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

THROUGH: KEVIN G. STRICKLIN
Acting Administrator for
Metal and Nonmetal Mine Safety and Health

FROM: THOMAS W. CHARBONEAU
Director, Office of Assessments

SUBJECT: Mine Safety and Health Administration (MSHA)
Office of Accountability Review, Metal and Nonmetal Rocky
Mountain District, Topeka, Kansas Field Office and

Introduction

This memorandum summarizes the Office of Accountability’s review of the subject
district office, field office, and mine. This 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 review
also involved 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 MSHA enforcement
policies, procedures and guidance are being followed consistently; assess whether
mission critical enforcement activities are accomplished effectively and to evaluate and
improve the overall performance of MSHA’s enforcement program. The major outcome
expected from the Office of Accountability’s review program is the identification of
potential or actual areas for improvement and the subsequent implementation of
effective corrective actions to address any identified issues.

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Office of Accountability (OA) Specialists Troy Davis and Jerry Kissell (Review Team) conducted this review of Metal and Nonmetal’s (MNM) Rocky Mountain District and the Topeka, Kansas Field Office (FO), from October 2014 through September 2015 and the first half of FY 2016 (October 2015 through March 2016), and included supervisory oversight activities, Field Accompanied Reviews (FARs) and Office Reviews (ORs) for FY 2015 and the first half of FY 2016. The review concentrated specifically on two regular E01 inspections, Event No. and conducted by the Topeka, Kansas FO of the

Overview

The review was conducted in accordance with the annual accountability review plan schedule. The mine was selected for review due to its large size as a crushed mining property.

As a part of this review, the Review Team conducted a mine visit to evaluate the general conditions at the mine; assess whether conditions at the mine are commensurate with enforcement levels documented in the inspection reports reviewed; and to observe work practices at the mine site.

Mine Visit

The Review Team accompanied the Field Office Supervisor and an inspector to the as part of a Regular Inspection (E01). The mine is a surface crushed mine located in producing an average of tons annually. The mine employs miners working one ten-hour production shift, five days per week. is mined by drilling and blasting in a surface quarry, which is subsequently loaded onto Caterpillar 777 haul trucks. The raw material is transported to a primary crusher where the material is crushed and transferred by conveyors through a series of screens and secondary cone crushers for further resizing. Once processed, the final product is prepared for commerce.

The inspection group visited the three active quarry benches; the overburden bench, the top production bench and the production ledge. The group also observed the screen plant, the pug mill, the mechanics shop, the oil storage area, the tool and parts storage shed and the welding shop.

Equipment inspected and observed included: an Atlas Copco T-45 Flexiroc drill, a Caterpillar 990 front end loader, a Caterpillar 970-F front end loader, a Caterpillar 988 H front end loader, two Caterpillar 777 haul trucks, a Caterpillar 775 - G haul truck, a Caterpillar D-9 L dozer, a Deere 330-C excavator, a Ford F-250 drillers truck, a Ford F-250 mine mechanics truck, a Dodge 5500 service/boom truck, a Caterpillar 769 - C water truck, the pug mill, conveyor belts, guarding, and electrical conditions.
The Review Team and inspection personnel also observed the primary crusher dump point, primary crusher, haul truck loading practices, high wall conditions, road ways, berms, housekeeping, walk ways, communications, break rooms, and the inspector's pre- and post-inspection discussions with the operator and safety talks with miners. During the mine visit, the inspector issued five enforcement actions.

**Review Results**

**Positive Findings:**

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

1. For the E01 inspection reports reviewed, notes and documentation were organized, clear and concise, and included pictures of violations.
2. For the E01 inspections reviewed, inspectors documented in detail their observations of work practices, mining cycles observed, and safety talks conducted with miners.
3. The supervisor regularly conducted staff meetings with inspectors and documented topics covered. The meetings provided inspectors with pertinent enforcement information and updates and reviews of MSHA policy and procedures.
4. All required ORs were completed, with an additional 3 OR’s per inspector, exceeding the minimum requirements. Also one additional FAR per inspector exceeded the minimum requirements.
5. Sound pressure level readings were taken and recorded on all mobile equipment inspected.
6. The review did not reveal any major issues that require a corrective action plan.

The Review Team identified a lessor issue regarding enforcement action documentation and discussed it with the field office and district.

As a part of the review, the OA compared enforcement levels of the mine with the field office, district, and national averages. The mine had a significant and substantial (S&S) rate of 25 percent during FY 2015 compared to the FO S&S rate of 33 percent; a district S&S rate of 28 percent; and the national S&S rate of 26 percent. This comparison of FY 2015 showed the S&S rate for the mine was lower than the average S&S rates of the field office, district and nation.

Based on the review and observations made during the mine visit, enforcement levels were appropriate with existing mining conditions and work practices.
Attachments

A. Office of Accountability Checklist

B. Citations issued during this review
   - 56.14207
   - 56.14100(b)
   - 56.14100(b)1
   - 56.4100(b)
   - 56.14100

C. Discussion Topics
### Attachment A – Office of Accountability Checklist

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

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 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 X  Corrective Action Needed □  Comments Below X
   Reviewed Timelines for decision only per SI Handbook

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 Field Accompanied Reviews (FARs), Office Reviews (ORs) and supervisory follow-up reviews being conducted and documented according to agency policy and procedures?
(OR's - One E-01/Inspector/every six months/FY - minimum; FAR's - one/Inspector/year - minimum)
Determine if a 104(d) tracking system is in place and being kept current at the office being reviewed.
Adequate [X] Corrective Action Needed [ ] Comments Below [ ]

15. Determine if the Mine Files are legible, up to date, and reviewed by supervisors.
Adequate [X] Corrective Action Needed [ ] Comments Below [ ]

16. Determine if supervisors are visiting active mines.
Adequate [X] Corrective Action Needed [ ] Comments Below [ ]

17. Review documentation of staff meetings/safety meetings to determine their effectiveness and relevance to current issues and the Agency's mission.
Adequate [X] Corrective Action Needed [ ] Comments Below [ ]

18. 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.
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<tbody>
<tr>
<td>District</td>
<td>Rocky Mountain</td>
<td>Field Office</td>
<td>Topeka, KS</td>
<td>Mine ID</td>
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<tr>
<td>19. Determine if district management personnel are reviewing work products and reports for accuracy and completeness.</td>
<td>Adequate X</td>
<td>Corrective Action Needed</td>
<td>Comments Below</td>
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<td>20. Determine if managers and supervisors are using required standardized reports to review critical data relevant to inspections and investigations.</td>
<td>Adequate X</td>
<td>Corrective Action Needed</td>
<td>Comments Below X</td>
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<tr>
<td>Key indicators and district internal reports are used</td>
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<td>21. 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.</td>
<td>Adequate X</td>
<td>Corrective Action Needed</td>
<td>Comments Below</td>
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<tr>
<td>22. Is methane liberation information being entered into the MSHA Standardized Information System (MSIS) accurately and in a timely manner?</td>
<td>Adequate X</td>
<td>Corrective Action Needed</td>
<td>Comments Below</td>
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<td>23. Determine if inspectors have sufficient equipment and supplies to conduct thorough inspections.</td>
<td>Adequate X</td>
<td>Corrective Action Needed</td>
<td>Comments Below</td>
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<td>24.</td>
<td>Evaluate the overall condition of the mine relative to the level of enforcement documented in previously completed inspections.</td>
<td>Adequate ✔</td>
<td>Corrective Action Needed ❌</td>
<td>Comments Below ❌</td>
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<td>25.</td>
<td>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.</td>
<td>Adequate ✔</td>
<td>Corrective Action Needed ❌</td>
<td>Comments Below ❌</td>
</tr>
<tr>
<td>26.</td>
<td>Determine if the management resource tracking tool is being used to track resources regarding Special Investigations.</td>
<td>Adequate ✔</td>
<td>Corrective Action Needed ❌</td>
<td>Comments Below ❌</td>
</tr>
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<td>27.</td>
<td>Determine if retraining of supervisors, inspectors, and specialists is being tracked.</td>
<td>Adequate ✔</td>
<td>Corrective Action Needed ❌</td>
<td>Comments Below ❌</td>
</tr>
<tr>
<td>28.</td>
<td>Determine if supervisors are rotating the mine assignments annually among inspectors assigned to their field office.</td>
<td>Adequate ✔</td>
<td>Corrective Action Needed ❌</td>
<td>Comments Below ❌</td>
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</table>
The Ford F-250 truck (OKLAHOMA LICENSE [REDACTED]) had a broken top passenger side mirror. The mirror is a two-piece mirror with the top being the standard mirror and the bottom being the fish eye mirror. The driver arrived at the mine at 06:30 for a safety meeting, then drove the truck to the production ledge in the quarry where he parked it. Defects on any equipment that affect safety shall be corrected in a timely manner. This condition exposes persons to collision injuries.
THE RIGHT SIDE TURN SIGNAL AND THE RIGHT SIDE BRAKE LIGHT ON THE FORD F-250 (OKLAHOMA LICENSE [REDACTED]) DID NOT FUNCTION WHEN TESTED. THE DRIVER ARRIVED AT THE MINE AT 06:30 FOR A SAFETY MEETING, THEN PROCEEDED TO THE PRODUCTION LEDGE IN THE QUARRY WHERE HE PARKED IT. DEFECTS ON ANY EQUIPMENT THAT AFFECT SAFETY SHALL BE CORRECTED IN A TIMELY MANNER. THIS CONDITION EXPOSES PERSONS TO INJURIES CAUSED BY COLLISIONS.

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<th>Section 1: Violation Data</th>
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<td>1. Date: Mo Da Yr</td>
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<td>2. Time (24 Hr. Clock)</td>
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<td>3. Serv. To: [REDACTED]</td>
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<td>4. Condition or Practice: [REDACTED]</td>
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<th>Mine Citation/Order</th>
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<tr>
<td>5. Operator: [REDACTED]</td>
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<td>6. Mine ID: [REDACTED]</td>
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<th>U.S. Department of Labor</th>
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<tr>
<td>Mine Safety and Health Administration</td>
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<tr>
<td>Office of Accountability</td>
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<tr>
<td>Field Office: Topeka, KS</td>
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| 7. Mine ID: [REDACTED] |
| 8. Date: [REDACTED] |

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THE LIGHTS WERE REPAIRED. THIS ACTION TERMINATES THE CITATION.
CIGARETTE BUTTS WERE FOUND IN BAY 2, THE OIL AND GREASE STORAGE ROOM WHERE MOBILE EQUIPMENT IS SERVICED. THE ROOM HAD 2 SIGNS PROHIBITING SMOKING AND OPEN FLAMES. ONE CIGARETTE BUTT WAS WITHIN APPROXIMATELY 8 FEET OF ONE OF THE SIGNS AND ANOTHER ONE WAS LOCATED WITHIN THE COILS OF A GREASE HOSE WITH THE OTHER THREE IN VARIOUS OTHER AREAS OF THE LUBE ROOM. THERE WERE SEVEN 500 GALLON TOTES OF OIL, 3 BARRELS OF GREASE AND 8 OTHER 55 GALLON BARRELS OF VARIOUS TYPES OF OIL. MINERS ARE IN THE ROOM EVERY DAY. NO PERSON SHALL SMOKE OR USE AN OPEN FLAME WHERE FLAMMABLE OR COMBUSTIBLE LIQUIDS INCLUDING GREASES ARE STORED OR HANDLED. THIS CONDITION EXPOSES PERSONS TO BURNS AND/OR SMOKE INHALATION INJURIES.

II. Violation

A. Health

B. Section of Act

C. Part/Section of Title 30 CFR

10. Gravity:

11. Negligence (check one)

12. Type of Action

13. Type of Issuance (check one)

14. Initial Action

15. Area or Equipment

16. Termination Due

17. Action to Terminate

ALL THE MINERS WERE RETRAINED WHERE SMOKING IS PROHIBITED. THIS ACTION TERMINATES THE CITATION.
United States Department of Labor
Mine Safety and Health Administration
Office of Accountability

District Rocky Mountain Field Office Topeka, KS Mine ID [Redacted] Date [Redacted]

Mine Citation/Order

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<tr>
<th>Section</th>
<th>Violation</th>
<th>A. Health</th>
<th>B. Section</th>
<th>C. Part/Section</th>
<th>Title 30 CFR</th>
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<td>1. Date</td>
<td>[Redacted]</td>
<td>Mo Da Yr</td>
<td>2. Time (24 Hr. Clock)</td>
<td>[Redacted]</td>
<td>3. Citation/Order Number [Redacted]</td>
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<td>4. Served To</td>
<td>[Redacted]</td>
<td>[Redacted]</td>
<td>[Redacted]</td>
<td>Operator [Redacted]</td>
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<td>5. Mine</td>
<td>[Redacted]</td>
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<td>6. Mine ID [Redacted]</td>
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**THE HIGH PRESSURE GAGE ON THE PORTABLE OXYGEN ACETYLENE TORCH LOCATED IN BAY 3 OF THE SHOP DID NOT ACCURATELY READ THE OXYGEN PRESSURE IN THE TANK. THE GAGE READ 700lbs PRESSURE WITH THE OXYGEN TANK VALVE SHUT OFF AND THE OXYGEN BLED FROM THE TORCH. MAINTENANCE PEOPLE ARE IN THE SHOP ON A DAILY BASIS. DEFECTS ON ANY TOOL THAT AFFECT SAFETY SHALL BE CORRECTED IN A TIMELY MANNER. THIS CONDITION EXPOSES PERSONS TO HIGH PRESSURE AND PROJECTILE TYPE INJURIES.**

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<tr>
<th>9. Violation</th>
<th>A. Health</th>
<th>B. Section</th>
<th>C. Part/Section</th>
<th>Title 30 CFR</th>
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**THE GAGE WAS REPLACED. THIS ACTION TERMINATES THE CITATION.**

**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 Ombudsmen to resolve complaints from small businesses about Federal agency enforcement actions. The Ombudsman annually initiates enforcement activities and rules each agency's responsiveness to small businesses. If you wish to contest an enforcement action of the MSHA, you may file a Small Business Fairness Act (SBF) complaint with the Ombudsman at Small Business Administration, Office of the National Ombudsman, 445 5th Street, SW MC 2120, 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 your right to contest violations and proposed penalties and refer a hearing before the Federal Mine Safety and Health Review Commission.**

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Attachment C – Discussion Topics

➢ Documentation for enforcement action; justification for gravity, negligence and likelihood. In a couple instances the citation documentation notes did not provide the mitigating factors that supported the negligence selected. This item was determined not to be a major issue as it occurred minimally. (Metal and Nonmetal GIPH, PH13-IV-1, Chapter 7, section D, pg.63-65)