Mines Fight Strict Laws by Filing More Appeals

by Gardiner Harris and Erik Eckholm

Armed with tougher federal mining laws passed in 2006, federal investigators had new powers to crack down on mines with persistent violations.

But mining companies have been able to fend off this tougher regulatory approach by challenging more of the citations filed against them.

As recently as March, for example, federal mine inspectors found dangerous coal dust accumulations during two separate inspections at the Massey Energy Company’s Upper Big Branch mine, the site of an explosion on Monday that killed at least 25 miners.

And throughout last year, the mine, in Montcoal, W.Va., was cited for failing to conduct inspections that would have spotted dangerous piles of coal dust and other unsafe conditions.

Massey appealed at least 37 of the 50 citations for serious safety violations that it received last year.

At a hearing in February, Representative George Miller, Democrat of California, complained that the growing number of appeals by coal companies threatened to “render the federal efforts to hold mine operators accountable meaningless.” Mining safety experts have expressed similar concerns.

One in four citations issued against coal mines are now appealed by operators — three times the appeal rate before the law, according to regulators. The result is a backlog of 18,000 pending appeals and $210 million in contested penalties.

The appeals “are also allowing miners, in some cases the worst operators, to escape liability for which they are in fact liable and continue to put miners in harm’s way,” Mr. Miller said at the hearing.
Mine operators blamed the government for the increasing appeals. Bruce Watzman, senior vice president of the National Mining Association, called the government’s citation process “irrational” but said appeals did nothing to endanger the safety of miners.

Officials at Massey did not respond to a telephone call seeking comment. The company’s Web site says that its safety record is better than the industry’s average when it comes to accidents that result in lost time.

And Don L. Blankenship, the company’s chief executive, cautioned in a radio interview Tuesday against reading too much into the Upper Big Branch mine’s history of violations.

“Violations are unfortunately a normal part of the mining process,” Mr. Blankenship said in the interview with the West Virginia MetroNews radio network, adding that there are violations at every coal mine in the country.

Although all mining companies have filed appeals, Massey — and Mr. Blankenship in particular — has developed a reputation for an aggressive style.

Mr. Blankenship has taken on unions, believers in global warming and even, in West Virginia, the trade association representing coal mining companies. He unintentionally set a new national legal precedent last year when the United States Supreme Court ruled that judges must disqualify themselves from cases involving people who spent unusually large sums to elect them.

That case was brought after Mr. Blankenship spent about $3 million in 2004 to defeat an incumbent justice on the West Virginia Supreme Court. The beneficiary of Mr. Blankenship’s spending, Brent D. Benjamin, went on to become the court’s chief justice, and he twice joined the majority in 3-to-2 decisions throwing out a $50 million jury verdict against Massey Energy.

More questions about Mr. Blankenship’s ties to the court were raised in 2008, when another justice on the court lost his re-election bid after photographs surfaced showing him dining on the French Riviera and in Monaco with Mr. Blankenship at a time when cases involving Massey were pending before the court.

Mr. Blankenship has been an active political donor. In 2006 he contributed more than $100,000 to legislative races in West Virginia, according to an analysis of campaign contributions by the National Institute on Money in State Politics, a nonpartisan, nonprofit research group based in Montana.

And people associated with Massey Energy, and the company’s political action committee, have donated more than $300,000 to federal candidates since 1990, with 91 percent of the money
going to Republicans, according to an analysis by the Center for Responsive Politics, a nonpartisan research group based in Washington.

Mr. Blankenship has long seemed to revel in the role of a modern-day coal baron. He amassed coal rights when some doubted the future of Appalachian coal and raised profits by holding down production costs, collecting dozens of environmental and safety violations along the way.

A self-described “street fighter,” Mr. Blankenship, a large man with a moustache and a slight drawl, has staunchly defended the practice of blasting off mountaintops to reach coal seams. He has accused state regulators of being anti-business and in cahoots with the union.

In 2008, according to public filings, Mr. Blankenship was paid $11.2 million in salary, bonuses and other benefits, up from $5.3 million in 2006. He lives in a relatively modest home in Rawl, W.Va. — where dozens of residents have sued Massey for, they say, poisoning the water supply.

*Michael Cooper contributed reporting.*