



**Evaluation of Hazard Complaint Handling  
in MSHA's Office of Metal and Nonmetal  
Mine Safety and Health**

**Mine Safety And Health Administration**

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**REPORT NO.: 2E-06-620-0001  
DATE ISSUED: MARCH 29, 2001**

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**ACRONYMS AND  
GLOSSARY**

**ACRONYMS**

FY	Fiscal Year
MSHA	Mine Safety and Health Administration
M/NM	Metal and Nonmetal
OIG	Office of Inspector General
POV	Pattern of Violation

**GLOSSARY**

miner:	Any individual working in a coal or other mine.
imminent danger:	Existence of any condition or practice in a coal or other mine which could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated.
representative of miner:	Any person or organization which represents two or more miners at a coal or other mine for the purposes of the Act, and who is registered with the appropriate MSHA district.
stope:	An underground excavation (usually steplike) for the removal of ore that is formed as the ore is mined in successive layers.
code-a-phone call:	Hazard complaint called into MSHA headquarters on the national toll-free (1-800) telephone number and referred to the appropriate district for complaint investigation.
103(g):	Section of Mine Act which specifies conditions of notification under which a miner or representative shall have (1) a right to obtain an immediate inspection and (2) a right to informal review of refusal to issue a citation with respect to alleged violation.

## EXECUTIVE SUMMARY

From January through September 1999, six written and verbal hazard complaints were lodged with the Mine Safety and Health Administration's (MSHA) Mesa field office. Five of the complaints were established to have been lodged by a miner's grown daughter and a family friend, alleging unsafe conditions at the ASARCO Mission Mine. An accident subsequently occurred at the mine leaving the aforementioned miner dead and two of his colleagues permanently disabled.

MSHA, in partnership with the American mining community, works to eliminate fatalities, reduce the frequency and severity of accidents, and minimize health hazards associated with the mining industry in accordance with the Federal Mine Safety and Health Act of 1977 (Mine Act).

In August 2000, the Secretary of Labor requested the Office of Inspector General to review MSHA's activities surrounding the ASARCO Mission Mine accident, including whether: (1) MSHA had adequate procedures and policies in place to ensure compliance with the Mine Act, (2) those policies and procedures were followed by MSHA personnel, and (3) any necessary corrective actions have been taken.

### RESULTS OF EVALUATION

During our evaluation, we found that MSHA's Division of Metal/Nonmetal can be more effective in responding to hazard complaints by improving the intake, management, tracking, and analysis of complaints. While MSHA has already implemented changes in complaint handling since the fatal accident of January 2000, the further development of a more efficient and systematic complaint system is needed. The following findings identify our areas of concern.

#### **FINDING A - MSHA Personnel Did Not Follow Hazard Complaint Handling and Inspection Policies and Procedures Regarding the ASARCO Mission Mine**

Our evaluation determined that the MSHA Mesa field office supervisor and mine inspector did not follow various MSHA policies and procedures for at least six hazard complaints received from January through September 1999. Additionally, the inspection actions in response to these complaints were not conducted in a prompt and thorough manner. Subsequently, an accident occurred at the ASARCO Mission Mine which left one miner dead and two others permanently disabled.

#### **FINDING B - Hazard Complaint Handling Procedures and Practices Are Not Consistent**

Hazard complaint handling procedures and practices lack uniformity. This lack of uniformity is evidenced in the following areas: (1) hazard complaint intake and documentation procedures across districts and field offices, (2) complaint analysis as a management tool, (3) implementation of "best practice" procedures, and (4) nationwide training on hazard complaint procedures.

**Finding C - MSHA's Policies and Guidelines on the Enforcement of the Mine Safety Act Need to Be Updated**

Differences exist between the Mine Act and various MSHA policies and guidelines which interpret the Act and its accompanying regulations. These inconsistencies result in complaint handling practices frequently differing according to the interpretations of the field office supervisors and mine inspectors.

**RECOMMENDATIONS**

We recommend that MSHA take the following actions to improve the intake, management, tracking, and analysis of complaints. A more effective complaint process not only ensures greater accountability and public confidence but also would allow MSHA to enhance inspection activity.

Ultimately, we believe implementation of our recommendations will reduce the likelihood of the recurrence of hazard complaint handling and inspection actions similar to those surrounding the ASARCO Mission Mine accident.

Therefore, MSHA should:

- (1) standardize and mandate the use of hazardous complaint handling intake, inspection and reporting forms.
- (2) nationally adopt "best practices" currently used in certain districts.
- (3) update and implement hazard complaint procedures to require that the mine file be reviewed by field office supervisors and mine inspectors upon receipt of a hazard complaint.
- (4) develop a complaint analysis system to:
  - a) capture all complaints,
  - b) specifically track or accurately account for complaints, and
  - c) follow up on complaints to ensure that appropriate corrective action has been taken.
- (5) further develop and update classroom training for new mine inspectors, and implement hazard complaint handling refresher courses for all journeymen mine inspectors, and for all MSHA personnel who receive hazard complaints.
- (6) reconcile inconsistent language on complaint handling found between the various MSHA guidelines in accordance with the July 2000 directive.
- (7) develop guidelines for district management's approval or disapproval of

proposed actions on hazard complaints outside of MSHA's jurisdiction and hazard complaints deemed frivolous.

- (8) establish a policy on whether and when to incorporate hazard complaints into regular inspections.

#### **AGENCY RESPONSE AND OIG CONCLUSION**

In response to OIG's official draft report, MSHA generally agreed with our findings and recommendations. MSHA provided suggested clarifications and modifications which are addressed in the findings and recommendations section of this report. As a result of corrective actions planned by MSHA, we consider all eight recommendations to be resolved. The recommendations will be closed after those corrective actions are completed. The agency's complete response is found in Appendix B.

## **BACKGROUND**

MSHA, in partnership with the American mining community, works to eliminate fatalities, reduce the frequency and severity of accidents, and minimize health hazards associated with the mining industry in accordance with the Federal Mine Safety and Health Act of 1977 (Mine Act). The Mine Act requires MSHA to inspect every underground mine four times annually and all surface mines two times annually to determine compliance with Federal safety and health regulations.

On January 31, 2000, an accident occurred at the ASARCO Mission Mine (an underground mine) in Pima County, Arizona, in which a miner with 37 years' experience was killed by a 9-ton slab of falling copper ore. The two other miners present in the area were critically injured by the rock fall.

### **Six Hazard Complaints Were Lodged Prior to the Accident**

Prior to the accident, six written and verbal hazard complaints were lodged with MSHA's Mesa field office. The five verbal hazard complaints were lodged by that miner's grown daughter and a family friend and included charges of inadequate ground support, roof bolting and ventilation.

The first complaint, a letter dated January 25, 1999, was signed by "a concerned worker for safety of all", and was received by MSHA's Mesa field office supervisor. The letter outlined specific complaints against ASARCO Mission Mine regarding inadequate ventilation, ground support, roof bolting, and the company practice of barricading stopes before the inspector's arrival. The Mesa field office supervisor did not assign the complaint to an MSHA inspector until six weeks later, for inclusion in a regular inspection. The inspector issued no citations.

The miner's daughter subsequently called the MSHA supervisor three times, beginning in May 1999. She did not identify herself or her father for fear of company retaliation. The miner's daughter stated that she requested that underground heat, bolting, ventilation and oxygen levels at the mine be inspected. She also reported to the Mesa field office supervisor that employees were being retaliated against for complaining about mine conditions.

When the miner's daughter felt that her complaints were being ignored by the Mesa field office supervisor, she enlisted the help of a family friend, who stated that he called the supervisor twice with the same allegations. After the last call on September 22, the field office supervisor orally passed the complaint on to the same inspector who had conducted the March 1999 inspection. Five days later (September 27), the inspector once again conducted a complaint investigation during the course of an already scheduled regular inspection, resulting in one citation for hazardous conditions (loose rock). A subsequent regularly scheduled inspection conducted in November by another mine inspector resulted in no citations.

## **Steps Taken By MSHA After the Accident**

Beginning on February 1, 2000, a team of accident investigators from MSHA investigated the facts and conditions surrounding the accident at the ASARCO Mission Mine. Their inspection resulted in one citation and three orders issued for failure to correct hazardous ground conditions or to examine for loose ground conditions; failure to replace previously installed ground support; and failure of miners to wear safety belts while working.

In the year 2000 after the accident, MSHA issued a total of seventeen citations related to some of the very same allegations contained in the six hazard complaints at Mission Mine. In 1999, one citation was issued in the previous year related to the hazard complaints.

An internal investigation conducted by MSHA (dated March 7, 2000) concluded that legitimate complaints were received but were not promptly investigated or properly documented. The investigation also determined that the Mesa field office supervisor failed to ensure that all complaints were handled in accordance with policy and Metal/Nonmetal procedures in place at the time of the complaints.

During May 2000, MSHA's Assistant Secretary and the Administrator for Metal/Nonmetal visited the Mesa field office to underscore the importance of responding to complaints immediately. On July 31, 2000, the Assistant Secretary issued a memorandum to all MSHA employees directing them that all complaints are to be investigated immediately irrespective of whether an official complaint was filed, and regardless of the source of the complaint. (See Appendix A.)



## **PURPOSE AND METHODOLOGY**

On August 10, 2000, the Secretary of Labor requested the Office of Inspector General (OIG) to review MSHA's activities surrounding the January 31, 2000 accident at ASARCO Mission Mine in Pima County, Arizona. Specifically, the Secretary requested that the OIG:

*“Review the events that occurred both before and after the accident, including whether MSHA had adequate procedures and policies in place to ensure compliance with the requirements of the Mine Safety Act, whether those policies and procedures were followed by MSHA personnel, and if not, whether corrective actions have been taken.”*

### **PURPOSE**

Our evaluation assessed the effectiveness of MSHA's complaint handling both prior and subsequent to the January 31, 2000 accident at the ASARCO Mission Mine which left one miner dead and two others permanently disabled. We reviewed complaint handling at the Mesa, Arizona field office, six Metal-Nonmetal district offices, and MSHA headquarters, in the following areas:

- whether MSHA policies and procedures were followed by MSHA personnel at the Mesa Field Office, and the adequacy of any corrective actions taken;
- whether and how effectively MSHA policies and procedures are followed by MSHA personnel nationwide; and,
- the adequacy of MSHA policies and procedures to ensure compliance with the requirements of the Mine Safety Act.

### **METHODOLOGY**

We conducted our fieldwork on site at the MSHA National office in Arlington, Virginia; the Rocky Mountain District office; and the Denver, Colorado and Mesa, Arizona field offices with mine inspectors, field and district supervisors, and other managerial, technical and professional staff members. Our evaluation involved telephone and in-person interviews with the other five district and assistant district managers. MSHA's Directorate of Program Evaluation and Information Resources provided us with data on hazard complaint and inspection files from their Teradata database and MSHA's Metal/Nonmetal database. We reviewed a judgmental sample of actual complaint and inspection files in the Rocky Mountain district, including the Mesa field office, for the period from 1997 - 2000. Our review included related MSHA documents, such as policy and procedures, inspection and training manuals, handbooks, directives, and memoranda related to hazard complaint handling.

The detail of events surrounding the ASARCO Mission Mine fatal accident was taken from the following: court depositions of MSHA inspectors; regular inspection files including field notes; a fatality report surrounding the accident; and, an MSHA internal investigation report conducted by an assistant district manager outside the Rocky Mountain district.

We conducted our evaluation in accordance with the *Quality Standards for Inspections* published by the President's Council on Integrity and Efficiency. A meeting was held on January 25, 2001, with MSHA's Division of Metal/Nonmetal to discuss our findings.

## FINDINGS AND RECOMMENDATIONS

### **Finding A - MSHA Personnel Did Not Follow Hazard Complaint Handling and Inspection Policies and Procedures Regarding the ASARCO Mission Mine**

Our evaluation determined that the MSHA Mesa field office supervisor and mine inspector did not follow various MSHA policies and procedures for at least six hazard complaints received from January through September 1999. Additionally, the inspection actions in response to these complaints were not conducted in a prompt and thorough manner. Subsequently, an accident occurred on January 31, 2000 at the ASARCO Mission Mine which left one miner dead and two others permanently disabled.

#### **Hazard Complaint Handling**

We found that MSHA's Mesa field office supervisor did not effectively follow two components of hazard complaint policies and procedures in relation to the ASARCO Mission Mine hazard complaints:

1. Determination of Who May File a Complaint
2. Determination of Imminent Danger or Health and Safety Violation

We determined that MSHA's mine inspector assigned to investigate the complaints violated MSHA policy in the following area:

3. Protecting Miner Confidentiality

We also found that the inspection actions in response to the hazard complaint allegations were not conducted in a prompt and thorough manner.

#### 1. Determination of Who May File a Complaint

We believe that the Mesa field office supervisor improperly determined that the six complaints received were not valid hazard complaints.

During the period January through September 1999, a total of six hazard complaints (both written and verbal) were received by MSHA's Mesa field office supervisor. Five of these complaints were later established by MSHA to be lodged by the deceased miner's daughter and a family friend. The anonymous complaints requested that underground heat, roof bolting, ventilation and oxygen levels at the mine be inspected. These complaints alleged conditions similar to those that resulted in the miner's death.

According to MSHA's March 7, 2000 internal investigation, the Mesa field office supervisor evaluated the complaints and made the determination that these complaints were not valid because the person(s) did not identify themselves. Moreover, the mine inspector stated in sworn testimony

that both he and the field office supervisor believed these were not valid complaints because the verbal complaints received by the field office supervisor were not specific enough.

The Mesa field office supervisor stated that he was acting in accordance with Section 103(g) of the Mine Act which stipulates that for official hazard complaints to be registered with MSHA, the notice shall be provided in writing and signed by a representative of miners or a miner.

*“Any such notice shall be reduced to writing, signed by the representative of the miners or by the miner, and a copy...provided the operator or his agent no later than at the time of inspection, except that the operator or his agent shall be notified forthwith if the complaint indicates that an imminent danger exists.”* – Federal Mine Safety and Health Act of 1977, section 103(g)(1).

As a result of making this determination, the field office supervisor did not document these complaints and subsequently discarded all related notes.

We believe that the specific allegations of inadequate ventilation, ground support, and improper roof bolting were valid complaints in accordance with MSHA policies and procedures. While the Mine Act is specific about the requirements of a formal hazard complaint, MSHA has further procedures for hazard complaint handling:

*“. . . Many times, complaints concerning hazardous conditions do not meet the technical requirements of Section 103(g). The health and safety of miners are best served by examining all notifications of the possible existence of hazardous conditions, even though a specific complaint may not strictly adhere to these requirements. Accordingly, all complaints of alleged hazards . . . must be evaluated. If appropriate, inspection steps must then be taken.”* – MSHA General Inspection Procedures Handbook, p. 27, dated April 1989.

We concluded that the field office supervisor did not effectively evaluate the complaints in determining a course of action. We also determined that he did not act prudently in failing to document the complaints.

## 2. Determination of Imminent Danger or Health and Safety Violation

MSHA policies stipulate procedures for a miner or miner’s representative to request an immediate mine inspection if an imminent danger exists. The Mesa field office supervisor stated that the complaints he received did not meet the threshold test of “imminent danger,” and that it was indeterminable where the alleged hazardous conditions were located in the mine. Therefore, at no time did the Mesa field office supervisor assign an inspector to conduct an immediate complaint inspection *separate from and prior to* regularly scheduled inspections.

We believe that the specific allegations of inadequate ventilation, ground support, and improper roof bolting described serious hazards and merited a complete evaluation and prompt complaint inspection separate from and prior to regularly scheduled inspections. We reached this conclusion

based on our review of MSHA documents and through interviews with MSHA district supervisors and managerial and technical staff at MSHA headquarters.

Furthermore, the Mesa field office supervisor could have taken additional steps before determining that the hazard complaints received posed no threat of “imminent danger” or other serious hazard. There was information available in the ASARCO Mission Mine file maintained at the Mesa office which indicated that, in November 1997, MSHA’s Safety and Health Technology Center’s Roof Control Division issued a report on its evaluation of ground support and mining methods at the ASARCO Mission Mine. The report identified weaknesses in the areas of scaling, roof bolting and split-set stabilizers. These issues were similar to some of the same allegations contained in the complaints received by the Mesa field office supervisor.

Despite the fact that the information from the November 1997 report was contained in the ASARCO Mission Mine file kept in the Mesa office, we found no indication that the Mesa field office supervisor utilized this information in making the determination whether these were valid complaints.

Finally, we believe that the information contained in the written and verbal complaints were sufficiently specific regarding the name of the mine and the hazardous conditions present to warrant a timelier inspection. The Mesa field office supervisor’s explanation that it was indeterminable where the alleged hazardous conditions were located in the mine was not a sufficient rationale for delaying the investigation of the complaints for as long as six weeks initially, and for failure to more effectively evaluate and document four subsequent complaint allegations.

### 3. Protecting Miner Confidentiality

In his court deposition, the Mesa inspector testified that he told ASARCO Mission Mine’s safety engineer the source of complaints. Hence, the confidentiality of the source was in this case breached by the MSHA inspector investigating the complaints, in violation of MSHA’s confidentiality policy and procedure.

MSHA policy and procedure surrounding protection of miner’s confidentiality in registering and inspecting hazard complaints state:

*“Information received about violations or hazardous conditions should be brought to the attention of the mine operator without disclosing the identity of the person(s) providing the information.”* – MSHA Program Policy Manual, Vol. III 43-1, April 1996.

## Inspection Actions

We determined that MSHA's inspection actions in response to these hazard complaints and previously identified hazardous conditions at the ASARCO Mission Mine were not conducted in a prompt and thorough manner.

### 1. Inspection Actions in Response to Hazard Complaints

As previously stated, the Mesa field office supervisor did not assign an inspector to conduct an immediate complaint inspection separate from and prior to regularly scheduled inspections. Instead, he incorporated the written complaint (the first complaint received) into a regular inspection approximately six weeks (March 1999) after the letter dated January 25, 1999. No citations were issued as a result of that inspection.

A second regularly scheduled inspection occurred during April 1999, which yielded one citation pertaining to the allegations. Both the miner's daughter and the Mesa field office supervisor recalled that, beginning in May 1999, the Mesa field office supervisor received four additional phone calls alleging the same hazards. The Mesa field office supervisor did not document these complaints or take any action. He finally instructed his inspector to investigate the alleged conditions during a third regular inspection beginning on September 27, 1999, after receiving the sixth complaint on September 22, 1999. That inspection resulted in one citation for ground conditions (loose rock).

While there is evidence that the mine inspector, during the March 1999 inspection, inspected areas that were barricaded, we found no evidence that barricaded areas were subsequently inspected. During the course of the September 1999 regular inspection, the mine inspector did not enter areas barricaded off by ASARCO management. Another inspector, who inspected the area during a fourth regular inspection in November 1999, testified that the barricades implied that the area was too dangerous for MSHA inspectors to enter, and hence he did not inspect or cite ASARCO. He stated that he only entered areas of the mine that were actively working at the time of his inspection. These actions occurred despite the fact that the initial written complaint contained the allegation that "in the past, management have prepared, closed, chained, or burned off certain stopes prior to inspectors arrival only for workers to again be sent back to those areas a few days later to work under poor conditions."

We concluded, through our own review of inspection documents and through discussion with the MSHA official who conducted an internal investigation of the events surrounding the accident, that the inspections conducted in March, April and September, 1999 were not thorough in investigating the allegations of hazards described in the six hazard complaints.

### 2. Inspection Actions In Response To Previously Identified Hazardous Conditions

As previously mentioned, in November 1997, MSHA's Safety and Health Technology Center's Roof Control Division issued a report on ground support and mining methods at the ASARCO Mission Mine. The report identified weaknesses in the areas of scaling, roof bolting and split-set stabilizers. These issues were similar to some of the same allegations contained in the six hazard

complaints received by the Mesa field office supervisor. We were told by an MSHA official that the mine file does not contain any information which demonstrates that specific followup actions were taken by either Mesa field office or the District management regarding the weaknesses identified in the November 1997 report.

In the two years after the report, and prior to the accident, only three citations related to the weaknesses identified in the November 1997 report were issued to the ASARCO Mission Mine. An MSHA internal investigation report dated March 7, 2000, concluded that the recommendations contained in the November 1997 report were not being followed at the ASARCO Mission Mine.

Additionally, during FY 2000 and after the fatal accident, MSHA conducted numerous inspection activities and issued a total of seventeen citations that addressed the types of conditions referred to in both the November 1997 Safety and Health Technology Center Report and the six hazard complaints that were received. In a report dated April 27, 2000, the MSHA Safety and Health Technology Center again evaluated the ASARCO Mission Mine, as a follow-up to the January 31, 2000 Mission Mine accident. Many of the same weakness were identified as in the November 1997 report.

### **Corrective Actions Taken After the Accident**

The Mesa field office supervisor was placed on administrative leave and in April 2000, he was transferred to the Rocky Mountain Coal Mine Health and Safety Division office in a non-supervisory position. In August, 2000, the inspector who investigated the hazard complaints was sent a memorandum proposing his dismissal from MSHA for revealing the source of the complaints.

The Administrator for Metal/Nonmetal and the Assistant Secretary for MSHA visited MSHA's Mesa field office in May 2000 to underscore the importance of replying to complaints immediately. On July 31, 2000, the Assistant Secretary for MSHA issued a memorandum to all MSHA employees directing them that all complaints were henceforth to be investigated immediately, irrespective of whether an official complaint was filed, and regardless of the source of the complaint. At the Mesa field office, the Assistant Secretary's memorandum was distributed to all staff and the new procedures verbally reviewed in staff meetings. The field office supervisors mandated that all complaints received would be documented and investigated. These practices have continued to be enforced and monitored in the Mesa field office.

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In summary, the MSHA Mesa field office supervisor did not effectively follow various MSHA policies and procedures for at least six hazard complaints received from January through September 1999. The MSHA Mesa mine inspector violated MSHA policies and procedures by betraying a miner's confidentiality. Additionally, the inspection actions in response to these complaints were not conducted in a prompt and thorough manner. Corrective actions taken by MSHA are positive steps towards improving hazard complaint handling and inspection policies, procedures and practices. However, as indicated in the following findings, we identified areas where additional steps can be taken.

### **MSHA's Response to Findings**

*“The report needs to specifically differentiate between the acts of the field office supervisor and the acts of the inspector. The report leads one to believe that both the supervisor and the inspector committed all three of the acts listed on page 5. In fact, the supervisor may have failed on the first two, but only the inspector failed on the third item. This point needs to be clarified.”*

### **OIG's Conclusion**

The aforementioned concerns were addressed in Finding A by separating the summaries of the actions of the supervisor from those of the inspector. The facts remain unchanged.

### **MSHA's Response to Findings**

*“The report does not adequately distinguish between a Section 103(g) hazard complaint and the more common informal hazard complaints. MSHA's regulations and policies set forth procedures for responding to hazard complaints. These include complaints that meet the requirements of Section 103(g) of the Mine Act and other, more informal complaints.”*

### **OIG's Conclusion**

Our discussions of 103(g) complaints and non-103(g) complaints throughout the report are accurate and should not be altered.

### **MSHA's Response to Findings**

*“The report consistently refers to six hazard complaints lodged by the family and friends of the family. In fact, the identity of the person filing the written complaint could not be verified. The identities of the persons filing the five verbal complaints are known.”*

### **OIG's Conclusion**

We have clarified throughout the body of the report that only the identities of the persons filing the five verbal complaints have been verified.



### **MSHA's Response to Findings**

*"Their (inspectors') failure to find a significant hazard does not necessarily mean that they failed to conduct a thorough investigation."*

### **OIG's Conclusion**

The report clearly states how and why thorough inspections were not conducted, that the recommendations of the 1997 Technical Report were not adequately considered in inspection activity, and that the volume of citations issued is adequately separated in the report from the thoroughness of inspections.

### **MSHA's Response to Findings**

*"We agree that the complaint should have been investigated promptly; however, without additional information regarding the conditions, location in the mine and miner exposure, the supervisor could not necessarily conclude that an imminent danger existed. He determined that the complaints addressed serious issues as evidenced by his instructions to the inspectors. Under MSHA's policies, enforcement personnel who receive non-103(g) complaints that can not be concluded to be imminent danger, have a greater degree of discretion in responding to the complaints."*

### **OIG's Conclusion**

We have modified "imminent danger" to "serious hazard" on page 7.

### **MSHA's Response to Findings**

*"The conditions complained of were not the ones that caused the accident. The accident did not occur in the area referenced in the complaint. The conditions in the stope where the fatal accident occurred were completely different than the conditions during the time that the complaints were filed. When the complaints were filed, the area where the accident occurred was an inactive section . . ."*

### **OIG's Conclusion**

We have changed the wording on page 5 of the "complaints related to some of the very conditions that resulted in the miner's death" to "these complaints alleged conditions similar to those that resulted in the miner's death."

All other miscellaneous corrections/adjustments requested in MSHA's response have been incorporated into the final report.

## **Finding B - Hazard Complaint Handling Procedures and Practices Are Not Consistent**

Hazard complaint handling procedures and practices lack uniformity. This lack of uniformity is evidenced in the following areas: (1) hazard complaint intake and documentation procedures across districts and field offices, (2) complaint analysis as a management tool, (3) implementation of “best practice” procedures, and (4) nationwide training on hazard complaint procedures.

### **Hazard Complaint Intake and Documentation Vary Across Districts and Field Offices**

After interviewing all six district managers and their assistant district managers, we concluded that hazard complaint intake and documentation procedures are not uniform among the six MSHA Metal/Nonmetal district offices and the different field offices within the districts. For example, most of the six districts we spoke with use some variation of a hazard complaint intake form; however, we found that this practice is not uniformly applied. In some instances, instead of using this intake form, inspectors and field supervisors simply refer to the complaint in their field notes. Important information (i.e. time, date and location of complaints) may not be captured in these notes. While MSHA does include a suggested form for the intake of hazard complaints in its program policy manual, it is not an official MSHA form. Mandatory use of the form by inspectors would have to be negotiated with the National Council of Field Labor Locals, which represents the MSHA inspectors.

Another example is the handling of the hazard complaint telephone calls which come in to the district or field offices. Most of the calls are answered by the district management or field office supervisor; occasionally the calls are answered by administrative staff, who may not be trained on complaint handling. Only one district voiced its concern that administrative staff be properly trained on complaint intake.

Finally, our review disclosed that code-a-phone complaints (the 1-800 number for hazard complaints received in the National office and forwarded to the districts) may be treated with more efficiency and thoroughness than complaints directly received by some district and field offices. Code-a-phone complaints received from the National office are often prioritized and given immediate inspection attention, and are reported back to the National office via detailed memorandum and logged into the national code-a-phone database. The code-a-phone complaint system provides an illustration of a clearly “closed loop” system wherein complaints are tracked from intake to the results of inspection findings and reported back for tracking purposes. Ideally, all complaints received at all levels-- whether from a miner at a mine, or by a field or district office-- should receive the same level of scrutiny, review and documentation as a code-a-phone complaint.

## **Complaint Analysis Can Be Utilized As A Management Tool**

We believe that MSHA can be more proactive in utilizing complaint analysis to: (a) identify any relationship between hazard complaints received and previous deficiencies reported at the mine site, and (b) identify broader areas of complaint activity (i.e., by complaint type, within the mine, within field offices and/or districts, and across time).

### **1. Qualitative Analysis of Complaints**

The mine files contain all the regular inspections conducted in a mine, and the MSHA inspection procedures require that enforcement personnel comprehensively review it prior to conducting the first inspection after receiving the assignment. However, MSHA hazard complaint procedures do not specify that the mine file should be reviewed by field supervisors or inspectors upon receipt of a hazard complaint. We believe that hazard complaint procedures should be updated to require that the mine file be reviewed by field supervisors or inspectors upon receipt of a hazard complaint.

### **2. Quantitative Analysis of Complaints**

Analyses of complaints are not regularly or consistently conducted by district or field offices. Our evaluation determined that complaint analysis could identify patterns and trends in complaints across field offices, particular inspector travel areas, or across years, and within mines, in a similar fashion as the current practice of monitoring Patterns of Violation (POV). In October 1990, regulations to identify mine operators who meet the criteria for a Pattern of Violation became effective. These include procedures for initial screening of mines that may be developing a Pattern of Violations; criteria for determining whether a POV exists at a mine; procedures for issuance of potential pattern notice and final pattern notice; and, procedures for termination of a Notice of POV. The pattern of violation analysis allows MSHA to decide which mines warrant further consideration by the agency, which will be issued potential notices, and allows MSHA to provide assistance to the districts where requested. A complaint analysis system could similarly be developed to aid as a management tool in monitoring and tracking complaints.

The development of a complaint analysis system should: 1) capture all complaints; 2) specifically track or accurately account for complaints; and, 3) follow up on complaints to ensure that appropriate corrective action has been taken. Examples of analyses which could be conducted could compare the volume and percentage of citations and enforcement actions which result from code-a-phone calls to the comparable figures for calls received in various district and field offices and to evaluate possible reasons for any statistically significant differences. There may also be merit in analyzing complaints later determined to be “frivolous” to better understand where and when complaints may emanate.

## **“Best Practice” Procedures Are Unevenly Implemented**

Our review identified a number of promising practices at the district level, which could be adopted nationwide. Two districts mandate the use of a memorandum format to “narrate” the entire sequence of events surrounding a complaint, from intake/nature of complaint to inspection, findings, and resolution. We noted that this practice was effective in documenting the process from complaint intake to enforcement action. Other districts use a memorandum format sporadically.

Additionally, our review of documents at the field level suggests that the practice varies vastly, with differences both between field offices and between different supervisors in one office during different time periods.

The Southeast District has developed a handbook which systematically details how complaints should be handled. This 35-page handbook is concise; chapters are clearly indexed for easy reference and forms and templates (included on computer disks) have been developed for complaint intake. The handbook catalogues excerpts from MSHA documents which refer to complaint handling (i.e., Section 103(g), Program Policy Manual, Inspection Manual, Field Procedures Handbook, the July 2000 Assistant Secretary’s Directive and OSHA/MSHA interagency agreement). It also includes the district’s own directive on how complaints are to be handled. The handbook highlights the importance of complaint handling and provides inspectors with a uniform, readily-available reference guide for complaint handling.

Our review disclosed the need for improved complaint handling forms. For example, as suggested to us by one field supervisor, M/NM may want to develop a standardized “checklist” of complaint inspection activity, as an alternative to the current practice of using a Miscellaneous Inspection checklist form.

Relatedly, MSHA should look to other customer complaint systems such as “911” and the IRS customer complaint handling systems as examples of comprehensive systems which emphasize the efficient handling of customer complaints through the identification, management, tracking and analysis of complaints.

## **Nationwide Training on Hazard Complaint Procedures Is Inadequate**

Our review determined that the area of complaint handling is inadequately covered in both new inspector and refresher training. Training for new inspectors is held at the National Mine Health and Safety Academy in Beckley, West Virginia, for a total of twenty-four weeks. The Mine Act is covered in detail in the three-day course, “Law, Regulation and Policy,” which includes a module on Complaint Handling. The curriculum for the course, which emphasizes the authority of the inspector, has not been updated for over three years. The module on Complaint Handling within that curriculum focuses on the handling of Section 103(g)(1) and (2) complaints, and has not been updated to reflect the Assistant Secretary’s Directive of July 31, 2000. The complaint handling module comprises two pages out of a forty-five page training manual, and includes approximately half an hour of classroom instruction and discussion.

Our evaluation determined that training in complaint handling, including the written training module procedures, does not sufficiently address procedural issues of the evaluation, documentation and investigation of complaints. In particular, little or no emphasis is given to those complaints which may fall outside of 103(g). The training should be broadened to encompass these broader areas. Some of the field inspectors we spoke with suggested that inspectors seasoned in complaint handling be brought in to assist in that portion of the training, possibly through conducting presentations in the classroom setting. Refresher training for experienced miners, held every two years, was also reported to be lacking in addressing complaint handling. Both inspectors and field supervisors we interviewed stated the need for more refresher training on hazard complaint handling.

In summary, we found that hazard complaint handling procedures lack uniformity across districts and field offices. Increased uniformity will result in a more efficient handling of hazard complaints through the systematic evaluation, management, tracking and analysis of complaints.

### **RECOMMENDATIONS:**

We recommend that MSHA take the following actions:

- (1) standardize and mandate the use of hazardous complaint handling intake, inspection and reporting forms.
- (2) nationally adopt “best practices” currently used in certain districts.
- (3) update and implement hazard complaint procedures requiring that, where practicable, the mine file be reviewed by field supervisors or inspectors after receipt of a hazard complaint. An exception can be made in the event that a complaint is received at the mine.
- (4) develop a complaint analysis system to:
  - a) capture all complaints;
  - b) specifically track or accurately account for complaints; and,
  - c) follow up on complaints to ensure that appropriate corrective action has been taken.
- (5) further develop and update classroom training for new mine inspectors, and implement hazard complaint handling refresher courses for all journeymen mine inspectors, and for all MSHA personnel who receive hazard complaints.

### **MSHA’s Response to Recommendations**

- (1) *“M/NM is currently developing standardized forms for the receipt, handling, and disposition of hazard complaints. Where possible, standard forms will be used to record the receipt of hazard complaints, however, because of the nature of our work, many field situations will preclude the use of the forms. Once the inspector returns to the office, however, the standard forms will be completed.”*
- (2) *“A handbook, the Hazard Complaint Processing Handbook (HCPH), will be created so that M/NM management personnel and inspectors can address hazard complaints in a uniform fashion.”*

- (3) *“This recommendation will be incorporated into the HCPH, see Recommendation #2. This recommendation, however, can not be mandatory because many complaints are received in the field and access to the files is impractical.”*
- (4) *“M/NM is currently developing a system that tracks the complaint from initial notification to final resolution and ultimate closing of the complaint.”*
- (5) *“M/NM’s existing program will be modified to incorporate new procedures and database use. The training will deal with processing and investigating hazard complaints, and bringing the hazard complaints to final resolution. New mine inspectors will be given the training as part of the new inspector training at the Mine Academy; journeymen inspectors will be trained at their next scheduled journeymen training session; and appropriate administrative personnel will be trained.”*

### **OIG’s Conclusion**

We concur with the proposed corrective actions and consider recommendations 1 through 5 resolved. The recommendations will be closed after those corrective actions are completed. In that regard, please submit a detailed action plan and timetable for each recommendation by no later than **May 31, 2001**.

## **Finding C - MSHA's Policies and Guidelines on the Enforcement of the Mine Safety Act Need to Be Updated**

Differences exist between the Mine Act and various MSHA policies and guidelines which interpret the Act and its accompanying regulations. These inconsistencies result in complaint handling practices frequently differing according to the interpretations of the field office supervisors and mine inspectors.

### **Differences Exist Between Various MSHA Policies and Guidelines**

As depicted earlier in Finding A, the Mine Act specifies that complaints coming from a miner or representative of miners (registered with the district, representing at least 2 miners) are in accordance with Section 103(g) of the Mine Act. However, various MSHA guidelines differ from the definition contained in the Mine Act, each other, and the latest directive, dated July 31, 2000, issued by MSHA's Assistant Secretary. For example, MSHA's Program Policy Manual extends valid complaints as follows:

*"A different situation exists when an inspector receives information about violations or hazards in a mine, and the information is given in an informal manner that does not meet the requirements of Sections 103(g)(1) or 103(g)(2) in that the notice is not in writing. In these situations, the inspector receiving the information must evaluate and determine a course of action, which in some cases may result in an immediate inspection, but in other cases may not."* – MSHA Program Policy Manual, Vol. III Part 43-1, dated April 1996.

In comparison, MSHA's Field Reports Procedures Handbook, limits consideration of hazard complaints to those that are filed by a representative of miners, etc.

*"Hazard complaints are filed by a representative of miners or union officials or any miner who has reasonable grounds to believe that a violation of the Act or of a mandatory health or safety standards exists or that an imminent danger exists."* – MSHA Field Reports Procedures Handbook, p. 9-1, dated February 1989.

The above excerpt is incongruous with the broader interpretation of the Policy Program Manual, as well as the spirit and intent of an earlier version of MSHA's publication, "A Guide to Miners' Rights," which stipulated that:

*"At any time any person may, and is encouraged to, notify MSHA of any violation of the Act or safety or health standards, or of an imminent danger."* – A Guide to Miners' Rights, p. 8, reprinted 1989.

It should be noted that the FY 2000 update to the "Guide to Miners' Rights," deletes the above section and, instead limits hazard complaints to miners and miner's representatives.

Notwithstanding that differences exist between the various guidelines listed above, the

inconsistency continues with the Assistant Secretary's July 2000 directive issued to all MSHA employees stating:

*"No matter who makes the complaint or how we receive it, any complaint about a safety or health concern in MSHA's jurisdiction must be taken seriously. If the complainant provides enough information to identify the location and the hazard of concern, it must be promptly investigated.... A complaint can come from a miner, family member, or any concerned person...If someone informs you that a specific hazard exists in a specific mine, then that should be treated as a complaint ."* – July 31, 2000 memorandum of the Assistant Secretary for MSHA.

We believe that the July 2000 directive, while sweeping in its intent, could be further developed in procedural terms. The investigation of complaints outside of the letter of the Mine Act's sections 103(g)(1) and (2) is very important, and various MSHA policies and guidelines should be updated to reflect the latest directive. Various documents including the Program Policy Manual, the Field Reports Procedures Handbook, and the Inspection Handbook should be updated to reflect the July 2000 directive.

Furthermore, we identified certain additional written guidelines issued by the Southeast District which we believe should also be considered when updating the various MSHA guidelines. For example:

*"All verbal complaints 'shall be reduced to writing' by the MSHA employee receiving the complaint . . . A verbal complaint information form is to be completed when a telephone complaint is received."* – Hazard Complaints Conditions Handbook, Southeast District, Section 1, page 1, FY 2000.

The Southeast District also states its prioritization of verbal complaints as requiring equal attention to written complaints:

*"Telephone and verbal complaints are general notices of alleged violations and are given the same attention and consideration as written complaints."* – Hazard Complaints Conditions Handbook, Southeast District, Section V.f, page 4, FY 2000.

No comparable language on documentation or prioritization of verbal complaints exists in National-level policies and guidelines. We believe that all existing MSHA policies and guidelines should be reviewed to ensure consistency.



## **Some Complaints Are Not Covered by the Mine Safety Act**

According to several MSHA district managers, the July 2000 directive is now *literally* interpreted, leaving field supervisors little room for discretion about: (1) complaints in which MSHA's jurisdiction is unclear; and, (2) complaints which can be established as "frivolous" in nature. Currently, there is no formal system for field supervisors to confer with district management in deciding, on a case-by-case basis, which complaints do not fall within MSHA's jurisdiction or are frivolous in nature.

(1) Regarding unclear jurisdiction, district managers and field supervisors now immediately inspect environmental complaints from neighborhoods adjacent to mines, i.e. excessive dust, noise, and explosion vibrations. Several district managers stated that they do not have the discretion or adequate guidelines to refer the call out to a more appropriate agency. While an existing OSHA-MSHA interagency agreement outlines enforcement guidelines on unsafe and unhealthy working conditions, OSHA's jurisdiction does not extend to environmental complaints outside of work areas.

(2) The July 2000 directive does not differentiate between "frivolous" complaints, which are now responded to immediately and not clearly distinguished from imminent danger calls. Some managers and field inspectors viewed the investigation of frivolous and even some non-imminent danger complaints as taking away from regular inspection responsibilities; yet, a literal interpretation of the July 2000 directive does not permit a distinction in the prioritization of such complaints.

We believe that guidelines should be developed to formally document district management's approval or disapproval of field offices' proposed actions surrounding environmental complaints outside of MSHA's jurisdiction and complaints deemed frivolous by both field and district offices.

## **MSHA Lacks a Policy on the Incorporation of Complaints into Regular Inspections**

Currently, MSHA does not have a clear policy on the practice of "folding" hazard complaint inspections into regular inspections. Several district supervisors stated that, unless a miner cites a complaint during the course of a regular inspection, all written and verbal hazard complaints are to be investigated separately and issued a separate event number in MSHA's Management Information Systems. However, one district manager and his assistant voiced the concern about miner confidentiality, particularly in small mines. They felt that, in order to preserve such confidentiality, the option to fold hazard complaints into regular inspections was a discretionary judgement which should not be unilaterally removed from MSHA policy.

The issues of timing of inspection activity and of coding complaints are also involved. If a hazard complaint about a mine comes directly to a district or field office shortly before a regularly scheduled inspection at that mine, it may be prudent to send an inspector out on the regular inspection and to simultaneously investigate the complaint. We believe MSHA should explore developing a procedure wherein hazard complaints, in *exceptional* cases and with the consultation of district supervisors, can be permitted to be folded into regular inspections. This procedure

should allow for both documentation and coding of complaint activity to identify, track and monitor complaints.

We believe that differences exist between the Mine Safety Act and the various MSHA guidelines on hazard complaint handling. A review and update of existing MSHA guidelines that are consistent with the July 2000 directive will be a positive step in assuring that all hazard complaints are properly handled.

**RECOMMENDATIONS:**

We recommend that MSHA take the following actions:

- (6) reconcile inconsistent language on complaint handling found between the various MSHA guidelines in accordance with the July 2000 directive.
- (7) develop guidelines for district management's approval or disapproval of proposed actions on complaints outside of MSHA's jurisdiction and complaints deemed frivolous.
- (8) establish a policy on whether and when to incorporate hazard complaints into regular inspections.

**MSHA's Response to Recommendations**

- (6) “. . . Any inconsistencies in MSHA's Program Policy Manual, MSHA's Inspection Procedures Handbook, and Internet postings will be reconciled in the HCPH.”
- (7) “This procedure is already in place for the code-a-phone complaints handled by the headquarters office and will be incorporated into the HCPH referred to earlier. Guidelines will be developed and incorporated into the HCPH for dealing with trivial hazard complaints.”
- (8) “M/NM will establish a procedure on whether and when to incorporate hazard complaints into regular inspections.”

**OIG's Conclusion**

We concur with the proposed corrective actions and consider recommendations 6 through 8 resolved. The recommendations will be closed after those corrective actions are completed. In that regard, please submit a detailed action plan and timetable for each recommendation by no later than **May 31, 2001**.

**APPENDIX A**

**July 31, 2000 Memorandum from MSHA's Assistant Secretary to  
all MSHA Employees Regarding Complaint Handling**



JUL 31 2000

TO ALL MSHA EMPLOYEES:

This is to remind everyone in MSHA of how important it is that we recognize and respond promptly to all safety and health complaints.

No matter who makes the complaint or how we receive it, any complaint about a safety or health concern in MSHA's jurisdiction must be taken seriously. If the complaint provides enough information to identify the location and the hazard of concern, it must be promptly investigated.

In addition, if a complainant asks to be anonymous, that request must be respected.

MSHA maintains a 24-hour "Hot Line" for safety and health complaints:  
telephone (800) 746-1554.

However, miners and others do not have to use the agency "Hot Line" to make a mine safety or health complaint. A complaint can be made in person, by telephone, through the "Hot Line," by e-mail or in writing.

A complaint can come from a miner, family member, or any concerned person.

The complainant does not need to say, "I am making a safety (or health) complaint." If someone informs you that a specific hazard exists in a specific mine, then that should be treated as a complaint.

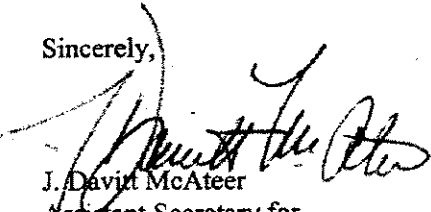
If you receive a complaint, and you have not been trained to handle complaints as part of your job, then write down the information and the person's name and phone number -- if provided -- and immediately contact the appropriate district manager, the Administrator's Office of Coal Mine Safety and Health on (703) 235-9423 or the Administrator's office for Metal/Nonmetal Mine Safety and Health on (703) 235-1565 for instructions.

Regular mine inspections detect many hazards. However, the mining environment can change daily, even hourly. Sometimes the only way MSHA can learn about a potentially deadly hazard is when someone tells us about it.

Last year, MSHA responded to 783 mine safety and health complaints, and as a result many safety and health hazards were detected and corrected.

Every one of us need to be aware, to recognize and take all mine safety and health complaints seriously. Miners and their families depend on us.

Sincerely,

  
J. Davitt McAteer  
Assistant Secretary for  
Mine Safety and Health

**APPENDIX B**

**Agency Response**



MAR 16 2001

MEMORANDUM FOR JOSE M. RALLS

Assistant Inspector General  
Office of Analysis, Complaints, and Evaluations

FROM:

ROBERT A. ELAM *Robert A. Elam*  
Acting Assistant Secretary for  
Mine Safety and Health

SUBJECT:

Evaluation of Hazard Complaint Handling in MSHA's  
Office of Metal and Nonmetal Mine Safety and Health  
Report No. 2E-06-620-0001

Thank you for the opportunity to comment on your draft Report No. 2E-06-620-0001, titled "Evaluation of Hazard Complaint Handling in MSHA's Office of Metal and Nonmetal Mine Safety and Health (M/NM)." The report thoroughly addresses relevant issues.

Generally, we agree with the recommendations set forth. We believe, however, that the report should be clarified and modified as described below. We would welcome the chance to meet and explain our concerns and reasons for the recommended changes. There are sections of the report that do not accurately reflect MSHA's policies and procedures or the facts and circumstances surrounding the accident and the events preceding the accident.

The report needs to specifically differentiate between the acts of the field office supervisor and the acts of the inspector. The report leads one to believe that both the supervisor and the inspector committed all three of the acts listed on page 5. In fact, the supervisor may have failed on the first two, but only the inspector failed on the third item. This point needs to be clarified.

The report does not adequately distinguish between a Section 103(g) hazard complaint and the more common informal hazard complaints. MSHA's regulations and policies set forth procedures for responding to hazard complaints. These include complaints that meet the requirements of Section 103(g) of the Mine Act and other, more informal complaints. In this case, there was one anonymous written complaint. The other five were verbal and did not identify the complainant, were not signed by a representative of the miners or by a miner with reasonable grounds to believe a violation existed; and did

not identify the area of the mine, or in some cases the mine itself, where the hazard or violation existed. As you note in the report, inspectors were, however, dispatched to conduct regular inspections in March and September with specific instructions to look into the conditions reported. Their failure to find a significant hazard does not necessarily mean that they failed to conduct a thorough investigation.

We agree that the complaint should have been investigated promptly; however, without additional information regarding the conditions, location in the mine and miner exposure, the supervisor could not necessarily conclude that an imminent danger existed. He determined that the complaints addressed serious issues as evidenced by his instructions to the inspectors. Under MSHA's policies, enforcement personnel who receive non-103(g) complaints that can not be concluded to be imminent danger, have a greater degree of discretion in responding to the complaints.

The conditions complained of were not the ones that caused the accident. The accident did not occur in the area referenced in the complaint. The conditions in the stope where the fatal accident occurred were completely different than the conditions during the time that the complaints were filed. When the complaints were filed, the area where the accident occurred was an inactive section. That area did not go into production until approximately two weeks before the accident at which time the first slab round was taken from the back, opening the ground that subsequently fell. During the time when the complaints were being filed, this area was roof bolted with split set bolts. This point is never mentioned in the report.

The following is a specific list of corrections we feel are needed in addition to the general statements above:

Throughout the Report

The report consistently refers to six hazard complaints lodged by the family and friends of the family. In fact, the identity of the person filing the written complaint could not be verified. The identities of the persons filing the five verbal complaints are known.

Page 1, Paragraph 2

The last sentence sounds like only three miners were working in the mine at the time of the accident. This should say that they were in the area.

Page 1, Paragraph 4

The statement that this was the first inspection at this mine by this inspector is irrelevant and should be deleted.

Page 2, Paragraph 1

MSHA did not inspect the mine in response to the accident, rather the agency investigated the facts and conditions surrounding the accident.

Page 2

The second sentence of paragraph 2 should be deleted.

Page 2, Paragraph 4

MSHA responds to complaints rather than replying to them.

Page 2

The McAteer memo mentioned in paragraph 4 was issued after the complaints had been filed and after the accident occurred. As a result, the field office supervisor could not be responsible for handling the subject complaints according to the memo's instructions. This fact should be clearly stated.

Page 4, Paragraph 2

There has only been one report issued relative to the December 1999 fatal accident.

Page 5, Item 1 - Determination of Who May File a Complaint

The second paragraph makes it sound like the supervisor knew the complaints were from the deceased miner's family and friends. The identity of the person filing the written hazard complaint has yet to be determined (see above). A statement should be included to note that the complaints were filed anonymously. Also, the second paragraph sounds like the complaints were ignored because they were deemed not valid. In fact, the allegations were investigated on two separate occasions. This needs to be clarified.

Page 6, Paragraph 2

There is no MSHA policy requiring that anonymous verbal complaints be reduced to writing and investigated immediately unless an imminent danger exists. This page makes it sound like there is. The statement "did not properly document these complaints..." should be altered to delete the word properly.

Page 6, Paragraph 4

The statement that "... (b) ... on a hazard complaint intake form" is not a fair statement. MSHA neither had such a form nor required the use of a form.

Page 7, Paragraph 1

The phrase "...presented an imminent danger..." be replaced with "...described a serious hazard..." It is not possible to determine that an imminent danger exists without specifics or an investigation of the conditions. The supervisor had neither of these at his disposal.

Page 7, Paragraph 4

Should the statement "... disregarding the complaint." read "... disregarding the complaints." or are you referring to a specific complaint? More importantly, although the supervisor did not immediately investigate the complaints, he did not disregard them.

Page 8, Paragraph 1

The Inspector General accurately notes that MSHA did respond to the complaints, albeit not in a prompt manner.

Page 9, Paragraphs 1 & 2

Replace the phrase 'hazardous conditions citations' with 'citations'.



Page 9, Paragraph 6

For clarity, separate the actions of the supervisor from the actions of the inspector.

Page 11, Quantitative Analysis..., Paragraph 1

The Pattern of Violations system is no more than queries run against our standard database. There is no separate system. Replace 'A pattern of complaints' system ...' with 'A complaint system ...'.

Page 11, Quantitative Analysis..., Paragraph 2

Replace 'patterns' in the last sentence with 'areas'.

Page 14, Differences exist..., Paragraph 1

The word valid in the first sentence has many connotations. We recommend replacing it with 'in accordance with Section 103(g) of the Mine Act'.

Page 14, Paragraph 3 and Page 15, Paragraph 2

'Policy Program Manual' should read 'Program Policy Manual'.

Page 15, Paragraph 1

Change the word 'ambiguity continues' to 'inconsistencies continue'.

The report contained eight specific recommendations. The following is our response to each of the recommendations and the corrective actions we will implement to address these recommendations.

RECOMMENDATION NO. 1

MSHA should standardize and mandate the use of hazardous complaint handling intake, inspection, and reporting forms.

M/NM PLANNED ACTIONS

M/NM is currently developing standardized forms for the receipt, handling, and disposition of hazard complaints. Where possible, standard forms will be used to record the receipt of hazard complaints, however, because of the nature of our work, many field situations will preclude the use of the forms. Once the inspector returns to the office, however, the standard forms will be completed.

RECOMMENDATION NO. 2

MSHA should nationally adopt "best practices" currently used in certain districts.

M/NM PLANNED ACTIONS

A handbook, the Hazard Complaint Processing Handbook (HCPH), will be created so that M/NM management personnel and inspectors can address hazard complaints in a uniform fashion.

### **RECOMMENDATION NO. 3**

MSHA should update and implement hazard complaint procedures to require that the mine file be reviewed by field office supervisors and mine inspectors upon receipt of a hazard complaint.

### **M/NM PLANNED ACTION**

This recommendation will be incorporated into the HCPH, see Recommendation #2. This recommendation, however, can not be mandatory because many complaints are received in the field and access to the files is impractical.

### **RECOMMENDATION NO. 4**

MSHA should develop a complaint analysis system to:

- a) capture all complaints,
- b) specifically track or accurately account for complaints, and
- c) follow up on complaints to ensure that appropriate corrective action has been taken.

### **M/NM PLANNED ACTIONS**

M/NM is currently developing a system that tracks the complaint from initial notification to final resolution and ultimate closing of the complaint.

### **RECOMMENDATION NO. 5**

MSHA should further develop and update classroom training for new mine inspectors, and implement hazard complaint handling refresher courses for all journeymen mine inspectors, and for all MSHA personnel who receive hazard complaints.

### **M/NM PLANNED ACTIONS**

M/NM's existing program will be modified to incorporate new procedures and database use. The training will deal with processing and investigating hazard complaints, and bringing the hazard complaints to final resolution. New mine inspectors will be given the training as part of the new inspector training at the Mine Academy; journeymen inspectors will be trained at their next scheduled journeymen training session; and appropriate administrative personnel will be trained.

**RECOMMENDATION NO. 6**

MSHA should reconcile ambiguous language on complaint handling found between the various MSHA guidelines in accordance with the July 2000 directive.

**M/NM PLANNED ACTIONS**

M/NM disagrees that the language in its policies is ambiguous and requests the term be changed to inconsistent. Any inconsistencies in MSHA's Program Policy Manual, MSHA's Inspection Procedures Handbook, and Internet postings will be reconciled in the HCPH.

**RECOMMENDATION NO. 7**

MSHA should develop guidelines for district managements's approval or disapproval of proposed actions on hazard complaints outside of MSHA's jurisdiction and hazard complaints deemed frivolous.

**M/NM PLANNED ACTION**

This procedure is already in place for the code-a-phone complaints handled by the headquarters office and will be incorporated into the HCPH referred to earlier. Guidelines will be developed and incorporated into the HCPH for dealing with trivial hazard complaints.

**RECOMMENDATION NO. 8**

MSHA should establish a policy on whether and when to incorporate hazard complaints into regular inspections.

**M/NM PLANNED ACTION**

M/NM will establish a procedure on whether and when to incorporate hazard complaints into regular inspections.