



NOV 3 2011

MEMORANDUM FOR PATRICIA W. SILVEY  
Deputy Assistant Secretary for Operations  
Mine Safety and Health

THROUGH: PETER J. MONTALI (b) (6)  
Acting Director of Accountability  
Mine Safety and Health

FROM: JERRY J. KISSELL (b) (6)  
ARLIE A. WEBB  
Accountability Specialist

SUBJECT: Review of Selected Inquiries and Complaints Related  
to Metal and Nonmetal, Southeast District

The Office of Accountability conducted a review of three complaints from mining operations inspected by the Southeast District. This memo summarizes our findings relative to those complaints.

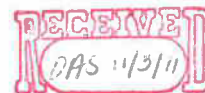
The review was conducted at the Birmingham, Alabama district office by Accountability Specialists Jerry J. Kissell and Arlie A. Webb during the week of (b) (6) through (b) (6). Although several statements made in each of the complaints were not related to inspection procedures or enforcement actions, we have reviewed all allegations submitted and the subsequent responses provided as part of this review.

(b) (6)

This complaint concerns a regular inspection (E01) conducted on (b) (6) and alleges an inability to abate the citations issued due to financial difficulty.

The Office of Accountability reviewed reports for the regular (E01) inspection in (b) (6) (b) (6) and for the follow-up spot inspection (E16) conducted in (b) (6).

A review of inspection field notes from the inspection report for (b) (6) was conducted. The results show well documented inspection practices, communications with the operator and a complete and thorough inspection of the mining operation. Additionally, the 16 citations issued during the inspection were reviewed as well as the citation/documentation notes supporting the observations of the inspector. The evaluation of gravity, negligence, number of persons affected, and levels of enforcement were consistent and supported by the documentation for that inspection.



Documentation contained in both reports show that agency policies and procedures were followed. The agency's response to the complaint is accurate and is supported by the facts contained in the reports. MSHA's response to the mine operator also provided a detailed explanation of the operator's rights to request a financial status review if an operator indicates that the penalty assessment will adversely affect the operator's ability to continue in business, along with a list of required documents necessary for that review.

(b) (6)

This complaint concerns an E01 inspection conducted from (b) (6) to (b) (6) and contains numerous allegations, including inconsistent enforcement and evaluation of citations.

The audit team reviewed all enforcement actions during this regular inspection. The review included citation/documentation notes supporting the observations of the inspectors, the evaluation of gravity, negligence, number of persons affected, and level of enforcement. The results of this review reflected that the appropriate and consistent enforcement was applied and supported by detailed documentation justifying all actions during the inspection. Additionally, the previous regular (E01) inspection report, conducted (b) (6) and the following regular (E01) inspection report, conducted (b) (6) were reviewed by the Office of Accountability. All field notes and citation documentation showed complete and thorough inspections and appropriate levels of enforcement.

A review of documentation contained in the report for the E01 inspection conducted in (b) (6) shows that agency policies and procedures were followed. The Agency's response to the complaint is accurate and is supported by the documentation in the reports.

(b) (6)

This complaint does not focus on any particular inspections, but alleges an adversarial relationship between MSHA and mine operators, and inconsistencies in enforcement and the interpretation of standards.

Six reports for regular inspections (E01) conducted during (b) (6) were selected at random from among the mines associated with the (b) (6). A review of the documentation in each of these reports shows complete and thorough inspections, documentation of communication between MSHA inspection personnel and

the mine operator, agents, miners and miners' representatives, and appropriate levels of enforcement.

A review was conducted of 138 citations and orders issued to all operators belonging to the (b) (6) during this time frame and compared for consistency at the same mines and at different mines within the (b) (6). The review found consistent evaluation of gravity, number of persons affected, negligence and overall level of enforcement at these mines.

The Agency's response to the complaint is accurate and is supported by the documentation in the reports reviewed.

The Office of Accountability reviewed 292 citations/orders and ten regular inspection (E01) reports with 1 follow up inspection (E16) report. Documentation for all inspection events shows MSHA inspection procedures and policies were followed. The level of enforcement was appropriate and supported with the citation /order note documentation. MSHA's response to each of the mine operators is accurate and supported with documentation in all reports reviewed for the three complaints.