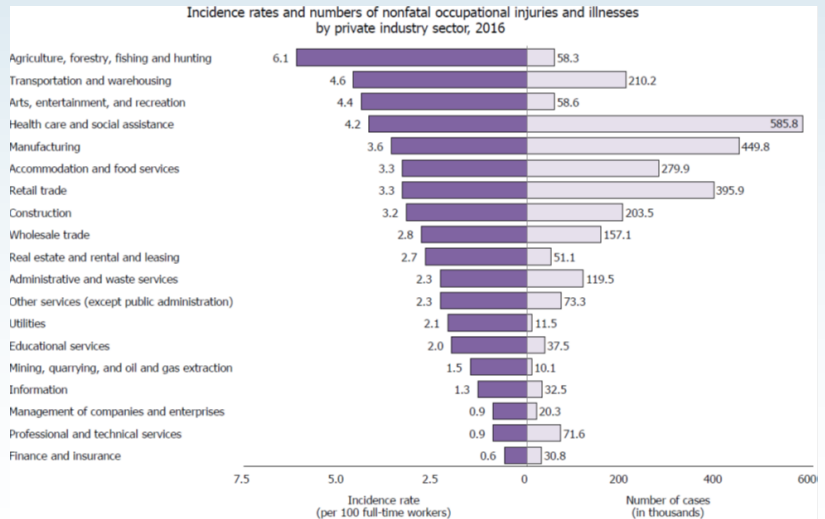


# October 2018 Newsletter

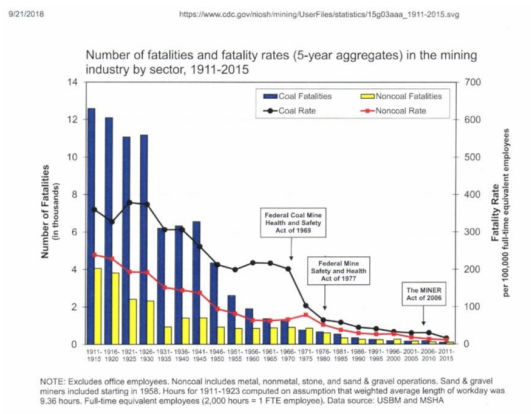
## Undeserved Reputation

History and folklore have left an indelible mark (in the eyes of many) on the mining industry. Mining’s reputation as a noisy, unsightly neighbor is difficult to overcome. Mining’s reputation as a dangerous occupation should be easier to overcome. Even folks too young to remember perceive a bias against mining as an occupation that places the mine worker in constant peril of explosion, disabling injury and lung disease.

The Bureau of Labor Statistics graph to the right may help to dispel that misguided impression. Mining still has safety and health issues to resolve around those incredible forces of nature and the energy applied to



Approximately 1 in 5 injury and illness cases reported by private industry employers in 2016 occurred in healthcare and social assistance industries. About half of all nonfatal injury and illness cases reported among private industry establishments in 2016 occurred in just three industry sectors—health care and social assistance, manufacturing, and retail trade.



mining, processing and transporting ore. Achieving the fifth best incident rate (ahead of educational services) provides a valid talking point. While not perfect, one can argue that mine safety and health is under control. With few exceptions, mine operators have provided the tools that miners need to work safely and return home to their families daily.

Statistics collected through the 20th century and into the 21st contribute to the new story. Similarly, mining had made terrific progress in many communities with environmental containment, addressing quality issues such as water, air, blasting and noise. Mine entrance beautification and reclamation of mined-out areas and abandoned mine lands also contributed to improving the image of mining.

In the end, it is up to us to continue to demonstrate exceptional commitment to safety, environment, and community—and then to speak up for our new reputation.

*(Larger reproductions of graphs on page 10 and 11)*

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# October 2018 Newsletter



## NEWS

On October 1, the grace period is over. The compliance extension that MSHA had provided to offer compliance assistance to M/NM operators in establishing workplace examination procedures and records under the revised 56/57.18002 expired on October 1. MSHA inspectors will be reviewing workplace inspection records and will likely ask questions about your procedures. Here is an overview of the basic requirements.

The revised rule requires that:

- A competent person examine each working place for conditions that may adversely affect the safety or health of miners. The working place must be examined at least once each shift, before work begins or as miners begin work in that place.
- Promptly initiate appropriate corrective action when adverse conditions are found.
- Promptly notify miners in affected areas if adverse conditions are found and not corrected before miners are potentially exposed.
- Withdraw all persons from affected areas when alerted to any conditions that may present an imminent danger, until the danger is abated.
- Create an examination record before the end of each shift that includes:
  - The name of the person conducting the examination;
  - Date of the examination;
  - Location of all areas examined;
  - A description of each condition found that may adversely affect the safety or health of miners that is not promptly corrected; and
  - The date when the described condition is corrected.
- Make the examination record available to MSHA and miners' representatives, with a copy provided upon request.

## Mining Safety Board

The Mining Safety Board will meet at 9:00 a.m. at the WIPP offices on National Parks Highway in Carlsbad on Tuesday, October 30

An agenda has been posted on the BMS website. [nmminesafety.com](http://nmminesafety.com)

Amendments by the MBS on the NM Administrative Code (19.6.4) for *Certification of Coal Mine Officials* will be published in the NM Register on October 15. A summary of the changes is posted on [page 3](#) of this newsletter.



Inquiries can be directed to Board Chair Jeff Gordon at: [jeffgordon.nmmsb@yahoo.com](mailto:jeffgordon.nmmsb@yahoo.com).

### Mining - Fatal Injuries

YTD—9/17/2018: 9 M/NM; 7 Coal; 16 Total

#### COAL

**Fatality #6;** September 11, 2018—A 27-year-old miner died as a result being pinned against the rib by a mobile bridge conveyor at the Rosebud mine site in Snyder Township, Jefferson Co, PA.

**Fatality #7;** September 07, 2018 — A 60 year-old haul truck driver jumped from the truck that had caught fire but succumbed to burns on 9/12. Bear Run Mine, Sullivan Co, Indiana — Surface

#### M/NM

**Fatality #10;** October 02, 2018—A 40 year-old underground miner was killed by an explosion at a Lead/Zink mine in NY.

MSHA has re-classified Fatality #8 as a highway traffic incident.

**If you have an apple and I have an apple and we exchange these apples then you and I will still each have one apple. But if you have an idea and I have an idea and we exchange these ideas, then each of us will have two ideas.**

**George Bernard Shaw**

# October 2018 Newsletter

## NEW MEXICO MINING SAFETY BOARD ACTION

The NM Mining Safety Board (MSB) met on June 21 in Socorro. One of the action items on the agenda was the approval of proposed amendments to the NM regulations governing the certification and recertification of coal mine officials. A hearing had been conducted in Albuquerque on May 8 to receive comments on the proposal. Comments may have also been provided by mail or email via the Bureau of Mine Safety.

On June 21, the MSB approved the amendments, and after some required formatting, the final revised rule was submitted on time for publication in the New Mexico Register on October 15. On that date, the new provisions will be active.

*New Mexico Mining Safety Board – Approved Amendments to 19.6.4 NMAC – Certification of Coal Mine Officials*

*The proposed rule amends the current rule as follows:*

- ◆ *The proposed rule standardized terminology with regard to the identification of the various certifications contained therein.*
- ◆ *The proposed rule permits scheduling examinations by appointment.*
- ◆ *The proposed rule codifies that the SMI may require supporting documentation from applicants.*
- ◆ *The proposed rule clarifies the intent of the examiner experience to qualify for underground coal mine foreman certification.*
- ◆ *The proposed rule creates a new certification applicable only to certified underground coal mine foremen who will have surface foreman duties at an underground mine.*
- ◆ *The proposed rule expands the adjusted experience requirement adjustment afforded mining engineers to include other persons who hold advanced competency.*
- ◆ *The proposed rule includes a table that serves as a guide to prerequisites and areas of responsibilities for coal mine officials.*
- ◆ *The proposed rule provides a means for recertification of coal mine officials who may have been unemployed or left the state for a period of time.*
- ◆ *The proposed rule codifies the practice of adjusting the recertification date to a single date each year to facilitate recordkeeping and processing at the BMS office and for operators.*
- ◆ *The proposed rule clarifies the suspension or revocation criteria to specify discipline “by a state mine regulatory authority” in another state.*

The New Mexico Register may be accessed at:  
<http://164.64.110.134/nmac/nmregister/home>

On or about October 15, the revised standard will be posted on the BMS website at:  
<http://www.nmminesafety.com/issChgs.htm>

## Bureau of Mine Safety Calendar



### October:

**01 Wish your MSHA inspector Happy New Year!**

**9-11 TRAM Conference, Beaver, WV**

**15 New Mexico Register Publishing final rule**

**18 NMMHSC Planning Meeting, ABQ**

**22-24 National Safety Congress, Houston, TX**

**22-24 Interstate Mining Compact Commission, midyear meeting, Biloxi, MS**

**30 Mining Safety Board, Carlsbad**

### November:

**06 Don't forget to V O T E !**

**08 NMMHSC Planning Meeting, ABQ**

**11 Veterans Day (Observed 11/12)**

**15 Coal Mine Examiner and Foreman exam, Farmington Civic Center**

**22-23 Thanksgiving Holiday—BMS office closed**

Need New Miner Training, Annual Refresher Training, First Aid Training? The Bureau of Mine Safety is ready to assist. Part 46; Part 48-B

**Call 575-835-5460**

# October 2018 Newsletter



## MSHA PROGRAM POLICY MANUAL COAL & M/NM

*Among the devices in an MSHA inspector's tool kit is the authority to withdraw personnel from an area or from a process that the inspector believes constitutes an imminent danger. Imminent Danger is defined in the Federal Mine Safety and Health Act of 1977 [107(a)]. It is further defined in MSHA's Program Policy Manual and by case law.*

### Federal Mine Safety and Health Act of 1977

SEC. 107. (a) If, upon any inspection or investigation of a coal or other mine which is subject to this Act, an authorized representative of the Secretary finds that an imminent danger exists, such representative shall determine the extent of the area of such mine throughout which the danger exists, and issue an order requiring the operator of such mine to cause all persons, except those referred to in section 104(c), to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that such imminent danger and the conditions or practices which caused such imminent danger no longer exist. The issuance of an order under this subsection shall not preclude the issuance of a citation under section 104 or the proposing of a penalty under section 110.

*In addition to enforcement action, the term imminent danger is used in a regulatory context with respect to workplace exams (emphasis added):*

#### 56/57.18002(a)(2)

Conditions noted by the person conducting the examination that may present an imminent danger shall be brought to the immediate attention of the operator who shall withdraw all persons from the area affected (except persons referred to in section 104(c) of the Federal Mine Safety and Health Act of 1977) until the danger is abated.

#### 75.363(a)

... If the condition creates an imminent danger, everyone except those persons referred to in section 104(c) of the Act shall be withdrawn from the area affected to a safe area until the hazardous condition is corrected. Only persons designated by the operator to correct or evaluate the hazardous condition may enter the posted area . . .

#### 75.364(d)

(d) Hazardous conditions shall be corrected immediately. If the condition creates an imminent danger, everyone except those persons referred to in section 104(c) of the Act shall be withdrawn from the area affected to a safe area until the hazardous condition is corrected. Any violation of the nine mandatory health or safety standards found during a weekly examination shall be corrected.

#### 77.1713(b)

If any hazardous condition noted during an examination conducted in accordance with paragraph (a) of this section creates an imminent danger, the person conducting such examination shall notify the operator and the operator shall withdraw all persons from the area affected, except those persons referred to in section 104(d) of the Act, until the danger is abated.

### Program Policy Manual

#### 107(a) Imminent Danger

"Imminent danger" is defined in the Act as "the existence of any condition or practice in a mine which could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated." The two important elements of an imminent danger are:

1. the existence of a condition or practice which could reasonably be expected to cause death or serious physical harm; and
2. the imminence of the danger is such that it may cause death or physical harm before it can be abated.

An imminent danger withdrawal order usually involves a violation of one or more mandatory standards, but such an order could also arise from natural or other causes without violation of a standard. The imminence of danger is a judgement to be made in light of all relevant circumstances. If the violative condition or practice is not an imminent danger, the proper action by the inspector is to issue a citation or order for the violation of the Act, mandatory health or safety standard, rule, order, or regulation(s), and to fix a time for abatement (if applicable).

In the absence of an imminent danger, an inspector cannot use Section 107(a) orders for "control purposes." The Act and applicable legal decisions spell out the need for an imminent danger to justify the issuance of a Section 107(a) order.

*One might rightfully assume that when MSHA used the term "judgement" that there would be disagreement between an inspector and the operator. Similarly, when performing the exams cited, (in the absence of an inspector) a judgement must be made about whether any particular hazard qualifies an imminent danger. It's also important to note that an imminent danger (or any hazard) does not necessarily have to constitute a violation of the Act or of the regulations contained in CRF 30.*

# October 2018 Newsletter

Continued from Page 4

*Each of us has that line that we will not cross that defines imminent danger individually. But when we take that step to declare an imminent danger, there is comfort in having some rationale to back up that decision. Decisions rendered by the Federal Mine Safety and Health Review Commission (FMSHRC) and Administrative Law Judges (ALJ's) should help us better define that line.*

*Note: Decisions by the full FMSHRC supersede ALJ decisions and generally more recent decisions carry more legal weight than older decisions. Decisions concerning issues that match your issues are especially relevant.*

## **Docket No. SE 2012-681-R Commission Decision**

In August 2012, an MSHA inspector discovered methane in excess of 5% located in a roof cavity in a crosscut near the face area. The cavity was approximately 5' x 7' x 2' in depth. The inspector used a pallet of blocks to reach the cavity to get a reading. Eight miners were in the area, and a Lo Trac machine was operating in the area. The inspector issued an imminent danger order and personnel were withdrawn. The inspector argued that the Lo Track was likely to enter the area and create sparks that would ignite the methane.

The operator contested the citation arguing that the inspector's conclusions were in error. The ALJ and the Commission ruled in support of the MSHA inspector stating that the inspector had reason to believe that an imminent danger existed. (*emphasis added*)

## **Docket Nos. WEST 2013-827-RM; 828-RM; 829-RM; 1009-M Commission Decision**

During a regular inspection of a sand and gravel mine, the MSHA inspector observed a scraper moving clay to a waste dump. The inspector stopped the scraper to inspect the machine and found that the service brakes were incapable of stopping and holding on a grade (12%-14%) when loaded. The inspector issued a 107(a) order.

*The Commission's reasoning in supporting the ALJ's decision in support of the inspector is worth noting.*

The Judge affirmed the section 107(a) order, specifically noting that it was issued immediately after the inspector observed the scraper fail to stop on a steep grade while carrying a heavy load. 36 FMSHRC at 2178.

Accordingly, the Judge concluded that the inspector did not abuse his discretion. Id. The Judge correctly limited his analysis to whether the inspector's belief was reasonable at the precise time he issued the order. See Jim Walter Res., Inc., 37 FMSHRC 1968, 1971-72 (Sept. 2015); see also Wyoming Fuel Co., 14 FMSHRC 1282, 1292 (Aug. 1992) ("the appropriate focus is on whether the inspector abused his discretion when he issued the imminent danger order.").

We (the Commission) conclude that the Judge's decision – that the inspector reasonably believed that the scraper operator risked serious physical harm by continuing to drive to the waste dump – is supported by substantial evidence in the record.

At the time he issued the oral order, the inspector was aware that the scraper was carrying a full 70,000 pound load. Tr. 146, 155. The inspector had just witnessed that the scraper was not able to stop on a grade. Tr. 41. Despite the defective brakes, the scraper continued to travel toward the waste dump, an area of the mine with multiple grades. Tr. 43-45. In addition, the inspector was aware that an embankment was under construction at the waste dump. Tr. 34, 40. The inspector testified that his primary concern was that the scraper would depart that embankment because it was traveling to the dump site without fully functioning brakes. Tr. 39, 41 ("Primarily my concern [was] about departing the embankment."). The operator's representatives were not able to stop the driver nor communicate the order to him as they did not have their radios at that moment. Tr. 42, 84-86, 177.

Inspector Chaix understood that although there were alternative methods available to abruptly stop the vehicle, such as the emergency brake or lowering the cutting tool, using either method would put the driver at risk for injury. Tr. 49-50. The inspector succinctly explained why he believed this was an imminent danger, stating "[t]hat's a big piece of equipment and . . . some pretty big distances and some steep grades involved. It's the kind of thing that gets people killed." Tr. 44. When asked who he expected to be injured by this condition, he responded, "[p]rimarily the equipment operator themselves, but anybody else nearby in the traffic pattern of the scraper." Tr. 44.

We conclude that the testimony above supports the Judge's conclusion that the inspector reasonably believed that an imminent danger existed. Accordingly, we affirm the Judge's conclusion that the inspector did not abuse his discretion in issuing the section 107(a) order. (*emphasis added*)

*We've cited parts of just two of the many decisions that may be accessed on line via the FMSHRC website.*



<https://www.fmsihrc.gov/decisions/commission>

*In many cases, the determination of imminent danger is obvious. It's those fuzzy gray areas that we may have difficulty with. In those cases, doesn't it make sense to judge conservatively? Rather than debate the legalities, when we discover a condition or practice is in close proximity to that line which we refuse to cross, let's stop, not to rationalize the situation, but to accept the hazard for what it is and to take the appropriate action to mitigate the risks and ultimately to protect our people.*

# October 2018 Newsletter

3M Fall Protection Business

3833 SALA Way  
Red Wing, MN 55066  
800 328 6146

## Letter to Distributors

### **3M™ DBI-SALA® 16 Foot Talon™ Self Retracting Lifeline**

Only Affects Lot Codes 12092430 through 18062730

### **Stop Use & Recall Field Service Action IMMEDIATE ACTION REQUIRED**



September 12<sup>th</sup>, 2018

Dear 3M Fall Protection Distributor:

3M Fall Protection is issuing the attached Stop Use and Recall Notice regarding the 3M™ DBI-SALA® 16 Ft. Talon™ Self Retracting Life Line. We have detected a small quantity of DBI-SALA 16 Ft. Talon™ Self Retracting Lifelines that are defective due to an assembly error. There have been no reports of fall-related injuries associated with this condition. However, **this assembly error would result in the unit not arresting a fall, which could result in serious injury or death. Your immediate action is required.**

To remedy this situation, 3M Fall Protection is launching a global Stop Use & Recall Field Service Action to inspect, and repair or replace all 16 Ft. Talon Self-Retracting Lifelines with lot codes 12092430 through 18062730 at no cost to end users.

Please note the affected model numbers and lot code range and mail, email or fax a copy of the attached Notice directly to your customers who have purchased the 3M™ DBI-SALA® 16 Ft. Talon™ Self Retracting Lifeline. (If you have not received the history report of our sales to you, please call us at 800-328-6146 (ext. 2012) or email [3MUSFPServiceAction@mmm.com](mailto:3MUSFPServiceAction@mmm.com)). The Notice provides instructions for end users as well as contact information if they have any questions or concerns. Alternatively, if you provide us with a list of customers who have purchased affected 16 Ft. Talons from you, 3M Fall Protection will communicate directly with your customers to facilitate the inspection procedure.

Thank you in advance for your support and cooperation in reaching your customers with this information.

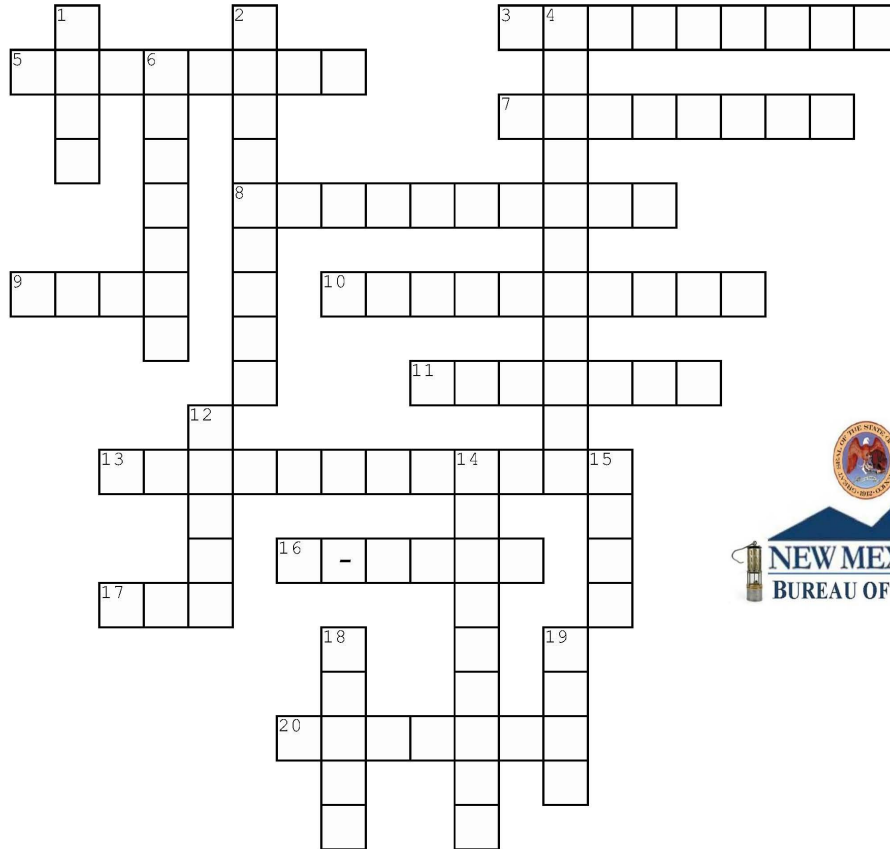
Please email any questions to: [3MUSFPServiceAction@mmm.com](mailto:3MUSFPServiceAction@mmm.com)

Frank Courtemanche, Global Quality Manager

# October 2018 Newsletter

## Safeguards

Complete the crossword below



Created with TheTeachersCorner.net [Crossword Puzzle Generator](http://www.theteacherscorner.net)

### Across

3. A seatbelt is a good example of an occupant \_\_\_\_\_
5. A structure placed close to the edge of a walking surface to prevent tools and debris from falling to a lower level
7. A railing provided along stairways to offer stability when ascending or descending
8. Safeguard procedure performed on mobile equipment before operation
9. A one-time use device used to protect electrical circuits from over-current damage
10. Protective coating over electrical wiring that mitigates electric shock
11. A device that constantly checks continuity of a ground conductor is a ground \_\_\_\_\_
13. Safeguard procedure that helps to control slip-trip-fall incidents and falling object incidents
16. A cord or other device that may be activated manually to disable machinery is an \_\_\_\_\_ - \_\_\_\_\_
17. A railing positioned between midway between a guardrail or handrail and the walking surface
20. This type of guard is used to prevent contact with moving power transmission points

### Down

1. Safeguard procedure (initials) for securing energy before work on circuits or equipment
2. A barrier designed to block access by personnel
4. Safeguard procedure performed in the workplace before beginning work
6. A device that may be reset and is used to protect electrical circuits from over-current damage is a circuit \_\_\_\_\_
12. A railing designed to prevent falling
14. A \_\_\_\_\_ device controls activation or operation based on nearness of someone or something
15. Initials for a device designed to interrupt power if an electrical fault to ground is detected
18. A warning \_\_\_\_\_ may be used to alert personnel to machine start-up
19. This type of guard covers an enlarged area with multiple hazardous contact points

*The correct answers will be attached to the archived*

## Location



New Mexico Institute  
of Mining and Technology  
Campus

## Smithsonite:

This 5.2 lb. gem will be  
embedded within sculpture



## "Green" Power:

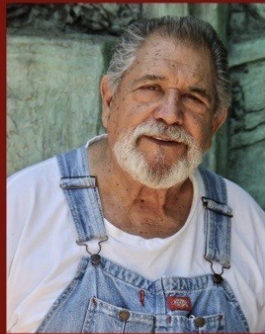
24/7 Customized lighting  
for head lamp and candles

## For More Info, Contact:

Michael Pino  
505-670-2363  
ancianos69@icloud.com

## Sculptor:

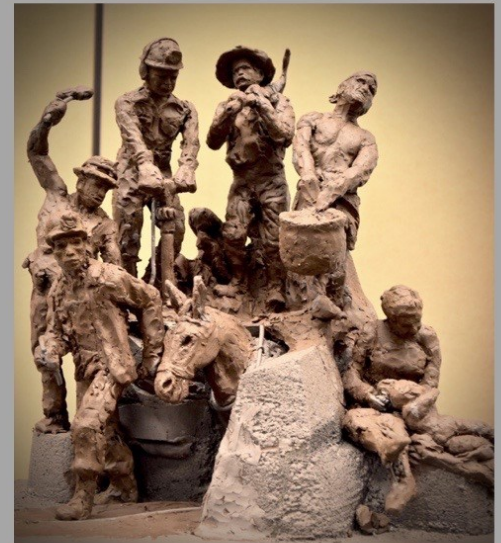
Reynaldo Rivera



In 2014, Reynaldo  
"Sonny" Rivera won  
The Rounders Award  
for his representational  
and impressionistic  
sculptures that move,  
talk, evoke emotion,  
and desire to be  
touched.  
And so it will be with  
this 12 ft. sculpture !

# MINER'S MEMORIAL SCULPTURE

## Donations Needed





# October 2018 Newsletter

**Our Goal:**  
**\$420,000.00**

**Donation Category**

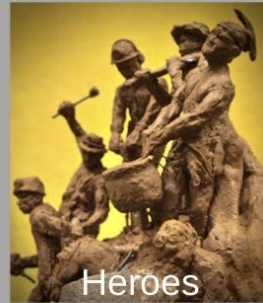
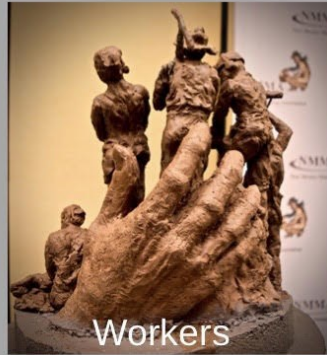
**Astatine:**  
**100% of Cost**

**Platinum:**  
**\$100,000.00**

**Gold:**  
**\$50,000.00**

**Silver:**  
**\$25,000.00**

**Smithsonite:**  
**\$10,000.00**



Dedicated to the Men and Women Who Extract Our Natural Resources for the Benefit of Humankind

## NM Miner's Memorial Sculpture Donation Form

To make donation via check, debit/credit card, PayPal, complete, and mail this donation form along with your choice of payment.

Write a check to: **New Mexico Mining Association**

1470 St Francis Dr. Santa Fe, NM 87505 | Office: 505-820-6662 | E-mail: [nmma@comcast.net](mailto:nmma@comcast.net)

**Our Goal:**

**\$420,000.00**

Donation Category:

- 100% of Cost  
 \$100,000.00  
 \$50,000.00  
 \$25,000.00  
 \$10,000.00

*Thank you!*

All donors will have their name on the plaque!

Amount Enclosed \$ \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

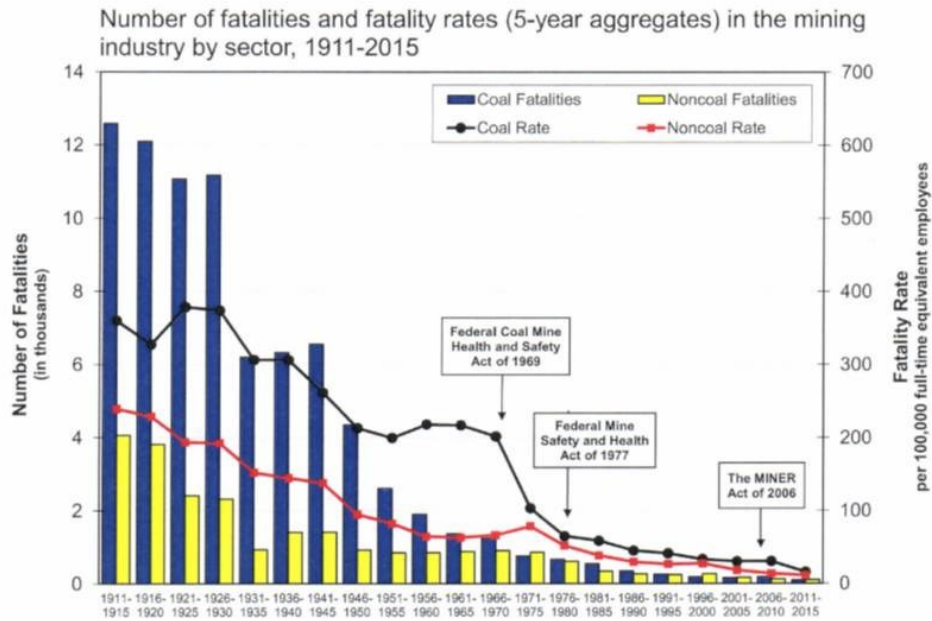
E-mail: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

# October 2018 Newsletter

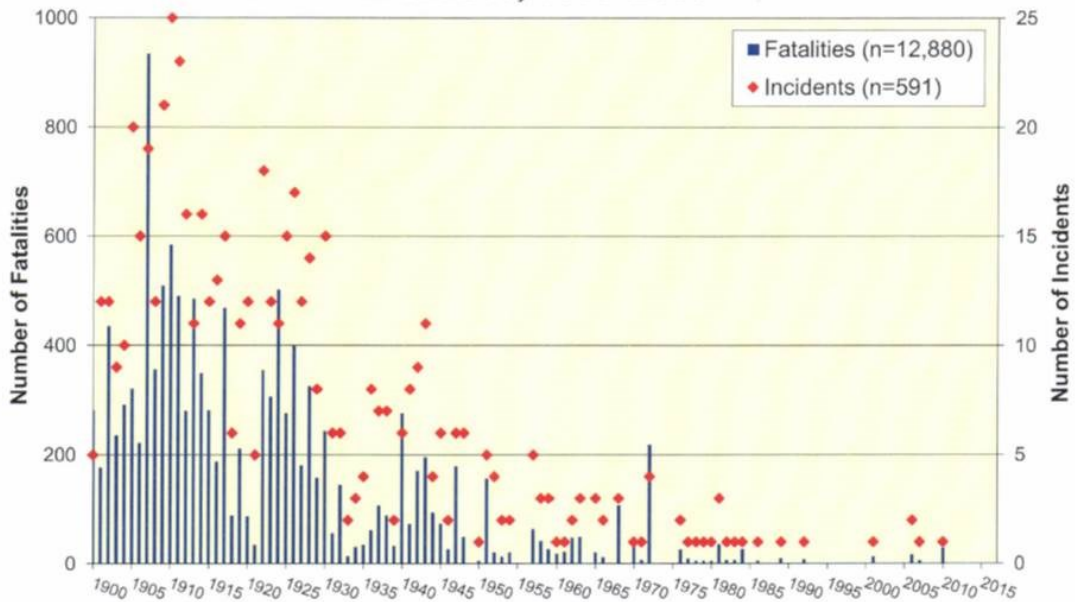
9/21/2018

[https://www.cdc.gov/niosh/mining/UserFiles/statistics/15g03aaa\\_1911-2015.svg](https://www.cdc.gov/niosh/mining/UserFiles/statistics/15g03aaa_1911-2015.svg)



NOTE: Excludes office employees. Noncoal includes metal, nonmetal, stone, and sand & gravel operations. Sand & gravel miners included starting in 1958. Hours for 1911-1923 computed on assumption that weighted average length of workday was 9.36 hours. Full-time equivalent employees (2,000 hours = 1 FTE employee). Data source: USBM and MSHA

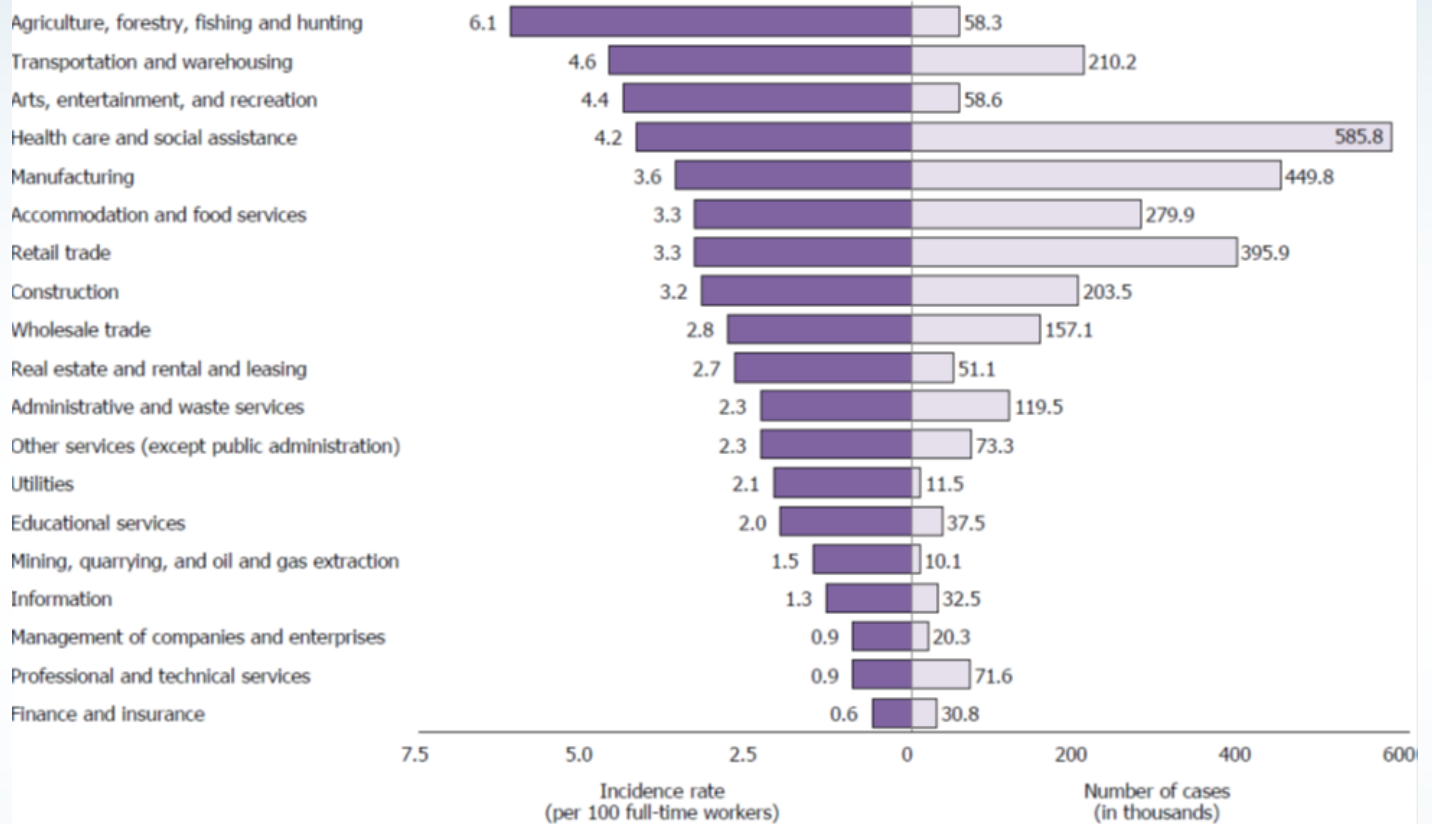
## Historical mine disasters, 1900-2016



NOTE: A mining disaster is an incident with 5 or more fatalities. Data source: MSHA

# October 2018 Newsletter

Incidence rates and numbers of nonfatal occupational injuries and illnesses by private industry sector, 2016



Approximately 1 in 5 injury and illness cases reported by private industry employers in 2016 occurred in healthcare and social assistance industries. About half of all nonfatal injury and illness cases reported among private industry establishments in 2016 occurred in just three industry sectors—health care and social assistance, manufacturing, and retail trade.