

Upper Big Branch-South Mine Information  
Citation and Order Explanations

**A. Accident and Rescue/Recovery Procedures [103(j) and (k) Orders]**

Upon learning of a mine emergency, unless MSHA is already present, enforcement personnel should verbally issue a section 103(j) order to the operator, including initial instructions, as soon as possible. The order, including any instructions, should be reduced to writing and transmitted to the operator as soon as practicable. The order should be written so as to protect all persons engaged in the rescue and recovery operation, as well as any other persons on-site. It should also require the operator to prevent the destruction of evidence at the accident site. In the event that a mine accident is not a mine emergency (i.e. there are no ongoing rescue and recovery efforts), MSHA may issue a 103(j) order prohibiting activity at the accident site so as to prevent the destruction of evidence which would assist in investigating the cause or causes of the accident.

Upon MSHA's arrival on-site and following assessment of conditions, MSHA may modify the section 103(j) order, including all instructions, to reflect that MSHA is now proceeding under the authority of section 103(k) of the Mine Act. MSHA should inform parties on-site that any activities that are rescue or recovery related will be permitted through subsequent modifications of the section 103(k) order. The section 103(k) order is intended to protect all persons involved in the emergency operation or accident investigation. As such, all parties on-site are subject to the section 103(k) order and any subsequent modifications. Each proposed action should be reviewed by the designated MSHA person on-site before the section 103(k) order is modified and before the action is commenced. MSHA has the authority to issue a section 103(k) order unilaterally. However, every effort should be made to gain consensus among the parties involved to obtain the safest and most effective outcome.

The 103(k) order does not preclude the issuance of a Section 107(a) order if an imminent danger situation is found. It is imperative that discretion and good judgment be exercised by the inspector when using the broad authority provided by the Mine Act.

In instances where an accident has resulted in the death or serious injury to a miner, and the inspector believes that the hazardous condition(s) or practice(s) causing that accident is likely to exist elsewhere at the mine, the Section 103(k) order shall include all such areas of the mine. In some instances it will be obvious that the conditions are peculiar to the accident site, and, therefore, the Section 103(k) order would not apply to areas other than the accident site.

The 103(k) order should remain in effect until a systematic evaluation of the conditions and safety practices is conducted and a determination is made that hazards similar to those which caused or contributed to the accident have been eliminated. The evaluation

can be made prior to the accident investigation or concurrent with it. After this evaluation and determination has been made, the Section 103(k) order may be modified to permit an area of the mine to resume operations, or terminated, provided that such action will not pose a hazard to the miners.

#### **IV. SECTION 104(a) CITATIONS [104(a) Citations]**

This section is the primary tool for obtaining compliance with the Mine Act, mandatory health or safety standards, rules, orders, or regulations.

A Section 104(a) citation must establish:

- o a violation of a standard, regulation, or section of the Mine Act;
- o the degree of hazard that exists;
- o the degree of exposure to the hazard; and
- o the degree of negligence by the mine operator. The time fixed for abatement of a violation shall be determined, whenever practical, after a discussion with the mine operator or the operator's agent.

#### **VI. "S&S" CRITERIA [Significant and Substantial]**

By checking "Yes" in Item 10C (Significant and Substantial or "S&S"), the inspector has indicated that based upon the particular facts surrounding the violation there exists a reasonable likelihood the hazard contributed to will result in an injury or illness of a reasonably serious nature.

Violations of the Mine Act, without an accompanying mandatory standard, shall always be designated as "non significant and substantial." For these violations, Section II, item 10A shall be evaluated as "No likelihood", item 10B will be marked "No Lost Workdays", and item 10C shall be checked "No." Further, these violations shall have the following sentence added to the body of the violation description in Section I, item 8: The condition has not been designated as "significant and substantial" because the conduct violated a provision of the Mine Act rather than a mandatory safety or health standard.

In determining whether conditions created by a violation could significantly and substantially contribute to the cause and effect of a mine safety or health hazard, inspectors must determine:

- o whether there is an underlying violation of a mandatory health or safety standard;
- o whether there is a discrete safety or health hazard -- that is, a measure of danger to safety or health -- contributed to by the violation;
- o whether there is a reasonable likelihood that the hazard contributed to will result in an injury or illness; and
- o whether there is a reasonable likelihood that the injury or illness in question will be of a reasonably serious nature.

All of these determinations must be made before a violation can be designated as "significant and substantial."

The Federal Mine Safety and Health Review Commission has further determined that "...the relevant time frame for determining whether a reasonable likelihood of injury exists includes both the time that a violative condition existed prior to the citation and the time that it would have existed if normal mining operations had continued." The violation would be evaluated as "S&S" if miners were not in the area when the violation was observed, but they had been, would be, or could be if normal mining operations were to continue, and the other "S&S" criteria were met.

## **XI. NOTICE TO PROVIDE SAFEGUARDS 314(b)]**

Section 314(b) of the Mine Act is specific to coal only and is intended for use in regards to haulage and hoisting related hazards that are identified at a specific mine.

When preparing for an inspection, an inspector must review the safeguard summary sheet in the uniform mine file so that he/she knows what safeguards have been previously issued for the mine. The inspector should also be familiar with the requirements for each safeguard.

When an inspector identifies a hazard specific to the mine and similar to those already identified in 30 CFR, Subpart O, Sections 75.1403-2 through 75.1403-11, he/she will issue a notice to provide safeguards to the mine operator if one has not been previously issued.

In those cases where the provisions of a safeguard notice are found to be violated at a mine, a citation or order will be issued as appropriate. The safeguard originally issued will be referenced in the initial action block on the citation and order form (7000-3).

## **XII. SECTION 104(b) ORDERS [104(b)]**

The inspector shall review the circumstances when the time fixed for a citation's abatement has expired. In determining whether to issue a Section 104(b) order, the inspector must determine whether there is a reasonable basis for extending the abatement date. If an extension of time is not justified and the cited condition or practice is not abated, the inspector must issue a Section 104(b) order of withdrawal. Upon abatement of the condition or practice cited in the original citation, the order can be terminated.

## **XIII. SECTION 104(d) CITATIONS AND ORDERS [104(d) Citations]**

### **A. Criteria for Issuing a 104(d)(1) Citation**

A 104(d)(1) citation shall be issued if:

1. there is a violation of a mandatory health or safety standard;
2. the violation significantly and substantially contributes to the cause and effect of a mine safety or health hazard; and

3. there is an unwarrantable failure of the mine operator or contractor to comply with the standard.

**Note:** A violation of a Section of the Mine Act cannot be issued as a 104(d) citation or a 104(d) order even if the negligence evaluation is determined to be "high" or "reckless disregard." Also, a violation of other than mandatory health or safety standards (e.g., Part 40, 41, 43, 44, 45, or 50) cannot be issued as a 104(d) citation or order even if the negligence evaluation is "high" or "reckless disregard."

A violation is caused by an unwarrantable failure if it is determined that the mine operator or contractor has engaged in aggravated conduct constituting more than ordinary negligence.

#### **XIV. SECTION 104(e) PATTERN OF VIOLATIONS [104(e) Citations]**

Section 104(e) of the Mine Act provides for severe sanctions against mine operators who have a pattern of violations of mandatory health and safety standards that could significantly and substantially contribute to the cause and effect of the health and safety hazards.

On October 1, 1990, regulations identifying mine operators who met the criteria for pattern of violations as outlined in 30 CFR Part 104 became effective. These regulations include procedures for initial screening of mines that may be developing a pattern of violations; criteria for determining whether a pattern of violations exists at a mine; procedures for issuance of potential pattern notice and final pattern notice; and procedures for termination of a Notice of Pattern of Violations.

If, upon any inspection within 90 days after the issuance of a Notice of Pattern of Violation, an inspector finds any "S&S" violation of a mandatory health or safety standard, the inspector shall issue a 104(e)(1) withdrawal order. The withdrawal order shall remain in effect until MSHA determines that the violation has been abated. Additional 104(e)(1) withdrawal orders will be issued if any further violations of an "S&S" nature are also observed during the course of the same inspection.

#### **XVI. SECTION 107(a) IMMINENT DANGER ORDERS**

Imminent danger is defined in the Mine Act as "the existence of any condition or practice in a coal or other mine which could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated." An inspector cannot issue a Section 107(a) order for "control purposes" in the absence of an imminent danger. The Mine Act and all legal decisions clearly spell out the need for the existence of an imminent danger to justify the issuance of a 107(a) order. The courts have noted that an imminent danger exists only when the hazardous condition has a reasonable potential to cause death or serious injury within a short period of time.

An imminent danger order cannot be issued for an accident which has already occurred unless the imminence still exists. Immediate physical exposure to the imminent danger

does not have to be witnessed by the inspector to issue a 107(a) order.

Because the purpose of Section 107(a) orders is to immediately remove miners from exposure to serious hazards and to prevent miners from entering such hazardous areas, an imminent danger must be impending at the time an order is issued. Therefore, when an imminent danger is observed, the inspector must, as soon as possible and at the time the imminent danger is being observed, either issue a written or an oral Section 107(a) order. An oral order should be documented in writing as soon as practical.

If an oral Section 107(a) order is issued, it should be stated in precise terms such as: "I am issuing you a Section 107(a) imminent danger order." At the least, the inspector must use the words "imminent danger" or "107(a)" at the time the oral order is issued.

A written order, issued after an oral Section 107(a) order, must clearly state that it is confirming an oral imminent danger order and identify:

- the individual to whom the oral order was issued;
- the time and date the oral order was issued;
- the location at which the oral order was issued; and
- the reason the oral order was issued. (This reason should be presented in the standard manner developed for the issuance of Section 107(a) orders.)

Imminent danger orders shall contain a detailed description of the conditions or practices which cause and constitute the imminent danger and a description of the area of the mine from which persons must be withdrawn and prohibited from entering. Only those persons described in Section 104(c) of the Mine Act may enter the affected area while the order is in place.

An imminent danger withdrawal order usually involves one or more violations of a mandatory health or safety standard. All contributing violations are to be addressed as separate citations or orders referring back to the 107(a) Imminent Danger Order.