

MSHA VIOLATION AND ENFORCEMENT ISSUES

2012

KENTUCKY PROFESSIONAL ENGINEERS IN MINING SEMINAR

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Liability

U.S. Energy Information Administration

- 1st Quarter of 2012 - - - 36% Coal
Consumption for Electricity
- 1st Quarter of 2011 - - - 44.6% Coal
Consumption for Electricity

Mine Safety and Health Administration Statistics

- 2008 – 2,129 Coal Mines
- 2011 – 1,973 Coal Mines
- Loss of 156 Coal Mines



Coal Mining Industry

Chain Reaction of Liability



- Who caused this and who approved this?
- Civil lawsuits
- Criminal prosecutions

Code of Professional Practice and Conduct

- The engineer or land surveyor shall conduct his or her practice to protect the public health, safety and welfare.

--- 201 KAR 18:142, Section 2



Code of Professional Practice and Conduct

- Except as provided by this section, a licensee shall not certify any work product dealing with subject matter in which he or she lacks competence by virtue of education or experience, or any work product not prepared by him or her under his or her direct supervisory control.

--- 201 KAR 18:142, Section 8

Code of Professional Practice and Conduct

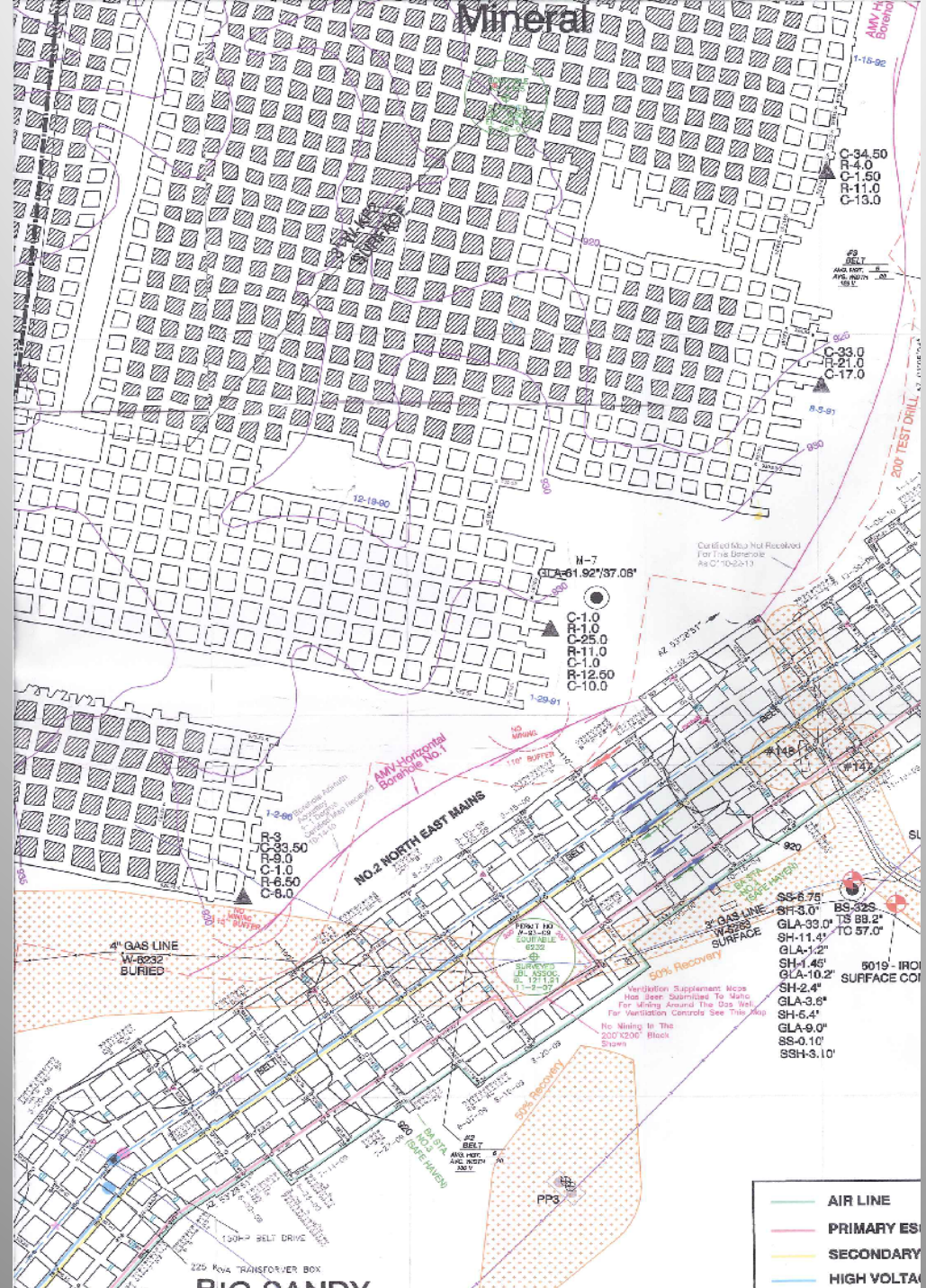
- A licensee shall not aid or abet the illegal practice of engineering or land surveying.

--- 201 KAR 18:142, Section 6

SECRETARY OF LABOR V. CLINTWOOD
ELKHORN MINING COMPANY, INC.,
KENT 2011-546

- Hubble Mining Company is operator of Hubble No. 6 Mine and Clintwood Elkhorn Mining Company, Inc. provides engineering services
- Hubble No. 6 Mine is adjacent to abandoned Blackhawk Mine

Mineral



C-34.50
R-4.0
C-1.50
R-11.0
C-13.0

C-33.0
R-21.0
C-17.0

H-7
GLA-61.92'/37.06'

C-1.0
R-1.0
C-25.0
R-11.0
C-1.0
R-12.60
C-10.0

R-3
C-33.50
R-9.0
C-1.0
R-6.50
C-8.0

4" GAS LINE
W-6232
BURIED

SS-6.78'
SF-3.0'
GLA-33.0'
GLA-1.2"
SH-1.46'
GLA-10.2'
SH-2.4'
GLA-3.6'
SH-6.4'
GLA-9.0'
SS-0.10'
SSH-3.10'

ES-325
TS 88.2'
TO 57.0'

501' - IRCI SURFACE COI

- AIR LINE
- PRIMARY ES
- SECONDARY
- HIGH VOLTA

225 KVA TRANSFORMER BOX
BIG SANDY



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- Three (3) professional engineers testified to the common practice of showing open-ended marks at end of entries

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ELKHORN MINING COMPANY, INC.,
KENT 2011-546

Borehole Drilling

- 30 CFR § 75.388(A) requires drilling in advancing working places when working place approaches to within 200 feet of adjacent workings that cannot be pre-shifted.
- MSHA's Position: No mining can occur without determining full extent of all workings by drilling

MSHA DOCUMENT REQUESTS

- MSHA has no subpoena power outside of litigation
- In Part 50 audits and investigations, MSHA requests documents not required to be kept under the Mine Act.
- These may involve personnel files with confidentiality concerns

BIG RIDGE, et al, v. SECRETARY OF LABOR

- Where do you draw the line?

BIG RIDGE, et al, v. SECRETARY OF LABOR

KEY POINTS

- MSHA may review relevant medical and employment records to determine whether an accident, injury or illness has been properly reported.
- Request was limited in time and narrowly tailored
- Right of privacy is up in the air
- MSHA's need outweighs privacy interests
- No illegal warrantless search
- No due process violation
- No violation of other federal or state laws

Where we stand today



U.S. Energy Information Administration

“Generation from coal increases by 25% from 2009 to 2035, largely as a result of the increased use of existing capacity; however, its share of the total generation mix falls from 45% to 43% as a result of more rapid increases in generation from natural gas and renewables over the same period.”



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