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Piling injustice on insult, MSHA's pattern of violations (POV) proposal would strip affected mines of their constitutional due process rights to challenge POV-contributing violations. Adding injury to the mix, the proposal would provide no redress whatsoever if eventually the mine proved it should never have been subject to the harsh POV sanction in the first place. We know of no other example within the federal government of such an egregious attempt at abuse of power. If a mine is patterned unjustifiably, MSHA can duck out the back door unscathed, while the operator is left with trying to pick up the pieces of its broken business. "POV status could well be a 'death sentence' for a large underground mine." The context was his argument that MSHA needed to normalize its criteria to account for mine size to avoid unfairly discriminating against larger operations. The Agency also had the audacity to encourage operators nearing POV status to develop safety and health management plans. Here again, no criteria are set forth, other than that MSHA expects to see "a process and program with measurable benchmarks for abating specific violations." Even though MSHA cannot or will not say what such a plan must entail, the Agency is proposing it be given authority to approve or disapprove such plans. In its submittal, the Methane Awareness Resource Group (MARG) described this mandate as an illegal 'end run' around proper rulemaking procedures.

MSHA's POV proposal is an insult, and injustice. If this rule goes through as proposed, it will be tantamount to a game being imposed on operators by an opponent with a rulebook they have not been allowed to see before the contest begins. As the match proceeds, MSHA is permitted to change the rules as it deems fit. Operators will have no redress until after the game is over, the score posted, and the other side inevitably proclaimed the victor. Only after the 'loser' finds its reputation damaged, its stock price depleted and its very survival threatened is it permitted to seek review of its opponent's actions before an impartial panel. Even if the ruling is favorable, the victory will be hollow because the cost of litigation is high and no restitution is possible.

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