

Vicarious Liability for Contract Mine Operations: Expanding Liability for Mineral Owners and Lessees

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§ 8.01. Introduction.

The mining industry is one of the most highly regulated industries in the United States, particularly with respect to employee safety and health and environmental protection. This extensive regulation essentially began with the novel provisions of the Federal Coal Mine Health and Safety Act of 1969,⁽¹⁾ and was significantly expanded with the enactment of the Federal Mine Safety and Health Act of 1977⁽²⁾ and the Surface Mining Control and Reclamation Act of 1977.⁽³⁾

In recent years, the federal regulatory agencies which administer these statutory programs have attempted to expand the scope of their statutory enforcement authority to include additional persons for purposes of regulation and imposition of sanctions. Increasingly, those federal agencies are seeking to hold owners of mine properties and lessees of mineral rights vicariously liable for regulatory violations charged against independent contractors who have contracted to operate the mines. As a result, owners of mineral rights are finding themselves subject to the threat of substantial governmental fines, denials of mining permits and other limitations and liabilities as a result of citations by the government against contract mine operators. This is occurring even though the targeted property owners did not cause the violations and did not know they existed.

This enforcement trend may have had its genesis in part in what has become known as the Applicant Violator System, which was created in 1985 as the result of an agreement to settle litigation between the Office of Surface Mining Reclamation and Enforcement⁽⁴⁾ and environmental groups.⁽⁵⁾

More recently, the Mine Safety and Health Administration⁽⁶⁾ has undertaken to charge mine property owners for violations of independent operators who mine the reserves of the property owners.

This Chapter will look at the historical background of MSHA enforcement against mine operators and will examine the recent shift in MSHA's enforcement policy toward imposing vicarious liability on an increasingly broad range of persons who are not the designated operator of the mine. Separately, the Chapter will consider the continuing expansion of enforcement by OSM under SMCRA to encompass persons beyond the permittee of the mine Ñ persons such as "owners and controllers" and "contract miners."

§ 8.02. Historical Background of MSHA Enforcement Actions Related to Independent Contractors.

[1]ÑTraditional Concept of "Operator."

Both the 1969 Coal Act and the 1977 Mine Act placed responsibility for compliance with the Act and related mandatory health and safety standards on the mine operator. The term "operator" was defined in the 1969 Coal Act as "any owner, lessee, or other person who operates, controls, or supervises a coal mine."⁽⁷⁾

With regard to general responsibility for the mine, the term "operator" traditionally has been applied to the actual mine operator Ñ in other words, to the individual, partnership, corporation or other entity in direct and immediate control of the mine on a day-to-day basis.⁽⁸⁾

Indeed, for the entire history of the 1969 Coal Act (and until recently the 1977 Mine Act) there was no question that the actual mine operator was responsible for the mine as a whole and for compliance with all of the daily requirements of the Act.⁽⁹⁾