

Chapter 10

Required Recordkeeping: Conducting Business in a Glass House

Susan E. Chetlin⁽¹⁾
MAPCO Coal Inc.
Lexington, Kentucky

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§ 10.01. Introduction.

We all grow up believing that our individual rights and freedoms are protected by the Bill of Rights to the United States Constitution. Maintaining freedom from unwanted government interference is thought to be secured by the Fourth and Fifth Amendments, which guard us against unreasonable searches and seizures and compelled self-incrimination, respectively. However, the ever-increasing onslaught of government regulation has slowly chipped away at the Fourth and Fifth Amendment protections of those who – like the coal industry – are the constant subjects of the government's watchful eye. Indeed, highly regulated industries may as well be "living in glass houses."⁽²⁾

The mining industry is pervasively regulated, *inter alia*, by two statutes, the Federal Mine Safety and Health Act of 1977⁽³⁾ (Mine Safety Act) and the Surface Mining Reclamation and Control Act of 1977⁽⁴⁾ (Surface Mining Act or SMCRA). These statutes contain regulatory schemes which require mine operators to comply with health and safety and environmental standards and to maintain certain records in the process. The government ensures compliance with these standards and recordkeeping provisions by mandating periodic inspections and, if the regulatory requirements are not satisfied, imposing penalties on operators or shutting down their operations.

The government's duty to inspect mine sites, cite corporate and individual violations, and close mine operations often seems to conflict with the constitutional protections guaranteed by the Fourth and Fifth Amendments. This Chapter will discuss the applicability of the Fourth and Fifth Amendments to the mining industry, specifically warrantless searches and the required records exception to the Fifth Amendment, in the context of records that mine operators are required to keep. An approach to limit the government's broad access rights is suggested.

§ 10.02. Required Records.

The Mine Safety Act and the Surface Mining Act impose numerous recordkeeping requirements on mine operators. For example, the Mine Safety Act requires underground mine operators to keep records of preshift examinations, weekly examinations for hazardous conditions, and examinations of electrical equipment.⁽⁵⁾ Underground and surface operators are required to keep records certifying that miners have received training.⁽⁶⁾ In addition, to comply with SMCRA, mine operators must, *inter alia*, keep records of all blasting done within the past three years, keep reports of inspections during the construction of disposal areas and compaction of fill,⁽⁷⁾ keep and periodically submit records of surface and ground water monitoring data,⁽⁸⁾ and keep production records, including records of the tons of coal produced, sold, or transferred.⁽⁹⁾

Failure to maintain accurate records has formed the basis for

both civil and criminal violations.⁽¹⁰⁾ In addition, falsification of records can be and has been cited as a separate offense.⁽¹¹⁾

Two senior officials from the Mine Safety and Health Administration (MSHA) have noted that, because the Mine Safety Act relies in large part on an operator's certification that regulations have been satisfied, "the