



Walking the MSHA Investigation Tightrope —
Implementing an Effective Inspection
Management Plan

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Synopsis

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§ 8.01. Introduction.

The Federal Mine Safety and Health Act of 1977 (“Mine Act”)¹ has a noncontroversial fundamental purpose — to provide safe and healthful working conditions for the Nation’s miners.² Mine operators and the United States Department of Labor’s Mine Safety and Health Administration (MSHA), as well as individual miners and their representatives, all share major responsibilities under the Mine Act in working to achieve this goal.

The Mine Act’s primary mechanism for seeking to accomplish its purpose, however, is a very intensive, highly intrusive, command and control enforcement scheme. Under this scheme, Congress and MSHA have established extremely detailed technical, procedural and legal requirements that mine operators must meet. MSHA polices compliance with these requirements through recurring comprehensive inspections, and civil and criminal sanctions are imposed where violations occur. Therefore, despite the shared goal of protecting miner safety and health, the Mine Act’s rigorous enforcement scheme places MSHA and the mine operators it inspects in inherently adversarial positions. Consequently, during inspections and investigations mine operators must strike a delicate balance between cooperating with MSHA in their mutual effort to provide safe working conditions, and protecting themselves and their agents from the significant potential liabilities that are threatened under the Mine Act.

A combination of four factors assures that the threat of substantial liability can never be eliminated from a mining operation. First, by its very nature the mining process is extremely dynamic. In both underground and surface extraction operations, ground conditions — and therefore

¹ 30 U.S.C. § 801 *et seq.* (1994).

² Section 2(a) of the Mine Act provides that “the first priority and concern of all in the coal or other mining industry must be the health and safety of its most precious resource — the miner.” 30 U.S.C. § 801(a).

miners' working conditions — are constantly changing. Hazardous or noncomplying conditions can develop very suddenly or be caused by subtle deterioration occurring gradually over time. Therefore, liability risks can never truly be eliminated from the mining environment.

Second, “to err is human.”³ Although “to forgive” may be “divine,”⁴ forgiveness is not an option for MSHA given the six criteria for determining an appropriate penalty set forth in Section 110(i) of the Mine Act (30 U.S.C. 820(i)) and the mandatory requirement that a penalty be assessed whenever a violation occurs.⁵ Even the best employees are not perfect. Although an effective safety program can reduce accidents and injuries, mistakes in judgment and work performance will still occur, as may intentional acts of wrongdoing by some individuals. When improper actions by mining personnel do occur, they can lead to potentially significant liabilities for the mine operator.

Third, under the Mine Act’s “liability without fault” scheme, mine operators are liable for any violations that occur at their mines.⁶ Therefore, regardless of whether an operator is negligent, had knowledge of a violative condition, or could have prevented it, the operator is held responsible for the violation.

Fourth, the MSHA inspection process is recurring. Because a minimum number of complete inspections must be conducted at each mining operation every year, MSHA will have repeated and ample opportunities to observe violations that may occur.⁷ Therefore, like past investment performance, past favorable MSHA inspection experience is no guarantee of future success.

The above factors, MSHA’s strong enforcement powers, and the many forms of significant liabilities that can be imposed under the Mine Act combine to make the navigation of an MSHA inspection and investigation

³ Alexander Pope, *An Essay on Criticism* (1711).

⁴ *Id.*

⁵ See discussion at § 8.02[6], *infra*.

⁶ *Id.*

⁷ Section 103(a) of the Mine Act requires that MSHA inspect each underground mine “at least four times a year” and each surface mine “at least two times a year” in their entirety. 30 U.S.C. § 813(a).