

# *Spring Thaw* 2018

## CALCIMA

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# Inspection Misconceptions

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# WE'RE GOING TO TELL YOU WHAT MSHA WON'T.

- I. document requests
- II. requests to start up equipment
- III. conversations with personnel

# DOCUMENT REQUEST, MSHA-STYLE.



# MSHA IS ASKING FOR DOCUMENTS.

“In addition to such records as are specifically required by this [Mine] Act, every operator of a ... mine shall establish and maintain such records, make such reports, and provide such information, as the Secretary ... may reasonably require from time to time to enable him to perform his functions under this Act.”

(Mine Act, § 103(h))

# MSHA'S AUTHORITY TO DEMAND DOCUMENTS

“MSHA may ***reasonably*** require operators to turn over records, even records they are not required to maintain, ***when that information would enable MSHA to perform any of its functions under the Act.*** ... In other words, MSHA’s statutory authority is not limited to ‘relevant and necessary’ information.”

*Warrior Coal, LLC*, 38 FMSHRC 913, 917 (May 2016) (emphasis added)

# OKAY, SO WHAT DO WE DO?

- keep documents you are required to keep for the period required by law, but generally no longer
- consider keeping other records (e.g. medical records) off-site
- have and use an internal document retention policy
- take steps to protect privileged and/or confidential company documents
- consult with management or counsel about MSHA requests for documents not required by the Mine Act

# ANYTHING ELSE?

- when appropriate, ask MSHA to put its document requests in writing
- consider negotiating scope of document request
- for Pete's sake, review each documents before you turn it over to MSHA and ...
- keep copies!



# MSHA WANTS YOU TO START UP EQUIPMENT.

- **Key question: is the mobile equipment in use or available for use?**
  - where is it located?
    - in the shop or someplace else?
    - who has access to the piece of equipment?
  - is it capable of being operated?
    - can mine personnel simply take it or start it up?
  - has it been locked and tagged?

# AVAILABLE FOR USE ?



# TAGGING MOBILE EQUIPMENT

- “Out of service for repair of conditions, including but not limited to:  
\_\_\_\_\_”
- “The maintenance department will conduct a thorough examination for additional safety defects and repair any such defects before releasing this equipment for service.”



# TAGGING MOBILE EQUIPMENT (CONT'D)

- “This piece of equipment will not be returned to service until maintenance has conducted its examination and made any necessary repairs, and a qualified person has conducted a pre-operation inspection of the equipment.”

# MSHA WANTS TO TALK WITH YOUR PEOPLE.





# MSHA CAN BE PERSISTENT.



# WHO HAS TO TALK WITH MSHA?

- It is each individual's decision whether or not to talk with the inspector or investigator.
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## MANAGEMENT GETS TO BE PRESENT.

“Subject to regulations issued by the Secretary, a representative of the operator and a representative authorized by his miners ***shall be given an opportunity to accompany the Secretary*** or his authorized representative during the physical inspection of any coal or other mine ... for the purpose of aiding such inspection and to participate in pre- or post-inspection conferences held at the mine. ...”

(Mine Act, § 103(f)) (emphasis added)



# MSHA RIDEALONG





**KEEP  
CALM  
AND  
ASK  
QUESTIONS**