



June 23, 2010

MEMORANDUM FOR: JOSEPH A. MAIN
Assistant Secretary
for Mine Safety and Health

Elliot P. Lewis

FROM: ELLIOT P. LEWIS
Assistant Inspector General
for Audit

SUBJECT: **Alert Memorandum: MSHA Set Limits on the
Number of Potential Pattern of Violation Mines to be
Monitored**
Report No. 05-10-004-06-001

The purpose of this memorandum is to alert you to a matter related to MSHA's past implementation of its Pattern of Violation (POV) authority that requires immediate corrective action. The results included in this interim report are based on our limited work to date. Fieldwork is continuing and we will provide overall results when our audit work is complete.

MSHA's POV activity addresses mines with an inspection history of recurrent significant and substantial violations of mandatory safety or health standards that demonstrate a mine operator's disregard for the health and safety of miners. In 2007, MSHA implemented its POV Screening Criteria and Scoring Model to identify potential POV mines. In March 2009 when the Coal Mine Safety and Health (CMS&H) Administrator notified his District Managers of mines meeting the POV screening criteria (including scores for each mine) he directed them to **"select no more than one mine on the initial screening list per field office and a maximum of 3 mines per district."** We were told this guidance was necessary to address resource limitations. However, this instruction set a limit that was inappropriate for this enforcement program.

MSHA's initial screening process allowed program Administrators to remove mines from the original list based on a written justification from the District Manager. Our preliminary review of information provided by MSHA shows that MSHA performed five POV analyses between 2007 and 2009. Those analyses identified 89 mines for potential POV status. For a variety of reasons (not yet

validated through audit procedures), MSHA officials removed 21 of these mines from the initial screening lists. Mines that were removed did not receive letters notifying them of potential POV status nor did MSHA monitor these mines for improved rates of significant and substantial violations.

The stated reason for removing some mines appears reasonable. For example, we were advised that three mines were removed because they were no longer producing coal. However, it appears that CMS&H removed at least 10 mines¹ because of the limit established by the CMS&H Administrator's instruction.

| Potential POV Mines 2007 - 2009 | | | |
|--|--|---|--|
| Analysis Date | # of Mines Identified by POV Screening Criteria and Scoring Model | # of Mines Removed From Initial Screening List (All reasons) | # of Mines Removed From Initial Screening List Because of Limits Set by CMS&H |
| Jun-07 | 8 | - | - |
| Dec-07 | 21 | 1 | - |
| Jun-08 | 19 | 4 | - |
| Feb-09 | 26 | 11 | 9 |
| Sep-09 | 15 | 5 | 1 |
| Totals | 89 | 21 | 10 |

We are very concerned about mines removed for reasons other than appropriate consideration of the health and safety conditions at those mines. MSHA is not subjecting these mines to the enhanced oversight that accompanies potential POV status, yet it does not have evidence that they had reduced their rate of significant and substantial violations. As a result, miners may be subjected to increased safety risks.

Although MSHA has suspended use of its POV Screening Criteria and Scoring Model while it evaluates possible revisions, we recommend that MSHA immediately re-evaluate the appropriate POV status of the 10 mines that were previously removed from POV oversight and monitoring based on the CMS&H limits. We also recommend that MSHA assure that on future POV analysis all decisions to include or remove mines from POV-related enforcement efforts are based solely on the health and safety conditions at each mine.

We request that you take action and respond to this report within 10 days on actions taken. Please contact Charles Allberry, Audit Director, MSHA Audits, at (312) 353-2416, if you have any questions.

¹ Total includes nine individual mines; one mine was removed in two separate cycles.