LAW OFFICE OF
ADELE L. ABRAMS P.C.

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APRIL 5, 2018

Safety Improvement Plans – Get Ahead of the POV Curve

By: Michael Peelish, Esq.

In 2010, the Mine Safety and Health Administration (MSHA) revised its pattern of violations (POV) regulation in (30 CFR Part 104) to improve the Agency's effectiveness in implementing its POV authority and to allow MSHA to focus on mine operators who have demonstrated a disregard for the health and safety of miners through a recurring pattern of significant and substantial (S&S) violations at their mines. A mine operator that has a pattern of S&S violations at a mine will receive written notice from MSHA. For each subsequent S&S violation, MSHA will issue an order withdrawing miners from the affected area until the cited condition has been corrected. MSHA will terminate an operator's POV notice when 1) an inspection of the entire mine is completed and no S&S violations are found or 2) no withdrawal order is issued by MSHA in accordance with Section 104(e)(1) of the Mine Act within 90 days of the issuance of the pattern notice.

What could be worse for a mine than receiving a notice letter from MSHA stating that the mine has made it onto the Pattern of Violation list? Not many things come to mind if you are a mine operator faced with this possibility. However, where this is a potential problem, there is a solution waiting.

First, mine operators and contractors need to review the POV Monthly Monitoring Tool. If you check yes to any of the items in criteria 1 and 2, it is a time for an assessment of your citations and injuries. One way to conduct this assessment, is to use MSHA's Program Information Bulletin (PIB) (P16-01). The reason a mine operator should use this document is because this is what MSHA suggests and uses, it is a good road map and it works, and there is no good reason to recreate the wheel.

A mine that has checked some boxes on the monitoring tool and is close to POV is well-advised to begin the process to identify and group each S&S citation. The numbers will direct you towards prioritizing actions and developing plans to correct conditions at the root cause. Also, review all injury reports to determine cause of incident and nature of the injury since the severity measure is a criterion.

Once the mine has developed a reasonable understanding of the issues and an initial approach towards solutions, then schedule a meeting with the MSHA field office supervisor to discuss the assessment process you have gone through and the path-forward. Explain to the MSHA supervisor that you are not submitting a formal corrective action plan to the District office under the PIB, but you are addressing the compliance mole hills before they become mountains.

Ask for input from the MSHA folks. They bring a lot to the table as they share information about issues they are seeing in the field. This feedback can prove valuable so that your mine can ensure it is addressing whatever issue is on MSHA's radar.

The key is to set goals for improvement and develop a process of planning, implementing, monitoring and improving. If you review the PIB, it requires a mine operator to set out specific actions such as training on workplace examinations, greater attention and review of examination records, unannounced management audits, implementation of engineering controls and administrative controls, and other items that can assist the mine operator. Take

(con't, page 8).

INSIDE THIS ISSUE

Law Office of
Adele L. Abrams, P.C.
Abrams Safety & Health
www.safety-law.com

D.C. Metro
4740 Corridor Place,
Suite D
Beltsville, MD 20705
(301) 595-3520
(301) 595-3525 fax

Colorado
600 17th St Ste 2800,
Denver, CO 80202
(303) 228-2170
(301) 595-3525 fax

West Virginia
1045 Bridge Road
Charleston, WV 25301
(301) 595-3520
(301) 595-3525 fax

Federal Court Dismisses Challenge to "2 for 1" Executive Order

By: Gary L. Visscher, Esq.

Shortly after taking office, President Trump issued Executive Order (E.O. 13771) which became known as the "2 for 1" order, which among other things, requires Executive Branch agencies which propose any new regulation to identify at least two existing regulations to repeal, and requires the cost of any new regulation be off-set by repeal or changes to existing regulations.

As reported in previous newsletters (May, August 2017), several groups, including Public Citizen, Natural Resources Defense Council, the AFL-CIO, and the Communications Workers sued over the executive order. The lawsuit alleged among other things that the executive order violated the Constitution's separation of powers by imposing factors on regulations that were not set by Congress, violated the "faithfully executed" clause of the Constitution, and was contrary to the Administrative Procedures Act.

Earlier this month the federal district court dismissed the lawsuit on the basis that the plaintiffs each lacked "standing" to bring the suit, in that they could not show that they or their members had yet suffered actual harm. Judge Moss analyzed each of the plaintiffs' arguments regarding possible or potential harm from the executive order, and found that the plaintiffs could not satisfy the test for the court's jurisdiction at this time. The judge left open the door to a later challenge, if these or other plaintiffs could show they or their members had been harmed by the executive order.
Among the arguments and examples given by the plaintiffs was that the Executive Order increased risk of harm to healthcare workers by delaying and interfering with OSHA's promulgation of a standard on infectious diseases. The judge found that the harm alleged by that example as well as other regulations possibly affected by the Executive Order was too speculative to support the federal courts' jurisdiction.

Reviews after the first year of the Executive Order showed that there were very few regulatory actions taken that required "two for one" off-sets. According to the Office of Management and Budget, government wide, three regulations in 2017 required offsets, while there were 11 rules identified as "deregulatory" actions. OMB also has indicated that it expects that in 2018 the ratio of deregulatory to regulatory actions will be 3 to 1. The mandated off-sets do not apply to rules that do not have "significant" impact on the public.

Maine Recreational Use Law Limits Employers Ability to Drug Test or Discipline for Marijuana

By: Joshua Schultz, Esq., MSP

Maine's recreational marijuana law includes a provision which prohibits employers from drug testing job applicants for marijuana use and prevents employers from firing workers for marijuana outside of the workplace. Maine residents voted in favor of the law, titled IB 2015, c.5, "Question 1 – An Act to Legalize Marijuana," on November 8, 2016. The law permits the recreational use, retail sale and taxation of marijuana.

The recreational marijuana law was originally scheduled to take effect on January 30, 2017, but the Maine legislature has imposed a moratorium on retail sales and taxation until they finalize regulations. However, the provisions prohibiting drug testing and discipline of marijuana users went into effect on February 1, 2018.

The provisions of the law which went into effect on February 1st prohibit adverse action from schools, employees, and landlords, requiring that "A school, employer or landlord may not refuse to enroll or employ or lease to or otherwise penalize a person 21 years of age or older solely for that person's consuming marijuana outside of the school's, employer's or landlord's property." However, the Act does allow employers to prohibit the use and possession of marijuana and marijuana products. The law specifies that these provisions "do not affect the ability of employers to enact and enforce workplace policies restricting the use of marijuana by employees or to discipline employees who are under the influence of marijuana in the workplace."

The law does not specifically exempt employers who are federally mandated to test for marijuana such as the U.S. Department of Transportation regulations for commercial motor vehicle drivers. This creates a conflict for federally regulated employers with employees who perform safety-sensitive functions. However, courts in other states, such as Oregon, have considered similar conflicts and ruled that similar statutes were preempted by federal law, as federal law classes marijuana as a Schedule I prohibited controlled substance.

Maine Republican lawmakers have introduced a bill which would overhaul workplace drug testing law in the state. The proposed law would remove current probable-cause requirements for drug testing employees and allow for a drug test after one workplace mishap or other evidence of impairment.

Maine Recreational Use Law, cont.

Other states which have enacted laws allowing recreational marijuana use and sale have addressed employer drug testing and discipline for marijuana use in various ways. Alaska and Washington, D.C. laws state explicitly that nothing requires an employer to permit or accommodate use, consumption, possession in the workplace, or to have policies restricting use by employees. Oregon's recreational marijuana law provides it does not amend any state or federal law regarding employment matters, and permits federal contractors and grantees to prohibit use as needed to satisfy federal requirements. Colorado's law provides that nothing is intended to require an employer to permit or accommodate use in the workplace.

The Law Office is a member of the National Cannibas Bar Association and can advise employers on workplace issues involving medical and recreational marijuana. For more information, please call any of our offices or visit www.safety-law.com.

NLRB Decision on Joint Employer Undone

By: Gary L. Visscher, Esq.

Previous newsletters (see June, July, and December, 2017) have reported on recent changes at the federal level on the important subject of "joint employment," that is, when more than one employer may be deemed responsible for compliance with federal labor and employment laws.

As described in the December article ("NLRB's Joint Employer Reversal – What is Old is New Again"), on December 14, 2017, the National Labor Relations Board (NLRB) , which was then and for a brief period at five members, voted 3-2 to overturn its controversial 2015 decision in *Browning-Ferris Industries*. The *Browning Ferris Industries* decision held that joint employer status existed if the entities have the right to "share or co-determine those matters governing the essential terms or conditions of employment," whether or not the control is direct or indirect, and regardless of whether the entity has actually exercised control of employment terms and conditions.

The NLRB decision in *Hy-Brand Industrial Contractors* reversed *Browning Ferris Industries* and reinstated the Board's previous test: "two or more entities will be deemed joint employers under the National Labor Relations Act (NLRA) if there is proof that one entity has exercised control over the essential employment terms of another entity's employees (rather than merely having reserved the right to exercise control) and has done so directly and immediately (rather than indirectly) in a manner that is not limited and routine."

Subsequent to that decision, the NLRB Inspector General opined that one of the Board Members who had voted with the majority in the Hy-Brand Industrial Contractors case should have recused himself because of the involvement of his former law firm with the issue. The Board then voted to vacate its decision in Hy-Brand, which for now leaves in place the Board's Browning Ferris Industries definition of joint employer for purposes of the NLRA.

Adding to uncertainty is that it may be some time before the NLRB considers the issue in another case. Subsequent to the 3-2 decision in *Hy-Brand*, one of the majority members in that decision left the Board. A new member has been nominated but not yet confirmed. In addition, the Board's 2015 decision in *Browning Ferris Industries* was appealed by the employer to the U.S. Court of Appeals, and was pending a decision by the Court when the Board issued its decision in *Hy-Brand*. With the *Hy-Brand* decision being vacated, the Court of Appeals may now consider the issue in the context of the appeal of the Browning Ferris Industries decision.

While the "back and forth" described here is specific to the NLRB and labor relations context, the NLRB's treatment and legal test for "joint employment" may impact other areas of labor and employment law, including Fair Labors Standards Act (FLSA) and Occupational Safety and Health Administration (OSHA). Please let us know if you have questions or would like more information.

Second Circuit Affirms OSHRC Decision on Repeat Violations

By: Gary L. Visscher, Esq.

Section 17 (a) of the OSH Act provides for elevated penalties for employers who "willfully or repeatedly" violate Occupational Safety and Health Administration (OSHA) standards, regulations, or the General Duty Clause in Section 5 of the Act. Today the maximum penalty for a willful or repeat violation is $129,336.

The Act does not define a "repeated" violation. In an early and lead case, *Potlatch Corp*. (1979), the OSH Review Commission said a violation is repeated "if at the time of the alleged repeated violation there was a Commission final order against the same employer for a substantially similar violation." A "substantially similar violation" may be, but does not need to be, a violation of the same standard; substantial similarity of the hazard may also be

Second Circuit Affirms OSHRC Decision, cont.

the basis for a repeat violation.

Prior to 2010, OSHA's policy was that the "look back period" for repeated violations was 3 years. In 2010, OSHA made several changes to its penalty policies, including changing the look back period to 5 years.

In *Triumph Construction*, the company was charged with a repeat violation after a trench accident in August 2014. The previous violations cited as predicate for the 2014 "repeat" violation occurred in November 2008 and July 2011. The 2008 violation was resolved by a settlement agreement approved by the Commission in May 2009. The 2011 violation was resolved by an Informal Settlement Agreement with the OSHA Area Office in November 2011.

The company contested the 2014 citation. Defending against the designation of the violation as "repeat" before the ALJ, Triumph argued (1) the 2011 violation did not result in a Commission final order, since it was resolved by an Informal Settlement Agreement, and (2) the 2009 final order was outside the 3-year look back period, which Triumph pointed out was the stated period in OSHA's Field Operations Manual (FOM) prior to September 30, 2015.

The Administrative Law Judge (ALJ) rejected Triumph's arguments. Regarding Triumph's first argument, the judge said that the Informal Settlement Agreement "was tantamount" to a Commission final order, and therefore the 2011 violation could serve as the predicate violation. Even though the 2011 citation would have sufficed for purposes of the repeat designation, the ALJ also addressed the 2009 final order of the Commission. The ALJ cited testimony that OSHA had changed its look back policy in 2010, even though the FOM had apparently not been updated. The ALJ also cited Commission precedents holding that the FOM does not create substantive rights for employers, and that regardless of OSHA enforcement policy, "Commission precedent does not limit the length of the look back period for a repeated citation."

Triumph appealed to the Second Circuit. In a summary order dated February 14, 2018, the Court of Appeals affirmed the ALJ's decision. Most notably in the decision, the Court rejected Triumph's argument for a 3 year look back based on the Field Operations Manual. The Court said the FOM does not bind either OSHA or the Commission, and does not create substantive rights for employers. The Court also cited the Commission's precedents that "the time between violations does not bear on whether the violation is repeated." Although OSHA will generally apply a five-year look back for repeat violations as is currently stated in the FOM, the Triumph Construction case is a reminder that neither OSHA nor the Commission is bound by it.

OSHA Delays Beryllium Standard Enforcement (Again)

By: Adele L. Abrams, Esq., CMSP

The Occupational Safety and Health Administration (OSHA) has announced another delay in enforcement of its final rule on occupational exposure to beryllium. The original enforcement date had been pushed out to March 2018, but enforcement will now commence in general, construction, and shipyard industries on May 11, 2018. OSHA provided the extended timeframe to ensure that stakeholders are aware of their obligations, and that OSHA provides consistent instructions to its inspectors.

In January 2017, OSHA issued new comprehensive health standards addressing exposure to beryllium in all industries. In response to feedback from stakeholders, the agency is considering technical updates to the January 2017 general industry standard, which will clarify and simplify compliance with requirements. OSHA will also begin enforcing on May 11, 2018, the new lower 8-hour permissible exposure limit (PEL) and short-term (15-minute) exposure limit (STEL) for construction and shipyard industries. In the interim, if an employer fails to meet the new PEL or STEL, OSHA will inform the employer of the exposure levels and offer assistance to assure understanding and compliance.

Law Office attorney Brian Yellin is also a CIH and CSP who can provide training and compliance assistance to affected employers in advance of the new enforcement deadline. The rule not only lowers exposure limits but also requires exposure monitoring, medical surveillance, worker training, and exposure control plans, similar to OSHA's new crystalline silica standard. For assistance, call 301-595-3520.

Crane Rule Goes to Office of Budget and Management

By: Tina Stanczewski, Esq., MSP

On February 22, 2018, the Occupational Safety and Health Administration (OSHA) submitted a draft version of the proposed rule on Construction Crane Operator Qualification to the White House Office of Management and Budget (OMB). The rules controversy arises over its requirements for crane operators to be certified by type and capacity. The organizations who certify crane operators only do so by type of crane.

The majority of the rule has already taken effect, only the portion concerning certification has remained at issue. Last year, OSHA postponed the certification until November 2018, but the submission to OMB indicates they are moving forward with the current version. For additional details, please see our September 2017 newsletter "OSHA Extends Deadline for Crane Operator Certification."

NIOSH Pilots Silica Monitoring System

By: Adele L. Abrams, Esq., CMSP

Respirable crystalline silica has been recognized as an occupational health hazard since the time of the ancient Greeks, and myriad studies in the United States over the past century have further supported the correlation between exposures to silica in the workplace and the development of respiratory diseases including silicosis, pneumoconiosis, COPD, and lung cancer (in addition to suggested correlations with renal and auto-immune diseases). More recently, a study released in February 2018 noted an accelerated development of black lung disease in coal miners, possibly due to increased exposure to silica generated by commonly used mining methods. OSHA reduced its permissible exposure limit (PEL) to 50 ug/m3 as an eight-hour time-weighted average, but MSHA still allows miners to legally be exposed to twice the OSHA PEL, and has tabled for now its own rulemaking that would bring exposures into conformity with OSHA.

The National Institute for Occupational Safety & Health (NIOSH) has now started a pilot project to use a monitoring system at more than 60 minutes that could provide real time silica exposure results at the end of each workshift. This system would alert miners to their potential risk much sooner than the current sampling system, which often involves delays of several weeks before the exposure monitoring results are shared with miners. Real-time data will also allow adjustments to controls to make them more effective, without delaying such changes until the exposure monitoring results are returned by the laboratory.

The new technology uses commercially available instruments to collect dust samples, but the samples could be analyzed on the same day they are collected, and this will allow for quicker adjustments to equipment (or to selection of respiratory protective equipment) if silica exposures are elevated. NIOSH hopes to roll out the system and make it user-friendly by the end of 2018, so that it can be implemented in the mines. While MSHA requires "surveys" at metal/nonmetal mines to ensure that miners are not exposed above the current PEL (equivalent to 100 ug/m3), there are no specified sampling requirements to guide employers on what is required. At present, there would be no legal requirement to implement the new monitoring devices at any mines, coal or metal/nonmetal site.

The NIOSH field-based approach still uses dust sampling cassettes, but the samples could be quickly analyzed in a few minutes on-site using the new instrumentation – which costs between $10,000 and $25,000 for employers to purchase. However, this would also eliminate the need for laboratory analysis, which would offset some of the initial expense.

At this time, MSHA would not permit the use of this approach as it dictates the type of sampling devices that are permitted under its respirable dust rule (for coal) and this excludes the gravimetric samples used by this system. It could, however, be helpful in gauging the real-time effectiveness of engineering controls, even if it was not used for MSHA compliance purposes. The system also holds promise more immediately in OSHA-regulated workplaces that are already under the agency's reduced silica PEL and must conduct more frequent sampling to develop effective exposure control plans.

For more information on silica solutions, contact the Law Office's team at 301-595-3520 or write to: safetylawyer@gmail.com.

Supreme Court Narrows Definition of "Whistleblower" Under Dodd-Frank

By: Diana R. Schroeher, Esq.

On February 21, 2018, the U.S. Supreme Court issued a unanimous decision which significantly narrowed the rights of whistleblowers who report violations of the securities laws. In *Digital Realty Trust, Inc. v. Somers*, the high court held that whistleblowers who file under the 2010 Dodd-Frank Act are only protected if they report possible securities violations directly to the Securities and Exchange Commission (SEC).

The Dodd-Frank Act, which was passed in response to the 2008 financial crisis, relates back to the 2002 Sarbanes-Oxley Act (SOX), an act passed in response to fraudulent corporate practices, and the collapse of the Enron Corporation. Both laws protect whistleblowers in the financial or securities sectors from retaliation. The Dodd-Frank and SOX laws defined "whistleblower" differently. SOX defined "whistleblower" broadly: an employee who reports violations internally to management, to any federal agency, to Congress, and/or to the SEC. Dodd-Frank defined "whistleblower" narrowly: only employees who report directly to the SEC are covered. Dodd-Frank also provided far greater incentives to whistleblowers. Because Dodd-Frank did not protect internal reporters, the SEC issued Rule 21-F, which had the effect of expanding protections to employees who only reported internally.

Respondent employee Paul Somers alleged that his employer, Digital Realty Trust, Inc. terminated him in retaliation for reporting possible violations of securities laws to his senior managers. Somers did not report to the SEC or any other entity. He then filed in federal district court under Dodd-Frank, anticipating that the court would afford deference to the SEC Rule 21-F for internal reporters. The lower courts gave deference to the SEC's rule, and allowed Somers' lawsuit to proceed.

Resolving the split in the federal circuit courts, and writing for the unanimous court, Justice Ginsburg held in this case that the definition of "whistleblower" in the Dodd-Frank Act is "clear and conclusive" and "unambiguous" and as such, declined to afford deference to the SEC Rule 21-F. Dodd-Frank filers must report to the SEC.

Following *Somers*, employers are urged to audit their whistleblower programs to ensure the procedures for internal reporting are intact and responsive, and that employees are aware of these procedures. Internal reporting provides the employer an opportunity to resolve employee complaints promptly and efficiently, and possibly as an alternative to those complaints reaching the SEC. Employers should also be aware that there are other federal and state laws that may also protect whistleblowers from retaliation in violation of public policy.

For a copy of the Supreme Court's decision or guidance on this topic, please contact the Law Office.

OSHA Begins Enforcement of Electronic Reporting Rule

By: Gary L Visscher, Esq.

Under OSHA's "Improve Tracking of Workplace Injuries and Illnesses" regulation, all establishments with 250 or more employees, and establishments with 20-249 employees in certain "high risk industries," were required to electronically submit their Form 300A (Injury and Illness summary form) for calendar year 2016 by December 15, 2017.

In addition, these establishments must submit the Form 300A for calendar year 2017 by July 1, 2018. (The electronic submission requirements for these establishments is separate and in addition to the requirement that all establishments covered by OSHA's recordkeeping rule post the Form 300A for 2017 in the workplace from February 1 to April 30, 2018).

A recent (February 21, 2018) memo to OSHA Regional Administrators outlines how OSHA is enforcing the electronic submission requirement. The memo states that OSHA accepted 2016 data until December 31, 2017, but that the portal for 2016 is now closed, and OSHA is only accepting 2017 data.

Area offices are being provided access to the database containing the submitted Form 300A's for 2016. Inspectors are expected to refer to the list before conducting any inspection; if the establishment is one that should have submitted the information but is not on the list, the inspector is directed to inquire during the inspection. If the employer can verify that it tried to submit the records electronically but was unable to do so, the inspector is directed to collect the injury and illness records but not issue a citation. However, if no such verification is provided, the employer will receive an other than serous citation. If paper copies are immediately provided, or if the employer shows that it has already submitted the information for 2017, no penalty will be assessed.

Electronic Reporting Rule, cont.

Otherwise, a penalty for the other than serious violation will be assessed. An employer who fails to produce a paper copy, or if there appears to be other recordkeeping issues, may also anticipate a full recordkeeping audit.

The memo indicates that the six-month period to issue a citation will apply to electronic submission, thus an employer may not be cited for failure to submit the 2016 information after June 15, 2018. According to information from OSHA, about 214,000 Form 300A's were submitted for 2016. Submitting the information requires the establishment or employer to create an account; about 60,000 accounts have been created, and if an account was created to submit the 2016 information, the same account is used for subsequent years.

The 214,000 submissions are less than OSHA anticipated it would receive annually when it issued the rule. There may be several reasons: OSHA delayed the filing date several times during 2017, and OSHA has stated that it plans to revise the rule, both of which may have created some confusion about when the first filing was required. In addition, not all state plan states have adopted the electronic filing rule, so employers in those states may not yet be required to submit their information. OSHA plans to send a postcard to employers whose establishments are likely to be covered, reminding them of the electronic filing obligation.

Whether the submitted electronic records will be publicly available is currently in litigation. After the initial submission of Form 300A's in 2017, Public Citizen filed an FOIA request seeking access to the records. OSHA denied the request on the basis that the records fall under the exemption for "information compiled for law enforcement purposes" in that OSHA plans to use the electronic records for site-specific enforcement targeting. Public Citizen has challenged the denial in U.S. District Court for the District of Columbia.

PAW Act Reintroduced in Senate

By Adele L. Abrams, Esq., CMSP

On March 22, 2018, Sen. Tammy Baldwin (D-WI) introduced a new version of the Protecting America's Workers Act (PAW Act) in the Senate. S. 2621, which was referred to the Senate Health, Education, Labor & Pensions committee, has five original co-sponsors: Sen. Patty Murray (D-WA), Sen. Sherrod Brown (D-OH), Sen. Elizabeth Warren (D-MA), Sen. Edward Markey (D-MA) and Sen. Bernie Sanders (I-VT).

The bill, in various versions, has been before the Senate for 14 years, ever since the first PAW Act was introduced by the late Sen. Edward Kennedy. To date, no version has been cleared for floor action. The legislation would make it a felony to knowingly violate OSHA standards in relation to the death or serious bodily injury of a worker. Currently, the maximum federal criminal sentence for willfully killing a worker is six months in prison plus a monetary penalty, although states can elect to prosecute under their criminal laws for manslaughter, homicide, reckless endangerment and assault and battery. The legislation would also extend criminal penalties to corporate officers and directors. Although OSHA's maximum penalties were recently increased to $1336 as of January 2, 2018, the legislation would set a mandatory minimum penalty of $50,000 for willful violations resulting in death.

The legislation also enhances workers' whistleblower protections and rights for their family members after a serious accident or fatality. In addition, abatement of serious, willful or repeated violative conditions would be required even if a citation is contested, although there would be a process for seeking to stay abatement in individual cases while the matter is being litigated. Currently, filing a contest stops the clock on any abatement requirements until the matter becomes final through settlement or a final judgment in litigated matters.

"We need to provide greater protections for workers and their families, so no one gets hurt. Everyone should be able to go to work knowing they will come home at the end of the day in the same condition and without experiencing any threat to their health and safety," Sen. Baldwin stated in introducing the legislation. She called it unacceptable for workers to face firing for raising safety concerns or filing a complaint.

The full text of the legislation was not available at press time. For more information on the S. 2621, contact Adele Abrams at safetylawyer@gmail.com.

POV, Con't

these ideas to heart when developing your improvement plan. Facing the possibility of an MSHA POV notice can be daunting to a mine operator. If you feel you need assistance in getting your compliance record in better shape, reach out to us before you get behind the POV curve.

MSHA UG Diesel Exhaust Exposure Rule Reopened

By Adele L. Abrams, Esq., CMSP

The Mine Safety and Health Administration (MSHA) is reopening the rulemaking record for public comment and extending the comment period for the Agency's Request for Information on Exposure of Underground Miners to Diesel Exhaust published on June 8, 2016 (81 FR 36826). The comment period on the RFI originally closed on November 30, 2016, prior to the end of the Obama administration.

During the comment period, MSHA received requests from stakeholders for MSHA and NIOSH to convene a Diesel Exhaust Health Effects Partnership (Partnership) with the mining industry, including coal and metal and nonmetal mines, diesel engine manufacturers, and representatives of organized labor. In response, MSHA reopened the rulemaking record until January 9, 2018 (82 FR 2284).

Since the close of the comment period, MSHA received additional stakeholder requests to reopen the record and further extend the comment period on the RFI. This notice reopens the rulemaking record and extends the comment period for one year, until March 26, 2019.

The notice was published in the Federal Register on March 26, 2018. For more information on this occupational health issue, or assistance in developing comments on the rulemaking, contact Adele Abrams, Esq., CMSP, at safetylawyer@gmail.com. The Law Office also offers industrial hygiene and compliance assistance on diesel exposure, silica, noise and other workplace issues.

DID YOU KNOW?

Our firm's safety professionals offer MSHA Part 46 and 48 training and other types of OSHA/MSHA courses and webinars.

Adele Abrams conducted a Silica Workshop for the Oregon Independent Aggregates Association.

Michael Peelish and Joshua Schultz conducted Part 46 annual refresher training.

2018 SPEAKING SCHEDULE

ADELE ABRAMS
April 5: Business 21 Webinar, OSHA's E-Recordkeeping Rule: What's Recordable & Reportable
April 9: ASSE WISE Lunch n Learn Webinar, Safety in the Age of Trump. Info: www.asse.org
April 10: BLR Webinar, OSHA's Crystalline Silica Rule: General Industry/Maritime Requirements
April 11: ASSE Region IV PDC, Keynote presentation on Medical Marijuana & Safety, Tuscaloosa, AL
April 12: National Safety Council, Southern Conference, presentation on Crystalline Silica, New Orleans, LA
April 17-18: BLR Safety Summit, Orlando, FL, presentations on crystalline silica, safety incentive/discipline and drug testing programs, and safety leadership
April 19: Hudson Valley ASSE PDC, Harriman, NY, keynote address, OSHA Legislative and Regulatory Update
April 24: Mid Atlantic Construction Safety Conference, Greenbelt, MD

May 10: New Mexico Mine Safety Conference, Albuquerque, NM, presentation on Effective Incident Investigations
May 11: New Mexico Mine Safety Conference, Albuquerque, NM, Legal Roundtable on Mine Safety Issues
May 18: Sassaman Consulting Spring Forum, King of Prussia, PA, presentation on OSHA's crystalline silica rule
May 21: National Electrical Contractors Association, Louisville, KY, presentation on OSHA/MSHA Update
May 22: National Safety Council, Mid-Year Division Meeting, Chicago, IL, presentation on crystalline silica in general industry
May 24: Business 21: Webinar, Legally Effective Incident Investigation

June 4-5: ASSE Professional Development Conference, San Antonio, TX, presentations on ADA, OSHA and Medical Marijuana; Crystalline Silica; and Whistleblower Protections for Safety Professionals
June 7: Environmental Information Association, crystalline silica workshop, Cinnaminson, NJ
June 12: SafePro Mine Safety Law Institute, Harrods Cherokee Casino, NC
June 13: ClearLaw Webinar, OSHA's Walking/Working Surfaces Rule
June 16: LERA (Labor & Employment Law) Annual conference, Baltimore, MD, presentation on OSHA and Drug Testing
June 20-22: MTBMA Annual Conference, Cambridge, MD, presentation on crystalline silica

TINA STANCZEWSKI
May 22-24: N.C. Mine Safety & Health Law School, Morganton, NC
Sept. 18-20: N.C. Mine Safety & Health Law School, Castle Hayne, NC