



JUN 16 2016

MEMORANDUM FOR PATRICIA W. SILVEY

**Deputy Assistant Secretary for Operations
Mine Safety and Health**

THROUGH:

NEAL H. MERRIFIELD

Administrator for

Metal and Nonmetal Mine Safety and Health

FROM:

THOMAS W. CHARBONEAU

Director, Office of Assessments

SUBJECT:

**MSHA Office of Accountability Review, Metal and Nonmetal
Northeastern District, Wyomissing, PA Field Office and**

Introduction

This memorandum summarizes the Office of Accountability's review of the subject district office, field office, and mine. The purpose of accountability reviews is to determine whether Agency enforcement policies, procedures, and guidance are being implemented consistently and whether mission critical enforcement activities are accomplished effectively. This review included MSHA field activities; level of enforcement; conditions and practices at the mine; 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.

Overview

Office of Accountability Specialists Jerry Kissell and Troy Davis (Review Team) conducted an accountability review of the Northeastern District and the Wyomissing, PA Field Office from [REDACTED]. The review focused on inspection activities during FY 2014 (October 2013 through September 2014) and the first three quarters of FY 2015 (October 2014 through June 2015). The review specifically involved two regular health and safety inspections (E01 event numbers [REDACTED] and [REDACTED] conducted by the Wyomissing, PA Field Office of the [REDACTED]

The [REDACTED] was selected for review at the request of the Office of the Assistant Secretary and because of the following statistics:

- an S&S issuance rate of 38 percent during the first three quarters of FY 2015 where the mine received [REDACTED] - 104(a) citations ([REDACTED] during the E01 Event No. [REDACTED] [REDACTED] 104(b) orders ([REDACTED] during the E01 Event No. [REDACTED] and [REDACTED] 104(g)(1) orders; compared to FY 2014 when the [REDACTED] had an S&S rate of 55 percent where the mine received [REDACTED] - 104(a) citations and [REDACTED] - 104(b) orders
- an elevated enforcement rate of 11.3 percent for FY 2015 compared to 10.0 percent for FY 2014
- a Violations per Inspection Hour (VPIH) rate of 0.39 for FY 2015 compared to 0.13 for FY 2014

As a part of the review, enforcement levels of the field office were compared with the district and national averages where the field office had the following issuance rates related to the Metal and Nonmetal (MNM) sector for FY 2014:

- an S&S rate of 35 percent compared to the district's rate of 26 percent and the national average rate of 26 percent
- an elevated enforcement rate of 11.9 percent compared to the district's rate of 10.2 percent and the national average rate of 11.6 percent
- a VPIH rate of 0.15 compared to the district's rate of 0.20 and the national rate of 0.23

For the first three quarters of FY 2015, the enforcement levels for the field office were:

- an S&S rate of 37 percent compared to the district's rate of 28 percent and the national average rate of 26 percent
- an elevated enforcement rate of 10.1 percent compared to the district's rate of 9.5 percent and the national average rate of 9.9 percent

- a VPIH rate of 0.17 compared to the district's rate of 0.19 and the national rate of 0.23

During one of the E01 inspections reviewed, event number [REDACTED] the inspector issued [REDACTED] citations and [REDACTED] orders. The Review Team evaluated the citations and orders, elevated enforcement actions, and any modified or vacated actions.

The Review Team visited the mine focusing on its general conditions; whether conditions at the mine are commensurate with enforcement levels documented in the inspection reports; and to observe company work practices at the mine site.

Positive findings are included in this accountability review report; however, the review identified one issue which required a corrective action plan.

Mine Visit [REDACTED]

The Review Team accompanied the Field Office Supervisor, Assistant District Manager and a mine inspector to the [REDACTED] on [REDACTED] during a spot inspection (E16).

[REDACTED]. The mine employs approximately [REDACTED] miners working three shifts per day. This plant has been in operation for [REDACTED] years and has been through multiple design revisions. The material used to make the [REDACTED] product is trucked in from other quarries in the surrounding area. The process consists of the [REDACTED] being transported via conveyor belt systems to the Raw Mill Building where it is crushed and transported via a conveyor belt to the pre-heating towers and then to the kilns to produce [REDACTED]. The [REDACTED] is either transported to storage or is directed to the finishing mill building where [REDACTED] and other additives are blended to produce a particular product. The product is sold into interstate commerce and shipped to the consumers via over-the-road trucks.

The Review Team accompanied the inspector into areas of the plant and observed the overall conditions and normal operations of the plant. The observations included inspections of the following areas: The #1 and #2 Raw Mills, (where raw materials are crushed/pulverized before processing), including the Separator Floor, the Dust Collector Floor, Dust Collector top floor, Finish Mill # 2 side, Finish Mill MCC (Motor Control Center – electrical disconnect switch gear), the [REDACTED] Silos which included the bottom level, feed level and H Silo. The team traveled up the elevator to the Preheat Tower 9th floor and traveled down to the third floor, continued over to the Kiln Floor, the [REDACTED] Mill, the Plastic fuel systems, #9 MCC room, and observed seven conveyor belts. Work procedures and mining cycles observed included maintenance and clean-up activities. The inspection group conducted safety talks with miners, as encountered, throughout the inspection.

The Review Team observed communications between the mine operator and MSHA personnel during the inspection, and observed discussions with miners and company officials regarding work practices and enforcement actions.

Review Results

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

1. The District and Field Office staffs were courteous and accommodating during the review.
2. The inspector conducted himself professionally and had a good rapport with mine management officials and miners during the E16 inspection conducted on [REDACTED]
3. The inspector was knowledgeable of mining systems used at the mine and held discussions with mine management and miners on violations, evaluations and termination requirement during the E16 inspection conducted on [REDACTED]

The Review Team identified some issues and discussed these with the District. Items discussed included documentation of enforcement actions and hazard complaint investigations procedures. The Review Team determined that the issues did not require a corrective action plan.

Enforcement Actions Review of Event No. [REDACTED]

A total of [REDACTED] enforcement actions were issued by one authorized representative during this event. As originally issued, the S&S rate for these actions was 64.21 percent.

The Field Office Supervisor (FOS) and Assistant District Manager, Enforcement (ADM) conducted a review of the inspection report due to the increased number of issuances at the [REDACTED] as compared to previous inspections. As a result of their review of the inspector's field notes and photos taken of the cited conditions, they vacated [REDACTED] issuances and modified [REDACTED] others [REDACTED] reductions in gravity to NON S&S; [REDACTED] reductions in negligence). These modifications and vacates account for 75 percent of the issuances. The [REDACTED] vacates represents 10 percent of the issuances as compared to the national vacate average of 5.0 percent; the Northeast District vacate average of 6.7 percent and represented 7.4 percent of the Wyomissing, PA Field Office's vacates for the first three quarters of fiscal year 2015.

The FOS and ADM determined the documentation contained in the field notes did not fully substantiate the determinations of gravity and negligence. The FOS documented his reasons for modifications and vacated actions in the Field Activity Review/Office Review (FAR/OR) conducted for the E01 Event No. [REDACTED]. As a part of the FAR/OR, the FOS discussed the modifications with the inspector and provided guidance concerning the proper determination and documentation of gravity and negligence. After all modifications, the S&S rate for this inspection reflected a rate of 34.88 percent.

The Review Team reviewed the inspection report documentation of the enforcement actions and associated photos of the cited conditions; conducted interviews with the FOS and ADM; conducted an onsite visit of the [REDACTED] and collectively all agree with and support the actions taken by MSHA management. These actions were taken as a result of proper oversight by the ADM and FOS of the inspection program prior to any Part 100 conference request or legal contest.

Issue Identified Requiring Corrective Action:

This accountability review revealed one issue that required a corrective action.

1. Checklist item #2 – The E01 inspection documentation was not complete and thorough. Proper documentation of modifications was not included on the 7000-3a Subsequent Action Form as required by the Citation and Order Writing Handbook (See Attachments A and C for details)

A corrective action plan from the District Manager to address the deficiency is attached to this report. (Attachment D)

The District, along with the Review Team, analyzed the findings identified during this review to determine the root cause(s) of the noted deficiency. Item 1 deficiency was collectively a result of many factors. [REDACTED]
[REDACTED]. The modifications were made on this inspection conducted from [REDACTED]. Also, the large number of modifications [REDACTED] that were required to this inspection report resulted from and were reflective of proper managerial oversight pertaining to the district's inspection program. The inspector started the E01, Event No. [REDACTED] in [REDACTED] and completed the inspection on [REDACTED]. Current practices allow the inspectors to maintain the inspection report until it is completed and ready for submission to the supervisor. In addition, the FOS typically reviews only completed inspection reports and in the case of this inspection that review did not occur until [REDACTED].

Recommendation:

The Review Team recommends the Administrator of Metal and Nonmetal assess the need for Field Office Supervisors to review the inspectors' work products (enforcement actions and supporting documentation) weekly, when practical, especially in those instances where the E01 will be ongoing for more than a one week period. During the review of the inspector(s)' work products, where significant numbers of modifications or corrections occur, the FOS will provide additional training to the issuing inspector on proper citation/order writing, gravity and negligence assessment and providing supporting documentation as needed. After the additional training is provided, the inspector(s)' understanding of accurate citation/order writing, gravity, negligence assessment and documentation requirements should be verified through the implementation of subsequent knowledge checks to ensure the effectiveness of such additional training efforts. These knowledge checks should be conducted for a pre-

determined period after each inspection where a citation or order is issued by the inspector(s) through a meeting between the FOS and the inspector(s). The FOS and inspector(s) should jointly review each issuance and discuss the propriety of the gravity and negligence determinations, and evaluate whether sufficient supporting documentation has been provided.

Attachments

- A. Office of Accountability Checklist
- B. Citations/Orders issued during this review
- C. Issues identified with corresponding requirements
- D. District Corrective Action Plan

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

District Field Office Mine ID Date

Attachment A - Office of Accountability 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 Attachment C

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

A total of enforcement actions were issued. As originally issued the S&S rate is 64.21 percent.

The Field Office Supervisor (FOS) and Assistant District Manager, Enforcement (ADM) conducted a review of this inspection report due to the increased number of issuances at the plant as compared to previous inspections. They reviewed the documentation in the inspectors' field notes and photos taken of the cited conditions. This review resulted in issuances being vacated and issuances being modified reductions in gravity to NON-S&S; reductions in negligence). After all modifications the S&S rate for this inspection is 34.88 percent.

No corrective action needed as the FOS has instructed the inspector, as a part of his normal oversight duties, during his FAR/OR review of the inspection report.

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

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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

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

Not reviewed as a part of this review.

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

No 103(i) mines are in the field office jurisdiction

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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

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

The team reviewed one FARs/OR report specific to the E01 event

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

The team reviewed one FARs/OR report specific to the E01 event

15. 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

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

Adequate Corrective Action Needed Comments Below

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17. Determine if supervisors are visiting active mines.

Adequate Corrective Action Needed Comments Below

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.

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, when required, 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

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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

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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District Northeastern Field Office Wyomissing, PA Mine ID [REDACTED] Date [REDACTED]

Attachment B - Citations issued during the Review

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		Ba. Written Notice (103g)

The Fringe bin walkway located in the Finish Mill building was not kept clean and orderly. The 11 foot by 11 foot walkway had an approximately 50 foot long 3/4 inch diameter air hose uncoiled and stretched throughout the walkway not allowing safe access. The area is not accessed often, as evidenced through conversation with the plant operator, and the workplace examination is conducted outside of the area. This is a slip, trip and fall hazard resulting in Lost Workdays or Restricted Duty type injuries from a miner accessing the area and tripping on the hose and falling into the steel rotary valve structure causing bruises, cuts and abrasions.

Photos Taken.

See Continuation Form (MSHA Form 7000-3a)

9. Violation	A. Health Safety Other	B. Section of Act	C. Part/Section of Title 30 CFR
			56.20003a

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:			D. Number of Persons Affected:			
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			001			
11. Negligence (check one)						
A. None <input type="checkbox"/>		B. Low <input checked="" type="checkbox"/>		C. Moderate <input type="checkbox"/>		
		D. High <input type="checkbox"/>		E. Reckless Disregard <input type="checkbox"/>		
12. Type of Action			13. Type of Issuance (check one)			
104a			Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>			
14. Initial Action				E. Citation/Order Number		
A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>				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 hose was removed from the walkway and wrapped up in an orderly manner. Photos Taken.

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 Mill
E16		P
22. AR Name		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, 405 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
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Attachment C – Issues identified with corresponding requirements

Checklist Item #2 – Determine if documentation for inspections is complete and thorough.

- The did not document his reasons for modifications to citations issued as part of the E01 inspection event No. on the subsequent action form 7000-3a as required by the Citation and Order Writing Handbook. The did however document his reasons for modifications in a FAR/OR report for this inspection.

Requirement: Citation and Order Writing Handbook for Coal Mines and Metal and Nonmetal Mines Handbook PH13-I-1-(1) page 24 states in part “The specific reason(s) for an inspector to modify an “S&S” violation to “non-S&S” must be documented on MSHA Form 7000-3a.”

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District Northeastern Field Office Wyomissing,
PA Mine ID [REDACTED] Date [REDACTED]

Attachment D – District Corrective Action Plan

U.S. Department of Labor Mine Safety and Health Administration
178 Thorn Hill Road, Suite 100
Warrendale, PA 15086



[REDACTED]

MEMORANDUM FOR TED SMITH
 Supervisor, Office of Accountability

FROM: PETER J. MONTALI [REDACTED]
 District Manager
 Northeast District Metal and Nonmetal

SUBJECT: Proposed Corrective Actions

This is a response to the review conducted by the Office of Accountability from [REDACTED], at the Wyomissing, Pennsylvania field office and the [REDACTED]. The results of your review identified one deficiency, which is required to be addressed by this district.

Checklist Item #2 – Determine if documentation for inspections is complete and thorough.

- The [REDACTED] did not document his reasons for modifications to citations issued as part of the E01 inspection event No. [REDACTED] on the subsequent action form 7000-3a as required by the Citation and Order Writing Handbook. The [REDACTED] did however document his reasons for modifications in a FAR/OR report for this inspection.

Requirement: Citation and Order Writing Handbook for Coal Mines and Metal and Nonmetal Mines Handbook PH13-I-1-(1) page 24 states in part "The specific reason(s) for an inspector to modify an "S&S" violation to "non-S&S" must be documented on MSHA Form 7000-3a."

• **ROOT CAUSE:**

Item 1 deficiency was collectively a result of: [REDACTED]
[REDACTED] The modifications were made on the inspection conducted from [REDACTED] Also a large number of modifications and a few vacates were required to this inspection report as a result of proper managerial oversight pertaining to the inspection program.

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• **PROPOSED CORRECTIVE ACTIONS:**

The assistant district manager (enforcement) will conduct a training session with all field office supervisors via conference call on November 2, 2015, reviewing Citation and Order Writing Handbook for Coal Mines and Metal and Nonmetal Mines Handbook PH13-I-1-(1) page 24 which states in part "The specific reason(s) for an inspector to modify an 'S&S' violation to 'non-S&S' must be documented on MSHA Form 7000-3a." Each field office supervisor will conduct a subsequent training session with their respective inspectors to review the requirements. An attendance register will be signed by all participants in each field office.

• **OFFICE OR POSITION RESPONSIBLE FOR IMPLEMENTING THE CORRECTIVE ACTION(S):**

The initial training session will be conducted by Dennis Yesko, ADM (enforcement). The field office supervisors will conduct the subsequent training sessions and each signed attendance register will be forwarded to the ADM at the conclusion of training.

• **TIMEFRAME FOR COMPLETION OF EACH CORRECTIVE ACTION:**

The initial training session (conference call) for field office supervisors will be conducted on November 2, 2015.
The field office training sessions for inspectors will be conducted on November 9, 2015.

• **METHOD FOR DETERMINING SUCCESS:**

The Field Office Supervisor will review all subsequent actions to assure reasons for modifications document on MSHA Form 7000-3a. The Field Office Supervisor will provide the ADM with a memo each month describing his findings for a four month period.

A DESCRIPTION OF THE DOCUMENTATION THAT WILL DEMONSTRATE CLOSURE OF THE CORRECTIVE ACTION:

The District Manager will send a memorandum to Alfred L. Clayborne, Deputy Director, Office of Assessments, Accountability, Special Enforcement and Investigations through Ted Smith, Supervisor, Office of Accountability upon completion and evaluation of the corrective actions.

(This will be a separate memorandum sent to document closure of the corrective action(s))