

# Challenging MSHA Issues on Inappropriate Citations

**LEGAL 2021**



## 1. Challenging MSHA Issues on Inappropriate Citations

On occasions, **ASPASA** Members may experience MSHA issues being enforced that it is believed to be an error. In such cases, companies should follow the process established by the MSHA for disputing inspector findings. This is fully within operator's rights. The chances for success in challenging inappropriate citations are always stronger if the operation has:



- a) Demonstrated compliance with MSHA standards.
- b) Engaged the inspector to provide clarification when necessary. As with Industrial Relations issues, always keep full notes.
- c) Taken pictures of any condition the inspector photographed. Any photos taken reflect your position, since the inspector's picture will try to support his or her position.
- d) Your operation has partaken in the **ASPASA** Health and Safety Audit and corrected non-compliance issues pointed out by the **ASPASA** auditor.

## 2. Five Opportunities for Operators to Challenge Citations

As a rule, the chances for success are highest when the operations challenges enforcement base on facts and not emotion as early as possible.

### Opportunity #1: Discuss it with the inspector during closeout

After the inspection is complete, inspectors hold a closeout. This is the first opportunity to formally discuss your position on each citation issued by the inspector and to present mitigating circumstances.

During the closeout conference, be prepared to provide evidence in support of your position. Bring additional information to the discussion that the inspector may not have considered at the time the citation was issued.

If you cannot achieve the changes you request, inform the inspector you respectfully disagree with his or her position and let the inspector know you will be considering whether to exercise your rights to further contest certain citations.



### **Opportunity #2: Request a pre-penalty conference**

By requesting a pre-penalty conference, you can contest citations. Some offices will allow the request to be done by phone, fax or email.

If you request the pre-penal conference, be prepared to provide mitigating factors in support of your contention. Plan to bring additional information to the table the inspector may not have considered at the time the citation was issued.

### **Opportunity #3: File a written request**

Once the assessment office sends the proposed assessment, you have 30 days to answer in writing what should be changed.

If a contest is granted, prepare the case for hearing.



*Always consider in referring problems to **ASPASA**.*

### **Opportunity #4: Appeal to the Chief Inspector of the DMRE**

The opportunity to appeal an adverse decision can be taken to the Chief Inspector.

### **Opportunity #5: Appeal an adverse decision to the Court within your region**

## **3. Small Surface Mines and Producers**

Small Surface Mines and producers compose the majority of **ASPASA** membership and are the lifeblood of the association's work to grow and safeguard the aggregates and any other commodities industry. Although **ASPASA** programs are not segmented by the size of a member company, on this page we attempt to provide information that we believe will be especially helpful to small producers, particularly in the areas of workplace safety and health, management of environmental issues, and grassroots action.







**ASPASA** encourages small producers to review and use these resources. Additionally, it is important to note that, in work to fend off excessive regulation, it is the voice of small producers that captures the attention of regulators or officials. We want our small producers to be fully engaged in **ASPASA's** work to safeguard operations and **ASPASA** is intended to assist in this effort.

Small producer members of **ASPASA** are highly engaged and is involved in the MHSC and the Minerals Council and many other Institutions, and other committees on issues important to small producers.

## ASPASA SERVICES 2021

<b>Legal Compliance</b> Updates on Legislation	Explosive Audits & Other	H&S Audits - MHS&A & OHS&A	<b>Health &amp; Safety</b> Audits, training & advice (Cost Effective Legal Opinions)
<b>Technical</b> Quality & Information	Quality & Laboratory Audits	ECSA Registration Info sharing on products	<b>Engineering</b> Committee/Development of career paths in surface mines
<b>Public Relations</b> Adverts, articles, handouts, law books & bulletins	Marketing the Industry	Work with other bodies in the Mining Industry	<b>Internal Liaison</b> Members of other bodies in SA with similar mandates
<b>Transport</b> Trackless Mobile, PDS & Road Transport	Assistance with TMM Legislation & Traffic Management	MHSC; MRAC; DEA; DMRE; COGTA & SANRAL	<b>Government Liaison</b> Meetings with Legislator & Others
<b>Environmental</b> Audits, Training & Advice	Environmental Audits (Cost Effective Legal Opinions)	Training & Skills Audits	<b>HR &amp; Training</b> Audits / Workshops – need to comply with Mining Charter
<b>International Liaison</b> GAIN & Other Bodies	Keeping up with International Standards	Anything from Legal to Industry Issues	<b>General</b> A host of issues
<b>Social Security</b> Assistance with Mining Charter	SLP/WSPs/Training/ Education and a host of others	Theft, Crime Attacks on Mines and Related Issues	<b>Security</b> A host of issues

Kind regards,

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