

# MSHA'S RESPONSE TO ACCIDENTS



# I. MSHA role as a first responder in mine emergencies

- ☞ MSHA has technical expertise to share
- ☞ MSHA partners with the operator and state agencies (if any)
- ☞ MSHA acts as a liaison with families of miners

- ☞ Quecreek rescue capsule



# **MSHA acts to protect the safety of miners in emergencies**

MSHA's legal tools for responding to accidents include:

- ☛ sections 103(k) and (j) of the Mine Act
- ☛ and 30 CFR 50.10 and 50.12.

# The 1969 Coal Act— first effective 40 years ago today

The Coal Act gave the federal government enhanced legal authority to respond to accidents in coal mines

1968 Farmington disaster



## Legislative history behind sections 103(k) and (j) of the Mine Act

- ☛ The unpredictability of accidents in mines and uncertainty surrounding them requires that the Secretary... be permitted to exercise **broad discretion** in order to protect the life or to insure the safety of any person.

## Legislative history, cont'd

- ☛ The grant of authority in [103(k)] to take appropriate actions and in [103(j)] to issue orders is intended to provide the Secretary with **flexibility** in responding to accident situations, including the issuance of withdrawal orders.

# Legal issues in rescues

- ☞ Sometimes MSHA has hard decisions to make during rescues
- ☞ Courts normally give great weight to MSHA's decisions

## ***Miller Mining Co. v. FMSHRC***

The 9<sup>th</sup> Circuit has held that MSHA has “plenary”, i.e. “full”, power when making decisions in accident situations.

# Commission caselaw

- ☞ Operators have sometimes challenged 103(k) orders before the Commission
- ☞ ALJ's can only determine whether the Secretary acted reasonably when she issued the order. They do not substitute their judgment for hers.

## II. Issue:

- Does issuing a 103(j) order mean that MSHA is completely directing the rescue and recovery efforts?

**Answer: “no.”**

MSHA has the authority to issue discrete 103(j) orders directing operators to take specific actions and it may do so without taking complete control over rescue and recovery operations.

## 103(j)

- ☛ In the event of any accident . . . the operator shall notify the Secretary thereof...
- ☛ and shall take appropriate measures to prevent the destruction of any evidence which would assist in investigating the cause or causes thereof....

## 103(j) cont'd

- ☛ In the event of any accident . . . , where rescue and recovery work is necessary, the Secretary . . . **shall take whatever action s/he deems appropriate to protect the life of any person**
- ☛ and s/he may, if he deems it appropriate, supervise and direct the rescue and recovery operations.

**MSHA has a history of issuing 103(j) orders to preserve evidence, but infrequently to direct rescue operations.**

Belle Isle salt mine explosion in the 1970's; 103(j) order issued.

Issues arose during Scotia disaster in 1976.



1975 blowout in 7 Main Entry West Room 4.

### III. Issue:

- ☞ 103(k): an inspector can issue the order “when present”.
- ☞ 103(j) does not have that limitation.
- ☞ MSHA is rarely present when accidents first occur— normally told via phone

## 103(k)

In the event of any accident occurring in a coal or other mine, an authorized representative of the Secretary, **when present**, may issue such orders as he deems appropriate to **insure the safety** of any person in the coal or other mine,

## **103(k) cont'd**

and the operator of such mine shall obtain the approval of such representative, in consultation with appropriate State representatives, when feasible, of any plan to recover any person in such mine or to recover the ... mine or return affected areas of such mine to normal.

# Crandall Canyon

## MSHA Independent Review report:

The issuance of a 103(k) order by phone conflicts with the Mine Act.



## **DOL OIG 1/9/09**

☛ We recommend that MSHA take immediate action, to include seeking legislative changes if necessary, to resolve the conflict between its existing practice and the language in Section 103(k) of the Mine Act that requires an inspector to be present to issue a closure order.

# Policy clarification

- ☛ Program Policy Letter, 8/12/09
- ☛ Procedure Instruction Letter, 9/10/09
- ☛ In a nutshell, MSHA issues 103(j) order orally in most cases and modifies to 103(k) when on-site.

## IV. Preserving the accident scene

- ☛ This policy did not change.
- ☛ See 103(j).
- ☛ 30 CFR 50.12 also prohibits the alteration of an accident scene.
- ☛ 50.12 provides several exceptions, including for rescue and recovery work; to prevent an imminent danger; or to prevent destruction of equipment.

## V. The Miner Act: revision to 103(j)

- ☛ The operator shall notify MSHA within 15 minutes of the time which it realizes that a death, or injury/entrapment with a reasonable possibility to cause death, has occurred
- ☛ The Secretary shall assess a minimum of \$5,000 for failure to provide this notification

# Preamble to the final rule

Timely reporting can be crucial in emergency, life-threatening situations to activate effective emergency response and rescue. Not only can this be vital to the saving of lives, but it can be instrumental to having expert Agency personnel at the scene with authority to assure that the accident site remains undisturbed and preserved for investigation into causes.

## Addressing the challenges of immediate reporting

- ☞ Standard is when “reasonably should know” that injury or entrapment has reasonable possibility to cause death.
- ☞ MSHA takes “need to save life” into account if it directly conflicts with ability to contact MSHA.

# After promulgating the ETS, MSHA saw an improvement in reporting times for major mine disasters



- ☛ Darby reported its explosion approximately five minutes after it occurred.

# MSHA takes reporting violations very seriously

- ☛ The immediate reporting standard is a mandatory standard.
- ☛ Consideration may be given to marking violations as flagrant.

# Conclusion

Celebrating the rescue at Quecreek



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