



LAW OFFICE OF ADELE L. ABRAMS P.C.

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OSHA/MSHA and DOJ Step Up Criminal Enforcement By: Adele L. Abrams, Esq., CMSP

The federal government is taking aim at occupational safety and health violations from a different perspective: criminal prosecution. On December 17, 2015, a joint statement was issued by the US Department of Labor (DOL) and the US Department of Justice (DOJ) encouraging the agencies to work cooperatively to bring more safety scofflaws to justice, and to work on imposing criminal prison sentences well beyond those provided for under the Occupational Safety & Health Act of 1970 (OSH Act).

A Memorandum of Understanding between the two agencies has been executed and a memo was sent to 93 federal prosecuting attorneys informing them of the new protocols. It also sets up a new framework for notification, consultation and coordination between the two departments to aid both in implementing safety-related workplace statutes.

OSHA Assistant Secretary David Michaels said about the initiative: "Strong criminal sanctions are a powerful tool to ensure employers comply with the law and protect the lives, limbs and lungs of our nation's workers." The DOJ's environmental crimes chief explained that prosecutions would be open to "the ones making the decisions that lead to the deaths of others" including people in the corporate office, managers and supervisors in the field. No comments were issued by MSHA officials.

Under the new plan, the attorneys in the DOJ's Environment and Natural

Resources Division will work with the DOL's personnel at the Occupational Safety and Health Administration (OSHA), the Mine Safety and Health Administration (MSHA), and the Wage and Hour Division (which has jurisdiction over issues including situations where minors illegally work in hazardous industries while under age 18) to investigate and prosecute endangerment violations.

It is not news that you can end up doing prison time for violations of OSHA and MSHA safety or health standards. The Mine Act carries possible penalties of up to one year in federal prison, plus monetary fines, for violations of MSHA standards, whether or not an accident or injury occurred. Generally, MSHA does a criminal referral to the DOJ where the "reckless disregard" box is checked on "unwarrantable failure" citations and orders issued under Section 104(d), or where such violations are coupled with an imminent danger order under Section 107(a) of the Mine Act. In addition, MSHA can seek criminal actions for giving advance notice of inspections and also for giving false statements or falsified documents in the course of an inspection or incident investigation.

By comparison, the OSH Act only provides criminal sanctions for three types of conduct that impact worker safety: (1) willfully violating a specific standard, and thus causing the death of an employee (there can be no criminal prosecutions, however, for violations of the OSH Act "General Duty Clause" that result in death); (2) giving advance notice of OSHA inspection activity (e.g., by calling inside a facility to give notice while holding inspectors outside, so that safety infractions can be remediated before discovery); and (3) falsification of

INSIDE THIS ISSUE

OSHA/MSHA and DOJ Step Up Criminal Enforcement	1
Congress Votes to SCRUB Bureaucratic Waste	3
Commission Expands MSHA's Jurisdiction, Finds Equipment Shop Meets Definition of a Mine	4
OSHRC Judge Holds OSH Act Allows Enterprise- Wide Abatement Orders	5
No Accommodation Needed for Washington State Medical Marijuana Users	6
MSHA's New Lockout/Tagout/Tryout Initiative	7

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Criminal Enforcement, Con't

documents filed or required to be maintained under the OSH Act.

The problem, which is what led to the new enforcement initiative, is that the DOJ typically refrained from prosecuting most federal OSHA and MSHA cases eligible for criminal sanctions because of the low level of sanctions available. Under current law, the maximum penalty for willful OSHA violations resulting in death has been criminal conviction of a misdemeanor, punishable by a fine of no more than \$10,000 for a first offense and/or imprisonment of no more than six (6) months.

By comparison, in the 22 “state plan states” that manage their own OSHA programs, criminal prosecutions are brought more often because the state attorney generals can rely on state statutes – involuntary manslaughter, negligent homicide, reckless endangerment and even assault -- to impose lengthier criminal sentences on employers whose workers die or are injured on the job than could normally be brought under the federal statute. These state laws are also implicated in mining cases, particularly where there are state mine safety agencies (e.g., Pennsylvania’s Bureau of Deep Mine Safety) that have concurrent jurisdiction with MSHA but whose criminal actions are prosecuted by the state attorney general.

The “Protecting America’s Workers Act” (HR 2090 & S 1112), which was introduced in early 2015, would strengthen federal OSHA’s ability to criminally prosecute violations by increasing potential monetary criminal penalties, expanding the consequences of “knowing” violations (a lesser standard than “willful”) that result in death to a maximum sentence of 10 years in prison, and adding the ability to prosecute non-fatal injury cases by imposing up to 5 years in prison for knowing violations that result in serious physical harm. However, that legislation – which was also introduced in previous sessions of Congress under different bill numbers – lays dormant and has little chance of enactment while the Republicans continue to control the legislative agenda. Heightened criminal sanctions are also sought under the pending Byrd Mine Safety legislation (HR 1926 and S. 1145).

The United States attorneys who work in the DOJ’s environmental unit historically have been reluctant to devote considerable resources to case investigation, preparation and prosecution when it can only result in a misdemeanor conviction, so they have instead focused on the weightier sentences that can be imposed for violations of requirements under federal

environmental laws. As a result, there are only a handful of reported criminal prosecutions under the federal OSH Act; in fact, there were only three in all of 2013. On the MSHA front, a high profile action against the CEO of Massey Energy in the wake of the Upper Big Branch disaster resulted in only a misdemeanor conviction and a call for more stringent criminal sentences in the future for such violations.

The new DOL/DOJ collaboration suggests that, until such time as the OSH Act itself is amended to include heightened criminal sanctions, workplace violations may be prosecuted creatively by using other statutes such as the Clean Air Act, the Resource Conservation & Recovery Act, and the Toxic Substances Control Act. Environmental statutes typically include felony prison terms and harsher monetary fines. In addition, prosecutors will be encouraged to look at use of Title 18 of the U.S. Code to enhance penalties and increase deterrence.

The Title 18 provisions that have sometimes been used in this manner before include charges of “obstruction of justice” and “conspiracy” (two or more individuals colluding to obstruct justice or otherwise violate the law). Because Title 18 crimes are subject to review under the federal sentencing guidelines, they can carry prison terms of up to 20 years. What OSHA might consider “obstruction” remains to be seen, but in the mining industry, after the Upper Big Branch disaster, the first criminal prosecution was against the company safety/security officer under Title 18 for destroying documents sought by the DOL. As a result of his conviction, he was sentenced to serve about six years in a federal prison.

The directive to the US attorneys tells them, when analyzing an OSHA case, to consider charging other serious offenses including false statements to inspectors and investigators, obstruction of justice, witness tampering (e.g., threatening employees who are whistleblowers or wish to speak to OSHA personnel privately, or who plan to testify against the company), environmental, and endangerment crimes (e.g., where an accident involves someone under age 18). These all carry felony provisions that, the DOJ argues, will better deter and punish workplace safety crimes.

A 2015 non-fatal OSHA case by the DOJ may be a harbinger of things to come. In that case, a roofing company supervisor was criminally prosecuted after falsely telling OSHA inspectors that fall protection had been purchased by the company prior to the accident

Criminal Enforcement, Con't

that seriously injured three workers, when it was actually purchased three days after the incident. While the company was cited for six safety violations totaling \$55,000 in civil penalties, because of the false information provided by the supervisor, the government was able to reach a plea agreement wherein the man will receive three years supervised probation and 30 hours of community service.

The bottom line is that employers under OSHA jurisdiction will need to carefully consider their actions any time a workplace incident occurs that results in a death, involves a young worker, or involves releases of toxics into the air (e.g., asbestos or silica) or water (e.g., diesel fuel spillage) that could be viewed as a tandem environmental violation. For those under MSHA, be aware that any unwarrantable failure citation or imminent danger order carries with it the threat of criminal sanctions – injury or no injury.

Counsel should be consulted promptly before the initial OSHA/MSHA investigation is in full swing, because it will be critical for management personnel to be aware of their right to remain silent, or to have counsel present when interviewed. In addition, supervisors need to be aware that it is the worker's right to speak privately to OSHA/MSHA, if they so choose.

OSHA cannot compel statements from anyone – salaried or hourly – except through the use of a subpoena pre-citation, or through depositions once a case is in litigation. MSHA can only issue pre-citation subpoenas if a public hearing is convened (which rarely occurs), but investigators have been known to threaten action under Section 103(a) of the Mine Act for failure to voluntarily produce non-mandatory documents such as safety audits or near miss accident reports. Finally, remember that documents or other critical evidence in a case cannot be destroyed or otherwise disposed of if there is a reason to believe that OSHA will want it.

For more information on these issues, or for assistance with OSHA/MSHA inspections or investigations, contact the Law Office at 301-595-3520 (eastern) or 303-228-2170 (western).

Congress Votes to SCRUB Bureaucratic Waste

By: Sarah Korwan, Esq.

It's an election year, so elected officials are scrambling to look good and inefficient bureaucratic waste may be on the chopping block. Notably, on January 7, 2016 the U.S. House of Representatives passed legislation aimed to reduce the costs of regulations, H.R. 1155, Searching for and Cutting Regulations that are Unnecessarily Burdensome (SCRUB) Act. The Act establishes a commission to review existing federal regulations and identify obsolete or unnecessary ones that should be repealed. The legislation directs agencies to "review rules or sets of rules that are major rules or that include major rules, that have been in effect more than 15 years, that impose paperwork burdens that could be reduced substantially without significantly diminishing regulatory effectiveness, that impose disproportionately high costs on small entities, or that could be strengthened in their effectiveness while reducing regulatory costs", with a goal of reducing the cost of regulations by 15%.

It's no secret that federal regulation places an enormous burden on families and businesses large and small, including those in the mining industry. The SCRUB Act is part of an ongoing House effort to relieve some of the federal regulatory burden that is limiting productivity and economic prosperity especially on small entities. According to the Competitive Enterprise Institute, federal regulations today impose a burden of \$1.88 trillion dollars on the economy. That figure equates to roughly \$15,000 per household and more than corporate and individual income taxes combined. The Code of Federal Regulations is now more than 175,000 pages long and contains more than 200 volumes. And according to a study by the American Action Forum, the Obama administration's efforts to review existing regulations resulted in the addition of more than \$23 billion dollars in costs on the economy and nearly 9 million hours of paperwork.

The SCRUB Act establishes a bipartisan commission to review existing federal regulations and identify those that should be repealed to reduce unnecessary regulatory burdens. The goal is to assess the rules to determine how more efficient methods can be used. The SCRUB Act also establishes key additional factors to be taken into account when identifying regulations for repeal (e.g., the regulations have: been rendered obsolete by technological or market changes; achieved their goals and can be repealed without target problems recurring; are ineffective; overlap,

SCRUB, Con't

duplicate, or conflict with other federal regulations or with state and local regulations; or, impose costs that are not justified by benefits produced for society within the United States).

If successful, supporters believe that the SCRUB Act could potentially eliminate obsolete and unnecessarily burdensome federal regulations without compromising needed regulatory objectives. Because it establishes an independent commission with the resources and authority to assess independently where and how regulations are outdated and unnecessarily burdensome, it will have the ability to identify and eliminate problem regulations.

However, the bill now heads to the Senate for consideration, where passage may be difficult. Specifically, opponents of the Bill believe it would violate the Appointments Clause of the U.S. Constitution. Adversaries of the bill assert that, the members of the committee would not have the authority to repeal or amend regulations. In addition, opponents do not like that the Act creates a “cut-go” system that requires any agency issuing a new regulation to remove an existing regulation of equal or greater cost.

We will keep you updated on the outcome following Senate review of the bill later this year.

Commission Expands MSHA's Jurisdiction, Finds Equipment Shop Meets Definition of a Mine

By: Gary Visscher, Esq.

At its public meeting on January 7, 2016, the four members of the Federal Mine Safety and Health Review Commission present were unanimous in affirming a judge's decision that an equipment maintenance and fabrication shop in Sidney, Kentucky operated by Maxxim Rebuild Company, LLC, comes within the definition of a “mine” in the Mine Act, and is therefore subject to MSHA's enforcement jurisdiction.

The Commission's decision constitutes a significant expansion of MSHA jurisdiction – for the first time the Commission is upholding MSHA's jurisdiction of an off-site facility that is not exclusively used for supplying or servicing the facility owner's mines. An independent facility that provides equipment maintenance and repair for a variety of customers, including non-mining customers, may now be subject to MSHA inspection.

Maxxim Rebuild, which is a wholly owned subsidiary

of Alpha Natural Resources, operates seven equipment maintenance and fabrication shops. One of the shops, which was previously located in Matewan, West Virginia, was moved in 2012 to Sidney, Kentucky. Both the West Virginia location and the Kentucky location were on former mine properties; in both cases the mining operations had closed and the operation abandoned. MSHA had formerly inspected the West Virginia shop while it was part of the mining operation, but ceased inspecting it when the mine closed. After the shop moved to the Sidney, Kentucky location, MSHA claimed jurisdiction and conducted at least two inspections, resulting in several citations.

The Sidney shop primarily worked on equipment that is used at Alpha Natural Resources' mines. Approximately 75% of the shop's work was for nearby mines operated by Alpha Natural Resources. About half of the remaining 25% was work on mining equipment for other mines (Alpha's and other operators), and the remainder was work that the shop did for non-mine customers.

Not only was MSHA's claim of jurisdiction after the shop moved to Sidney, Kentucky inconsistent with its previous treatment of the shop when it was located in West Virginia, but Maxxim Rebuild also pointed out that nearly all (5 of 6) of its other equipment maintenance shops are currently subject to OSHA standards and inspections, rather than MSHA.

Maxxim Rebuild contested the citations on the grounds that MSHA did not have jurisdiction over an off-site, independent equipment maintenance and fabrication shop. Maxxim also argued that MSHA's inconsistent interpretation constituted a denial of equal protection and was an abuse of discretion.

In October 2013, Judge Miller ruled against Maxxim Rebuild, and the four commissioners stated that they would affirm the judge's decision. Both the judge and the commissioners found that the case was controlled by Commission precedent in *Jim Walter Resources*, 22 FMSHRC 21 (Jan. 2000). That case involved a central supply shop which was located off mine premises but was owned by the operator of nearby mines and was used exclusively by the mine operator to house supplies for the company's mines. The Commission

Maxxim, Con't

ruled that the supply shop was in effect part of the mine operation and was therefore subject to MSHA jurisdiction.

The Maxxim Rebuild case is the first time that the Commission will have found MSHA jurisdiction over an off-site facility that is not owned and operated by a mining company and used exclusively for that company's operations. The only Commission decision other than Jim Walter Resources involving jurisdiction over an off-site facility was U.S. Steel, 10 FMSHRC 146 (Feb. 1988), which, like Jim Walter Resources, involved a facility that was owned by U.S. Steel and was used exclusively for supplying U.S. Steel's nearby mines.

In contrast, the owner of the equipment shop in this case, Maxxim Rebuild, is a separate company (albeit a subsidiary of Alpha Resources) and Maxxim Rebuild's business is not exclusively servicing equipment for Alpha Resources (or any other mining company's mines). The commissioners nonetheless did not find those thresholds to expanded MSHA jurisdiction to be important – "a distinction without a difference."

While the majority of Maxxim Rebuild's business is servicing equipment for Alpha Resources affiliated mining operations, it also services equipment for other mining and non-mining customers. It is unclear whether a higher percentage of non-Alpha Resource work would change the outcome. Would MSHA have jurisdiction if Maxxim Rebuild's business was 50% non-Alpha Resources?

The commissioners were no more sympathetic to Maxxim Rebuild's argument regarding MSHA's inconsistent application of the law. With regard to the fact that other Maxxim Rebuild shops are not currently inspected by MSHA, the commissioners found that the record did not provide evidence as to whether the other shops are "substantially similar" to the Sidney, Kentucky shop. As to Maxxim Rebuild's argument that MSHA's previous non-inspection of the Sidney shop (when it was located in West Virginia) showed that MSHA's claim of jurisdiction when the shop moved to Kentucky was an abuse of discretion, commissioners found that argument unconvincing as well, comparing it to a person arguing against a traffic ticket for running a red light on the grounds that a police officer did not issue a ticket the last time the person ran the red light.

Only in passing was mention made by any of the commissioners as to whether employees working in Maxxim Rebuild's equipment shop are better

protected by being under MSHA, rather than OSHA, standards and enforcement. There is little doubt that OSHA's standards for the types of hazards likely to be found in equipment maintenance shops are more comprehensive. MSHA's inspections are more frequent and training requirements are more onerous. But query: do workers in a separately located and independent equipment maintenance and fabrication shop really benefit from 40 hours of initial and 8 hours annual "miner" training?

Those who try to understand the jurisdictional lines between MSHA and OSHA are accustomed to seeing MSHA claim jurisdiction over facilities and operations that it had not previously claimed, and of having those claims upheld by the Commission – so much so that the steady trickle of newly claimed jurisdiction by MSHA, and OSHA's acquiescence, has become something of a joke at the Commission. What is unfortunately missing is a consistent approach that would give the regulated community reason to believe that jurisdiction decisions between MSHA and OSHA are not simply arbitrary.

OSHRC Judge Holds OSH Act Allows Enterprise-Wide Abatement Orders By: Gary Visscher, Esq.

A recent decision by an administrative law judge for the Occupational Safety and Health Review Commission (OSHRC) has opened the door to "enterprise wide abatement orders" when OSHA issues citations after inspecting a single facility of a multi-worksites employer.

The case involved Central Transport (CT), a Michigan-based transport company with about 170 terminals and service centers throughout the United States. In 2014, OSHA inspected a Central Transport facility located in Massachusetts. As a result of the inspection, OSHA issued several citations, asserting willful and repeat citations for powered industrial truck violations.

Central Transport contested the citations. In its subsequently filed Complaint, OSHA stated that it had issued citations to Central Transport for violating the same standard during previous inspections at about a dozen other Central Transport facilities (some of the previous citations, according to the Complaint, are still under contest).

While reference to previous citations has been used to support willful and/or repeat citations, OSHA's complaint in the Massachusetts case also requested that the Commission enter "an order of

Enterprise-Wide Abatement Orders, Con't

enterprise-wide abatement” against Central Transport, compelling compliance with the cited standard (29 CFR 1910.178 (p) (1)) at all Central Transport’s workplaces. OSHA would have authority at any time to inspect any of Central Transport’s facilities to verify abatement, and any violation of the standard found at any Central Transport facility could be cited for “failure to abate,” with penalties of up to \$7,000 per day.

Along with its Answer to the Complaint, Central Transport filed a Motion to Strike the request for enterprise wide abatement, arguing that the OSH Act does not authorize the Commission to order such relief. In the alternative, CT moved to stay the issue of enterprise wide abatement until after the validity of the underlying citation was resolved.

In the past, OSHA has achieved “enterprise wide” measures through entering into corporate wide settlement agreements with a cited employer. However, no previous case has found that the Commission has the authority, in the absence of a settlement agreement, to order such enterprise wide abatement. OSHA has requested such an order in several previous complaints. Most of those cases were settled before the authority for such an order was resolved. However, in a 2013 decision in Delta Elevator Service, an administrative law judge found that the enterprise wide abatement order requested by OSHA in that case was not authorized by the OSH Act.

In Central Transport, however, the administrative law judge found that the phrase “other appropriate relief” in section 10 (c) of the OSH Act authorized the Commission to enter an enterprise wide abatement order. The judge denied CT’s motion to strike, as well as the motion to stay until the underlying citation was resolved. The judge said that the appropriateness of an enterprise wide abatement order against Central Transport should be an issue at the hearing.

If the case does proceed to hearing, an important issue will be what type of evidence is necessary to support an enterprise wide abatement order. In its motion to strike the request for an enterprise wide abatement order, CT raised the specter that, if the authority for such relief is upheld, OSHA would ask for enterprise wide abatement in every case against a multi-site employer, without having to actually conduct inspections at any of the employer’s other worksites.

Arguing against the motion to strike, OSHA said that it had requested enterprise wide relief “only in a limited number of cases and there is no reason to believe that any of those claims were frivolous” – a claim that appears to be supported by OSHA’s reference to the number of violations of the same standard at Central Transport’s facilities. On the other hand, OSHA hailed

the administrative law judge’s preliminary decision in Central Transport in a national press release, an indication that OSHA is likely to pursue enterprise wide abatement orders more frequently in cases against multi-worksites employers.

No Accommodation Needed for Washington State Medical Marijuana Users

By: Diana R. Schroeder, Esq.

A recent court decision out of Washington State serves to continue the dialog for employers who may be wondering how to respond if an employee tests positive for marijuana -- even if the employee possesses a valid medical marijuana prescription. This decision illustrates that it is important for employers to draft and maintain a drug-free and drug testing policy. Marijuana laws are changing at a fast pace – knowledge of how your State is responding is also critical.

In *Swaw v. Safeway, Inc.*, No. C15-939-MJP (Nov. 20, 2015), a federal district court judge ruled that a user of a Class I “controlled substance” under federal law and who tested positive for marijuana, was not in a protected class and dismissed the employee’s wrongful termination lawsuit.

Safeway employee Michael Swaw had a valid prescription to use marijuana, for after-hours use, as a medical treatment for his terminal or chronic illness or disability. Swaw was drug-tested following an on-the-job injury, pursuant to Safeway’s drug-testing policy, and also the terms of its collective bargaining agreement with the Teamsters. Swaw failed the drug test, and he was terminated by Safeway. Swaw filed a lawsuit alleging disability discrimination under the Washington Law Against Discrimination. Plaintiff Swaw argued that he should not have been terminated because 1) he held a valid medical marijuana prescription, and 2) he was treated differently than other Safeway employees, because Safeway had only suspended (and not fired) two employees who were caught intoxicated while actually on the job.

The Judge held that Plaintiff Swaw failed to state a claim upon which relief can be granted, and dismissed the case. The Judge discussed the Washington State Medical Use of Marijuana Act (MUMA), a law that addresses an employer’s duty and states that “nothing in this chapter requires an accommodation for the medical use of cannabis if an employer has a drug-free workplace.” MUMA, RCW 69.51A.060(6). The Judge also noted the Court’s 2011 decision in *Roe v. TeleTech Customer Care*, where the Washington State Supreme Court found that “[t]he language of the [MUMA] is

Marijuana, Con't

unambiguous – it does not regulate the conduct of a private employer or protect an employee from being discharged because of unauthorized medical marijuana use.” Roe, 171 Wn.2d 736, 748, 751 (2011). The Court was also persuaded by the U.S. Supreme Court’s decision in Gonzales v. Raich, 545 U.S. 1 (2005), which clarified the federal government’s authority to criminalize the use of marijuana, despite state laws legalizing marijuana for medicinal purposes. The Judge dismissed Swaw’s claim of disparate treatment, noting that while alcohol is a legal substance, that marijuana was still listed as a Schedule I controlled substance, and therefore is illegal under federal law. So, an employee who tests positive for cannabis on the job is not protected by state laws, and a company policy enforcing a drug-free workplace and requiring drug testing, is essential.

For copies of the decisions or laws noted above, or for more information about the medical marijuana laws in your State, please contact the Law Office.

MSHA’s New Lockout/Tagout/Tryout Initiative By: Ryan Horka, Esq.

In the coming months, MSHA will be stressing the importance of effective lockout/tag out/try out procedures by focusing on and increasing enforcement, education, and outreach, including walk-and-talks. As a part of this effort, MSHA recently published a “Lock-Tag-Try” alert on their website.

The alert instructs miners in a lockout/tag out scenario to: (1) stop the equipment, disconnect power, and lock the switch; (2) attach your identifying tag; and (3) with miners in the clear, try to start the equipment or test for power; stressing that, “It’s not locked out until you’ve tried it out.” In addition, the MSHA alert provides the following 11 best practices for an effective Lock-Tag-Try program:

- 1) Use Lock-Tag-Try whenever:
 - Removing or bypassing a guard or other safety device for maintenance, repair, cleaning, or clearing jammed mechanisms;
 - Placing any part of one’s body where it could get injured by moving machinery parts or release of stored energy (hydraulic or pneumatic pressure, steam, springs, objects that could fall or pivot); or
 - Placing any part of one’s body into an electrical energy or hazardous substances danger zone.

2) Identify and control stored energy: mechanical, electrical, hydraulic, pneumatic, gravity, chemical, and thermal.

3) Identify proper lock out locations – disconnect main or circuit power sources, not on/off switches, interlocks, emergency stops, or selector switches.

4) Develop machine-specific lock out procedures.

5) Each person uses his/her personal, unique lock and tag (no duplicate locks or keys).

6) Clearly defined group lock out procedures may be used for complex jobs involving multiple miners, equipment, or energy sources.

7) Each person affixes and removes one’s own lock and tag. Verify mechanical equipment is isolated by trying to start or operate it. Electricians verify electrical circuits are de-energized by testing. Keep miners clear of equipment and hazards during the “try out” process.

8) Use locks only for lock out, not for securing toolboxes or lockers.

9) Train all miners who use locks and tags on proper procedures. Provide awareness training to other miners.

10) Address contractor responsibilities and procedures.

11) Periodically review lockout program. Add or modify procedures when new equipment is installed or new procedures are implemented. Retrain miners as needed.

According to Neal Merrifield, MSHA’s Administrator for Metal and Nonmetal Mine Safety and Health, “since 2005, 28 metal and nonmetal miners have died in accidents in which electrical power was not disconnected and locked out or other energy sources were not controlled before work was begun on power circuits or mechanical equipment.” MSHA’s focus on this area is an effort, as Merrifield went on to echo, to show “how important it is to develop and implement an effective mine-specific ‘Lock-Tag-Try’ program.”

MSHA’s lockout/tag out standards address both electrical lockout, under 30 CFR §§ 56/57.12006 (distribution boxes), 30 CFR §§ 56/57.12016 (work on electrically powered equipment), and 30 CFR §§ 56/57.12017 (work on power circuits); and mechanical lockout under 30 CFR §§ 56/57.14105 (procedures during repair or maintenance). With this LOTO initiative in mind, it would be prudent for mine operators to analyze their current lockout/tag out procedures to determine if additions or modifications are necessary.

Contact the Law Office for guidance on your compliance requirements or questions on the new initiative.

Adele L. Abrams Speaking Schedule

Jan 28: Mechanical Contractors Association of America Safety Conference, Tempe, AZ
Jan 29: National Pavement Expo, Charlotte, NC
Feb. 9: ASSE Northwest Safety Professional Development Conference, Minneapolis, MN
Feb. 22: Society of Mining Engineers, Phoenix, AZ
Feb 25: BLR Webinar on Amputation Prevention
March 2: Florida Mine Safety Conference, Bartow, FL
March 3: National Wooden Pallet & Container Association Leadership Conference, Orlando, FL
March 7: Progressive Business Conferences Webinar on Infectious Disease Prevention
March 15: IMA-NA Technology and Safety Workshop, San Diego, CA
March 17: BLR Webinar on Hazard Communication
March 17: ASSE NOVA Chapter Meeting, Presentation on Safety & Health Management Systems
March 22: AGG-1 Conference, Nashville, TN
March 23: Indiana Safety & Health Conference, Indianapolis, IN
March 28: Oregon Independent Aggregates Association, Part 46 Annual Refresher Training, Albany, OR
March 29: Oregon Independent Aggregates Association, Part 46 Annual Refresher Training, Roseburg, OR
April 6: BLR Safety Summit, Austin, TX
April 21: AIHA/Johns Hopkins APL Safety Conference, Laurel, MD
April 22: Sassaman Training Conference, Valley Forge, PA
April 26: BLR Webinar on Safety Incentive Systems
May 2: Pacific Rim Safety & Health Conference, Honolulu, HI
May 5: Minnesota Safety Council Conference, Minneapolis, MN
May 23: National Electrical Contractors Association Safety Professionals Conference, Indianapolis, IN
June 7: SafePro Inc. Mine Safety Law Institute, Savannah, GA
June 8: ASSE Delmarva Chapter Luncheon, Salisbury, MD
June 27: ASSE Professional Development Conference, Atlanta, GA