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SUBJECT: Prohibition of Advance Notice of § 103(a) Inspections

Scope

This Program Information Bulletin applies to mine operators, miners' representatives, Mine Safety and Health Administration (MSHA) enforcement personnel and other interested parties.

Purpose

The purpose of this Program Information Bulletin (PIB) is to remind mine operators, miners' representatives and MSHA enforcement personnel that § 103(a) of the Federal Mine Safety and Health Act (Mine Act or Act) prohibits giving advance notice of inspections conducted by MSHA inspectors. Additionally, this PIB clarifies potential consequences for anyone who violates this advance notice prohibition.

Information

Section 103(a) of the Mine Act states that: "Authorized representatives of the Secretary . . . shall make frequent inspections and investigations in coal or other mines each year . . ." and that "In carrying out the requirements of this subsection, no advance notice of an inspection shall be provided to any person" Volume I of MSHA's Program Policy Manual (PPM) notes that there are limited occasions when advance notice is contemplated by the Mine Act. For example, under Section 103(g)(1) of the Act, where a representative of the miners or a miner gives notice of what he believes to be an imminent danger, the operator or his agent must be notified and such notification will almost always have the effect of indirectly giving notice of an inspection.

Section 108(a)(1) of the Mine Act authorizes the Secretary of Labor to initiate a civil action in a United States District Court for relief, including permanent and temporary injunctions, restraining orders, or any other appropriate order, for operator violations of the advance notice of inspections prohibition contained in § 103(a) of the Act.

In addition to a permanent and temporary injunction, Section 110(e) of the Mine Act provides that any person who gives advance notice of any inspection is, upon conviction, subject to a fine of up to \$1,000 or imprisonment or both. Additionally, an operator may be assessed a civil penalty under § 110(a) of the Act for violating the § 103(a) prohibition on advance notice of inspections. Finally, § 110(c) of the Mine Act imposes personal liability on individual corporate agents if they knowingly authorized, ordered, or carried out a violation of a mandatory health or safety standard or an order issued under the Act.

MSHA maintains an anonymous hotline to report hazardous conditions. The phone number is **1-800-746-1553**. Persons may also report hazardous conditions to their MSHA District office. MSHA will promptly investigate any report of a hazardous condition at a mine.

Background

On April 21, 2010, MSHA launched inspections at 57 coal mines whose enforcement history indicated a significant number of violations related to methane accumulations, ventilation, rock dusting and mine examinations. These impact inspections followed the April 5, 2010, explosion at the Upper Big Branch Mine in Montcoal, West Virginia, and focused on mine ventilation, rock dusting, methane monitoring, and mine examinations. During two of the impact inspections, MSHA discovered that operators had warned miners working underground of MSHA inspectors either at or en route to the mine site.

On May 24, 2010, the House Education and Labor Committee conducted a hearing on the Upper Big Branch explosion. The Committee heard testimony from deceased miners' families. The testimony addressed issues regarding safety conditions in existence prior to the explosion including inadequate ventilation, intentional changes to ventilation systems, high levels of methane, excessive coal float dust, "bridging out" methane monitors on mining equipment, advance notice of MSHA inspections, and retaliation for miners who raised safety and health issues.

This PIB re-emphasizes MSHA's intent that mine operators fully comply with the Mine Act and MSHA's regulatory requirements.

Authority

The Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. § 801 et seq.

Internet Availability

This PIB may be viewed on the Internet by accessing [MSHA's home page](#), then choosing "Compliance Info" and "Program Information Bulletins."

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