



"It's Not About Safety, It's About Compliance"

Insights

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A few weeks ago, I blogged about a Congressional Field Hearing to be held in North Carolina about "[Building a Better Partnership](#)" between the industry and MSHA. The hearing was held on June 21 and three industry representatives were able to publicly disclose some of the many issues presented by the current MSHA administration. Though it remains unclear whether Congress will take any action as a result, this hearing represents an important step toward improving the relationship between the industry and MSHA.

Sam Bratton, President of the North Carolina Aggregates Association and Wake Stone Corporation, started by making it clear that the industry's number one priority is safety. Bratton pointed out that the injury rate for metal/non-metal mining is lower than many other industries (and is less than one-half the injury rate for MSHA!). Despite [the lowest injury and fatality rates in the history of mining](#), Bratton testified that "MSHA regulates our industry with impunity and acrimony." Bratton's testimony was not a baseless attack on MSHA, but instead was a request for a more reasonable approach, backed by a large binder full of specific examples of inconsistent and unreasonable enforcement. If you operate a mine, you probably have your own examples in mind, but I can forward a few of Bratton's examples if you're interested.

Jeff Stoll, Safety and Health Manager for The Quartz Company, and Mack McNeely, Vice President of LBM Industries and Nantahala Talc and Limestone, both echoed Bratton's observations and added more examples of MSHA's flawed enforcement. Stoll astutely remarked that under the current administration, MSHA has become "out of balance" by "emphasizing a punitive approach instead of training and education." (Stay Tuned for a long overdue post about MSHA's proposed de-funding of the state grants program). Similarly, McNeely described several instances of inconsistent enforcement, including what I like to call MSHA's "square peg, round hole" approach to enforcement. As many in the industry know all too well, many inspectors will try to fit what they believe to be hazardous conditions into regulations that clearly don't apply. Unfortunately, mine operators subject to such heavy-handed enforcement have to choose between a costly and lengthy contest process, or begrudgingly accepting the erroneous citation. It comes as no surprise then that mine operators have heard inspectors explain that "it's not about safety, it's about compliance."

If you read MSHA Deputy Administrator for Metal/Non-Metal Safety and Health Marvin Lichtenfelt's testimony on its own, you may believe that MSHA and the industry have a good working partnership. Lichtenfelt trumpeted MSHA's transparency by stating that MSHA engages in "stakeholder outreach

and education." However, when regulatory interpretations are a moving target and each inspector is apparently reading from a different rule book, any amount of stakeholder outreach is likely to have little impact. Interestingly, at a hearing discussing surface mining in the Southeast, Lichtenfelt mentioned Upper Big Branch at least twice during his testimony. Reminding us of a terrible tragedy that occurred underground should not be the sole justification for increased enforcement and penalties for a completely unrelated surface mining industry. Again, Lichtenfelt and MSHA miss this important distinction and are taking advantage of a broad "mining industry umbrella" to justify enhanced enforcement tools for the surface mining industry (which itself is comprised of very different industries).

Rather than dwelling on the negatives, however, Bratton, Stoll, and McNeely offered concrete ideas for improving the relationship between MSHA and the industry. Some of the great ideas put forth include:

- Increasing the legitimacy of the informal conference process by creating a three-member panel to hear informal contests of citations and orders, including an MSHA representative, an industry representative, and a third-party attorney or consultant.
- Focusing on safety, rather than just compliance, by creating a safety escrow account to fund training for small mines and contractors.
- Separating metal/non-metal mining from the unrelated underground coal industry, and regulating each industry appropriately based on its relative hazards.
- Using a performance-based enforcement model that rewards operators with outstanding safety records and focuses MSHA's efforts on repeat offenders.
- Refunding the state grants program to provide necessary training for miners throughout the country and improve safety in a proactive manner.

Overall, I'm cautiously optimistic that this hearing is a small step toward improvements to the current enforcement model. If you have time, I highly recommend reading the full testimony from the hearing [available here](#). Let's look forward to a more cooperative relationship with improved consistency and a focus on what really matters...miner safety.

At the end of the day, safety should trump compliance every time.