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Inspection Misconceptions

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CalCIMA Spring Thaw
2018
WE’RE GOING TO TELL YOU WHAT MSHA WON’T.

• I. document requests

• II. requests to start up equipment

• III. conversations with personnel
I DON'T WANT THE TOYS THAT CAME IN THE BOX!

I WANT THE BUBBLE WRAP AND THE BOX THEY CAME IN!!
“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