

# **MSHA INSPECTIONS & CITATIONS**

## **How to Prepare for & Defend against!**

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# WHO IS MSHA AND WHAT, EXACTLY, ARE THEY DOING HERE?

- the purpose of the Mine Act is to protect miners
- the Act covers all surface and underground mines, all mine operators, independent contractors working at mines, and all miners
- The Act creates the Mine Safety and Health Administration (MSHA)
- MSHA is responsible for rulemaking and enforcement
- MSHA inspects mines regularly for compliance with mandatory health and safety standards (30 C.F.R.)

# OVERVIEW (CONT.)

- strict liability for mine operators
- citations, closure orders and mandatory civil penalties for violations
- miners are protected from retaliation for raising safety concerns
- the Federal Mine Safety and Health Review Commission (FMSHRC) resolves disputes

# THE MINE ACT: RULEMAKING MANDATE

[www.MSHA.gov](http://www.MSHA.gov)

- and on the MSHA website, under Policies & Procedures:
  - Code of Federal Regulations (C.F.R.) Title 30
  - 30 C.F.R. Part 56 (and the rest of the relevant ones)
  - Program Policy Manual (PPM)
  - Procedure Handbooks

# THE MINE ACT: INSPECTION MANDATE

- MSHA inspects mines to:
  - collect information about health and safety conditions and causes of accidents and illnesses
  - gather information for mandatory health and safety standards
  - determine whether an imminent danger exists
  - determine whether there is compliance
- underground mines inspected at least 4x per year
- surface mines inspected at least 2x per year
- MSHA has the right to enter mine sites without a warrant
- giving advance notice of inspections is a crime

# MSHA CITATIONS AND ORDERS

## § 104(a) citation

- violation of the Mine Act, a mandatory safety or health standard, or other regulation
- reasonable abatement time allowed
- civil penalty must be assessed based on inspector's findings regarding (among other things)
  - gravity
  - negligence

# MSHA CITATIONS AND ORDERS (CONT.)

## § 104(d)(1) citation

- violation of mandatory safety or health standard
- unwarrantable failure charged
- significant and substantial violation charged
- reasonable abatement time allowed
- triggers 90-day “probation” period
- penalty assessed – \$2,277 minimum
- disclosure in quarterly SEC filings

# MSHA CITATIONS AND ORDERS (CONT.)

## § 104(d)(1) and § 104(d)(2) orders

- violation of mandatory safety or health standard
- unwarrantable failure charged
- no requirement that violation be significant and substantial
- no time for abatement: all miners must be withdrawn from affected area
- special investigation possible
- idled miners are entitled to pay
- higher penalty assessed, special assessment possible (\$4,553 minimum penalty)
- disclosure in SEC filings



# MSHA CITATIONS AND ORDERS (CONT.)

## § 104(b) order

- failure to abate citation
- must withdraw all miners from affected area: no more time for abatement
- idled miners are entitled to pay
- high penalty assessed
- possible daily civil penalties of up to \$7,500 per day
- disclosure in SEC filings

# § 104(g) ORDER – UNTRAINED MINER



# MSHA CITATIONS AND ORDERS (CONT.)

## § 104(g) order

- requires untrained miner to be withdrawn from the mine
- high penalty assessed
- idled miner entitled to normal compensation

# § 107(a) IMMINENT DANGER ORDER



# MSHA CITATIONS AND ORDERS (CONT.)

## § 107(a) order

- imminent danger exists
- no violation required
- no time for abatement
- idled miners are entitled to pay
- disclosure in SEC filings

# RESPONSIBILITY AND LIABILITY OF SUPERVISORS AND AGENTS – THE LAW

## Mine Act § 110(c):

- Whenever a corporate operator violates a ***mandatory health or safety standard or knowingly violates or fails or refuses to comply with any order*** issued under this Act or any order incorporated in a final decision issued under [the Mine Act] ..., any ***director, officer, or agent*** of such corporation who ***knowingly authorized, ordered, or carried out*** such violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under [§ § 110(a) or 110(d) of the Mine Act].

# “KNOWING” VIOLATIONS

## Mine Act § 110(f):

- ***Whoever knowingly*** makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this Act shall, upon conviction, be punished by a fine of not more than [\$250,000], or by imprisonment for not more than five years, or both.
- for example, 5000-23 training certificates, preshift books, equipment pre-op exam records



# INSPECTIONS AND INVESTIGATIONS





# PARTICIPATING IN THE INSPECTION

- accompany the inspector at all times
- participate in conversations with inspector
- take notes: keep a record of all activities and discussions with the inspector
- ask about details of expected citations and orders
- correct violations promptly (before time for abatement expires) – if appropriate, you can always challenge later
- be truthful
- avoid admissions about how long a violation existed or whether anyone knew about it
- never speculate – stick to the facts
- do not conduct demonstrations

# MANAGEMENT GETS TO BE PRESENT

“Subject to regulations issued by the Secretary, a representative of the operator and a representative authorized by his miners ***shall be given an opportunity to accompany the Secretary*** or his authorized representative during the physical inspection of any coal or other mine ... for the purpose of aiding such inspection and to participate in pre- or post-inspection conferences held at the mine. ...”

(Mine Act, § 103(f)) (emphasis added)

# STAY WITH THE MISHA INSPECTOR



# MSHA CAN BE PERSISTENT



# WHO HAS TO TALK WITH MISHA?

- It is each individual's decision whether or not to talk with the inspector or investigator.
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**KEEP  
CALM  
AND  
ASK  
QUESTIONS**

# QUESTIONS?



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