

Mine Accident Reporting Obligations and MSHA Enforcement

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§ 8.01. Introduction.

The Federal Mine Safety and Health Act of 1977, or Mine Act, requires mine operators to report accidents that occur at a mine site to the Secretary of Labor’s Mine Safety and Health Administration (MSHA).¹ Two widely reported coal mine accidents in January 2006, and a third that May, spurred new federal and state legislation and regulation touching on any number of mine safety and health issues.² Among the targeted areas of new legislation

¹ Mine Act § 103(j), 30 U.S.C. § 813(j).

² See, e.g., Mine Improvement and New Emergency Response Act of 2006, Pub. L. 109-236 (June 15, 2006); Emergency Temporary Standard — Emergency Mine Evacuation, 71 Fed. Reg. 12,252 (March 9, 2006).

and regulation was accident reporting. And with new statutory and regulatory provisions, there has come a heightened, perhaps even strident, focus on enforcement. To keep abreast of mine safety and health regulation, operators must stay informed not only of what the law says, but of how MSHA interprets what the law says when it is applied in an enforcement context. The two — (i) the letter of the law, and (ii) how the letter is read by the enforcement agency — do not always match.

The first part of this chapter gives an overview of an operator's federal accident reporting requirements; the second part analyzes a recent case concerning accident reporting to illustrate how the law expands not only through formal legislative and regulatory processes, but also more stealthily through the enforcement process. The thesis of the second part of this chapter is that the natural tendency of executive power is to expand, and expand it will if left unchecked. Before concluding, this chapter also notes several other issues touching on accident reporting with which operators should be familiar.

Although a federal agency cannot, in principle, act in a manner that is not authorized by an act of Congress, statutes are vague by nature and thus frequently leave latitude to the agency to define the scope of its authority. Regulations, too — which implement statutory mandates — are frequently worded in such a way as to leave flexibility on how the language must be applied. This is not to say executive agencies act willfully — they may or may not. It is enough to note that, if left alone, the entropic forces of executive power causes it to expand.

In the world of the federal executive agencies, fortunately, some checks on expansive power do exist. The Administrative Procedure Act (APA), generally speaking, imposes certain constraints on the manner by which a federal agency may promulgate regulations.³ The principal protection provided the public in a rulemaking setting is the right to be notified of a proposed rule and to comment on it before the rule can be issued in final

³ See, e.g., 5 U.S.C. § 553.

form.⁴ In the federal mine safety and health world, the Mine Act incorporates the central rulemaking process of the APA and imposes several additional administrative protections.⁵ But even with these statutory constraints, agencies still have a tremendous amount of discretion to carry out their day-to-day functions, and with discretion comes — typically — the desire to *do more* pursuant to the thinking the agency knows best.⁶

The last few years have created the perfect storm out of which MSHA has assumed greater regulatory authority, some of it by statutory authority, but other parts by enforcement finesse, or regulatory creep — the act of expanding its powers not by express authority, but by virtue of the fact that it is in the pivotal position to do so (or at least try as long as it can get away with it) as the federal agency charged with safeguarding the nation’s miners. Accident reporting is an area where MSHA apparently believes that it needs to assert greater control, to do more, to get tougher, and that it knows best how to make the industry safer. Operators need to be armed with an understanding of what is required of them under various circumstances so they are ready to push back when the agency goes too far.

§ 8.02. Regulatory Background.

[1] — The Definition of “Accident.”

The Mine Act defines “accident” as “a mine explosion mine ignition, mine fire, or mine inundation, or injury to, or death of, any person.”⁷ MSHA defines the term more broadly to include a number of mining-related events.⁸

⁴ See *id.*; see also *id.* § 553(b).

⁵ See Mine Act § 101(a)(2006), 30 U.S.C. § 811(a). For example, whereas the APA requires an agency to propose the “terms or substance” of a proposed rule in the Federal Register and to entertain comments “with or without opportunity for oral presentation,” the Mine Act requires MSHA to publish the text of proposed rules “in their entirety,” and provides “any interested person” the right to a public hearing to voice objections. Compare 5 U.S.C. § 553(b), (c) with 30 U.S.C. § 811(a)(2), (3).

⁶ See, e.g., *Michigan v. EPA*, 268 F.3d 1075, 1084 (D.C. Cir. 2001)(striking agency action not supported by statute and stating that the agency does not have “a roving commission to achieve [any] other laudable goal”).

⁷ Mine Act § 3(k), 30 U.S.C. § 802(k).

⁸ See 30 C.F.R. § 50.2(h)(2006). “Accident” is defined as: (1) A death of an individual at a mine; (2) An injury to an individual at a mine which has a reasonable potential to cause