

APPENDIX E

Agency Response to Draft Report

U.S. Department of Labor

Mine Safety and Health Administration
1100 Wilson Boulevard
Arlington, Virginia 22209-3939




INFORMATION

JUL 06 2007

MEMORANDUM FOR ELLIOT P. LEWIS

Assistant Inspector General
for Audit

FROM:


RICHARD E. STICKLER
Assistant Secretary for
Mine Safety and Health

SUBJECT:

Response to Draft Report
No. 05-07-002-06-001
"MSHA's Office of Coal Mine Safety
and Health Needs to Strengthen its
Accountability Program"

We have reviewed your Draft Audit Report, *MSHA's Office of Coal Mine Safety and Health Needs to Strengthen its Accountability Program*, and believe it contains sound recommendations and concepts applicable to the Mine Safety and Health Administration's (MSHA) Accountability Program.

On June 28, 2007, MSHA released the internal reviews of the three fatal accidents at Sago, Aracoma and Darby Mines. Concurrent with the release of the results of these internal reviews and a comprehensive corrective action plan containing 153 recommendations, MSHA also announced the establishment of the Office of Accountability. The purpose of the Office of Accountability will be to increase oversight of MSHA's accountability and enforcement programs to ensure that necessary management controls are fully implemented and effective. As noted in the findings of the internal reviews, and supported by the recommendations in your draft report, MSHA must improve oversight of its Accountability Program to correct past deficiencies and prevent potential future lapses in enforcement.

Your recommendations will be considered as part of this new directive at MSHA which will strengthen oversight of our enforcement programs and the accountability of management and enforcement personnel. MSHA's new Office of Accountability will be comprised of a Director and two Compliance Specialists who will work full-time on accountability issues and report directly to me as the Assistant Secretary for Mine Safety and Health.

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Coal Mine Safety and Health and Metal/Nonmetal Safety and Health, with the assistance of MSHA's Program Evaluation and Information Resources Directorate (PEIR), will continue to conduct their own accountability reviews. However, as a result of both your audit and MSHA's own examination of accountability issues during our recent internal reviews, MSHA will work to improve accountability practices within the respective enforcement programs. This will be accomplished formally through appropriate revisions to MSHA's Accountability Program Handbook and resultant restructuring of the program. Additionally, enhancements to MSHA's Performance Management System will provide supervisors and managers improved tools to better identify and resolve weak performance in oversight and enforcement efforts.

We look forward to responding more fully after your report is issued in final and MSHA has had sufficient time to consider your recommendations within the framework of our pending Accountability Program and Handbook revisions.

If you have any questions, please contact Ken Bullock 693-9778 or Melinda Pon 693-9516.

Thank you for your consideration.

Attachment

OIG Recommendations (Design and Planning)

1. *Develop a process and criteria for the selection of activities to be examined during accountability reviews that emphasizes measures and indicators of CMS&H performance and provides the possibility that any activity (related to any mine operation) could be selected; and*
2. *Prohibit District Managers, or anyone in their subordinate chain of command, from selecting the activities to be reviewed in DPRs.*

We agree that MSHA's Accountability Program must primarily emphasize MSHA's own performance. Going forward, MSHA will take steps to strengthen the effectiveness of its accountability reviews by focusing on key internal performance indicators and the root causes of deficiencies. As such, we will provide for the possibility that activities related to any mine operation or enforcement activity may be selected for review. That being said, the risk associated with a particularly unsafe mine and MSHA's oversight of that mine are related, and MSHA will continue to examine mine operator characteristics together with indicators of internal performance. As our revised Accountability Program and Handbook are developed, criteria for internal indicators of performance will be established, and we will examine how to incorporate mine visits within each Headquarters Review (HQR) and District Peer Review (DPR) using the new criteria.

We concur with the intent of recommendation two, but suggest that prohibiting District Managers or their subordinates from having any input into DPR activities would be ill advised. These officials have a wealth of experience regarding enforcement issues, and their input is valuable. However, MSHA's Accountability Program can be revised to ensure that Headquarters select enforcement activities for DPR and that input from District management serves to *complement* a standardized process of DPR activity selection independent of District Manager or subordinate approval.

OIG Recommendations (Implementation)

3. *Ensure that accountability review team members cannot independently review work they have performed or supervised;*
4. *Require that DPR teams include at least one appropriate individual from outside the District conducting the review;*

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MSHA's Accountability Program will be revised and enhanced to ensure that accountability review team members cannot *independently* review work they have performed or supervised. Resources and time permitting, the revised Accountability Program will also require that DPR teams include at least one appropriate individual from outside the District conducting a review.

OIG Recommendations (Implementation)

5. *Provide guidance and instruction that is more detailed on specific procedures and tasks required to complete an effective DPR;*
6. *Establish a minimum scope for DPRs and HQRs that includes at least a review of two non-consecutive quarters of enforcement documentation from the preceding 12 months;*
7. *Require that the timeframe for completion of DPRs and HQRs be planned in a way to ensure an accurate and thorough review; and*
8. *Require that DPRCs regularly communicate to discuss common issues, resolutions and best practices to ensure consistency and compliance nationwide.*

As mentioned previously, MSHA's Accountability Program and Accountability Handbook will be revised. Specific guidance and instruction will be provided on procedures and tasks required to conduct timely, effective, and thorough DPRs and HQRs - with a strong focus on internal performance indicators and root cause analysis. This will include establishing a minimum scope for DPRs and HQRs, and minimum review timeframes. We also agree that there is value in sharing accountability review findings across the Districts, and will require regular dissemination of common issues, resolutions, and best practices.

Page 18 of your report discusses your September 29, 2006, management letter and your continuing recommendation for accountability review team members to interview all appropriate individuals to better gauge the performance of a particular District or field office. We agree that accountability interviews should not arbitrarily exclude relevant MSHA personnel or stakeholders, and will consider this recommendation as we integrate MSHA's new Office of Accountability with our revised Accountability Program.

OIG Recommendations (Reporting and Analysis)

9. *Require HQR teams to be involved in the development of appropriate corrective actions.*

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HQR accountability teams will have the responsibility of conducting root-cause analysis to identify the deficiencies and subsequently submitting final corrective actions to District management. District management will then have the responsibility for implementing the corrective actions. The development of the corrective actions may, in some cases, be a collaborative effort between the HQR accountability team and District management as they leverage their respective expertise to derive the most timely and effective remedies. MSHA's revised Accountability Program and Handbook will further define and formalize this process.

10. *Require a timeframe be established for the development of all corrective action plans resulting from DPRs.*
11. *Incorporate dates into corrective action plans for the implementation and completion of actions resulting from DPRs and HQRs.*
12. *Require a timely evaluation by District Managers to ensure that completed corrective actions are adequately addressing the deficiencies identified during DPRs and HQRs.*

We strongly concur with these recommendations. Timeframes for the development of corrective action plans are crucial to minimize the impact of practices which may negatively influence MSHA enforcement program (and potentially the safety of miners). Similarly, establishing dates for the implementation and completion of corrective action plans are equally important. Finally, monitoring and evaluating the effectiveness of corrective action plans is vital both at the District and Headquarters level. MSHA's revised Accountability Program and Handbook will define and formalize this process.

13. *Require that District Offices utilize the same tracking system, once it is developed and implemented by HQ, to record and track the results of their DPRs (e.g., identified deficiencies, planned corrective actions, potential best practices, etc.).*

We concur with this recommendation, which is related to your September 29, 2006, management letter's recommendation to use a standard reporting format across the Districts for DPR reports. MSHA will implement both of these corrective actions. Our revised Accountability Program and Handbook will define and formalize this process. HQR accountability reviews can utilize a parallel tracking system / database.

14. *Require that identified issues, deficiencies, corrective actions, and best practices be communicated within a district's field offices and disseminated nationwide, as appropriate, in a timely manner.*

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MSHA concurs with this recommendation – which is in the same spirit as recommendation eight. Our revised Accountability Program and Handbook will formalize this process.