



Staying Off MSHA's "Naughty List"

Insights

4.29.13

The Mine Safety and Health Administration (MSHA) recently released a Final Rule ([summary version/full version](#)) that significantly changes the way the Agency charged with protecting America's miners uses one of its most powerful enforcement tools: pattern of violations (POV). Under the Mine Act, MSHA has the authority to issue a pattern of violations notice to mine operators with a pattern of recurrent significant and substantial (S&S) violations.

The Final Rule fundamentally alters the way MSHA uses the tool in a number of ways. For example, MSHA has eliminated its warning mechanism (the potential pattern of violations letter, or PPOV) and has eliminated the requirement that violations become a final order of the Commission before they are counted toward POV status. This means that mine operators may receive citations or orders that are not valid, but could still put the Company in jeopardy of being added to the POV list.

This Final Rule is so controversial that the National Mining Association (joined by several other industry associations) filed a lawsuit against MSHA, arguing that the Rule denies mine operators their Constitutional due process rights. This case is pending appeal in the 6th Circuit. To read more about this challenge, check out Coal Age's article [NMA Sues MSHA over POV Rule](#).

To review my tips for staying off POV, read my article [MSHA's Still Making Its POV List, But No Longer Checking It Twice](#).