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**Does Most Safety Enforcement Go To Areas Of Least Risk? Is There A Better Way?**

As I write in the current issue of *Rock Products* magazine, mining is an industry approaching zero, with record low fatality rates. But, enforcement doesn’t always follow risk. Mines account for only 0.5% of U.S. workplace fatalities but have 40% of federal safety dollars. Even within mining, mines with fantastic safety records are just as likely to get intensive MSHA inspections as those with severe problems. Is there a better way?

*(From* [*Rock Products, April 2019*](http://www.rockproducts.com/key-issues/law/18483-an-industry-approaching-zero.html#.XMod5F5YbPR)*)*

By one critical measure, mine safety just had its second-best year in history: 2018 was the second-lowest year for fatal mining accidents. In fact, compared with other industries, mining is now quite safe. Can this offer a lesson for how to target MSHA enforcement differently in the future?

**An industry approaching zero that is now safer than many others**

In 2018, a total of 27 people were killed in mine accidents in the United States. According to MSHA accident reports, 12 of the deaths occurred in coal mines (which account for 44 percent of the industry’s deaths but only 24 percent of the nation’s miners and 9 percent of the nation’s mines). Fifteen of the accidents occurred in metal/non-metal mines.

While every fatal accident is an immeasurable tragedy, these numbers continue a remarkable decades-long trend in improving mine safety. According to MSHA, the worst year on record was 1907, when an estimated 3,242 miners died. For decades, mining averaged 1,500 or more deaths per year. That fell to under 100 per year in the 1990s and below 30 for the first time in 2015. The lowest remains 25 fatalities in 2016.

Significantly, mining isn’t just safer than it used to be; it’s now also far safer than many other industries. In 2016, mining’s 25 fatal incidents were dwarfed by those in construction contracting (631 fatalities), administrative and building support services (372), food services and restaurants (165), and even the performing arts and sports (53). Mining accounted for just 0.5 percent of all U.S. workplace fatalities.With a recordable injury rate of 2.4, mines were much safer than grocery stores (4.6) or nursing homes (10.9).

**A growing gap between hazards and enforcement resources**

Because mining was much more dangerous when Congress created federal safety agencies decades ago, mining has its own safety enforcement agency all to itself. But, with mining’s dramatic improvement over the last 40 years, the balance has shifted. Today, federal taxpayers spend significantly more on safety per employee in mining than they do in the rest of private industry, where there are far more dangerous workplaces.

For instance, in FY 2019, OSHA has a budget of $557 million to cover 8 million worksites and 130 million employees. That’s roughly $69 per worksite and $4 per employee. With about 2,100 OSHA inspectors, there is one inspector for every 3,800 worksites.

By contrast, MSHA has $373 million to cover 13,200 mines and 333,000 mining industry employees. Its enforcement divisions report 1,493 personnel. That means roughly $25,530 spent per site (versus OSHA’s $69), over $1,000 per miner (versus OSHA’s $4), and just 9 worksites per inspector (versus OSHA’s 3,800). It’s no surprise that MSHA issued more citations in 2017 (101,018) than OSHA did (92,730) though MSHA has so many fewer sites.

It’s even more interesting to compare enforcement resources with hazards. When you add it all up, mining accounts for 0.5 percent of workplace fatalities, but it receives 40 percent of federal safety enforcement resources. Put differently, OSHA is responsible for the places where 99.5 percent of fatal workplace deaths occur but has only 60 percent of federal safety and health enforcement dollars.

**How can we best channel safety and health resources to areas of greatest hazard?**

When it comes to the MSHA/OSHA divide, this imbalance is mostly academic. No one in industry or government is talking about re-aligning MSHA and OSHA resources. But, it illustrates an interesting problem – and opportunity – that also exists within mining. Aside from responding to complaints and accidents, MSHA’s inspection resources are spread across the industry regardless of the true hazards at each site. MSHA believes that it must try to lay eyes on every area of every mine – regardless of whether the mine is a ticking time bomb or, alternatively, has a robust safety and health program, experienced team, excellent training, and below-average injury rates.

Is there a better way? OSHA may offer helpful experience. By necessity, it has developed several methods for prioritizing its attention so it spends more time at sites with greater risk. For example, its regional and national emphasis programs target more inspection activity in industries and workplaces with heightened hazards.

Likewise, for 30 years, OSHA has run the Voluntary Protection Program. To participate, companies must meet and maintain rigorous standards. They have to implement effective safety and health management systems and keep injury and illness rates below national industry averages. They must show proactive cooperation among leadership, the workforce, labor unions, and OSHA. As long as a site demonstrates lower-than-average risk – and maintains VPP’s exacting standards – it is exempt from OSHA programmed inspections. That allows OSHA compliance officers to spend their time visiting more hazardous places. It also frees up the VPP company’s internal safety team to focus on bringing safety to the next level, rather than accompanying inspectors and haggling over citations.

OSHA’s VPP is not perfect, but the results are impressive. According to OSHA, VPP sites consistently have lower accident and workers’ compensation rates than other sites. The average VPP site has a Days Away Restricted or Transferred (DART) case rate 52 percent below industry average. In 2017, 414 VPP companies had zero recordable injuries and illnesses.

**Can MSHA borrow some of this experience?**

While there are no doubt still some bad apples in mining, many mine operators have sophisticated safety programs that far exceed MSHA regulations. MSHA inspectors shouldn’t have to spend weeks or even months at these sites looking at every cover plate, conveyor guard, and dust pile – especially when another facility down the road really needs closer in-person attention.

The Mine Act’s requirement that MSHA inspect every mine “in its entirety” does not have to mean physically observing every nook and cranny. There is legal precedent suggesting that a series of spot inspections could count as a complete inspection. Isn’t a 2-month regular inspection effectively a series of spot inspections anyway?

Court opinions also say that an inspection should involve thoroughly reviewing the “conditions and practices throughout a mine.” Let’s be honest. MSHA’s current model focuses almost entirely on the “conditions” part of this equation. But, it is no less valid to shift the paradigm a bit and focus more on a mine’s “practices” (such as reviewing safety programs, risk assessment systems, and training efficacy), especially when MSHA can assure itself that the mine regularly meets a high bar for safety.

MSHA says it is looking to become more efficient and to run more like a business. As it does so, it certainly cannot compromise on its safety and health mission. With these goals in mind, whether with these proven OSHA models or others, MSHA should look for ways to better align resources with hazards. Future trends in mine safety could hang in the balance.