

DOCUMENT REQUESTS UNDER THE MINE ACT

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Legal Considerations

§ 103(a) of the Mine Act:

“(a) Authorized representatives of the Secretary ... shall make frequent inspections and investigations in coal or other mines each year for the purpose of (1) obtaining, utilizing, and disseminating information relating to health and safety conditions, the causes of accidents, and the causes of diseases and physical impairments originating in such mines, (2) gathering information with respect to mandatory health or safety standards, (3) determining whether an imminent danger exists, and (4) determining whether there is compliance with the mandatory health or safety standards or with any citation, order, or decision issued under this title or other requirements of this Act. ... The Secretary shall develop guidelines for additional inspections of mines based on criteria including, but not limited to, the hazards found in mines subject to this Act, and his experience under this Act and other health and safety laws. For the purpose of making any inspection or investigation under this Act, the Secretary, ... with respect to fulfilling his responsibilities under this Act, or any authorized representative of the Secretary ... shall have a right of entry to, upon, or through any coal or other mine.”

Legal Considerations (cont'd)

§ 103(h) of the Mine Act:

“In addition to such records as are specifically required by this Act, every operator of a coal or other mine shall establish and maintain such records, make such reports, and provide such information, as the Secretary ... may reasonably require from time to time to enable him to perform his functions under this Act. ... Except to the extent otherwise specifically provided by this Act, all records, information, reports, findings, citations, notices, orders, or decisions required or issued pursuant to or under this Act may be published from time to time, may be released to any interested person, and shall be made available for public inspection.”

Legal Considerations (cont'd)

30 C.F.R. § 50.41:

“Verification of reports. Upon request by MSHA, an operator shall allow MSHA to inspect and copy information related to an accident, injury or illnesses which MSHA considers relevant and necessary to verify a report of investigation required by § 50.11 of this part or relevant and necessary to a determination of compliance with the reporting requirements of this part.”

Case Law

BHP Copper, Inc., 21 FMSHRC 758 (July 1999)

- The Secretary’s statutory obligation to investigate accidents, coupled with her authority to conduct warrantless searches, trumped a claim of confidentiality or privacy on behalf of the operator’s employees.
- The Commission expressly limited its holding to the facts of the case, including MSHA’s urgent need for employees’ personal addresses and telephone numbers under exigent circumstances, and stated that its holding expressly did “not address disclosure of other information not at issue in this case.”

Case Law (cont'd)

Sewell Coal Co., 1 FMSHRC 864 (July 1979) (ALJ)

- the Secretary’s authority to conduct inspections did not extend to “wholesale warrantless, nonconsensual searches of files and records in a mine office”
- the attempt to conduct warrantless searches of company records implicates the Fourteenth Amendment to the Constitution
- the Secretary could not constitutionally promulgate a regulation that would give her the ability to search such records

So What Is An Operator To Do?

Considerations:

- Is all of the information truly sensitive?
- Would any of the information advance the operator's safety goals or otherwise be helpful to the operator?
- If so, are there ways to comply, while still protecting sensitive information?
- If not, how should an operator handle the request?