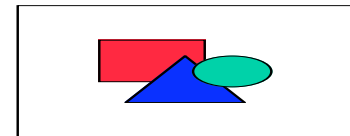


DOCUMENTING FOR LITIGATION

**Mine Safety & Health Law
Special Institute**

March 23-24, 2010

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FORMS OF DOCUMENTATION

- Walk around books**
- Incident reports**
- Rebuttal Sheets**
- Government required forms (MSHA Form 7000-1)**
- Notes**
- Owners manuals of involved equipment**
- Examination logs**
- Statements**
- Measurements**
- Security/guard shack logs**
- Training records**
- Photographs/videotapes**

**CONFIDENTIAL CITATION/NOV/ORDER INVESTIGATION REPORT
PREPARED IN ANTICIPATION OF LITIGATION**

A copy of this report must be faxed to the Safety Department with each Citation or Order on the shift issued!
Photos, records, sketches and statements may be sent along with the original report within 24 hours

Date of Citation/Order: _____ Citation/Order Number: _____ Mine: _____

Your Name: _____ Date Prepared: _____

- 1) Were you with the inspector when he observed the cited condition or did you see it prior to corrective action? Describe what you saw and if there wasn't a violation, explain in detail why not?
- 2) If the citation/order was valid, what was the cause?
- 3) Who else (name/position) saw the condition prior to abatement?
- 4) If S&S and/or (d) paper, explain why you agree or disagree. Describe any circumstances that eliminate or lessen the severity/seriousness of the cited condition?
- 5) If you and the inspector discussed the alleged violation, what was said? Was anyone else present?
- 6) If the inspector interviewed anyone: Who and what was said?
- 7) Were the number of people affected correct? If not, why?
- 8) What was done to abate the citation/order, how many people worked on it and how long did it take?
- 9) Who was the person responsible for the area or equipment cited?
- 10) Was the condition reported on pre-shift/on-shift reports? Who reported it? What action was taken prior to the citation/order? ATTACH COPIES OF THE REPORTS.
- 11) Are there any errors in the citation/order, such as incorrect equipment identification, etc?
- 12) Provide copies of any statements, photos, videos or test results. Identify photographer, etc.
- 13) ADDITIONAL INFORMATION?

EFFECTIVE DOCUMENTATION

- Contemporaneous**
- Factual**
- Detailed - who, what, where, when, why and how**
- Reliable**
- Thorough and complete**
- Retained and saved**

HOW TO ACHIEVE SUCCESSFUL DOCUMENTATION

**Anticipate needs based on
requirements and experience**

Have forms available

Walk around resource bag

Code of Federal Regulations

State mining laws

Walk around book

Photographic devices (digital) (permissible)

Measuring devices (tape – heat gun)

Plans (roof control – ventilation)

TRAIN - TRAIN - TRAIN

Establish procedures

Require compliance

EXAMINATION LOGS

Pre-shift examination records

On-shift examination records

Belt examination reports

Equipment inspection reports

Security/guard shack logs

Permissibility examination records

Training records

BE ACCURATE AND COMPREHENSIVE

(include what looks good; what does not; and what was done to correct problems)

INVESTIGATIONS

Collect evidence

Interview everyone

Detailed - who, what, where, when, why and how

Confront inconsistencies

Review all information before passing judgment

Review policies, procedures, rules and regulations

Memorialize findings

Be honest and fair

If MSHA takes part, be MSHA's shadow

INTERVIEWS

Private vs. Group

Neutral and unemotional

Identify others with information

Signed Statements vs. Notes vs. Affidavits

Focus on issues

Listen carefully

Multiple interviews if required

Open-ended questions vs. pointed, direct questions

Videotaped or recorded

MSHA present vs. Company only

INCIDENT REPORTS

Who completes the report

When is the report completed

What is checked and collected for the report

What additional information is required

Record the scene

Record all versions of the facts