FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
7 PARKWAY CENTER, SUITE 290
875 GREENTREE ROAD
PITTSBURGH, PA 15220
TELEPHONE: 412-920-7240 / FAX: 412-928-8689

JUL 19 2017

SECRETARY OF LABOR MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), Petitioner, v. EMERALD COAL RESOURCES, LP, Respondent.	CIVIL PENALTY PROCEEDING Docket No. PENN 2015-266 A.C. No. 36-05466-385249 Emerald Mine No. 1

ORDER

On August 15, 2014, Brandon Crutchman ("Crutchman"), an inspector from the Mine Safety and Health Administration ("MSHA") conducted an inspection at Emerald Mine No 1, a coal mine operated by Emerald Coal Resources LP ("Emerald"). After completing his inspection, Crutchman issued Order No. 7028490 for an alleged violation of 30 C.F.R. § 75.363(a) and Order No. 7028491 for an alleged violation of 30 C.F.R. § 75.400.

Procedural History

Approximately ten months after the Orders were issued, MSHA proposed assessment No. 000385249, which included Order No. 7028490 and Order No. 7028491. Both Orders were designated as flagrant. A total proposed penalty of $234,200.00 was assessed on Emerald.

Emerald received the proposed assessment on July 6, 2015. Later that week, Emerald contested the proposed assessment by a letter sent to the Mine Safety and Health Administration Civil Penalty Compliance Office. A date stamp indicates that the office of assessments received the contest on July 14, 2015.

Pursuant to Section 2700.28(a), "[w]ithin 45 days of receipt of a timely contest of a proposed penalty assessment, the Secretary shall file with the Commission a petition for assessment of penalty." Thus, the Secretary was required to file with the Commission a petition for assessment of penalty on or before August 28, 2015.

On August 3, 2015, Alpha Natural Resources, Inc. ("Alpha"), filed for Chapter 11 Bankruptcy; this included affiliate Emerald. Thereafter, Emerald issued Worker Adjustment and Retraining Notification Act ("WARN"), notices to all of its 278 employees stating that it intended to permanently idle Emerald No.1 Mine and reduce its workforce by November 24, 2015. On October 28, 2015, Emerald submitted a plan to seal the mine. Throughout the months of November and December 2015, Emerald reduced its workforce to approximately 15 active hourly and salaried employees between their underground and surface preparation plant operations. The final mine sealing plan was approved on December 22, 2015.

On January 15, 2016, the Secretary filed a Motion to Permit Late Filing, simultaneously with a Petition for Assessment of Civil Penalty in this matter. Four days later, on January 19 2016, Emerald received the Secretary's Motion to Permit Late Filing and Petition for Assessment of Civil Penalty. This occurred 17 months after the issuance of the Orders and 5 months after the deadline by which the Secretary was required to file the Petition for Assessment of Civil Penalty.[1] The Secretary claimed the filing was delayed because of a clerical error caused by a change in the District's administrative personnel.

Emerald then filed a Response to the Secretary's Petition for Late Filing on January 28, 2016, requesting that the Secretary's Petition for Assessment of Civil Penalty be dismissed due to the Secretary's untimely filing.

On May 26, 2017, this case was assigned to the Administrative Law Judge. On June 27, 2017, the undersigned sent the Respondent a request for additional information regarding the Bankruptcy proceedings of Alpha, as well as the nature of the asset sale. On July 5, 2017, Respondent provided this additional information, as well as sections of the Bankruptcy Court order.

Contentions of the Parties

The Respondent argues that the Secretary failed to show adequate cause for her delay in filing a Petition for Assessment of Civil Penalty. The Respondent further argues that because the Secretary has provided no adequate cause, Respondent is not required to show prejudice to the presentation of its defenses. Therefore, the Respondent requests that the Secretary's Motion to Permit Late Filing be rejected and the Petition dismissed.

In addition, the Respondent asserts that even if this Court determines adequate cause for the Secretary's delay exists, the Petition should still be dismissed because the Respondent suffered "real" and "substantial" prejudice. The Respondent alleges that as a result of filing for Chapter 11 Bankruptcy in 2015, the company has significantly reduced its workforce. Additionally, Respondent claims that several of the witnesses that were involved in the inspection on August 15, 2014 are no longer employed by the Respondent. Notably, Respondent alleges that the mine manager, manager of operations, the belt maintenance supervisor, several of the hourly belt personnel responsible for maintaining the belts, and its union escort are no longer employed by Respondent or any of its affiliates. Therefore, Respondent alleges, in effect, an inability to gather the information necessary to present its best defense against the Orders issued by MSHA.

The Respondent further states that equipment has been altered since the inspection occurred. Additionally, Respondent believes that documents related to the subject condition may now be missing. Thus, the Respondent argues they have been significantly prejudiced by the Secretary's untimely delay.

---

[1] Due to an error, the Secretary mistakenly filed his Initial Motion to Permit Late Filing as Unopposed. To fix this error the Secretary filed an Amended Motion correctly identifying the motion as opposed on January 20, 2016.

The Secretary argues he has shown adequate cause to support the admission of an untimely petition because the delayed filing in this matter was the result of an innocent and rare inadvertent error by an inexperienced employee who is no longer employed by MSHA. Moreover, the Secretary claims there is no evidence to suggest that the Secretary acted with caprice, willful delay, intentional misconduct, or bad faith. In fact, the Secretary states as soon as the error was discovered it filed the Motion and Petition. Therefore, the Secretary believes adequate cause explains the delay in this case.

In addition, the Secretary argues that the Respondent has failed to show prejudice arising from the Secretary's delay because the Respondent has made no showing that it will suffer immediate prejudice in filing its Answer to the Petition. The Secretary further argues that the Respondent has presented no evidence as to how it has specifically been prejudiced by the Secretary's delay.

Lastly, the Secretary argues even if this Court credits the Respondent's claim of prejudice, dismissal of the Petition is not automatic because the public interest in enforcing the Mine Act is paramount to strict procedural regularity. Therefore, the Secretary requests her petition be accepted out-of-time.

Legal Principles

Section 105(a) of the Mine Act provides: "If, after an inspection or investigation, the Secretary issues a citation or order under section 104, he shall, within a reasonable time after the termination of such inspection or investigation, notify the operator...of the civil penalty proposed to be assessed..." 30 U.S.C. § 815(a).

If a timely notice of contest is filed, section 105(d) provides: "The Secretary shall immediately advise the Commission of such notification, and the Commission shall afford an opportunity for a hearing...." 30 U.S.C. § 815(d).

Commission Procedural Rule 28 provides: "Within 45 days of receipt of a timely contest of a proposed penalty assessment, the Secretary shall file with the Commission a petition for assessment of penalty." 29 C.F.R. § 2700.28(a).

The legislative history of the Mine Act reveals the express intent of Congress that "there may be circumstances, although rare, when prompt proposal of a penalty may not be possible, and the Committee does not expect that the failure to propose a penalty with promptness shall vitiate any proposed penalty proceeding." S. Rep. No. 95-181, 95th Cong., 1st Sess. at 34 (1977), *reprinted in* Senate Subcommittee on Labor, Comm. on Human Resources., 95th Cong., 2nd Sess., *Legislative History of the Federal Mine Safety and Health Act of 1977,* at 622 (1978).

In *Twentymile Coal Company*, 411 F. 3d 256 (2005), the D.C. Circuit Court held that an 11-month delay between an investigation report and the issuance of a proposed penalty assessment was not unreasonable. Two Supreme Court cases were cited, *Brock v. Pierce County,* 476 U.S. 253 (1986) and *Barnhart v. Peabody Coal Co.,* 537 U.S. 149 (2003). In *Brock*, the Supreme Court warned that it "would be most reluctant to conclude that every failure of an

agency to observe a procedural requirement voids subsequent agency action, especially when important public rights are at stake." *Id.* at 260, and concluded that the statutory time provision in that case "was clearly intended to spur the Secretary to action, not to limit the scope of his authority. Congress intended that the Secretary should have maximum authority to protect the integrity of the program." *Id.* at 265. In *Barnhart,* the Supreme Court noted that not "since *Brock* have we ever construed a provision that the Government 'shall' act within a specified time, without more, as a jurisdictional limit precluding action later." *Id.* at 158.

In 1981 the Commission considered a proposed penalty filed approximately 2 months after the date it was due. *Salt Lake County Road Department*, 3 FMSHRC 1714 (July 1981). Referring to the legislative history, it was determined that the overriding concern was with enforcement, and the Commission's Rule did not create a "statute" of limitations or procedural "strait jackets." *Id.* at 1715, 1716. The Commission held that upon seeking permission to file late, the request must be predicated upon adequate cause. However, the Commission also held that an operator may object to a late penalty proposal on the grounds of prejudice. *Id.* at 1716.

The Commission has clarified that "adequate cause" will not be found to exist unless a non-frivolous explanation for the delay is provided. The Secretary's excuse may not be facially implausible, and the delay must not result from "mere caprice" or through willful delay, intentional misconduct, or bad faith. Should the Secretary meet the burden of showing adequate cause, the Commission further explained:

> [A]n operator must show at least some actual prejudice arising from the delay in order to secure a dismissal of a penalty proceeding due to a late-filed petition. Mere allegations of potential prejudice or inherent prejudice should be rejected. Of course, occasions may arise where a judge will find that the Secretary has demonstrated adequate cause and that the operator has brought forth evidence of actual prejudice. The judge in such instances must weigh the interest of fairness to the operator against the public interest in upholding the enforcement purpose inherent in section 105(d).

Long Branch Energy, 34 FMSHRC 1984, 1991 (Aug. 2012).

Therefore, the burden shifts to the operator to establish actual prejudice. The prejudice must be "real" or "substantial", and demonstrated by a specific showing by the operator. *Id.,* at 1993. There must be more than "inherent prejudice" or mere "danger of prejudice". *Webster County Coal, LLC,* 34 FMSHRC 1946, 1951 (Aug. 2012), citing *Long Branch.*

The Commission has held that where the Secretary and operator have both satisfied their burdens, a judge "must weigh the interests of fairness to the operator against the public interest in upholding the enforcement purpose inherent in Section 105(d). *Long Branch*, 34 FMSHRC at 1991.

The Secretary's Declaration

In pertinent part, the Declaration of Rebecca L. Kollar ("Kollar") on February 3, 2016 is as follows:

1. I am currently employed by the U.S. Department of Labor, Mine Safety and Health Administration ("MSHA"), as Secretary to the Assistant District Manager at the MSHA Coal District 2 ("Coal District 2"). I joined MSHA on October 15, 2006, when I was hired as a Coal Mine Safety and Health Assistant ("CMS&H Assistant").
2. On December 14, 2014, I was promoted to my current position. On or about March 23, 2015, April Neiderhiser was hired to replace me as a CMS&H Assistant. Ms. Neiderhiser as a CMS&H Assistant.
3. The Coal District 2 CMS&H Assistant, is responsible for keeping track of and carrying out all of the administrative tasks executed by the Conference & Litigation Representatives ("CLR's") of Coal District 2. These tasks include processing new civil penalty petitions and mailing cases to the Philadelphia Office of the Regional Solicitor ("Solicitor's Office").
4. I am familiar with MSHA's civil penalty assessment process and the procedures of civil penalty proceedings before the Commission.
5. Coal District 2 typically receives an automated e-mail from MSHA's internal citation and case tracking software that a matter has been docketed at the Federal Mine Safety and Health Review Commission ("FMSHRC"). This e-mail alerts the CMS&H Assistant that a contest has been filed and whether a CLR or the Solicitor's Office will handle the matter. In either case, the CMS&H Assistant enters the docket number on an Excel spreadsheet.
6. As a CMS& H Assistant I was responsible for creating a system to manage and track various cases that came into the office. I developed an Excel Spreadsheet to organize and maintain information about cases including petition deadlines. This spreadsheet automatically calculates the petition's due date. If as case is to be transferred to the Solicitor's Office, then the matter is entered in the spreadsheet. The procedure is for the case to be removed from the spreadsheet once a return receipt is e-mailed from United Parcel Services ("UPS") indicating that the package transmitting the case has been delivered.
7. I trained Ms. Neiderheiser how to populate the Excel spreadsheet, keep track of cases, file petitions, and mail cases to the Solicitor's Office.
8. On or about January 13, 2016, our office was contacted by the Solicitor's Office inquiring about the status of Docket PENN 2015-266. The Solicitor's Office stated it never received the case. As a result I reviewed our records in an effort to locate the case and found that we received an automated e-mail on July 20, 2015 regarding Docket No. PENN 2015-266. From this e-mail I learned that the Docket was designated to the Solicitor's Office.

9. I also reviewed the Excel spreadsheet and determined that Docket No. PENN 2015-266 was not included on this list. I searched through our e-mailed receipts and could not find an e-mail receipt from UPS showing that the case had been mailed to the Solicitor's Office. As a result of my review, I found no evidence that the case was even sent to the Solicitor's Office or that a civil penalty petition was filed by Coal District 2.
10. Ms. Neiderheiser was the CMS&H Assistant at the time Coal District 2 received the notice of docketing for PENN 2015-266 and therefore responsible for ensuring that the case was mailed to the Solicitor's Office. Since Ms. Neiderheiser's last date of employment with MSHA was July 23, 2015, I could not get her input as to what may have happened with Docket No. PENN 2015-266.
11. Because the file for PENN 2015-266 could not be located, our office created a new case file for the docket. The new case file was mailed to the Philadelphia Solicitor's Office for litigation.

GX-1 (Secretary's Reply to Respondent's Response In Opposition).

The Respondent's Declarations

In pertinent part, the Declaration of Dan Lhota on January 28, 2016 is as follows:

1. I am employed in the human resources department of Maxxim Shared Services, LLC, which is affiliated with Emerald Coal Resources, LP and Alpha Natural Resources, Inc.
2. On September 25, 2015, Emerald issued Worker Adjustment and Retraining Notification Act ("WARN"), notices to its 278 employees stating that it intended to permanently idle Emerald No. 1 Mine and reduce the workforce at the mine by approximately November 24, 2015.
3. On November 25, 2015, Emerald reduced its workforce to approximately seventeen active hourly and thirteen salaried employees between the underground and surface preparation plant operations.
4. On December 8, 2015, Emerald further reduced its workforce to six active hourly employees and nine salaried employees.
5. Currently, there are eight salaried and six hourly employees assigned to work at Emerald Mine No. 1 and the Emerald Mine No. 1 preparation plant.
6. Emerald does not plan to increase its staff in the future.

RX-F.

In pertinent part, the Declaration of Ryan Kerr on January 28, 2016 is as follows:

1. I am employed by Maxxim Shared Services, LLC, which is affiliated with Emerald Coal Resources, LP and Alpha Natural Resources, Inc.

2. I am currently assigned to work at Emerald Mine No. 1 in the safety department.
3. I am one of fourteen persons currently assigned to work at Emerald Mine No. 1. Emerald does not place to increase its staff in the future.
4. I am responsible for dealing with compliance issues at Emerald Mine. I receive proposed assessments from MSHA and forward the completed contest forms to the corporate office of Alpha Natural Resources for processing. I also receive petitions for assessment, which I forward to the corporate office of Alpha Natural Resources for processing.
5. In July 2015, I completed the contest form associated with Assessment No. 000385249, which contained Order Nos. 7028490 and 7028491 that were assessed as flagrant. I forwarded the completed contest form to Alpha Natural Resources for processing.
6. In November and December 2015, Emerald reduced its workforce and no longer retains relations with several of the witnesses involved in the inspection on August 15, 2014.
7. Emerald or its affiliates no longer employ many of the persons employed by Emerald during the August 15, 2014 inspection.
8. The mine foreman and manager of operations are no longer employed by Emerald or its affiliates. The belt maintenance supervisor along with several hourly belt personnel responsible for maintaining the belts at Emerald in August 2014 are no longer employed by Emerald or its affiliates. Additionally, the UMWA escort who accompanied Inspector Crutchman is no longer employed by Emerald or its affiliates.
9. Currently, Emerald is working toward sealing the mine and plans to seal the mine in the near future.
10. The belt that was cited in Order No. 7028491 has been altered since August 2014.
11. I believe it will be difficult to locate documents relevant to the issuance of Order Nos. 7028490 and 7028491, particularly given the passage of time since the Orders were issued and the limited staff currently at Emerald.

RX-H (Respondent's Response to Secretary's Motion to Permit Late Filing).

Other information

On June 6, 2017, Counsel for Respondent by email provided a copy of a letter dated March 4, 2016 showing that the Emerald Mine was sealed on February 29, 2016. Also received was information from MSHA's Mine Data Retrieval System showing that the mine was in "nonproducing" status since October 6, 2015 and that effective July 29, 2016 the controller was Contura Energy, Inc ("Contura"). In addition, the Emerald Mine No. 1 was considered a

"facility" and in the last 12 months had received no S&S citations or orders in 56.25 inspection hours.

Analysis

Adequate Cause

The Commission has held that in instances where the Secretary does not file a timely petition for assessment, it must predicate the request for late filing upon a showing of adequate cause. *Salt Lake County Road Dept.*, 7 FMSHRC 1714, 1716 (July 1981). "Such a requirement will guard against cases of abuse and also comports with the analogous leeway extended to private litigants before the Commission." *Id.* In the instant case, the Secretary has presented evidence that its late filing was due to an unusual oversight related to a change in Coal District 2's administrative personnel. Kollar's Declaration describes how administrative and human error led to a situation where MSHA neglected to process the Contest properly and issue a citation in a timely manner. GX-1. The MSHA administrator who would have received the notice and been responsible for ensuring that the case was mailed to the Solicitor's office left MSHA's employ almost two years ago, and MSHA is unable to reach her for information. The error was only discovered in mid-January 2016 when the Solicitor's Office contacted the District inquiring about the status of Docket No. PENN 2015-0266. Following this discovered discrepancy, the Solicitor's Office filed the Motion to Permit Late Filing in the instant case.

Despite an agency's best efforts, there is bound to be some minimal amount of administrative, technological, or human error that leads to delay or loss of files. The Commission has found adequate cause based on clerical errors similar to the one detailed in the instant case. *Medicine Bow*, 4 FMSHRC 882 (May 1982) (finding adequate cause where inadequate staff led to delay); *Webster Cnty Coal*, 34 FMSHRC 1946 (Aug. 2012) (clerical error and computer issues led to delay). In the instant case, the Secretary has described a situation where such mistakes occur. The Secretary's delay was not due to any dilatory intent, bad faith, or "mere caprice" on the part of the agency, but rather clerical error at the District Office. *Long Branch Energy*, 34 FMSHRC 1984, 1991 (Aug. 30, 2012). Once the delay was discovered, MSHA acted with haste in filing the petition, and moving the Court to allow such late filing. I find that under the circumstances described by MSHA, the agency had adequate cause for the delay.

Actual Prejudice

Despite a finding that the Secretary had adequate cause for the delay, the Respondent may still object to the late filing of the petition based upon prejudice. *Salt Lake*, 3 FMSHRC at 1716; *See also Long Branch Energy*, 34 FMSHRC at 1992; *Rhone-Poulenc of Wyoming*, 15 FMSHRC 2089, 2093 (Oct. 1989), aff'd 57 F.3d 982 (10th Cir. 1993). However, mere "allegations of potential prejudice or inherent prejudice" are to be rejected. *Long Branch*, 34 FMSHRC at 1991. The prejudice borne by the operator must be "real" or "substantial." *Id.* In the instant case, the Respondent has provided detailed information regarding events that have actually happened and has made a showing of such real and substantial prejudice.

During the Secretary's untimely five-month delay Emerald was part of a Chapter 11 bankruptcy and issued WARN notices to 278 employees indicating that it would permanently idle the mine. RX-F. In November and December 2015, Emerald reduced its workforce to approximately 15 employees. In January 2016, Emerald and its affiliates no longer employed and did not maintain relations with certain witnesses involved in the August 15, 2014 inspection. RX-F, RX-H. These witnesses included the mine foreman, the manager of operations, the belt maintenance supervisor, the UMWA escort who accompanied the MSHA Inspector, and several hourly belt maintenance personnel. Further, the belt relevant to the orders had been altered, and documents relevant to the orders would be difficult to locate. RX-H. In the same manner that this Court has accepted the Secretary's position that, due to Neiderheiser leaving MSHA's employ in July 2015, it has been unable to get her input into what occurred with the missing docket, this Court accepts the Respondent's argument that the necessary witnesses and documents will be difficult or impossible to find and have available for further proceedings in this matter.

The following month, on February 29, 2016, the Emerald No. 1 Mine was sealed, thereby preventing travel to the cited area.

On July 12, 2016, the sale of Emerald Coal Resources to the new entity, Contura, was approved by the Bankruptcy Court. Effective July 29, 2016, Contura was the controller listed on the MSHA website. Contura purchased the assets "free and clear of any and all mortgages, options, pledges, liens, charges, security interests, encumbrances, restrictions, leases, licenses, easements, liability or claims of any nature whatsoever, direct or indirect..." *In Re: Alpha Natural Resources, Inc., et al.*, Case No. 15-33896 (KRH), Bankr. E.D. VA. (July 12, 2016) at (B)(5). Contura did not assume the liabilities of Emerald, and is not owned or in any way related to Alpha. See also, Respondent's Response to Request for Information, p. 2.

Considering the specific circumstances that transpired during the long delay in this case, the Respondent has shown more than a mere potential for or danger of prejudice. The burden that would be imposed on the Respondent in proceeding further with this action would be quite substantial because much of the evidence necessary for defense is either missing, unavailable or in a significantly altered condition. This would certainly have a significant effect on the presentation of the defense. By January 2016, very few employees remained, the belt in question had been altered, and the location of relevant documents was not known. Thereafter the mine was sealed and the company was sold. Thus, needed witnesses have long ago been laid off and their whereabouts would be unknown. Even if some could be found, they would suffer greatly from the passage of time and faded memories. Evidence has undoubtedly been lost; there is no indication that Emerald as a business entity still exists or that needed evidence could be found. Therefore, I find that Respondent has met its burden of showing real and substantial prejudice.

Balancing of Interests

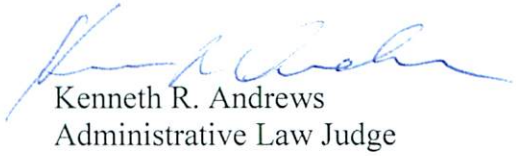
Since the Secretary and the Respondent have both satisfied their burdens, the undersigned "must weigh the interests of fairness to the operator against the public interest in upholding the enforcement purpose inherent in Section 105(d). *Long Branch*, 34 FMSHRC at 1991. In the instant case, there is minimal, if any, public interest in permitting the late filing.

One of the most common rationales for the imposition of civil penalties is the deterrent effect of the penalties. *See National Independent Coal Operators' Assn. v. Kleppe*, 423 US 388, 401 (1976). In the instant case, there would be absolutely no deterrent effect of permitting a late filing when the penalties were proposed 17 months after the inspection, after the company was part of a bankruptcy, after the vast majority if not all of the personnel have been laid off, after the mine has been sealed, and after the Emerald asset was sold to an entity that did not assume any of the former company's liabilities. Pursuant to the Order of the Bankruptcy Court the successor entity, Contura, cannot be charged with a monetary debt. The deterrent effect of any penalty that might be determined is lost.

The Secretary has not identified any entity following the bankruptcy and absent any potential monetary liability that could be subject to this enforcement action. It is not enough for the Secretary to assert only that the public interest in enforcing the Mine Act is paramount to strict procedural regularity. The question presented is just what specific purpose is served by the further expenditure of resources by all parties when the effect of an enforcement action, even if the Secretary were entirely successful, has not been explained. The bankruptcy action has removed any monetary liability, and there is no showing that Contura is a successor in interest and liable for its predecessor's violations of the Mine Act. The Commission's successorship test[2] would not appear to be able to be satisfied since the mine is sealed and not producing, there is no continuity of business operations established, the same jobs no longer exist, the workforce and supervisory personnel have been laid off and there is no indication that the successor had notice of this enforcement action.

Due to the very substantial burden that would be imposed on Respondent by continuing this enforcement action, I find the interest of fairness to Respondent greatly outweighs any remaining potential public interest in permitting the late filing of the petition.

Accordingly, the Secretary's Motion to Permit Late Filing is **DENIED**, and the Petition for Assessment of Civil Penalty is **DISMISSED**.



Kenneth R. Andrews
Administrative Law Judge

---

[2] The nine-part test is 1) [W]hether the successor company had notice of the charge, 2) the ability of the predecessor to provide relief, 3) whether there has been a substantial continuity of business operations, 4) whether the new employer uses the same plant, 5) whether he uses the same or substantially the same work force, 6) whether he uses the same or substantially the same supervisory personnel, 7) whether the same jobs exist under substantially the same working conditions, 8) whether he uses the same machinery, equipment and methods of production and 9) whether he produces the same product. See, *Munsey v. Smitty Baker Coal Co.*, 2 FMSHRC 3463, 3465-66 (Dec. 1980).

Distribution: (First Class Mail and email)

Judson Dean, Esq., U.S. Department of Labor, Office of the Solicitor, 170 S. Independence Mall West, Suite 630E, Philadelphia, PA 19106 dean.judson@dol.gov

Patrick W. Dennison, Esq., Three Gateway Center, 401 Liberty Ave., Suite 1500, Pittsburgh, PA 15222 pwdennison@jacksonkelly.com