



DEC - 1 2017

MEMORANDUM FOR PATRICIA W. SILVEY

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

THROUGH:

TIMOTHY R. WATKINS [REDACTED]
**Deputy Administrator for
Coal Mine Safety and Health**

FROM:

THOMAS W. CHARBONEAU [REDACTED]
Director, Office of Assessments

SUBJECT:

**Mine Safety and Health Administration (MSHA)
Office of Accountability Review
Coal District 7, Martin, Kentucky Field Office**
[REDACTED]

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); Accompanied Activity (AA) and MSHA supervisory and managerial oversight. The accountability 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; and to assess whether mission critical enforcement activities are accomplished effectively. The accountability review also identifies areas for improvement and the subsequent implementation of effective corrective actions to address any identified issues.

Overview

Office of Accountability (OA) Supervisor Ted Smith and Specialist Troy Davis (Review Team) conducted a review of Coal's District 7 and Martin, Kentucky Field Office in accordance with the annual accountability review plan schedule. The on-site portion of the review was conducted from [REDACTED]. The review focused on inspection activities conducted in FY 2017 and included review of supervisory oversight activities. The review concentrated on the regular E01 inspection of the [REDACTED] conducted during the first half of FY 2017. [REDACTED] The review also included the E01 inspections on [REDACTED]

[REDACTED] was selected for review because it is a large surface operation [REDACTED]

Mine Visit

The Review Team accompanied the Assistant District Manager for Enforcement, the Field Office Supervisor, and an Inspector to the mine on [REDACTED] as part of a Safety and Health Spot Inspection (E16). During the visit the Review Team evaluated general conditions at the mine; assessed whether conditions at the mine are commensurate with enforcement levels documented in the inspection reports reviewed; and observed work practices at the mine site.

The mine is located in [REDACTED] and employs approximately [REDACTED] miners working two, ten-hour production shifts, five days per week. The mine consists of one active pit. The mine produces an average of [REDACTED] of raw coal daily. [REDACTED]

[REDACTED] Coal is transported from the mine by over-the-road trucks to an offsite preparation plant.

The mine visit included inspections and observations of the following:

Surface areas:

- pre-inspection discussions with mine operator;
- mine examination records and postings;
- training records for the blaster;
- explosives magazines;
- haulroads, ramps and berms;
- highwalls and general ground control conditions at the dump site; and
- mining cycle (stripping of overburden, drilling, blasting preparation, loading, haulage, dump site).

Mining Cycle:

- loading / haulage cycle at "Ridge 2" – overburden removal;
- loading / haulage cycle at "Ridge 3" – coal extraction;
- highwall drilling operation at "Ridge 3"; and
- [REDACTED] (mining cycle, safety discussions on routine maintenance).

Equipment:

- explosives truck;
- front-end loader;
- rear dump haul truck;
- dozer; and
- highwall drill.

Over the course of the mine visit, the operator received one enforcement action.

Review Results

The review revealed positive findings in the following areas:

- For E01 Event [REDACTED], the Inspector documented safety talks with miners on all shifts and discussions of the Ground Control Plan for the mine.
- For E01 Event [REDACTED] the Inspector documented inspections of and discussions with six separate independent contractors on mine property during the course of the inspection.

This accountability review identified one issue that required a corrective action plan. (See Attachment B for Issue requiring a Corrective Action Plan and Attachment C for Office of Accountability Checklist Items)

Issue 1: Proper inspection procedures were not followed for complete and thorough Regular Health and Safety Inspections (E01). (Office of Accountability Checklist Item #1)

- 1A. Event No. [REDACTED] was not complete. The mine was in a non-producing status with persons working. The operator of the mine or miners' representative was not present at the time of inspection. No activity was observed during the inspection and the event was closed. No contact was made with the operator to inspect training records of miners that periodically perform work at the mine. This is an [REDACTED] operation and is in and out of producing status frequently.
- 1B. Event No. [REDACTED] inspection procedures were not properly followed for the collection and documentation of noise surveys. Sufficient time was not spent to observe and record the operating conditions and work activities in the area, the noise controls in use, a general description of the conditions of the controls, and potential sources of noise exposure.

District Staff and the Review Team analyzed the findings to determine the root cause(s) of the issues:

- Issue 1A – The root cause is the Authorized Representative did not follow procedures/documentation requirements outlined in the General Inspection Procedure Handbook (GIPH). Contributing to the deficiency is [REDACTED] [REDACTED] event was unique to a non-producing mine.
- Issue 1B – The root cause is the [REDACTED] did not follow procedures/documentations which are outlined in the Coal Mine Health Inspection Procedures Handbook. Also contributing to the deficiency is [REDACTED]

A corrective action plan from the District Manager addressing the identified issues is included and attached to this report. (See Attachment A)

The Review Team identified and discussed with the District personnel, inspection and procedural best practices as described in the Coal GIPH. A general outline of discussion topics is included in an attachment to this memorandum. (See Attachment E)

Based on the review of the E01 Event No. [REDACTED] and on observations made during the mine visit on [REDACTED] enforcement personnel were using proper enforcement levels at the [REDACTED]

Attachments

- A. Corrective Action Plan
- B. Issues requiring Corrective Action
- C. Office of Accountability Checklist
- D. Citations Issued during Mine Visit
 - No. [REDACTED] 77.1104
- E. Discussion Topics

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

District **Coal District 7** Field Office **Martin, KY** Mine ID **[REDACTED]** Date **[REDACTED]**

Attachment A - Corrective Action Plan

U.S. Department of Labor

Mine Safety and Health Administration
3837 S. US Hwy, 25E
Barbourville, Kentucky 40906-7602



August 31, 2017

MEMORANDUM FOR: TED D. SMITH
Supervisor, Office of Accountability

THROUGH: TIMOTHY R. WATKINS [REDACTED]
Deputy Administrator for Coal Mine Safety and Health

THROUGH: MARCUS A. SMITH [REDACTED]
Supervisor, Accident Investigation/Special Investigations/
ACR Group

FROM: JIM W. LANGLEY [REDACTED]
District 7 Manager, Coal Mine Safety and Health

SUBJECT: Proposed Corrective Actions

This is in response to the review conducted by the Office of Accountability from [REDACTED] at the Martin Field Office. The review included: [REDACTED]
[REDACTED] The review identified a deficiency which is addressed as per the following.

Issue 1: Proper inspection procedures were not followed for complete and thorough Regular Health and Safety Inspections (E01). (Office of Accountability Checklist Item #1)

- 1A. Event No. [REDACTED] was not complete. The mine was in a non-producing status with persons working. The operator of the mine or miner's representative was not present at the time of inspection. No activity was observed during the inspection and the event was closed. No contact was made with the operator to inspect training records of miners that periodically perform work at the mine. This is an [REDACTED] operation and is in and out of producing status frequently.

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ROOT CAUSE

It was found that Issue 1A was unique to a non-producing mine. The Authorized Representative (AR) did not follow procedures/documentations outlined in the *General Inspection Handbook*. Also, contributing to the deficiency was [REDACTED]

PROPOSED CORRECTIVE ACTIONS

[REDACTED] will be trained on the requirements regarding documentation required of a complete E01 event at non-producing mines. [REDACTED] will train all ARs of the requirements for a complete E01 inspection at non-producing mines including the pertinent, necessary documentation.

OFFICE OR POSITION RESPONSIBLE TO IMPLEMENT THE CORRECTIVE ACTIONS

The Assistant District Manager (ADM) for the Enforcement Division will implement the corrective actions regarding training for the [REDACTED] ensuring that each AR is trained.

TIMEFRAME FOR COMPLETION OF CORRECTIVE ACTION

The identified deficiency will be discussed in a supervisory staff meeting on September 06, 2017. The training will be documented in the agenda and an attendance roster will be kept. [REDACTED] will provide the training to all ARs at their next monthly Field Office staff meeting. For tracking purposes, the completed attendance roster will be sent to the district Staff Assistant and the ADM for the Enforcement Division.

METHOD FOR DETERMINING SUCCESS

Thorough supervisory reviews of completed E01s at mines in a non-producing status will be made to assure that all required documentation is included. In addition, the ADM for the Enforcement Division will review at least one E01 inspection event of non-producing mines of each Field Office conducted during the first quarter of Fiscal Year 2018 (FY18). This will serve as a secondary check to assure proper procedures and documentation are being completed. Feedback from these reviews will be provided to the District Manager.

DOCUMENTATION TO DEMONSTRATE CLOSURE OF THE CORRECTIVE ACTION

Upon completion and evaluation of the corrective action, the District Manager will send a memorandum to Ted Smith, Supervisor, Office of Accountability, through Timothy Watkins, Deputy Administrator for Coal Mine Safety and Health, and through Marcus Smith, Supervisor of Accident Investigations; Special Investigations; ACR Group.

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- 1B. Event No. [REDACTED] inspection procedures were not properly followed for the collection and documentation of noise surveys. Sufficient time was not spend to observe and record the operating conditions and work activities in the area, the noise controls in use, a general description of the conditions of the controls, and potential sources of noise exposure.

ROOT CAUSE

[REDACTED] did not follow procedures/documentations which were outlined in *Coal Mine Health Inspection Procedures Handbook*. Also, contributing to the deficiency was [REDACTED]

PROPOSED CORRECTIVE ACTIONS

[REDACTED] will be retrained on the requirements concerning documentation required during noise surveys. [REDACTED] will train all ARs required to conduct noise surveys regarding the requirements of conducting a complete noise survey and necessary documentation.

OFFICE OR POSITION RESPONSIBLE TO IMPLEMENT THE CORRECTIVE ACTIONS

The Assistant District Manager (ADM) for the Technical Division will implement the corrective actions regarding training for [REDACTED]

TIMEFRAME FOR COMPLETION OF CORRECTIVE ACTION

The identified deficiency will be discussed in a supervisory staff meeting on September 06, 2017. The training will be documented in the agenda and an attendance roster will be kept. [REDACTED] will provide the training to the ARs in staff meetings. For tracking purposes, the completed attendance roster will be sent to the district Staff Assistant and the ADM of the Technical Division.

METHOD FOR DETERMINING SUCCESS

Thorough supervisory reviews of completed noise surveys will be made to assure that all required documentation is included. In addition, the ADM for the Technical Division will review at least fifty percent (50%) of the noise survey documentations of the district for the first quarter of FY18 as a secondary check to assure proper procedures and documentation are being completed. Feedback from these reviews will be provided to the District Manager.

DOCUMENTATION TO DEMONSTRATE CLOSURE OF THE CORRECTIVE ACTION

Upon completion and evaluation of the corrective action, the District Manager will send a memorandum to Ted Smith, Supervisor, Office of Accountability, through Timothy Watkins, Deputy Administrator for Coal Mine Safety and Health, and through Marcus Smith, Supervisor of Accident Investigations; Special Investigations; ACR Group.

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Attachment B - Issues requiring Corrective Action Plan

Issue 1: Proper inspection procedures were not followed for complete and thorough Regular Health and Safety Inspections (E01). (Office of Accountability Checklist Item #1)

- 1A. Event No. was not complete. The mine was in a non-producing status with persons working. The operator of the mine or miners' representative was not present at the time of inspection. No activity was observed during the inspection and the event was closed. No contact was made with the operator to inspect training records of miners that periodically perform work at the mine. This is an operation and is in and out of producing status frequently.

Requirement: GIPH, page 3-1: A Regular Safety and Health Inspection (E01) is one in which a mine is inspected in its entirety pursuant to Sections 103(a)(3) and (4) of the Act. This inspection is to determine if imminent dangers exist and to ascertain compliance with mandatory health and safety standards, approved plans (including suitability to current mine conditions), citations, orders, or decisions issued, and other requirements of the Act.

- 1B. Event No. inspection procedures were not properly followed for the collection and documentation of noise surveys. Sufficient time was not spent to observe and record the operating conditions and work activities in the area, the noise controls in use, a general description of the conditions of the controls, and potential sources of noise exposure.

Requirement: Coal Mine Health Inspection Procedures Handbook PH89-V-1 (15) (September 2008), Chapter 3, page 3-5 states in part "the inspector must spend sufficient time to observe and record the operating conditions and work activities in the area, the noise controls in use, a general description of the conditions of the controls, and potential sources of noise exposure."

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Attachment C - 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

See Attachment B

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

Adequate

Corrective Action Needed

Comments Below

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

Adequate

Corrective Action Needed

Comments Below

6. Evaluate, upon arrival to the active pit, inspector/specialist examination of all working areas and highwalls for imminent dangers.

Adequate

Corrective Action Needed

Comments Below

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7. Evaluate the inspector/specialist observation of the work cycle and conditions in the active pit area during the review.

Adequate Corrective Action Needed Comments Below

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

Adequate Corrective Action Needed Comments Below

NA – Not required during this inspection.

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

Adequate Corrective Action Needed Comments Below

NA – None observed during the mine visit.

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

Adequate Corrective Action Needed Comments Below

NA – Not part of this review

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

Adequate Corrective Action Needed Comments Below

NA – Surface mine

12. Evaluate, during the review, the inspection of at least one set of seals, including methods for obtaining samples from sealed area.

Adequate Corrective Action Needed Comments Below

NA – Surface mine

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

Adequate Corrective Action Needed Comments Below

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

Adequate Corrective Action Needed Comments Below

15. 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

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

Adequate Corrective Action Needed Comments Below

17. Determine if supervisors are monitoring inspector time and activity to ensure proper use of time, including off-shift and weekend work, by all inspectors.

Adequate Corrective Action Needed Comments Below

18. Determine if required Accompanied Activities (AAs); Field Activity Reviews (FARs) and supervisory follow-ups are being conducted and documented according to agency policy and procedures?

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19. 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

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

Adequate

Corrective Action Needed

Comments Below

21. Determine if supervisors are thoroughly reviewing Uniform Mine Files at least annually?

Adequate

Corrective Action Needed

Comments Below

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

Adequate

Corrective Action Needed

Comments Below

23. Determine if all sections where retreat mining is occurring (not to include longwall mining) are being inspected at least monthly?

Adequate

Corrective Action Needed

Comments Below

24. Determine if documentation of staff meetings/safety meetings are effective and relevant to current issues and the Agency's mission.

Adequate

Corrective Action Needed

Comments Below

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Determine, after an in-mine visit, if approved plans (Ventilation, Roof
25. Control, Training, Emergency Response Plan (ERP), etc.) are compatible
with mining conditions and equipment.

Adequate Corrective Action Needed Comments Below

Ground Control Plan and Training Plan was reviewed

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

Adequate Corrective Action Needed Comments Below

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

Adequate Corrective Action Needed Comments Below

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

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

Adequate Corrective Action Needed Comments Below

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

Adequate Corrective Action Needed Comments Below

Determine if District Manager is using discretion in granting conferences
and monitoring the Alternative Case Resolution (ACR) program to ensure
31. that all decisions (including upholding, modifying or vacating citations) are
properly documented and justified by the Conference and Litigation
Representatives (CLRs).

Adequate Corrective Action Needed Comments Below

NA – not part of this review

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

Adequate Corrective Action Needed Comments Below

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

Adequate Corrective Action Needed Comments Below

Determine if information (mine status, methane liberation, number of
34. employees, etc.) is 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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35. Determine if District Managers are using the Report Center to identify overdue responses from operators and take appropriate actions.

36. Determine if a complete permissibility inspection of each longwall system is being conducted by electrical specialists or inspectors who hold a current MSHA electrical qualification card on at least an annual basis.

Adequate Corrective Action Needed Comments Below

NA – No longwalls in District 7.

37. Determine if a proper examination of the Atmospheric Monitoring System (AMS) and/or AMS systems that operate Carbon Monoxide (CO) sensors is being conducted. A complete inspection includes those items in the Coal General Inspection Procedures Handbook (GIPH) AMS checklist.

Adequate Corrective Action Needed Comments Below

38. Determine if SSIs are maintaining a memorandum detailing the reasons for not conducting a special investigation when the District Manager decides to take no further action, in accordance with the Special Investigations Procedures Handbook.

39. Determine if proper procedures for conducting, documenting, and reviewing MSHA respirable dust surveys are being followed. Proper documentation to include blue cards, 2000-86s, etc.

Adequate Corrective Action Needed Comments Below

No 2000-86s reviewed – Surface mine was the subject of this review.

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- Determine if District Managers and Assistant District Managers are providing acting Field Office Supervisors with the level of oversight necessary to manage their work groups on a temporary basis including an
40. online distance learning training course with a knowledge check for temporarily promoted supervisors. The guidance will be included in each District's Standard Operating Procedure (SOP) for training newly promoted Field Office Supervisors.

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

41.
 - checking that required information is submitted
 - checking for communication with other plan approval groups
 - assuring that designated MSHA personnel contact the operator for additional information
 - discussing results of on-site evaluations with the operator and identified miners' representatives.

Adequate

Corrective Action Needed

Comments Below

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

District **Coal District 7** Field Office **Martin, KY** Mine ID [REDACTED] Date [REDACTED]

Attachment D - Citations issued during Mine Visit

Mine Citation/Order Yes <input type="checkbox"/>		U.S. Department of Labor Mine Safety and Health Administration		
Section I--Violation Data				
1. Date <small>Mo Da Yr</small>	2. Time (24 Hr. Clock)	3. Citation/Order Number [REDACTED]		
4. Served To [REDACTED]		5. Operator [REDACTED]		
6. Mine [REDACTED]		7. Mine ID [REDACTED] (Contractor)		
8. Condition or Practice		8a. Written Notice (103g) <input type="checkbox"/>		
<p>HYDRAULIC OIL FROM A LEAK IS PRESENT ON THE LEFT SIDE OF THE MACK PRELL AND EXPLOSIVES HAULAGE TRUCK (MT 1196) WHICH EXTENDS THE ENTIRE LENGTH OF THE TRUCK'S BED.</p>				
<small>See Continuation Form (MSHA Form 7000-3a)</small> <input type="checkbox"/>				
9. Violation	A. Health Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 77.1104	
Section II--Inspector's Evaluation				
10. Gravity:				
A. Injury or illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input checked="" type="checkbox"/> Reasonably Likely <input type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input checked="" type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input type="checkbox"/>				
C. Significant and Substantial: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>				D. Number of Persons Affected: 001
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input checked="" type="checkbox"/> C. Moderate <input type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action 104(a)		13. Type of Issuance (check one) Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action		E. Citation/Order Number		F. Dated <small>Mo Da Yr</small>
A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>				
15. Area or Equipment				
16. Termination Due				
A. Date <small>Mo Da Yr</small>		B. Time (24 Hr. Clock)		
[REDACTED]		[REDACTED]		
Section III--Termination Action				
17. Action to Terminate				
18. Terminated				
A. Date <small>Mo Da Yr</small>		B. Time (24 Hr. Clock)		
[REDACTED]		[REDACTED]		
Section IV--Automated System Data				
19. Type of Inspection (activity code) E16		20. Event Number [REDACTED]		21. Primary or Mill
22. AR Name [REDACTED]		23. AR Number [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.

United States Department of Labor
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Attachment E – Discussion Topics

Topics discussed with the District that do not require a corrective action plan are as follows:

MSHA Form 2000-84:

- For Event nine samples were taken and recorded on two 2000-84 forms. One of the forms was outdated (Oct 2004).

Documentation:

- One citation reviewed concerning a plan violation. The approval letter and pertinent page(s) was not included with the Inspector's field notes.

MSHA 2000-22:

- For Event the report type was marked as "NA." The report type should be marked as "Last."

AAs/FARs:

- AAs/FARs forms should be completed and submitted to the District for review within 30 days of the activity date. This was not a systemic issue.