

# Supervisory Responsibility



Responsibilities under the Federal Mine Safety and  
Health Act of 1977

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# Course Topics

- Definitions
- Sections of the Mine Act
- Significant and Substantial (S&S)
- Negligence
- Unwarrantable failure
- Company/agent violations
- Special investigations
- Penalties

# History

In the Mine Act of 1977, Congress declared:  
The first priority of the mining industry is the  
health and safety of the miner



Sunshine Memorial



Tom Wilkinson &  
Ron Flory

# WHO IS RESPONSIBLE?

The operators of mines, with the assistance of miners, have the primary responsibility to prevent the existence of unsafe and unhealthful conditions and practices in mines.



# Federal Mine Safety and Health Act of 1977 - Definitions

- **Miner** - any individual who works in a mine
- **Operator** - any owner, lessee or other person who operates, controls or supervises a mine, **OR**
  - **Any** independent contractor performing services or construction at a mine. Contractors account for 30-35% of all mining fatalities.

# INDEPENDENT CONTRACTORS

- Must comply fully with the Mine Act
- Will be cited for violations
- Mine operator may also be cited for contractor violations
- Mine operator responsible for ensuring contractor is aware of MSHA regulations.
  - Specify rigid requirements in contracts to control contractor behavior
  - Monitor contractor activities

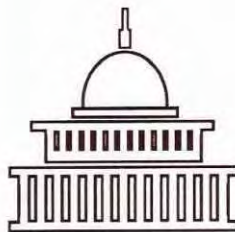
# Sections of the Mine Act

**Federal Mine Safety and  
Health Act of 1977**

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**Public Law  
95-164  
Nov. 9, 1977**



# Section 104

- 104(a) -- Citations issued for violations
- 104(b) -- Non-compliance orders
- 104(d)(1) -- Unwarrantable failure citation/order



## Section 104 (Con't)

- (g)(1) - Untrained miner withdrawn from the mine.
- (g)(2) - No discharge, discrimination or loss of pay if withdrawn under (g)(1).

# A Word About Part 46/48 Training and Certifications

Ensure proper training is given

Special Investigations focus on falsification allegations

Can result in criminal penalties



## Training Record/Certificate

From: 10/21/2014 To: 10/21/2015

Miner's Full Name: Cooper, Charlie

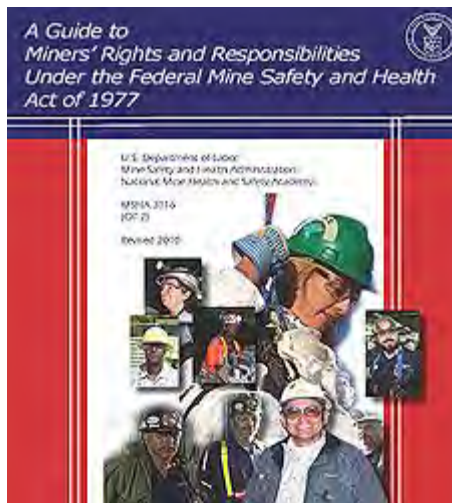
Mine or Contractor Name: Salem, OR

ID # 12345654321

2015 New Miner Training Program						
Subject	Course Length	Date	Competent Person(s)	Location	Miner's Initials	
<input checked="" type="checkbox"/> Introduction to the Work Environment		3 h 0 m				
General Physical Characteristics of Surface Mines	Computer-Based	30 min	4/2/2015	Foster, Frank(P)		
Introduction to Work Environment Site Tour	Event	90 min	4/2/2015	Foster, Frank(P)		
Surface Mine Development, Operations, and Reclamation	Computer-Based	30 min	4/4/2015	Foster, Frank(P)		
Typical Surface Mining Equipment	Computer-Based	30 min	4/4/2015	Foster, Frank(P)		
<input checked="" type="checkbox"/> Recognizing and Avoiding Electrical & Other Hazards		3 h 0 m				
Chemical Hazards	Computer-Based	30 min	4/1/2015	Foster, Frank(P)		
Environmental Hazards	Computer-Based	30 min	4/2/2015	Foster, Frank(P)		
Equipment Hazards	Computer-Based	30 min	4/2/2015	Foster, Frank(P)		
Hazard Overview	Computer-Based	30 min	4/2/2015	Foster, Frank(P)		
New Miner/Annual Refresher—Electrical and Hazardous	Event	30 min	4/3/2015	Foster, Frank(P)		

# Section 105

- 105(c) -- No discrimination against miners for engaging in protected activity.



# Elements of 105(c)

1. Protected Class
2. Protected Activity
3. Adverse Action
4. Nexus

## Section 107(a)

### Imminent danger order

\*Too hazardous to continue operations without the possibility of something occurring

(\*Requires immediate action)

May be issued with an associated 104(a) or 104(d)(1) citation.

# Section 108 - Injunctions

- A. Fails or refuses to comply with any order or decision (amended to include civil penalty orders)
- B. Interferes, hinders or delays inspector
- C. Refusing entry of inspector
- D. Refuses to permit inspection
- E. Refuses to furnish information or report requested by the Secretary
- F. Refuses to permit access to and copying of such records

# Title 18, Section 111 USC

Title 18, Section 111 of the United States Code clearly states that it is a Federal Crime to Forcibly Assault, Resist, Oppose, Impede, Intimidate, or interfere with any federal employee while engaged in the performance of their official duties.

*Simple assault results in fines, not more than 1 year in prison, or both; physical assault results in fines, not more than 8 years in prison, or both.*

# Significant and Substantial (S&S)

**Q:** What makes a violation S&S?

**A:** Gravity

- **Likelihood:** If a condition is left unabated, what is the likelihood it would result in an injury, and
- **Severity:** If there was an injury, how serious would it be?

***For a citation to be S&S, an injury must be reasonably likely to occur AND expected to result in at least lost workdays or restricted duty.***



# How is Operator Negligence Determined?

- Negligence is failure to exercise the degree of care or diligence you would reasonably expect from a prudent person in a position of responsibility.

# The Commission Definition of Ordinary Negligence is

- Inadvertence
- Thoughtlessness
- Inattentive action

# The Commission Definition of Aggravated Conduct

- Beyond ordinary negligence
- Conduct not justifiable or excusable resulting from more than inadvertence, thoughtlessness or inattention
- Conduct failing an assigned, expected or appropriate task
- “Reckless Disregard”=intentional conduct, indifference or a serious lack of reasonable care

# Unwarrantable Failure

- Unwarrantability is a negligence determination
- Factors caused by a **high** degree of negligence or **reckless disregard** are evaluated for an unwarrantable failure to comply

# Negligence

- If an operator acted in good faith but mistaken belief that the cited conduct complied with the standard, and if that belief was reasonable, the conduct was not unwarrantable failure

# Examples of Factors Addressed By Inspector

- Amount of time violative condition existed
- The hazard is serious warranting increased attention by the operator
- The violation is repetitious of a previous violation
- The violation was the result of deliberate activity, or the operator had knowledge or reason to know

# Section 110: Purpose

Congress recognized that strict civil and criminal penalties for violations were necessary to ensure that the health and safety standards would be met; therefore, ...

## Purpose (cont.)

Congress expressly imposed civil and criminal penalties on both the company and **AGENTS** of company and/or corporate mine operators.



# What is an Agent?

ANY person charged with the responsibility for the operation of all or part of a mine...or supervision of miners in a mine.

## Section 110

- (a) - Assess civil penalties for violations
  - (b) - Penalty per day for failure to comply
  - (c) - Corporate agent assessed civil penalty for knowing violations
  - (d) - Any operator agent who willfully violates and is convicted (criminal) can be assessed up to \$25k or 1 year in federal prison or both.
- 2<sup>nd</sup> conviction carries \$500k penalty and/or 5 years in prison

# Section 110 (e) Advanced Notice

- Any person who gives advanced notice of an inspection subject to penalties
- Punished by a fine of not more than \$1000 (individuals)
- Imprisonment of not more than 6 months or both
- Citations issued to the mine for advanced notice can reach \$266,275 or not more than five years in prison or both

## Section 110 (Con't)

110(f) – Fine or imprisonment, or both, for anyone convicted of knowingly making false statements, representation, or certification in any application, record, report, plan or other document filed or required to be maintained by the ACT.

**\$250K or not more than 5 years in prison or both**

## Section 110 (Con't)

110(g) - Miners can be fined personally for willfully violating smoking related standards. **Up to \$324**

110(h) – Fine or imprisonment, or both, for anyone convicted of knowingly misrepresenting equipment, components or accessories as being in compliance.

# Violations Reviewed For Possible 110 Action

- 107(a) order with 104(a) or (d) citation & high negligence
- 104(d) citations/orders which are S&S
- Operator working in the face of an order
- District Manager prerogative (usually egregious high negligence or falsification allegation)

# Special Investigation

- If a determination is made to investigate a violation, a case number will be assigned and the case will be assigned to a special investigator
- The investigator will conduct thorough interviews with employees and members of management to determine if there has been a violation of Sections 110(c), 110(d), 110(e) or 110(f) of the Act.

# A word about MSHA Special Investigators

Specialized Training

Impartial/Unbiased

Excellent communicators





# Special Investigations

- Fact finding
- Determines if issuance was proper
- Determines degree of risk to miners
- Determine agent(s) actual knowledge/negligence
- Determines if Sections of the Act have been violated

# Violation of the Mine Act

## Penalties

- If the investigation determines that a violation of Section 110 occurred, individual civil or criminal penalties will be recommended against the AGENT
- Reviewed by SOL
- Rights to conference and appeal apply

# Agent penalties

- Agent penalties are calculated based on a variety of factors and can range from 10% to 50%
- Agents are included in a database and tracked from mine site to mine site
- Eliminates opportunity for future government employment/contracts
- Any subsequent 110 penalty assessment results in substantial increase in fines

# Personal Fines

- Agents (you) are responsible for the debt to the United States Government, not the company
- Non-payment will go on your credit report and your wages could be attached by court order

# Staying out of trouble

- Correct known hazards promptly
- Never allow miners to be exposed to a known hazard
- Respond to miner's safety complaints immediately
- Use the tools you're given, PPE, SLAM, JSA, etc.
- Be a conscientious and alert supervisor
- Always put safety ahead of production
- Teach people safe work habits



**Our Ultimate Measure of  
Success**

**Every Day - Every Shift!**

*Safety and Health are Values*



# Have questions or need help?

Please feel free to contact me...

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