



MSHA Partnership Agreements:
A New Approach Toward Enforcement

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Synopsis

Table with 2 columns: Section Number and Page Number. Includes sections like Introduction, History of MSHA Enforcement, Partnership Agreement Concept, etc.

1 The author gratefully acknowledges the assistance of Lizbeth L. Baker and Prof. Barry E. Friedman, both of Wyatt, Tarrant & Combs, in the research and preparation of this chapter.

§ 2.01. Introduction.

In recent years, the Mine Safety and Health Administration (MSHA) has approached its task of mine safety enforcement by holding a widening circle of parties responsible for violations of the Federal Mine Safety and Health Act of 1977 (the “Mine Act”)² and its predecessor statutes. Over the past 25 years, MSHA has gradually moved from citing only a party directly responsible for a safety violation to imposition of liability for such violations on the mine operator or an independent contractor or both. Other entities with authority to prevent violations, including wholly passive entities, have recently been drawn into the liability circle as well, in a dramatic broadening of the range of those potentially liable, in MSHA’s eyes, for safety violations. MSHA has deemed these passive entities “operators” and attached liability accordingly, much to the dismay of those in the coal industry. Obviously, a host of litigation has been spawned in the wake of this trend.

Facing increased litigation and regulatory challenge in response to its actions, MSHA has begun to look toward other avenues of maintaining enforcement while attempting to promote cooperation with the coal industry. In that vein, the agency has initiated a new “partnership” approach toward enforcement of mine safety regulations. In an age in which governmental funding is on the decline, MSHA appears to be trying to shift part of the responsibility for mine safety enforcement to the mining industry by having it, in effect, police itself. In doing so, MSHA is taking part in a growing trend among agencies, many of which are changing the style in which they relate to the industries they are mandated to monitor and regulate.

MSHA’s new approach to mine safety promotion comes in the form of “Mine Safety Promotion Partnerships” or “partnership agreements” through which a coal company can assume a certain set of responsibilities for monitoring, evaluating, training, and promoting health and safety compliance among independent contractors and contract mining operators working in the company’s mines. The trade-off is that if the company takes on these additional responsibilities regarding its contract operators, the agency will not tag the company as an “operator” of that particular mine or hold it liable for the violations of its independent contractors or contract mining operators. However, these mine safety promotion partnership efforts

² 30 U.S.C. § 801 *et seq.* (1988).

are new and untested and raise significant issues, some of which will be discussed in this chapter. Therefore, a careful case-by-case assessment seems the best approach to a company's determination of whether or not it would be beneficial to pursue a partnership agreement with MSHA. To that end, this chapter will consider the history of MSHA enforcement and the implications of current trends, the partnership agreement concept and the issues pertaining to it, the specter of liability which these partnership agreements raise, and some thoughts on the advisability of a coal company undertaking a partnership arrangement with MSHA.

§ 2.02. History of MSHA Enforcement and Implications of Trend.

[1] — The Early Years.

Congress enacted the Federal Coal Mine Health and Safety Act of 1969 ("the Coal Act") "to protect the health and safety of coal miners, and to combat the steady toll of life, limb and lung, which terrorizes so many unfortunate families."³ Enforcement of the Coal Act was initially vested with the Secretary of the Interior and his representatives, including the Mine Enforcement Safety Administration (MESA), the predecessor to the current Mine Safety and Health Administration (MSHA).

During the early years of the Coal Act, there was some confusion as to exactly which entity should be cited for safety violations. Congress had specified that "operators" were to be cited for safety violations and defined an "operator" as "any owner, lessee, or other person who operates, controls, or supervises a coal mine."⁴ Early on, MESA adopted a policy of citing independent contractors directly for their violations of the Coal Act.⁵

In 1977, Congress enacted the Federal Mine Safety and Health Act ("the Mine Act").⁶ The Mine Act shifted enforcement responsibility from the Secretary of the Interior to the Secretary of Labor and his representatives, the Mine Safety and Health Administration. It also amended the definition of "operator," found in Section 802(d) of the Mine Act, to make clear the

³ 30 U.S.C. § 801 *et seq.* (1969).

⁴ 30 U.S.C. § 802(d).

⁵ *See Bituminous Coal Operators Ass'n v. Hathaway*, 406 F. Supp. 371, 372 (W.D. Va. 1975).

⁶ 30 U.S.C. § 801 *et seq.* (1988).