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, Accountability,
Special Enforcement and Investigations

SUBJECT: Mine Safety and Health Administration (MSHA)
Office of Accountability Review,
Metal and Nonmetal Southeastern District, Sanford, North Carolina Field Office, and

Introduction

This memorandum summarizes the Office of Accountability's review of the subject
district office, field office, and mine. The accountability 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. This review also included evaluations to determine if there were any issues
in areas commonly identified during Agency internal reviews of MSHA's actions
following past mine disasters.

Purpose

The purpose of this accountability review is to determine whether Agency enforcement
policies, procedures, and guidance are being followed consistently; whether mission
critical enforcement activities are accomplished effectively; and to effectively evaluate
and improve the overall performance of MSHA's enforcement program. The major
outcome expected from the Office of Accountability review is to identify potential or
actual areas for improvement and the subsequent implementation of effective corrective
actions to address any identified issues.

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Overview

Office of Accountability (OA) Specialists Mark Odum and Jim Poynter conducted this review of Metal and Nonmetal’s (MNM) Southeastern District and the Sanford, North Carolina, Field Office, from the Southeastern District and the Sanford Field Office were reviewed in accordance with the FY 2016 annual accountability review plan schedule. The Southeastern District and the Sanford Field Office were reviewed in accordance with the FY 2016 annual accountability review plan schedule. The was selected for review because the mine is a large operation and had received 104(a) citations and 107(a) order in FY 2015 compared to 104(a) citations and 104(b) order during FY 2014. The review focused on inspection activities during FY 2015 (October 2014 through September 2015). The review concentrated specifically on documentation associated with the regular E01 inspection, Event No. conducted by the Field Office of the a surface

As a part of this review, the team conducted a mine visit focusing on conditions at the mine; whether conditions at the mine are commensurate with enforcement levels documented in the inspection reports and observed work practices at the mine site.

The review did not identify any issues determined to be material weaknesses requiring a corrective action plan; however, the team discussed with management some non-material weaknesses they identified along with inspection best practices as described in the General Inspection Procedures Handbook (GIPH). A general outline of discussion topics is included in an attachment to this memorandum.

Mine Visit

Accountability Specialists Mark Odum and Jim Poynter accompanied the Assistant District Manager of Enforcement (ADM), the Field Office Supervisor (FOS), and an inspector to the on as part of a Spot Inspection (E16).

The is located in The The operation employs approximately company miners and approximately independent contractor employees, all working three eight-hour production shifts per day, seven days per week, and performing maintenance as needed. The first step involves the use of excavators, bull dozers, and articulating haul trucks to pre-strip (scallp) the

1 The Accountability Program Handbook, AH13-III-1, defines material weaknesses as those that, if left unaddressed, would likely result in continuing deficient operations, and are important enough to warrant a corrective action.

2 According to the Accountability Program Handbook, non-material weaknesses are weaknesses identified during the reviews but are not determined to be material weaknesses. These non-material weaknesses should be discussed with management during the accountability review closeout conferences but do not need to be included as issues in the accountability review reports.

3 See Metal and Nonmetal General Inspection Procedures Handbook, PH13-IV-1, page i, for reference.
The material removed during the pre-strip operations forms a pit approximately 10 to 15 feet deep. The second step involves an electric driven dragline with a bucket with an 80 ton capacity to remove the remaining material, including the... This increases the depth of the pit to approximately 130 to 140 feet, which is the final depth. During this process the dragline dumps the... into piles approximately 20 feet high in an un-mined area. The third step involves additional excavators that pick up the... and place it onto mobile screens for conveyance via belt to a mixing hopper. In the hopper the... is mixed with water to form a slurry mixture which is subsequently pumped through 22-inch pipes to the mill, where it begins the final preparation process.

The inspection group traveled to the mill where they observed normal operations and maintenance work being performed. The mill uses coal-fired calciners to heat and remove the moisture from the... The visit included observations of the following: inspections of the working places; all approaches to the mine pit; the mine pit and highwalls; a Marion 8200 walking dragline, five Caterpillar 349F excavators, communication; and the general mining cycle.

Other observations during the inspection included various travelways, walkways, vehicles, man-lift cranes and the inspector's post inspection discussions with the operator. As a result of the inspection, the inspector issued six enforcement actions:

Review Results

Positive Findings:

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

1. For the E01 reviewed, notes and documentation were organized, clear and concise, and included pictures of violations.
2. For the E01 reviewed, inspectors documented observations of work practices, mining cycles observed, and safety talks with miners.
3. The Hazardous Condition Complaints reviewed were investigated in a timely manner. Documentation clearly covered the investigative activities and the results.
4. The review did not reveal any systemic issues requiring a corrective action plan.
The Review Team identified some non-material weaknesses and discussed these with the District. Topics discussed included documentation of enforcement actions, updated forms for documentation of pictures, and identification of notes when more than one inspector is on an inspection. The items discussed did not require a corrective action plan. (See attachment C)

Of the 136 active mines/facilities inspected by the field office in FY 2015, 35 received no enforcement issuances and 32 mines had one issuance. The accountability specialists, the FOS, and the assigned inspector visited three small sand mining sites that were representative of sites that had received zero or one issuance. The sites were located in [redacted]. These small sand mining operations produce sand used in the construction industry for asphalt, concrete, and mortar products. The production of sand at these sites depends on the demand for the product. A mining company may operate several mine sites and utilize the same employees for all their operations, moving the workers and equipment from site to site.

The field office ensures that the equipment and mining cycle is inspected at least twice during the year, unless the operation is designated intermittent, in which case the site would receive one inspection for the year. The small size and irregular operation of the sand sites, coupled with the fact that the equipment is moved from site to site, helps explain why many operations experience inspections with few or no enforcement issuances. The viewpoint of the field office personnel is that the operators of the sand sites are safety conscious and diligently strive for safe, compliant operations. The FOS conveyed that sand mining companies use the same equipment, persons, and processes at each mine and has done so to keep safety first and strive to eliminate unsafe conditions. The companies have a low tolerance for non-compliance and hold their employees accountable. Therefore, the miners at these mines strive to make sure their site is in compliance.

As a part of this review, the enforcement levels for the field office and mine were compared with the district and nation. The field office enforcement levels showed no significant deviation from that of the district and nation. Based on the review and observations during the mine visit, enforcement levels were appropriate for the mining conditions and work practices at the mine.

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4 The particular status of the mine, either active or intermittent, determines the number of regular complete inspections MSHA is required to conduct each year.
Attachments

A. Office of Accountability Checklist

B. Citations issued during this review

- 56.14207
- 56.14100b
- 56.14100a
- 48.29a
- 56.16002b
- 56.20011

C. Discussion Topics
### 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 [X]
   - Corrective Action Needed [ ]
   - Comments Below [ ]

2. Determine if documentation for inspections is complete and thorough.
   - Adequate [X]
   - 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 [X]
   - Corrective Action Needed [ ]
   - Comments Below [ ]

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

6. Evaluate the inspector(s) on-site contaminant assessment and documentation.
   - Adequate [X]
   - Corrective Action Needed [ ]
   - Comments Below [ ]
7. Evaluate inspector(s) examination of electrical equipment, transformer stations, and/or electrical circuits.
   Adequate [X]  Corrective Action Needed [ ]  Comments Below [ ]

8. Determine if adequate close-out conferences are being conducted at the end of each inspection.
   Adequate [X]  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 [X]
   Not reviewed as a part of this review. The review was not conducted in the Birmingham, AL District Office where the forms are located.

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 [X]
    Not reviewed as a part of this review. The Field Office does not have any mines in a 103(i) status.

11. Determine if Hazard Complaint inspections/investigations are being conducted according to policy and procedures.
    Adequate [X]  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 [X]  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 \( \checkmark \) | Corrective Action Needed \( \square \) | Comments Below \( \square \) |
| 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 \( \checkmark \) | Corrective Action Needed \( \square \) | Comments Below \( \square \) |
| 15. | Determine if a 104(d) tracking system is in place and being kept current at the office being reviewed. | Adequate \( \checkmark \) | Corrective Action Needed \( \square \) | Comments Below \( \square \) |
| 16. | Determine if the Mine Files are legible, up to date, and reviewed by supervisors. | Adequate \( \checkmark \) | Corrective Action Needed \( \square \) | Comments Below \( \square \) |
| 17. | Determine if supervisors are visiting active mines. | Adequate \( \checkmark \) | Corrective Action Needed \( \square \) | Comments Below \( \square \) |
| 18. | Review documentation of staff meetings/safety meetings to determine their effectiveness and relevance to current issues and the Agency's mission. | Adequate \( \checkmark \) | Corrective Action Needed \( \square \) | Comments Below \( \checkmark \) |
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.

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

Adequate [X]  Corrective Action Needed [ ]  Comments Below [ ]

Determine if managers and supervisors are using required standardized reports to review critical data relevant to inspections and investigations.

Adequate [X]  Corrective Action Needed [ ]  Comments Below [X]
Key indicators and district internal reports are used.

Determine if Districts, when required, are conducting in-depth accountability reviews in compliance with agency policy and procedures including follow-up to determine the effectiveness of corrective actions.

Adequate [X]  Corrective Action Needed [ ]  Comments Below [ ]

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 [X]  Corrective Action Needed [ ]  Comments Below [ ]

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

Adequate [X]  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  X  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  X  Corrective Action Needed  []  Comments Below  []

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

   Adequate  X  Corrective Action Needed  []  Comments Below  []

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

   Adequate  X  Corrective Action Needed  []  Comments Below  []

29. Determine if supervisors are rotating the mine assignments annually among inspectors assigned to their field office.

   Adequate  X  Corrective Action Needed  []  Comments Below  []
The park brake provided for the Chevrolet Pickup truck company was not set when observed. The truck was parked unattended at the Mill maintenance shop. The truck is used as needed to transport miners and equipment to various areas of the mill and was last used February 2, 2016. This exposes a miner to a serious injury due to the park brake not being set when the truck is left unattended.

Standard 56.14207 was cited

The provided park brake is now set. This citation is terminated.
Defects affecting safety were not being corrected in a timely manner. The right rear tail light of the Chevrolet Pickup truck company was broken exposing sharp edges of the tail light. Preshift documents were reviewed and indicated the tail light as a defect on January 18, 2016 and existed today. The truck is used as needed to transport miners and equipment to various areas of the mill. This exposes a miner to a lost workday injury due to the broken tail light.

Standard 56.14100b was cited.

The right rear tail light has been replaced and the hazard has been eliminated. This citation is terminated.
A complete pre-shift inspection was not conducted by the operator of the 1250AJP JLG Manlift #288469 prior to placing the manlift into operation. The operator did inspect the auxiliary control functions provided for the basket of the manlift to ensure proper functions of the auxiliary controls. The manlift was observed in use at the ______________. This exposes a miner to serious injury by not conducting a complete pre-shift inspection prior to placing the manlift into operation.

Standard 56.14100a was cited.

See Coordination Form (MSHA Form 7000-5a).
To modify the second sentence in section 8 condition or practice. To add the word not between the words did and inspect. To read as: The operator did not inspect the auxiliary control functions provided for the basket of the manlift to ensure proper functions of the auxiliary controls.
Mine Citation/Order

Section I-Violation Data

1. Date: 2023-04-15  
2. Time (24 Hr. Clock):  
3. Citation/Order Number:  
4. Serviced To:  
5. Operator:  
6. Mine:  
7. Mine ID:  

Section II-Condition or Practice

Task training records for miner [Redacted] were not being maintained by the [Redacted]. Task training records could not be reviewed for the miner to indicate task training had been conducted for a 1250AJP JLG Manlift. The operator was observed operating the manlift at the [Redacted] in the mill area. This exposes a miner to a serious injury by not being able to indicate the operator is task trained for the equipment being operated.

Section III-Inspection's Evaluation

10. Gravity:  
   A. Injury or illness (has it?):  
      - No Likelihood  
      - Unlikely  
      - Reasonably Likely  
      - Highly Likely  
      - Occurred  
   B. Injury or Illness could reasonably be expected to be:  
      - No Lost Workdays  
      - Lost Workdays or Reassigned Duty  
      - Permanent Disability  
      - Fatal  
   C. Significant and Substantial:  
      - Yes  
      - No  
   D. Number of Persons Affected:  001  

12. Type of Action:  184a  
13. Type of issuance (check only):  
   - Citation  
   - Order  
   - Safeguards  
   - Written Notice  
14. Initial Action:  
   - A. Citation  
   - B. Order  
   - C. Safeguards  
   - D. Written Notice  
15. Area or Equipment:  

Section II-Termination Action

16. Terminated:  
   A. Date: 2023-05-15  
   B. Time (24 Hr. Clock):  

Section IV-Automated System Data

19. Type of Inspection (activity code): E16  
20. Event Number:  
21. Primary or Minor:  
22. AR Name:  
23. AR Number:  

*MSHA Form 7000-5, Apr 06 (Rev)  
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 Enforcement Ombudsman and 12 Regional Ombudsman Boards to receive complaints from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activity and rates each agency’s responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-800-REG-Omb (1-800-734-6626), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW, Room 4100, Washington, DC 20410. Please note, however, that your right to file a complaint 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
Mine Safety and Health Administration
Office of Accountability

Mine Citation/Order

<table>
<thead>
<tr>
<th>Change</th>
<th>From</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Condition Or Practice</td>
<td>The third sentence should read: The manlift operator was observed operating the manlift at the in the area.</td>
<td></td>
</tr>
<tr>
<td>10. B. Injury Expected</td>
<td>Fatal</td>
<td>No Lost Workdays</td>
</tr>
<tr>
<td>10. D. Persons Affected</td>
<td>1</td>
<td>0</td>
</tr>
</tbody>
</table>

Reason: To modify section 8 condition or practice. The add the word manlift between the first and second word in the third sentence.

To modify section 10. B from fatal to No lost workdays.

To modify section 10. D from 1 persons affected to 0 persons affected.
Task training has been documented to indicate that Miner [redacted] has been task trained for a 1250AJD JLG Manlift. This citation is terminated.
Taglines hitches and slings to hoist materials were not suitable for the material being handled at the... Two miners were observed lowering metal sheeting from the transfer tower. A rope was wrapped around the metal sheeting with one turn and placed in the manlift basket and lowered. Windy conditions were observed in the area during this activity and increasing. The metal sheeting was approximately 2.5 feet wide and approximately 16 feet long and not secured to prevent the wind from blowing the metal sheeting from the manlift basket. Ground personnel were observed in the area during this activity. This exposes a miner to a serious injury due to the tagline not being suitable for the material being handled.
The [Name] has ceased work in this area. He has requested additional time to develop another rigging method for the metal sheeting. This citation is extended.
The company has developed another rigging method to secure the metal sheeting when being lowered. Miners have been trained in this rigging method. This citation is terminated.
To modify section 9.C part or section of Title 30 CFR from 56.16002b to reflect 56.16007b To correctly identify the standard cited.
United States Department of Labor
Mine Safety and Health Administration
Office of Accountability

District: Southeastern
Field Office: Sanford, NC
Mine ID: [Redacted]
Date: [Redacted]

Mine Citation/Order

<table>
<thead>
<tr>
<th>Section I: Violation Date</th>
<th>U.S. Department of Labor</th>
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<tbody>
<tr>
<td>1. Date Mo Da Yr</td>
<td>Mine Safety and Health Administration</td>
</tr>
<tr>
<td>2. Time (24 Hr. Clock)</td>
<td></td>
</tr>
<tr>
<td>3. Citation/Order Number</td>
<td></td>
</tr>
</tbody>
</table>

4. Served To

5. Operator

6. Mine

7. Mine ID (Contractor)

8. Condition or Practice

Areas where safety and health hazards existed that were not immediately obvious to miners were not posted at the walkway entrance of the

The gate at the end of the walkway had been

removed for repair and access was readily available onto the walkway. The

walkway is used as needed for maintenance and clean up and was approximately 5

feet above ground level. This exposes a miner to a serious injury due to the

lack of barricades and warning signs.

Standard 56.20011 was cited

9. Violation

<table>
<thead>
<tr>
<th>A. Health</th>
<th>B. Section of Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Health</td>
<td>C. Part/Section of</td>
</tr>
<tr>
<td>Other</td>
<td>Title 30 CFR</td>
</tr>
<tr>
<td></td>
<td>56.20011</td>
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10. Gravity:

<table>
<thead>
<tr>
<th>A. Injury or Illness (Injury):</th>
<th>Unlikely</th>
</tr>
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<tbody>
<tr>
<td>Unlikely</td>
<td>Yes/No</td>
</tr>
<tr>
<td>Reasonably Likely</td>
<td>Yes/No</td>
</tr>
<tr>
<td>Highly Likely</td>
<td>Yes/No</td>
</tr>
<tr>
<td>Occurred</td>
<td>Yes/No</td>
</tr>
<tr>
<td>B. Injury or Illness could reasonably be expected to be:</td>
<td></td>
</tr>
<tr>
<td>Lost Workdays</td>
<td>Yes/No</td>
</tr>
<tr>
<td>Lost Workdays or Restricted</td>
<td>Yes/No</td>
</tr>
<tr>
<td>Permanently Disabling</td>
<td>Yes/No</td>
</tr>
<tr>
<td>Fatal</td>
<td>Yes/No</td>
</tr>
<tr>
<td>C. Significant and Substantial</td>
<td></td>
</tr>
<tr>
<td>D. Number of Persons Afflicted</td>
<td></td>
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11. Negligence (Check one)

<table>
<thead>
<tr>
<th>A. None</th>
<th>B. Low</th>
</tr>
</thead>
<tbody>
<tr>
<td>Moderate</td>
<td>High</td>
</tr>
<tr>
<td>Reckless Disregard</td>
<td></td>
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12. Type of Action

<table>
<thead>
<tr>
<th>A. Citation</th>
<th>B. Order</th>
</tr>
</thead>
<tbody>
<tr>
<td>C. Safeguard</td>
<td>D. Written Notice</td>
</tr>
<tr>
<td>E. Claluation</td>
<td>F. Dated</td>
</tr>
<tr>
<td>Order Number</td>
<td>Mo Da Yr</td>
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13. Type of issuance (Check one)

<table>
<thead>
<tr>
<th>Citation</th>
<th>Order</th>
</tr>
</thead>
<tbody>
<tr>
<td>Safeguard</td>
<td>Written Notice</td>
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14. Initial Action

<table>
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<th>A. Citation</th>
<th>B. Order</th>
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</thead>
<tbody>
<tr>
<td>C. Safeguard</td>
<td>D. Written Notice</td>
</tr>
<tr>
<td>E. Claluation</td>
<td>F. Dated</td>
</tr>
<tr>
<td>Order Number</td>
<td>Mo Da Yr</td>
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</table>

15. Area or Equipment

16. Termination Due

<table>
<thead>
<tr>
<th>A. Date Mo Da Yr</th>
<th>B. Time (24 Hr. Clock)</th>
</tr>
</thead>
</table>

17. Action to Terminate

The access ladder is now provided with danger tape and a do not enter sign to alert miners of the hazard. This citation is terminated.

18. Terminated

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

19. Type of Inspection

<table>
<thead>
<tr>
<th>Activity Code</th>
<th>Event Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>primary or intermediate</td>
<td></td>
</tr>
</tbody>
</table>

20. AR Name

21. AR Number

MSHA Form 7000-3, Apr 68 (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 Ombudsmen in each state. For guidance on how to contact the enforcement actions of MSHA, you may call 1-800-656-PAR (1-800-752-7647) or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 400 3rd Street, NW, Washington, DC 20410. Please note, however, that you may contact the Ombudsman's office in addition to any other rights you may have, including the right to contract citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.
Attachment C – Discussion Topics

- Documentation of negligence determinations - See GIPH, page 64, and Citation and Order Writing Handbook For Coal Mines and Metal and Nonmetal Mines, PH13-I-1, page 16 for reference
- Inspection notes to be identifiable as coming from a particular inspector - See GIPH, page 60, for reference
- Documentation of information for photographs - See GIPH, page 13 and 65, for reference
- Use of most recent Form 4000-125 - See GIPH, page 13 and 65, for reference