

# PUBLIC SUBMISSION

<b>As of:</b> 2/14/22 9:22 AM <b>Received:</b> February 11, 2022 <b>Status:</b> Posted <b>Posted:</b> February 14, 2022 <b>Tracking No.</b> kzj-5epv-ttpn <b>Comments Due:</b> February 11, 2022 <b>Submission Type:</b> Web
--

**Docket:** MSHA-2018-0016

Safety Improvement Technologies for Mobile Equipment at Surface Mines, and for Belt Conveyors at Surface and Underground Mines.

**Comment On:** MSHA-2018-0016-0111

Safety Program: Surface Mobile Equipment

**Document:** MSHA-2018-0016-0167

Comment from Peelish, Michael

---

## Submitter Information

**Name:** Michael Peelish

**Address:**

Beltsville, MD, 20705

**Email:** mpeelish@aabramslaw.com

**Phone:** 4437427088

---

## General Comment

See attached file(s)

---

## Attachments

9.11.2022\_Surface Haulage Comments

## **LAW OFFICE OF ADELE L. ABRAMS, P.C.**

4740 Corridor Place, Suite D  
Beltsville, MD 20705

301-595-3520 telephone  
301-595-3525 facsimile

Filed via the Federal eRulemaking Portal: <http://www.regulations.gov>

February 11, 2022

Ms. Jessica Senk  
Director  
Office of Standards, Regulations, and Variances  
Mine Safety and Health Administration  
210 12<sup>th</sup> Street South  
Suite 4E401  
Arlington, VA 22202-5452

RE: RIN 1219-AB91; Docket No. MSHA 2018-0016, Safety Program for Surface Mobile Equipment

Dear Ms. Senk:

My name is Michael Peelish, and I am an attorney with the Law Office of Adele L. Abrams, P.C. and work in the Beltsville, Maryland office. These comments are my comments as an individual and do not intend to represent the views of our clients. I am a degreed mining engineer and was a corporate executive for safety, health, HR, training, process management, other duties for publicly traded mining companies for 19 years of my career implementing safety programs on four continents. I have worked with NIOSH, equipment manufacturers, MSHA technical folks, and technology providers to ensure safety systems and processes kept up with the increasing size, speed, and pieces of the mobile equipment.

It appears that MSHA has provided the flexibility the operators wanted to implement surface mobile equipment safety programs which sounds good until MSHA decides that the operator's program is "inadequate". Once that happens, MSHA sets abatement dates which gives the operator the option to seek expedited hearing or abate and challenge the citation by filing a notice of contest or await the civil penalty assessment to see if the case still means that much to them. In other words, can you live with what MSHA will approve? And I say it that way because that is reality during the abatement process when the mobile surface equipment safety program becomes subject to an MSHA approval process through the abatement of a citation or order.

To avoid the inevitable abuses of MSHA's discretion, operators should be given an off ramp to have disputes over the adequacy of a program heard by someone other than the inspector or field office before abatement is due. Frankly, MSHA is not ready for this responsibility from

an organizational perspective or from a consistent application perspective. MSHA needs to devise a scheme to allow for an immediate appeal (unless an imminent danger exists) before abatement of the citation/order is required. OSHA allows this, why not MSHA?

Another concern is the requirement that operators develop and maintain procedures and schedules for routine maintenance and non-routine repairs for surface mobile equipment integrating manufacturer's recommendations into the safety program. This is how MSHA will require a formal written safe operating and maintenance program which it has always wanted but not able to require across the board in a regulation until now. Today, I downloaded an operator's manual for a 45 ton articulated haul truck. It was 458 pages and when the terms ANSI, ASTM, NFPA, and SAE were searched, there were 21 hits meaning that operators must be cognizant that other consensus standards can be applicable under this standard which is essentially rulemaking without the notice and comment.

The industry must rely on the safety data for mobile surface equipment (although inflated somewhat by what MSHA has redefined as powered-haulage accidents) that requires MSHA to take action to reduce and eliminate the number of surface mobile equipment fatal accidents and serious injuries. The rule is not that action. It will cause more confusion because of MSHA non forgiving discretion. If MSHA does not make changes to the rule as suggested hereinabove, before MSHA begins enforcing this rule ad hoc, it should gather the various stakeholders and discuss the interpretations and implementation of the rule more than the historical stakeholder meetings. MSHA, with industry, employees, and NIOSH involved, should be able to agree on certain acceptable approaches. MSHA needs to take its time in implementing the final rule. Like we tell our employees, take your time and do it right the first time.

Respectfully submitted,

/s/

Michael Peelish