

2011 FEB -4 P 4: 25

From: Scott Higdon [mailto:SHigdon@standardsand.com]
Sent: Friday, February 04, 2011 1:49 PM
To: zzMSHA-Standards - Comments to Fed Reg Group
Subject: RIN 1219-AB73 Pattern of Violations

"Due Process is the principal that the government must respect all of the legal rights that are owed to a person according to the law. Due process holds the government subservient to the law of the land protecting individual persons from the state. When a government harms a person, without following the exact course of the law, then that is a due process violation which offends the rule of the law".

"In the United States, due process refers to a set of established legal principles, derived from the Constitution, that seek to protect the rights of citizens. This is done to insure that government treats individuals fairly and does not abuse it's power by action against it's citizens in an arbitrary, oppressive, or capricious manner."

"At it's most fundamental level, due process prohibits the government from taking action against an individual that would result in a loss of liberty or property, without first affording that individual notice of the pending action, and an opportunity to be heard."

The proposed rule changes to 30 CFR in this document completely disregard the principal of due process as set forth in the Constitution. What about our right to contest a citation and have it ruled on in a timely manner? What about the concept of 'innocent until proven guilty'. The wording *Congress' intent* is used numerous times in this document. I don't believe that it was Congress' intent for the Department of Labor to deprive mine operators of their Constitutional Rights. Section 104.3(b) of 30 CFR states *"only citations and orders that have become final shall be used to identify mines with a potential pattern of violations under this section"*. Has someone arbitrarily decided that Congress' intent is now different than what it was when this section was first written in 1989?

You don't have to try and interpret Congress' intent when it comes to MSHA's responsibility to inform operators of a potential pattern of violations. In section 104(e)(1) of the Federal Mine Safety and Health Act of 1977, Congress clearly states that *"an operator shall be given written notice that such a pattern exists"*. Publishing something on a website is not giving written notice. Oftentimes information in the mine data retrieval system on MSHA's website is inaccurate and not posted in a timely manner. I know small mine operators that do not have computers or internet access. Is MSHA requiring that all mine operators buy a computer and purchase internet access?

Could MSHA be attempting to deprive mine operators of their Constitutional Rights in order to make their own job easier? It's not the operators' fault that the Review Commission has a backlog of cases. A start would be for MSHA to stop writing frivolous citations and focus on legitimate safety problems. The concept is for mine operators and MSHA to work together to create a safer workplace. But that isn't the case. It's an adversarial relationship due in large part to MSHA's heavy handed and arrogant attitude. The proposed rule changes posted in this document only contribute to this adversarial relationship.

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