

OCTOBER 25, 2016 | MSHA INSPECTIONS, CITATIONS & ENFORCEMENT

# MSHA Presses Tougher Enforcement Stance Even As Injury, Fatality Data Show Safest Year to Date for Mining Industry

By: [Nicholas W. Scala](#)

Mine operators should take notes of the toughening enforcement posture by MSHA that is taking place against the backdrop of overall decreases in the numbers of mining sector fatalities.

In fact, by MSHA's own calculation, fiscal year 2016 was the safest year in mining history judging by sheer numbers. From Oct. 1, 2015, to Sept. 30, 2016, a record low 24 deaths occurred at the more than 13,000 mines nationwide, the lowest total since 34 in fiscal 2013, per a recent [MSHA press release](#).

While any mining death or injury is a tragedy – and the goal will always be zero injuries – these latest numbers are very encouraging, and indicate that mine operators' diligent efforts and MSHA's support have had a cumulative effect of tamping down injuries and fatalities.

The latest numbers compare to 38 mining deaths in fiscal 2015, representing a significant year-over-year reduction. Assistant Secretary of Labor Joseph Main unveiled the latest figures recently at the National Mine Health and Safety Academy in Beaver, WV.

Assistant Secretary Main, speaking at the annual [Training Resources Applied to Mining](#) (TRAM) conference, noted that the numbers represent nearly a 30 percent drop since fiscal year 2013. He also credited the industry's hard work:

"The extensive efforts by MSHA and the mining community that held metal and nonmetal mining deaths to three during a 7-month period were instrumental in driving these numbers."

Nonetheless, he warned that more rigorous MSHA enforcement may be coming down the pike, which is an interesting upshot to the sector are seeing a continual decline in injuries. MSHA said that the Assistant Secretary was cautioning “against complacency,” noting four fatal mining accidents occurred just in September 2016.

“We are eroding the gains we have made on behalf of our nation’s miners. Eliminating mining deaths and reducing injuries and illnesses is a goal that must be shared by all of us,” he said. “We can – and must – strive to reach zero mining deaths.”

### **Multi-Pronged Approach**

MSHA says it will work toward achieving this goal through multiple enforcement, outreach and compliance assistance actions.

Assistant Secretary Main recently sent a letter to all mine operators and minters, timed with an early October stakeholder meeting, in which he alluded to some of the upcoming initiatives.

For example, MSHA is launching a renewed effort that includes members from all MSHA staff groups such as Coal, Metal and Nonmetal, Educational Policy & Development, and Technical Support getting out to the mine sites with enforcement and outreach at both metal and nonmetal and coal mines, he said.

“We are calling on mine operators, miners, mining organizations, and associations to increase attention on conditions and hazards that are leading to miner deaths.”

Main in the widely distributed letter also asked mining employers to help “by conducting thorough examinations of the work place to assure conditions and hazards that lead to deaths and injuries are identified and prevented. Also, make sure your miners are properly trained to do their work, and make sure your compliance program is effective.” Not surprisingly, workplace exams and training are two of the most aggressively enforced issues by the agency, and they are pursuing more stringent regulation of workplace exams through [rulemaking](#).

The agency head stressed that particular attention should be paid to standards that frequently lead to mining deaths such as “Rules to Live By” and the nine standards commonly cited at underground coal mines. MSHA recently added its [fourth entry](#) in the Rules to Live By program, which include two standards, coal standard 30 C.F.R. 77.207 (Illumination in working areas) and metal and nonmetal standard 30 C.F.R. 57.3201 (Location for performing scaling in underground M/NM mines).

Main said in a recent conference call with industry stakeholders that they needed to reinvigorate their efforts to

reverse the trend in mining deaths:

“We are calling on all of our stakeholders, including mine operators, miners’ organizations, associations and trainers, to increase their attention to the conditions and hazards that are leading to fatalities.”

While industry outreach, hazard alerts, and other cooperative efforts are laudable initiatives to help the industry reduce fatalities even further, the calls for stepped-up enforcement are troublesome at a time when existing programs are showing success.

It’s worth noting that on the health front, MSHA also sees signs of improvement – at least by some of the measures on which MSHA relies.

For example, Main recently noted that MSHA efforts to lower levels of respirable coal mine dust and silica in coal mines remain on track. Indeed, MSHA says since the 2009 launch of the “End Black Lung – Act Now” campaign, average respirable dust levels have decreased annually.

Dust sampling results for fiscal 2016, collected under the respirable coal dust rule that went into effect in August 2014, dropped to historic lows, the Agency says. During this period, the yearly average respirable dust samples collected by MSHA from the dustiest occupations in underground coal mines fell to 0.64 milligrams per cubic meter (mg/m<sup>3</sup>), down from the FY 2015 average of 0.70 mg/m<sup>3</sup>.

Agency officials point out that mine operators and MSHA personnel have collected nearly 154,000 respirable dust samples under the new rule, and 99.3 percent of those samples met compliance levels. As Main put it, “the new respirable dust rule is working to reduce miners’ exposure to unhealthy conditions, and that is good news for miners.”

Also, MSHA says operator sampling with continuous personal dust monitors, which began in April, showed positive results. From April 1, 2014, through July 31, 2016, mine operators collected nearly 40,000 valid CPDM samples, with 99.8 percent in compliance, per the latest figures.

With all this good news on both the safety and health fronts for the mining sector, it’s bound to raise more than a few eyebrows that MSHA has chosen this time to call for a tough new enforcement push by federal inspectors.

These activities are needed where workers are put at risk by egregious non-compliance, but the prospect of new heavy-handed MSHA actions means good-faith employers may be unfairly targeted in many cases. It will be crucial for employers to carefully watch the areas in which MSHA is putting emphasis, particularly the continued

prominence of “Rules to Live By,” going forward.