



NOV 15, 2021

MEMORANDUM FOR PATRICIA W. SILVEY

Deputy Assistant Secretary for
Mine Safety and Health

[REDACTED]

THROUGH: NANCY M. ROONEY
Administrator for
Mine Safety and Health Enforcement

[REDACTED]

FROM: THOMAS W. CHARBONEAU
Director, Office of Assessments

SUBJECT: Mine Safety and Health Administration (MSHA)
Accountability Division Review
Beckley District and

[REDACTED]

Introduction

This memorandum summarizes the Accountability Division's review of the Beckley District and the [REDACTED]. The review focused on enforcement activities at the [REDACTED]. This review also included an evaluation of the District and Field Office activities, level of enforcement, and MSHA supervisory and managerial oversight activities.

Purpose

The purpose of this accountability review was to determine whether MSHA enforcement policies, procedures, and guidance were followed consistently and to assess whether mission-critical enforcement activities were accomplished.

Overview

Accountability Division Specialist Jerry Kissell conducted the review in [REDACTED]. The review focused on a Regular Safety and Health Inspection (E01) at the [REDACTED] ID No. [REDACTED] Event No. [REDACTED]. The [REDACTED] is an underground coal mine located in [REDACTED]. The review also included areas of District and Field Office responsibilities as identified in the attached Accountability Division checklist (Attachment B). Due to travel restrictions resulting from the February 2021 National Emergency and continuing in effect beyond March 1, 2021, the site visit portion of the review could not be performed.

Review Results

Based on the review of the E01 inspection report, Event No. [REDACTED] and discussions with the Field Office and District management, enforcement was appropriate for the mine.

This review identified three issues that required a Corrective Action Plan.

Issue 1: Documentation for inspections did not conform to inspection procedures (Attachment C).

- Notes for 19 of 53 underground inspection days did not document bump tests of multi-gas detectors.
- Notes for 6 of 10 underground inspection days for E02 events did not document bump tests of multi-gas detectors.

Issue 2: The District did not provide inspectors access to bump test equipment to safely and effectively complete the E01 and E02 inspections/events (Attachment C).

- The inspectors were not provided access to proper equipment to perform the required bump tests. Bump tests were not performed on 21 of 53 underground inspection days. One inspector did document bump tests were not performed for 2 of the 21 days.

Issue 3: The Authorized Representative's 48-hour retraining for the 2019-2020 cycle was not completed as required (Attachment C).

- [REDACTED]

The District developed and implemented a Corrective Action Plan to address the issues (Attachment A). Specialist Kissell also discussed with District Management inspection and procedural best practices (Attachment D).

Attachment A: Corrective Action Plan

August 11, 2021

MEMORANDUM FOR THOMAS W. CHARBONEAU
Director, Office of Assessments

THROUGH: [REDACTED]
NANCY M. ROONEY
Administrator for
Mine Safety and Health Enforcement

THROUGH: MOHAMED ABOELMAGD [REDACTED]
Chief, Accountability Division

FROM: DAVID S. MANDEVILLE [REDACTED]
District Manager
East Region, Beckley District

SUBJECT: Proposed Corrective Actions Plan

This is a response to the review conducted by the Accountability Division in [REDACTED] for the Beckley District and [REDACTED]. The results of your review identified three issues that are required to be addressed by this District.

Issue 1 – Documentation for inspections was not in accordance with inspection procedures (Attachment C).

- Notes for 19 of 53 underground inspection days did not document bump tests for multi-gas detectors.
- Notes for 6 of 10 underground inspection days for E02 events did not document bump tests for multi-gas detectors.

ROOT CAUSE:

The inspectors failed to follow established notetaking and documentation requirements and procedures specified in the General Inspection Procedures Handbook.

PROPOSED CORRECTIVE ACTION:

Starting immediately:

1. If the inspector is unable to bump-test their MSHA-issued multi-gas detector, the inspector will confirm that the operator's representative or accompanied miner's representative has properly functional, calibrated, and bumped-tested detectors before traveling underground. The inspector shall document this action in the daily notes.
2. If the inspector is able to bump test their MSHA-issued multi-gas detector, the inspector will document it in the daily notes as required by the General Inspections Procedures Handbook.

OFFICE OR POSITION RESPONSIBLE FOR IMPLEMENTING THE CORRECTIVE ACTION(S):

The District Manager is responsible for verifying the implementation of corrective actions.

TIMEFRAME FOR COMPLETION OF EACH CORRECTIVE ACTION:

All Authorized Representatives will be instructed to document bump tests of multi-gas detectors, as required by the General Inspection Procedures Handbook, by October 1, 2021.

METHOD FOR DETERMINING SUCCESS:

The Field Office Supervisor will timely review the inspector's notes as they are submitted. The Assistant District Manager of Enforcement will review five (5) randomly selected inspection events in the next 90 days. These reviews will be tracked, and issues in the notes and reports will be noted.

Issue 2 – The inspectors were not provided access to proper equipment to perform the required bump tests. Bump tests were not performed on 21 of 53 underground inspection days. One inspector did document bump tests were not performed for 2 of the 21 days (Attachment C).

- Inspection personnel will be provided equipment and supplies sufficient to safely and effectively complete the assigned inspection and will be properly trained in the use of such equipment. The inspector should use equipment and supplies owned and properly maintained by MSHA (refer to the Inspector's Equipment List and Field Office Equipment and Supplies List in Chapter 5) or other specialized equipment as required.

ROOT CAUSE:

Due to exigencies associated with COVID-19, access to bump test equipment was restricted. The District instructed inspectors to drive directly from their residences to the mine sites, and not to enter the Field Office to conduct the bump test.

PROPOSED CORRECTIVE ACTION:

Management instructed inspectors to confirm that the operator's representative or accompanied miner's representative has properly functional, calibrated, and bump-tested multi-gas detectors before traveling underground. The inspector(s) shall document this action in their daily notes. The inspector(s) will continue to use their MSHA-issued multi-gas detectors. Inspectors shall take an air sample for the area in question whenever any discrepancy is discovered between the MSHA-issued multi-gas detector and the readings taken by the operator's accompanied representative. The District will provide portable bump-test kits to individual inspectors beginning in January 2022.

OFFICE OR POSITION(S) RESPONSIBLE FOR IMPLEMENTING THE CORRECTIVE ACTION(S):

The District Manager is responsible for verifying that corrective actions are implemented.

TIMEFRAME FOR COMPLETION OF EACH CORRECTIVE ACTION:

Starting January 3, 2022, the Field Office Supervisor will ensure that inspection personnel are provided with portable bump-test kits sufficient to safely and effectively complete the assigned inspection and will be properly trained in the use of such kits.

METHOD FOR DETERMINING SUCCESS:

The Field Office Supervisor will timely review the inspector's notes as they are submitted. The Assistant District Manager of Enforcement will review five (5) randomly selected inspection event reports by February 1, 2022. These reviews will be tracked, and issues in the notes or reports will be noted and provided to the Field Office Supervisor, who will use them for training the inspection staff.

Issue 3: The Authorized Representative's 48-hour retraining for the 2019-2020 cycle was not completed as required (Attachment C).

- [REDACTED]

ROOT CAUSE:

[REDACTED]

PROPOSED CORRECTIVE ACTION:

The District Manager will require the Administrative Officer to monitor the training for all the District Authorized Representatives of the Secretary of Labor, regardless of position. The District Manager will request up to a one-year extension from the Administrator for Mine Safety and Health Enforcement to complete the required 48 hours of training for the relevant District personnel.

OFFICE OR POSITION(S) RESPONSIBLE FOR IMPLEMENTING THE CORRECTIVE ACTION(S):

The District Manager is responsible for verifying that corrective actions are implemented.

TIMEFRAME FOR COMPLETION OF CORRECTIVE ACTION:

By September 30, 2021.

METHOD FOR DETERMINING SUCCESS:

The District Administrative Officer will ensure the relevant District personnel are enrolled and completed the required training within the extension period.

A DESCRIPTION OF THE DOCUMENTATION THAT WILL DEMONSTRATE CLOSURE OF THE CORRECTIVE ACTION(S):

The District Manager will send a memorandum to Thomas W. Charboneau, Director, Office of Assessments, upon completion and evaluation of the corrective actions.

Attachment B: Accountability Division Checklist

Beckley District and [REDACTED]

Some questions may not be applicable to the particular mine site or office and would not be a part of this review.

Questions 1-16 apply to the regular mine inspection reports reviewed and the mine site visit.

Question Number	Question	Answer
Question 1	Determine if complete and thorough E01 inspections are being conducted and/or if policy and procedures were properly followed.	Adequate: Yes Corrective Action Needed: No Comments: None
Question 2	Determine if the documentation for inspections conforms to inspection procedures.	Adequate: No Corrective Action Needed: Yes Comments: Attachment C
Question 3	Determine if citations and orders issued during previous inspections were properly evaluated for gravity, negligence, level of enforcement, number of persons affected, and supported by documentation.	Adequate: Yes Corrective Action Needed: No Comments: None
Question 4	Evaluate examination of required record books and postings for compliance with applicable standards.	Adequate: Yes Corrective Action Needed: No Comments: None
Question 5	Evaluate examination of the required mine maps.	Adequate: Yes Corrective Action Needed: No Comments: None

Question Number	Question	Answer
Question 6	Evaluate the observation of the mining cycle and conditions in the active working area during the review.	Adequate: Yes Corrective Action Needed: No Comments: None
Question 7	Evaluate the air quantity, quality, and gas checks during the review.	Adequate: Yes Corrective Action Needed: No Comments: None
Question 8	Evaluate the examination of electrical equipment, transformer stations, and/or electrical circuits.	Adequate: Yes Corrective Action Needed: No Comments: None
Question 9	Evaluate examination for permissibility during the review.	Adequate: Yes Corrective Action Needed: No Comments: None
Question 10	Determine if E01 inspections include examinations of the conveyor belts, belt drives, and belt entries.	Adequate: Yes Corrective Action Needed: No Comments: None
Question 11	Evaluate, during the review, the inspection of at least one set of seals, including methods for obtaining samples from sealed areas.	Adequate: Yes Corrective Action Needed: No Comments: None
Question 12	Determine if close-out discussions are being conducted.	Adequate: Yes Corrective Action Needed: No Comments: None

Question Number	Question	Answer
Question 13	Evaluate applicable plans for the site (ventilation, roof control, emergency response, ground control, etc.)	Adequate: Yes Corrective Action Needed: No Comments: None
Question 14	Determine if a proper examination of the Atmospheric Monitoring System and Automatic Fire Sensor and Warning Device is being conducted.	Adequate: Yes Corrective Action Needed: No Comments: None
Question 15	Determine if proper procedures for conducting, documenting, and reviewing MSHA health inspections are being followed.	Adequate: Yes Corrective Action Needed: No Comments: None
Question 16	Evaluate the overall condition of the mine relative to the level of enforcement documented in previously completed inspections.	Adequate: Yes Corrective Action Needed: No Comments: None

Questions 17-34 apply to Field Office and District-specific items.

Question Number	Question	Answer
Question 17	Determine if inspectors have sufficient equipment and supplies to conduct thorough inspections.	Adequate: No Corrective Action Needed: Yes Comments: Attachment C
Question 18	Determine if inspectors have an understanding of when a violation of Section 103(a) for Advance Notice occurs and whether appropriate citations are issued for Advance Notice.	Adequate: Yes Corrective Action Needed: No Comments: None

Question Number	Question	Answer
Question 19	Determine if decisions are made to initiate or decline investigations for Possible Knowing/Willful Reviews within 30 Calendar days.	<div></div> <div></div> <div></div>
Question 20	Evaluate 103(i) spot inspection (E02) reports for the office being reviewed for compliance with agency policies and procedures.	Adequate: Yes Corrective Action Needed: No Comments: None
Question 21	Determine if Hazardous Condition Complaint inspections/investigations are being conducted according to policy and procedures.	Adequate: Yes Corrective Action Needed: No Comments: None
Question 22	Determine if supervisors are monitoring inspector time and activity to ensure proper use of time, including off-shift and weekend work, by all inspectors.	Adequate: Yes Corrective Action Needed: No Comments: None
Question 23	Determine if required supervisory accompanied activities are being conducted and documented according to agency policy and procedures.	Adequate: Yes Corrective Action Needed: No Comments: None
Question 24	Determine if a 104(d) tracking system is in place and being kept current at the office being reviewed.	Adequate: Yes Corrective Action Needed: No Comments: None
Question 25	Determine if the Electronic Mine Files are maintained and reviewed according to current agency policy and procedures.	Adequate: Yes Corrective Action Needed: No Comments: None

Question Number	Question	Answer
Question 26	Determine if supervisors are rotating the mine assignments annually among inspectors assigned to their Field Office.	Adequate: Yes Corrective Action Needed: No Comments: None
Question 27	Determine if retraining for supervisors, inspectors, and specialists is up to date and being tracked.	Adequate: No Corrective Action Needed: Yes Comments: Attachment C.
Question 28	Determine if District Managers, Assistant District Managers, and supervisors are conducting mine visits according to directives.	Adequate: Yes Corrective Action Needed: No Comments: None
Question 29	Determine if six-month plan reviews comply with current agency policy and procedures.	Adequate: Yes Corrective Action Needed: No Comments: None
Question 30	Determine if Assistant District Managers are conducting the required second-level reviews.	██████████ ████████████████████████████████████████ ████████████████████
Question 31	Determine if District management personnel are reviewing work products and reports for accuracy and completeness.	Adequate: Yes Corrective Action Needed: No Comments: None
Question 32	Determine if managers and supervisors are using standardized reports to review critical data relevant to inspections and investigations.	Adequate: Yes Corrective Action Needed: No Comments: None

Question Number	Question	Answer
Question 33	Determine if information (mine status, methane liberation, number of employees, etc.) is being entered into the MSHA Standardized Information System accurately and in a timely manner.	Adequate: Yes Corrective Action Needed: No Comments: None
Question 34	<p>Determine if the District's Roof Control Plan Review Standard Operating Procedures follow established Program Policy Manual requirements and include guidance to follow the Roof Control Plan Review Handbook to include:</p> <ul style="list-style-type: none"> • Checking that required information is submitted • Checking for communication with other plan approval groups • Assuring that designated MSHA personnel contact the operator for additional information • Discussing results of on-site evaluations with the operator and identified miners' representatives 	Adequate: Yes Corrective Action Needed: Yes Comments: None

Attachment C: Issues Requiring Corrective Action Plan with Requirements.

Issue 1: Documentation for inspections was not in accordance with inspection procedures. Notes for 19 of 53 underground inspection days did not document bump tests for multi-gas detectors. Notes for 6 of 10 underground inspection days for E02 events did not document bump testing for multi-gas detectors.

Requirement: General Inspections Procedures Handbook, PH19-IV-V-1, page 2-3 states, “Multi-gas detectors used by enforcement personnel will be performance- (“bump”) tested before use. Instruments that fail the “bump” test must be recalibrated prior to use in the field. “Bump” tests will be documented in the notes.”

Issue 2: The inspectors were not provided access to the necessary equipment to perform the required bump tests. Bump tests were not performed on 21 of 53 underground inspection days.

Requirement: General Inspections Procedures Handbook, PH19-IV-V-1, page 1-2 – “Inspection personnel will be provided equipment and supplies sufficient to safely and effectively complete the assigned inspection and will be properly trained in the use of such equipment. The inspector should use equipment and supplies that are owned and properly maintained by MSHA (refer to the Inspector’s Equipment List and Field Office Equipment and Supplies List in Chapter 5) or other specialized equipment as required.”

Issue 3: The 48-hour retraining for the 2019-2020 cycle was not completed for all District personnel. [REDACTED]

Requirement: MSHA Administrative Policy and Procedures Manual Volume III General Management, CH 1400, Training and Retraining of Enforcement Personnel, Part 1405 Policy, Part E - Authorized Representatives.

1. Complete 48 hours of retraining during each two-year cycle.

Attachment D: Discussion Items

Accountability Division Specialist Jerry Kissell conducted the closeout of the review with District Management staff on [REDACTED] Items discussed included:

Possible Knowing and Willful Reviews

- Special Investigations Procedures Handbook (PH20-I-5) - Revisions in the Possible Knowing/Willful Reviews decision process.