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June 26, 2012

Congressman George Miller
Congresswoman Lynn Woolsey
U.S. House of Representatives
Committee on Education and the Workforce
2181 Rayburn House Office Building
Washington, DC 20515-6100

RE: June 15, 2012 Correspondence to K & D Mining, Inc., et al

Dear Congressman Miller and Congresswoman Woolsey:

My clients, Jack Ealy, Ralph Napier, John North and K & D Mining, Inc. ("K & D") have asked that I respond to your correspondence of June 15, 2012 making several inquiries relating to mine safety violations at the K & D mine and outstanding MSHA civil penalties at this mine and other mines. As set out in your correspondence MSHA recently conducted a "blitz" inspection at the K & D mine which resulted in the issuance of numerous alleged violations of mine safety standards. This is not an unusual occurrence when MSHA conducts "blitz" inspections, as it appears that one goal of MSHA in conducting these inspections is to see how much paper can be written. I recently had another operator who was blitzed by MSHA; its employees treated unfairly and talked to like they were dogs and the mine was issued approximately 40 violations, including approximately 9 unwarrantable failure orders. Like this case, it was reported in the newspaper and on newscasts that all of these violations were issued and that the mine was closed for nine days. However, the unwarrantable violations were conferenced and after the conference several were vacated and the remaining, with the exception of one or two, were modified to Section 104(a) citations. Of course, the newspapers and the new media did not print or report anything noting these modifications.

As for the violations at K & D, my clients believe that many of the unwarrantable failure violations are not supported by facts and law. Contrary to your correspondence, the mine was shut down for nine days due to MSHA's unwillingness to put the mine back into operation after the alleged violations had been corrected. The remedial work



to correct the alleged violations took approximately one and half days. MSHA was notified of the completion of the work; however MSHA wanted to conduct a safety meeting with the employees which ultimately took place on a May 24. MSHA then waited an additional full day before it would allow K & D and its employees to return to work at 6:00 p.m. on May 25. It is somewhat important to note that several days after the May 16 "blitz" inspection that the Kentucky mine safety agency was inside the mine and did not report any such unwarrantable violations.

K & D would also respond to your inquiry about its non-fatal lost time injury rate by pointing out that there have been two injuries at the mine, one involved a cut finger which required a couple of stitches and the other involved an abrasion to an employee's forehead which require one stitch. On one of these incidents, the employee completed his shift before seeking medical attention and both injured employees were off work for less than two or three days.

Regarding outstanding civil penalties, it is true that the entities mentioned in your correspondence have not paid these outstanding civil penalties. The entities have spent money on employees' salaries and benefits and the costs associated with operating the mines, including money spent for mine safety needs. With the huge increase in the amount of civil penalties imposed by MSHA, these operators have been unable to pay the outstanding civil penalties. Prior to the explosion at the Kentucky Darby mine, civil penalty payment was mostly current.

In your correspondence you requested a plan of action to address safety compliance at the mine and to address the outstanding civil penalty issue. At this point, K & D is closing the mine and laying off approximately 40 employees. K & D plans to submit documents to MSHA formalizing its plan to pull out of the mine and abandon its operations there. As for the outstanding civil penalties, the entities do not have the ability to pay the civil penalties now and/or in the foreseeable future.

Thank you for your attention to this matter.

Very truly yours,



Billy R. Shelton
Lexington Office

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