January 16, 2009

MEMORANDUM FOR RICHARD E. STICKLER
Acting Assistant Secretary for
Mine Safety and Health Administration

THROUGH: CHARLES J. THOMAS
Director of Accountability for
Mine Safety and Health Administration

FROM: JERRY KISSELL
Accountability Specialist

SUBJECT: MSHA Office of Accountability Audit, Bessemer, Alabama, Field Office, and

Introduction

This memorandum summarizes the Office of Accountability audit of the subject mine and field office. Audit subjects included the Uniform Mine File, MSHA field activities, level of enforcement, Field Activity Reviews (FAR's), MSHA supervisory and managerial oversight, mine plans, and the conditions and practices at the mine. The audit was conducted during the week of [mask] by Jerry Kissell. Positive findings and issues requiring attention are included in this audit report.

Overview

The auditor traveled to the Bessemer, AL field office and the [mask], to observe and evaluate enforcement activities and mine conditions.

Accompanying the auditor were [mask] Mine personnel traveling with the inspection party included [mask] Areas of the mine inspected included the open pit, highwalls, haulroads, and berming. Eight pieces of mobile equipment including dozers, excavators, haul/rock trucks, and front end loaders were inspected as well. A safety discussion was held with eleven (11) miners on
site concerning highwall safety, dozer accidents, equipment operation safety, berming safety, haul truck safety and safe dumping procedures.

The audit revealed many positive findings related to MSHA field activities and mine conditions, including well organized pre-inspection conferences, and enforcement actions on all levels from 104(a), 104(b), 104(d), and 107(a). Other positives included good communications between MSHA and the mine operator, clear explanation and root cause discussion on citations issued and thorough and complete inspections. FARS and AA’s for the surface inspectors were reviewed as well. Conditions observed at the mine site were reflective of the previous inspection reports.

Four violations were issued during this audit. The level of enforcement appears accurate and fair for the conditions observed at the mine.

Positive items observed include:
1.) Inspection documentation indicates thorough and complete inspections.
2.) Good communications during inspections, including root cause evaluation in citation issuance. Excellent professionalism with the operator.
3.) D-tracking by the district and updated spreadsheet provided to field office.
4.) Knowledgeable, experienced inspection staff.

Issues that require corrective actions:
1.) 7000-1 MSHA accident and injury reports were not maintained as required by the UMF handbook. (Checklist Item 7)

2.) Event sheet activity calendar is not accurately documented. (Checklist Item 1)

3.) SCMI must conduct a thorough review of inspection reports, and time reporting. (Checklist Items 1,2)

4.) Effective oversight of follow-up and evaluation of the corrective action plan are essential to the success of the accountability program. The district should monitor and update corrective actions to determine the success of the plan and make adjustments as necessary. (Item 68)

Recommendations -

One district review was completed. OA recommends future district audits too consider surface mines and surface facilities in lieu of an underground mine audit each and every year, this is not a requirement. When separate surface facilities are under a separate ID it would be wise use of resources to incorporate the surface entity along with the UG audit when appropriate. HQ selects the mines for each district, as per the
Accountability Handbook. A surface mine was selected for one of the Coal district level reviews for 2008.

High visibility, reflective safety vests be provided to MSHA surface coal inspectors. (Night inspections can be more hazardous as these inspectors perform duties with little or no safety reflective clothing to improve their presence to others in the area.) Metal Non-Metal Program area has ordered reflective vests for all inspectors.

Consider cameras as part of inspection tools for surface inspector to support violations documentation. (The last two recommendations may already be in the action phase according to HQ.)

Audit Results

The attached checklist addresses the findings of this audit. Positive results as well as issues that need to be addressed are covered in the checklist.

Attachments

A. OOA Checklist with comments
B. Citations issued during audit mine visit.
   1. 77.1605(d)
   2. 77.1605(a)
   3. 77.1606(c)
   4. 77.1606(c)
C. Photo’s of Mine site equipment activity

cc: M. Davis
    J. Pallasch
    K. Stricklin
    T. Bentley
    F. Quintana
    N. Merrifield
    G. Fesak
1. Coal  [X]  Metal/Nonmetal  [ ]
   Evaluate supervisory review of inspection reports and documentation for completeness.
   Adequate  [ ]  Inadequate  [X]  Not Applicable  [ ]  Comments Below

   SCMI failed to verify the accuracy of the event Calendar.

   Event
   Time was credited to [ ] was checked on the Activity Calendar.
   The ending date for this event was [ ] Is this correct? There was no other time charged other than on [ ]

   Event
   1. The Event started on [ ] Time was charged on [ ] and [ ]; however, these days are not documented on the Event Calendar.
   2. On [ ] the inspector indicated in his time that he worked on the 2nd shift; however, the supervisor accompanying him indicated she worked on the 3rd shift. The 2nd shift was checked on the activity calendar.
   3. Time was credited to this Event on [ ] after the Event closing date on [ ]

   Action required  SCMI need to improve work product reviews to ensure accuracy of inspection reports, citations, event calendars, and field notes.

   The event calendars have been updated to reflect the correct information for these events.

   Reference – Coal Mine safety and Health Supervisor’s Handbook (AH08-III-1)

2. Coal  [X]  Metal/Nonmetal  [ ]
   Determine if supervisors address report deficiencies immediately
   Adequate  [ ]  Inadequate  [X]  Not Applicable  [ ]  Comments Below

   Reference item 1, supervisors should be identifying the items and requesting the proper corrective actions.
3. Coal  **X**  Metal/Nonmetal  **☐**  
Determine if supervisors are visiting each assigned mine at least annually  
| Adequate |   X   | Inadequate |   | Not Applicable |   | Comments Below |

4. Coal  **X**  Metal/Nonmetal  **☐**  
Evaluate the quality of Field Activity Review reports (FAR’s)  
| Adequate |   X   | Inadequate |   | Not Applicable |   | Comments Below |

More positive and issues requiring correction documentation could be provided, but they are meeting the required elements for the surface inspectors.

5. Coal  **X**  Metal/Nonmetal  **☐**  
Determine if supervisors/managers are identifying and addressing performance or behavior based issues during and after accompanied inspections are conducted  
| Adequate |   X   | Inadequate |   | Not Applicable |   | Comments Below |

6. Coal  **X**  Metal/Nonmetal  **☐**  
Evaluate the quality of Accompanied Inspections  
| Adequate |   X   | Inadequate |   | Not Applicable |   | Comments Below |

They are timely and the supervisor has a spreadsheet tracking the completed and scheduled activities. More specific documentation could be provided on the positives and possible areas for improvements for the surface inspectors.
7. Coal Metal/Nonmetal

Determine if supervisors are thoroughly reviewing mine files at least annually

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The UMF files are in good order with one exception. The 7000-1 accident and injury reports were not current for all accidents in the past 12 months. The 7000-1 for an accident reported Jan. 5, 2008 was not in the UMF. (PH94-V-9(2), CHAPTER 3, Section 3, Part 1.)

17. Coal Metal/Nonmetal

Determine if supervisors are monitoring inspector time and activity documentation to ensure proper use of time by inspector

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The management of inspection activity time is very good. The events reviewed show the total percent of other time was at 8.5% for event and 11% for event. **Total on site time accounted for 60% and 51% respectively. Travel accounted for the remainder of the time on this event.**

29. Coal Metal/Nonmetal

Determine if complete and thorough inspections are being conducted and adequately documented

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30. Coal Metal/Nonmetal

Determine if inspection notes, air samples, rock dust samples, and tracking map/diagram support the inspector’s assertion that the mine was inspected in its entirety

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31. Coal [X] Metal/Nonmetal [ ]
Determine that the inspector spent sufficient time on off-shifts and on weekends

Adequate [X] Inadequate [ ] Not Applicable [ ] Comments Below

This mine runs two shifts and records indicate the inspectors are on site during both shifts.

34. Coal [X] Metal/Nonmetal [ ]
Determine if all mine record books, postings, and other required materials are examined during the inspection

Adequate [X] Inadequate [ ] Not Applicable [ ] Comments Below

36. Coal [X] Metal/Nonmetal [ ]
Determine if the amount of time expended on each inspection activity and area of the mine is sufficient to accomplish inspection goals

Adequate [X] Inadequate [ ] Not Applicable [ ] Comments Below

37. Coal [X] Metal/Nonmetal [ ]
Evaluate each citation/order/safeguard for inspector's determination of gravity, negligence, number of persons affected, and the level of enforcement

Adequate [X] Inadequate [ ] Not Applicable [ ] Comments Below
38. Coal [X] Metal/Nonmetal [ ]
   Accompany and evaluate inspector’s imminent danger run
   Adequate [X] Inadequate [ ] Not Applicable [ ] Comments Below

41. Coal [X] Metal/Nonmetal [ ]
   Evaluate operator’s workplace examinations
   Adequate [X] Inadequate [ ] Not Applicable [ ] Comments Below

42. Coal [X] Metal/Nonmetal [ ]
   Evaluate conditions on working section and observe work cycle
   Adequate [X] Inadequate [ ] Not Applicable [ ] Comments Below

49. Coal [X] Metal/Nonmetal [ ]
   Evaluate several pieces of equipment.
   Adequate [X] Inadequate [ ] Not Applicable [ ] Comments Below

The audit team inspected 3 trucks, 2 dozers, 1 FEL, 1 skid steer and 1 excavator. Citations were issued for defects. (See attachment B). Good utilization of inspection resources were observed during this E01 Event.
60. Coal  **X** Metal/Nonmetal  **☐**
Determine if all required record books are adequately completed and in compliance with applicable standards

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62. Coal  **X** Metal/Nonmetal  **☐**
Examine mine bulletin board and evaluate adequacy of all required postings

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66. Coal  **X** Metal/Nonmetal  **☐**
Determine if districts are conducting sufficient, in-depth Peer Reviews

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OA recommends future District audits should consider surface mines and surface facilities in lieu of an underground mine audit each and every year when practical.

67. Coal  **X** Metal/Nonmetal  **☐**
Determine if MSHA headquarters is conducting sufficient, in-depth Peer Reviews

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No Headquarters review conducted in District 11 for the audit period, four other Districts were selected for the CY.
68. **Coal** | Metal/Nonmetal | X

Determine if Peer Reviews identify root causes of deficiencies, corrective actions, set time lines for corrections, and identify a method for accurately measuring the success or failure of corrective actions.

- Adequate | X |
- Inadequate | |
- Not Applicable | |
- Comments Below

Effective follow-up and evaluation is part of the peer review program. The district will monitor the effectiveness of the corrective action plan on an ongoing basis and make adjustments to the plan as necessary. *(Reference: AH08-III-4, Accountability Program Handbook, Follow-up and Evaluation, page 8.)*

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73. **Coal** | Metal/Nonmetal | X

Evaluate the approved ground control plan after in-mine visit

- Adequate | X |
- Inadequate | |
- Not Applicable | |
- Comments Below

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77. **Coal** | Metal/Nonmetal | X

Evaluate the two most current completed E01 (regular) inspection reports (two quarters)

- Adequate | |
- Inadequate | X |
- Not Applicable | |
- Comments Below

Event Sheet Activity Calendar was not accurate. See Checklist item 1.

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79. **Coal** | Metal/Nonmetal | X

Citations, orders, and safeguards issued during previous two quarters

- Adequate | X |
- Inadequate | |
- Not Applicable | |
- Comments Below
80. Coal [X] Metal/Nonmetal [ ]
Determine if 104(d) tracking system is in place at the office being audited, and is being kept up to date

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81. Coal [X] Metal/Nonmetal [ ]
Determine if all plans and documents in the Uniform Mine File are legible, and up to date

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Accident on 1/5/2008 - No 7000-1 report was filed or date stamped in the UMF as required under PH94-V-9(2), CHAPTER 3, Section 3, Part 1. (This is corrected.)

114. Coal [X] Metal/Nonmetal [ ]
Determine if spreadsheets and/or databases provided for tracking of mine visits by supervisors and managers is kept up to date

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115. Coal [X] Metal/Nonmetal [ ]
Evaluate the effectiveness of management's support of, and communication with, inspectors and specialists

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The audible warning device, front horn, located on the company no. 275 Caterpillar 773F rock truck in service in the pit was not being maintained. When tested, the device did not function by sound as required.

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<tr>
<th>Violation</th>
<th>A. Health</th>
<th>B. Section of Act</th>
<th>C. Part/Section of Title 30 CFR</th>
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<tbody>
<tr>
<td>A. Injury or Illness (fat)</td>
<td>No Likelihood</td>
<td>Unlikely</td>
<td>Reasonably Likely</td>
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<tr>
<td>B. Injury of illness could reasonably be expected to be</td>
<td>No Lost Workdays</td>
<td>Lost Workdays/Or Restricted Duty</td>
<td>Permanently Disabling</td>
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<td>C. Significant and Substantial</td>
<td>Yes</td>
<td>No</td>
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<td>D. Number of Persons Affected:</td>
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A new fuse was installed in the circuit fuse panel. When tested, the device operated properly by sound.
The front cab windshield located on the 385C Caterpillar excavator, serial no. EDA408, in service in the pit was not being maintained in good condition. The windshield was cracked and broken with jagged edges from the center of the window out to the frame in the middle and bottom area of the windshield. This is in the sight of the operator vision.
The bottom steps for the 7710 Caterpillar rock truck located in the pit were not being maintained. The step for the off side of the truck was broken and damaged. The steps could not be used for access to get on the truck from this side. This is a defect which effects safety.

Regulatory Enforcement Fact of 1996, the Small Business Administration has established the National Small and Agriculture Regulatory Ombudsman to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and ranks each agency's responsiveness to small businesses. 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 2125, Washington, DC 20418. 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.
The bottom steps for the 773F Caterpillar rock truck, company number 236 located in the pit were not being maintained. The step for the operator side of the truck was broken and damaged. The steps could not be used for access to get on the truck from this side. This is a defect which affects safety.
Attachment C - Mine site Photo.

Largest excavator with Highwall in background and coal seam in the floor.

High wall and Pit floor showing coal seam.