

Procedures for Challenging MSHA on Inappropriate Citations

On occasion, operators may experience MSHA enforcement that they believe is in error. In such cases, you should follow the process established by MSHA for disputing inspector findings. This is fully within operator rights and called for in the Mine Act. Your chances for success in challenging inappropriate citations are always stronger if your operation has:

1. Demonstrated compliance with MSHA standards.
2. Engaged the inspector to provide clarification when necessary.
3. Taken pictures of any condition the inspector photographed. Any photos taken should reflect your position, since the inspector's picture will try to support his or her position.

5 Opportunities for Operators to Challenge Citations

As a rule, the chances for success are highest when the operator challenges enforcement based on facts and not emotion as early as possible.

Opportunity #1: Discuss it with inspector during closeout

After the inspection is complete, inspectors hold a closeout. This is the first opportunity to formally discuss your position on each citation issued by the inspector and to present mitigating circumstances.

During the closeout conference, be prepared to provide evidence in support of your position. Bring additional information to the discussion that the inspector may not have considered at the time the citation was issued.

If you cannot achieve the changes you request, inform the inspector you respectfully disagree with his or her position and let the inspector know you will be considering whether to exercise your rights to further contest certain citations.

Opportunity #2: Request a pre-penalty conference (available only in certain districts)

By filing a written request for a pre-penalty conference, you can contest citations with a conference litigation officer (CLO). The CLO is a representative from an MSHA area office who may work with you to clear up misunderstandings and/or present information on mitigating circumstances. Some MSHA offices will allow the request to be done by phone, fax or email.

If you request the pre-penalty conference, be prepared to provide mitigating factors in support of your contention. Plan to bring additional information to the table the inspector may not have considered at the time the citation was issued.

Opportunity #3: File a written request for contest

Once the assessment office sends the proposed assessment, you have 30 days to answer in writing what should be changed. Contact would potentially be made by the CLO and have rights under certain amount in an attempt to gather information necessary for taking operator's position to District office for final resolution. The CLO will either settle or work with a representative of the Department of Labor (DOL)'s Solicitor's Office, which represents MSHA's side in a dispute.

If a contest is granted, prepare the case for hearing by an administrative law judge (ALJ), who plays the role of arbiter in a contest between an MSHA inspector and an operator.

Opportunity #4: Appeal to the FMSHRC

The opportunity to appeal an adverse ALJ decision can be taken to the Federal Mine Safety & Health Review Commission (FMSHRC). The FMSHRC is an independent U.S. government panel of five judges who review challenged contests or cases. Operators have a right to bring the position before the commission with or without legal representation.

Opportunity #5: Appeal an adverse decision to the U.S. Court of Appeals within your circuit

If the contest request is denied, or the FMSHRC decision is adverse, you have the opportunity to appeal the case to the U.S. Court of Appeals to alert the Federal court system your belief that both MSHA and FMSHRC are wrong. This action will require legal representation.

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For more information that can help operators address errant inspector citations, including names of NSSGA members from all MSHA districts willing to provide advice on this potentially complicated subject, please contact:

The National Stone, Sand & Gravel Association
(703) 526-1074
Alexandria, VA
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