

WINTER 2023

# SAND & GRAVEL

A PUBLICATION OF MAINE AGGREGATE ASSOCIATION



**MAINE**  

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**AGGREGATE ASSOCIATION**

## WHAT'S INSIDE?

- MSHA App Release*
- Contesting MSHA Citations*
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- Spring Thaw/Annual Meeting*

# ABOUT US

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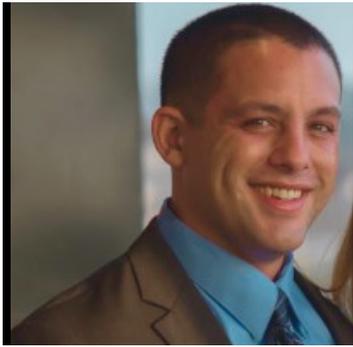


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SPRING THAW MSHA 8 HR. REFRESHER  
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## A MESSAGE FROM OUR PRESIDENT

**RYAN CARRIGAN**  
**RAY LABBE & SONS CONSTRUCTION**

Happy New Year! After a few challenging years due to the COVID pandemic we are finally getting back to business as usual here at Maine Aggregate Association. We have finalized our 2023 Board of Directors meeting schedule, as well as returning our Annual Meeting to the end of April.

I am also excited to announce that Spring Thaw will return this year to the Augusta Civic Center. After having to cancel it the last few years we are anticipating a large turn out with some really great presenters lined up. Spring Thaw is an easy way for you and your staff to fulfill the MSHA required 8-hour refresher training in a single day. This is an especially great tool for small mining operations that don't have the ability to dedicate someone with the sole responsibility of handling their safety program. Spring Thaw also gives attendees the chance to speak with MSHA officials face to face and ask them any questions they may have.

In addition to safety and workforce development a new legislative session began last month. With the help of Tim Walton of Walton External Affairs, we will be keeping a close eye on any bills that are presented which would impact our industry and members. Our executive committee will be meeting with Tim on a regular basis to stay up to date on the latest legislative news. All members are welcome to join our meetings so please feel free to contact me if you are interested.

Our main goals at Maine Aggregate Association are safety training, workplace development, and legislative impact. As your president I promise to continue to be at the forefront ensuring we meet those goals as well as maintain the high integrity our organization has earned thanks to the efforts of our membership.

**Thank you for your continued support and I wish you all a  
happy and healthy 2023!**



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# ANNUAL MEETING

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**WEDNESDAY, APRIL 26, 2023**

*3PM BOARD MEETING*

*4PM HAPPY HOUR*

*5:30PM DINNER*

**LEGAL REVIEW - TIM WALTON**

**"LEGAL STRATEGIES DEALING WITH MSHA"  
(KEY NOTE SPEAKER, ADELE ABRAMS, ESQ., CMSP,)**

**RSVP @ [WWW.MAINEAGGREGATE.ORG](http://WWW.MAINEAGGREGATE.ORG)**

# UNDER THE DOME

BY TIM C. WALTON

WALTON EXTERNAL AFFAIRS

Well, as legendary baseball hall of famer Yogi Berra said, it's Déjà Vu all over again. In a year when it was widely predicted there would be a "Red Wave" of Republican victories across the nation, Maine apparently didn't get the memo. With essentially no change in the numerical make-up of the Democrat and Republican caucuses in both the Senate and House Chambers and the occupant of the Blaine House remaining the same, the political landscape in Augusta is almost a mirror image from what it was after the last election two years ago.

Handily retaining control of the Senate, the Democrats returned the same slate of officers to lead their caucus as last session. Senator Troy Jackson was re-elected to his post of Senate President; Senator Eloise Vitelli will return as Majority Leader and Senator Mattie Daughtry is back at the helm as Assistant Majority Leader, or as that position is historically referred to as the "Whip". Having failed to add a single seat to their ranks, the Republicans decided to change things up a bit this time around when choosing their caucus leaders.

Senator Trey Stewart of Presque Isle will lead the Republican caucus as Senate Minority Leader, while Senator Lisa Kiem will serve as the Assistant Minority Leader.

The House Leadership on the other hand changed completely. In historic precedence, the House Democrats elected Rachel Talbot Ross of Portland to the top position in that chamber. Talbot Ross will serve as the State's first African American Speaker of the House. Making history in politics isn't an unfamiliar event to her family, as her father Gerald Talbot was elected as Maine's first black lawmaker fifty years ago. The other two leadership posts the Democrats filled as a result of their Majority status will also be new faces. The House Majority Leader will be Maureen Terry and Kristen Cloutier will serve her caucus as the House Whip (Assistant Majority Leader). Likewise, the House Republican's made changes too. With both prior leaders unable to run for re-election to their respective House seats due to term limits, both leadership seats for the Republicans were wide open. Elected to fill the position of Minority Leader is Representative Billy Bob Faulkingham, with the Assistant Leader role going to Representative Amy Arata.

# SARGENT

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## UNDER THE DOME (CONT.)

As widely publicized as the race for Governor was, there is probably no need to say much about the outcome. Governor Mills was easily elected to serve a second term, winning handily by over ten points. That said, other than the normal key appointed staff turnover that always seems to occur from the end of one gubernatorial term to the next and the anticipated retirements and/or promotions of the career bureaucrats, we shouldn't need to be too concerned with too many changes within the various departments or agencies for the issues of concern to our industry.

In light of the above-mentioned changes, coupled with the areas that haven't changed at all, the good news is we are in familiar territory when it comes to our efforts on your behalf in Augusta. With so few changes in the make-up of the Legislature, no changes in the Governor's office and likely only minor, predicted moves on the bureaucratic front, we are well equipped to take on whatever comes our way.

To that point, amongst a host of lessor impactful bills, we should anticipate a number of climate and land use legislation to be introduced this session, as well tax, transportation, licensing and code related initiatives as well. As is usually the case, we should expect well over two-thousand bills to be submitted for due consideration. It should be an interesting session to say the least.

In closing, as I've reported before, the Maine Aggregate Association is considered one of the most prominent and influential trade associations in Augusta. By maintaining and fostering strong relationships on both sides of the political aisle, we have earned a reputation as one of the more trusted and reliable sources under the dome. We enjoy that status in large part because we have a strong leadership team and a membership of companies and firms that are true stewards of our industry, promoting a strong Maine economy every day. Doesn't get better than that!

*TIM C. WALTON SERVES AS LEGISLATIVE COUNSEL TO THE MAINE  
AGGREGATE ASSOCIATION AND IS THE PRESIDENT OF WALTON  
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*HE CAN BE REACHED AT:  
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# SPRING THAW 2023

MSHA 8 HOUR REFRESHER TRAINING

AUGUSTA CIVIC CENTER

APRIL 14, 2023

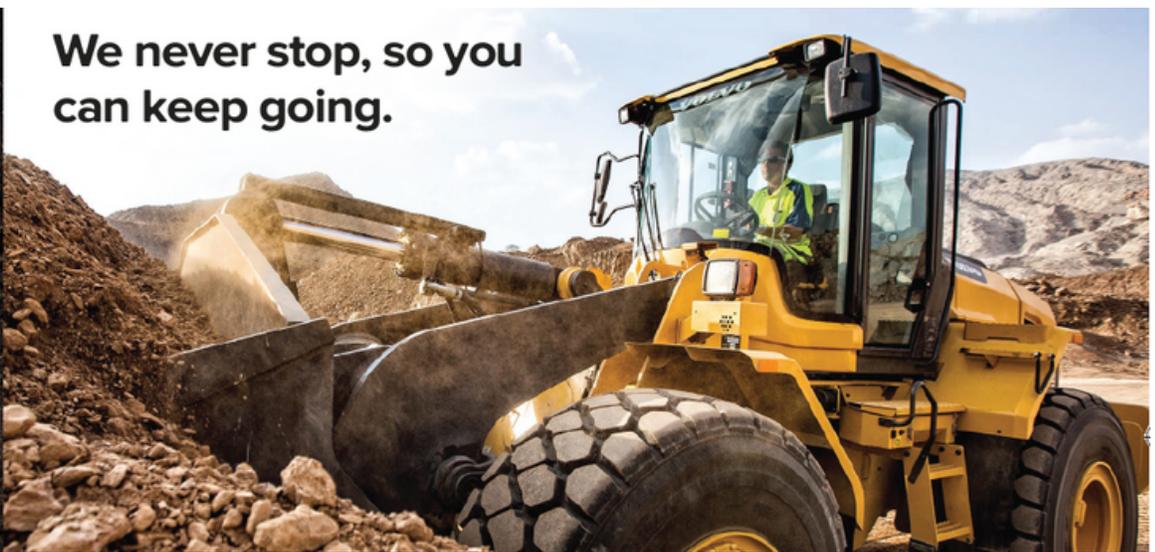
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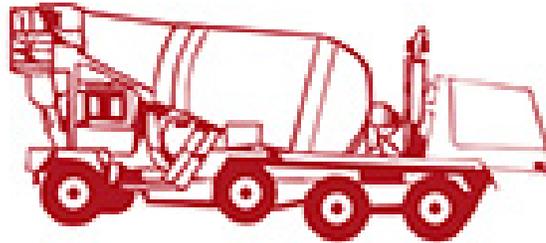
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## MSHA LAUNCHES APP TO PROVIDE MINERS ACCESS TO HEALTH, SAFETY, MINER'S RIGHTS INFORMATION

The U.S. Department of Labor's Mine Safety and Health Administration has launched an app for use on iPhone and Android devices that will help get timely information directly to miners and members of the mining community.

The app allows miners to easily use the tool at mine sites and outside of working hours to search for best safety and health practices and find resources on understanding their rights and responsibilities under the Federal Mine Safety and Health Act of 1977. The app also sends users notifications of mining accidents and how to prevent them.

The app is divided into five main sections:

- Safety Topics.
- Health Topics.
- Miners' Rights.
- About MSHA.
- A Contact Us section.

Miners nationwide can now access important safety and health and miners' rights information in the palm of their hands," said Assistant Secretary of Labor for Mine Safety and Health Chris Williamson.

*THE APP CAN BE DOWNLOADED AT THE IPHONE APP STORE OR GOOGLE PLAY STORE*

Traditionally, miners have received safety and health information from several sources, including their unions, miners' representatives, their mine's safety office or managers, training programs, MSHA inspectors, and industry stakeholder groups. Although those remain important avenues to reach miners, technology has made it possible for miners to research information directly. MSHA has collaborated with mining stakeholders on accessibility for miners and developed various design features throughout the application in response to stakeholders.

"This new, innovative tool is another technical and educational resource to empower miners and help them play active roles in mine safety and health; even so, the Mine Act is clear that mine operators have the primary responsibility to maintain safe and healthy working conditions and provide regular and thorough training to miners," Williamson added.

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## MSHA LAUNCHES APP TO PROVIDE MINERS ACCESS TO HEALTH, SAFETY, MINER'S RIGHTS INFORMATION (CONT.)



### ABOUT MSHA

The U.S. Department of Labor's Mine Safety and Health Administration (MSHA) works to prevent death, illness, and injury from mining and promote safe and healthful workplaces for U.S. miners.

MSHA carries out the provisions of the Federal Mine Safety and Health Act of 1977 (Mine Act) as amended by the Mine Improvement and New Emergency Response (MINER) Act of 2006.

The agency develops and enforces safety and health rules for all U.S. mines regardless of size, number of employees, commodity mined, or method of extraction. MSHA also provides technical, educational and other types of assistance to mine operators. We work cooperatively with industry, labor, and other federal and state agencies to improve safety and health conditions for all miners in the United States.

Safety and health in America's mining industry made significant strides during the 20th century and over the last several decades in particular. In 1978, the first year MSHA operated under the Mine Act of 1977, 242 miners died in mining accidents. In 2020, this number fell to 29 fatalities.

MSHA continues to work to reduce injuries, illnesses and death through strong enforcement as well as active outreach, education and training, and technical support to the mining industry.

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## CONTESTING MSHA CITATIONS: FREQUENTLY ASKED QUESTIONS

### **How do I contest a citation or order issued by the Mine Safety and Health Administration (MSHA) for a mandatory health or safety violation?**

When an MSHA inspector issues a citation or order under Section 104 of the Federal Mine Safety and Health Act of 1977 (Mine Act), a mine operator has 30 days in which to file a notice of contest with the Secretary of Labor at the Solicitor's Office (Mine Safety and Health Division in Arlington, Virginia or the appropriate Regional Solicitor's Office) and to file a copy of such notice of contest with the Federal Mine Safety and Health Review Commission (Commission). An operator may also challenge the modification of a citation or order, as well as the reasonableness of the length of time for abatement. A notice of contest must contain: (1) a short, plain statement of the operator's position regarding each issue of law and fact and the relief requested and (2) a copy of the contested citation or order. An operator's failure to file a notice of contest of a citation or order issued under Section 104 of the Mine Act will not preclude the operator from challenging, in a civil penalty proceeding, the fact of violation or any special findings contained in a citation or order, including the assertion in the citation or order that the violation was of a significant and substantial nature or was caused by the operator's unwarrantable failure to comply with the standard.

### **How do I contest a civil penalty assessment?**

When a civil penalty is assessed, a mine operator has 30 days in which to file a contest and request a hearing before a Commission administrative law judge. Every civil penalty assessment lists each citation and/or order for which a penalty is being assessed. An operator has the option to contest all or some of the penalties by placing a check mark beside each citation and/or order listed on the assessment that it wants to contest. The operator is also requested to state the reasons for the contest. A copy of the contested assessment must be returned to MSHA's Civil Penalty Compliance Office in Arlington, Virginia within 30 days of the operator's receipt. An operator who wants to contest a civil penalty assessment must provide such notification regardless of whether it has previously contested the underlying citation(s) and/or order(s).





On Feb. 5, 1998, MSHA published a Program Information Bulletin in the Federal Register outlining the Secretary's position with regard to the proper interpretation of the phrase "significant and substantial." The Secretary's interpretation of the phrase "significant and substantial" was that a violation must be found to be "significant and substantial" so long as it is shown to present a hazard that is more than remote or speculative.

1. A finding or conclusion of material fact is not supported by substantial evidence;
2. A necessary legal conclusion is erroneous
3. The decision is contrary to law or to the duly promulgated rules or decisions of the Commission; or
4. A prejudicial error of procedure was committed.

If a judge's decision is not appealed to the Commission within 30 days after it is issued, or the Commission does not order an appeal of its own volition, the judge's decision will become a final order not reviewable by any court or agency. A petition for discretionary review that is not granted within 40 days after the issuance of the judge's decision is deemed denied.

### **How do I appeal a decision of the Commission?**

Under Section 106(a)(1) of the Mine Act, any person adversely affected or aggrieved by an order of the Commission issued under the Mine Act may obtain a review of such order in any U.S. Court of Appeals for the circuit in which the violation is alleged to have occurred or in the U.S. Court of Appeals for the District of Columbia Circuit by filing in such court within 30 days following the issuance of such order a written petition requesting that the order be modified or set aside. A Commission decision that is not appealed within the 30-day time period will become a final order not subject to review by any court or agency.

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### What is the meaning of "significant and substantial"?

Under the case law decided by the Commission, there are four elements that must be proven in order to establish a "significant and substantial" violation:

1. The underlying violation of a mandatory standard;
2. The existence of a discrete safety hazard contributed to by the violation
3. A reasonable likelihood that the hazard contributed to will result in an injury; and
4. A reasonable likelihood that the injury in question will be of a reasonably serious nature.

Secretary of Labor v. Mathies Coal Company, 6 FMSHRC 1 (January 1984).

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