

Close the new backdoor to task training enforcement

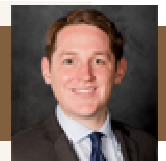
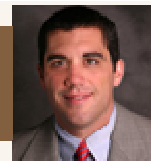
MSHA's new workplace examination enforcement efforts are generating task-training violations. Here's guidance on how to prevent receiving one.



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It is no secret that the Mine Safety and Health Administration (MSHA) has recently increased its workplace examination enforcement efforts. As our colleague Patrick W. Dennison wrote in September, MSHA issued Program Policy Letter No. P15-IV-01 (PPL) effective July 9, 2015, on its website, and later “re-issued” the PPL at the July 22 stakeholder meeting. Generally, the PPL’s stated purpose was to clarify the requirements for workplace examinations.

As previous articles have discussed, the PPL may do more than just “clarify” the standard. It arguably expands the existing workplace examination requirements by: (1) enlarging the definition of “working place” to include areas where work is performed on an infrequent basis, such as areas accessed primarily for maintenance or cleanup; (2) recommending that the requirement to have “competent persons” perform the examinations means having a foreman or a supervisor do so in order to be a best practice; (3) recommending that the examination should provide details of any conditions found; and (4) stating that conducting a workplace examination is a “new task” for which the examiner must be trained under 30 C.F.R. Parts 46 and 48.

The PPL also stated that deficient examinations may be a “basis for MSHA to require training plan revisions” under Parts 46 and 48. In his September article, Dennison accordingly predicted that the new PPL would provide an impetus for MSHA to write three violations for one condition going forward: one for the condition found, one for the inadequate workplace examination, and one for the task training violation. That prediction is now coming true. Operators have reported new task training citations issued along with workplace exam citations, and amendments to training plans also have been required for terminating the violations. This article will provide a brief overview of task training requirements and explain how an operator might avoid the increased training enforcement efforts that have arrived with MSHA’s new workplace examination agenda.

There are two different types of training plans, depending on the type of mine or operation in question. This article will focus on Part 46, as these training requirements are most prevalent in the aggregates industry. Part 46 specifically requires that an operator develop and implement written training programs for (1) training new and newly hired experienced miners, (2) training miners for new tasks, (3) annual refresher training, and (4) site-specific hazard awareness training. Generally, training under the required plan “must be provided to miners before they begin work at a mine, or before they receive new work tasks or assignments.” Program Policy Manual, PDF available at www.msha.gov/REGS/COMPLIAN/PPM/PDFVersion/PPM Vol III.pdf. Failure to train any miner can result in a withdrawal order issued under § 104(g) of the Mine Act.

The regulations provide a list of the minimum information that, if included in a plan, should result in automatic approval by MSHA. A plan that does not contain all of this information can still be submitted to MSHA for approval. Operators also must comply with the procedures for plan approval when revisions are made to the plan. Whenever approval is requested, MSHA’s regional manager must notify the operator of approval status within 30 days of receiving the plan. See 30 C.F.R. § 46.3.

Once a written plan is developed and published, training must be conducted in accordance with that plan. New employee training requirements may differ depending on whether the employee is classified as a “new” or a “newly hired experienced” miner. The differences are explained in 30 C.F.R. §§ 46.5 and 46.6. “New task” training is addressed by § 46.7. Any miner who is reassigned to “a new task in which he or she has no previous work experience” must receive training in the health and safety aspects of the new task. As explained above, according to MSHA’s new PPL, workplace examination duties will now be treated as a “new task” implicating these training requirements. However, note that there is an exception to new task training for “miners who have received training in a similar task or who have previous work experience in the task, and who can demonstrate the necessary skills to perform the task in a safe and healthful manner.” Furthermore, practice under the close supervision of a competent person may fulfill the requirements for new task training. See 30 C.F.R. § 46.7.

Part 46 also has recordkeeping requirements for all training plans. Operators must record and certify on MSHA Form 5000-23 (or other complying forms) that each miner has received the requisite training. Time limits for recording the various types of training are addressed in 30 C.F.R. § 46.9. New miners must receive certain training before they begin work at the mine, and such training must be recorded upon completion. New task training (in addition to annual refresher and hazard training) must also be recorded upon completion. Records must be certified and provided to miners and be maintained during each miner’s employment (and for 60 days after termination). Training records must also be made available for inspection by MSHA and by miners and their representatives. See 30 C.F.R. § 46.9.

We know that MSHA has a new avenue for scrutinizing an operator’s training of its miners. Operators should thus be aware of this new risk and be prepared to mitigate it going forward. Submitting training plans for MSHA input and approval — even if the plans already meet the criteria for automatic approval — can help establish that your written plan is in compliance. Timely recording of all training and keeping good records also go a long way in disproving training-related citations. Finally, if workplace exams are not already included elsewhere in your

approved training plan (e.g., under “new” or “newly hired experienced” miner training), issuing separate 5000-23 forms for workplace exams is likely now necessary. These measures can help close the door to the increased task training enforcement that has arrived along with MSHA’s workplace examination agenda.

- See more at: <http://www.aggman.com/close-the-new-backdoor-to-task-training-enforcement/#sthash.MKsLMCvR.dpuf>