



APR 22 2014

MEMORANDUM FOR PATRICIA W. SILVEY

Deputy Assistant Secretary for Operations
Mine Safety and Health Administration

THROUGH:

KEVIN G. STRICKLIN
Administrator for
Coal Mine Safety and Health Administration

JAY P. MATTOS
Director, Office of Assessments, Accountability,
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FROM:

ALFRED L. CLAYBORNE
Deputy Director, Office of Accountability, Special Enforcement
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SUBJECT:

MSHA Office of Accountability Audit, Coal District 5 and the
Norton, Virginia Field Office,

Introduction

This memorandum summarizes the Office of Accountability's audit of the subject district office, field office, and mine. The audit included MSHA field activities; level of enforcement; conditions and practices at the mine; Field Activity Reviews (FARs); Accompanied Activities (AAs); second level reviews; and MSHA supervisory and managerial oversight. The audit included evaluations to determine if there were any deficiencies in areas commonly identified during Agency internal reviews of MSHA's actions following past mine disasters.

Positive findings, as well as issues requiring attention are included in this audit report.

Overview

The audit was conducted by Accountability Specialist Troy Davis and Supervisory Accountability Specialist Ted Smith from [REDACTED]

The audit team traveled with the inspection party to the [REDACTED] on an E01 (regular) mine inspection. Areas and activities examined included the alternate escapeway, communication and tracking system, escape lifelines, belt drives, areas along the belt conveyor entries, and the No.1 Working Section (MMU's 001-0 & 002-0). The inspection party conducted an examination of all working faces on the working section for imminent dangers, took air readings, checked dust parameters and calibration of methane monitors on both continuous mining machines. The section roof support system and ventilation controls along with rock dusting and cleanup were observed during this inspection. A safety talk was conducted on the section with the entire section crew. Topics discussed included recent accidents both in the district and nationally, current mining conditions and methane liberation for the mine.

The outby areas visited included portions of the section's belt, portions of the No. 8 belt conveyor, crossover belt, and transfer point for the Nos. 7 and 8 belt drives. The team also traveled the No. 2 belt and portions of the No.3 belt conveyor. Mine communications were tested, and escape lifelines and signage were inspected along the alternate escape route. The Strata refuge alternative (equipped with stainless steel fittings) located at crosscut 131 in the Mud Lick Mains was also inspected. The team made visual observations of the outby ventilation controls (equipment airlock doors just inby the portal) and observations of the rock dust applications. The [REDACTED] currently has eleven trickle rockdusters in use to continuously apply dust in the returns and at strategic belt drives.

Surface areas examined during the audit included the check-in/check-out system and mine record books. The audit team observed pre- and post inspection conferences conducted by the inspector.

Audit Results

This audit revealed positive findings in several areas as follows:

1. Inspectors at the Norton Field Office were courteous and professional in their interactions with miners and mine operators.
2. The mine conditions as observed in the areas inspected during the mine visit were rockdusted and reflects the level of enforcement reviewed in the last E01 regular inspection.
- 3.
4. The operator has implemented the use of trickle dusters as a result of the inspector's recommendations.
4. The district had sufficient inspector presence at the mines on off-shifts, Friday, and weekends. Friday coverage was above the National average.

This audit revealed one issue that required corrective action:

(Supporting data for each issue can be found in the Office of Accountability (OA) checklist)

1. The documentation for inspections is not complete and thorough for the E01 event

Attachments

- A. Internal Review Summary
- B. Office of Accountability Checklist
- C. Citations/Orders Issued During Audit

Two citations were issued during the audit

- D. Examples of Citations Issued During Previous E01 Inspections

There were no issues identified with previously issued citations

- E. Audit Checklist Item #2
- F. District Corrective Action Plan

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Attachment A – Internal Review Summary

The table below lists the most common internal review findings following mine disasters. District 5 had one of the most commonly identified issues.

	Common Internal Review Findings	Examples of Deficiencies :
	Failure to identify deviations in approved plans.	Not identifying operator departures from requirements in any plan that requires approval, such as training plans, roof control plans, ventilation plans, emergency response plans, etc.
	Incomplete or inadequate inspections	Not following policy or procedures for conducting inspections. Failure to cite all violations. Not inspecting all areas and equipment.
	Failure to conduct 103(i) spot inspections according to policy.	Not conducting spot inspections, not conducted in a timely manner and at irregular intervals.
X	Supervisors did not provide adequate oversight.	No review/lax review of inspection reports. Inadequate review of PKW/SAR forms. Failure to conduct required Field Activity Reviews and Accompanied Activities.
	Improper evaluations of gravity, negligence and type of enforcement action.	Inadequate documentation to support citation and evaluation. Failure to consider and document aggravating or mitigating circumstances.
	Inadequate Peer Reviews	Inadequate district level Peer Reviews. Failure to adopt and follow corrective action plans. Failure to follow up or monitor effectiveness of corrective action plans.
	Weakness in the ACR Program	Not following ACR handbook. Inadequate management oversight. Failure to follow the Mine Act, MINER Act, 30 CFR and MSHA policy.
	MSHA data not used or reviewed.	Key Indicators, Mine Profile, Inspection completion reports not being used. Failure to keep MSIS data up to date and accurate.
	Lack of unwarrantable failure tracking system	No or inadequate unwarrantable failure sequence tracking system.
	Conflict of Interest	Inspecting prior employers, employment of relatives
	Failure to comply with Hazard Complaint Procedures.	Improper coding of inspections. Inadequate documentation of inspections/investigations.
	Investigations of multi-phase plans	Failure to conduct on-site evaluations of plans.
	Failure to observe retreat mining.	Inadequate periodic evaluations when retreat mining is conducted.
	Upper Big Branch Internal Review Corrective Actions	Corrective Actions implemented as of March 31, 2013.

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Attachment B – Audit Checklist

1. Determine if complete and thorough E01 inspections are being conducted and/or if policy 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

See Appendix E for details

Determine if citations and orders issued during previous inspections were

3. 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/specialist examination of required record books and postings for compliance with applicable standards.

Adequate Corrective Action Needed Comments Below

5. Evaluate inspector/specialist examination of the operator's maps (on-site) for accuracy, escapeway locations, etc.

Adequate Corrective Action Needed Comments Below

6. Upon arrival on the working section, accompany and evaluate inspector/specialist examination of all working faces for imminent dangers.

Adequate Corrective Action Needed Comments Below

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7. Evaluate the inspector/specialist observation of the work cycle and conditions on the working section during the audit.

Adequate Corrective Action Needed Comments Below

8. Evaluate the inspector/specialist air quantity, quality, and gas checks during the audit.

Adequate Corrective Action Needed Comments Below

9. Evaluate inspector/specialist examination of equipment electrical cables during the audit.

Adequate Corrective Action Needed Comments Below

10. Evaluate inspector/specialist examination for permissibility during the audit.

Adequate Corrective Action Needed Comments Below

Permissibility examinations were not observed.

11. Determine if previous E01 inspections include examinations of the condition and maintenance of conveyor belts, belt entries, belt drives, fire detection and suppression systems, and separation of belt entries from other air courses.

Adequate Corrective Action Needed Comments Below

12. During the audit, evaluate the inspection of at least one set of seals, including methods for obtaining samples from sealed area.

Adequate Corrective Action Needed Comments Below

Seals were not observed during this audit

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

Adequate Corrective Action Needed Comments Below

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

Adequate Corrective Action Needed Comments Below

The Possible Knowing and Willful forms were not reviewed during this audit.

15. Evaluate 103(i) spot inspection (E02) reports for the office/district being audited 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

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

Adequate Corrective Action Needed Comments Below

17. 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

Previous E01 off-shifts and weekends had inspector coverage

18. Are required Field Activity Reviews (FARs) and supervisory follow-ups being conducted and documented according to agency policy and procedures?

Adequate Corrective Action Needed Comments Below

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19. Are Accompanied Activities (AAs) and supervisory follow-ups being conducted and documented according to agency policy and procedures?

Adequate Corrective Action Needed Comments Below

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

Adequate Corrective Action Needed Comments Below

Tracking through ITS and tracking maps.

21. Determine if the Uniform Mine File books are being maintained and reviewed according to current agency policy and procedures.

Adequate Corrective Action Needed Comments Below

22. Are supervisors thoroughly reviewing Uniform Mine Files at least annually?

Adequate Corrective Action Needed Comments Below

23. Determine if supervisors are visiting each active underground mine at least annually.

Adequate Corrective Action Needed Comments Below

24. Are all sections where retreat mining is occurring (not to include longwall mining) being inspected at least monthly?

Adequate Corrective Action Needed Comments Below

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25. 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

26. After an in-mine visit, evaluate approved plans (ventilation, roof control, training, etc.) for compatibility with mining conditions and equipment.

Adequate Corrective Action Needed Comments Below

27. Determine if approved plans are being revised or updated to reflect changes in conditions and/or equipment.

Adequate Corrective Action Needed Comments Below

28. Determine if plan reviews are in compliance with current agency policy and procedures (performed within required timeframes, tracked from the date of submission, properly documented, and contain input from all affected departments and field offices).

Adequate Corrective Action Needed Comments Below

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

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

Adequate Corrective Action Needed Comments Below

31. Determine if District Managers, Assistant District Managers, and supervisors are conducting required mine visits and properly completing the required spreadsheet.

Adequate Corrective Action Needed Comments Below

32. Determine if District Manager is using discretion in granting conferences and monitoring the ACR program to ensure that all decisions (including upholding, modifying or vacating citations) are properly documented and justified by the CLR's.

Adequate Corrective Action Needed Comments Below

The ACRI program was not reviewed during this audit.

33. Determine if District Manager is holding the Supervisory Special Investigator accountable for properly evaluating and initiating or denying potential cases.

34. 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

MHSA Report Center on MSHAnet website, MSIS, and MPA

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Determine if Districts are conducting in-depth Peer Reviews in compliance with
35. agency policy and procedures including follow-up to determine the effectiveness
of corrective actions.

Adequate Corrective Action Needed Comments Below

Last District Peer Review was conducted in April 27, 2011

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

Adequate Corrective Action Needed Comments Below

UBB Internal Review Corrective Actions

(Implemented as of March 31, 2013)

37. (#2) Training which covered an overview of Part 48 and Part 48 inspection procedures, emphasizing a purposeful examination of training records. Guidance concerning CMS&H Memo No. HQ-08-055-A. Annual refresher online training concerning Part 48.

Adequate Corrective Action Needed Comments Below

38. (#3) On August 30, 2012, the Administrator for Coal directed district managers to use MPA database system to identify overdue responses from operators and take appropriate actions.

Adequate Corrective Action Needed Comments Below

39. (#4) Enforcement personnel were instructed that MSHA policy only allows violations of 30 CFR 48.5, 48.6, 48.7, 48.8, and 48.11 to be cited under section 104(g)(1) of the Mine Act for untrained miners at underground mines. Also trained on records that must be inspected to ensure that an operator is providing all required training. This includes checking training records for AMS operators, responsible persons, and persons who sample atmospheres behind seals.

Adequate Corrective Action Needed Comments Below

40. (#5) Identify training records required by 30 CFR 75.338(a) and 75.1501(a)(3) as records that are to be inspected during a regular inspection, as well as any records of any other training required by MSHA regulations;

- Specify the percentage of miners for which training records are to be inspected during a regular inspection;
- Inspectors are to question miners on their training related to roof control plans and document such information per CMS&H Memo No. HQ-08-055-A. This also applies to training related to ventilation plans.

Adequate Corrective Action Needed Comments Below

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(#7) A complete permissibility inspection of each longwall system shall be
41. conducted by electrical specialists or inspectors who hold a current MSHA
electrical qualification card on at least an annual basis.

Adequate Corrective Action Needed Comments Below

(#11) Conduct a proper examination of the AMS system and/or AMS systems
42. that operate CO sensors for the purposes of 75.1101. A complete inspection
includes those items in the revised GIPH (AMS checklist).

Adequate Corrective Action Needed Comments Below

(#12) Inspectors are to review examination records with the purpose of
determining whether:

43.
 - Examinations have been conducted at required intervals;
 - Records include violations of mandatory safety or health standards;
 - Hazardous conditions have been properly recorded;
 - Records of violations or hazardous conditions indicate a need for inspectors to follow up;
 - Corrective actions have been recorded for reported hazardous conditions;
 - Ventilation of worked out and outby areas have been evaluated properly.

Adequate Corrective Action Needed Comments Below

(#19) Supervisors are to utilize standard oversight reports in the review of
44. rockdust sampling and to also ensure inspectors have valid reasons for not
collecting samples, including visiting some areas that inspectors indicated were
too wet to sample.

Adequate Corrective Action Needed Comments Below

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45. (#21) Inspectors were reinstructed to review required records and postings, including Mine Accident, Injury, and Illness Reports (MSHA Form 7000-1) and Quarterly Employment and Coal Production Reports (MSHA Form 7000-2) during each regular inspection. This will help identify mine operators that routinely under report or inaccurately report accidents, injuries, illnesses, employment, and production.

The District Managers were instructed to hold supervisors accountable for enforcing compliance with this directive.

Adequate Corrective Action Needed Comments Below

46. (#32) Districts are to monitor the time required to process plans and take appropriate administrative actions when necessary. The Administrator for Coal directed district managers and district personnel to use the "Days to Reach Decision" Report in the MSHA Report Center to monitor the time required to process plans and take appropriate administrative action when necessary.

Adequate Corrective Action Needed Comments Below

47. (#33) The Coal Safety Division provided training on the procedures outlined in the Mine Ventilation Plan Approval Procedures Handbook regarding six-month plan reviews to all inspectors and specialists to help ensure that the in-mine physical inspection of the mine ventilation system is properly conducted and documented.

District Managers were instructed to monitor the six-month reviews to verify their effectiveness and take follow-up corrective action if necessary.

[REDACTED]

48. (#38&64) Coal revised the Program Policy Manual provision governing the establishment of Mechanized Mining Unit (MMU) numbers under 30 CFR 70.207. The revised policy provides that the reduced respirable dust standard, due to the presence of quartz, will not change when the operator changes equipment on a mining section.

Adequate Corrective Action Needed Comments Below

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(#42) The Administrator for Coal directed staff to monitor the implementation of new regulations to ensure districts enforce the provisions of final rules within the effective dates specified. This will be tracked through Field Activity Reviews, Accompanied Activities, Second Level Reviews, and District Peer Reviews.
(Only deficiencies are required to be documented)

Adequate Corrective Action Needed Comments Below

(#47) The Roof Control Plan SOP should comply with the established Program Policy Manual requirements as identified by the OIG report to address deficiencies identified in the Internal Review report. The SOPs should account for:

- 50.
- to check that required information is submitted
 - check for communication with other plan approval groups
 - assure that designated MSHA personnel contact the operator for additional information
 - discuss results of on-site evaluations with the operator and identified miners' representatives.

Adequate Corrective Action Needed Comments Below

(#48&49) Six month In-mine physical evaluation of the Roof Control Plan shall be properly conducted and documented (*checklists*). GIPH provides guidance on when six month reviews of complex roof control plans should be forwarded to Technical Support for evaluation. Complex plans should be reviewed by roof control specialists and/or forwarded to Tech Support.

Adequate Corrective Action Needed Comments Below

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52. (#58) SSI's are required to maintain a memorandum detailing the reasons for not conducting a special investigation when the district manager decides to take no further action, in accordance with the Special Investigations Procedures Handbook.

53. (#65) The Coal Health Division provided training on proper procedures for conducting, documenting, and reviewing MSHA respirable dust surveys. Proper documentation to include blue cards, 2000-86's, etc...

Adequate Corrective Action Needed Comments Below

54. (#66) Managers and enforcement personnel should monitor respirable dust violations from issuance to termination to reduce miners' exposure to respirable coal mine dust. The "Abatement Times for Respirable Dust Citations" report is located in the MSHA Report Center on MSHAnet website.

Adequate Corrective Action Needed Comments Below

55. (#67) Retraining of inspectors report is available so that districts can track the training process of their inspectors in real time. This report also allows districts to integrate retraining of inspectors conducted at other sites and certified by Coal. The reports are now available on one reporting system. The Administrator for Coal will provide an annual report to the Assistant Secretary detailing compliance with this policy at the end of each fiscal year.

Adequate Corrective Action Needed Comments Below

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(#75) The Administrator for Coal provided uniform guidance to all district managers and assistant district managers to provide acting field office supervisors with the level of oversight necessary to manage their work groups on a temporary basis. The guidance will be included in each District's SOP for training newly promoted field office supervisors. An online distance learning training course with a knowledge check for temporarily promoted supervisors has been developed for this purpose.

Adequate

Corrective Action Needed

Comments Below

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Attachment C – Citations Issued During Audit

Mine Citation/Order		U.S. Department of Labor Mine Safety and Health Administration		
Section I-Violation Data				
1. Date	Mo Da Yr	2. Time (24 Hr. Clock)		3. Citation/Order Number
4. Served To			5. Operator	
6. Mine			7. Mine ID	(Contractor)
8. Condition or Practice				8a. Written Notice (103g)

Coal dust, including float coal dust deposited on rock-dusted surfaces, loose coal, and other combustible materials, shall be cleaned up and not be permitted to accumulate in active workings. When checked The #1 entry on the active 001 MMU at S.S.#2330 has accumulations that measured 32 feet long by 36 inches wide and from 1 in to 7 inches deep the coal was black and dry to the touch.

Standard 75.400 was cited

See Continuation Form (MSHA Form 7000-3a)			
9. Violation	A. Health Safety <input checked="" type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR
			75.400

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 104(a)		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 Mo Da Yr	B. Time (24 Hr. Clock)

Section III-Termination Action	
17. Action to Terminate	The accumulations have been removed and well rock dusted.

18. Terminated	A. Date Mo Da Yr	B. Time (24 Hr. Clock)

Section IV-Automated System Data		
19. Type of Inspection (activity code)	20. Event Number	21. Primary or Milt
E01		
22. Signature		23. AR Number

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 20415. 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.

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District Coal District 5 Field Office Norton, VA Mine ID [REDACTED] Date [REDACTED]

Mine Citation/Order

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Section I—Violation Data

1. Date Mo Da Yr	2. Time (24 Hr. Clock)	3. Citation/ Order Number
4. Served To	5. Operator	
6. Mine	7. Mine ID	
8. Condition or Practice		8a. Written Notice (103g)

Methane monitors shall be maintained in permissible and proper operating condition and shall be calibrated with a known 2.5% air-methane mixture. When checked the Co.#6832 Joy miner in the 5 right entry on the active 002 MMU at S.S.#2324 was not being maintained in permissible condition when a known mixture of 2.5% air-mixture was applied to the miner it would only span to 2.2%.

Standard 75.342(a)(4) was cited [REDACTED]

See Continuation Form (MSHA Form 7000-3a)

9. Violation	A. Health Safety <input checked="" type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR
			75.342(a)(4)

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 104(a)		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					F. Dated
A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>					Mo Da Yr
15. Area or Equipment					

16. Termination Due	A. Date Mo Da Yr	B. Time (24 Hr. Clock)
	[REDACTED]	[REDACTED]

Section III—Termination Action

17. Action to Terminate The 002 Joy Miner has been recalibrated and is working properly.

18. Terminated	A. Date Mo Da Yr	B. Time (24 Hr. Clock)
	[REDACTED]	[REDACTED]

Section IV—Automated System Data

19. Type of Inspection (activity code)	E01	20. Event Number	[REDACTED]	21. Primary or Mill
22. Signature				23. AR Number
[REDACTED]				[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 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.

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Attachment D – Examples of Citations Issued During Previous Inspections

There were no issues identified with previously issued citations and orders.

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Attachment E – Audit Checklist Item #2

E01 event

1. The inspector's hard copy notes do not document each belt flight inspected. Example: On of the inspectors notes "traveled the #2 thru #9 beltline checking the roof& ribs, rockdusting, cleaning and belt rubbing – NVO"

Requirement: GIPH page 3-47

Documentation Required: *The inspector should record in the inspection notes **each belt flight, skip shaft facility and bunker that is inspected.** The belt flight should be identified in the inspection notes as it appears in the ITS. The inspector is not required to document the inspection of conveyor belt flights by date and initials in the ITS. If a belt flight is not inspected in its entirety, the starting and stopping points, as correlated to a permanent reference point on the mine map such as a crosscut number or spad location should be included in the inspection notes. The inspector should clearly mark the extent of **daily travels that contribute to the E01 inspection by date and initials on the mine tracking map and the beginning and ending point of each day's travel,** until the belt flight is fully inspected (this does not apply to routine travel of or incidental travel into the belt flight).*

2. A. The aircourses (including Escapeways) were not correctly listed in the ITS to include all aircourses identified on the mine map.
B. The inspector's daily extents of travel while examining aircourses were not identified on the tracking map with beginning and stop points.

Requirement: GIPH page 3-41 & 42

During each regular inspection, the inspector should compare the mine operator's weekly examination records of aircourses to the mine map to assure that the mine operator is examining the mine in its entirety. The inspector will assure that all **aircourses required to be examined are maintained in the ITS by name and identified with an intake or return designation. If the aircourse is also an escapeway, it should be so identified with the aircourse name.**

Documentation Required: *The inspector should record in the inspection notes each aircourse that is inspected. The aircourse should be identified in the inspection notes as it appears in the ITS. The inspector is not required to*

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*document the inspection of aircourses by date and initials in the ITS. If an aircourse is not inspected in its entirety, the starting and stopping points, as correlated to a permanent reference point such as a crosscut number or spad number on the mine map should be included in the inspection notes. The inspector should **clearly mark the extent of daily travels that contribute to the E01 inspection by date and initials on the mine tracking map, including any approved evaluation or measurement point locations associated with the aircourse and the beginning and ending point of each day's travel until each intake or return aircourse is fully inspected (this does not apply to routine travel of or incidental travel through an aircourse).***

3. The E01 tracking map also being used to track rockdust samples does not identify float coal dust sources, sample collection dates for individual samples taken. (The map did include an identifier "X" as to the location samples were taken.)

Requirement: GIPH page 5-19

Map

A map of each mine will be maintained at the field office showing ventilation air courses, float coal dust sources, sample locations, sample collection dates, dust violations and other pertinent information.

4. No documentation in inspector's hard copy notes or pertaining to the travel/evaluation of the pre-shift mine examiner (ITS depicts travel with pre-shift examiner on No documentation in inspector's hard copy notes on pertaining to travel/evaluation of the weekly mine examiner (ITS depicts travel with weekly examiner on

Requirement: GIPH page 3-8

Documentation Required: *The inspector should document the **examination type, the examiner by name, and the area examined in the inspection notes;** if the examiner is satisfying the requirements of more than one examination (a combination of preshift, on-shift, or weekly) it should be documented in the inspection notes and the inspector may also consider the procedure complete for those examinations.*

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5. Not all working section equipment identified as being inspected in the ITS on was documented in the inspector's hard copy notes.

Requirement: GIPH page 3-65

Documentation Required: *Inspection of each piece of in use and available for use section equipment should be documented in the inspector's notes and the ITS, including the MMU numbers, the company number, serial number, approval number, or other positive identifier. Documentation that the methane monitor was observed as being tested during the E01 inspection should be included in the inspection notes. Small pieces of handheld electrical equipment are not required to be recorded in the ITS.*

6. No documentation in the inspector's hard copy notes on pertaining to each piece of electrical equipment being examined. The notes on page 6 state "checked all of the 110V pumps along the beltline when checked power centers on #1 thru #14 belt NVO", page 7 "checked the power center at midway points checking breaker settings, fire protection NVO", page 7 "checked the #1 thru #7 cyclone dusters, cable, breaker setting, fire protection". Inspection notes dated on page 9 states "then from there to the portal finishing up on all the LF/RT pump in the return and in the intake from stopping to power centers NVO".

Requirement: GIPH page 3-52

Documentation Required: *Each piece of in use and available for use outby permanent or portable electrical equipment, including the equipment description and company number, serial number, approval number, or other positive identification, inspected under this procedure should be listed in the inspection notes. Small pieces of handheld electrical equipment are not required to be listed in the ITS.*

7. SCSR's were not properly documented in the inspector's hard copy notes. Example page 6. The manufacturer and model was not documented for SCSR's checked.

Requirement: GIPH page 3-17

Documentation Required: *Each SCSR storage cache shall be inspected and documented in the inspector's notes including the physical location. Each SCSR required to be inspected should be documented in the inspection notes by including the SCSR manufacturer, model, serial number and physical location.*

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8. The inspection of the AMS system was not documented properly in the inspector's hard copy notes. The manufacturer and model of the system not documented.

Requirement: GIPH page 3-43

An AMS is a network consisting of hardware and software meeting the requirements of §§ 75.351 (Atmospheric monitoring systems) and 75.1103-2 (Automatic fire sensors; approved components; installation) that are capable of measuring atmospheric parameters; transmitting the measurements to a designated surface location; providing alert, alarm, or warning signals; processing and cataloging atmospheric data; and providing reports.

Page 3-46 **Documentation Required:** *Compliance with this procedure should be recorded in the inspection notes, including the AMS manufacturer and model.*

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Attachment F-District Corrective Action Plan

September 6, 2013

MEMORANDUM FOR TED D. SMITH
Supervisor, Office of Accountability
Mine Safety and Health Administration

FROM: GREGORY B. MEIKLE
District Manager
Coal Mine Safety and Health
District 5

SUBJECT: Proposed Corrective Action

This memo is a response to the audit conducted by your office from
 at the Norton Field Office and the
MSHA ID No This memo addresses the proposed corrective action for one
deficiency outlined in your Office of Accountability audit.

DEFICIENCY NO. 1:

The documentation for inspections is not complete and thorough for the E01 event
number

Proposed Corrective Actions:

All Coal Mine Inspectors (CMIs) and Field Office Supervisors (FOS) in District 5 will be
instructed as to proper documentation for the eight (8) items outlined in Attachment E-
Audit Checklist #2 from the MSHA Office of Accountability Audit performed

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ROOT CAUSE:

Training/Supervisor Oversight:

The CMI(s) did not provide complete/thorough documentation, as outlined in the General Inspection Procedures Handbook (GIPH), during the E01 inspection for the items outlined in Attachment E-Audit Checklist #2

OFFICE RESPONSIBLE FOR IMPLEMENTING:

The Field Office Supervisors will be responsible for providing the required ongoing instruction. The Assistant District Manager for Inspection Programs will assure that the instruction is provided. One day of comprehensive training is scheduled for the District enforcement personnel, including CMIs and Field Office Supervisors, on Wednesday, October 16, 2013, to address these issues.

TIMEFRAME FOR COMPLETION:

The deficiencies will be corrected Wednesday, October 16, 2013, with the training scheduled for the Norton and Vansant Field Offices.

METHOD FOR DETERMINING SUCCESS:

The Field Office Supervisor(s) will review the documentation for the inspections to ensure completeness as outlined in the GIPH. Further review will be conducted during the required Field Activity Reviews (FAR) and the second level reviews.

