



New Conferencing Procedures in the SE M/NM District

Insights

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Breaking news out of the SE M/NM District of MSHA - Don Collier will no longer be handling informal conferences under 30 C.F.R. Part 100.6. Beginning next Monday, June 17, 2013, requests for an informal conference must be directed to the issuing Inspector's Field Office Supervisor. As usual, the request must be submitted within 10 days of issuance of the citation or order, must be in writing, by email, or fax, and must include the specific reason(s) that each citation or order is being conferenced. Contact information for the Field Office Supervisors can be found [here](#).

What does this mean for operators and independent contractors in the SE M/NM District?

Many mining industry professionals have already expressed frustration with the informal conference procedures - as it often seems that the informal conference merely serves to "rubber stamp" the Inspector's findings. While there are occasional modifications to gravity or negligence findings, and a few vacates, the conference representative cannot agree to a modification without approval from the District. This leaves operators feeling that they may not get a fair, objective hearing unless they formally contest the citation and involve an Administrative Law Judge.

Now, the informal conference procedures will be handled by the Inspector's Field Office Supervisor. Past experience has shown that Field Office Supervisors have a natural tendency to support their Inspectors' findings - as they should, if they are correct. Anyone that has ever been in a management position knows that supervisors have a natural inclination to protect the team and back up their subordinates. Therefore, I anticipate that it will be more difficult to resolve citations and orders at the informal conference stage once the new procedures take effect next week. Additionally, Field Office Supervisors often contribute their input into the citation or order issuing process, or are even present when the citation or order is being issued. In these cases, an informal conference will almost certainly be unsuccessful.

This is not to say that Field Office Supervisors will be unfair in any way, but there is a certain degree of objectivity that will be lacking under the new procedures. In the past, the mining industry has raised the idea of having a panel of people hear informal conferences, with equal representation from the industry and MSHA. This would afford a fair, objective hearing, would reduce the number of formal contests, and would help small mine operators challenge erroneous findings, without having to invest significant resources in a formal contest and litigation. Perhaps MSHA will consider modifying the procedure again in the future to increase objectivity.

Overall, operators should still take advantage of the informal conference procedures in my opinion. This is a good opportunity to explain the operator's position, provide support (both factual and legal), and hopefully resolve differences between MSHA and the mine operator without resorting to costly litigation. If you plan to use the informal contest procedures, you should make sure to document your position and the Field Office Supervisor's responses. In the event the informal conference is unsuccessful, you may be able to use this information during the formal conference process.