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***Illinois Association of Aggregate Producers
Safety Conference***

***Working with Contractors: MSHA
Compliance Requirements and Strategies***

***Nicholas W. Scala, Esq., CMSP
Chair, MSHA Practice Group***

Agenda

How Does MSHA Define Operator?

Who Is Responsible On The Mine Site?

Who Retains What Records?

Who Must Complete What Training?

Operator or Independent Contractor?

30 CFR 45.2 (Independent Contractors) and 46.2

- ***Production-operator***: means any owner, lessee, or other person who operates, controls or supervises a coal or other mine.
- ***Independent contractor***: means any person, partnership, corporation, subsidiary of a corporation, firm, association or other organization that contracts to perform services or construction at a mine.

Operator or Independent Contractor?

30 CFR 45.2 (Independent Contractors) and 46.2

- **Operator:** means any production-operator, or any independent contractor whose employees perform services at a mine.

30 CFR 48.2

- **Operator:** Any owner, lessee or other person who operates, controls or supervises an underground mine; or any independent contractor identified as an operator performing services or construction at such mine

Operator or Independent Contractor?

30 CFR 46.2

Miner:

(1) (i) Any person, including any operator or supervisor, who works at a mine and who is engaged in mining operations. **This definition includes independent contractors and employees of independent contractors who are engaged in mining operations;** and

(ii) Any construction worker who is exposed to hazards of mining operations.

Operator or Independent Contractor?

30 CFR 46.2

Mining operations:

- ✓ Extraction
- ✓ Milling
- ✓ Crushing
- ✓ Screening
- ✓ Sizing of minerals at a mine
- ✓ Mine development
- ✓ Drilling & blasting
- ✓ Maintenance and repair of mining equipment
- ✓ Associated haulage of materials within the mine from these activities.

Operator or Independent Contractor?

30 CFR 46.2

Miner: (cont.)

(2) The definition of “miner” does not include scientific workers; delivery workers; customers (including commercial over-the-road truck drivers); vendors; or visitors.

This definition also **does not include maintenance or service workers who do not work at a mine site for frequent or extended periods.**

Operator or Independent Contractor?

30 CFR 46.2

Miner: (cont.)

Frequent or Extended Periods???

- "**Frequent**" exposure is defined as a pattern of exposure to hazards at mining operations occurring intermittently and repeatedly over time.
- "**Extended**" exposure means exposure to hazards at mining operations of more than five consecutive work days.

From MSHA Program Policy Manual (46.2(g))

Who is Responsible?

The Mine Act is a Strict Liability statute:

➤ **Strict Liability:**

*Liability that does NOT depend on actual negligence or intent to harm, but that is based on the break of an **absolute duty to make something safe**. Black's Law Dictionary 9th Edition*

➤ **What does that mean?**

- ❖ Mine production-operator is always going to be open to liability for any action that takes place on mine property. Even the actions of persons who are not their employees.

Who can be issued Citations/Order?

MSHA Program Policy Manual Volume III– Part 45

Production-operators are subject to all provisions of the Act, and to all standards and regulations applicable to their mining operations. This overall compliance responsibility includes assuring compliance by independent contractors with the Act and with applicable standards and regulations. **As a result, both independent contractors and production-operators are responsible for compliance with all applicable provisions of the Act, standards and regulations.**

This "overlapping" compliance responsibility means that there may be circumstances in which it is appropriate to **issue citations or orders to both the independent contractor and to the production-operator for a violation.**

Who can be issued Citations/Order?

MSHA Program Policy Manual Volume III– Part 45

Enforcement action against a production-operator for a violation(s) involving an independent contractor is normally appropriate in any of the following situations:

- (1) when the production-operator ***has contributed by either an act or by an omission to the occurrence of a violation*** in the course of an independent contractor's work;
- (2) when the production-operator has contributed by either an act or omission to ***the continued existence of a violation*** committed by an independent contractor;

Who can be issued Citations/Order?

MSHA Program Policy Manual Volume III– Part 45

Enforcement action against a production-operator for a violation(s) involving an independent contractor is normally appropriate in any of the following situations:

- (3) when the **production operator's miners are exposed to the hazard**; or
- (4) when **the production-operator has control over the condition that needs abatement.**

Who Maintains Which Records?

A contractor must have MSHA ID if performing:

- ✓ Mine development, including shaft and slope sinking;
- ✓ Construction or reconstruction of mine facilities;
- ✓ Demolition of mine facilities;
- ✓ Construction of dams;
- ✓ Excavation or earthmoving involving mobile equipment
- ✓ Equipment installation;
- ✓ Equipment service or repair for a period of 5 consecutive days at a particular mine;
- ✓ Material handling within mine property; and
- ✓ Drilling and blasting.

Who Maintains Which Records?

Training Plans:

- All contractors who employ miners must, must maintain their own training plan.
- Contractors working in Part 46 and Part 48 mines can develop, maintain and work under a Part 48 plan at both types of facilities.
- Production-operator must ensure that contractors working on their site are properly trained and should ensure this before contractors begin work on site.

Who Maintains Which Records?

Part 50 Injury and Illness Records:

- Contractors required to maintain an contractor ID must report:
 - ❖ Accidents, injuries and illnesses under 50.20;
 - ❖ Quarterly employment reports under 50.30; and
 - ❖ Records of such reports under 50.40.
- ALL Contractors must comply with Immediate notification requirements
 - ❖ Mine Operators should also file injury and illness reports and immediately contact MSHA within 15 minutes of becoming aware of situation under 50.10.

Who Maintains Which Records?

§45.4 Independent contractor register.

(a) Each independent contractor shall provide the production-operator in writing the following information:

- (1) The independent contractor's trade name, business address and business telephone number;
- (2) A description of the nature of the work to be performed by the independent contractor and where at the mine the work is to be performed;
- (3) The independent contractor's MSHA identification number, if any; and
- (4) The independent contractor's address of record for service of citations, or other documents involving the independent contractor.

(b) Each production-operator shall maintain in writing at the mine the information required by paragraph (a) of this section for each independent contractor at the mine. The production-operator shall make this information available to any authorized representative of the Secretary upon request.

Who Maintains Which Records?

Workplace and Pre-Shift Examinations:

- Production-operators should ensure that contractors know they are required to perform workplace and pre-shift exams.
- If production-operator employees are working in the same area as contractor employees, the operator must also complete a workplace exam.
- Production-operator should ensure that contractor is performing workplace and pre-shift exams.
 - ❖ If not the operator could be cited for failure to complete the exams.

Who is Responsible for What Training?

- **§46.12 Responsibility for independent contractor training.**

(a)(1) **Each production-operator has primary responsibility** for ensuring that site-specific hazard awareness training is given to employees of independent contractors who are required to receive such training under §46.11 of this part.

(2) Each production-operator must provide information to each independent contractor who employs a person at the mine on site-specific mine hazards and **the obligation of the contractor to comply with our regulations**, including the requirements of this part.

Who is Responsible for What Training?

- **§46.12 Responsibility for independent contractor training.**
(cont.)

(b)(1) Each independent contractor who employs a miner, as defined in §46.2, at the mine has primary responsibility for complying with **§§46.3 through 46.10 of this part, including providing new miner training, newly hired experienced miner training, new task training, and annual refresher training.**

(2) The independent contractor must inform the production-operator of any hazards of which the contractor is aware that may be **created by the performance of the contractor's work at the mine.**

Who is Responsible for What Training?

§46.11 - Site-Specific Hazard Awareness Training

(a) You must provide site-specific hazard awareness training **before any person specified under this section is exposed to mine hazards.**

(b) You must provide site-specific hazard awareness training, as appropriate, **to any person who is not a miner as defined by §46.2** of this part but is present at a mine site, including:

- (1) Office or staff personnel;
- (2) Scientific workers;
- (3) Delivery workers;
- (4) Customers, including commercial over-the-road truck drivers;
- (5) Construction workers or employees of independent contractors who are not miners under §46.2 of this part;
- (6) Maintenance or service workers who do not work at the mine site for frequent or extended periods; and
- (7) Vendors or visitors.

Who is Responsible for What Training?

§46.11 - Site-Specific Hazard Awareness Training

(c) You must provide miners, such as drillers or blasters, **who move from one mine to another mine while remaining employed by the same production-operator or independent contractor with site-specific hazard awareness training for each mine.**

(d) Site-specific hazard awareness training is information or instructions on the hazards a person could be exposed to while at the mine, as well as applicable emergency procedures. **The training must address site-specific health and safety risks, such as unique geologic or environmental conditions, recognition and avoidance of hazards such as electrical and powered-haulage hazards, traffic patterns and control, and restricted areas; and warning and evacuation signals, evacuation and emergency procedures, or other special safety procedures.**

Who is Responsible for What Training?

§46.11 - Site-Specific Hazard Awareness Training

(e) You may provide site-specific hazard awareness training through the **use of written hazard warnings, oral instruction, signs and posted warnings, walkaround training, or other appropriate means that alert persons to site-specific hazards at the mine.**

(f) Site-specific hazard awareness training is **not required for any person who is accompanied at all times by an experienced miner who is familiar with hazards specific to the mine site.**

Workplace Exam Rule

Status:

- Effective date: June 2, 2018
 - ❖ April 9, 2018: Release final rule in Federal Register.
 - ❖ Six stakeholder meetings will be held to review the training/compliance materials to “inform and educate” the industry on new requirements.
 - ✓ Bloomington, IL – May 1, 2018

Workplace Exam Rule

What is included in new rule?

- Perform a workplace examination **BEFORE OR AS** miners begin work in an area;
- Promptly notify miners of any adverse conditions in their working area before they are exposed to the adverse conditions;

Workplace Exam Rule

What is included in new rule?

- Maintain a record of the examination for twelve (12) months, which includes:
 - ❖ The name of the examiner
 - ❖ Date of the exam
 - ❖ Locations examine;
 - ❖ Descriptions of any and all adverse conditions found during examination (unless promptly corrected)
 - ❖ Date of corrective action
- Make records available to MSHA inspectors AND miner representatives, providing copies upon request.

Workplace Exam Rule

What was removed from Proposed Rule?

- Provide a description of the corrective action taken for each recorded adverse condition;
- Maintain the name of the individual who performed the corrective action;
- Record adverse conditions promptly corrected; and
- Sign the workplace exam record by the examiner.

Workplace Exam Rule

Areas Covered:

- All locations where miners work in the extraction and milling processes, including haul roads;
- All roads traveled to and from a work area; and
- Inactive, isolated, or abandoned areas of a mine, **ONLY** when miners must perform work in these areas during shift

Workplace Exam Rule

Areas Exclude:

- Roads not directly involved in the mining process;
- Administrative buildings;
- Parking lots;
- Lunchroom;
- Toilet facilities; and
- Inactive storage areas

Contractor Training

Ash Grove Cement Company (CENT 2015-614)

➤ **Status: Decided by ALJ**

➤ **At issue:**

- ❖ Whether or not environmental clean-up workers were miners under The Mine Act?
- ❖ Whether production operator was liable for a contractor electrician failing to have new miner training?
- ❖ Whether “extraordinary circumstances” existed to cite operator for lack of training on contractor?

Contractor Training

Ash Grove Cement Company (CENT 2015-614)

➤ **Status: Decided by ALJ**

➤ **Decision:**

- Environmental clean-up workers, on-site to clean hydraulic oil spill, were not miners because:
 - ❖ Not involved in any milling, crushing, or maintenance or repair of mining equipment or any other type of mining operations
 - ❖ Were not on site for “frequent or extended period of time”
 - ❖ Mine was not liable to lack of new miner training for contract electrician because it was contractor’s primary responsibility and MSHA failed to prove “extraordinary circumstances”

Parking Brakes

Blanchard Machinery Company (SE 2016-56)

- **Status:** Decided by ALJ
- **At issue:** Did a contractor violation 56.14207 when truck parked without parking brake set while engaged with railroad tie?
- **Decision:** Modified to No Negligence on contractor, because company could not be aware of failure to set parking brake and provided training.

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2018 **MSHA WEBINAR** series

<p>Wednesday, May 23rd</p> <p>The Status of the Final Rule for Metal/Nonmetal Workplace Exams</p>	<p>Wednesday, September 26th</p> <p>Responsibilities and Regulations with Independent Contractors</p>
<p>Wednesday, July 18th</p> <p>Enforcement Update and Legal Developments</p>	<p>Wednesday, November 7th</p> <p>Unwarrantable Failures: Evaluating the Causes and Effects</p>

Questions?



Contact Information



Nick Scala

Chair, MSHA • Workplace Safety Group

Conn Maciel Carey LLP

Washington, D.C.

202.895.2797

nscala@connmaciel.com

@MSHA_Guy (Twitter)