Delinquent US mines allowed to continue dangerous operations

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Thousands of mining companies throughout the US continue operating despite owing millions in delinquent fines for past health and safety violations. A joint investigative report by National Public Radio (NPR) and Mine Safety and Health News (MSHN) released last week reveals that nearly $70 million in delinquent fines are owed by some 2,700 mining companies operating coal, metal, and mineral mines in the US.

The report reviewed federal mine data regarding fines for violations, injuries and deaths over the last 20 years ending in the first quarter of 2014. This data was then compared with delinquency records supplied by the US Mine Safety and Health Administration (MSHA) to determine the number and gravity of violations, as well as the number and rate of injuries, which occurred at delinquent mines.

The report used the data to prove what seems like an obvious conclusion: “mines that don’t pay their penalties are more dangerous than mines that do.” In fact, such mines have injury rates 50 percent higher than non-delinquent mines. “Delinquent mines reported close to 4,000 injuries in the years they failed to pay, including accidents that killed 25 workers and left 58 others with permanent disabilities,” the investigation found.

The study also found, unsurprisingly, that over the time period researched, delinquent mines continued to violate the law, with more than 130,000 violations, while refusing to pay their fines. Some 40,000 of these violations were characterized as “Significant and Substantial” (S&S), where there existed “a reasonable likelihood” of serious injury.

Top among the list of offenders is Horace Garrison Hill and his D&C Mining Corp. with $4,354,975 in unpaid fines at a single mine stretching back to 2006. While the D&C mine was abandoned last year due to flooding, the operation was never shut down over Hill’s refusal to pay, allowing him to extract approximately $50 million in coal while in delinquency.

The D&C mine was a particularly dangerous operation, reporting four injuries and receiving an additional 1,498 violations—about one-third of which were deemed S&S—while operating in delinquency. Inspectors issued 145 withdrawal orders to the mine over the same period.

Two years ago, MSHA took D&C to federal court seeking payment. The agency won a $2 million dollar default judgment last year. However, MSHA reports that Hill has paid less than $25,000 of this and hasn’t made a payment in over a year.

Second on the list is Ralph Napier Sr. who owes nearly $3 million in fines at nine delinquent mines since 2006. Among those mines is the Kentucky Darby where five coal miners were killed in an explosion in 2006. The report notes that Napier and his partners still owe $500,000 in penalties for the disaster, despite even a federal court order demanding payment.

NPR/MSHN highlight the Kentucky Darby case to make the point: “Even after major disasters with multiple deaths, the owners of delinquent mines can continue to operate. MSHA does not shut them down even if they continue to commit violations, even when there are more injuries.”

Since 2006, Napier’s mines have extracted 1.4 million tons of coal worth approximately $89 million while operating in delinquency. Over the same period, these mines have caused 20 injuries and received an additional 1,295 violations.

Fourth on the list is James C. Justice II, West Virginia’s richest man and the state’s only billionaire. Justice inherited his father’s Bluestone Coal Corporation in 1993 and amassed a small fortune when he sold a substantial portion of its coal reserves and operations to Russian mining and metal giant Mechel OAO in 2009. However, Justice’s Southern Coal Company still owns some 1.4 billion tons of coal reserves in Appalachia and has operations in five states.

The investigation found that Justice owes nearly $2 million in unpaid fines for some 500 safety violations—four times as many as any other delinquent. His 71 delinquent mines have an injury rate twice the national average and have been issued more than 4,000 safety violations reaching back to 2007. Meanwhile, Justice has been allowed to extract an estimated $500 million in coal from his delinquent operations.

Since being contacted by NPR, Justice has started paying off his fines at a rate of $100,000 a month. Justice is also paying $50,000 a month in a settlement reached in August for hundreds of violations of reclamation laws by his operations in Kentucky. Justice, who is a major donor of the Kentucky Democratic Party and friend of Governor Steve Beshear, had his debt for the violations reduced from $4.5 million to just $1.5 million as part of the deal.

In all, the investigation found that the top nine delinquents owe more than $1 million each. Throughout the US mining industry, about 7 percent, or one out of every 14 mining companies, is delinquent on fines, most of which are between two and ten years overdue, but some which go back at least two decades.

"Just think about that," Howard Burkes, one of the report's author said, "ignore parking tickets and they'll boot your car. Ignore tax bills and you could lose your paycheck, your house, and your freedom. But there's little to fear from ignoring the fines that are supposed to keep mine workers safe."

The report notes that "federal regulators seem unable or unwilling to make mine owners pay." More fundamentally, however, the impunity of these companies is the outcome of a system tailored to the interests of the mining industrialists. Resource-starved regulatory agencies combine with deliberately complex corporate structures, loopholes in corporate law, a generous appeals process, and simple refusal to allow mine owners to escape payment and continue operating dangerously.

For example, fines are issued to the operator of a mine that is not necessarily the owner. Moreover, it is common for larger mining companies to deliberately structure themselves in a web of subsidiary operating companies, thus shielding the parent company from criminal and financial liability for accidents and deaths.

"When a fine becomes delinquent," the report explains, "MSHA sends out letters requesting payment. If necessary, the Treasury Department follows up with letters, phone calls and referrals to collection agencies. Sometimes, the Justice Department is asked to seek federal court orders demanding payment."

The Treasury Department—the primary debt collector for all government agencies since 1996—holds the authority to force payment; however, the agency has collected only 31 percent of the $97 million in delinquent penalties referred to it by MSHA between 2006 and 2013, the report notes.

Over the last eight years, the investigation "identified 34 cases in which MSHA or the Treasury Department tried to collect penalty payments by taking the matter to federal court or negotiating settlements." The $16 million owed in these cases was reduced to $5.8 million through settlements and judgments, however, and of this, only $783,000 or about 13 percent has been paid, according to MSHA.

The backlog of delinquent fines underscore that mine health and safety enforcement remains a low priority and no significant action is taken when mine owners flout these measures and simply refuse to pay.

Central to this state of affairs is the historic decline of the United Mine Workers (UMW) and its virtual abandonment of mine health and safety issues. Through its alliance with the Democratic Party and its corporatist outlook, the union ceases to exist as an organization which can serve, even in a limited sense, to defend the interests of miners.

For its part, MSHA claims it doesn't have the authority to shut down mines for lack of payment. MSHA chief Joe Main—former longtime UMW safety director—largely dismisses the findings claiming the delinquency problem looks worse than it really is.

"I don't want folks who hear this to think that this is an agency that doesn't care about mine operators paying their fines," Main said. "But we have to place our priorities where they are most impacting, and it's going to be protecting that miner that's out there at risk today."

How a system of mine safety regulations that does not enforce accountability upon violators can protect miners, Main did not say. So far this year, 34 miners have been killed in US mines, 14 in the coal industry and 20 in the nation's metal mines.