



more *Insight.*

**FORCED VENTILATION CHANGES:
PRACTICAL AND EFFECTIVE RESPONSES**

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Background

- ▶ Mine Operators and MSHA Have Mutual Goals
- ▶ Control over mining operations
- ▶ Mining Plans
 - “We did not dictate this plan. We approve plans, we don’t say what goes in them.”
 - > By W. Ponceroff, in *C.W. Mining Company*, 15 FMSHRC 1559 (1993).

Mine Ventilation Plan

- ▶ Initial approval of ventilation plans
- ▶ Subsequent Plan Changes
- ▶ Plan Disagreements
- ▶ Today's Focus

Plan Change Situations

- ▶ Discretion
- ▶ Formal Requirements
- ▶ Tools

Areas of Concern

- ▶ Major potential consequences
- ▶ Required Procedure
- ▶ Operator Rights

Plan Disputes

- ▶ Applicable Scenarios
 - New Plan Dispute
 - Existing Approved Plan
 - Operator Proposed Change

- ▶ Plan Revocation Proceedings

“Bishop Procedure”

- ▶ **Mandatory**
- ▶ **Written Notification**
- ▶ **Second Written Notification**
- ▶ **Revocation of Plan / Citation**

Problematic Scenarios

- ▶ Single Sample Demand Letter
- ▶ Condition for Abatement

The Demand Letter

- ▶ Typical letter
- ▶ No potential for enforcement action
- ▶ Aggressive

What do you do?

- ▶ First: Cover yourself
- ▶ Second: Try diplomacy
- ▶ Third: Weigh your options
- ▶ Fourth: Exercise your rights

What happens next?

- ▶ Bishop Process
- ▶ Technical Violation
- ▶ Hearing

The Ability to Abate

- ▶ 70.100 and 70.101
- ▶ The Scenario
- ▶ Abatement Sampling

What can you do about it?

- ▶ Same course as previous scenarios
- ▶ Document All Communications

Can they do that?

- ▶ Well, can they?
- ▶ Authority
- ▶ The courts

The Right to Challenge MSHA

- ▶ MSHA Burden

- ▶ Reflect

Considerations

- ▶ Uncertainty in resolution
- ▶ No end in sight

This is a big deal

- ▶ Major potential consequences
- ▶ Aggressive action without clear authority
- ▶ Unpersuasive Basis

CONCLUSIONS

- ▶ Ventilation plans are important
- ▶ Only you can take the first steps in protecting your rights
- ▶ MSHA's burden
- ▶ Take a hard look
- ▶ Continuing uncertainty

- ▶ Questions?
- ▶ Comments?

Thank you for listening

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