Surface-003 Section; Surface Coal; State—TN	11	\$1,987	3	\$672
No 1 Tipple; Facility Coal; State—TN	36	\$9,684	5	\$1,802
S & H Mining, Inc	164	\$108,348	35	\$15,179
S & H Mining; Underground Coal; State—TN	164	\$108,348	35	\$15,179
Sequoia Energy LLC	99	\$20,208	60	\$15,590
Prep Plant; Facility Coal; State—KY	99	\$20,208	60	\$15,590
James H Booth	1,216	\$1,175,530	819	\$1,043,200
Apex Energy, Inc	121	\$42,015	43	\$20,190
Apex No 1; Facility Coal; State—KY	13	\$1,632	8	\$1,070
Apex No 2; Facility Coal; State—KY	6	\$662	4	\$462
No 1; Surface Coal; State—KY	5	\$708		
No 2; Surface Coal; State—KY	26	\$12,185	9	\$5,076
No 3; Surface Coal; State—KY	19	\$6,232		
No 7; Surface Coal; State—KY	6	\$2,435	3	\$1,775
No 8; Surface Coal; State—KY	18	\$6,255	1	\$1,304
No. 6; Surface Coal; State—KY	28	\$11,906	18	\$10,503
Argus Energy WV LLC	542	\$912,443	446	\$831,693
Copley Trace Surface Mine; Surface Coal; State—WV	69	\$177,910	69	\$177,910
Deep Mine No 7; Underground Coal; State—WV	191	\$85,599	152	\$71,728
Deep Mine No 8; Underground Coal; State—WV	231	\$621,893	211	\$575,794
Kiah Creek Preparation Plant; Facility Coal; State—WV	30	\$16,943	14	\$6,261
Wayne County River Terminal; Facility Coal; State—WV	21	\$10,098		
Beech Fork Processing Inc	21	\$3,918	12	\$3,018
Prep Plant # 1; Facility Coal; State—KY	20	\$3,818	12	\$3,018
Prep Plant #2; Facility Coal; State—KY	1	\$100		
C W Augering Inc	25	\$5,100		
No 009; Surface Coal; State—KY	12	\$2,654		
No 2; Surface Coal; State—KY	13	\$2,446		
Coalburg Enterprises, Inc	78	\$18,131	35	\$13,823
No 6; Underground Coal; State—KY	78	\$18,131	35	\$13,823
Eagle Coal Company Inc	62	\$18,451	34	\$15,445
No 20; Underground Coal; State—KY	36	\$14,291	25	\$13,123
No 24; Underground Coal; State—KY	17	\$3,122	9	\$2,322
No. 22; Underground Coal; State—KY	9	\$1,038		
Matrix Energy LLC	286	\$136,667	203	\$123,742
No. 1; Underground Coal; State—KY	286	\$136,667	203	\$123,742
Mayo Resources Inc	22	\$20,777	19	\$20,469
#5; Surface Coal; State—KY	17	\$15,727	15	\$15,527
No 4; Surface Coal; State—KY	5	\$5,050	4	\$4,942
Pinnacle Processing Inc	59	\$18,028	27	\$14,820
Pevler Plant; Facility Coal; State—KY	59	\$18,028	27	\$14,820
James River Coal Company	3,419	\$2,316,289	1,199	\$1,603,334
Bell County Coal Corporation	314	\$64,285	213	\$52,377

DETAIL SUMMARY BY MINE—Continued

Company/Mine Operator/Mine Name/Mine Type/State	No. of Violations Assessed	Penalty Dollars Assessed	No. of Violations Contested	Penalty Dollars Contested
Cabin Hollow; Underground Coal; State—TN	82	\$18,938	44	\$14,421
Coal Creek; Underground Coal; State—KY	19	\$2,128	6	\$676
Garmeda #2; Underground Coal; State—KY	49	\$6,380	22	\$3,312
Jellico #1; Underground Coal; State—KY	25	\$7,530	24	\$7,267
Moseley Spur; Underground Coal; State—KY	96	\$23,309	91	\$22,809
Preparation Plant; Facility Coal; State—KY	43	\$6,000	26	\$3,892
Bledsoe Coal Corporation	470	\$173,159	177	\$76,687
#1; Facility Coal; State—KY	44	\$23,491	21	\$12,473
Abner Branch Rider; Underground Coal; State—KY	59	\$28,310	33	\$19,144
Beechfork Mine; Underground Coal; State—KY	218	\$80,689	82	\$32,267
Clover Loadout; Facility Coal; State—KY	7	\$1,178		
Dollar Branch Mine; Underground Coal; State—KY	81	\$23,756	41	\$12,803
Marion Branch; Underground Coal; State—KY	7	\$717		
No 61; Facility Coal; State—KY	10	\$1,391		
Tantrough; Underground Coal; State—KY	44	\$13,627		
Blue Diamond Coal Company	1,165	\$956,721	284	\$634,612
#75; Underground Coal; State—KY	406	\$249,101	86	\$136,738
#77; Underground Coal; State—KY	349	\$423,161	113	\$325,475
76 Plant; Facility Coal; State—KY	27	\$4,604	2	\$1,707
Calvary No 81; Underground Coal; State—KY	383	\$279,855	83	\$170,692
James River Coal Service Company	62	\$19,040	8	\$5,468
Bear Branch Surface; Surface Coal; State—KY	1	\$100		
Buckeye Highwall Miner; Surface Coal; State—KY	4	\$662		
Buckeye Strip #1; Surface Coal; State—KY	18	\$3,815		
Hog Trough; Surface Coal; State—KY	18	\$8,173	8	\$5,468
Lewis Creek; Surface Coal; State—KY	9	\$4,154		
Lick Branch Strip; Surface Coal; State—KY	4	\$896		
Montgomery Creek; Surface Coal; State—KY	8	\$1,240		
Leeco Inc	383	\$312,856	118	\$243,993
#64; Facility Coal; State—KY	6	\$839		
#68; Underground Coal; State—KY	369	\$310,378	118	\$243,993
Jeff Tipple; Facility Coal; State—KY	8	\$1,639		
McCoy Elkhorn Coal Corporation	610	\$478,229	230	\$384,150
Bevins Branch Preparation Plant; Facility Coal; State—KY	28	\$7,986		
Longfork Preparation Plant; Facility Coal; State—KY	3	\$376		
Mine #12; Underground Coal; State—KY	62	\$17,643	12	\$6,195
Mine #15; Underground Coal; State—KY	313	\$334,393	159	\$288,600
Mine #16; Underground Coal; State—KY	80	\$21,946	16	\$10,593
Mine #23; Underground Coal; State—KY	122	\$57,312	41	\$40,189
Mine #25; Underground Coal; State—KY	2	\$38,573	2	\$38,573
Shamrock Coal Company Incorporated	248	\$129,796	157	\$98,073
Beech Fork Coal Prep Facility; Facility Coal; State—KY	49	\$8,682		
Shamrock #18 Series; Underground Coal; State—KY	199	\$121,114	157	\$98,073
Triad Mining Inc	72	\$60,250	2	\$29,629
Augusta Mine; Surface Coal; State—IN	12	\$10,410		
Flat Creek; Surface Coal; State—IN	2	\$1,933		
Freelandville East Mine; Surface Coal; State—IN	14	\$7,380		
Freelandville Mine; Surface Coal; State—IN	13	\$35,183	1	\$29,529
Hurricane Creek; Surface Coal; State—IN	10	\$2,701		
Log Creek Surface; Surface Coal; State—IN	10	\$1,093	1	\$100
Patoka River; Facility Coal; State—IN	1	\$176		
South Augusta; Surface Coal; State—IN	7	\$962		
Switz City; Facility Coal; State—IN	3	\$412		
Triad Underground Mining, L.L.C	95	\$121,953	10	\$78,345
Freelandville Underground; Underground Coal; State—IN	95	\$121,953	10	\$78,345
Lafarge S A	1,153	\$1,059,198	375	\$797,654
Conco Western Stone Co	12	\$2,739		
Conco Mine; Underground Stone; State—IL	12	\$2,739		
Lafarge Aggregates Southeast, Inc	101	\$26,350	13	\$5,696
BALLGROUND MINE SITE; Surface Stone; State—GA	6	\$1,248		
Calera Aggregates; Facility Stone; State—AL	6	\$873		
CAVE IN ROCK QUARRY; Surface Stone; State—IL	11	\$2,236		
Citadel Quarry; Surface Stone; State—AL	2	\$227		

DETAIL SUMMARY BY MINE—Continued

Company/Mine Operator/Mine Name/Mine Type/State	No. of Violations Assessed	Penalty Dollars Assessed	No. of Violations Contested	Penalty Dollars Contested
CLAYTON COUNTY MINE SITE; Surface Stone; State—GA	3	\$445		
Columbus Mine Site; Surface Stone; State—GA	10	\$5,089	4	\$3,818
Cumming Mine Site; Surface Stone; State—GA	11	\$2,043		
DOUGLASVILLE MINE SITE; Surface Stone; State—GA	8	\$2,301	3	\$994
FRIENDSHIP MINE SITE; Surface Stone; State—GA	6	\$884	5	\$784
Hickory Bend; Surface SandAndGravel; State—AL	2	\$200		
Honey Island Operations; Surface SandAndGravel; State—LA	2	\$787		
Isabel Operations; Surface SandAndGravel; State—LA	8	\$1,248		
Jackson County Mine Site; Surface Stone; State—GA	3	\$300		
Lakeshore Quarry; Surface Stone; State—AL	3	\$338		
LITHONA MINE SITE; Surface Stone; State—GA	3	\$2,254		
MORGAN COUNTY MINE SITE; Surface Stone; State—GA	6	\$839		
Newton County Mine Site; Surface Stone; State—GA	4	\$1,094	1	\$100
No 1 Pit & Dr Clemons; Surface SandAndGravel; State—LA	7	\$3,944		
Lafarge Aux Sable, LLC	16	\$3,514		
Aux Sable Plant; Surface SandAndGravel; State—IL	16	\$3,514		
LaFarge Building Materials Incorporated	360	\$461,151	195	\$405,945
Atlanta Plant; Facility Stone; State—GA	10	\$10,992		
HARLEYVILLE MINE & PLANT; Facility Stone; State—SC	275	\$421,663	182	\$400,730
Lafarge Building Materials Incorporated; Facility Stone; State—NY	32	\$14,248		
LAFARGE ROBERTA PLANT; Facility Stone; State—AL	42	\$14,140	13	\$5,215
Tulsa Plant; Facility Stone; State—OK	1	\$108		
Lafarge Fox River, Inc	28	\$10,180		
The R S & D Mine; Underground Stone; State—IL	28	\$10,180		
Lafarge Joliet Inc	11	\$1,400		
JS & G Underground Mine # 1 Joliet; Underground Stone; State—IL	11	\$1,400		
Lafarge Mid Atlantic, LLC	11	\$3,712		
Chase Sand Plant; Surface SandAndGravel; State—MD	3	\$1,553		
Churchville Quarry; Surface Stone; State—MD	7	\$2,059		
Warfordsburg Quarry; Surface Stone; State—PA	1	\$100		
Lafarge Midwest	191	\$256,381	85	\$191,613
Joppa Plant; Facility Stone; State—IL	47	\$20,386	2	\$3,013
Lafarge Midwest Incorporated; Facility Stone; State—KS	144	\$235,995	83	\$188,600
Lafarge North America Inc	321	\$264,569	62	\$185,638
Alpena Plant; Facility Stone; State—MI	16	\$2,099		
Colgate Pit Yard 1; Surface SandAndGravel; State—WI	15	\$3,027		
COURTNEY RIDGE PLANT; Underground Stone; State—MO	11	\$4,173		
Davenport Plant; Facility Stone; State—IA	44	\$26,151	18	\$19,111
DEFIANCE PLANT; Surface Stone; State—MO	5	\$985		
Elburn Sand & Gravel; Surface SandAndGravel; State—IL	13	\$1,552		
Freedom Pit; Surface SandAndGravel; State—NY	2	\$217		
Jack Rabbit; Surface SandAndGravel; State—AZ	8	\$2,649		
Kentucky Road Quarry; Underground Stone; State—MO	11	\$2,688		
Lafarge Bridgeton; Surface SandAndGravel; State—MO	1	\$100		
Lafarge North America; Facility Stone; State—OH	8	\$3,940		
LAFARGE SUGAR CREEK PLANT; Facility Stone; State—MO	24	\$7,554		
Lafarge Whitehall Plant; Facility Stone; State—PA	19	\$13,470		
Marblehead Quarry; Surface Stone; State—OH	12	\$1,880		
Petersburg; Surface Stone; State—OH	2	\$200		
PETTIS QUARRY; Surface Stone; State—MO	1	\$100		
Seattle Plant; Facility Stone; State—WA	51	\$166,091	30	\$156,472
Shalersville North Plant; Surface SandAndGravel; State—OH	1	\$100	1	\$100
ST CHARLES PLANT; Surface Stone; State—MO	4	\$563		
Sugar Creek Ug Mine; Underground Stone; State—MO	32	\$7,805	10	\$1,567
Sun City Pit; Surface SandAndGravel; State—AZ	6	\$9,768	3	\$8,388
Tulsa Plant; Facility Stone; State—OK	32	\$7,280		
Wichita Sand and Gravel; Surface SandAndGravel; State—KS	3	\$2,177		
Lafarge Southwest	5	\$527		
PLACITAS; Surface SandAndGravel; State—NM	5	\$527		
Lafarge West Incorporated	24	\$3,139		
Cottonwood Pit; Surface SandAndGravel; State—CO	4	\$608		

DETAIL SUMMARY BY MINE—Continued

Company/Mine Operator/Mine Name/Mine Type/State	No. of Violations Assessed	Penalty Dollars Assessed	No. of Violations Contested	Penalty Dollars Contested
Northern Portable Plant #10; Surface SandAndGravel; State—CO	1	\$100		
Northern Portable Plant #11; Surface SandAndGravel; State—CO	1	\$100		
NORTHERN PORTABLE PLANT #14; Surface SandAndGravel; State—CO	2	\$200		
Northern Portable Plant #17; Surface SandAndGravel; State—CO	4	\$524		
Northern Portable Plant #19; Surface SandAndGravel; State—CO	1	\$100		
Northern Portable Plant #20; Surface SandAndGravel; State—CO	2	\$200		
Northern Portable Plant #21; Surface SandAndGravel; State—CO	1	\$100		
NORTHERN PORTABLE PLANT #3; Surface SandAndGravel; State—CO	2	\$599		
Northern Portable Plant #4; Surface SandAndGravel; State—CO	1	\$100		
Northern Portable Plant #6; Surface SandAndGravel; State—CO	2	\$208		
Riverbend Pit; Surface SandAndGravel; State—CO	2	\$200		
SPECIFICATION AGGREGATES; Surface Stone; State—CO	1	\$100		
Lafarge Western of Illinois, Inc	20	\$5,828	1	\$2,000
Sheridan Plant; Surface SandAndGravel; State—IL	20	\$5,828	1	\$2,000
Presque Isle Corp	19	\$4,657	15	\$3,965
Stoneport; Surface Stone; State—MI	19	\$4,657	15	\$3,965
Redland Genstar Inc	22	\$10,879	3	\$797
Beaver Creek Quarry; Surface Stone; State—MD	1	\$100		
Churchville Quarry; Surface Stone; State—MD	2	\$200		
Frederick Quarry; Surface Stone; State—MD	13	\$9,481	3	\$797
Rockdale Quarry; Surface Stone; State—MD	2	\$200		
Texas Quarry; Surface Stone; State—MD	2	\$250		
Warfordsburg Quarry; Surface Stone; State—PA	2	\$648		
Redland Quarries Ny Inc	5	\$1,087		
LOCKPORT QUARRY; Surface Stone; State—NY	5	\$1,087		
Utica Stone Company	7	\$3,085	1	\$2,000
Utica Stone Plant; Surface Stone; State—IL	7	\$3,085	1	\$2,000
Massey Energy Company	10,793	\$13,516,382	3,741	\$10,486,334
Alex Energy, Inc	241	\$434,961	54	\$281,321
Alex Energy Loadout; Facility Coal; State—WV	5	\$840		
Blackberry Coalburg; Underground Coal; State—WV	3	\$377		
Edwight Surface Mine; Surface Coal; State—WV	37	\$196,534	16	\$110,654
Jerry Fork Eagle; Underground Coal; State—WV	118	\$53,352	20	\$15,302
No 1 Surface; Surface Coal; State—WV	37	\$150,521	8	\$139,899
North Surface Mine; Surface Coal; State—WV	13	\$11,080		
Superior Surface Mine; Surface Coal; State—WV	19	\$16,889	10	\$15,466
Trace Fork Surface Mine; Surface Coal; State—WV	9	\$5,368		
Aracoma Coal Company, Inc	387	\$616,224	169	\$577,950
Aracoma Alma Mine #1; Underground Coal; State—WV	308	\$585,686	144	\$555,495
Cedar Grove #1 Mine; Underground Coal; State—WV	32	\$5,008	10	\$1,946
Dingess Processing Complex; Facility Coal; State—WV	1	\$100		
Hernshaw Mine; Underground Coal; State—WV	43	\$24,645	15	\$20,509
Mine No 8; Underground Coal; State—WV	2	\$685		
No 6; Underground Coal; State—WV	1	\$100		
Bandmill Coal Corp	108	\$252,490	55	\$236,172
Rum Creek Preparation Plant; Facility Coal; State—WV	89	\$245,456	47	\$230,626
Tower Mountain; Surface Coal; State—WV	19	\$7,034	8	\$5,546
Bent Branch Energy Co	1,363	\$936,515	408	\$649,208
#1 Prep Plant; Facility Coal; State—KY	47	\$22,194	6	\$15,304
Bent Branch Energy Co Mine No 1; Underground Coal; State—KY	1	\$5,000	1	\$5,000
Bent Branch Plant; Facility Coal; State—KY	1	\$100		
Fraleigh Branch Surface Mine; Surface Coal; State—KY	30	\$38,963	8	\$31,223
Mine #1; Underground Coal; State—KY	459	\$393,133	154	\$312,270
NO. 1; Underground Coal; State—KY	181	\$75,961	32	\$29,668
New Ridge Mining Company; Facility Coal; State—KY	7	\$10,246	1	\$9,300
No 1; Underground Coal; State—KY	289	\$180,064	90	\$107,720
Taylor Fork Energy; Underground Coal; State—KY	335	\$208,736	116	\$138,723
Transport Mine; Underground Coal; State—KY	13	\$2,118		
Coalgood Energy Company	171	\$219,196	16	\$187,329
Coalgood Crusher/Loadout; Facility Coal; State—KY	3	\$300		

DETAIL SUMMARY BY MINE—Continued

Company/Mine Operator/Mine Name/Mine Type/State	No. of Violations Assessed	Penalty Dollars Assessed	No. of Violations Contested	Penalty Dollars Contested
Moore Processing; Facility Coal; State—KY	8	\$800		
Right Fork Splint; Surface Coal; State—KY	11	\$1,339		
Triumph Mine; Underground Coal; State—KY	149	\$216,757	16	\$187,329
Delbarton Mining Company	20	\$5,690	3	\$768
Delbarton Preparation Plant; Facility Coal; State—WV	20	\$5,690	3	\$768
Elk Run Coal Co., Inc	982	\$1,486,208	421	\$1,098,630
Black Castle Mining Co; Surface Coal; State—WV	96	\$106,264	35	\$60,758
Black King I North Portal; Underground Coal; State—WV	176	\$456,737	110	\$439,743
Black Knight II; Underground Coal; State—WV	109	\$49,690	45	\$40,586
Blue Pennant Transfer; Facility Coal; State—WV	5	\$815	3	\$615
Castle East Portal; Underground Coal; State—WV	1	\$1,412		
Castle Mine; Underground Coal; State—WV	169	\$224,857	48	\$100,343
Chess Processing; Facility Coal; State—WV	20	\$7,466	5	\$4,438
Homer III Processing; Facility Coal; State—WV	11	\$2,484	6	\$1,865
Hunter Peerless Mine; Underground Coal; State—WV	35	\$22,384	30	\$21,884
Republic Energy; Surface Coal; State—WV	59	\$88,471	15	\$36,578
Roundbottom Powellton Deep Mine; Underground Coal; State— WV	255	\$510,390	106	\$380,656
Seng Creek Powellton; Underground Coal; State—WV	46	\$15,238	18	\$11,164
Freedom Energy Mining Company	725	\$826,164	262	\$663,439
Mine #1; Underground Coal; State—KY	725	\$826,164	262	\$663,439
Goals Coal Company	28	\$10,321	1	\$946
Goals Preparation Plant; Facility Coal; State—WV	28	\$10,321	1	\$946
Green Valley Coal Company	7	\$1,091		
No 1 Preparation Plant; Facility Coal; State—WV	7	\$1,091		
Highland Mining Company	61	\$271,528	21	\$235,817
Freeze Fork Surface Mine; Surface Coal; State—WV	44	\$265,688	19	\$234,647
Highland Coal Handling Facility; Underground Coal; State—WV	17	\$5,840	2	\$1,170
Independence Coal Company dba Endurance Mining	96	\$199,729	35	\$178,270
Plant No 1; Facility Coal; State—WV	11	\$1,714	1	\$100
Red Cedar Surface Mine; Surface Coal; State—WV	49	\$169,374	26	\$162,539
West Cazy Surface Mine; Surface Coal; State—WV	36	\$28,641	8	\$15,631
Independence Coal Company Inc	709	\$1,134,694	391	\$996,391
Allegiance Mine; Underground Coal; State—WV	263	\$492,733	142	\$421,863
Homer III Processing; Facility Coal; State—WV	10	\$1,957	3	\$948
Justice #1; Underground Coal; State—WV	306	\$526,889	160	\$471,887
Liberty Processing; Facility Coal; State—WV	129	\$113,015	86	\$101,693
Tunnel Mine; Underground Coal; State—WV	1	\$100		
Inman Energy	345	\$194,887	194	\$167,852
Randolph Mine; Underground Coal; State—WV	345	\$194,887	194	\$167,852
Knox Creek Coal Corp	752	\$928,094	197	\$520,094
Coal Creek Prep Plant; Facility Coal; State—VA	47	\$9,135		
Hess Creek Surface Mine; Surface Coal; State—VA	25	\$7,903		
Hurricane Branch Strip #1; Surface Coal; State—VA	4	\$934		
Tiller No 1; Underground Coal; State—VA	676	\$910,122	197	\$520,094
Long Fork Coal Company	58	\$23,970	11	\$16,985
Long Fork Preparation Plant; Facility Coal; State—KY	58	\$23,970	11	\$16,985
Marfork Coal Company, Inc	896	\$1,356,283	364	\$1,172,550
Allen Powellton Mine; Underground Coal; State—WV	98	\$90,809	36	\$65,610
Brushy Eagle; Underground Coal; State—WV	98	\$145,989	37	\$118,738
Coon Cedar Grove Mine; Underground Coal; State—WV	34	\$15,309	14	\$13,183
Horse Creek Eagle; Underground Coal; State—WV	134	\$219,017	60	\$194,159
Marfork Processing; Facility Coal; State—WV	23	\$8,959	10	\$7,016
Marsh Fork Mine; Underground Coal; State—WV	150	\$511,463	74	\$474,380
Parker Peerless Mine; Underground Coal; State—WV	155	\$174,992	64	\$148,263
Slip Ridge Cedar Grove Mine; Underground Coal; State—WV	178	\$176,381	64	\$142,175
White Queen; Underground Coal; State—WV	26	\$13,364	5	\$9,026
Martin Co. Coal Corp	359	\$111,850	50	\$61,072
Emily Creek Energy; Underground Coal; State—KY	63	\$38,156	12	\$27,404
MTR Surface Mine; Surface Coal; State—KY	19	\$8,462	4	\$4,759
MTR Wolf Creek Mine; Surface Coal; State—KY	17	\$2,077	4	\$777
Preparation Plant; Facility Coal; State—KY	31	\$5,323	4	\$1,394
Voyager #7; Underground Coal; State—KY	165	\$49,765	21	\$25,099

DETAIL SUMMARY BY MINE—Continued

Company/Mine Operator/Mine Name/Mine Type/State	No. of Violations Assessed	Penalty Dollars Assessed	No. of Violations Contested	Penalty Dollars Contested
White Cabin #7; Underground Coal; State—KY	64	\$8,067	5	\$1,639
Omar Mining Company	26	\$27,895	11	\$25,760
Chesterfield Prep Plant; Facility Coal; State—WV	26	\$27,895	11	\$25,760
Peerless Eagle Coal Company	6	\$2,419		
Lilly Fork Surface Mine; Surface Coal; State—WV	2	\$2,019		
Rockcamp Impoundments 1 & 2; Facility Coal; State—WV	4	\$400		
Performance Coal Company	502	\$913,021	182	\$628,873
Lower Big Branch Impoundment; Facility Coal; State—WV	4	\$434		
Upper Big Branch Mine-South; Underground Coal; State—WV ...	495	\$911,802	181	\$628,288
Upper Big Branch Raw Coal Facil; Facility Coal; State—WV	3	\$785	1	\$585
Power Mountain Coal Company	40	\$39,986	1	\$100
Power Mountain Processing; Facility Coal; State—WV	40	\$39,986	1	\$100
Progress Coal	48	\$118,351	14	\$90,890
Twilight Mtr Surface Mine; Surface Coal; State—WV	48	\$118,351	14	\$90,890
Rawl Sales and Processing Company Inc	3	\$300	1	\$100
Sprouse Creek Processing Company Inc; Facility Coal; State— WV	3	\$300	1	\$100
Road Fork Development Company, Inc	203	\$119,103	45	\$81,300
Long Pole Energy; Surface Coal; State—KY	1	\$5,000	1	\$5,000
Love Branch Mine; Underground Coal; State—KY	13	\$24,084	1	\$20,700
Love Branch South; Underground Coal; State—KY	189	\$90,019	43	\$55,600
Rockhouse Energy Mining Company	432	\$536,456	92	\$369,593
Mine #1; Underground Coal; State—KY	432	\$536,456	92	\$369,593
Rum Creek Coal Sales	15	\$4,775	6	\$3,571
Camp Branch Mine; Surface Coal; State—WV	15	\$4,775	6	\$3,571
Spartan Mining Company, Inc	1,874	\$2,549,982	649	\$2,122,220
Alloy Powellton; Underground Coal; State—WV	6	\$1,317	1	\$499
Coalburg Extension; Underground Coal; State—WV	4	\$1,186		
Diamond Energy; Underground Coal; State—WV	126	\$106,823	69	\$97,238
Hatfield Energy Mine; Underground Coal; State—WV	92	\$35,607	38	\$28,267
Laurel Coalburg Tunnel Mine; Underground Coal; State—WV	190	\$123,499	47	\$85,417
Laurel Creek/Spirit Mine; Underground Coal; State—WV	2	\$276		
Mammoth #2 Gas; Underground Coal; State—WV	134	\$230,615	44	\$211,619
Mammoth Coal Processing Pl & Riv Tipple; Facility Coal; State—WV	46	\$19,424	7	\$10,611
Mammoth Coal Co. Surface Mine; Surface Coal; State—WV	9	\$976		
No 130 Mine; Underground Coal; State—WV	84	\$66,567	13	\$37,995
Road Fork #51 Mine; Underground Coal; State—WV	251	\$315,521	81	\$247,500
Ruby Energy; Underground Coal; State—WV	562	\$1,399,193	274	\$1,245,047
Shadrick 5 Block; Underground Coal; State—WV	60	\$22,960	17	\$17,499
Slabcamp; Underground Coal; State—WV	269	\$211,617	50	\$135,477
Stockton Mine; Underground Coal; State—WV	39	\$14,401	8	\$5,051
Stirrat Coal Company	59	\$41,130	7	\$7,941
Preparation Plant; Facility Coal; State—WV	59	\$41,130	7	\$7,941
Talon Loadout Company	5	\$1,240	1	\$392
Talon Loadout; Facility Coal; State—WV	5	\$1,240	1	\$392
Tennessee Consolidated Coal Company	1	\$100		
Preparation Plant; Facility Coal; State—TN	1	\$100		
White Buck Coal Company	271	\$151,729	80	\$110,800
Grassy Creek No 1; Underground Coal; State—WV	144	\$97,414	51	\$73,614
Hominy Creek Mine; Underground Coal; State—WV	45	\$16,823	14	\$11,267
Pocahontas Mine; Underground Coal; State—WV	56	\$13,574	9	\$4,589
White Buck No 2; Underground Coal; State—WV	26	\$23,918	6	\$21,330
Mechel Oao	545	\$547,614	524	\$545,498
Bluestone Coal Corp	27	\$16,820	17	\$15,820
Central Shop; Facility Coal; State—WV	6	\$600		
No 2 Plant; Facility Coal; State—WV	1	\$100		
No 6 Strip; Surface Coal; State—WV	5	\$686	4	\$586
Pinnacle Creek Strip; Surface Coal; State—WV	1	\$100		
Pinnacle Ridge Surface Mine; Surface Coal; State—WV	2	\$200	1	\$100
Red Fox Load-Out; Facility Coal; State—WV	12	\$15,134	12	\$15,134
Double Bonus Coal Company	162	\$78,953	162	\$78,953
No 65; Underground Coal; State—WV	162	\$78,953	162	\$78,953

DETAIL SUMMARY BY MINE—Continued

Company/Mine Operator/Mine Name/Mine Type/State	No. of Violations Assessed	Penalty Dollars Assessed	No. of Violations Contested	Penalty Dollars Contested
Dynamic Energy Inc	31	\$28,175	31	\$28,175
Coal Mountain No 1 Surface; Surface Coal; State—WV	25	\$26,908	25	\$26,908
McDonald Fork Impoundment; Surface Coal; State—WV	6	\$1,267	6	\$1,267
Frontier Coal Company	76	\$38,831	75	\$38,731
Double Camp No. 1; Underground Coal; State—WV	76	\$38,831	75	\$38,731
Justice Energy Inc	14	\$79,008	14	\$79,008
Red Fox Surface Mine; Surface Coal; State—WV	14	\$79,008	14	\$79,008
Justice Highwall Mining, Inc	16	\$9,046	13	\$8,746
No 1 Miner; Surface Coal; State—WV	3	\$362	3	\$362
No 3 Miner; Surface Coal; State—WV	3	\$300		
Red Fox Surface Mine; Surface Coal; State—WV	10	\$8,384	10	\$8,384
Keystone Service Industries Inc	7	\$1,525	7	\$1,525
Keystone No 1 Preparation Plant; Facility Coal; State—WV	7	\$1,525	7	\$1,525
M & P Services, Inc	3	\$3,109	3	\$3,109
Red Fox Load-Out; Facility Coal; State—WV	3	\$3,109	3	\$3,109
NuFac Mining Company, Inc	24	\$6,476	24	\$6,476
Buckeye Mine; Underground Coal; State—WV	24	\$6,476	24	\$6,476
Pay Car Mining Inc	153	\$280,086	153	\$280,086
No 58; Underground Coal; State—WV	153	\$280,086	153	\$280,086
Second Sterling Corp	32	\$5,585	25	\$4,869
Keystone No 1 Preparation Plant; Facility Coal; State—WV	32	\$5,585	25	\$4,869
Metinvest B V	883	\$505,254	203	\$288,185
Banner Blue Coal Company	285	\$192,104	87	\$109,118
Apple Jacks No. 7; Underground Coal; State—VA	62	\$30,631	18	\$17,499
Locust Thicket; Underground Coal; State—VA	116	\$60,328	27	\$26,337
Paw Paw Mine; Underground Coal; State—VA	107	\$101,145	42	\$65,282
Black Diamond Company	21	\$6,511		
Wellmore #8 Prep Plant; Facility Coal; State—VA	21	\$6,511		
Carter Roag Coal Company	111	\$92,462	35	\$76,150
Pleasant Hill Mine; Underground Coal; State—WV	110	\$92,362	35	\$76,150
Star Bridge Preparation Plant—Rail Load; Facility Coal; State— WV	1	\$100		
North Star One LLC	5	\$1,601	4	\$1,501
Tommy Creek Mine No 1; Surface Coal; State—WV	5	\$1,601	4	\$1,501
Pocahontas Coal Company, LLC	100	\$71,448	42	\$53,544
Beckley No. 1 Mine; Underground Coal; State—WV	2	\$1,265		
East Gulf Preparation Plant; Facility Coal; State—WV	6	\$5,624	4	\$5,374
Josephine No 2 Mine; Underground Coal; State—WV	33	\$35,712	13	\$29,497
Josephine No 3 Mine; Underground Coal; State—WV	59	\$28,847	25	\$18,673
Sapphire Coal Company	319	\$126,675	32	\$41,256
Advantage No 1; Underground Coal; State—KY	115	\$68,264	14	\$26,831
Buck Creek No 1; Surface Coal; State—KY	13	\$1,799		
Sandlick II; Underground Coal; State—KY	69	\$37,263	11	\$13,011
Sapphire Prep Plant; Facility Coal; State—KY	21	\$3,955		
UZ No 2; Underground Coal; State—KY	101	\$15,394	7	\$1,414
Surface Minerals Company	25	\$12,610	3	\$6,616
3 Pole; Surface Coal; State—VA	11	\$1,325		
Convict Hollow; Surface Coal; State—VA	3	\$3,408		
Huffman Fk.; Surface Coal; State—VA	3	\$300		
Jones Fork; Surface Coal; State—VA	6	\$6,978	3	\$6,616
Mule Hollow Surface Mine; Surface Coal; State—VA	2	\$599		
Wellmore Coal Company, LLC	17	\$1,843		
#7 Prep Plant; Facility Coal; State—VA	8	\$800		
Nora Preparation Plant; Facility Coal; State—VA	9	\$1,043		
Newmont Mining Corp	601	\$1,355,470	278	\$802,317
Newmont Mining Corp	601	\$1,355,470	278	\$802,317
Deep Post; Underground Metal; State—NV	77	\$181,511	45	\$159,868
GENESIS; Surface Metal; State—NV	74	\$251,687	44	\$245,600
Leeville; Underground Metal; State—NV	107	\$157,749	52	\$138,300
Lone Tree Mine; Surface Metal; State—NV	37	\$7,535	12	\$3,961
Midas Mine; Underground Metal; State—NV	134	\$497,469	50	\$103,498
Phoenix Mine; Surface Metal; State—NV	9	\$8,929	4	\$3,418
SOUTH AREA; Surface Metal; State—NV	103	\$200,069	55	\$123,181

DETAIL SUMMARY BY MINE—Continued

Company/Mine Operator/Mine Name/Mine Type/State	No. of Violations Assessed	Penalty Dollars Assessed	No. of Violations Contested	Penalty Dollars Contested
TWIN CREEKS MINE; Surface Metal; State—NV	60	\$50,521	16	\$24,491
Patriot Coal Corporation	3,851	\$4,475,766	1,509	\$3,530,080
Apogee Coal Company LLC	59	\$98,828	22	\$75,236
Fanco; Facility Coal; State—WV	7	\$700		
Guyan; Surface Coal; State—WV	51	\$98,028	22	\$75,236
Little White Oak; Facility Coal; State—WV	1	\$100		
Catenary Coal Company LLC	33	\$7,547	1	\$540
Samples Mine Highwall Miner; Surface Coal; State—WV	1	\$100		
Samples Mine; Surface Coal; State—WV	29	\$7,130	1	\$540
Toms Fork Loadout; Facility Coal; State—WV	3	\$317		
Coal Clean LLC	20	\$2,163		
Coal Clean LLC; Facility Coal; State—WV	20	\$2,163		
Coyote Coal Company LLC	1	\$100	1	\$100
Buffalo No. 2 Gas Deep Mine; Underground Coal; State—WV	1	\$100	1	\$100
Dodge Hill Mining Company LLC	178	\$111,283	50	\$65,287
Dodge Hill Mine #1; Underground Coal; State—KY	178	\$111,283	50	\$65,287
Eastern Associated Coal Corp	786	\$415,477	231	\$265,744
Black Oak Mine; Underground Coal; State—WV	60	\$20,283	9	\$8,517
Cow Creek Coal Blending Facility; Facility Coal; State—WV	1	\$100		
Federal No 2; Underground Coal; State—WV	379	\$173,177	105	\$115,344
Harris No 1; Underground Coal; State—WV	298	\$215,909	116	\$141,620
Harris Preparation Plant; Facility Coal; State—WV	4	\$400		
Matewan Tunnel; Underground Coal; State—WV	7	\$880	1	\$263
Powellton Tunnel; Underground Coal; State—WV	2	\$212		
Rocklick Preparation Plant; Facility Coal; State—WV	21	\$3,040		
Wells Preparation Plant; Facility Coal; State—WV	6	\$600		
Wharton No 1 Tunnel; Underground Coal; State—WV	8	\$876		
Grand Eagle Mining, Inc	34	\$9,197	6	\$1,484
Grand Eagle Prep Plant; Facility Coal; State—KY	23	\$6,143	1	\$100
Patriot Surface; Surface Coal; State—KY	11	\$3,054	5	\$1,384
Highland Mining Company	672	\$999,350	353	\$876,774
Highland 9 Mine; Underground Coal; State—KY	672	\$999,350	353	\$876,774
Highwall Mining LLC	21	\$8,685		
Wildcat Surface Mine; Surface Coal; State—WV	21	\$8,685		
Hobet Mining LLC	58	\$16,135		
Beth Station No 79 Prep Plant; Facility Coal; State—WV	16	\$2,264		
Hill Fork Surface Mine; Surface Coal; State—WV	17	\$3,228		
Hobet 21 Surface Mine; Surface Coal; State—WV	25	\$10,643		
I O Coal Company, LLC	73	\$45,728	9	\$17,860
Europa Mine; Underground Coal; State—WV	73	\$45,728	9	\$17,860
Little Creek LLC	1	\$100		
Little Creek Dock; Facility Coal; State—WV	1	\$100		
Midland Trail Energy LLC	160	\$83,210	32	\$22,111
BC No. 2 Deep Mine; Underground Coal; State—WV	10	\$2,209	3	\$300
Campbells Creek No 7 Mine; Underground Coal; State—WV	136	\$79,525	27	\$21,535
Campbells Creek Surface Facilities; Facility Coal; State—WV	14	\$1,476	2	\$276
Ohio County Coal Company LLC	271	\$326,261	140	\$287,489
Freedom; Underground Coal; State—KY	271	\$326,261	140	\$287,489
Peabody Coal Company	81	\$16,442	11	\$5,079
Camp 9 Prep Plant; Facility Coal; State—KY	81	\$16,442	11	\$5,079
Pine Ridge Coal Company LLC	373	\$644,001	136	\$468,164
Big Mountain No 16; Underground Coal; State—WV	354	\$640,859	135	\$468,064
Big Mountain Preparation Plant; Facility Coal; State—WV	19	\$3,142	1	\$100
Pond Fork Processing Corporation	4	\$552		
Pond Fork Processing; Facility Coal; State—WV	4	\$552		
Remington, LLC	191	\$213,741	60	\$163,755
Deskings Mine; Underground Coal; State—WV	30	\$28,016	12	\$18,876
Stockburg No 2; Underground Coal; State—WV	17	\$25,675	6	\$21,040
Winchester Mine; Underground Coal; State—WV	144	\$160,050	42	\$123,839
Rivers Edge Mining Inc	98	\$51,063	28	\$28,547
Rivers Edge Mine; Underground Coal; State—WV	98	\$51,063	28	\$28,547
Speed Mining Inc	733	\$1,424,612	429	\$1,251,910
American Eagle Mine; Underground Coal; State—WV	728	\$1,422,908	429	\$1,251,910

DETAIL SUMMARY BY MINE—Continued

Company/Mine Operator/Mine Name/Mine Type/State	No. of Violations Assessed	Penalty Dollars Assessed	No. of Violations Contested	Penalty Dollars Contested
Coon Hollow Tunnel Mine; Underground Coal; State—WV	5	\$1,704		
Weatherby Processing Corp	4	\$1,291		
Remington Preparation Plant; Facility Coal; State—WV	4	\$1,291		
Peabody Energy	4,394	\$10,900,611	1,322	\$8,639,575
Big Ridge Inc	928	\$2,798,215	367	\$2,468,308
Willow Lake Central Preparation Plant; Facility Coal; State—IL	3	\$716		
Willow Lake Portal; Underground Coal; State—IL	925	\$2,797,499	367	\$2,468,308
Caballo Coal Company	33	\$7,355	1	\$634
Caballo Mine; Surface Coal; State—WY	24	\$4,531	1	\$634
Rawhide Mine; Surface Coal; State—WY	9	\$2,824		
Highland Mining Company	2	\$6,856	2	\$6,856
Highland 9 Mine; Underground Coal; State—KY	2	\$6,856	2	\$6,856
Lee Ranch Coal Co Div/Peabody Nat Resources Co	44	\$96,676	3	\$72,727
El Segundo; Surface Coal; State—NM	28	\$23,421	2	\$13,200
Lee Ranch Coal Company; Surface Coal; State—NM	16	\$73,255	1	\$59,527
Peabody Midwest Mining, LLC	2,608	\$6,747,716	737	\$5,290,728
Air Quality #1 Mine; Underground Coal; State—IN	1,339	\$4,630,954	555	\$3,960,588
Air Quality South Wash Plant; Facility Coal; State—IN	17	\$3,683	10	\$2,348
Farmersburg Mine; Surface Coal; State—IN	41	\$31,294		
Francisco Mine—Underground Pit; Underground Coal; State—IN	320	\$377,076	52	\$212,362
Francisco Mine; Surface Coal; State—IN	20	\$28,703	3	\$11,559
Gateway Mine; Underground Coal; State—IL	555	\$1,129,068	72	\$727,657
Mine No.17; Underground Coal; State—KY	2	\$998		
Preparation Plant; Facility Coal; State—IL	15	\$5,262		
Riola Complex Vermilion Grove Portal; Underground Coal; State—IL	79	\$377,129	16	\$304,321
Somerville Central Mine; Surface Coal; State—IN	55	\$39,990	2	\$1,660
Viking Mine—Corning Pit; Surface Coal; State—IN	28	\$15,053	8	\$11,624
Viking Mine—Knox Pit; Surface Coal; State—IN	48	\$61,016	7	\$36,545
Wildcat Hills Mine—Cottage Grove Pit; Surface Coal; State—IL	7	\$7,724	4	\$6,204
Wildcat Hills Mine—Underground; Underground Coal; State—IL	82	\$39,766	8	\$15,860
Peabody Western Coal Company	80	\$185,684		
Kayenta Mine; Surface Coal; State—AZ	80	\$185,684		
Powder River Coal, LLC	82	\$100,100	20	\$87,926
North Antelope Rochelle Mine; Surface Coal; State—WY	82	\$100,100	20	\$87,926
Twentymile Coal Company	617	\$958,009	192	\$712,396
Foidel Creek Mine; Underground Coal; State—CO	617	\$958,009	192	\$712,396
Richard Gilliam	2,425	\$1,648,057	1,243	\$1,492,963
Big Laurel Mining Corporation	177	\$284,546	111	\$277,587
Mine No 2; Underground Coal; State—VA	177	\$284,546	111	\$277,587
Bluff Spur Coal Corporation	226	\$61,183	119	\$49,732
Marker Portal Mine; Underground Coal; State—VA	139	\$27,219	63	\$19,432
Mine No 1; Underground Coal; State—VA	86	\$33,864	56	\$30,300
Mine No 2; Underground Coal; State—VA	1	\$100		
Cave Spur Coal LLC	105	\$157,721	53	\$149,136
Mine #1; Underground Coal; State—KY	105	\$157,721	53	\$149,136
Cloverlick Coal Company LLC	104	\$55,034	61	\$48,407
Mine #1; Underground Coal; State—KY	99	\$53,454	58	\$47,027
Mine #3; Underground Coal; State—KY	5	\$1,580	3	\$1,380
Dorchester Enterprises, Inc	185	\$76,023	139	\$71,396
Mine No. 4; Underground Coal; State—VA	185	\$76,023	139	\$71,396
Guest Mountain Mining Corporation	211	\$64,637	98	\$52,998
Mine No 3; Underground Coal; State—VA	13	\$4,864	8	\$4,347
Mine No 4; Underground Coal; State—VA	92	\$23,024	47	\$18,353
Mine No 5; Underground Coal; State—VA	105	\$36,649	43	\$30,298
Mine No. 6; Underground Coal; State—VA	1	\$100		
Mill Branch Coal Corporation	266	\$88,574	113	\$72,842
Looney Creek Taggart Mine; Underground Coal; State—VA	116	\$54,962	60	\$49,259
Low Splint A Mine; Underground Coal; State—VA	68	\$16,472	29	\$12,548
Mine No. 3; Underground Coal; State—VA	82	\$17,140	24	\$11,035
Nine Mile Spur LLC	2	\$363	2	\$363
Nine Mine Spur No 7 Strip; Surface Coal; State—VA	2	\$363	2	\$363
North Fork Coal Corporation	395	\$558,186	167	\$521,938

DETAIL SUMMARY BY MINE—Continued

Company/Mine Operator/Mine Name/Mine Type/State	No. of Violations Assessed	Penalty Dollars Assessed	No. of Violations Contested	Penalty Dollars Contested
Mine No 4; Underground Coal; State—KY	281	\$512,486	138	\$489,224
Mine No 5; Underground Coal; State—KY	114	\$45,700	29	\$32,714
Osaka Mining Corporation	242	\$71,360	141	\$60,118
Mine No. 1; Underground Coal; State—VA	242	\$71,360	141	\$60,118
Panther Mining, LLC	209	\$101,253	100	\$83,379
Mine #1; Underground Coal; State—KY	137	\$68,287	71	\$57,521
Panther Mine #4a; Underground Coal; State—KY	72	\$32,966	29	\$25,858
Pigeon Creek Processing Corporation	30	\$4,819	13	\$3,012
Plant No 1; Facility Coal; State—VA	30	\$4,819	13	\$3,012
Stillhouse Mining LLC	273	\$124,358	126	\$102,055
Mine #1; Underground Coal; State—KY	154	\$66,690	71	\$54,883
Mine #2; Underground Coal; State—KY	119	\$57,668	55	\$47,172
Robert E Murray	2,559	\$2,467,043	1,963	\$2,349,683
American Energy Corp	313	\$115,702	244	\$107,221
Century Mine; Underground Coal; State—OH	313	\$115,702	244	\$107,221
Andalex Resources Inc	3	\$403	1	\$100
Pinnacle; Underground Coal; State—UT	2	\$227	1	\$100
Wildcat Loadout; Facility Coal; State—UT	1	\$176		
Canterbury Coal Company	2	\$200		
Cleaning Plant; Facility Coal; State—PA	2	\$200		
Genwal Resources Inc	4	\$552		
Crandall Canyon Mine; Underground Coal; State—UT	1	\$176		
South Crandall Canyon Mine; Underground Coal; State—UT	3	\$376		
Kenamerican Resources Inc	559	\$846,080	448	\$826,366
Paradise #9; Underground Coal; State—KY	559	\$846,080	448	\$826,366
Ohio American Energy Incorporated	17	\$7,768	6	\$6,668
Salt Run Mine #1; Surface Coal; State—OH	13	\$7,368	5	\$6,568
StarRidge Preparation Plant; Facility Coal; State—OH	4	\$400	1	\$100
Ohio Valley Transloading Company	4	\$760		
Powhatan Transportation Center; Facility Coal; State—OH	4	\$760		
The American Coal Company	959	\$1,057,480	779	\$1,011,509
Galatia Mine; Underground Coal; State—IL	959	\$1,057,480	779	\$1,011,509
The Ohio Valley Coal Company	372	\$249,309	297	\$238,130
Powhatan No. 6 Mine; Underground Coal; State—OH	372	\$249,309	297	\$238,130
Utah American Energy, Inc	17	\$2,832	2	\$352
Lila Canyon; Underground Coal; State—UT	17	\$2,832	2	\$352
West Ridge Resources Inc	307	\$185,757	186	\$159,337
West Ridge Mine; Underground Coal; State—UT	307	\$185,757	186	\$159,337
West Virginia Resources Inc	2	\$200		
Cheshire Dock; Facility Coal; State—OH	2	\$200		
Rogers Group Inc	582	\$281,962	258	\$202,248
Mid-South Stone Inc	7	\$1,115	7	\$1,115
Gordonsville Plant; Facility Stone; State—TN	7	\$1,115	7	\$1,115
Reostone Llc	24	\$4,805	20	\$4,405
Gallatin Quarry; Surface Stone; State—TN	2	\$200		
Reostone LLC; Surface Stone; State—TN	22	\$4,605	20	\$4,405
Rogers Group, Inc	551	\$276,042	231	\$196,728
ALGOOD QUARRY; Surface Stone; State—TN	7	\$700		
Bloomington Quarry; Surface Stone; State—IN	24	\$12,041	1	\$334
Bloomington Underground Mine; Underground Stone; State—IN	2	\$667	1	\$460
Bullitt County Stone Company; Surface Stone; State—KY	2	\$200		
Cabot Quarry; Surface Stone; State—AR	11	\$1,398		
Canton Quarry; Surface Stone; State—KY	7	\$4,693	2	\$4,039
Caryville Quarry; Surface Stone; State—TN	7	\$738		
Columbia Quarry; Surface Stone; State—TN	20	\$7,649	18	\$7,449
Cowan Quarry; Surface Stone; State—TN	1	\$190		
Cross Plains Quarry; Surface Stone; State—TN	7	\$2,520	4	\$2,220
Deason Quarry; Surface Stone; State—TN	2	\$200		
Farmington Quarry; Surface Stone; State—AR	2	\$200		
FAYETTEVILLE QUARRY; Surface Stone; State—TN	3	\$4,013		
Fentress Quarry; Surface Stone; State—TN	2	\$200		
Greenbrier Quarry; Surface Stone; State—AR	11	\$1,691	11	\$1,691
Hickman County Quarry; Surface Stone; State—TN	8	\$1,483		

DETAIL SUMMARY BY MINE—Continued

Company/Mine Operator/Mine Name/Mine Type/State	No. of Violations Assessed	Penalty Dollars Assessed	No. of Violations Contested	Penalty Dollars Contested
Hillsboro Quarry and Mill; Surface Stone; State—TN	8	\$1,400		
Hopkinsville Aggregate Quarry; Surface Stone; State—KY	1	\$100		
Interstate Sand & Gravel Plant; Surface SandAndGravel; State—IN	1	\$100		
Jefferson County Stone; Underground Stone; State—KY	12	\$2,265	3	\$1,073
Knox County Sand & Gravel Plant; Surface SandAndGravel; State—IN	2	\$200		
Lacey's Spring; Surface Stone; State—AL	3	\$699		
LaFollette Quarry; Surface Stone; State—TN	7	\$1,149		
Lawrenceburg Quarry & Mill; Surface Stone; State—TN	47	\$12,207	11	\$4,886
Lewisburg Quarry; Surface Stone; State—TN	10	\$1,767		
LIBERTY QUARRY; Surface Stone; State—TN	8	\$2,313	4	\$1,621
Limestone County Quarry; Surface Stone; State—AL	4	\$450		
Lowell Quarry; Surface Stone; State—AR	2	\$307		
Lynchburg Quarry; Surface Stone; State—TN	5	\$1,150		
MARION MINE & MILL; Underground Stone; State—KY	93	\$60,429	56	\$53,750
MCMINNVILLE QUARRY; Surface Stone; State—TN	5	\$1,225		
Mitchell Quarry; Surface Stone; State—IN	9	\$6,361	9	\$6,361
MONROE COUNTY STONE; Surface Stone; State—TN	4	\$760		
MORGAN COUNTY SAND & GRAVEL PLANT; Surface SandAndGravel; State—IN	1	\$100		
Newton County Quarry; Surface Stone; State—IN	12	\$1,504	7	\$1,004
Oak Ridge Quarry & Mill; Surface Stone; State—TN	4	\$756		
Oldham County Stone; Underground Stone; State—KY	7	\$2,385	2	\$1,445
Owen Valley Quarry; Surface Stone; State—IN	5	\$500		
Portable Plant #1; Surface Stone; State—AR	5	\$1,023	2	\$599
Pottsville Quarry; Surface Stone; State—TN	1	\$100		
Princeton Mine; Underground Stone; State—KY	58	\$32,094	42	\$16,382
Princeton Quarry And Mill; Surface Stone; State—KY	3	\$300		
Pulaski Quarry; Surface Stone; State—TN	67	\$94,620	54	\$92,392
RGI Cumberland Mountain Sand; Surface SandAndGravel; State—TN	13	\$2,272		
Rhea County Stone; Surface Stone; State—TN	10	\$2,225		
Roane County Quarry; Surface Stone; State—TN	3	\$508		
Rutherford Quarry; Surface Stone; State—TN	2	\$200		
Shelbyville Quarry; Surface Stone; State—TN	9	\$3,968		
Sieboldt Quarry; Surface Stone; State—IN	1	\$100		
Sparta Quarry; Surface Stone; State—TN	4	\$400		
Tuscumbia Quarry; Surface Stone; State—AL	3	\$300		
Wabash Gravel; Surface SandAndGravel; State—IN	2	\$200		
Whites Creek Plant & Quarry; Surface Stone; State—TN	4	\$1,022	4	\$1,022
TECO Energy Inc	1,392	\$763,207	211	\$371,078
Clintwood Elkhorn Mining	154	\$82,135	2	\$200
Bearwallow Surface; Surface Coal; State—VA	4	\$400		
Cedar Branch No 1; Surface Coal; State—VA	45	\$57,305		
Clintwood Elkhorn II; Facility Coal; State—KY	22	\$2,707		
Clintwood Elkhorn III; Facility Coal; State—VA	39	\$4,943	1	\$100
Laurel Branch Surface; Surface Coal; State—VA	36	\$13,703	1	\$100
Millers Creek Surface; Surface Coal; State—KY	7	\$2,977		
Turkey Pen Refuse; Surface Coal; State—KY	1	\$100		
Gatliff Coal Co., Inc	2	\$1,404		
Gatliff Surface #3; Surface Coal; State—KY	2	\$1,404		
Perry County Coal Corp	1,000	\$542,526	190	\$303,653
E3-1; Underground Coal; State—KY	213	\$151,536	6	\$80,264
E4-1; Underground Coal; State—KY	291	\$142,314	54	\$70,813
E4-2; Underground Coal; State—KY	465	\$244,627	129	\$152,476
Preparation Plant; Facility Coal; State—KY	27	\$3,573		
Upper Second Creek Portals; Surface Coal; State—KY	4	\$476	1	\$100
Premier Elkhorn Coal Co	236	\$137,142	19	\$67,225
#14; Underground Coal; State—KY	75	\$47,321	6	\$13,488
Burke Branch Tipple; Facility Coal; State—KY	44	\$6,634	2	\$200
Job #42; Surface Coal; State—KY	23	\$7,884		
Job #45; Surface Coal; State—KY	20	\$4,776	3	\$652

DETAIL SUMMARY BY MINE—Continued

Company/Mine Operator/Mine Name/Mine Type/State	No. of Violations Assessed	Penalty Dollars Assessed	No. of Violations Contested	Penalty Dollars Contested
Job #49; Surface Coal; State—KY	16	\$56,050	6	\$52,685
Job 54; Surface Coal; State—KY	4	\$400		
PE 5 Underground; Underground Coal; State—KY	50	\$13,677	2	\$200
Pe Letcher County; Surface Coal; State—KY	1	\$100		
Pe Southern Pike Co; Surface Coal; State—KY	3	\$300		
Vulcan Materials Company	809	\$235,178	215	\$101,309
Cal Mat Co	90	\$24,754	9	\$10,883
AVONDALE PLANT; Surface SandAndGravel; State—AZ	1	\$100		
Azusa Rock; Surface Stone; State—CA	7	\$1,278		
Big Rock Creek; Surface SandAndGravel; State—CA	4	\$462		
Carroll Canyon Plant; Surface SandAndGravel; State—CA	1	\$100		
Durbin Plant; Surface SandAndGravel; State—CA	5	\$643		
LITCHFIELD PLANT; Surface SandAndGravel; State—AZ	2	\$200		
MARANA PLANT; Surface SandAndGravel; State—AZ	5	\$5,547	3	\$5,347
Mission Valley Plant; Surface SandAndGravel; State—CA	2	\$200		
Palmdale Plant; Surface SandAndGravel; State—CA	3	\$300		
Pleasanton Plant; Surface SandAndGravel; State—CA	10	\$2,028		
Reliance Plant; Surface SandAndGravel; State—CA	6	\$743	1	\$100
River Rock Plant; Surface SandAndGravel; State—CA	5	\$500		
San Bernardino Plant; Surface SandAndGravel; State—CA	3	\$1,131		
San Emidio Plant; Surface SandAndGravel; State—CA	6	\$2,338	1	\$807
Sanger Plant; Surface SandAndGravel; State—CA	11	\$1,629		
SANTO DOMINGO PUEBLO MINE; Surface SandAndGravel; State—NM	4	\$4,683	1	\$4,329
Shakespeare Pit; Surface SandAndGravel; State—NM	2	\$200	1	\$100
Sun Valley Plant; Surface SandAndGravel; State—CA	7	\$2,072		
Upland Plant; Surface SandAndGravel; State—CA	2	\$200		
VAL VISTA—CITRUS GROVE 150; Surface SandAndGravel; State—AZ	2	\$200	2	\$200
West Plant; Surface SandAndGravel; State—AZ	1	\$100		
Wheeler Ridge Plant; Surface SandAndGravel; State—CA	1	\$100		
Florida Rock Industries	103	\$22,231	64	\$16,716
Astatula Sand Plant; Surface SandAndGravel; State—FL	6	\$600	2	\$200
BAINBRIDGE SAND PLANT; Surface SandAndGravel; State—GA ...	2	\$200		
Calcium Plant; Surface Stone; State—FL	4	\$987	3	\$887
Diamond Sand Plant; Surface SandAndGravel; State—FL	2	\$734		
Fort Myers Mine; Surface Stone; State—FL	2	\$352		
Fort Pierce Mine; Surface Stone; State—FL	1	\$100		
Grandin Sand Plant; Surface SandAndGravel; State—FL	2	\$380	2	\$380
Keuka Sand Plant; Surface SandAndGravel; State—FL	2	\$238	1	\$138
Miami Quarry; Surface Stone; State—FL	6	\$929	2	\$324
POLK SAND PLANT; Surface SandAndGravel; State—FL	4	\$1,123	3	\$985
Tampa Cement Grinding Plant; Facility Stone; State—FL	36	\$8,334	32	\$7,934
TAMPA SALES YARD; Facility Stone; State—FL	11	\$2,594	4	\$1,775
TSB CEMENT PLANT; Facility Stone; State—FL	17	\$4,251	11	\$3,146
Turnpike Sand; Surface SandAndGravel; State—FL	4	\$902	3	\$740
Witherspoon Sand Plant; Surface SandAndGravel; State—FL	4	\$507	1	\$207
TCS Materials Inc	1	\$308	1	\$308
Elkton Plant; Surface Stone; State—VA	1	\$308	1	\$308
Tidewater Quarries, Inc	1	\$100	1	\$100
Augusta Plant; Surface Stone; State—VA	1	\$100	1	\$100
Triangle Rock Products Inc	10	\$1,759		
TRP—Los Banos Plant; Surface SandAndGravel; State—CA	6	\$1,245		
TRP—Sacramento Plant; Surface SandAndGravel; State—CA	4	\$514		
VULCAN CONSTR. MATERIALS, L.P	604	\$186,026	140	\$73,302
115 QUARRY; Surface Stone; State—NC	1	\$100	1	\$100
Abilene Black Lease Quarry; Surface Stone; State—TX	5	\$500		
Adairsville Quarry; Surface Stone; State—GA	3	\$548	3	\$548
ANDERSON QUARRY; Surface Stone; State—SC	2	\$200		
ATHENS QUARRY; Surface Stone; State—TN	1	\$100	1	\$100
Barin Quarry; Surface Stone; State—GA	10	\$2,937	4	\$1,325
Bartlett Underground Mine; Underground Stone; State—IL	5	\$858	2	\$324
BARTOW QUARRY; Surface Stone; State—GA	5	\$1,194	5	\$1,194

DETAIL SUMMARY BY MINE—Continued

Company/Mine Operator/Mine Name/Mine Type/State	No. of Violations Assessed	Penalty Dollars Assessed	No. of Violations Contested	Penalty Dollars Contested
Benton County Quarry; Surface Stone; State—TN	21	\$5,541		
BESSEMER QUARRY; Surface Stone; State—AL	3	\$300	2	\$200
BLACKSBURG QUARRY; Surface Stone; State—SC	5	\$815		
BLAIR QUARRY; Surface Stone; State—SC	2	\$227		
BLAIRSVILLE QUARRY; Surface Stone; State—GA	2	\$9,938	2	\$9,938
Bolingbrook Underground; Underground Stone; State—IL	2	\$200		
BOONE QUARRY; Surface Stone; State—NC	1	\$100	1	\$100
BRISTOL QUARRY; Surface Stone; State—TN	4	\$427		
Brownwood Quarry; Surface Stone; State—TX	7	\$1,086	3	\$686
Cabarrus Quarry; Surface Stone; State—NC	1	\$100	1	\$100
CALERA QUARRY; Surface Stone; State—AL	3	\$390		
CENTRAL SERVICE; Facility Stone; State—NC	1	\$100		
Central; Underground Stone; State—KY	9	\$4,514		
CHATTANOOGA QUARRY; Surface Stone; State—TN	3	\$443		
Cherokee Quarry; Surface Stone; State—AL	2	\$250		
CHILDERSBURG QUARRY; Surface Stone; State—AL	2	\$288		
CLARKSVILLE QUARRY; Surface Stone; State—TN	2	\$200		
CLEVELAND QUARRY; Surface Stone; State—TN	1	\$100	1	\$100
COLUMBIA QUARRY; Surface Stone; State—SC	4	\$524		
Columbia Quarry; Surface Stone; State—TN	1	\$634		
Columbia Quarry; Underground Stone; State—TN	7	\$4,854	7	\$4,854
COOKEVILLE QUARRY; Surface Stone; State—TN	3	\$300		
Dahlonega Quarry; Surface Stone; State—GA	2	\$200		
DALTON QUARRY; Surface Stone; State—GA	2	\$200		
DANLEY; Surface Stone; State—TN	4	\$400		
Daugherty Plant; Surface SandAndGravel; State—IN	2	\$234		
De Kalb Quarry; Surface Stone; State—IL	1	\$100		
Dickson Quarry; Surface Stone; State—TN	1	\$100		
Dolcito Quarry; Surface Stone; State—AL	4	\$667		
Dousman Pit; Surface SandAndGravel; State—WI	3	\$300		
DREYFUS QUARRY; Surface Stone; State—SC	2	\$2,484		
East Forsyth; Surface Stone; State—NC	1	\$138		
ELKIN; Surface Stone; State—NC	1	\$634		
Enka; Surface Stone; State—NC	1	\$100	1	\$100
Ensley Central Services; Facility Stone; State—AL	1	\$100	1	\$100
Forest Park Quarry; Surface Stone; State—GA	4	\$624	1	\$100
Fort Knox Quarry; Surface Stone; State—KY	4	\$400		
Fort Payne Quarry; Surface Stone; State—AL	8	\$876	1	\$100
Francesville Quarry; Surface Stone; State—IN	2	\$200		
Franklin Quarry; Surface Stone; State—TN	10	\$2,112		
Franklin Quarry; Surface Stone; State—WI	20	\$11,048	16	\$10,598
Frederick Quarry; Surface Stone; State—MD	2	\$200		
Geronimo Creek Quarry; Surface Stone; State—TX	1	\$100		
GLENCOE QUARRY; Surface Stone; State—AL	1	\$150		
GOLD HILL; Surface Stone; State—NC	2	\$200	2	\$200
GRAHAM-VIRGINIA; Surface Stone; State—VA	5	\$1,207	2	\$702
Grand Rivers Quarry; Surface Stone; State—KY	17	\$2,608	5	\$1,087
GRAY COURT QUARRY; Surface Stone; State—SC	1	\$150		
Grayson Quarry; Surface Stone; State—GA	6	\$900		
GREENWOOD QUARRY; Surface Stone; State—SC	1	\$5,503		
GRIFFIN QUARRY; Surface Stone; State—GA	2	\$200		
Groesbeck Quarry; Surface Stone; State—TX	3	\$548	2	\$324
HANOVER QUARRY; Surface Stone; State—PA	3	\$300		
Hardin County Quarry; Surface Stone; State—KY	5	\$1,050		
Harrison County Quarry; Surface Stone; State—IN	2	\$234		
HAVRE DE GRACE QUARRY; Surface Stone; State—MD	2	\$352		
HELENA QUARRY; Surface Stone; State—AL	3	\$300		
Helotes Quarry; Surface Stone; State—TX	5	\$929	5	\$929
HENDERSONVILLE; Surface Stone; State—NC	4	\$1,025	4	\$1,025
Hermitage Quarry; Surface Stone; State—TN	3	\$300		
HOUSTON SALES YARD; Facility Stone; State—TX	1	\$100		
Huebner Road Quarry; Surface Stone; State—TX	7	\$1,224		
HUNTSVILLE NORTH QUARRY; Surface Stone; State—AL	8	\$1,110	1	\$100

DETAIL SUMMARY BY MINE—Continued

Company/Mine Operator/Mine Name/Mine Type/State	No. of Violations Assessed	Penalty Dollars Assessed	No. of Violations Contested	Penalty Dollars Contested
JACK PLANT; Surface Stone; State—VA	6	\$929		
Kankakee Quarry & Mill; Surface Stone; State—IL	2	\$200		
KENNESAW QUARRY; Surface Stone; State—GA	1	\$176		
KINGSPORT QUARRY; Surface Stone; State—TN	3	\$354		
Knippa Quarry; Surface Stone; State—TX	5	\$3,607		
KODAK QUARRY; Surface Stone; State—TN	5	\$2,561	1	\$2,161
La Grange Quarry; Surface Stone; State—GA	1	\$100		
LACON QUARRY; Surface Stone; State—AL	2	\$200	1	\$100
Lakeside Quarry; Surface Stone; State—SC	16	\$3,968	1	\$100
Laraway Quarry; Surface Stone; State—IL	2	\$845		
LAWRENCEVILLE; Surface Stone; State—VA	3	\$362		
Lemont Underground Limestone; Underground Stone; State—IL	10	\$2,552	4	\$1,512
Lenoir; Surface Stone; State—NC	1	\$100	1	\$100
LIBERTY QUARRY; Surface Stone; State—SC	1	\$100		
LITHIA SPRINGS QUARRY; Surface Stone; State—GA	6	\$12,205	3	\$11,843
LOWELL QUARRY; Surface Stone; State—IN	3	\$300		
LYMAN QUARRY; Surface Stone; State—SC	7	\$1,074	1	\$224
MACON QUARRY; Surface Stone; State—GA	6	\$676		
Macon; Surface SandAndGravel; State—IL	1	\$100		
Madras Quarry; Surface Stone; State—GA	6	\$1,512		
MANASSAS; Surface Stone; State—VA	5	\$3,700	1	\$3,224
MARYVILLE QUARRY; Surface Stone; State—TN	1	\$100		
MAYNARDVILLE QUARRY; Surface Stone; State—TN	14	\$6,144	3	\$1,204
McCook Quarry; Surface Stone; State—IL	19	\$5,728	8	\$4,303
Midsouth Machine Service; Facility Stone; State—TN	1	\$100		
Monon Quarry; Surface Stone; State—IN	3	\$300		
MORGANTON; Surface Stone; State—NC	2	\$200	1	\$100
MORRISTOWN QUARRY; Surface Stone; State—TN	2	\$200		
Norcross Quarry; Surface Stone; State—GA	3	\$463		
Norcross Shop; Surface Stone; State—GA	2	\$217		
NORTH QUARRY; Surface Stone; State—NC	1	\$100		
Norton Quarry; Surface Stone; State—VA	4	\$434	1	\$100
Notasulga Quarry; Surface Stone; State—AL	2	\$200		
OHATCHEE QUARRY; Surface Stone; State—AL	1	\$138		
Oshkosh Quarry; Surface Stone; State—WI	4	\$544		
PACOLET QUARRY; Surface Stone; State—SC	4	\$1,374		
Parsons Quarry; Surface Stone; State—TN	13	\$24,772	2	\$3,881
Pineville; Surface Stone; State—NC	3	\$443	1	\$243
PLEASANT VIEW QUARRY; Surface Stone; State—TN	2	\$324		
Pocomoke City Sand & Gravel; Surface SandAndGravel; State—MD	7	\$1,002	4	\$702
Polk County Quarry; Surface Stone; State—TN	1	\$100		
PRIDE QUARRY; Surface Stone; State—AL	10	\$1,594		
Puddledock Sand & Gravel; Surface SandAndGravel; State—VA	2	\$957		
RABUN QUARRY; Surface Stone; State—GA	5	\$500		
Racine Quarry; Surface Stone; State—WI	3	\$534		
Richard City Underground/Surface; Underground Stone; State—TN	3	\$376		
Richmond Quarry; Surface Stone; State—VA	6	\$759	2	\$216
Richmond Road; Underground Stone; State—KY	9	\$1,974		
River Road Quarry; Surface Stone; State—TN	1	\$100		
Rochester Sand & Gravel; Surface SandAndGravel; State—IL	3	\$785	1	\$585
ROCKINGHAM; Surface Stone; State—NC	4	\$1,173		
ROCKMART QUARRY; Surface Stone; State—GA	2	\$845	2	\$845
SANDERS; Surface Stone; State—VA	2	\$343	1	\$100
Savannah Quarry; Surface Stone; State—TN	8	\$3,121	3	\$1,851
SCOTTSBORO QUARRY; Surface Stone; State—AL	5	\$617	1	\$190
Searcy Quarry; Surface Stone; State—AR	4	\$758	1	\$334
SEVIERVILLE QUARRY; Surface Stone; State—TN	4	\$450		
Shelbyville Quarry; Surface Stone; State—TN	11	\$1,805	3	\$861
Shelton; Surface Stone; State—NC	1	\$100		
Simonton Sand Plant; Surface SandAndGravel; State—TX	3	\$924	2	\$824
SKIPPERS; Surface Stone; State—VA	1	\$100		

DETAIL SUMMARY BY MINE—Continued

Company/Mine Operator/Mine Name/Mine Type/State	No. of Violations Assessed	Penalty Dollars Assessed	No. of Violations Contested	Penalty Dollars Contested
Spicewood Quarry; Surface Stone; State—TX	1	\$100	1	\$100
SPRINGFIELD QUARRY; Surface Stone; State—TN	7	\$1,395	7	\$1,395
Stockbridge Quarry; Surface Stone; State—GA	1	\$162		
Sussex Quarry; Surface Stone; State—WI	2	\$200		
SWISHER; Surface SandAndGravel; State—IN	1	\$263		
SYCAMORE QUARRY; Surface Stone; State—IL	7	\$3,818		
TAZEWELL QUARRY; Surface Stone; State—TN	7	\$1,816	3	\$670
Tehuacana Quarry; Surface Stone; State—TX	6	\$650	1	\$100
TRINITY QUARRY; Surface Stone; State—AL	2	\$212	1	\$100
TUSCALOOSA QUARRY; Surface Stone; State—AL	3	\$534		
Tuscumbia Quarry; Surface Stone; State—AL	3	\$300		
Uvalde Quarry; Surface Stone; State—TX	5	\$1,228		
VULCAN FAB SHOP; Facility Stone; State—SC	2	\$227		
Weatherford Quarry; Surface Stone; State—TX	5	\$500	2	\$200
Wilson County Quarry; Surface Stone; State—TN	5	\$527		
York Plant; Surface Stone; State—PA	4	\$400	2	\$200
Walter Energy Incorporated	862	\$1,205,776	250	\$945,616
Jim Walter Resources, Inc	833	\$1,197,689	250	\$945,616
Central Shop; Facility Coal; State—AL	5	\$562		
Central Supply; Facility Coal; State—AL	4	\$400		
No 4 Mine; Underground Coal; State—AL	428	\$620,857	136	\$466,766
No 7 Mine; Underground Coal; State—AL	395	\$575,770	114	\$478,850
No. 3 Mine; Facility Coal; State—AL	1	\$100		
Taft Coal Sales & Associates Inc	13	\$3,216		
Choctaw Mine; Surface Coal; State—AL	13	\$3,216		
Tuscaloosa Resources, Inc	16	\$4,871		
East Brookwood Mine; Surface Coal; State—AL	11	\$4,137		
Highway 59 Mine No. 1; Surface Coal; State—AL	1	\$100		
Howton Mine; Surface Coal; State—AL	4	\$634		
Wexford Capital LLC	1,296	\$1,308,115	366	\$1,013,846
Cam Ohio, L.L.C	143	\$119,992	25	\$57,227
Hopedale Mine; Underground Coal; State—OH	132	\$118,420	25	\$57,227
Nelms Prep; Facility Coal; State—OH	11	\$1,572		
Central Appalachia Mining, LLC	655	\$965,793	252	\$861,933
Bevins Branch #1; Surface Coal; State—KY	15	\$21,413	3	\$19,503
Calloway North; Surface Coal; State—KY	18	\$4,057		
Dorton E 3; Underground Coal; State—KY	24	\$3,821		
Grapevine South Surface Mine; Surface Coal; State—WV	28	\$11,192	14	\$9,352
Jamboree Loadout; Facility Coal; State—KY	3	\$335		
Marion Branch; Surface Coal; State—KY	13	\$6,136	1	\$1,530
Mine #23; Underground Coal; State—KY	11	\$1,977		
Mine #25A; Underground Coal; State—KY	4	\$3,632		
Mine #28; Underground Coal; State—KY	430	\$859,586	215	\$820,244
Mine #30; Underground Coal; State—KY	5	\$2,454		
Mine #32; Underground Coal; State—KY	17	\$5,251		
Remining No 1; Surface Coal; State—WV	1	\$540		
Rob Fork Contour; Surface Coal; State—KY	14	\$3,729		
Rob Fork Processing; Facility Coal; State—KY	55	\$17,514	19	\$11,304
S-1 Hunts Br.; Surface Coal; State—KY	3	\$20,700		
Slate Branch; Surface Coal; State—KY	2	\$200		
Thacker Preparation Plant; Facility Coal; State—WV	5	\$940		
Three Mile Mine #1; Surface Coal; State—KY	7	\$2,316		
Clinton Stone LLC	4	\$400		
Clinton Stone; Facility Stone; State—OH	4	\$400		
Deane Mining LLC	278	\$113,443	67	\$66,511
Deane #1; Underground Coal; State—KY	129	\$41,900	18	\$11,067
Love Branch; Underground Coal; State—KY	104	\$59,664	40	\$47,846
Mill Creek Prep Plant; Facility Coal; State—KY	45	\$11,879	9	\$7,598
McClane Canyon Mining, LLC	70	\$42,191		
Mc Clane Canyon Mine; Underground Coal; State—CO	70	\$42,191		
Rhino Eastern LLC	134	\$64,039	22	\$28,175
Eagle #1; Underground Coal; State—WV	114	\$60,536	22	\$28,175
Eagle #2 Mine; Underground Coal; State—WV	19	\$3,403		

DETAIL SUMMARY BY MINE—Continued

Company/Mine Operator/Mine Name/Mine Type/State	No. of Violations Assessed	Penalty Dollars Assessed	No. of Violations Contested	Penalty Dollars Contested
Sewell Mine No. 1; Underground Coal; State—WV	1	\$100		
Rhino Services LLC	8	\$1,355		
Calloway South; Surface Coal; State—KY	8	\$1,355		
Sands Hill Mining LLC	4	\$902		
Sands Hill Dock; Facility Coal; State—OH	1	\$100		
Sands Hill Strip; Surface Coal; State—OH	3	\$802		
Grand Total	68,825	\$78,835,254	27,072	\$60,811,780

[VIA EMAIL],

U.S. CONGRESS,

Washington, DC, February 26, 2010.

Mr. BRUCE WATZMAN, *Senior Vice President for Regulatory Affairs, National Mining Association, 101 Constitution Avenue, NW, Suite 500 East, Washington, DC.*

DEAR MR. WATZMAN: Thank you for testifying at the Committee's hearing, "Reducing the Growing Backlog of Contested Mine Safety Cases" held on Tuesday, February 23, 2010.

I have three additional questions to which I would like you to provide a written response for the hearing record:

1. Is it in the interest of the members of the National Mining Association to have a backlog of 16,000 cases at the Review Commission?

2. In addition to the administrative reforms discussed by MSHA at the hearing on February 23, does the National Mining Association support the President's FY 11 budget request for the Review Commission which will add 4 more Administrative Law Judges (ALJs) for a total of 18?

3. Would the National Mining Association support adding funds for the Review Commission to hire additional ALJs above and beyond the President's budget request to begin the work of eliminating the backlog over a 3 year period?

Please send your written response to the Committee by COB on Tuesday, March 9th—the date on which the hearing record will close. If you have any questions, please contact the Committee at 202-225-3725. Once again, we greatly appreciate your testimony at this hearing.

Sincerely,

GEORGE MILLER, *Chairman.*

Washington, DC, March 4, 2010.

Hon. GEORGE MILLER, *Chairman, Committee on Education and Labor, U.S. House of Representatives, 2181 Rayburn House Office Building, Washington, DC.*

DEAR MR. CHAIRMAN: I want to thank you again for providing the National Mining Association (NMA) the opportunity to testify at the Committee's hearing, "Reducing the Growing Backlog of Contested Mine Safety Cases," On Feb. 26, I received your letter that contained three additional questions. The following are our responses.

Question 1—Is it in the interest of members of the National Mining Association to have a backlog of 16,000 cases at the Review Commission?

Response: No. Swift adjudication is better for everyone. Workers and certified people need to know the proper interpretation of the law. Two year delays result in unnecessary confusion. The industry gains when citation issues are postponed. Any perceived gain in penalty payments, involvement with a Pattern of Violation (POV) or repeat history is really just a postponement—not a gain. Cases that become a final order are used in POV and repeat violation calculations. On the minus side, mass docket settlements are frequent, and the mine's history is skewed as the violations in the final order are from a number of quarterly inspections, including some from the distant past, rather than the mine's most recent inspection history.

Furthermore, any controversial interpretation of a regulation by an inspector in today's backlogged system does not get clarified in a timely manner. Since the in-

dustry is obligated to abate a violation—whether the operator believes it is issued in error or not—certified persons and workers are left confused. By the time the issue is heard by an administrative law judge, the mine has most likely changed its practices to meet an improper interpretation, causing confusion in training/ re-training to suit that false interpretation.

We believe most industry representatives would like to see the backlog eliminated as quickly as possible so that discussions between agency and industry personnel—and, where necessary, representatives of the Commission—deal with issues that are current and not muddied by historic recollection.

Question 2—In addition to the administrative reforms discussed by MSHA at the hearing on February 23, does the National Mining Association support the President’s FY 11 budget request for the Review Commission which will add 4 more Administrative Law Judges (ALJs) for a total of 18?

Response: The National Mining Association has not taken a position on the President’s budget request for the Review Commission. While we understand the basis for this request, we think solving this problem will require consideration of actions beyond hiring additional ALJs.

During the course of the hearing, the Assistant Secretary for Mine Safety and Health identified several actions the agency is considering to address this situation. We look forward to discussing these with him and offering our ideas to address the backlog. The hiring of more ALJs should be considered as part of a more comprehensive strategy as we do not believe that it, in and of itself, will be sufficient to address the concerns that we collectively share regarding the current backlog.

Question 3—Would the National Mining Association support adding funds for the Review Commission to hire additional ALJs above and beyond the President’s budget request to begin the work of eliminating the backlog over a 3 year period?

Response: See response to question 2. We do not believe that focusing solely on the hiring of more ALJs is sufficient to eliminate the backlog in a timely manner. We recommend expanding the Commission’s settlement counsel process that was established by former Commission Chairman Duffy and exploring mechanisms to use processes short of formal ALJs hearing to expedite this process.

Thank you again for providing us the opportunity to share our thoughts on this important matter. We look forward to having the opportunity to further discuss this with you.

Sincerely,

BRUCE WATZMAN,
Sr. Vice President, Regulatory Affairs.

[Additional submissions of Mr. Miller follow:]

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Justification of Appropriation Estimates for Committee on Appropriations

Fiscal Year 2011

PERFORMANCE MEASUREMENT MATRIX
OFFICE OF ADMINISTRATIVE LAW JUDGES

	FY2005	FY2006	FY2007	FY2008	FY2009		FY2010	FY2011
	Actual	Actual	Actual	Actual	Goal	Actual	Goal	Goal
OBJECTIVE 1: ISSUE OPINIONS IN A TIMELY MANNER								
• Average time (days) for assignment of penalty cases.	73	78	89	135	81	266	95	75
• Average time (days) for assignment of review cases.	27	24	29	82	35	87	40	30
Average time (days) for assignment of all cases.	61	53	65	123	70	214	80	60
• Percentage of decisions issued within 180 days of post-hearing brief.	96%	88%	69%	60%	90%	86%	65%	85%

PERFORMANCE MEASUREMENT MATRIX
OFFICE OF ADMINISTRATIVE LAW JUDGES—Continued

	FY2005	FY2006	FY2007	FY2008	FY2009		FY2010	FY2011
	Actual	Actual	Actual	Actual	Goal	Actual	Goal	Goal
• Percentage of settlement approvals issued within 60 days of settlement motion.	90%	96%	80%	73%	90%	61%	65%	85%
Average time (months), case assignment to disposition.	62 days	62 days	63 days	164 days	15	3.5	21	16
• Average time (months), case receipt to disposition.	121 days	N/A	128 days	291 days	12	10.5	24	18
• Percentage of cases decided within 365 days of assignment.	97%	98%	97%	79%	90%	92%	70%	90%
Undecided cases over 365 days of age.	18	5	71	687	0	3,738	11,500	13,000

Information on performance measurement is currently not available.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
APPROPRIATIONS HISTORY

Fiscal	Budget Estimate House to Congress	Senate		Appropriation
		Allowance	Allowance	
1986	3,709,000	3,815,000	3,815,000	(1) 3,651,000
1987	3,919,000	3,651,000	3,919,000	3,785,000
1988	4,139,000	4,080,000	4,080,000	(2) 3,892,000
1989	4,079,000	4,079,000	4,079,000	(3) 4,030,000
1990	4,005,000	4,030,000	4,030,000	4,030,000
1991	4,292,000	4,292,000	4,292,000	(4) 4,188,509
1992	4,719,000	4,357,000	4,357,000	5,143,000
1993	5,830,000	5,772,000	5,772,000	(5) 5,726,000
1994	5,842,000	5,842,000	5,842,000	5,842,000
1995	6,237,000	6,200,000	6,200,000	(6) 6,189,000
1996	6,467,000	6,467,000	6,200,000	(7) 6,184,000
1997	6,332,000	6,060,000	6,060,000	(8) 6,049,000
1998	6,060,000	6,060,000	6,060,000	6,060,000
1999	6,060,000	6,060,000	6,060,000	6,060,000
2000	6,159,000	6,060,000	6,159,000	(9) 6,136,000
2001	6,320,000	6,200,000	6,320,000	6,320,000
2002	6,939,000	6,939,000	6,939,000	(10) 6,934,000
2003	7,127,000			(11) 7,131,343
2004	7,774,000	7,774,000	7,774,000	(12) 7,728,133
2005	7,813,000	7,813,000	7,813,000	(13) 7,809,024
2006	7,809,000	7,809,000	7,809,000	(14) 7,730,910
2007	7,576,000	7,731,000	7,731,000	(15) 7,777,652
2008	8,096,000	8,096,000	7,954,563	7,954,563
2009	8,653,000	8,653,000	8,653,000	8,653,000
2010	9,857,567	9,857,567	10,358,000	(16) 10,358,000
2011	13,105,000			

¹ Reflects reduction of \$164,000 pursuant to P.L. 99-177.
² Reflects reduction of \$14,000 pursuant to Sec. 512 of P.L. 100-202.
³ Reflects reduction of \$49,000 pursuant to Sec. 517 of P.L. 100-436.
⁴ Reflects reduction of \$103,437 pursuant to Sec. 514(b) of P.L. 101-517 and \$54 pursuant to P.L. 99-177.
⁵ Reflects reduction of \$46,000 pursuant to Sec. 511 of P.L. 102-394.
⁶ Reflects reduction of \$11,000 pursuant to Sec. 2007 of P.L. 104-19.
⁷ Reflects reduction of \$9,000 pursuant to Sec. 513 and \$7,000 pursuant to Sec. 31002 of P.L. 104-134.
⁸ Reflects reduction of \$11,000 pursuant to Sec. 519 of P.L. 104-208.
⁹ Reflects reduction of \$23,000 pursuant to the Consolidated Appropriations Act for 2000, P.L. 106-113.
¹⁰ Reflects reduction of \$5,000 pursuant to Section 1403 of P.L. 107-206.
¹¹ Reflects adjustments pursuant to the Omnibus Appropriations Act, P.L. 108-7.
¹² Reflects reduction of \$45,867 pursuant to the Consolidated Appropriations Act, P.L. 108-199.

- ¹³ Reflects a congressional add-on of \$59,000 and a reduction of \$62,976 pursuant to section 122(a) of P.L.108-447.
¹⁴ Reflects reduction of \$78,090 pursuant to Title III, Chapter 8, of the Department of Defense Appropriations Act, P.L. 109-148.
¹⁵ Reflects reduction of \$144,437 pursuant to Sec. 528(a) of P.L.
¹⁶ Reflects Senate Approved Mark-up of \$500,000 pursuant of P.L.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
 SELECTED WORKLOAD DATA

	2009 Actual	2010 est.	2011 est.
Commission Review Activities:			
Cases pending beginning of year	103	95	105
New cases received	184	200	205
Total case workload	287	295	310
Cases decided	192	190	195
Cases pending end of year	95	105	115
Administrative Law Judges Activities:			
Cases pending beginning of year	9,737	14,213	18,247
New cases received	9,239	9,200	9,200
Total case workload	18,976	23,413	27,447
Cases decided	4,766	5,166	7,750
Cases pending end of year	14,213	18,247	19,697

FOLLOWUP ON MSHA ERP STATS

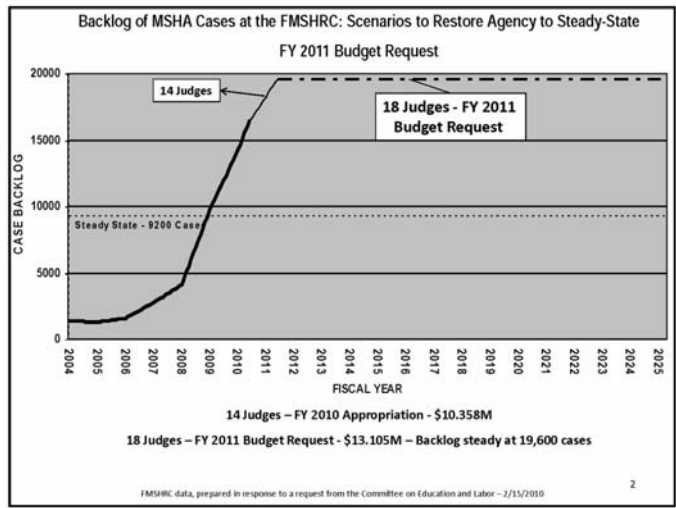
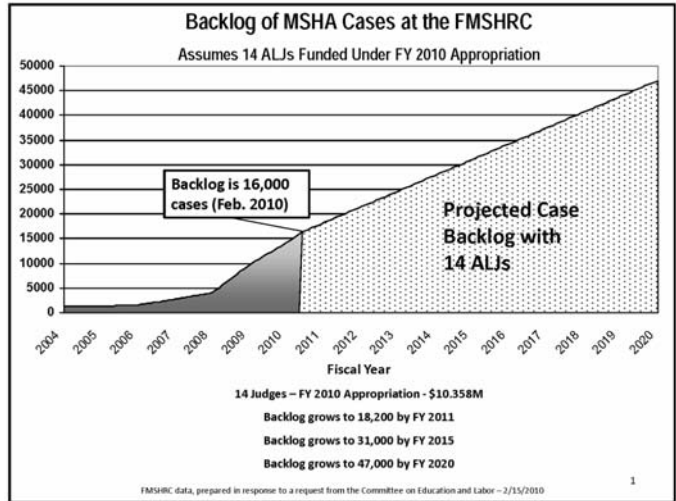
	Dist 01	Dist 02	Dist 03	Dist 04	Dist 05	Dist 06	Dist 07	Dist 08	Dist 09	Dist 10	Dist 11	National
How many mines require a plan?	9	36	29	146	58	79	68	20	23	12	7	487
How many plans submitted?	9	36	29	146	58	79	68	20	23	12	7	487
How many plans approved?	3	35	27	118	40	78	59	6	8	12	6	392
How many plans pending?	6	1	2	28	18	1	9	14	15	0	1	95
How many mines with tracking and communications equipment installed and operational?	0	0	3	20	0	2	10	1	0	10	0	46
How many mines in your district have a system completely installed and operational?	0	0	3	20	0	2	8	1	0	0	0	34
How many mines in your district have the areas installed and operational outby the tailpiece?	0	0	2	66	3	1	10	4	0	6	0	92
How many mines in your district are in the process of installing a system?	0	14	16	46	11	9	13	2	5	10	2	128
In your district, what percentage of refuge chambers is installed and ready for operation underground?	100.0%	94.0%	96.6%	100.0%	93.0%	81.0%	86.1%	95.0%	100.0%	92.0%	(*)5.0%
Have all of the initial back orders of SCSRs needed to comply with the Miner Act been filled?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
How many of the underground coal mines have installed Refuge Alternatives? ..	2	32	28	122	46	41	46	18	19	11	3	368
If so, how many prefabricated units have been installed?	0	94	95	276	87	83	92	98	83	46	12	966
If so, how many units consisting of 15-psi stoppings have been installed?	0	1	1	28	0	0	0	1	8	0	0	39
How many mines are using pre-positioned materials (barricades)?	0	0	2	4	12	22	29	3	3	4	6	85
If so, how many pre-positioned (barricade) units have been installed?	0	0	2	6	20	37	62	13	6	16	25	187
Are any mines currently out of compliance with the requirements for a refuge in coal mines?	No	No	No	No	Yes	No	No	No	No	Yes	No
If so, are there enforcement actions pending? At which mines?***	No	No	No	No	Yes	No	No	No	No	No	No

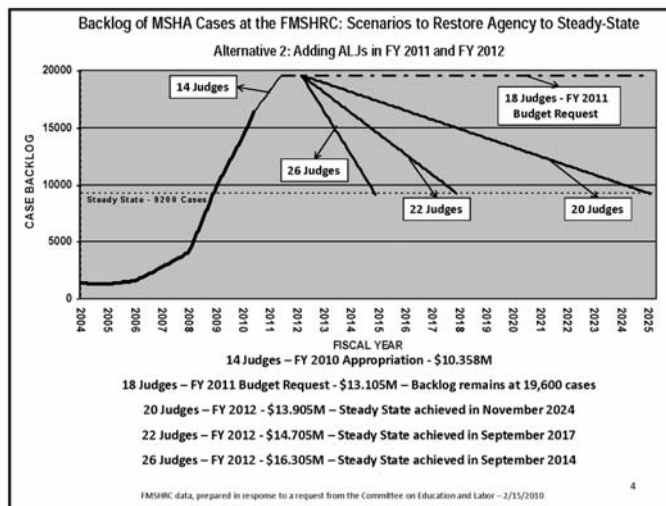
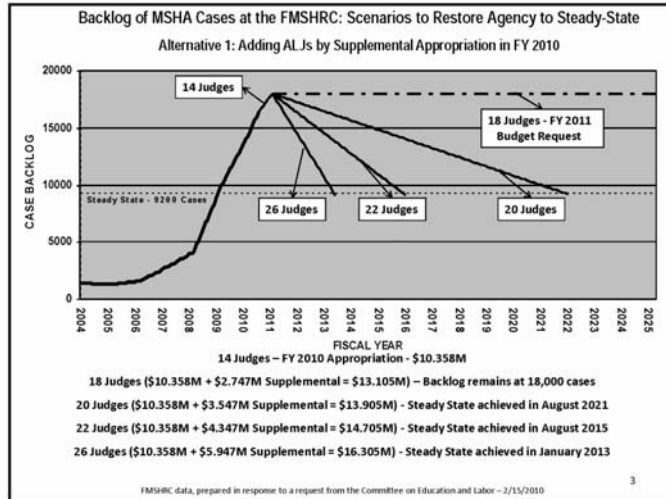
*Note: See Details/Comments for D11 in attachment.

**If your district has mines out of compliance, provide a list of those mines to headquarters via e-mail. Also specify which of those has enforcement actions pending.

Note: As new mines are advancing and older mines are retreating, the numbers in this table can change weekly.

Updated as of 02/19/2010.





MINE OPERATORS NOTIFIED BY MSHA OF A POTENTIAL PATTERN OF VIOLATIONS (POV)

	Mine Operator	Date(s) Notified	Type of Mine	Location
1	Blue Diamond Coal Co	June 2007, June 2008 & March 2009	Coal	KY
2	Elk Run Coal Co	June 2007 & March 2009	Coal	WV
3	Tilden Mining Co	June 2007 & June 2008	Iron	MI
4	Argus Energy WV, LLC	Dec 2007 & June 2008	Coal	WV
5	Double Bonus Coal Co	Dec 2007 & June 2008	Coal	WV
6	Independence Coal Co., Inc	Dec 2007 & March 2009	Coal	WV
7	D&C Mining Corp	Dec 2007 & June 2008	Coal	KY
8	Excel Mining Co	Dec 2007 & June 2008	Coal	KY
9	Rockhouse Energy Mining Co	June 2008 & March 2009	Coal	KY
10	Peachtree Ridge Mining Co	June 2007	Coal	WV
11	Oak Grove Resources	June 2007	Coal	AL

MINE OPERATORS NOTIFIED BY MSHA OF A POTENTIAL PATTERN OF VIOLATIONS (POV)—Continued

	Mine Operator	Date(s) Notified	Type of Mine	Location
12	Marfork Coal Co. Inc	Dec 2007	Coal	WV
13	Performance Coal Co	Dec 2007	Coal	WV
14	Bledsoe Coal Corp	Dec 2007	Coal	KY
15	Bardo Mining, LLC	Dec 2007	Coal	KY
16	Riverside Cement Co	June 2007	Non-metal	CA
17	National Coal Corp	Dec 2007	Coal	TN
18	RB #10 Mine	Dec 2007	Coal	KY
19	Shamrock Coal Co	Dec 2007	Coal	KY
20	Kosmos Cement Co	Dec 2007	Non-metal	KY
21	Left Fork Mining Co., Inc	June 2007	Coal	KY
22	Sidney Coal	Dec 2007	Coal	KY
23	Black Dog Coal Corp	Dec 2007	Coal	VA
24	Commonweath Mining, LLC	Dec 2007	Coal	VA
25	Regent Allied Carbon Energy, Inc	Dec 2007	Coal	VA
26	Progress Coal	Dec 2007	Coal	WV
27	Rivers Edge Mining, Inc	Dec 2007	Coal	MO
28	Carter Roag Coal Co	June 2008	Coal	WV
29	NFC Mining, Inc	June 2008	Coal	KY
30	McElroy Coal Co	Dec 2007	Coal	PA
31	Carmeuse Lime and Stone, Inc	June 2008	Non-metal	GA
32	Newtown Energy, Inc	June 2008	Coal	WV
33	Conshor Mining, LLC	June 2008	Coal	KY
34	GCC Energy, LLC	June 2008	Coal	CO
35	Stillhouse Mining, LLC	June 2008	Coal	KY
36	Patriot Mining, LLC	June 2008	Coal	VA
37	Big River Mining, LLC	March 2009	Coal	WV
38	Stollings Trucking Co., Inc	March 2009	Coal	WV
39	Keokee Mining, LLC	March 2009	Coal	VA
40	Snapco, Inc	March 2009	Coal	VA
41	Banner Blue Coal Co	March 2009	Coal	VA
42	Double A Mining, Inc	March 2009	Coal	KY
43	North Star Mining, Inc	March 2009	Coal	KY
44	Century Operations, LLC	March 2009	Coal	KY
45	Hidden Splendor Resources, Inc	March 2009	Coal	UT
46	Celite Corp	March 2009	Diatomaceous Earth	CA
47	Newmont USA Limited	March 2009	Gold	NV
48	Black Beauty Coal Co	Oct 2009	Coal	IN
49	McCoy Elkhorn Coal Corp	Oct 2009	Coal	KY
50	Pleasant View Mining Co., Inc	Oct 2009	Coal	KY
51	Doe Run Co	Oct 2009	Lead zinc	MO
52	Knox Creek Coal Corp	Oct 2009	Coal	VA
53	Mountain Reclamation & Construction	Oct 2009	Coal	WV
54	Spartan Mining Co., Inc	Oct 2009	Coal	WV
55	Laurel Coal Corp	Oct 2009	Coal	WV
56	Mammoth Coal Co	Oct. 2009	Coal	WV

Note: Patriot Coal Corporation, Pine Ridge Coal Company LLC, Big Mountain No. 16 Mine, was also notified in Oct 2009 but MSHA noted in its press release that the operator did not actually meet one of the published criteria for identifying a potential pattern and should not have been listed in the memorandum. (The company contested four unwarrantable failure orders that were subsequently modified to 104(a) citations as part of a settlement agreement. MSHA's Office of Assessments did not record these modifications in the system and the company, during its review of the data MSHA provided, identified the error. These violations have now been updated in the system to reflect the modifications per MSHA.)



June 3, 2008

The Honorable Richard Stickler
Acting Assistant Secretary for
Mine Safety & Health
U.S. Department of Labor
Mine Safety & Health Administration
1100 Wilson Boulevard
Arlington, VA

Dear Mr. Secretary:

We have reviewed the data contained on the Mine Safety and Health Administration (MSHA) website under the title "Mine Operator Citation/Orders Assessed and Contested October 1, 2007 - March 31, 2008." We believe that without additional information this data can and will be taken out of context and request that the agency, at a minimum, separate out the citations that were originally in the manager's conference system but subsequently placed into assessment following issuance of Procedure Instruction Letter No. I08-III-01.

During the timeframe used for preparation of this report the agency announced that the use of manager's conferences would be severely limited to only a certain class of enforcement actions. As a result of that decision citations already in the conference system were processed for assessment. This action placed many citations into the "contested field" that were in fact lying in limbo for months in the manager's conference arena. Further, now that conferences are essentially unavailable many of NMA's members are now required to contest a citation through the assessment system that would have been normally handled in the manager's conference system.

As an example, one of our members reviewed the data provided in this report and attempted to put this information in context. Of the approximately 400 contested citations listed in your report that were involved with this company, almost half were the result of backlogged manager's conference requests being placed into assessment. An additional significant portion were citations that would normally have been processed at the manager's conference level, but were now being challenged through the assessment process. This member stated that only 5 to 10percent of the total citations listed in this report as "contested" would, in fact,

The Honorable Richard Stickler
June 3, 2008
Page Two

have been in the contested/litigated arena prior to the changes in the manager's conference system.

Previously we wrote to share NMA's concerns with your decision to restrict the use of manager's conferences. We believe that the data in this report only reinforces the concerns expressed in that letter. Today the industry is faced with a classic Catch 22 - we can no longer discuss citations informally therefore we are required to file formal notices of contest; these contests then "swamp" the administrative system and the industry is then accused of abusing the system for the purpose of delaying final adjudication of the enforcement actions.

Mr. Secretary, we look forward to your consideration of this request and are available to discuss this issue in greater depth with you should you have any questions.

Sincerely,



Bruce Watzman
Vice President, Safety, Health and
Human Resources

U.S. Department of Labor

Solicitor of Labor
Washington, D.C. 20210

JUN 20 2008

Mr. Kraig R. Naasz
President and Chief Executive Officer
National Mining Association
101 Constitution Avenue, NW
Suite 500 East
Washington, DC 20001-2133

Dear Mr. Naasz:

I am writing in response to Mr. Bruce Watzman's June 3, 2008, letter to Acting Assistant Secretary Richard Stickler, and to ask your assistance in addressing a matter of great concern to the Department of Labor and to the workers in the mining industry. Given the importance of these issues to all parties involved, I would like to invite you and representatives of your member companies to meet with Acting Assistant Secretary Stickler and me in the Secretary's conference room on June 27, 2008. Our purpose is to address the causes and effect of what appears to be an artificially high rate of contested Mine Act enforcement matters.

In recent months, it has become apparent that several mine operators have invoked the legal process for review of enforcement actions taken by the Mine Safety and Health Administration (MSHA) at an unprecedented rate. As you will see from the attached documents, a significant number of your member companies have chosen to contest a high percentage of the citations issued by MSHA and, in too many cases, that percentage is as high as 80 -100 percent. It becomes readily apparent just how extraordinary these contest rates are when they are compared to the historic nationwide contest rate of under 7 percent. Indeed, a majority of the mine operators that are listed in the attached documents previously had contest rates below, and in some cases significantly below, the historic nationwide contest rate.

Additionally, contrary to the assertions in the June 3 letter, the contest rate began to rise at an alarming rate before the issuance of Procedure Instruction Letter 108-III-01, not after, and citations that had been in the conference system before it was issued were not automatically placed in "contested" status. Nor did the limitation on the availability of informal conferences affect the validity of virtually all citations issued to particular mine operators. This seems to suggest a concerted effort to impede the statutory enforcement and penalty assessment process under the Mine Act. I am concerned that the breadth and extent of these

contests threatens the congressionally authorized system to resolve legitimate enforcement disputes.


Mine operators of course have a legal right to contest citations that they believe are not legally valid. We support this right, and I would be happy to hear your thoughts on the issue. But I am unaware of any explanation for the fact that mine operators who have historically paid 95 percent or more of their assessed penalties without contest are now challenging all or nearly all of them. I believe a meeting to discuss this matter would be beneficial.

I am sure we agree that these extraordinarily high contest rates do not advance the cause of improving mine safety and health. To address this issue, I invite you, your General Counsel, and representatives of your member companies with high contest rates for a significant number of violations to a meeting on June 27, 2008, at 2:00 PM or, if necessary, another more mutually convenient time and date.

I seek your help in identifying the appropriate industry representatives to accompany you, and in letting me know who will be attending. I hope I can count on your assistance and I look forward to hearing from you.

Please feel free to contact me directly or have your staff contact Edward Clair at 202-693-9330.

Sincerely,


Gregory F. Jacob
Solicitor of Labor

[Additional submission of Mr. Kline follows:]

March 8, 2010.

Hon. GEORGE MILLER, *Chairman*; Hon. JOHN KLINE, *Ranking Minority Member, Committee on Education and Labor, U.S. House of Representatives, Washington, DC.*
Re: *Statement of the Industrial Minerals Association-North America (IMA-NA) on the February 23, 2010 Oversight Hearing Before the Committee on Education and Labor Entitled "Reducing the Growing Backlog of Contested Mine Safety Cases"*

DEAR CHAIRMAN MILLER AND RANKING MEMBER KLINE: On behalf of the Industrial Minerals Association-North America ("IMA-NA"), we respectfully request that this letter, expressing the views of the IMA-NA, be included in the record of the February 23, 2010 hearing before the Committee on Education and Labor, entitled

“Reducing the Growing Backlog of Contested Mine Safety Cases”. IMA-NA is the principal trade association representing the industrial minerals industry in North America (see www.ima-na.org). Industrial minerals are not coal or metals, but are the mineral feedstocks used by manufacturing and agricultural industries. The safety and health of miners employed by IMA-NA’s member companies is their first priority and concern. The mining methods used to extract industrial minerals are significantly different than for coal or metals. IMA-NA member companies strive not only to comply fully with the requirements of the Federal Mine Safety and Health Act of 1977, but also to continuously promote, benchmark, and develop programs to achieve best practices in mine safety and health.

IMA-NA member companies paid close attention to the February 23 hearing, and we appreciate the Committee’s focus on the important problem of how to go about reducing the backlog of contested mine safety cases pending, and continuing to grow, at the Federal Mine Safety and Health Review Commission (“Commission”). IMA-NA wants to let you and the Committee know, therefore, that we generally endorse the remedies to reduce the Commission’s backlog proposed by Assistant Secretary of Labor for Mine Safety and Health, Joseph A. Main, and Commission Chairman Mary Lu Jordan. In the context of this general endorsement, IMA-NA wishes to emphasize some of those recommendations and augment them as follows.

MSHA Recommendations

With regard to the Mine Safety and Health Administration (MSHA), IMA-NA recommends that the Agency should—

- Restore an effective “Close-Out Conference” system by requiring that MSHA inspectors meet with the mine operator at the end of each inspection to make sure that they explain the enforcement actions they have taken during that inspection and to engage in a dialog about those enforcement actions with the mine operator;
- Restore the MSHA conference process as it existed prior to the February 4, 2008 issuance of Program Instruction Letter (“PIL”) No. I08-III-I and the March 27, 2009 issuance of Program Information Bulletin (“PIB”) No. P09-05; and then hire and train additional Conference Litigation Representatives (“CLRs”);
- While the CLRs should continue to be housed in their existing space in MSHA mine safety and health district offices in order for them to be conveniently available to operators, representatives of miners, and MSHA field enforcement personnel, supervision of CLRs should be changed so that they report directly, and independently of district manager control and influence, to the Office of the Assistant Secretary of Labor for Mine Safety and Health at MSHA’s Headquarters in Arlington, Virginia;
- Increase from 30 to 60 days the time an operator has to contest a citation or order, thereby allowing operators more time to analyze the underlying enforcement action, collect information and conduct an informal conference with the MSHA District Manager before a formal contest is required;
- Increase from 30 to 60 days the time an operator has to contest a proposed assessment of civil penalty, thereby allowing operators more time to analyze the underlying enforcement action and the proposed penalty; and
- Reform the manner in which MSHA bundles dockets to ensure they include only the citations/orders and related proposed civil penalties from the same inspection.

Commission Recommendations

In connection with the Commission, IMA-NA recommends the following:

- Set up an expedited procedure at the Commission that would encourage mediation and settlement of suitable contests under the supervision of Commission Administrative Law Judges (“ALJs”). This could be accomplished by temporarily hiring lawyers skilled in mediation, non-lawyer mediators, retired MSHA CLRs, or other similar personnel; and
- Bring the Commission’s reforms to localities in the mining regions around the country to make it convenient and cost-effective for the parties to settle cases. This could be implemented by having Commission ALJs and other involved personnel “ride the circuit” and/or through the leasing of office space in central localities in mining regions.

IMA-NA believes that implementation of the reforms recommended by Assistant Secretary Main and Chairman Jordan, along with those specifically identified above, will go a long way toward reducing the current backlog of contested cases at the Commission and the pace at which new contests are filed. However, there is much more to this backlog that can be alleviated simply by instituting the procedural rem-

edies discussed above.¹ Indeed, in his written statement, Assistant Secretary Main identified some of these problems including:

- The unprecedented increase in the number of citations and orders issued by MSHA in recent years, and the even larger dollar value of associated proposed penalties;
- The significant turnover in MSHA's inspectorate coinciding with the significant changes in the law brought about by the 2006 enactment of the MINER Act; and
- Inconsistency in application of MSHA enforcement decisions involving health and safety standards.

In particular regard to the consistency of MSHA enforcement actions, IMA-NA wants you and the Committee to clearly hear that our member companies regard this problem as one that must be remedied as quickly as possible. Failure to do so detracts from every feature of the safety and health programs in place at our member companies' mines, wastes not only our resources, but MSHA's scarce resources as well, and, most importantly, does a true disservice to all of our efforts to protect the safety and health of miners.

IMA-NA wishes to call your particular attention to the following portion of Assistant Secretary Main's written statement in which he said:

"Consistency requires training and review. To help with consistency, MSHA is developing training programs for its supervisors with the goal that inspectors will be held accountable for writing citations based on solid facts and evidence, and based on sustainable legal determinations. * * *

Consistency also requires training of * * * CLR's * * *. It is vital that CLR's evaluate citations under the same training and criteria as the inspectors who write the citations.

Finally, we must also provide appropriate training and guidelines to all MSHA field supervisors, including District Managers and Assistant District Managers, who have significant oversight responsibility for MSHA's enforcement program. Once trained for consistency, we must ensure that MSHA personnel are also managed for consistency."

Statement of Assistant Secretary Main at 16 & 17.

We could not agree more. IMA-NA also wishes to remind the Committee that there is much more to protecting the safety and health of miners than the enforcement of MSHA's regulations. Indeed, we believe that the best solutions to protect the lives of miners emerge from joint industry-MSHA efforts, as opposed to over-reliance on "command-and-control" regulatory schemes. Without detracting for one moment from the need for mine operators to comply with federal mine safety and health requirements, collaborative programs designed to "get-things-right" from the outset bring enormous value to protecting the safety and health of miners.

In this regard, IMA-NA has vigorously embraced public-private partnerships. For instance, we have formed an Alliance with MSHA that has been very successful in achieving substantive results, thereby improving the already outstanding safety programs of our member companies. We also have formed partnerships with NIOSH to address ergonomics and dust control within the mining industry. Ergonomics has been identified, proactively, by our members as the number one cause of injury, and dust control and silicosis prevention always have been major priorities for IMA-NA's membership.

We also want you and the Committee to know that IMA-NA and its affiliate organization, the National Industrial Sand Association ("NISA") have engaged in extensive efforts to prevent the occurrence of silicosis in our industry. In fact, NISA has developed a silicosis occupational health program that we believe is the most progressive silicosis prevention program in the world. This program goes far beyond regulatory requirements, represents thousands of hours of work from dedicated professionals, and, no doubt, is the primary cause for the virtual disappearance of silicosis from the work force of participating member companies. In fact, at the very hour of the February 23 hearing, NISA was announcing the release of the latest version of this world-class health and safety program at our annual workshop in St. Louis.

Finally, and in light of the above positive contributions industry has made to the reduction in miner deaths and injuries, we find that we cannot allow certain statements made by the Assistant Secretary to go unchallenged. In particular, we reject the following:

"If mine operators would take greater ownership of mine safety and health, it would be beneficial for all involved.

¹In this regard, IMA-NA endorses and supports the written statement of Bruce Watzman, Senior Vice President, Regulatory Affairs, National Mining Association.

“The responsibility for identifying and remedying mine hazards needs to be shifted from MSHA inspectors back to mine operators.

“Over the years the mining industry’s approach to safety and health has shifted. Mining operators have switched over time to a reactive approach, relying on MSHA inspectors to identify safety and health hazards, and treating citations as a cost of doing business instead of having comprehensive safety and health programs of their own.”

Statement of Assistant Secretary Main at 9 & 18.

We note that the Assistant Secretary did not emphasize these points in his verbal comments before Congress, but that he did make the decision to include them in his written testimony. These statements simply are inaccurate, and it is wholly inappropriate to label all, or even most, of the mining industry in such a negative fashion. The statements portray an industry that is unrecognizable to the members of IMA-NA. We simply refuse to accept these statements as fact, and we regret that the leadership of the government organization tasked with protecting miners, and working collaboratively with industry, have seen fit to make these statements before Congress and the American people. Such statements are not accurate, instill conflict, foster wholesale cynicism in the entire industry, and nullify the fine work of thousands of safety and health professionals who rise each day with no other goal than promoting the welfare of their fellow miners. We strongly urge the Assistant Secretary to refrain from statements such as these in the future, and we welcome the opportunity to introduce the Assistant Secretary to the safety and health professionals and corporate leadership of many proud American companies that simply cannot be classified as disengaged from miner safety.

Again, IMA-NA stands ready to work with the Committee at any time on mine safety and health matters.

Sincerely,

MARK G. ELLIS,
President.

[Additional submissions of Mr. Thompson follow:]

Prepared Statement of the National Stone, Sand & Gravel Association

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE: On behalf of the National Stone, Sand and Gravel Association (NSSGA), we offer this testimony for the hearing on “Reducing the Growing Backlog of Contested Mine Safety Cases.” NSSGA and its member companies go to great lengths to comply with regulations tied to worker safety and health. NSSGA is concerned about the delay in producers’ ability to obtain from the Federal Mine Safety and Health Review Commission (FMSHRC) a timely hearing on alleged violations.

By way of background, the U.S. Geological Survey reports that NSSGA is the largest mining association by product volume in the world and represents the crushed stone, sand and gravel—or construction aggregates—industries that constitute by far the largest segment of the mining industry in the United States. Our member companies produce more than 90 percent of the crushed stone and 75 percent of the sand and gravel consumed annually in the United States. There are more than 10,000 construction aggregates operations nationwide. Almost every congressional district is home to a crushed stone, sand or gravel operation. Proximity to market is critical due to high transportation costs, so 70 percent of our nation’s counties include an aggregates operation. Of particular relevance to this hearing is the fact that 70 percent of NSSGA members are considered small businesses.

We offer a number of suggestions for alleviating the case backlog at the Commission.

We applaud Assistant Secretary of Labor for Mine Safety & Health Joseph Main for his goal of improving training for inspectors on behalf of enforcement consistency. We understand that a number of contests from aggregates companies are due to strong disagreement on the basis of the severity finding on a citation. Inspectors need to do a proper job of evaluating and clearly identifying what is “Significant and Substantial” (S&S). NSSGA hears repeated expressions of concern that S&S is being over-written.

Also, we would like to see the agency communicate more proactively with stakeholders about agency changes in enforcement interpretations. Citations should not serve as first notice to stakeholders that there has been a change in the agency’s interpretation of what is needed for compliance. Rather, the agency should notify all stakeholders of such interpretation changes before enforcement begins so that companies and their workforces are afforded adequate information needed for com-

pliance. For example, suppose the agency changes its opinion about an aspect of guarding design. The agency should so inform stakeholders before sending out the inspectors with their new “rulebook,” so the change, the purpose of the change, and the ability to tackle and correct for such change can be fully understood and implemented for compliance in a timely manner. We urge MSHA to find ways to go beyond what is required and warn or advise stakeholder communities on particular emphasis and interpretation changes. In fact, we would urge that MSHA inspectors be authorized to issue warnings on infractions that are more or less in relation to administrative or housekeeping issues, not risking imminent injury. That said, we realize this may not be possible without statutory change.

Additionally, we recommend that MSHA reinstitute the process of conferencing citations before assessment of penalties. Before it was changed, pre-penalty conferencing enabled operators to close out on inspections satisfactorily without having to add to the Commission’s docket.

Further, we encourage the agency to consider changes in civil penalty procedures hastily put in place contemporaneously with enactment of the MINER Act. A major concern, for example, is the regulatory provision specifying how an operator’s history should be brought into calculation of civil penalties. While we understand the importance of a review of every company’s history in reviewing violations for assessment, the present procedure of assigning maximum penalty points for a fifteen-month average of 2.1 violations per inspection day is having a disparate and unfair impact on many companies. Take a small company, for example, that in its last two inspections, of one day each in the previous 15 months, has a total of five violations for a total of two days of inspections. This will cause 25 points to be added to this small company’s civil penalty calculation, which can translate into very big fines. Twenty-five points will convert a \$555 penalty to \$4,099 and it will convert a \$4,099 penalty to \$30,288. There are small companies that have been assessed penalties as high as \$200,000 in a single inspection.

It is understandable that companies will not want a single underserved violation in their history and that they will do everything in their power to contest questionable citations. We are committed to the notion that operators have every right and need to contest citations with which they do not agree. We hasten to add that history is by no means the sole issue. Every undeserved subjective finding by an inspector will add underserved points to the company’s penalty calculations. These are unaudited findings and they represent big money liability. Only by seeking review before the Federal Mine Safety and Health Review Commission—the agency with exclusive authority to assess penalties—can an operator have a voice in the process. Indeed, even MSHA now is telling operators that if they want a conference regarding a citation, they will have to contest the citation formally before the Commission. We have mentioned only some of the concerns of operators that are prompting contests, but the system as a whole is deemed unfair and the only avenue that operators have to bring issues to light is through the contest process. NSSGA would be pleased to work with MSHA to address this and possible solutions.

Finally, we offer the attached article, which was published in *Mine Safety and Health News* on Jan. 25, 2010. It was authored by an NSSGA Manufacturers and Services Division member and discusses the background of the backlog, relevant legal issues and includes suggestions for addressing the backlog. For your information, the author is scheduled to participate in an Energy and Mineral Law Foundation Special Institute (March 23 and 24) in Washington, D.C., with attorneys from the Solicitor of Labor’s office and Judges from the Federal Mine Safety and Health Review Commission. The goal of the panel is to constructively address civil penalty case backlog issues and how they might be resolved for everyone’s benefit.

Thank you for the opportunity to submit a statement for the record of this hearing. Further, we ask that the attached article be included in the record.

What About That Case Backlog?*

By MICHAEL T. HEENAN

MSHA civil penalties have risen rapidly since enactment of the MINER Act in 2006. Total penalties in 2005 were around \$25,000,000 and by 2008, they were almost \$200,000,000. Each mine’s “history of violations” can contribute enormously to accumulation of high penalties and also can bring about other grave enforcement in the form of mine closure orders. MSHA has undertaken enforcement as never before of “pattern of violations” provisions, also founded on mine history. If mine oper-

*This paper previously appeared in essentially the same form as a “Perspectives” column in *Mine Safety and Health News*, Vol. 17, No. 2, January 25, 2010

ators are to be fairly regulated and not unfairly penalized, the record on which enforcement is based better be right.

The way the system works, it is up to the individual operators of mines to employ available procedures to make sure they are not improperly faulted or penalized. Enforcement actions that will not withstand legal scrutiny should be vacated. This will not happen unless the miner operator takes advantage of guaranteed rights of review by the Federal Mine Safety and Health Review Commission, the independent adjudicatory agency which has exclusive authority to assess penalties under the Federal Mine Safety and Health Act.

Mine operators conduct their businesses under intense scrutiny with respect to even the most insignificant of safety considerations. They have developed a strong culture of safety. They take pride in their safety programs and want their MSHA record to reflect the success of their efforts. They do not want to be unfairly charged. Historically, many operators have taken issue with enforcement actions when the associated penalty was of virtually no consequence, but rightness and fairness were at issue. Today, operators have many more reasons to want to make sure that enforcement is fair in all respects.

Today, it is not just whether there was a violation that operators need to be concerned about; virtually every one of the multiple findings in every citation has significance far beyond anything previously. For one thing, each written finding by an inspector directly affects calculation of proposed civil penalties against the company. It is not surprising, therefore, that with the rapid escalation in enforcement, there has been a substantial rise in requests for hearings, and there is a backlog of cases.

A former head of the Assessment Office once commented to me: "If operators are not contesting, penalties are not high enough." If there is merit to this, then penalties are apparently now "high enough." But I think there is much more to the case backlog. And I think there may be more that can be done to reduce the backlog, even without expansion of government resources. Before discussing backlog solutions, I feel it is important to consider in greater depth the multitude of considerations pertinent to contest proceedings

Importance of Review of Inspector Discretion

In the Mine Safety Act, Congress has developed an effective enforcement system and an effective review system. The combined approach, when properly implemented, allows operators to feel they are being treated as they deserve. It allows them to respect the system. An operator is much more motivated to comply with a respected system than one that is viewed as arbitrary and unfair. This is true even if achieving fairness proves to be an expensive proposition for the operator. And it is expensive. The time, effort and costs of seeking review of enforcement actions typically involve a greater burden overall on companies than MSHA penalties, but the review process has the desired effect all around. The government may presently feel burdened by the level of contests, but the government should appreciate that the system is working just as it should and everyone benefits.

Under the Mine Safety Act, MSHA inspectors have a surprising level of discretion, which they can exercise for better or worse. Since MSHA enforcement is in every case rooted in actions of inspectors in the field, it is worth remembering that no group of people is equally capable, and as individuals, we are all far from perfect. Some inspectors have excellent judgment; others do not. Some inspectors are by nature perceptive and fair. Others are more interested in their own self-importance and sense of power when they sense their intimidating effect on mine personnel. Some inspectors have years of experience and have learned well how to apply MSHA's regulations and others have not. Regardless, even well intentioned inspectors make mistakes. Operators care about avoiding the consequences of such mistakes.

Demise of the Informal Conference Procedure

MSHA regulations provide an "opportunity to review with MSHA each citation and order issued during and inspection." However, the regulations also state: "It is within the sole discretion of MSHA to grant a request for a conference and to determine the nature of the conference." For most of MSHA's existence, an operator needed only to alert the MSHA district office of a desire for such an informal conference and it was granted to review any or all citations and orders. It was not a hearing, but rather a request that the agency review its own actions. It was a thoroughly welcome and successful procedure. For many companies, this was all the review they felt they needed.

Fairness and appropriateness of inspector enforcement actions are important issues, and effective review is dependent on complete information. Inspector citations and orders are theoretically subject to ongoing supervisory review, but as in

all organizations, supervisors are naturally inclined to encourage and support inspector discretion unless it is exercised in a clearly inappropriate manner. More importantly, without operator input, supervisors have only the inspector's report on which to base their review and there is little likelihood that very many actions will be called into question internally. Moreover, with the current emphasis on enforcement, supervisors have reason to be concerned about criticism against themselves if they second guess harsh enforcement by an inspector. Consequently, there is very little self correction by the agency.

Today, conference requests are regularly met with responses that say, for example: "A conference will be scheduled after * * * penalties * * * have been assessed. * * * Failure to timely contest the proposed penalties will result in your conference request being cancelled." In other words, current MSHA policy today is to discuss inspector enforcement actions only in the context of formal civil penalty contests initiated before the Federal Mine Safety and Health Review Commission.

Right to Commission Determination of Propriety of Enforcement

Although civil penalty contests were already on the rise, elimination of informal conference opportunities by MSHA has made formal contests the only reliable avenue for dialogue. The loss of an opportunity to speak with MSHA promptly and informally on a pre-penalty basis immediately after an inspection, without regard to any specific penalty and without the filing of formal penalty contests, is unfortunate. MSHA would say that the informal conference procedure was a casualty of the backlog due to increased contests generally. I do not think much thought has been given to the impetus for contests created precisely as a result of the unavailability of conferences. Operators have more reasons to talk to MSHA than just civil penalties.

In talking about rights of review, it is important that I stress that MSHA has the power to propose penalties, but the power to actually assess penalties lies exclusively with the Federal Mine Safety and Health Review Commission. Congress created the Commission to decide enforcement cases arising under the Federal Mine Safety and Health Act of 1977. The Commission is authorized to review citations and orders separate and apart or together with proposed civil penalties. The MINER Act amendments of 2006 did not change the longstanding procedures of the 1977 Act. Commission review is available as a matter of right. With respect to penalty determinations, all proposed penalties are set out by MSHA on a form that provides space for the operator to indicate whether a hearing is desired on all or specific penalties.

Mine operators may forfeit their right to have the Commission determine their penalties. Consistent with law, MSHA regulations state: "If the proposed penalty is not paid or contested within 30 days of receipt, the proposed penalty becomes a final order of the Commission and not subject to review by any court or agency." In other words, if an operator does nothing to preserve rights to Commission determination, or if the operator does not check the right box for which citations it wants to have reviewed, penalties proposed for the citations by MSHA will become final and unreviewable orders of the Commission by reason of a legal fiction.

Summary Penalty Proposals by MSHA

In connection with Congress's authorization of the Secretary of Labor (acting through MSHA) to propose penalties, Congress basically removed from the Secretary burdens of detailed review of relevant facts. The law states:

In proposing civil penalties under this Act, the Secretary may rely upon a summary review and shall not be required to make findings of fact concerning the above factors.

In practice, the Secretary's (MSHA's) review of facts is limited. Penalty proposals are primarily calculated on the basis of points assigned to subjective and often speculative conclusions of the individual inspector issuing the citation. As a practical matter, individual inspectors are actually determining the amount of most proposed penalties. Each inspector finding on every citation and order, along with information from MSHA's files regarding size of the company and history of violations, constitute the sum total of what goes into a proposed monetary penalty calculation. With limited exceptions for "special assessments," the information provided by the inspector and taken from the files is summarily assessed by MSHA's civil penalty computer program. The penalty calculation variables for each citation are more numerous than the six criteria listed for Commission determinations under the Act. The variables include all of the following:

- Type of Mine or Contractor
- Production or Hours Worked
- Size of Controlling Entity

- History of Previous Violations
- Time Period during which History Calculated
- Repeat Violations per Inspection Day
- Less than six
- How many more than six
- Negligence
- None
- Low
- Moderate
- High
- Reckless Disregard
- Likelihood of Injury or Illness
- None
- Unlikely
- Reasonably Likely
- Highly Likely
- Occurred
- Gravity of Possible Injury
- No lost work days
- Lost work days or restricted duty
- Permanently Disabling
- Fatal
- Number of Persons Potentially Affected
- One
- Two
- Three
- Four
- Five
- Six
- Seven
- Eight
- Nine
- Ten or More
- Good Faith of Operator in correcting alleged violation
- Whether the Operator failed to timely abate the violation
- Whether the alleged violation was “Significant and Substantial”
- Whether the alleged violation was due to “Unwarrantable Failure”
- Whether the alleged violation was associated with an imminent danger

Because of the subjectivity inherent in so many of the findings that are translated into points for penalty calculations, penalty amounts can vary widely—all depending on what particular subjective conclusions inspectors include as findings in their citations. Small companies can end up with a hundred thousand dollar total penalty from a relatively few violations over the course of a couple of inspections. A large company could end up with a five thousand dollar penalty for many more violations issued over many days. It mostly depends on the subjective findings of inspectors as to what is a violation and what findings are to be associated with a violation. In many respects, if it were not for Commission review, the inspector would be the judge and jury. Depending on temperament, the inspector could exercise power well outside his or her job description.

A factor which is not part of the Secretary of Labor’s calculation is one of the six criteria which Congress requires the Commission to consider in assessing any penalty. That is “ability to continue in business.” Clearly, it was not Congress’s intention to drive companies out of business with excessive civil penalties. For small companies, the size of their final penalties can be the difference between surviving and not surviving, particularly in this difficult economy. Large companies, on the other hand, usually can survive because all of their business is not typically tied up in a single mine, but penalties in the hundreds of thousands of dollars per mine per year does take a toll on any mine.

Practical Aspects of Case Processing—How the System Really Works

The fact is that a hearing is not needed in most cases. What is needed is a fair exchange of information—a dialog. Formal case procedures provide an opportunity for just that. Before a case proceeds very far, each side has to evaluate the strength of their respective cases. Judges direct the parties to talk to one another. Then each party can explain to the other what its position is on the issues in the case and what evidence will be introduced in support. Both sides will discover weaknesses in their separate cases. There will be dialog and a compromise may be reached. The compromise will be presented to the Commission administrative law judge in a mo-

tion to approve settlement. Generally, the motion is written and submitted by the government. In most cases, because good reasons are given for the settlement, the judge will approve it. Case closed. Further expenditure of resources is unnecessary. The interests of judicial economy are served. This really is no different from case handling in tribunals everywhere.

How the System Might be Improved

MSHA has tried to improve the review system by inserting a conference opportunity at the front end of the formal review procedure. Because of the volume of cases, MSHA is relying to a great extent on its own employees serving as Conference and Litigation Representatives (CLRs) rather than attorneys from the Labor Department Solicitor's office. Certainly, companies have endeavored to enter into negotiations with CLRs or attorneys to see if issues can be resolved before the cases become subject to formal Commission procedures. To this end, CLRs typically request a ninety day extension from the Commission to see if the case can be settled before a formal Petition for Assessment of Civil Penalty is filed and the case is subject to all Commission formalities.

A general trend in negotiations with MSHA is that CLRs, like inspectors, do not take into account what can and cannot be proved. Typically, they are refusing to address the issues that will be front and center in a trial. Instead, they assume a position of intransigence and rely on a percentage of operators becoming discouraged and giving up. Consequently, nothing gets resolved—unless the operator backs down and goes away. Most operators know that this is not a fair review and they are going to have to stay the course to protect their rights.

Of course, the problem is not always necessarily solved when attorneys have the case. It can become a game of negotiations rather than a determination of what is right—what should be recommended to the judge as a resolution. As a result, neither side can get serious until right before trial. That is when what can be proved becomes more important than insisting that the inspector was right in all respects. This is not what operators expect when they seek review. They believe that if given a fair review, the validity of their position will be recognized and citations will be adjusted accordingly.

Obviously, I am generalizing to make a point. In many instances, the negotiation process is the key to effective and efficient resolution. So what can enhance the effectiveness of negotiations? Here is my list of items for consideration.

- Reinstatement of the Pre-penalty Conference Process—This can restore MSHA's ability to promptly address issues arising in the field, and should help operators feel like they can get true consideration of their issues and concerns by the agency. When matters are resolved early, parties are less likely to get into a litigation stand-off.
- Reduce Discovery—Too much time and effort goes into discovery that serves little purpose other than to force up the cost of efforts to get review. If operators are willing to forego discovery, the government should also. (The Labor Department has made provision for "Simplified Proceedings" to expedite OSHA cases in this way.)
- Allow Elective Mini-trials—Parties could go to hearing with just one witness on each side and with exhibits submitted in advance, for example.
- Allow Simplified Written Submittals—In many cases, there is little disagreement as to facts, and issues can be narrowed by agreement of the parties. What they cannot agree on is the appropriate result. Judges could decide cases based on simplified submittals and perhaps query the parties in a telephone conference regarding any apparent factual differences.
- Provide for Mediation—Former solicitors, former judges and other attorneys may be willing to serve on a panel to mediate cases. The parties could share the costs. (With the substantial increase in penalties going into the federal Treasury, there ought to be a way for the government to fund its part of the bill.)
- Consider Global Settlement Conferences in which companies could bring all their issues to the government for fair consideration, without having to go through a long drawn-out piecemeal conflict approach.

Conclusion

I do not presume to have the answers, but I do offer my suggestions as a possible starting point. There are things wrong with the current system that need to be fixed, or at least improved. In the meantime, the only way operators have a chance of getting things changed is to broadly contest current enforcement and the associated penalties.

Managing Shareholder of the Washington DC office of Ogletree Deakins, Michael Heenan has had a long career representing companies in mine safety and health cases. He has authored multiple articles, treatise chapters and books on mine safe-

ty. His books include *Safety and Health at Mines and MSHA—The Mine Operator and the Law*. He is also Legal Editor of *Pit & Quarry* magazine.

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[Whereupon, at 11:34 a.m., the committee was adjourned.]

