



“The Sound of Silence” – What Mine Operators Should Expect From MSHA During Pandemic

Insights

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Since the start of the COVID-19 pandemic, most mine operators have been waiting for MSHA to release some health and safety guidance regarding the outbreak and how to safeguard the safety and health of their miners. After a protracted period of silence, MSHA recently provided some guidance: simply directing mine operators to the Occupational Safety and Health Administration’s (OSHA’s) [Guidance on Preparing Workplaces for COVID-19](#), which outlines steps employers can take to help protect their workforce.

This lack of mine-specific guidance from an alleged mine safety and health agency remains disturbing, to say the least. We reached out to MSHA for answers to some concerns operators across the country have expressed. We found an agency navigating uncharted waters just like the rest of the regulated community. MSHA is struggling with basic logistics, inspectors traveling to counties with “Shelter in Place” orders and trying to inspect mines only to find they have suspended operations.

With near daily interactions with inspectors and field office supervisors, operators can be forgiven for thinking they are developing a relationship with a safety and health agency. However, operators should not lose sight of the fact that MSHA is an enforcement agency at its core. For this reason, MSHA will not be issuing (or agreeing to) any “best practices” or “health guidance” for operators to combat the COVID-19 coronavirus. Rather, during these difficult times of extreme challenges facing the regulatory community, MSHA will focus on conducting mandated inspections.

Here are the key points MSHA wants operators to know right now:

- MSHA is focusing on mandated inspections.
- During its inspections, inspectors should be following CDC guidelines – social distancing and minimizing contact.
- MSHA inspectors cannot be forced to fill out operator surveys or questionnaires prior to inspecting the mine. Some inspectors may voluntarily choose to provide certain information but cannot be compelled to do so.
- MSHA does not plan to issue any formal notice or policy directive during the pandemic. However, MSHA has posted “Flexibilities for Mine Operators” on its website, noting possible extensions for training deadlines.

- MSHA will be granting a 30-day grace period for certain training and certification that's due. After 30 days, they will re-evaluate. MSHA is encouraging online training. If you are looking to take advantage of the extension, contact your District Manager or Assistant District Manager and let them know how you plan to address the extension. MSHA has made clear that there will be no extensions for new miner training.
- Similar grace period and guidance for audiometric testing is now in place.
- MSHA is going to be flexible in how it conducts inspections. For example, instead of doing a "hands on" equipment inspection, their personnel will probably just observe the equipment from outside. They will not plan to climb on the equipment or enter the cabs.
- During inspections, the MSHA inspector and the operator's safety representative will travel in separate vehicles where possible. MSHA is unable to operate mine equipment or take government vehicles underground, so in those cases, mine representatives may be asked to drive inspectors in the same vehicle.
- In the event of a disagreement with the inspector in terms of how the inspector is conducting the inspection, the operator should follow the normal chain – call the local field office supervisor, then District if need be. In the unlikely event the issue is not resolved at district level, then call the Regional Administrator.
- Operators do not have to notify MSHA if an employee tests positive at the mine site. Please follow CDC guidelines if that happens.

Obviously, we are faced with uncertainty in the face of evolving "shelter in place" orders and how operators and MSHA continue to react issues surrounding COVID-19. Your mine safety and health team at Fisher Phillips will continue to update whenever additional issues arise. Stay safe.

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