

## Questions and Answers from Q&A with MSHA

The following questions were addressed by **Steve Richetta (MSHA North Central District Manager)** and **Kevin LeGrand (Peru, Illinois Field Office Supervisor)** during the Q&A session on Wednesday, May 12, 2010 at 8:00 a.m. inside the Crowne Plaza Hotel in Springfield, Illinois.

PLEASE NOTE: These answers represent what several participants heard during the Q&A session and were compiled from their notes.

1. What is MSHA's ultimate goal for safety?

Answer:

- A. to send every miner home healthy at the end of each shift
  - B. Protect the health and life of the miner
  - C. Inspect each UG mine 4 times per year, and each surface mine 2 times per year.
  - D. To issue one citation per violation where a violation is observed.
2. There seems to be a lot of question as to who is exactly an "agent of the company." I've heard contradictory explanations from the Duluth office and Peru field office. Who exactly is an agent and does performing workplace exams make you an agent of the company while they are being performed?

Answer: An Agent is anyone tasked with responsibilities that include miner safety, taking equipment out of service, having leadership responsibilities, assigned the responsibility for area or daily workplace examinations, paid more than regular workers, the authority to hire and fire workers, etc.

3. It seems in the past year MSHA has used "strong arm tactics" during inspections, like threatening jail and massive penalties when they are not warranted. Why is this and if this continues what is the proper protocol for having an inspector removed from the site or put back into reality? Their demeanor at times is such that no one wants to talk or cooperate with them because of the constant threat of massive penalties and jail.

Inspectors should not threaten any miner. If one does, call the field office and lodge a complaint. If an inspector is asked about the consequences of a particular violation, the inspector will outline the penalties and will probably give the maximum penalty answer, even though that penalty may not be assessed for the particular violation in question. This might be the result of a special investigator's blanket statement of potential liabilities.

4. How does MSHA work with equipment manufacturers to solve the problems of guarding, etc? (Examples: Handrails on crawler hoes and haul trucks.) Manufacturers are offering no options or retrofits to take care of MSHA issued citations.

Answer: MSHA does occasionally work with manufacturers. If the manufacturer offers no solutions, contact:

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5. The city where a mine is located has requested they hold an open house and invite the community. The mine operator is concerned with MSHA's view regarding opening a mine to the community because last year a producer was told that all persons attending an open house would be considered non-miners and the company would be cited and fined for allowing all those non-miners into the mine. After holding their event, that producer said they were not fined and they were relieved; however, they are not inclined to consider ever having one again due to the threat. How can a mining company conduct an open house without being worried that MSHA will fine us for allowing non-miners onto the property?

Answer: Open houses are good provided: The participants (the general public) are not exposed to any hazards. The company needs to commit to training, at some level, all people who come on the mine site. Hazard awareness signs are necessary at the minimum and site specific training may be required. No riding in haul trucks or other activities that are not permitted to miners on a daily basis. No allowing kids to sit in an equipment operator's lap while operating equipment. In underground mines, each person must have a light and self-rescuer.

Discussion afterward on what is meant by "operating equipment"

- a. moving the wheels or the tracks of the equipment in any manner is operating the equipment
- b. rotating the equipment or the articulation is considered operating - as in rotating a excavator, or bending a loader at the hinge. Picking up a bucket and dropping it without rotating or moving the unit *may* be permitted. (Stress is on the "*may*" but this is not official.)

6. How is the "Rules to Live By" initiative affecting the inspection process?

Answer: MSHA is placing emphasis on the 13 rules and the citations for each. Each of the 13 rules and their citations will be reviewed for special assessment. MSHA has identified these 13 conditions as being among the leading cause of fatalities over the last few years.

7. What is being done internally at MSHA to address the inconsistencies we are seeing in the inspection process and types/severity of citations written?

Answer: The field office supervisor reviews all inspection citations and if the supervisor notices any inconsistencies exist he will review with the inspectors involved and make a correction if necessary. The district office does the same with a representative sample of citations.

8. Despite the drastic decrease in fatalities at mine sites (6 years w/o a MNM fatality in Illinois), why does MSHA appear to be “more strict” in recent years?

For example:

- Citations being written for conditions that have existed for decades and have never been cited in the past.
- “New” initiatives such as screen spring guards, railings on scales, and extra handrails on mobile equipment. These are not new conditions, just a change in enforcement.

Answer: Screen spring guards are generally not being cited now while some citations were/are being vacated. However, if there are large gaps in springs that could pinch a finger, etc. he suggests that they be guarded. Scales have been determined to be roadways so railings on scales should be mid-axle height. Handrails on mobile equipment: Richetta noted that fall protection is an old regulation. Just because it has not been cited doesn't mean it won't be in the future. MSHA requires that you protect the person from falling – how you do that is up to each operator

*Discussion continued regarding railings.*

Railings were the result of an accountability audit that MSHA was not consistent, therefore MSHA started citing. Steve Richetta said that apparently MSHA was not aware that the operator checked oil from the top of the machine. An inspector found out by observing the oil being checked, and that started the process. Richetta agreed that the most prudent method is a handrail, but a ladder or other means of fall protection can be used. MSHA has indicated you have options besides handrails. Operators are concerned about warranty issues since the machines are not designed for handrails, the manufacturers have so far refused to put them on and will not approve the engineering done by the operators.

9. Can you explain the Inspector's apparent view that salaried personnel do not look out for “miners” at the mine site? Why do inspectors insist on viewing salaried staff as non-miners?

Answer: MSHA believes salaried staff can be considered miners. While some inspectors may feel that managers don't look out for the workers, this is not widespread.

10. Under the MINER Act and new fee structure, what percentage increase or decrease has occurred for contested citations?

Answer:	Citations:	2007 + 15%	2008 + 23%	2009 + 26%
	Dollar Amount:	2007 + 54%	2008 + 68%	2009 + 66%

Rate of increase over these years could be due to higher dollar amounts now being assessed. These are nationwide statistics for M/NM

11. What percentage increase or decrease has occurred for contested citations being withdrawn by MSHA?

Answer: Nationwide for M/NM in year 2006 = 12%; 2007 = 11%; 2008 = 10%; 2009 = 9% (many 2008 and 2009 citations are still being contested).

12. Are the Inspector's salaries, bonuses, or promotions in any way linked to the number of citations or amount of fines collected by an individual Inspector (ie, are they on a quota)?

Answer: MSHA has no quotas and salaries are not dependent on number of citations written or fines imposed. However, if a inspector fails to cite violations, then there can be repercussions (to the inspector) and he or she can be disciplined.

13. Are there repercussions to inspectors that find 0 citations at a site? (Rumors abound that those facilities and inspectors are audited by supervisors and external crews)

Answer: In this district there were 3,000 inspections last year. There were 600 inspections (20%) with no citations in the last year. If an inspector consistently writes no citations then he will be reviewed. If an inspector has a high percentage of zero-citation inspections, a supervisor will accompany him or her to make sure they are doing a good job.

14. What does MSHA view as a "grade"? How do we determine when tire chocks are needed? (Have been told 2 different things: 1- any paved surface professionally leveled is not a grade, 2- anywhere the vehicle will not move when in neutral is not on grade)

If the vehicle or piece of equipment rolls when placed in neutral with the parking brake off, it needs to be chocked or turned into a bank. Bucket down on a loader is not a means to prevent rolling. Bucket down may be taken into account when determining S&S or non-S&S. Track-type vehicle must be chocked if parked on a grade. MSHA now equips its vehicles with a set of wheel chocks.

15. Per 30 CFR § 56.14207 *Parking procedures for unattended equipment*. What is the definition of "equipment"? (company pickup truck, vendors trucks, haul trucks, loaders, track equipment, etc.?) Can employees' personal vehicles be cited under this standard? Who receives that citation? (company or vehicle owner?)

Answer: Any and all mobile equipment is included in the definition of "equipment." Personal vehicle is included in definition only if used in the mining process (i.e. maintenance vehicle or when used to get to the job site) or wherever the vehicle can expose miners to a hazard. The mine operator will be cited when the vehicle is found to be out of compliance with the rule.

16. How does MSHA determine when to cite the individual miner vs. the company? (i.e. not wearing a seat belt, smoking in a non-smoking area)

Answer: The Mine Act is a strict liability act – the mine operator is liable. The company will always be cited unless the citation is written for smoking in a place not designated for smoking then the citation goes to the individual miner.

17. If a piece of mobile equipment has not been operated during the shift, can the Inspector cite safety malfunctions on the equipment without allowing a pre-shift inspection? If while an operator is doing a pre-shift inspection they find a problem and the operator tags out that piece of equipment, can an inspector write a citation on equipment not being operated?

Answer: The inspector will do the pre-shift inspection with the miner. If the inspector or the miner finds something wrong, a citation will be issued if the inspector can determine that the defect existed while the machine was last operated before it was parked. If the defect is noted in a previous pre-shift inspection you will be cited if it is not tagged out. The inspector makes this determination.

18. What is the maximum height allowed between the bottom of the guard and the ground? (When no guarding is provided underneath the tail pulley)

Answer: There is no specific height; this is a performance standard determined by present circumstances in each case. MSHA has more information in the guarding handbook, on the MSHA website, and in a future MSHA PowerPoint presentation related to guarding.

19. Do inspectors take into account a facility's safety record (lack of accidents) when determining S&S?

Answer: Your safety record is not a factor in determining S&S. S&S is determined by the gravity of the violation and degree of likely injury.

20. After ten years accompanying inspectors at my mine sites I have learned something new recently: inspectors are using vague, one line rules to stretch their own interpretation to fit writing a violation. Is this normal practice?

Answer: Steve Richetta is not aware of this practice. If you have encountered any specific instances of inspectors using vague, one line rules, contact Steve Richetta with details.

21. Why can't a mining company consult with the field office supervisor, when the company receives what it believes to be an unwarranted citation, before the citation is entered into the system?

Answer: You can consult with the field office supervisor before the assessment is entered 30 days after the citation is written. You must call right away. Citations are up-loaded every week. If you call and the supervisor agrees with your position, then you can get it removed before it is entered into the system.

22. I've followed the appeal protocol to fight citations and the MSHA supervisors I'm talking to agree that some needed to be adjusted in severity or vacated yet weeks later I get a notice that all are "upheld as written". Why does this happen? Please explain the citation appeals process.

*Answer:* If the supervisor said the citation is modified, this should be done unless they were overruled. If they were overruled they should inform you. In any case if you get a citation/penalty you have 10 days to appeal. Steve noted that the North Central district has added a second Conferencing Litigation Representative (CLR). Dan Goyen, to help with the process. Appeals process outline: a) citation issued; b) close-out conference; c) 10 days to request a conference; d) letter back from CLR (withholding contest until penalty assessed); e) 30 days after issuance of citation it becomes final order; f) 30 days to resolve appeal or "enhanced contest" An outline of the citation appeals process and related issues can be found on the MSHA website here: <http://www.msha.gov/SOLICITOR/faqs.htm>

23. Why are inspectors allowed to "correct" violations to another standard after we alert them that they wrote the thing under the wrong standard?

*Answer:* Inspectors are allowed to correct a mistake once it is realized. However, once a citation is contested, it must go through the ALJ to change the standard.

24. Written citations are later raised to higher levels of severity after the inspector returns to the office and consults fatalgrams and other resources. Why does this occur?

*Answer:* After a supervisory review, citations can be changed to maintain consistency with similar citations. This change can go either way – S&S or non-S&S

25. Does MSHA have plans forthcoming that will expedite the citation conferencing process and decrease the backlog?

*Answer:* Yes, but those plans are being worked on nationally and in the district and are not yet finalized. MSHA has added a second CLR in the North Central district.

26. Per inspector's comments and operator experience; why do some inspectors elect to write all electrical citations as "fatal"?

*Answer:* MSHA strives for consistency but electrical citations are not always written as fatal. While one inspector may write more as fatal than another, the inspector looks at conditions that exist and writes the citation accordingly.

27. How does MSHA view their role in educating producers (if any)?

*Answer:* MSHA has policy and education departments. Educational materials are available on the MSHA website. Safety and health videos are available from MSHA. The Small Mines Office and Educational Field Services are educating producers. In the future, the Small Mines Office may become part of the district office.

28. How does MSHA inform mining companies about new initiatives and inspection priorities so that the mining company can ensure these situations are addressed prior to inspection day?

Answer: MSHA uses its website, mailings, Spring Thaw conferences, Holmes meetings, and email distribution lists. The “Rules to Live By” were widely distributed. Richetta praised the Illinois Association of Aggregate Producers for passing along information to its members.

29. I believe all operators utilize Fatalgrams for training purposes but that is a reactive effort—a proactive effort is always better. Would the district consider the development of a monthly or quarterly newsletter that included unusual hazards or atypical standards that have been recently cited (this could also include a best practices section)? Operators could use this during safety meetings and tool box talks. If a newsletter is too time consuming or costly, would MSHA consider producing a handout for inspectors to distribute during inspections?

Answer: MSHA currently offers a quarterly newsletter for each district. It is available on the MSHA website at <http://www.msha.gov/DISTRICT/MNM/MNMHOME.HTM> Click on the map showing districts in the U.S. to go to that district’s page. Here you will find district newsletters and links to health and safety alerts.

30. How high must a miner be to require a tie-off?

Answer: At any elevation that could result in a fall. MSHA does not follow OSHA’s standards.

31. What tie-off points are not approved by MSHA?

Answer: MSHA does not have an approved list of tie-off points. MSHA approves any tie-off that is secure and properly situated.

32. What fall restraints are approved by MSHA?

Answer: A harness is a safe fall restraint. Approved fall restrains must include fall breaks. A harness or belt without a fall break can only be used to prevent a miner from getting into a position where a fall could occur.

33. What determines if a seatbelt currently in use is no longer approved?

Answer: MSHA considers the condition of the belt when determining if it should be replaced. The date stamp on a belt does not determine when it should be removed from service unless the manufacturer has specified a date or time period after which the belt must be replaced. Regardless of the date, the belt must be maintained in good condition.

34. Under what conditions are berms required on a haul road?

Answer: Anywhere over-travel can occur and result in injury. Over-travel is not the same condition as roll-over. Example given for over-travel: When a haul truck leaves the roadway at the bottom of a hill and runs into a pond but does not roll over.

35. Will companies be required to do dust and noise sampling? When and how often?

Answer: Operators are required to monitor miner to determine effectiveness of dust and noise control measures. Expect companies to be required to sample more frequently than in the past. Official notice and guidance from MSHA will be forthcoming.

36. We have noticed a difference in interpretation of what the Review Commission has provided MSHA and the industry relative to the S & S criteria for a citation and what is being enforced in the field by the MSHA inspectors in your District. Please discuss the S & S criteria from the Review Commission and compare it to what is written in the 2008 version of the Inspector's citation manual?

Answer: Steve Richetta said he was not qualified to comment on the Review Commission's decisions. He did recommend mining companies follow the MSHA program policy manual.

37. Are guards required for return rollers where employees can not and do not get under them but do walk along the truss type conveyors?

Answer: Guards are required when accidental or purposeful contact can occur.

38. Why are the outriggers required to be down when the crane or similar equipment is parked and not in use? We have been told that this is a citation.

Answer: Outriggers are not required to be down if the outriggers and crane boom are placed in the travel position and there is no possibility for a miner to be injured in the vicinity while in this position. However, if there is a possibility the outriggers or any other equipment part could fall from the travel position when the hydraulic system fails, the outriggers should be in the down position or a mechanical means of securing the outriggers in the upright position must be present. If the crane boom will not be in the travel position then outriggers must be put out first. If the vehicle or piece of equipment could roll when placed in neutral with the parking brake off, it needs to be chocked or turned into a bank.