



DEC - 6 2014

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

THROUGH: NEAL H. MERRIFIELD [REDACTED]
Administrator for
Metal and Nonmetal Mine Safety and Health

JAY P. MATTOS [REDACTED]
Director, Office of Assessments, Accountability,
Special Enforcement and Investigations

FROM: ALFRED L. CLAYBORNE [REDACTED]
Deputy Director, Office of Accountability,
Special Enforcement and Investigations

SUBJECT: MSHA Office of Accountability Review, MNM Southeastern
District, Knoxville, Tennessee Field Office, and [REDACTED]
[REDACTED]

Introduction

This memorandum summarizes the Office of Accountability's review of the subject district office, field office, and mine. The review included MSHA field activities; level of enforcement; conditions and practices at the mine; Field Accompanied Reviews (FARs); Office Reviews (ORs); and MSHA supervisory and managerial oversight. The accountability review also 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 accountability review report.

Overview

This review was conducted by Accountability Specialist Jerry Kissell from [REDACTED]

[REDACTED] accompanied the accountability specialist during this audit.

[REDACTED]

The review team traveled with the inspection party to the mine on a regular (E-01) inspection. Areas and activities examined included: daily mine crew safety meeting, check in check out board, primary shaft, primary escape and secondary escape routes to the Gann shaft, haulage roads/travelways from the 242 level to the 484 level, air readings throughout areas traveled, ventilation velocity readings, roads and berms, loading and haulage cycles, development face drilling, high scaling/ground control practices, and ventilation practices.

Other areas inspected included the primer and powder storage facilities, inventory/records and housekeeping practices. Also inspected were the 14 lower pod bench, 14 upper – 55 roadway, the 3-AF 2 lower stope level, three Strata refuge chambers, the AW-3 SWICK exploration drilling (contractor) work area, fire extinguishers throughout the mine and mine communication systems.

Mobile equipment inspected included a Caterpillar R 2900 load haul dump (LHD), two Caterpillar 2600 G haul trucks, a Toro 0010 LHD, three Oldenburg Cannon twin boom jumbo rock drills, a Genie 585 man lift scaling rig, a Minetec core drill, a Ford personal utility tractor, a Kubota maintenance tractor, a Kubota lube tractor and two - 75 horse power auxiliary fans.

Review Results

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

1. Enforcement personnel conducted themselves in a professional and courteous manner at all times during the audit and during the inspection.
2. Inspection procedures observed during the audit appeared in compliance with MSHA policy and procedures.
3. Field Accompanied Reviews (FARs) for the Knoxville Field Office were adequately documented.
4. Enforcement personnel used appropriate enforcement tools during the mine site visit.
5. [REDACTED] completed the minimum required Office Reviews (ORs) and Field Accompanied Reviews (FARs) for the second half of FY 2013 and the minimum required OR's for the first half of FY 2014.
6. Staff and safety meetings were well documented and included updates and reviews of MSHA initiatives and policy memoranda.

This accountability review revealed one issue that requires a corrective action:
(Supporting data for each issue can be found in the OA checklist and attachments)

1. Required office reviews were not completed for the first half of FY 2013. The field office was without a supervisor during the period in question and no office reviews were completed for inspectors during this time.

Requirement:

B. Office Reviews (M/NM Mine Safety and Health Supervisors Handbook AH09-III-1(1) Item B, pg. 4)

Requirement: "Field office supervisors shall evaluate inspection documentation generated by inspectors assigned to them once every six months during a fiscal year. That review must include at least one recently completed regular (mandated) inspection or investigation for each inspector. Evaluation activities shall include:

All work documentation or products related to a completed regular inspection to determine if enforcement tools available to the inspector were properly used and whether the level of enforcement applied on the inspection was appropriate based on the actions of the mine operator.

Evaluations will be based on a review of the violations cited, inspection notes, possible knowing and willful review forms, special assessment review forms, photographs, mine maps, required plans or documentation, and any other related documents. Related documents shall include the number and type of violations issued, whether multiple violations of the same standard were issued, and whether similar conditions were cited at different locations with different outcomes. Supervisors must also determine whether specific samples or tests required (e.g., Government Performance and Results Act health goals, radon daughter samples) were conducted and properly documented.

Supervisors shall meet with the affected inspector following completion of the review to discuss their findings. **Significant accomplishments and deficiencies during the review shall be discussed with the inspector. Emphasis added.**

Supervisors shall complete a FAR form, checking "no" for the accompanied inspection block. Once the FAR form is completed, it shall be forwarded to the Assistant District Manager for review within 5 business days of completion.

Assistant District Managers may alter the submission requirement if adequate justification is provided by the field office supervisor.

E. Oversight of Field Office Supervisory Accompanied Reviews and Office Evaluations (M/NM Mine Safety and Health Supervisors Handbook (AH09-III-1(1) Item E. pg. 5-6)

Requirement: "Assistant District managers are required to verify that supervisors conduct the required accompanied inspections and field activity inspection report evaluations. This is accomplished by them completing the following activities each fiscal year.

Reviewing and initialing every FAR form submitted by their field office supervisors. These reviews will assure that the forms are properly completed and that supervisors are conducting the required field activity inspection report evaluations and accompanied inspections. It does not include a review of the inspection files.

Reviewing documentation and signing FAR forms for at least two field activity inspection report evaluations from each field office. This activity will include a review of appropriate inspection files. Assistant Managers must evaluate whether field office supervisors properly conducted, evaluated, and documented their field activity inspection report evaluations....".

Attachments

- A. Internal Review Summary
- B. Office of Accountability Checklist
- C. Statistics
- D. Citations/Orders issued during this audit
 - 1. [REDACTED] 57.20032
- E. Examples of Citations Issued During Previous E01 Inspections
(No issues were identified during this review)
- F. District Corrective Action Plan

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 Mine Safety and Health Administration
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District Southeastern Field Office Knoxville, Tennessee Mine ID [REDACTED] Date [REDACTED]

Attachment A – Internal Review Summary

The table below lists the most common internal review findings following mine disasters. The Knoxville, Tennessee Field Office had one of the most commonly identified issues.

	Common Internal Review Findings	Examples of Deficiencies found in this Accountability Review:
	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/documentation 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 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 (Office 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.

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	Common Internal Review Findings	Examples of Deficiencies found in this Accountability Review
	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.
	Section 103(a) is violated when an operator gives advance notice of MSHA's presence on mine property	Citation not issued when advance notice of impending MSHA inspection
	Tracking tool was needed to monitor personnel resources and those devoted to special investigations	Not monitoring resources devoted to special investigations.
	Needed to improve tracking of retraining of supervisors, inspectors, and specialists	Some supervisors, inspectors, and specialists were not being retrained.

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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

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
No blasting or roof bolting took place during the mine visit.

6. Evaluate the inspector(s) on-site contaminant assessment and documentation.
Adequate Corrective Action Needed Comments Below
No health samples were taken during this inspection. A review of previous inspection reports verify the last health survey was conducted in April of 2014.

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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

Field notes reviewed show daily and final close-outs are consistently conducted.

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

Adequate Corrective Action Needed Comments Below

No PKW's were reviewed during this office review.

10. 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

No 103(i) mines in this field office.

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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13. Are required Office Reviews (ORs) and supervisory follow-up reviews being conducted and documented according to agency policy and procedures?
(One E-01/Inspector/every six months/FY –minimum)

Adequate Corrective Action Needed Comments Below

Required office reviews were not completed for the first half of FY 2013. The field office was without a supervisor during the period in question and no office reviews were completed for inspectors during this time. (See section on Review Results contained in the report for requirements).

14. Are Field Accompanied Reviews (FARs) and supervisory follow-up reviews being conducted and documented according to agency policy and procedures?
(one/inspector/year - minimum)

Adequate Corrective Action Needed Comments Below

15. 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

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

Adequate Corrective Action Needed Comments Below

17. Determine if supervisors are visiting active mines.

Adequate Corrective Action Needed Comments Below

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18. 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

19. 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.

[REDACTED]

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

Adequate Corrective Action Needed Comments Below

21. 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

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

Adequate Corrective Action Needed Comments Below

23. 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

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

Adequate Corrective Action Needed Comments Below

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

Adequate Corrective Action Needed Comments Below

26. 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

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

Adequate Corrective Action Needed Comments Below

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

Adequate Corrective Action Needed Comments Below

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Attachment C – Statistics

S&S Rate Comparison

During FY 2013, the S&S rates for the Knoxville, Tennessee Field Office are higher than the average for the Southeastern District and national average. Year to date in 2014, the S&S rates for the Knoxville, Tennessee Field Office are lower than the average for the Southeastern District and national average. Citations issued during the review were appropriately issued and consistent with policy and procedures. (See attachment D)

Fiscal Year	Knoxville Field Office	Southeastern District	National Average
2013	33%	27%	27%
2014*	24%	26%	26%

*10/01/2013 thru 06/30/2014

Time and Activity Comparison

A comparison of FY 2013 and FY 2014 time distribution for the Knoxville Field Office at all mining operations shows that time in the other category has decreased and on-site enforcement time decreased.

Time Distribution (%) – E01 Inspections							
FY	Area/Office	Travel	*Other	**On-Site Enf. time	Total Enf. Time	Non Enf. time	Total Percent
2013	FO	12%	11%	49%	72%	28%	100%
	Nat'l Avg	21%	15%	42%	78%	22%	100%
2014***	FO	11%	7%	42%	60%	40%	100%
	Nat'l Avg	20%	15%	42%	77%	23%	100%

* Other time includes off site citation/order writing, health equipment calibration, and mailing of samples

** Total On-Site time includes citations written on-site

*** 10/01/2013 thru 06/30/2014

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District Southeastern Field Office Knoxville, Tennessee Mine ID [REDACTED] Date [REDACTED]

Attachment D- Citations issued during the Review

Mine Citation/Order U.S. Department of Labor
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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 <small>(Contractor)</small> [REDACTED]
8. Condition or Practice 8a. Written Notice (103g) <input type="checkbox"/>	

The underground mine phone located at bottom of the Gann Escape Shaft did not function when tested it would not page or receive. The phone is used to call the hoist man when miners have to escape the mine. To warn miners of hazards and call for help. If miners could not escape from fires or other hazards fatal injuries could occur.

See Continuation Form (MSHA Form 7000-3a)

9. Violation	A. Health <input type="checkbox"/> Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 57.20032
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Section II--Inspector's Evaluation

10. Gravity:

A. Injury or illness (has) (is): No Likelihood Unlikely Reasonably Likely Highly Likely Occurred

B. Injury or illness could reasonably be expected to be: No Lost Workdays Lost Workdays Or Restricted Duty Permanently Disabling Fatal

C. Significant and Substantial: Yes No D. Number of Persons Affected: 001

11. Negligence (check one) A. None B. Low C. Moderate D. High E. Reckless Disregard

12. Type of Action 104a 13. Type of Issuance (check one) Citation Order Safeguard Written Notice

14. Initial Action A. Citation B. Order C. Safeguard D. Written Notice 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

18. Terminate	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) E01	20. Event Number [REDACTED]	21. Primary or Mill P	23. AR Number [REDACTED]
22. AR Name [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.

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Attachment E – Examples of Citations Issued During Previous E01 Inspections
No issues were identified during this review

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Attachment F – Southeastern District Corrective Action Plan

October 2, 2014

MEMORANDUM FOR TED SMITH
Supervisor, Office of Accountability

FROM: Sam Pierce [REDACTED]
District Manager
Southeast District,
MSHA, Metal Nonmetal

SUBJECT: Proposed Corrective Actions

This is a response to the review conducted by the Office of Accountability from [REDACTED] at the Knoxville Field Office and the [REDACTED]

The results of your review identified one deficiency, which is required to be addressed by this district.

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Issue No. 1

The required Office Reviews (ORs) for the first half of FY 2013 and supervisory follow-up reviews were not being conducted and documented according to agency policy and procedures.

Root Cause:

The Knoxville field office was without [REDACTED] during the period in question, and no office reviews were completed for inspectors during this time.

PROPOSED CORRECTIVE ACTION:

Re-training will be given to all ADMs and Supervisors on the requirements listed in the MNM Mine Safety and Health Supervisor's Handbook for the items specifically identified during the OA Review conducted from [REDACTED]

- The ADMs and Supervisors will be re-trained to according to the MNM Mine Safety and Health Supervisor's Handbook (AH09-111-1(1) Item E, pg. 4-6)
- The ADMs and Supervisors will be re-trained to fully document the completion of both the accompanied FAR (field activity review) and unaccompanied office reviews (ORs) according to pg. 4 of the MNM Mine Safety and Health Supervisor's Handbook (AH09-111-1(1) Item E.
- Supervisors will be re-trained to forward the ORs/FAR's to the ADM for review within 5 business days of completion.
- The ADMs will be re-trained to verify that supervisors conduct the required unaccompanied and accompanied inspections and office reviews/field activity inspection report evaluations. This is accomplished by completing the following activities each year:
 - Reviewing and initialing every OR/FAR form submitted by their field office supervisors.

The re-training will be conducted during a field office staff conference call utilizing the MNM Mine Safety and Health Supervisor's Handbook (AH09-111-1(1) Item E. All supervisors will be required to participate and a record of the training will be kept with the corrective actions for this review.