In Mine Safety, a Meek Watchdog

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The Mine Safety and Health Administration was created almost 35 years ago, after deadly explosions at a Kentucky mine, with a mission to conduct more inspections of the nation’s mines and enforce safety standards more strictly. It was strengthened four years ago, after more disasters.

But it remains fundamentally weak in several areas, and it does not always use the powers it has.

The agency can seek to close mines that it deems unsafe and to close repeat offenders, but it rarely does so.

The fines it levies are relatively small, and many go uncollected for years. It lacks subpoena power, a basic investigatory tool. Its investigators are not technically law enforcement officers, like those at other agencies, including the Food and Drug Administration and the Environmental Protection Agency.

And its criminal sanctions are weak, a result of compromises over the 1977 Mine Act that created the agency. Falsifying records is a felony, for example, while deliberate violations of safety standards that lead to deaths are misdemeanors.

After an explosion at the Upper Big Branch mine in Montcoal, W.Va., killed 29 miners last Monday — including four whose bodies were discovered late Friday — in the nation’s worst
mining disaster in four decades, evidence quickly surfaced that the mine had been cited for hundreds of violations over the last year, including many serious ones.

Federal mining officials said Friday that they believed the mine’s safety record was poor enough to declare that it had a “pattern of violations,” which would have allowed them to increase oversight and to shut the mine down every time a significant violation was found.

But their hands were tied, they said, because Upper Big Branch, like many mines, had contested many of its violations — a tactic that helps mine owners fend off fines and delay additional scrutiny.

The total fines the Massey Energy Company, which owns the Upper Big Branch mine, paid for infractions there in the last year, $168,393 in all, is just the latest example of what former regulators, inspectors and miners say is an agency that lacks muscle — a testament to the industry’s political clout and the practical limits of enforcement.

Fatalities among miners have been steadily dropping for years. But inspectors, regulators and miners said the deaths at Upper Big Branch showed that enforcement of safety laws remained weak.

“Every place I’ve ever worked, safety has been a distant second to production,” said Billy Brannon, 30, of Harlan, Ky., who has been a miner for nine years. “If you take 30 minutes out of the day doing it right, that takes a lot out of the tonnage of the mine.”

Labor Secretary Hilda L. Solis, who oversees the mine safety agency, said in an interview that she was concerned about weaknesses in its oversight powers.

“We know that there are some areas of the law that probably could be strengthened, and so we’re going to be reviewing those areas — for example, looking at powers to subpoena,” she said. “We don’t have the authority to shut down a mine as easily and as quickly as the public might think, and I think those are the loopholes that we want to close.”

In the Bush administration, a number of officials from the mining industry were appointed to senior positions at the mine safety agency. The agency made a priority of winning voluntary compliance from the industry, which prompted critics to accuse officials of not taking enforcement seriously enough.
After a series of deadly fires in 2006, Congress passed a tougher mining law, and the agency stiffened its fines and began using some powers more aggressively. When President Obama took office, he named Joseph A. Main, a former safety official with the United Mine Workers of America, to lead the agency. Last year, mine experts said, there seemed to be greater enforcement and more citations.

But even the new fines remain so low that they are mere rounding errors on the bottom lines of the big energy companies that own mines. And the industry has hobbled enforcement by challenging so many violations.

Since 2005, the number of cases pending appeal before the Federal Mine Safety and Health Review Commission, which reviews challenges, has jumped to 16,000 from 1,500. Federal officials estimated that the backlog of challenged cases was holding up enforcement actions against 48 mines, which employ about 6,000 miners nationwide, including Upper Big Branch.

An analysis of federal records by The New York Times shows that of the $123.4 million in major fines levied against the industry by the agency since 2005, only 8 percent — or $10.2 million — has been collected partly because mine owners began challenging fines more routinely when the agency threatened to increase enforcement for repeat offenders.

Between the industry’s success in challenging enforcement actions and the mine safety agency’s reluctance to flex all of its powers, problem mines are almost never cited for having “a pattern of violations,” which would allow stricter oversight.

Although the agency has had the power to cite mines for such patterns since 1977, it rarely if ever used it until 2007. Since then, it has warned at least 69 mines that they could be cited for a pattern, but has then allowed almost all to escape the added oversight as long as they reduce — not necessarily eliminate — violations in a three-month review period.

So far the agency has cited only one mine for such a pattern; it is in court trying to cite another. Officials said they do close down sections of mines to fix serious violations, but they rarely use the added powers they have had for more than 30 years.

The cause of the explosion at the Upper Big Branch mine is still under investigation. Massey defended its safety record last week, even as federal officials said the mine’s record of some of
the most serious violations was well above the national average. And the industry is warning against a rush to impose tougher enforcement.

Bruce H. Watzman, senior vice president of the National Mining Association, the industry’s main lobbying group, said the industry was deeply committed to worker safety, estimating that it had spent more than $800 million since 2006 to enhance safety measures nationwide. He cautioned against quick adoption of new regulations, which might add cost, without addressing what actually caused the explosion at Upper Big Branch.

“It is understandable there is additional scrutiny and that some will call for immediate action,” Mr. Watzman said. “But we need good, complete answers as to what happened. And those are not necessarily quick answers.”

Enforcement at the mines themselves carries a separate set of challenges.

On the narrow and isolated highways of Appalachia’s coal region, the white S.U.V.s of federal inspectors are easy to spot. Coal truck drivers sometimes use CB radios to tell mine operators that the inspectors are on their way.

Convenience store clerks have been known to call in warnings when inspectors stop in to buy coffee. And once the inspectors arrive, operators can employ a variety of delaying tactics so they can clean up glaring violations.

“It’s always been a game of cat and mouse,” said Maurice Mullins, who worked as a federal mine inspector for 32 years before retiring in 2003.

Another recently retired inspector and one who still works for the agency also spoke about their experiences last week, along with several miners.

They said that many mines routinely violate safety rules, but they also faulted regulators for decades of timid enforcement.

“It’s always been my opinion that M.S.H.A. doesn’t use the powers it has,” said an inspector with more than 20 years of experience who did not want his name used because he was not authorized to speak to reporters.
Miners say that despite ubiquitous “safety first” slogans, they face relentless pressure to run more coal, as production is called.

“These big mine companies push the envelope to the breaking point,” said Mark Gray, a 51-year-old miner from Harlan.

Making routine methane checks, hanging ventilation curtains and shoveling dangerous accumulations of coal dust — all required under federal rules — take time away from production.

In most mines, foremen are judged almost exclusively by the productivity of their crew, said Mr. Brannon, the 30-year-old miner from Kentucky. “I’ve worked for bosses that wanted it done right, and most of the time they didn’t boss for too long,” he added.

The industry, with its powerful lobby in Washington, has not been shy about fighting additional regulations.

In 2007, the year after a series of fatal accidents that were attributed in part to the failures of seals designed to keep explosive methane gas from seeping between work areas in the mines, federal officials considered imposing a rule requiring mine owners to replace or retrofit all seals, to better protect the estimated 30,000 miners nationwide.

But at a hearing that year, Bill K. Caylor, then president of the Kentucky Coal Association, accused the government of reacting hysterically to the accidents.

“Did you know that 750 people die each year in the U.S. from eating bad or ruined potato salad?” he told federal regulators. “Do you think we could get some new laws put on the books to control these deaths?”

He urged regulators to ignore pleas from the widows of victims who were pressing them to mandate that new seals be installed in mines nationwide.

“The cost of installing the new approved seals will put a lot of smaller operators out of business,” he told regulators, urging them to require the new seals only when old ones were replaced.
When the final rule came out in 2008, the regulators sided with Mr. Caylor.

Spending by the coal industry in Washington has surged in recent years, with the tab for its more than 100 lobbyists — almost all representing mine owners — jumping to $14 million, from less than $2.5 million in 2003.

Much of that is driven by industry opposition to new restrictions that could be imposed as part of an effort to combat climate change. But industry lobbyists have also looked for ways to limit or block new safety measures, like legislation adopted by the House in 2008 that would add new safety provisions, including tougher standards to contain explosions or fires inside mines.

The National Mining Association warned that the proposed law would “choke off investment in domestic mineral operations, causing whole industries and thousands of high-paying jobs to move offshore.”

The legislation, which would have given subpoena power to investigators, died in the Senate.

Bill Banig, a former miner and now a lobbyist for the United Mine Workers of America, said he feels outgunned when he goes to Capitol Hill because there are dozens of industry lobbyists.

Mr. Watzman, the lobbyist, blamed poorly trained inspectors — faulty training was recently cited by the Labor Department’s inspector general — and regulators who are less willing to negotiate settlements for the growing backlog of appeals.

Massey appealed at least 37 of the 50 citations for serious violations that it received last year. Industrywide, mine owners now contest two-thirds of all fines.

Mr. Main, the assistant secretary of labor for mine safety and health, said he had planned, before the Upper Big Branch explosion, to announce initiatives to expedite the review of challenges made by companies with high numbers of serious violations.

Last Monday morning, a federal inspector visited the Upper Big Branch mine. He looked over its books, “discussed black lung and handed out stickers,” according to handwritten notes.

He made an “imminent danger” run in the mine, checked for dust collection and inspected the toilet, the notes say. He checked the conveyor belt and the roof, and took air readings in two
locations that showed no methane.

The inspector then issued two citations, for an improperly insulated spliced electrical cable and for the lack of an updated map of escape routes in one section of the mine. Then he left.

That afternoon, the mine blew up.

*Andrew W. Lehren contributed reporting.*