

An Interview with
David D. Lauriski,
CMSP, Assistant
Secretary of Labor,
Mine Safety
and Health

WHAT'S HAPPENING at MSHA

Adele L. Abrams, Esq., CMSP, ASSE's Washington, DC-based national government relations consultant, recently interviewed David Lauriski, Assistant Secretary of Labor for Mine Safety and Health. He shared his thoughts on the state of the mining industry, explored MSHA's changing role and discussed how ASSE continues to be a valuable resource to the mining community.

ASSE: You are a long-time ASSE member and have worked on a whole series of national advisory issues impacting mine safety and health. This includes safety and health management, training and increased use of voluntary third-party safety and health audits. ASSE is pleased that someone who is a true safety professional is at the helm of this agency. The Society hopes this will facilitate more-cooperative efforts between MSHA and ASSE, particularly its Mining Practice Specialty.

For readers of *Professional Safety* who are not familiar with MSHA, briefly describe its mission and what you see as its key objectives.

DL: The Mine Safety and Health Administration, or MSHA, evolved from the 1977 Mine Safety and Health Act,

which evolved from two previous acts, the Coal Mine Safety and Health and Metal/Nonmetal Safety and Health Act. The agency is responsible for the safety and health of the nation's miners, and its mission is to 1) enforce the rules and regulations that the act provides for and 2) provide technical services—including mine safety and compliance assistance—to key stakeholders. That's the agency's charter and its role—and the goal we really need to strive for. As administrator, I have only one goal: To improve the safety and health of the nation's miners and the conditions in the mines in which they work.

ASSE: Who do you view as MSHA's customers?

DL: MSHA's customers are, as I call them, stakeholders, for I truly believe that they are stakeholders in this business. The agency's customers are mining companies around the country, miners, trade associations, professional organizations, labor organizations, state associations and/or state agencies who have an interest in mine safety and health. A variety of people in educational institutions are also stakeholders, as are several people outside the U.S.—those who have an interest in what MSHA does and with whom the agency pursues some cooperative efforts.

ASSE: To help readers understand what brought you to this position, share some of your personal background.

DL: I have spent nearly 30 years in the coal mining business. Most of those years were in the safety and health arena. I am a certified mine safety professional, but have worked at all levels of the mining organization. I worked underground as a miner while attending school and also worked in the engineering department for a short period time while in school. I then started as a safety engineer in 1970 and have worked in various capacities over the years. I was safety director for a mining company in eastern Utah, the Packard Still Corp., and also served for a period of time as an industrial relations manager, which is what we now call a human resources manager.

I left Packard in 1984 to work as a corporate safety engineer for Erie Mining Corp. I held that position for several months, then became director of health and safety for the company. I continued in that capacity when Utah Power & Light took over operations. When Pacific Corp. absorbed Utah Power & Light, I became corporate director of safety for the mining operations of Pacific Corp. Most recently, I was general manager of the Underground Utah Operations. In the



David Lauriski, Assistant Secretary of Labor for Mine Safety and Health, is a long-time ASSE member.

Inset: Adele Abrams and Lauriski discuss new directions at the agency.

last few years, I have spent time in the private sector as a consultant as well.

As this shows, I have been involved in the industry for a long time. I have dealt closely with MSHA throughout the course of my career and have also served on various national committees. I have a true passion for this industry. I believe I have a genuine opportunity to work with the industry and miners to improve our overall performance.

ASSE: As a young safety engineer just starting in this business, did you

ever think you would wind up as head of this agency? What advice would you give to young safety engineers who are interested in making a difference in terms of governmental service?

DL: As far as heading MSHA, I can't ever recall it being in my thought process. As far as advice, I think you have to have the right mindset to do this type of work. You must truly have a passion for the business of safety and health and enhancing safety performance. If you don't have that passion, you probably need to look elsewhere. But that's true of any job. If you are not passionate about what you are doing, you are not going to do very well.

ASSE: Many have said that the practice of safety is really a vocation more than a job—that people enter this field for the money. Would you agree?

DL: I believe that's a fair representation. I once listed 26 different roles—from teacher to psychologist—that I felt a good safety engineer must perform, so it truly is a vocation. If you are going into this profession for accolades, I would caution that you likely won't get many. But, if you can walk away each day proud to say, "I made a difference today," then you are in the right business.

ASSE: Describe the organizational structure of MSHA for those who are not as familiar with the agency.

DL: The agency currently has two primary program areas: coal mining and metal/nonmetal mining. Outside of these areas are support groups. These include education and training, technical services/technical support, administration/management, human resources, information and public affairs, congressional affairs, standards and regulations, and assessments, as well as education policy development.

MSHA is a broad organization, and each of the agency's support areas has specific responsibilities. For example, technical support is responsible not only for plans, but also for the agency's technical support center near Pittsburgh. This group certifies equipment, and conducts ventilation control studies and roof control studies among other duties, so it is a function that supports the two principal program areas.

ASSE: In recent interviews, you have talked about MSHA being "more sensitive" to the distinctions between the two types of mining operations. Can you elaborate?

DL: Throughout my career, I have heard from peers in the metal/nonmetal community that they feel like bridesmaids to coal mining. While serving as a private consultant, I became more aware of this perception, particularly how metal/nonmetal companies often feel that MSHA is forcing coal issues on them. I call this "being coalized." I believe it is an area the agency must be aware of.

Since I joined MSHA, I have been reminded several times that I have a coal background, not a metal/nonmetal background. So, I have asked MSHA staff to recognize that differences do exist between these industries. In my view, these differences primarily involve operational and culture issues. I see no differ-

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ences when it comes to those who work in the mines—they are all the same, equal in all respects.

But MSHA must be sensitive to those areas that are different when assessing any issues, regulatory and otherwise. In some cases, a one-size-fits-all approach works, but in many cases, such an approach simply does not work.

ASSE: You have acknowledged the distinctions between coal and metal/nonmetal mining. At times, it seems that aggregate operations are viewed as more akin to construction than to underground mining. Do you have any plans to improve the synergy in rulemaking and other outreach activities between OSHA's construction directorate and MSHA's metal/nonmetal operation programs?

DL: I support consensus building. While working in the private sector, I saw firsthand how effective it is when you tap the expertise and experience of all involved. As MSHA moves forward with initiatives or regulations, we will need to tap the resources of all relevant parties—both our stakeholders and our employees.

That's also the message I am sharing as I talk to MSHA employees and stakeholders. Mine safety has to be a shared effort—one in which all ideas are considered. I have felt a sense of encouragement and enthusiasm among those to whom I have spoken thus far. If we can really walk that talk, then we will make a difference. But we must change the way we do business—we must solicit ideas, think creatively, work outside the box and find innovative ways to direct this agency's efforts. Alone, MSHA cannot make the difference we need. Together with stakeholders, I believe we can help the industry achieve enhanced performance.

ASSE: Currently, several similar items appear on MSHA's and OSHA's regulatory agenda—such as crystalline silica and confined space for construction. Ergonomics is another issue that OSHA is addressing. Several years ago, MSHA and NIOSH had a criteria document on hand-arm vibration syndrome in the mining industry. Do you see the potential for “tandem” rulemaking with OSHA—as a way to conserve resources and share information—rather than each agency proceeding separately on such issues?

DL: First, let me say I am still being briefed on many of these issues. I have had no discussions with OSHA representatives as to whether that is something we should or should not consider. Certainly, in areas where our agencies can share specific expertise from a safety, health and management perspective, such partnership may be appropriate. However, I have not yet sat down and examined it from a regulatory perspective. It is probably premature for me to discuss this issue.

ASSE: What issues would you identify as regulatory priorities?

DL: From my view, we will strive to develop regulations where there is a proven need. In other words, where we need to have standards for enhanced safety and health, we will pursue them. We are not going to have regulations simply for the sake of having regulations, however. We will be diligent and thoughtful in our processes from the regulatory perspective.

ASSE: What forthcoming standards will likely be first out of the gate? For example, silica is listed for promulgation this year, as is surface haulage.

DL: As you know, some of the diesel particulate regulations, specifically the coal rule, went into effect May 21. The metal/nonmetal rule has been challenged, and the agency is currently in negotiations with the parties and intermediaries on that matter. Hopefully, we will have an announcement on this issue soon. MSHA also recently issued an interim final rule on hazard communication. Beyond that, I am in the process of being briefed on the regulatory agenda. That process needs to be completed before I can speak to where we need to go as an agency.

ASSE: As an ASSE member, and also as head of MSHA, how would you say ASSE is viewed by the agency?

DL: I don't know how others view it as I have never had that conversation. Personally, I view organizations such as ASSE as valuable resources for both their members and for organizations such as this agency. Groups like ASSE provide a



valuable service, have a tremendous wealth of information, and offer a tremendous opportunity for people to learn about the business of health and safety. That is principally why I joined ASSE. The Society offers the type of information and education services I felt I needed in my career.

ASSE: As ASSE's representative, I recently participated in a brainstorming session with some of your staff about new directions for the agency. It was agreed that the agency needs to encourage additional professional development among entry personnel, especially those in the inspector ranks, so they can be viewed as peers by safety and health professionals at the mining companies, who are themselves pursuing certifications such as CSP, CIH and CMSP. It was suggested that inspectors should obtain some training outside the academy, where they could interface with other safety professionals and engage in greater information sharing. What is your view on this issue?

DL: I am a firm believer in education and training, and a firm believer that old dogs can learn new tricks. As you know, the intent of the brainstorming meeting was to gather input from stakeholders regarding what things MSHA can do better. Internally, we have had brief discussions about having outside experts come to the academy to provide training on different perspectives—such as effective safety and health management, or understanding the business costs of good safety and health performance vs. poor performance.

As noted, however, those discussions have been brief, so it is interesting to hear what was discussed during the session. Knowing that, I feel much more comfortable that my ideas—that education and training is a part of the agency's improvement effort—may be shared by others. I would add that this agency has some

dedicated, intelligent people with a wealth of experience. I believe everyone is looking to do what is right and to share the same passion I have. If it means that we can do things from an education and training perspective, then I am all for it.

ASSE: As noted, ASSE is positioned to be a strong resource for MSHA. What types of assistance or information can ASSE provide your agency that would help you achieve some of its objectives?

DL: As you noted, ASSE has a Mining Practice Specialty, so the Society is one of our stakeholders and can be a valuable resource for us as we move forward with the opportunities I think are present. Several key areas of assistance come immediately to mind. For example, information on how to achieve effective health and safety management and understanding safety and health in the business climate. ASSE members have a tremendous wealth of knowledge in these areas, so they could certainly provide ideas on how MSHA might want to approach these issues. At this point, I don't know whether the agency will move in those two arenas, but that is the kind of help I believe organizations such as ASSE can provide to us.

ASSE: Contractor safety is another hot topic—and it certainly is not unique to the mining industry. However, statistics show that contractors are represented disproportionately in the injuries and fatalities which occur in mines. What would you like to see MSHA accomplish in this area? Are any programs on the horizon that would reach out to contractors and educate them about their requirements under MSHA regulations?

DL: MSHA has recently entered into an agreement with a company in Nevada. This pilot program deals specifically with contractor safety and contractors on mine property. Although I can't speak with much authority in terms of what the agreement entails and how it functions, I am encouraged that a process to address this issue has been initiated. Hopefully, six months from now I will be able to talk with more knowledge about how the project is proceeding. I see some real potential for similar agreements with other mining companies.

ASSE: Let's discuss Part 46 training. This new regulation is applicable to nonmetal surface operations that were previously exempt from enforcement under a provisional rider. The agency has taken a different approach on this in allowing for non-penalty compliance assistance visits (CAVs) during the phase-in. How has that been working?

DL: It has worked fine, but I don't think we have made the dent we felt we would when we initiated this approach. That is one reason the timeframe for such assistance was extended—to make sure all operators have had an opportunity to complete a CAV.

Once inspectors are in the mines, this process has had a fairly positive impact. It gives mine operators a better understanding of the rule and why it was enacted. This is much more effective than an inspector walking in and saying, "Here's the rule, you must comply." It also shows that the agency is willing to provide information, detail what steps mine owners must take and why, and offer assistance. I believe this type of approach helps create an atmosphere that will help the industry improve its overall safety and health performance.

ASSE: Is this the shape of things to come? Do you envision using CAVs during the phase-in of future rules?

DL: We will look at each rule on a case-by-case basis, but I believe CAVs have a place in MSHA's compliance assistance efforts. In my opinion, they need not be tied to the scope of a particular rule. If the agency identifies key issues, perhaps inspectors can say, "Here's how we can help."

However, we cannot forget that the Mine Act requires the agency to do certain things, including enforce the rules, and doesn't really give inspectors discretion on whether or not they must write a citation if a violation is found. I believe we do have some discretion as we put rules into place, and we can do some things from the education/training or technical service perspective to provide compliance assistance while at the same time meeting our regulatory mandate. So, I believe there is an opportunity for some balance.

ASSE: Flexibility under the act was also discussed during the brainstorming session. Most agreed that more CAVs would help to build credibility and re-establish trust that seems to have eroded between mine operators and MSHA. Given the agency's somewhat limited resources, does latitude exist within the Mine Act to substitute CAVs for some mandatory twos and fours [inspections]?

DL: No, not as a substitute, but certainly in concert with. This is especially true in the education and training area, which I believe will be the cornerstone of our efforts to reduce incidence rates. The act is specific that the twos and fours must be done, but I think it provides the

flexibility we need to do things in concert with that enforcement, such as compliance assistance through education and training or, in some cases, through technical service.

ASSE: You inherited a budget that went to Congress before you were fully confirmed, although you did get to present the budget at the House Appropriations Subcommittee once you were confirmed. As a result, you did not have a hand in shaping the budget. Next year, will you pursue additional funding for these types of education, training and outreach efforts?

DL: We are beginning our budget development for 2003 and have yet to sit down and discuss these matters. I have not had the benefit of anyone else's input, and I look for people to provide me with information, not just for me to provide information to others.

ASSE: The 15/50 accident reduction initiative seems to be one of your primary goals. Briefly explain what this entails and what the general plans are for putting it into practice?

DL: You are referring to 15-percent reduction and 50-percent reduction goals I have proposed. I believe that to achieve a level of performance, you must have a defined objective. On arriving here, I found that the objectives were largely undefined. So, I inquired how everyone would feel about having a performance objective that said we would reduce fatalities 15 percent per year over each of the next four years, and achieve a 50-percent reduction in incidence rates over the next four years. I also asked whether these goals were achievable.

Initially, I approached senior agency officials and all agreed that those were reasonable objectives. I have since had the opportunity to ask the same questions of both mine operators and labor. Although I haven't met with everyone yet, most have agreed that the industry can achieve these numbers.

During these meetings, I have stressed that MSHA can't do it alone, that everyone in the industry must be involved. If all parties are committed to this goal, then I believe the industry can move forward and realize these goals. By doing so, we will have 45 fewer fatalities than we had last year, and we will have reduced our incident rate to 1.72 for every 200,000 hours worked. I know how I will feel if we can do that, and I would hope that anybody who has participated in that process will have the same feelings. I am proud of what this industry has accomplished in the past 25 years.

“ At the same time, we are pursuing a similar initiative to reduce the agency’s incident rates. We are currently studying those rates and categorizing them by program, geographic area and field area in order to identify where the highest rates are occurring. I believe that an agency which is responsible for the safety and health of miners must set an example. We have to reduce our rates before we can expect others to do so.”

The next step will be to determine how to achieve these goals. That’s the process you were involved in during the brainstorming session. We’re asking interested parties to share ideas about what MSHA can do to help stakeholders achieve these levels over the next four years. We are asking agency employees the same questions. From what I’ve heard to date, some terrific ideas are out there, waiting to be acted on. We are trying to move quickly in this process—to gather and assess information and identify best practices that can be shared through outreach programs, education/training efforts and inspection programs.

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ASSE: ASSE commends you for doing outreach with the industry. The Society appreciated the opportunity to be part of that shareholder process through the brainstorming session, which took a “team-building” approach that is often used in industry. This fostered honest, open discussion. I understand you will have a similar session with labor. Will the agency conduct additional sessions that bring industry, labor and the safety societies and professional organizations to the table together to develop solutions?

DL: That is exactly what will occur. I thought it was important to conduct separate sessions for the first round, but after that it will become a true tripartite environment. All involved will be able to hear what others have said regarding where we need to head as agency. I wish we could do it overnight, but obviously it will take time.

ASSE: There seems to be a sense that the culture needs to change within both MSHA and the mining industry—that such change will help the industry break through the injury plateau

and foster the partnership effort you champion. What elements would you like to see changed in MSHA’s culture?

DL: From a culture perspective, I think this is a passion issue again. I don’t care if you are in administration or budgets or technical services and support, or education and training. If you have a passion about this business, we can make a difference. If that intensity doesn’t exist, then we need to make a change.

Morale is key. Some might call it attitude. If we have good morale—and I am not saying that we don’t—but if we have good morale, then that breeds a good culture and lends itself to building this passion I have talked about.

I believe all MSHA employees should be treated fairly and equally, with respect and dignity. I don’t care what the job is, I expect—and will demand—that. I expect MSHA employees to treat stakeholders that way and have also asked our stakeholders to treat MSHA representatives in the same fashion—fairly, equally and with respect and dignity.

I have been on the other side and realize that certain issues have been prevalent for many years. In some cases, this has been due to the personalities involved.

I don’t mean that we can’t have disagreements. But I want those involved to part at the end of the day understanding those disagreements and coming to a resolution in a dignified manner, treating each other professionally. I believe if that one standard is met, any morale concerns will improve.

I have also advised MSHA employees to “lighten up and have some fun.” We have important work to do, but we should have some fun in the process. I see a few more smiles than I did a month ago. Hopefully that will continue. I hope it becomes contagious. I have an open door policy and always try to find time if people want to see me.

ASSE: In the international area, the mining industry has much to share, particularly regarding mine disasters that continue to occur. Previous administrations pursued a certain amount of outreach in Russia and Asia. Do you intend to continue that pattern?

DL: We are looking at that right now. I spent two years working with the International Labor Organization (ILO) in Geneva, Switzerland. I was the U.S. employer representative to work on Convention 176, which was the convention that developed worldwide safety and health standards for mine workers. That convention was only one of 14 that has ever been ratified by the U.S. It was ratified last fall by the Senate and was signed by President Clinton prior to his departure in January. It is something I am proud to have had the honor and opportunity to work on because it is an important part of making sure that all workers in mines have standards of safety and health.

ASSE: Your reference to the ILO leads to something else. How do you view MSHA’s role in the development of consensus standards, such as those promulgated by ANSI and National Fire Protection Assn.?

DL: Given some ongoing litigation, I will not speak much on this issue because it would only be my opinion at this point. I am still trying to understand some of the issues involved—including consensus standards, in terms of the challenge of the TLVs from ACGIH, for example.

ASSE: Any final remarks or words of encouragement for the partnership with ASSE?

DL: We are appreciative that we can turn to organizations such as ASSE and I am proud to be a member of the organization. I consider ASSE members my peers—quality people for whom I have a great deal of respect.

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