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INSIGHTS

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OCTOBER 2012

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I. ADMINISTRATION/CONGRESS

1. ROCKEFELLER REINTRODUCES MINE REFORM LEGISLATION

A mine reform bill similar to legislation that went nowhere in the past, even when the Democrats controlled Congress, has been reintroduced by West Virginia Senator Jay Rockefeller (D). The difference this time is that Rockefeller's bill includes provisions developed in response to the Upper Big Branch Mine tragedy.

The bill contains provisions common to comprehensive mine reform legislation Rockefeller introduced last year and is similar to legislation championed by Rep. George Miller (D-CA) in the House that failed to pass Congress in 2008, when the Democrats held the majority in Congress. Miller's bill narrowly passed in the House but was never taken up in the Senate, in part because then-President Bush threatened a veto.

The previous legislation also would have amended the Occupational Safety and Health Act in several ways: enhance protections for whistleblowers, extend rights to accident victims or their representatives, require immediate abatement of the most serious alleged violations, and raise civil and criminal penalties, among others. Rockefeller's bill retains those provisions.

Rockefeller's latest incarnation also would amend the Mine Act in a host of ways, including granting MSHA subpoena authority, expanding the Agency's injunctive power, extending significant and substantial (S&S) citations to cover all violations, setting up specific requirements for pattern violators, giving MSHA power to revoke mine plans and raising civil and criminal penalties.

Provisions specific to UBB include a prohibition against mine operators keeping two sets of examination books, establishing flagrant penalties for unsafe ventilation changes, requiring MSHA to issue a rule to reduce exposure to respirable coal dust within six months and update it every five years if the incidence of black lung disease does not decline, improving federal and state coordination to combat safety violations, upgrading mine safety technology by requiring "black box" technology to measure harmful contaminant levels on mining equipment and requiring quarterly training on the use of emergency oxygen supplies under real-world conditions.

Rockefeller's bill is given no chance of passage in this election year. But, the Senator's persistent efforts may one day result in the passage of a similar bill.

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2. WHISTLEBLOWER PROTECTIONS ADDED TO HIGHWAY BILL

A new highway funding bill contains a provision prohibiting retaliation against whistleblowers. The legislation covers motor vehicle manufacturers, parts suppliers and dealerships. It forbids retaliation against employees for reporting information to their employers or to the U.S. Department of Transportation about motor vehicle defects, noncompliance, alleged violations of the notification or reporting requirements enforced by the National Highway Traffic Safety Administration or related protected activities. OSHA is now enforcing the provision, which the President signed into law in July as part of the MAP-21 Act.

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3. GAO ENDORSES STUDIES SUPPORTING BLACK LUNG RULE

The federal government's auditing agency said MSHA and NIOSH followed appropriate scientific procedures when they evaluated studies that support MSHA's black lung rule, but the National Mining Association (NMA) said more recent data should have been considered.

In a report released last month, the Government Accountability Office (GAO) said the two government agencies took



reasonable steps to mitigate limitations and biases in the data they evaluated and used appropriate analytical methods to reach their conclusion that the exposure limit for respirable coal dust should be cut from 2 mg/m³ to 1 mg/m³.

The 1 mg limit is included in a comprehensive health rule MSHA proposed in October 2010 that the coal industry opposes. Based on coal operators' objections to the 1 mg limit, Congress directed GAO to evaluate the studies and analytical methods MSHA used to support the change. GAO focused on a 1995 criteria document from NIOSH and on the quantitative risk assessment MSHA prepared to support its rule. GAO also reviewed 10 other studies the agency identified from a literature search.

"In all of the key scientific studies, coal mine dust was found to be a statistically significant predictor of health risk, even when taking other known factors into account," GAO said.

But NMA expressed its disappointment at the limited scope of GAO's review. Senior Vice President Bruce Watzman said NMA had provided GAO with more recent data from NIOSH's data query system for 2011 that indicated the incidence rate for coal workers' pneumoconiosis is declining across all groups analyzed. "Additionally, NIOSH's enhanced x-ray surveillance data documents that in eight MSHA districts the prevalence of disease is below predicted levels," he said.

The congressional directive that led to GAO's review also included a prohibition against MSHA's either implementing or enforcing its proposal. Action by either agency seems a long way off, since MSHA has yet to send the rule to the Office of Management and Budget for final review. In fiscal 2013 budget language currently under consideration in Congress, MSHA would be prevented from continuing development of the rule altogether.

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II. AGENCIES

4. DEMOLITION, UNDERGROUND CONSTRUCTION COVERED UNDER OSHA DIRECT FINAL RULE

OSHA has issued rules to apply its cranes and derricks regulations to demolition work and underground construction. The action is intended to apply the same crane rules to underground construction and demolition that are already being used by other construction sectors, the agency said in a press release Aug. 17. The intent is also to streamline OSHA's standards by eliminating the separate cranes and derricks standard now in use for underground and demolition work and to correct errors in the 2010 cranes and derricks rulemaking, the agency added.

OSHA issued both a direct final rule (DFR) and a notice of proposed rulemaking (NPR). The DFR will become effective Nov. 15 unless significant adverse comment were received by Sept. 17. In that event, the NPR will allow OSHA to continue with the notice and comment rulemaking component by withdrawing the DFR. Henry Chajet (hchajet@pattonboggs.com, 202-457-6511) can assist anyone with questions or with preparing comments.

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5. STUDY FINDS HOST OF ILLNESSES FROM EARLY ASBESTOS EXPOSURE

Children exposed to crocidolite asbestos may face a wider range of adverse health impacts than lung cancer and mesothelioma, Australian researchers concluded after studying long-term health data from about 2,500 children who lived in the western Australian town of Wittenoom. Crocidolite, or blue asbestos, was mined there for nearly 20 years. Wittenoom has since become a ghost town due to environmental contamination from the mine works.

As expected, women who spent their childhoods in Wittenoom had a greatly increased risk of mesothelioma – 70 to 113 times higher – than the general population. However, they also had a four-fold increase in risk for brain cancer and three-fold increase for ovarian cancer. For men, the mesothelioma risk was slightly lower than for women, but was increased for brain, colorectal and prostate cancer and for leukemia. There also was a slightly elevated risk of heart disease and nervous disorders. Researchers said this was the first study to report on cancer incidence and mortality in adults exposed to crocidolite as children. The study appeared in the *American Journal of Industrial Medicine*.



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6. MSHA SEES PROGRESS FROM RULES TO LIVE BY PROGRAM

Nine fewer miners than average have died in accidents attributed to violations of Rules to Live By I (RTLBI) standards than occurred during the past five years, MSHA said in a recent stakeholders' briefing. The session was held to report on first-year results from the special enforcement program.

According to MSHA, 16 miners died in accidents attributed to RTLBI violations during the first year of the program compared to an average of 25 deaths attributable to these standards during the previous five years, a 36 percent decline. "Early on, the progress looks good," commented George Fesak, then head of the Agency's program evaluation and information directorate. Fesak now runs MSHA's Technical Support Division.

RTLBI targets 24 specific safety standards for special enforcement, 11 mandatory safety standards in Coal and 13 in Metal/Non-Metal that MSHA said caused 237 fatalities, or 42 percent of all mining fatalities between 2000 and 2008. The RTLBI standards cover such areas as blocking against motion, fall protection, falls of roof/rib, lockout/tagout, equipment maintenance and operating mobile equipment. Enforcement began on March 15, 2010. Two other RTLBI initiatives have been put in place since then, covering 23 additional health and safety standards.

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7. MSHA SUPPORT BRINGS SURGE IN TEMPORARY REINSTATEMENTS

MSHA has submitted three times as many requests during the past three years to the Federal Mine Safety and Health Review Commission for temporary reinstatement of miners with discrimination claims than it did during FY 2007-2009. In a statement this month, MSHA said it had submitted 71 requests for temporary reinstatement from Oct. 1, 2009 through July 31, 2012, compared to 22 requests it filed on behalf of miners during the three previous fiscal years. The agency said it also filed 70 complaints alleging discrimination during the same 2010-2012 period compared to 39 from FY 2007-2009.

In its statement, MSHA described "stepped-up" efforts it has made to educate miners about their rights, to promptly and thoroughly investigate discrimination complaints, and to take legal action on their behalf when a miner faces suspension, layoff, discharge or other adverse action after engaging in a protected activity. "Since I arrived at MSHA nearly three years ago, one of my top goals has been to educate miners about those rights and protections, and to rigorously enforce them," MSHA chief Joe Main said.

Sec. 105(c)(1) of the Mine Act prohibits discrimination against or interference with any miner who exercises his or her statutory rights, including filing a complaint alleging danger or a safety and health violation. Under 105(c)(2), a miner may file a discrimination complaint with MSHA. In most instances, the complaint alleges the miner was terminated for engaging in a protected activity. The agency then is obliged to investigate to determine if the complaint is frivolous. If MSHA deems the complaint non-frivolous, the agency asks the Commission to temporarily reinstate the miner while it investigates further. Because of the low legal bar involved, most complainants are temporarily reinstated. If MSHA's investigation cannot establish discrimination has occurred, then there is no violation and the agency petitions the Commission for a final order dissolving the temporary reinstatement.

That is not necessarily the end of the matter, though. Under Sec. 105(c)(3), the miner then can file a complaint directly with the Commission. If that happens, MSHA and the Commission have both held that temporary reinstatement continues until the Commission issues a final order on the merits of that complaint. However, in a decision last month, the U.S. Court of Appeals for the Sixth Circuit ruled that temporary reinstatement may not continue once the Commission issues a final order denying a claim originally filed with MSHA.

Under the Obama Administration, mine operators can anticipate that there will be a greater number of discrimination claims and requests for reinstatement. Since a miner has nothing to lose by filing a claim, many complaints can be expected to lack merit and even be frivolous. Operators facing reinstatement claims should seek advice of counsel early in the process to assure the best possible outcome. Contact Henry, Mark Savit (msavit@pattonboggs.com, 303-894-6117) or Brian



Hendrix (bhendrix@pattonboggs.com, 202-457-6543).

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8. FBI Investigation Training for MSHA Special Investigators

On Friday, October 5 MSHA accident and special investigators were given additional FBI training to support investigations of potential willful violations and criminal prosecutions. The FBI's lab evidence response team will supplement the two weeks of training given by the FBI and the Justice Department in April 2012 to 75 investigators, by teaching classes on securing an accident scene, photographing and sketching, collecting and packaging evidence, conducting interviews, dealing with false or altered records and releasing the scene. Patton Boggs special investigation webinar materials and the MSHA training materials from the first round of FBI training, obtained through a FOIA request, are posted on the Patton Boggs web site here.

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III. ENFORCEMENT

9. MINES CLOSE AFTER IMPACT INSPECTIONS

Two coal operators have gone into nonproducing status following impact inspections by MSHA. Bitco Resources, Inc.'s #1 Mine in Letcher County, Kentucky and Rebco Coal, Inc.'s Valley Mine #1 in Claiborne County, Tennessee were among 17 coal mines and eight metal/non-metal operations MSHA inspected in June and July. Bitco received 15 citations and orders during MSHA's visit, while the Valley Mine got 63. The closures follow remarks made by MSHA Coal Administrator Kevin Stricklin in February that the agency would work to "eradicate" operations that chronically violate mine safety rules.

During the June-July period, MSHA issued 484 citations, orders and safeguards. Since the Upper Big Branch Mine explosion in April 2010, MSHA has conducted 477 impact inspections, which have resulted in 8,545 citations, 852 orders and 36 safeguards. Besides fines from these inspections, mines hit hard during impact inspections may receive potential pattern of violation notices down the road. Support from experienced counsel is advised.

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10. COAL OPERATOR FINED \$600,000 IN MINER'S DEATH

Manalapan Mining Co., Inc. faces a \$594,100 MSHA fine in connection with the death of a miner in a rib collapse at the company's P-1 Mine in Kentucky. In its accident investigation report, MSHA accused the operator of flagrant conduct for allegedly not taking measures to ensure safe working conditions around ribs and for conducting an inadequate safety examination after David A. Partin, 49, died in the June 2011 accident. The three alleged flagrant violations each carry fines of \$174,700. MSHA also wrote a \$70,000 order for failure to revise the mine's roof control plan based on conditions. The Harlan County mine has been in nonproducing status for the past year.

Federal authorities have also pursued criminal action as a result of the fatality. Indictments were handed down in February against the company and three mine officials: operations manager Jefferson Davis, 53; superintendent Joseph Miniard, 45; and foreman Bryant Massingale, 52. Last month, Massingale pleaded guilty to failing to identify or correct hazardous conditions. He will be sentenced in January.

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11. ROUNDUP OF OSHA WHISTLEBLOWER CASES

OSHA has taken action against several companies, including four railroads, who allegedly retaliated against employees over safety issues. Last month, Norfolk Southern Corp. was ordered to pay three workers more than \$1.2 million in back pay, benefits, damages and attorneys' fees. Since August 2011, OSHA has cited the company four times for dismissing



seven employees who had reported injuries at work, the Agency said.

In July, OSHA ordered Illinois Central Railroad to pay \$424,401 for allegedly retaliating against two employees in separate incidents at the carrier's Markham (IL) Railroad Yard. Chicago Fort Wayne & Eastern was ordered to pay \$226,328 for terminating a conductor. Union Pacific Railroad Co. was ordered to pay a Kansas worker \$38,561 after the employee was given a 10-day unpaid suspension, allegedly for reporting a work-related injury.

Washington State-based T-Mobile and its parent company, Deutsche Telekom, were ordered to reinstate and pay \$345,972 to a whistleblower who was terminated after raising concerns about possibly fraudulent telephone roaming charges. Arizona trucking firm Roadmaster Group, successor to a company that fired a driver, was ordered to pay him \$315,000. The driver had refused to share duties transporting explosives with another driver who smoked, a violation of federal explosives regulations. A driver employed by Georgia-based Interline Logistics Corp. was ordered reinstated. He will also receive \$190,000. The driver complained that the company had given him an assignment that violated federal hours-of-service rules. Ameriflight, LLC and a subsidiary, Ameriflight, PR, Inc., were told to reinstate a pilot who raised safety concerns with the Federal Aviation Administration.

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12. \$13 MILLION SETTLEMENT REACHED IN BP CASE

In the latest settlement agreement with OSHA over safety conditions at its Texas City, Texas refinery, BP Products North America, Inc. has agreed to pay \$13 million in penalties. The settlement also resolves 409 of 439 willful citations OSHA issued in 2009 for alleged violations of OSHA's process safety management standard. The pact further calls for BP to abate all existing violations by the end of 2012.

The agreement is the third between the oil company and the regulatory agency. The first came in 2005, months after an explosion at the refinery claimed 15 lives. BP received a then-record \$21 million fine and agreed to identify and correct deficiencies. However, an OSHA follow-up inspection in 2009 led to 270 failure-to-abate notices. In a settlement the following year, BP agreed to pay \$50.6 million to resolve those notices. That agreement also obligated BP to set aside \$500 million to ensure safety at the facility.

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13. REMOVAL CRITERIA FOR SEVERE VIOLATOR PROGRAM

Intended for employers who show indifference to safety, OSHA's Severe Violators Enforcement Program (SVEP) has been in effect since June 2010, increasing penalties and OSHA inspections for companies placed in the program. A number of significant program flaws and suspect legal grounds for the program have been identified that treat employers unfairly, such as the use of alleged violations and a small number of violations to trigger placement on the SVEP web site list. These public listings and the press releases that often accompany them can prevent businesses from gaining contracts for new work and cost jobs and company viability. Moreover, until now the Agency had not set criteria for removal from the program. In a memo last month, OSHA said employers may be removed after a period of three years from the date of final disposition of SVEP inspection items. This could occur through failure to contest, settlement agreement, final order of the Occupational Safety and Health Review Commission or a court of appeals decision.

According to the memo, employers must have abated all SVEP-related hazards affirmed as violations, paid all final penalties, abided by and completed all settlement provisions and not received any additional serious citations related to the hazards identified in the SVEP inspection at the initial establishment or at any related establishment.

Except where national corporate-wide settlements are involved, approval for SVEP removal is at the discretion of the regional administrator and is to be based on an additional follow-up inspection and IMIS/OIS data. Failure to meet the criteria during the three-year period will mean an additional three-year stay in the SVEP and a second re-evaluation. For national corporate-wide settlements, the removal decision falls to OSHA's Directorate of Enforcement Programs following



termination of the agreement. The policy is effective immediately. OSHA said it has conducted 288 SVEP inspections since program inception.

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14. OSHA, AUTO REPAIR FIRM REACH SAFETY AGREEMENT

Monro Muffler Brake, Inc. has agreed to implement procedures to protect its employees against injury from automotive hydraulic lifts. The enterprise-wide settlement covers more than 800 stores in the eastern U.S. and comes after a lift failure at a shop in Massachusetts in April 2011. No one was injured, and Monro was cited for improperly inspecting and maintaining the lifts, as well as for other alleged hazards. The company will also pay a \$12,500 fine.

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IV. CHEMICAL SAFETY BOARD

15. CSB: PROCESS SAFETY FOCUS NEEDED TO PREVENT OIL RIG DISASTERS

In the wake of the Deepwater Horizon disaster in the Gulf of Mexico in 2010, the chairman of the U.S. Chemical Safety Board (CSB) has publicly called for the oil industry to develop a system of meaningful and reportable leading safety indicators that can bring attention to process safety problems before they develop into accidents.

Rafael Moure-Eraso noted that the industry answered CSB's call for developing leading safety indicators after the accident, but he said more needs to be done. He asserted that companies still focus too much on personal injury rates while overlooking looming process safety problems, such as backlogs in maintaining safety equipment and failure to implement recommendations from previous similar incidents. As an example, he noted that the Deepwater Horizon crew experienced several so-called "well kicks" at the Macondo well prior to the disaster that might have warned of the need for improved kick identification and response had they been effectively investigated.

Moure-Eraso's remarks were made in July on the eve of a two-day public hearing in Houston set up by CSB to take testimony on what he said was the need to develop and implement actionable safety indicators that drive continuous improvement in the oil industry.

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16. INHERENTLY SAFER DESIGN COULD AVERT CHEMICAL PLANT ACCIDENTS

A deadly accident at a West Virginia chemical plant in 2008 prompted Congress to direct CSB to commission a study on the feasibility of reducing or eliminating highly hazardous methyl isocyanate (MIC) at the facility. Two workers were killed and eight others were injured in an explosion at the Bayer CropScience plant in Institute. The tragedy could have been far worse if MIC, which was made and stored at the facility, had escaped into the surrounding community. A MIC release in Bhopal, India in 1984 killed thousands in one of the world's worst industrial disasters.

The study by the National Academy of Sciences (NAS) explored how the concept of "inherent safety" could be applied at the Bayer plant. The goal of inherently safer design is not only to prevent an accident, but also to reduce the consequences when one occurs. NAS found that while Bayer and previous owners incorporated some elements of safer technology, they did not perform systematic and complete inherently safer process assessments for either the MIC or the carbamate pesticide manufacturing processes at the plant.

Inherently safer design has four components: substitution of a less hazardous material, minimization of the amount of hazardous material in the process, moderation by using less hazardous process conditions and simplification by designing less complicated systems that are not as prone to failure. MIC production at the plant had stopped due to the accident, and last year Bayer announced it would not restart it. The company also said it would no longer manufacture hazardous



carbamate pesticides there.

CSB has released a video on the inherently safer concept, which is available on the Board's website at www.csb.gov.

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17. BOARD PLEDGES FULL INVESTIGATION INTO REFINERY FIRE

CSB has pledged a full investigation into the cause of a fire Aug. 6 at the Chevron oil refinery in Richmond, California, near San Francisco. CSB said the accident occurred when a combustible hydrocarbon liquid known as "gas-oil" leaked from a pipe connected to a crude oil distillation tower in the refinery's crude unit. Workers initially noted the leak and were in the process of attempting repairs on piping connected to the distillation tower when the leak suddenly intensified. Because the material in the tower exceeded 600°F, the gas-oil material immediately formed a large flammable vapor cloud. Although no one was injured, Board Chairman Rafael Moure-Eraso said workers narrowly escaped severe injury or death. "Monday's fire was a near-disaster for refinery personnel," he said. "Although fortunately no workers were killed, the overall impact of the incident ranks it as among the most serious U.S. refinery incidents in recent years."

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V. LITIGATION/COURTS

18. RESPIRATOR MANUFACTURER LIABILITY AFFIRMED IN ASBESTOS CASE

In a split vote, the Washington State Supreme Court ruled last month that respirator manufacturers have a duty to warn users of their products about the dangers of asbestos. The case involves a former shipyard worker, Leo Macias, who contracted mesothelioma after retiring as a tool keeper at Todd Shipyards, where he had worked for 26 years. Macias' job duties included cleaning and maintaining respirators used by asbestos-exposed workers. His lawsuit against the shipyard and the manufacturers of the respirators alleged that they had a duty to warn him but did not.

Citing precedent in two other cases, the manufacturers argued that they had no duty to warn. They also contended they were not responsible for Macias' exposure because their products did not contain asbestos and were not dangerous.

But in a 5-4 decision, the Court's majority rejected their arguments. They wrote, "The very purpose of the respirators would, of necessity, lead to high concentrations of asbestos (and/or other contaminants) in them, and in order to reuse them as they were intended to be reused, this asbestos had to be removed." The minority judges opined that respirators are designed to protect against a variety of contaminants, not just asbestos, and the manufacturers cannot warn about all of them. They also said respirators are safety equipment. As such, an adverse ruling will have a chilling effect on safety equipment manufacturers.

The case has had a long and contentious history and is not over. A trial court had denied the respirator manufacturers' motion for summary judgment. An appellate court reversed, bringing the case before the state's High Court. It has been remanded back to the trial court, with a trial set for early 2013.

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19. UNIVERSITY BOARD ESCAPES CRIMINAL CHARGES IN LAB DEATH

The University of California (UC) Board of Regents has escaped criminal charges in the death of a student in a lab fire at UCLA in 2008. In a deal with prosecutors, the Regents have accepted responsibility for lab conditions at the time of Sheharbano Sangji's death. They have also pledged to set up a \$500,000 environmental law scholarship in her name, maintain a lab safety program and require all UC principal investigators to complete lab safety training. Sangji's supervisor still faces three counts of willfully violating state occupational safety and health standards. A not guilty plea has been entered on his behalf, and he faces a preliminary hearing in October. The accident occurred as Sangji, 23, was working



with t-butyl lithium. The chemical, which ignites when exposed to air, caught fire when the syringe Sangji was using came apart. She suffered third degree burns and died 18 days later.

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20. CONTRACTOR GETS 10 YEARS IN PRISON FOR ASBESTOS VIOLATIONS

An Illinois contractor has been sentenced to 10 years in federal prison for violating provisions of the Clean Air Act that relate to the safe removal, handling and disposal of asbestos. Duane O'Malley ordered workers employed by his company, Origin Fire Protection, to remove asbestos insulation from a building in Kankakee without proper controls. The cancer-causing material was then placed into unmarked bags and dumped into an open field by employees who were not properly licensed and did not have appropriate personal protection. O'Malley was also ordered to pay a \$15,000 fine and more than \$47,000 beyond that to the EPA for cleanup costs.

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21. COAL MINE EXAMINER, SUPERVISORS GET MSHA FINES

Two coal mine supervisors have been ordered to pay \$24,000 in fines over an accident that left a contract electrician severely injured. In a separate case, a mine examiner has been fined for allegedly negligent conduct. MSHA cited the contractor, the mine operator and the two supervisors after an electrician was burned in a fire as he repaired a motor control center at a Kentucky mine in May 2007. The agency fined each man \$15,000, an amount reduced to \$12,000 each by a judge last month. The mine examiner was ordered to pay \$2,160 after being found personally liable for two violations involving his alleged failure to conduct an adequate pre-shift examination and for failing to protect miners from roof/rib falls at a mine in southwestern Virginia. MSHA had initially proposed \$2,700.

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22. FEDS PURSUE MINE OPERATORS OVER UNPAID FINES

A federal judge has ordered a mine operator in Kentucky to pay \$1.67 million in accumulated fines. MSHA said D&C Mining Corp. received nearly 1,200 citations between January 2006 and February 2012 and had paid just \$1.1 million of its \$2.7 million assessment bill. The amount includes \$255,785 in interest since February. In New England, three stone producers face lawsuits aimed at getting them to pay \$267,724 in unpaid civil penalties. The lawsuits by the Department of Labor state that American Industries, Inc. of Jewett City, CT, owes \$24,628; R.J. Cincotta Co., Inc. of Waltham, MA owes \$144,847; and Raymond Sand and Gravel of Raymond, NH, \$98,249. Interest charges have not been included.

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23. NEW TRIAL ORDERED IN SILICOSIS CASE

Mississippi Valley Silica Co. will get another day in court after the Mississippi Supreme Court ordered a new trial in the case of a former sandblaster who contracted silicosis and received a \$7.6 million jury award. In July, the High Court ruled that the trial judge erred in an instruction to jurors by not allowing the company to argue to the jury that Robert Eastman's employer bore more blame because it failed to protect Eastman from a product everyone knew could be dangerous. Eastman, who has since died, worked for Marathon LeTourneau of Vicksburg for 25 years.

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24. JUDGE OVERTURNS MAJORITY OF \$90 MILLION ASBESTOS AWARD



A judge has set aside nearly \$50 million of a \$90 million landmark jury payout to Charles Gillenwater against four companies that he had accused of conspiring to cover up the potential danger and health risks associated with asbestos. Gillenwater, 59, claimed he developed mesothelioma while working as a pipefitter in the 1970s. In a decision in March 2011, a jury agreed. However, on Aug. 31 a trial judge in McLean County, Illinois set aside Owens-Illinois' (OI) \$40 million portion, along with \$9.6 million of compensatory damages levied against the other three firms. In a press statement, OI said it was "pleased" with the decision. "The ruling is consistent with O-I's position that it did not conspire with anyone concerning asbestos health hazards," the company said. The judge's decision is subject to appeal.

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25. MORE THAN \$11 MILLION AWARDED IN MESOTHELIOMA CASES

A Texas jury has awarded \$8.4 million to the widow of John Gensler, a chemical plant worker who alleged Gensler was not adequately warned or provided with appropriate protective gear when he worked with asbestos pipe products in the 1960s and 1970s. In Delaware, a jury awarded \$2.68 million to the family of 62-year-old Michael Galliher, who died last year of mesothelioma. Galliher worked for nearly 40 years for a plumbing firm that used asbestos-containing talc powder to dust large molds of ceramic fixtures. The verdict went against the talc producer.

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