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

THROUGH: EMILY HARGROVE
Acting Deputy 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 South Central District
Norman, Oklahoma Field Office

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 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 Metal and Nonmetal's South Central District and the Norman, Oklahoma Field Office in accordance with the annual accountability review plan schedule. The onsite portion of the review was conducted from [redacted]. The review focused on inspection activities conducted in FY 2016 and the first half of FY 2017, and included review of supervisory oversight activities (FARs and ORs). The review concentrated on two Regular Safety and Health Inspections (E01), of the [redacted] Event Nos. [redacted] and [redacted] conducted by the Norman, Oklahoma Field Office. The [redacted] was selected for review because it is a large surface operation.

Mine Visit

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

The mine is a surface operation located in [redacted]. The mine employs approximately [redacted] miners working one, ten-hour production shift and one, ten-hour maintenance shift per day, five days per week. The mine produces an average of [redacted] annually. [redacted] is mined by drilling, blasting and is loaded into haul trucks and transported to the primary crusher on the property. The crushed material is then moved via conveyor belt to sizing screens and further processed for commerce.

The mine visit included inspections and observations of the following:

Surface
- Pre-Inspection conference
- Mine office
- Open pit
- Mining cycle to include drilling, blast preparation, loading and haulage
- Primary Crusher area
- Screening towers and conveyor belts
- Haulroads
- Loading operations at the stockpiles
- Highwall drill
- Drilling Contractor
- Utility Truck
- Front-end Loader.
Over the course of the inspection, the operator received five enforcement actions.

Review Results

Positive Findings:

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

1. The E01 inspection reports, notes and documentation were organized, clear and concise, and included pictures of violations.
2. In 2016, the District developed a PowerPoint presentation on Ground Control Hazard Recognition to provide additional training to inspectors as a result of onsite observations, technical support reviews and industry trends. The training was conducted in all nine of the District's Field Offices. Since receiving the training, the number of overall citations issued for standards involving ground control has increased, as enforcement personnel are more aware of what to look for.

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

Issue 1:

District staff and the Review Team analyzed the finding to determine the root causes of the issue:

A corrective action plan from the District Manager addressing the identified issues is 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 Metal and Nonmetal General Inspection Procedures Handbook. A general outline of discussion topics is included in an attachment to this memorandum. (See Attachment E)

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 43 percent during FY 2016, compared to the Field Office S&S rate of 24 percent; a District S&S rate of 25 percent; and the national S&S rate of 24 percent.
While the S&S rate for the mine was higher than the average S&S rates of the Field Office, District and nation the enforcement levels were appropriate with existing mining conditions and work practices based on the review and observations made during the mine visit.
Attachments

A. Corrective Action Plan

B. Issues requiring a Corrective Action Plan

C. Office of Accountability Checklist

D. Citations issued during this review
   - 41.13
   - 47.41(a)
   - 56.3200
   - 56.3200
   - 56.3401

E. Discussion Topics
Attachment A – Corrective Action Plan

U.S. Department of Labor
Mine Safety and Health Administration
1030 London Drive
Suite 410
Birmingham, AL 35211

July 17, 2017

MEMORANDUM FOR: TED SMITH
Supervisor, Office of Accountability

THROUGH: Emily Hargrove
Acting Deputy Administrator for Metal and Nonmetal Mine Safety & Health
Arlington, VA

FROM: Michael A. Davis
District Manager, South Central District
Dallas, TX

SUBJECT: District Corrective Action Plan for Office of Accountability Review Norman, OK

This is a response to the accountability audit conducted by the Office of Accountability from [redacted] at the Norman, Oklahoma field office. The results of the review identified one deficiency that needs to be addressed by the South Central District (SC District).

ISSUE 1: [Redacted]

[Redacted]
**ROOT CAUSE:**

Implementation of the new SEI system brought on additional issuances for review, namely 104(a) citations attached to 107(a) Imminent Danger orders and 104(g) orders, regardless of the negligence determination associated with either. Of the 252 total issuances reviewed, 58 were citations attached to 107(a) issuances and 47 were attached to 104(g) training orders for a total of 105 or 42%. The bulk of these citations were not issued with elevated negligence and, ultimately, were determined a 'no go,' but the SC District still had to go through the PKW required review.

In 2018, the SC District implemented a 14-day time limit for submission of PKWs from the field. This improved the overall timeframe but failed to reduce our response time to 30 days or less as anticipated. We found that the SEI system would not allow us to assign PKWs to the area supervisor for review when inspectors traveled outside of their assigned travel area when we assigned numerous inspectors from various field offices into other areas in order to complete mandated inspection obligations, as was the case in 2018. MNM inspectors travel the majority of the week. We found that we lost a significant amount of time as reviewers if we returned the PKW back to the initiator for support items. For example, a citation warranting a PKW issued on July 11 likely would not be entered into the system until July 17th, the Monday of the following week when the inspector is back in the office. The initiating inspector would be in travel status the following week when this item was returned for correction/supplemental information. At the earliest, the initiator would not get the request until the following Friday (the 28th) or more likely Monday (the 31st) when most inspectors review this type action. That is a total of 20 days before the item is returned with sufficient information to the reviewer. Further, the SEI system does not have automated notification protocol and requires constant checking for items in the folders ready for review.
BACKGROUND

The above describes the best case scenario and assumes that everyone in the chain was available for review during the prescribed period (i.e. no absences due to AJSL). There are multiple other factors that also may impede the 30-day review process. For example, when PKWs are returned for corrections, this can add an additional 1-2 weeks depending on timing for inspector availability. Additionally, there are times PKWs get stuck in the system and routed to an incorrect person/supervisor. It takes additional time to put in a ticket for the PEIR group to track it and correct the mistake. Lastly, there is no notification or prompting by the system when the PKW has been rejected for needed corrections.

PROPOSED CORRECTIVE ACTIONS

The SC District will conduct a training session with all inspectors and supervisors on the timeframe requirements and the need for communicating to the next level reviewer once a PKW is completed. The training will cover the requirements listed in the Special Investigations Procedures Handbook for completing PKW forms and the 30-day timeline requirements. The District policy requiring all closed inspection reports from the previous week to be submitted prior to beginning the new week will be amended to include PKWs and SARs. The
The timeframe for inspectors to initiate the PKW will be set at 7 days. The guidance sheet listing all required information forms and attachments for processing PKWs will be provided on each jacketed report. Training will include a review of examples of identified deficiencies to assist inspectors and supervisors in preventing reoccurring deficiencies. To offset the system's lack of automatic notification when a level of review is complete, we will add an additional step to the review process and reviewers will make a weekly check of the system for any added PKWs.

All participants will sign an attendance roster and a record of the training will be kept with the corrective actions for this review.

- **Office or Position Responsible for Implementing the Corrective Action(s):**
  - Supervisor for Special Investigations
  - ADM for Enforcement

- **Timeframe for Completion of Each Corrective Action:**

Training for inspectors and supervisors will be conducted within 30 days of acceptance of the CAP.

- **Method for Determining Success:**

One quarter following the implementation of the corrective actions, the SC District will export the PKW log from MSIS and conduct a thorough review of all PKWs to determine compliance with guidelines, policies, and procedures.

- **A Description of the Documentation That Will Demonstrate Closure of the Corrective Action:**

The District Manager will send a memorandum to Ted Smith, Supervisor, Office of Accountability, through Deputy Administrator for Metal Non Metal Mine Safety and Health.
Attachment B – Issues requiring a Corrective Action Plan

Issue 1:

Requirements: Special Investigations Procedures Handbook, PH05-I-4, page 4-2, states that for “each citation and/or order required by MSHA Policy to be reviewed, a Possible Knowing/Willful Violation Review Form, MSHA Form 7000-20, shall be completed.” Page 4-3 states that “within 30 calendar days of the date of issuance of the citation/order a determination must be made by the DM (with the assistance of the SSI) whether to initiate an investigation or take no further action.”
Attachment C – Office of Accountability Checklist

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<tr>
<td><strong>1.</strong></td>
<td>Determine if complete and thorough E01 inspections are being conducted and/or if policies and procedures were properly followed.</td>
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<tr>
<td>Adequate</td>
<td>X</td>
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<td>Corrective Action Needed</td>
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<td><strong>2.</strong></td>
<td>Determine if documentation for inspections is complete and thorough.</td>
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<td>Adequate</td>
<td>X</td>
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<td>Corrective Action Needed</td>
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<td><strong>3.</strong></td>
<td>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.</td>
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<td>Adequate</td>
<td>X</td>
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<td>Corrective Action Needed</td>
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<td><strong>4.</strong></td>
<td>Evaluate inspector(s) examination of required records and postings for compliance with applicable standards.</td>
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<td>Adequate</td>
<td>X</td>
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<td>Corrective Action Needed</td>
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<td><strong>5.</strong></td>
<td>Evaluate the inspector(s) physical examination of the active working areas of the mine and inspection of all mining cycles.</td>
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<td>Adequate</td>
<td>X</td>
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<td>Corrective Action Needed</td>
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<td><strong>6.</strong></td>
<td>Evaluate the inspector(s) on-site contaminant assessment and documentation.</td>
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<td>Adequate</td>
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<td>Corrective Action Needed</td>
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### United States Department of Labor
#### Mine Safety and Health Administration
#### Office of Accountability

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<tr>
<th>District</th>
<th>Field Office</th>
<th>Mine ID</th>
<th>Date</th>
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<tr>
<td>South Central</td>
<td>Norman, OK</td>
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#### 7. Evaluate inspector(s) examination of electrical equipment, transformer stations, and/or electrical circuits.

- **Adequate**: ☑
- **Corrective Action Needed**: ☐
- **Comments Below**: ☐

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

- **Adequate**: ☑
- **Corrective Action Needed**: ☐
- **Comments Below**: ☐

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

- **Adequate**: ☐
- **Corrective Action Needed**: ☑
- **Comments Below**: ☒

NA - The Field Office does not have any mines in a 103(i) status.

#### 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**: ☒

#### 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 Field Accompanied Reviews (FARs), Office Reviews (ORs) and supervisory follow-up reviews being conducted and documented according to agency policy and procedures?

14. 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 [ ]
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.

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

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 [ ]

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 methane liberation information being entered into the MSHA Standardized Information System (MSIS) accurately and in a timely manner?

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

NA - No 103i mines/ other mine information is updated as needed.
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<td><strong>District</strong>: South Central</td>
<td><strong>Field Office</strong>: Norman, OK</td>
<td><strong>Mine ID</strong>: [Redacted]</td>
<td><strong>Date</strong>: [Redacted]</td>
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<td><strong>23.</strong></td>
<td>Determine if inspectors have sufficient equipment and supplies to conduct thorough inspections.</td>
<td>Adequate [X]</td>
<td>Corrective Action Needed [ ]</td>
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<td><strong>24.</strong></td>
<td>Evaluate the overall condition of the mine relative to the level of enforcement documented in previously completed inspections.</td>
<td>Adequate [X]</td>
<td>Corrective Action Needed [ ]</td>
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<td><strong>25.</strong></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 [X]</td>
<td>Corrective Action Needed [ ]</td>
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<td><strong>26.</strong></td>
<td>Determine if the management resource tracking tool is being used to track resources regarding Special Investigations.</td>
<td>Adequate [X]</td>
<td>Corrective Action Needed [ ]</td>
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<td><strong>27.</strong></td>
<td>Determine if retraining of supervisors, inspectors, and specialists is being tracked.</td>
<td>Adequate [X]</td>
<td>Corrective Action Needed [ ]</td>
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<td><strong>28.</strong></td>
<td>Determine if supervisors are rotating the mine assignments annually among inspectors assigned to their Field Office.</td>
<td>Adequate [X]</td>
<td>Corrective Action Needed [ ]</td>
</tr>
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Attachment D - Citations issued during the review

Mine Citation/Order

Section I - Violation Date
1. Date: [Redacted]
2. Time (24 Hr Clock): [Redacted]
3. Citation/Order Number: [Redacted]

4. Issued To: [Redacted]
5. Operator: [Redacted]
6. Mine: [Redacted]
7. Mine ID: [Redacted]

8. Condition or Practice:
9. Written Notice (103g): [Redacted]

10. Inciting or Contributing Violation:
A. Injury or Illness (1904) (a) (1) No Likelihood [Redacted]
B. Injury or Illness that could reasonably be expected to be
   Lost Workdays [Redacted]
   Lost Workdays Or Restricted Duty [Redacted]
   Permanently Disabling [Redacted]
   Fatal [Redacted]
C. Significant and Substantial [Redacted]
D. Number of Persons Affected: [Redacted]

11. Type of Action:
   A. Notice [Redacted]
   B. Law [Redacted]
   C. No Action [Redacted]
   D. High [Redacted]
   E. Rejected or Disregarded [Redacted]

12. Type of Issue after initial action:
   A. Citation [Redacted]
   B. Order [Redacted]
   C. Safeguard [Redacted]
   D. Written Notice [Redacted]

13. Citation/Order Number: [Redacted]

14. Action Taken:
   A. Citation [Redacted]
   B. Order [Redacted]
   C. Safeguard [Redacted]
   D. Written Notice [Redacted]
   E. Citation/Order Number [Redacted]

15. Area or Equipment:

16. Termination Date:
   A. Date: [Redacted]
   B. Time (24 Hr Clock): [Redacted]

17. Action to Terminate:
   The required update has been made and submitted to MSHA.

18. Termination Date:
   A. Date: [Redacted]
   B. Time (24 Hr Clock): [Redacted]

19. Type of Inspection (activity code)
   A. [Redacted]
   B. Event Number: [Redacted]
   C. Primary or NF: [Redacted]
   D. AR Number: [Redacted]
There were two 5 gallon containers not provided with a label to indicate their contents. The containers were located in the bed of the dribbler truck and is used to help maintain the drill as needed. This condition created the hazard of persons being injured should they come into contact with the contents and are not able to locate it in the MSDS for recommended treatments. Photo Taken.

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

There were loose ground conditions observed in the area and were not taken down before work was permitted in the area. There were several sections of loose cap rock observed on the west high wall as well as in the corners. Persons have been working in the area mining the material at the base of the high wall. This condition created the hazard of persons being injured should they be struck by the loose materials. Photo Taken.

Standard 56.3200 was cited.

<table>
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<tr>
<th>Violation A. Health Safety Other</th>
<th>B. Section of Act</th>
<th>C. Part/Section of Title 30 CFR</th>
<th>56.3200</th>
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| Section 8—Inspector’s Examination |  |
|----------------------------------|  |

| 10. Gravity |  |
|-------------|  |
| a. Injury or Illness (Note(s)) No | Unlikely | Reasonably Likely | Highly Likely | Occurred |  |
| b. Injury or Illness could reasonably be expected to be | No Lost Workdays | Lost Workdays | Reinstatement Duty | Permanently Preventing | Fatal |  |
| c. Significant and Substantial |  |
| d. Number of Persons Affected |  |

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

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

| Area of Equipment |  |

| Termination Date | A. Date | B. Time (24 Hr Clock) |  |

| Action to Terminate |  |

| Type of Inspection (Activity code) | E16 | Event Number |  |

| AR Name |  |

MSHA Form 1010-5, Apr 00 (Rev 00). 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 16 Regional Ombudsman Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman secretly evaluates enforcement activities and rules each agency's responsibilities to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-800-REG-FAX (1-800-734-3294) or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 401 1st Street, SW, MC 2125, Washington, DC 20414. 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.
Mine management has scheduled to set off a shot tomorrow to remove a portion of the loose materials. They have also barricaded the area and posted signage against entry until the loose has been removed. This action is taken to allow mine management additional time needed to correct the hazardous condition. *Note: Taka*
There were loose ground conditions observed in the area and were not taken down before work was permitted in the area. There was loose material along sections of the Southeast working face as well as a large section on the point/conveyor. Persons have been working in the area mining the material at the base of the high wall. This condition created the hazard of persons being injured should they be struck by the loose materials. Photo Taken.

Standard 56.3200 was cited.
Mine management has barricaded the area and posted signage against entry until the loose material can be removed. This action is taken to allow mine management additional time needed to correct the hazardous condition. Photo Taken.
Persons designated by mine management failed to conduct an examination of ground condition before work/travel was permitted in the area. There were loose ground conditions observed on the Southeast wall and persons were permitted to perform normal work activity in the area.

Section I - Violation Date
1. Date [ ] Mo Da Yr
2. Time (24 Hr Clock)
3. Citation/Order Number

Section II - Violation
4. Violation
5. Section of Act
6. Part/Section of Title 30 CFR
7. Citation/Order Number
8. Number of Persons Affected
9. Area or Equipment

Section III - Violation Evaluation
10. Section E - Marginal Evaluation
   a. Injury or Illness (fatal) [ ] No
      [ ] Yes
   b. Unlikely [ ] Likely [ ] Highly Likely [ ] Occurred
   c. Significantly
   d. Number of Persons Affected

Section IV - Initiation of Action
11. Type of Action
    a. No Action [ ] Low Action [ ] Moderate Action [ ] High Action [ ] Reckless Disregard
12. Type of Issuance (check one)
    a. Citation [ ] Order [ ] Written Notice

Section V - Action to Terminate
13. Action to Terminate

Section VI - Action for Suspension
14. Type of Inspection (activity code)
15. Event Number
16. Primary or Minor
17. AR Number

Note: The form is a template for mine safety and health violations and actions. It includes sections for the date, time, violation details, action taken, and additional information such as the number of persons affected and the type of action issued. The form is used by mine safety and health officials to record and document safety and health violations at mines.
Attachment E – Discussion Topics

- **MSHA Photo Form** – The most current MSHA Form 4000-125 June 2009 (Photo mounting sheet) was not being used in the E01 reports reviewed by the OA Review Team. However, the Inspectors were including all the required information on the old version of the form. See GIPH, page 66 and 78, for reference.