



**AUG 13 2018**

MEMORANDUM FOR PATRICIA W. SILVEY

Deputy Assistant Secretary for  
Mine Safety and Health Administration

THROUGH:

KEVIN G. STRICKLIN  
Acting Administrator for  
Metal and Nonmetal Mine Safety and Health

FROM:

THOMAS W. CHARBONEAU  
Director, Office of Assessments

SUBJECT:

Mine Safety and Health Administration (MSHA)  
Office of Accountability Review, Metal and Nonmetal  
South Central District, Carlsbad, New Mexico Field Office,  
[REDACTED]

Introduction

This memorandum summarizes the Office of Accountability's review of the South Central District, Carlsbad, New Mexico Field Office. The review focused on enforcement activities at the [REDACTED]. This review included MSHA field activities, level of enforcement, conditions and practices at the mine, Field Accompanied Reviews, and Office Reviews and MSHA supervisory and managerial oversight.

Purpose

The purpose of this accountability review is to determine whether MSHA enforcement policies, procedures and guidance are being followed consistently and whether mission critical enforcement activities are accomplished effectively. The accountability review also identifies areas for improvement and the subsequent implementation of effective corrective actions to address any identified issues.

## Overview

Office of Accountability (OA) Supervisor Ted Smith and Specialists Mark Odum and Jerry Kissell (Review Team) conducted the review in accordance with the annual accountability review plan schedule. The review concentrated on two Regular Safety and Health Inspections (E01) of the [REDACTED] Event Nos. [REDACTED]. The mine was selected because it is a large underground and surface operation. Mr. Smith and Mr. Odum conducted the on-site review from [REDACTED] through [REDACTED]. The review focused on enforcement activities during FY 2017 and included review of supervisory oversight activities.

## Mine Visit – [REDACTED]

The Review Team accompanied the Field Office Supervisor and inspector to the mine on [REDACTED] as part of a Spot Inspection (E16).

The mine is an underground [REDACTED] operation located in [REDACTED] that produces approximately [REDACTED] tons per day. It employs [REDACTED] miners working a twelve-hour production shift per day, four days per week. The [REDACTED] is mined by use of a continuous mining machine. Material is loaded onto shuttle cars and dumped onto conveyors that transport the [REDACTED] to the surface for further processing to be made ready for commerce. During the visit, the Team evaluated general conditions at the mine; assessed whether conditions at the mine are commensurate with enforcement levels documented in the inspection reports reviewed; and observed work practices at the mine site.

The mine visit included inspections and observations of the following:

- examination records
- underground development working section area
- primary escape and travelway
- mining cycle and work practices
- 2<sup>nd</sup> South 100 conveyor belt head and transfer area
- refuge chamber area near mine bottom
- surface pellet plant and disc deck
- check in/check out system

The inspector issued one enforcement action. (See Attachment B)

## Review Results

This accountability review revealed positive findings in several areas, including the following:

1. The inspection reports reviewed were organized and notes were clear and concise.
2. Reports included pictures of violations.
3. Inspectors documented observations of mining cycles and work practices.

4. This accountability review did not identify any issues that required a corrective action plan.

(See Attachment A for Office of Accountability Checklist Items)

The Review Team identified and discussed with District personnel inspection and procedural best practices as described in the Metal and Nonmetal General Inspection Procedures Handbook. A general outline of discussion topics is included in an attachment to this memorandum. (See Attachment C)

As a part of the review, the OA compared enforcement levels of the mine with the Field Office, District, and national averages. The mine had a Significant and Substantial (S&S) rate of 18 percent during the FY 2017 compared to the Field Office S&S rate of 23 percent; a District S&S rate of 24 percent; and the national S&S rate of 23 percent. While the S&S rate for the mine was lower than the average S&S rates of the Field Office, District and nation, the enforcement levels were appropriate with existing mining conditions and work practices based on the review and observations made during the mine visit.

**Attachments**

A. Office of Accountability Checklist

B. Citation issued during the mine site visit



57.3200

C. Discussion Topics

United States Department of Labor  
Mine Safety and Health Administration  
Office of Accountability

District

South  
Central

Field Office

Carlsbad, NM

Mine ID

[REDACTED]

Date

[REDACTED]

Attachment A – Office of Accountability Checklist

1. Determine if complete and thorough E01 inspections are being conducted and /or if policies and procedures were properly followed.  
Adequate  Corrective Action Needed  Comments Below

2. Determine if documentation for inspections is complete and thorough.  
Adequate  Corrective Action Needed  Comments Below

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  Corrective Action Needed  Comments Below

4. Evaluate inspector(s) examination of required records and postings for compliance with applicable standards.  
Adequate  Corrective Action Needed  Comments Below

5. Evaluate the inspector(s) physical examination of the active working areas of the mine and inspection of all mining cycles.  
Adequate  Corrective Action Needed  Comments Below

6. Evaluate the inspector(s) on-site contaminant assessment and documentation.  
Adequate  Corrective Action Needed  Comments Below

United States Department of Labor  
Mine Safety and Health Administration  
Office of Accountability

District  South  Central Field Office  Carlsbad, NM Mine ID  [REDACTED] Date  [REDACTED]

7. Evaluate inspector(s) examination of electrical equipment, transformer stations, and/or electrical circuits.

Adequate  Corrective Action Needed  Comments Below

8. Determine if adequate close-out conferences are being conducted at the end of each inspection.

Adequate  Corrective Action Needed  Comments Below

9. Determine if Possible Knowing/Willful (PKW) Forms are documented and processed according to agency policy and procedures.

Adequate  Corrective Action Needed  Comments Below

Attachment C

10. Evaluate 103(i) spot inspection (E02) reports for the office/district being reviewed for compliance with agency policies and procedures, including compliance with time frames and separating E02 inspections from other events.

Adequate  Corrective Action Needed  Comments Below

Not Applicable - The Field Office does not have any mines in a 103(i) status.

11. Determine if Hazard Complaint inspections/investigations are being conducted according to policy and procedures.

Adequate  Corrective Action Needed  Comments Below

12. 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  Corrective Action Needed  Comments Below

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Mine Safety and Health Administration  
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District

South  
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Mine ID

[REDACTED]

Date

[REDACTED]

13. Are required Field Accompanied Reviews (FARs), Office Reviews (ORs) and supervisory follow-up reviews being conducted and documented according to agency policy and procedures?  
(ORs -One E-01/Inspector/every six months/FY -minimum; FARs - one/inspector/year - minimum)

[REDACTED]

14. Determine if a 104(d) tracking system is in place and being kept current at the office being reviewed.

Adequate

Corrective Action Needed

Comments Below

15. Determine if the Mine Files are legible, up to date, and reviewed by supervisors.

Adequate

Corrective Action Needed

Comments Below

16. Determine if supervisors are visiting active mines.

Adequate

Corrective Action Needed

Comments Below

17. Review documentation of staff meetings/safety meetings to determine their effectiveness and relevance to current issues and the Agency's mission.

Adequate

Corrective Action Needed

Comments Below

United States Department of Labor  
Mine Safety and Health Administration  
Office of Accountability

District  Field Office  Mine ID  Date

18. Determine if Assistant District Manager is conducting the required second level reviews and holding supervisors accountable for oversight of Office Reviews and Field Accompanied Activity Reviews.

19. Determine if district management personnel are reviewing work products and reports for accuracy and completeness.

Adequate  Corrective Action Needed  Comments Below

20. Determine if managers and supervisors are using required standardized reports to review critical data relevant to inspections and investigations.

Adequate  Corrective Action Needed  Comments Below

21. Determine if Districts, when required, are conducting in-depth accountability reviews in compliance with agency policy and procedures including follow-up to determine the effectiveness of corrective actions.

Adequate  Corrective Action Needed  Comments Below

22. Is information (mine status, methane liberation, number of employees, etc.) being entered into the MSHA Standardized Information System (MSIS) accurately and in a timely manner?

Adequate  Corrective Action Needed  Comments Below

23. Determine if inspectors have sufficient equipment and supplies to conduct thorough inspections.

Adequate  Corrective Action Needed  Comments Below

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Mine Safety and Health Administration  
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District

South  
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Field Office

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Date

24. Evaluate the overall condition of the mine relative to the level of enforcement documented in previously completed inspections.

Adequate

Corrective Action Needed

Comments Below

25. 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

Corrective Action Needed

Comments Below

26. Determine if the management resource tracking tool is being used to track resources regarding Special Investigations.

Adequate

Corrective Action Needed

Comments Below

27. Determine if retraining of supervisors, inspectors, and specialists is being tracked.

Adequate

Corrective Action Needed

Comments Below

28. Determine if supervisors are rotating the mine assignments annually among inspectors assigned to their Field Office.

Adequate

Corrective Action Needed

Comments Below

United States Department of Labor  
 Mine Safety and Health Administration  
 Office of Accountability

District South Central Field Office Carlsbad, NM Mine ID [REDACTED] Date [REDACTED]

Attachment B – Citations issued during the mine site visit

Mine Citation/Order U.S. Department of Labor  
 Mine Safety and Health Administration

Section I—Violation Data	
1. Date <small>Mo Da Yr</small> [REDACTED]	2. Time (24 Hr. Clock) [REDACTED]
3. Citation/Order Number [REDACTED]	
4. Served To [REDACTED]	5. Operator [REDACTED]
6. Mine [REDACTED]	7. Mine ID [REDACTED] <small>(Contractor)</small>

B. Condition or Practice 8a. Written Notice (103g)

Loose material ranging in size existed on four areas of the rib located in the Power room of 500 Area between BT31 and BT29. This condition contributes to a struck-by hazard to miners. The area is accessed as needed by miners for equipment and fire extinguisher examinations/maintenance. Should an incident occur lacerations or broken bones could result.

Photos taken:

See Continuation Form (MSHA Form 7000-3a)

9. Violation	A. Health Safety Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 57.3200
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Section II—Inspector's Evaluation

10. Gravity				
A. Injury or illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input checked="" type="checkbox"/> Reasonably Likely <input type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input checked="" type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input type="checkbox"/>				
C. Significant and Substantial: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>				D. Number of Persons Affected: 001
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input checked="" type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action 104a		13. Type of Issuance (check one) Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>			E. Citation/Order Number	F. Dated Mo Da Yr

15. Area or Equipment

16. Termination Due	A. Date <small>Mo Da Yr</small> [REDACTED]	B. Time (24 Hr. Clock) [REDACTED]
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Section III—Termination Action

17. Action to Terminate The loose material was scaled down. This citation is hereby terminated.

18. Terminated	A. Date <small>Mo Da Yr</small> [REDACTED]	B. Time (24 Hr. Clock) [REDACTED]
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Section IV—Automated System Data

19. Type of Inspection (activity code) E16	20. Event Number [REDACTED]	21. Primary or Mit P
22. AR Name [REDACTED]		23. AR Number [REDACTED]

MSHA Form 7000-3, Apr 08 (revised). In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.

United States Department of Labor  
Mine Safety and Health Administration  
Office of Accountability

District 

South Central
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 Field Office 

Carlsbad, NM
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 Mine ID 

[REDACTED]
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 Date 

[REDACTED]
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Attachment C – Discussion points

- Enforcement Action Review – Discussed in general documentation and justification of gravity and negligence of citations reviewed in previous E01 events.
- Discussed Office Reviews / Field Accompanied Reviews requirements.
- 4000-49 form – Discussed documenting accurate information for petition for modifications and miners’ representatives.
- Photo mounting sheet – Form 4000-125 – Discussed using the current form dated June 2009.
- Attachment A, See Checklist #9 - PKW detail – time frames – Corrective actions from the Office of Accountability review conducted in 2017 were continuing to be evaluated for effectiveness at the time of this review.