When to Contest: 
Defining Your Relationship with MSHA

Presented by:
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Email: cpeterson@fisherphillips.com

Presented to:
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Reno, NV
October 2019
### Citation/Order Form

<table>
<thead>
<tr>
<th>Field</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Date</td>
<td>Date of Violation</td>
</tr>
<tr>
<td>2. Time (24-Hr. Clock)</td>
<td>Time of Violation</td>
</tr>
<tr>
<td>3. Violator</td>
<td>Name of Violator</td>
</tr>
<tr>
<td>4. Address</td>
<td>Address of Violation</td>
</tr>
<tr>
<td>5. Zip Code</td>
<td>Zip Code of Violation</td>
</tr>
<tr>
<td>6. City</td>
<td>City of Violation</td>
</tr>
<tr>
<td>7. State</td>
<td>State of Violation</td>
</tr>
<tr>
<td>8. MSHA Number</td>
<td>MSHA Number of Violation</td>
</tr>
<tr>
<td>9. Citation/Order</td>
<td>Citation/Order Number</td>
</tr>
<tr>
<td>10. Date</td>
<td>Date of Issuance</td>
</tr>
<tr>
<td>11. Time (24-Hr. Clock)</td>
<td>Time of Issuance</td>
</tr>
</tbody>
</table>

**Notes:**
- This form is used to document citations and orders issued by the Mine Safety and Health Administration under the authority of the Mine Act.
- It includes spaces for the violation date, time, violator information, and relevant details about the citation or order.
- It is filled out by Mine Safety and Health Administration officials after conducting an inspection or investigation of a mine.

**Fisher Phillips Law Firm:**
- Provides legal representation and advice to companies on compliance with federal and state regulations.
- Specializes in labor law, including OSHA and MSHA regulations.
- Offers guidance on how to prevent such violations and prepare for potential enforcement actions.
INFORMAL CHALLENGES

INSPECTOR DISCUSSIONS

INSPECTION CLOSE-OUT CONFERENCE

INFORMAL CONFERENCE WITH FIELD OFFICE, DISTRICT OR DISTRICT MANAGER

(request in writing no later than ten days after receipt of citation/order)
FORMAL CHALLENGES

Pre-Penalty Challenges

PRE-PENALTY FORMAL CONTEST BEFORE REVIEW COMMISSION
(within 30 days of receipt of citation/order)

SECRETARY FILES ANSWER TO PRE-PENALTY CONTEST
(within 20 days of filing of pre-penalty formal contest)
PRE-PENALTY NOC

• Abatement Issues
  • § 107(a)
  • § 104(b)
  • § 103(k)
FORMAL CHALLENGES

Proposed Assessment Form
FORMAL CHALLENGES

Proposed Assessment Form
## FORMAL CHALLENGES

### Table: Proposal Assessment Case Number: 00426933

<table>
<thead>
<tr>
<th>Check For Content</th>
<th>Citation/Order Number</th>
<th>Date</th>
<th>Issue Date</th>
<th>Type of Action</th>
<th>Health or Safety Standard Violated</th>
<th>Min. Points</th>
<th>Max. Points</th>
<th>Number of Violations</th>
<th>Number of Inspections</th>
<th>History Points</th>
<th>Previous Violations Points</th>
<th>Min. Score</th>
<th>Max. Score</th>
<th>Potential Points</th>
<th>Penalty Points</th>
<th>Penalty Amount Based On Total Points</th>
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<tbody>
<tr>
<td>☑ 3846075</td>
<td>N</td>
<td>02/23/2011</td>
<td>DA4C-C</td>
<td>56.14(100)</td>
<td>1.1 6</td>
<td>174</td>
<td>113</td>
<td>14</td>
<td>3</td>
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<td>10</td>
<td>5</td>
<td>1</td>
<td>71</td>
<td>$150.00</td>
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<td>DA4C-C</td>
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<td>10</td>
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<td>5</td>
<td>1</td>
<td>134</td>
<td>$1,700.00</td>
<td>100%</td>
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</tbody>
</table>

I wish to contest and have a formal hearing on all violations listed in the Proposal Assessment(s).

**Total Proposed Penalty for this Assessment Case:** $2,864.00

**Outstanding Balance**

<table>
<thead>
<tr>
<th>Case Number</th>
<th>Outstanding Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>00426933</td>
<td>$20.80</td>
</tr>
</tbody>
</table>

**Total Outstanding Balance:** $20.80

**Total:** $2,884.80
FORMAL CHALLENGES

FORMAL POST-PENALTY CONTEST BEFORE REVIEW COMMISSION
(within 30 days of receipt of penalty assessment)

SOLICITOR’S OFFICE FILES PETITION FOR ASSESSMENT OF CIVIL PENALTY
(45 days after penalty contest)

OPERATOR FILES ANSWER TO PETITION FOR ASSESSMENT OF CIVIL PENALTY
(30 days after the filing date on the Petition for Assessment of Civil Penalty)

SOLICITOR’S OFFICE NEGOTIATIONS
(ongoing, after citation/order and/or penalty is contested)
FORMAL CHALLENGES

ADMINISTRATIVE LAW JUDGE ASSIGNMENT
(after Petition for Assessment of Civil Penalty or Notice of Contest is Answered)

ADMINISTRATIVE LAW JUDGE HEARING

REVIEW COMMISSION REVIEW OF ALJ DECISION
(file Petition for Discretionary Review within 30 days of ALJ’s decision/order)

CIRCUIT COURT OF APPEALS REVIEW OF COMMISSION DECISION
(file Petition for Permission to Appeal within 30 days of Review Commission)
WHY CONTEST

• Compliance Issues
• Enforcement Issues
• S&S
• Negligence
• $$$
Significant and Substantial

IF there is a violation:
1. Reasonably Likely
2. Lost Workdays Restricted Duty
Negligence

• Measure of operator knowledge of the alleged violation
• Standard of care
NAME OF THE GAME:

Mitigation
Mitigating circumstance – a fact or situation that does not justify or excuse a wrongful act or offense but reduces the degree of culpability.
MITIGATING S&S

What makes an injury unlikely?
• Length of time cited condition existed
• Exposure
• Safety systems in place
• Training
Think of the chain of events that need to occur to cause injury.

• The longer the chain, less likely it is.
Do not be afraid to ask or discuss.
MITIGATING NEGLIGENCE

• Condition obvious?
• Area recently examined?
• Already corrected?
• Enforcement history?
• Employee misconduct?
• Put on notice?
Final Questions

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Thank You

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