



# Commission Decides Sago Mine Case - Accident Reporting Requirements

## Insights

1.14.14

On December 23, 2013, the Federal Mine Safety and Health Review Commission ("Commission") issued its decision in a case resulting from the explosion that occurred at the Sago Mine in 2006. MSHA alleged that the mine operator's failure to immediately notify (within 15 minutes) MSHA of the accident (as required by 30 C.F.R. § 50.10). The dispute in this case was whether the Inspector's designation of high negligence and unwarrantable failure was appropriate. The Commission's decision clarifies the accident reporting requirements and stands as a reminder to mine operators that in the event of a reportable accident (as defined at 30 C.F.R. § 50.2(h)), one of the first items on the emergency response checklist must be to contact MSHA.

In his decision, Administrative Law Judge Jerold Feldman reduced the operator's negligence level to "moderate," thereby removing the unwarrantable failure designation. Judge Feldman reduced the negligence level by finding, among other factors, that: (1) Commission case law permitted the operator a reasonable opportunity to investigate the event prior to being required to contact authorities; and (2) the operator's negligent in not immediately reporting the incident was mitigated by mine management's wish to execute a rescue attempt and to not be barred from entering the mine.

### **When does the 15 minute time period begin?**

First, the Commission addressed when the 15 minute window for immediately reporting an accident begins. The Commission relied upon ALJ Feldman's factual finding that mine management "knew, or should have known, as early as 6:36 a.m. that an explosion had occurred." Ultimately, the Commission rejected the operator's argument that the mine operator "must be accorded a degree of discretion in investigating accidents prior to notifying MSHA," based on the Commission's prior holding in *Consolidation Coal Co.*, 11 FMSHRC 1935 (Oct. 1989) ("*Consol*"). The Commission clarified its earlier holding in *Consol*, noting that "an operator's opportunity to investigate is tempered by the urgent need to notify MSHA *immediately* once it is clear that an accident has occurred." In *Consol*, the Commission stated that "internal investigation, however, must be carried out by operators in good faith without delay and in light of the regulation's command of prompt, vigorous action." 11 FMSHRC at 1938.

Therefore, the standard that the Commission will use to determine whether an operator has violated the accident reporting requirement is whether the operator contacted MSHA within 15 minutes of

when management first knew or should have known of the reportable incident. While there is an opportunity to investigate in some circumstances, if it is clear that a reportable accident has occurred, the operator must contact MSHA immediately.

### **Does human nature mitigate negligence level?**

In reducing the operator's negligence from "high" to "moderate," ALJ Feldman noted that the mine operator's "delay was not motivated by a desire or reluctance to avoid notification. Rather, the delay is attributable to the fact that [the mine operator] was conflicted over its concern for evacuating survivors, its preoccupation with establishing contact with the missing victims, and its responsibility to notify MSHA." The Commission disagreed with ALJ Feldman, noting that "an intentional delay in contacting MSHA in an effort to deliberately avoid MSHA enforcement action, for whatever reason, cannot be construed as mitigating its negligence, but is rather evidence of high negligence." The Commission continued, "The operator's intention to assist underground personnel during this emergency, while admirable, is exactly the type of conduct that the Mine Act and the Secretary's regulations are intended to address and avoid . . . Sending miners underground in the aftermath of an explosion puts additional miners at risk before a mine is secured and deemed safe to enter."

Dissenting from the Commission's decision, Commissioner Young reasoned that the operator's failure to immediately notify MSHA did not constitute an unwarrantable failure because "reason was shunted aside by the basic commands of human nature. The operator's personnel ignored their responsibility to call MSHA immediately, but only because they were commanded by a more fundamental instinct - one universally recognized, and in other contexts, applauded - to go to the aid of their fellow miners." Despite the fact that human nature played a role in the operator's delay, the Commission applied a rigid standard for reporting accidents.

### **Take-aways**

Mine operators should take away from this decision that the Commission will strictly apply the immediate reporting requirement found at Section 50.10. Mine operators must be knowledgeable of the reporting requirements in advance of an accident, as 15 minutes does not provide enough time to research whether a particular issue is immediately reportable. Proper training for all managers and supervisors on reportable accidents will be essential, as the standard is when management knew about the incident, not when the health and safety professional first learned of the incident. When in doubt, it may be prudent to contact MSHA within 15 minutes of an incident that the operator believes may be immediately reportable.