

Agency Response to Draft Report

U.S. Department of Labor

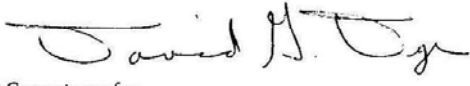
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**INFORMATION**

**SEP 25 2006**

MEMORANDUM FOR ELLIOT P. LEWIS  
Assistant Inspector General for Audit

FROM: DAVID G. DYE   
Acting Assistant Secretary for  
Mine Safety and Health

SUBJECT: Full Response to Draft OIG Report "Coal Mine Hazardous  
Condition Process Should be Strengthened"  
[Draft Audit Report No. 05-06-006-06-001]

We appreciate the opportunity to comment on the Department of Labor's Office of the Inspector General (OIG) draft report entitled "Coal Mine Hazardous Condition Process Should Be Strengthened" [Draft Audit Report no. 05-06-006-06-001]. The open dialogue and cooperation of the team led by Chuck Allberry, Regional Inspector General for Audit and Ray Armada, Assistant Regional Inspector General, allowed Coal Mine Safety and Health (CMS&H) to understand the OIG perspective and your recommendations for improvement. As you are aware, this facilitated CMS&H's acknowledgement of some of the issues identified by the OIG and engaged the program area to initiate and complete many corrective actions during the course of the audit. We encourage the OIG to continue this practice during the succeeding MSHA audits to be completed.

In the draft report, the OIG recognizes that CMS&H significantly expanded the Mine Act's definition of a "complaint" (draft OIG Report, pages 8 and 48). Section 103(g) of the Mine Act, and the implementing regulations of 30 CFR Part 43, require that complaints citing violations of the Mine Act, a mandatory health or safety standard, or an imminent danger at any mine be reduced in writing and signed by the miner or miners' representative. CMS&H believes that requiring the mine or miners' representatives to reduce all complaints to writing and sign the complaint was too narrowly focused and placed an undue burden on the miner to report hazardous conditions. Accordingly, CMS&H made a reasoned decision to afford miners and miners' representatives greater health and safety protection by investigating verbal complaints, unsigned or anonymous complaints and complaints originating from someone other than the miner or miners' representative. It is clear that CMS&H's implementation of the HCC process is working beyond the requirements of the MINE Act. This policy is inherently beneficial to miners and others in the mining community

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because it expands not only what is accepted and investigated as a hazardous condition complaint but who can file a complaint on behalf of miners.

From February 1, 2006, through July 31, 2006, a total of 529 hazardous conditions complaints were entered into the system. Of these:

- 262 complaints were categorized as 103(g) complaints in which 103 of them were given to CMS&H in some kind of written format (typed online, email or written via letter, fax or note);
- An additional 159 of these 103(g) complaints were communicated in some form of verbal communication (recording, TASCOS, telephone or verbal face-to-face); and
- An additional 24 complaints were given to CMS&H in some kind of written format that was not categorized as 103(g) and presumably was not identifiable as coming from a miner or miners' representative.

From an enforcement perspective, hazardous condition complaints generate a small portion of MSHA's inspection activities. During the period of February 2, 2006, and July 31, 2006, CMS&H received:

- 529 total complaints, of which 223 of these complaints contained one or more positive findings;
- We took a sample of 394 complaints whose investigations were readily identifiable. In this sample, a total of 521 citations and orders were issued in 175 of these hazard complaint events. If you extrapolate this for all 529 complaints, there would be an estimated 700 citations and orders issued;
- By comparison for the same period, CMS&H issued 37,455 citations and orders in 7,771 total inspections; and
- Hazardous condition complaints inspections account for roughly 6.8 percent of our total number of inspections and 1.9 percent of our total citations and orders issued.

The draft report also acknowledges that CMS&H had made efforts to ensure its hazardous condition complaint process worked effectively to protect miners' health and safety through the development and implementation of a new Hazardous Condition Complaint tracking system for management control and oversight purposes (draft OIG Report, pages 8 and 48). Early in the design phase, MSHA's CMS&H, Metal and Nonmetal Safety and Health (MNM) and Program Evaluation and Information Resources (PEIR) programs purposely developed the HCC system in phases so that improvements would be made over time to address additional requirements and oversight reporting mechanisms. This process is ongoing with the additional list of HCC enhancements already identified and prioritized for the next phase. These improvements should in part address the OIG's recommendations that "CMS&H should take further action to strengthen its hazardous condition complaint process." The OIG acknowledges on page 31 that "this tracking system, if properly implemented

and monitored, should improve CMS&H's ability to ensure that complaint inspections are thorough, consistent, and in compliance with Federal laws and MSHA policy."

The following are MSHA's specific responses to the OIG recommendations.

**Objective 1. Is MSHA's hazard condition complaint process promoted effectively to coal miners, coal miners' representatives, and other stakeholders?**

The OIG offers 2 recommendations in support of Objective 1.

1. CMS&H management develops and implements a written strategy to plan, monitor, and evaluate the effectiveness of efforts to promote its hazardous condition complaint process to coal miners, coal miners' representatives and others. This includes ensuring promotional materials, such as websites and publications, describe the methods for filing complaints with both headquarters and the districts, and how quickly complaints will be addressed by CMS&H.

MSHA response:

A draft concept paper is being developed to evaluate MSHA's options in its promotion activities on the hazardous condition complaint process in the mining community. As part of this draft concept paper, an outline will be developed that describes the methods for filing complaints at the headquarters and district levels in order to bring consistency to the process. Additionally, we have reviewed all the CMS&H district websites and are developing a standardized template that would not only bring a consistent "look and feel" but also content, especially on the hazardous condition complaint process information and the appropriate point of contacts at the district and headquarters levels. Once these options are finalized, CMS&H will implement a written strategy to plan, monitor, and evaluate the effectiveness of efforts to promote its hazardous condition complaint process to coal miners, coal miners' representatives and others.

We noted that on page 11, the draft report states "While CMS&H had an assortment of methods to promote its hazardous condition complaint process, the practices used in individual district offices varied significantly. For example: At two coal mines we visited in one district, no MSHA promotional materials were posted." We reiterate that the mine operator is not required to post these materials and MSHA has no authority to force the operator to post promotional materials.

2. Code-A-Phone complaints are recorded accurately and completely. This includes ensuring personnel receiving and documenting hazardous condition complaints are properly trained and knowledgeable about coal mining terminology.

MSHA response:

Prior to the audit by the OIG, MSHA was already reviewing problems with TASCO, the messaging service provider for hazardous conditions complaints. Prior to October 2005, MSHA utilized the MATRIX system, a menu-driven voicemail system that delivers digital audio format over email. MATRIX permitted the complainant to leave a voice mail message in the system which was then delivered to personnel in CMS&H's Safety Division who are knowledgeable about coal mining. In October 2005, the Department of Labor (DOL) upgraded the email system and it was determined that the MATRIX system was incompatible with the new system. As an interim solution, TASCO was asked to add hazardous condition complaints to their statement of work. The TASCO system, for a number of reasons, could not effectively and accurately accommodate this additional work load.

MSHA will be reinstating the MATRIX option beginning in October 2006 and will provide options for the complainant to speak with a live person or leave a voice mail message in the system for delivery to CMS&H mining professionals. CMS&H will periodically monitor the effectiveness of this option and review deficiencies and corrective actions as necessary with the MATRIX solution. CMS&H will continue to periodically test and monitor the quality of the contractor's service according to the protocol established during the OIG's audit.

Also in your report, you elaborate further that "This includes ensuring personnel receiving and documenting hazardous condition complaints are properly trained and knowledgeable about coal mining terminology." It has been implied that we should provide 24/7 coverage for hazardous condition complaint evaluations and investigations utilizing MSHA personnel. In addition to the resource issues associated with manning a hazardous conditions complaint service 24/7 with MSHA personnel, we would have difficulty in locating an answering service that can provide personnel knowledgeable about coal mining terminology to receive and document these complaints. Alternatives continue to be reviewed.

**Objective 2 - Does MSHA effectively ensure hazardous condition complaint evaluations are conducted timely, consistently, and in accordance with Federal law and MSHA policy?**

The OIG offers 5 recommendations in support of Objective 2.

3. The expectation of timeliness for completing evaluations of hazardous condition complaints under the Mine Act, 30 C.F.R. 43, and MSHA policy are consistent and quantified in specific terms (e.g., number of hours).
4. Hazardous condition complaint evaluation timeliness is measured, monitored, and systemic reasons for delays are identified and addressed. This includes

ensuring processes are developed to improve evaluation timeliness for complaints made to headquarters after normal business hours and during weekends and holidays.

MSHA Response:

The draft OIG report states that 56 or 14% of 410 hazardous condition complaints made to CMS&H headquarters from January 1, 2005 through March 30, 2006 took 2 or more days from the date the complaint was received to the date a district office was notified. (draft OIG report, page 15). In its analyses, the OIG identified a delay in 41 of 56 (73%) of the evaluations because they were received on a Friday, weekend or holiday outside of normal business hours and another 11 of the 56 (20%) of the evaluations due to a temporary DOL email glitch. Further, the report erroneously concludes that this occurred because "CMS&H management had not (1) monitored evaluation timeliness and (2) addressed system reasons for delays." In actual fact, we were aware of the reasons for the delays (52 of the 56 (93%) evaluations were delayed because of other reasons i.e. no coverage during non-business hours and problem with the email system) and have taken steps to correct the deficiencies.

Table 1 on page 16 refers to Headquarters Hazardous Condition Complaints. We believe that a footnote is appropriate to indicate that these complaints include 103(g) complaints and the other complaints, as mentioned on page 1 of this memo. Specifically, we suggest a footnote that reads "Data includes mandatory 103(g) evaluations and any other complaint evaluations conducted in accordance with CMS&H policy."

CMS&H agreed with the OIG that the expectation for timely and consistent hazardous condition complaint evaluations and responsiveness to complaints received during non-business hours could be improved. As noted on page 17, CMS&H took corrective actions during the course of the audit to remedy the process weaknesses. We are fully confident that the implementation of these procedures to address evaluation timeliness will greatly improve the percentage of HQ complaints being sent to the district for action on the same or next day from the 87 percent, as tabulated by the OIG draft (OIG report, Table 1, page 16).

We do not concur with the part of OIG's recommendation number 3 that states that MSHA needs to quantify an expectation for timeliness in specific terms (e.g. number of hours) for completing evaluations of hazardous condition complaints. We believe that tracking this performance measure through the upcoming enhancement to the HCC system is sufficient for oversight purposes. In actuality, placing time constraints on a safety or health activity could have a detrimental effect on the evaluation and quality of our inspection and response. Given that each circumstance is different, the proper response to a complaint requires ensuring that an appropriate number of resources with

the right technical skills are deployed as soon as possible. Focusing on timeliness instead of the overall need for response could result in a premature and uninformed decision and minimizes the ability for CMS&H to attack the root cause.

5. Pre-inspection evaluations by ARs of the seriousness of complaints are documented.

MSHA Response:

The OIG draft report (page 18) stated that “CMS&H records usually did not contain documentation (emphasis added) that an assessment according to the four categories had been performed.” These 4 categories included imminent danger, serious hazard, not a serious hazard and violation does not exist. The OIG correctly stated that “without evidence of an AR’s (authorized representative) assessment, CMS&H management had no assurance that district offices were complying with its policy.” CMS&H issued a policy memo on July 21, 2006, to clarify and remedy the need for documentation of complaint evaluations by an AR as a corrective action during the course of the OIG audit. As a point of clarification, the HCC complaint system can categorize complaints as imminent danger, violation or other. Since ARs conduct these inspections, their categorizations of these complaints, including imminent dangers, are evidence that some documentation does exist. Further enhancements to the HCC complaint system will include a field identifying the AR who performed the evaluation.

6. Training and oversight is provided for appropriate determination of imminent danger hazardous condition complaints.

MSHA Response:

The OIG report noted that “inconsistencies (in imminent danger determinations) could result in different treatment of and disposition of similar complaints and increase the risk that dangers or violations exist but are not appropriately addressed.” We concur with this finding and as noted in the OIG report on page 22, CMS&H initiated corrective action to develop “training to ensure CMS&H personnel are aware of established practices and requirements provided under the Mine Act and MSHA policy.” This training package has been completed in headquarters and is currently being deployed in CMS&H’s 11 districts. At this time, 10 of the 11 districts have conducted the training and the remainder by September 29, 2006. In addition, CMS&H will send the training package to the National Mine Safety and Health Academy and request that it be incorporated into the mandatory AR training program.

However, MSHA takes issue with the information presented in Tables 2 and 3 regarding HQ hazardous conditions complaints not considered as imminent danger and similar allegations resulted in different categorizations, respectively. During our

discussions and our follow-up correspondence, we stated that imminent danger determinations are professional judgment calls that utilize the depth and breadth of AR mining knowledge. Congress, in its wisdom, defined "imminent danger" in the Mine Act in descriptive terms, not according to a checklist. As properly noted, we provide "guidance" to the inspectorate on paying special attention on certain key words that may indicate the existence of an imminent danger. So it is not surprising that circumstances, miner exposure and environment would dictate if and when a hazardous condition is an imminent danger.

On pages 19 - 21 of the draft OIG report, the audit team persists in erroneously establishing several instances where determinations of hazardous condition complaints as imminent danger situations were inconsistent.

Table 2 describes item 3 -- involving "the energized high voltage in the high voltage tub behind the section power center has exposed wires covered by plastic tape" -- as an imminent danger. In our collective opinions as mining professionals, we disagree that the electrical 7200 high voltage cable is an imminent danger. No miners were at risk on the best insulated, grounded and most barricaded and guarded cable in the underground mine environment. Multiple authorized representatives and mining professionals were consulted and all agree that the miners were not at risk and this complaint was properly evaluated and categorized as a regular hazard complaint and did not meet the AR evaluation as an imminent danger. We disagree with the OIG's assessment that this complaint should be categorized as an imminent danger.

In our collective opinions as authorized representatives and mining professionals, we explained the rationale for the categorization of the 6 cases in Table 3. We stand by our position despite the misleading information presented in this table. Our inspection responsibilities at the mines require knowledgeable decisions on diverse and complex issues where safety and health is enhanced or minimized by the environment, existing safety equipment, behavior etc. Deferring to an inspector's experience and professionalism in making those decisions is paramount to an effective safety and health inspection program.

7. Copies of complaints provided to mine operators are consistent with MSHA's guidelines to remove detailed information that could compromise a complainant's identity.

MSHA Response:

To remedy the OIG concern that "CMS&H practices to protect the confidentiality of complainants were not always consistent with its guidelines," CMS&H will implement another level of complaint sanitization for mine operators where identification or references to specific equipment, work area and work shift could potentially disclose a



complainant's identity. CMS&H plans on utilizing a laptop-compatible, "fillable" version of an existing OMB-approved Complaint Allegations and Findings form (7000-35) and using this form for an additional level of hazardous condition complaint sanitization for the mine operator and assisting inspectors and others in getting the information into the HCC system.

**Objective 3 – Does MSHA effectively ensure hazardous condition complaint inspections are conducted timely, thoroughly, consistently, and in accordance with Federal law and MSHA policy?**

The OIG offers 4 recommendations in support of Objective 3.

8. Processes are developed to improve inspection timeliness for complaints made to both headquarters and the districts. This includes ensuring hazardous condition complaint inspection timeliness is measured, monitored, and systemic reasons for delays are identified and addressed.

MSHA Response:

The OIG is concerned about the inspection timeliness for hazardous condition complaints made to headquarters and directly to the district. On page 23 of the draft OIG report, the audit teams established the following:

As previously discussed (see p.15), the time requirements for MSHA to respond to hazardous condition complaints under the law, regulations, and its policies are imprecise. However, all convey a sense of urgency. Terms such as "immediate" and "as soon as possible" are used to describe the expectation for initiating an inspection of **an alleged imminent danger or violation of a mandatory health and safety standard** (emphasis added).

We agree that the timeliness of hazardous condition complaint inspections could be improved. CMS&H will not argue that there is a delay in inspection start when the complainant chooses not to contact the district directly. For this reason, CMS&H will emphasize the benefits of filing complaints directly with the district in the Agency's promotional campaign.

However, CMS&H takes the position that in cases of imminent danger and violations of a mandatory health and safety standard, the districts respond as soon as personnel can be deployed. In this section of the draft report, the OIG goes to great length to characterize delays in inspection starts by providing analyses of statistical samples and projected sample results for hazardous condition complaints filed with headquarters



and districts during the period from January 1, 2005, through March 30, 2006 (Tables 4, page 24 and Table 5, page 26).

On closer evaluation of these tables and the relevant text, we could not discern that the OIG made any distinction between hazardous condition complaints as imminent danger or other hazards in relation to the inspection starts. The only clarifying statement occurs on page 23: "In addition, we determined whether there were valid reasons for delays of 2 days or more" with no mention that perhaps the complaint was categorized as a serious hazard, not serious hazard or no violation exists. This would, in part, explain the delay to inspection start as opposed to OIG's determination that "we considered a reason for delay valid if the delay did not potentially subject a miner to a prolonged hazardous condition." Guidance in MSHA's *Hazard Complaint Procedures Handbook* requires that the AR assess whether a special inspection should be conducted based on the seriousness of a hazardous condition, including one for imminent danger requiring an immediate inspection. There is no category for "a prolonged hazardous condition."

Tables 4 and 5 on pages 24 and 26, respectively, refers to Inspection Starts for Headquarters and District Hazardous Condition Complaints. We believe that a footnote to each table is appropriate to indicate that these complaints include 103(g) complaints and the other complaints, as mentioned on page 1 of this memo. Specifically, we suggest a footnote that reads "Data includes mandatory 103(g) investigations and any other complaint investigations conducted in accordance with CMS&H policy."

9. Segregation of duties is maintained when individuals responsible for managing district hazardous condition complaint processes are included on headquarters or district review teams.

MSHA Response:

As noted in the OIG report (page 28), CMS&H has issued "a policy to district management stating that the persons responsible for hazardous condition complaints should recuse themselves from reviewing the effectiveness and efficiency of the district's complaint system during internal reviews."

10. The expectation of timeliness for beginning inspections of "imminent danger" allegations is quantified in specific time frames (e.g., number of hours), and the subsequent inspections are started within those specific time frames.

MSHA Response:

The draft OIG report states on page 29 that “CMS&H did not always conduct immediate inspections of imminent danger hazardous condition complaints as required under Section 103(g)(1) of the Mine Act and MSHA policy.” The OIG determined that an “immediate inspection” was not performed in 4 out of 10 cases that CMS&H categorized as “imminent dangers.” Two of these 4 cases were initiated in less than 24 hours after the call was received.

In 1 of the other 2 cases, operator notification occurred because an inspection could not be conducted immediately by CMS&H and the operator was directed to investigate the hazard prior to the MSHA inspection. The inspection did occur on the 2<sup>nd</sup> day in accordance with the MSHA Hazard Condition Complaint Handbook for “an on-site inspection of the area, equipment, or practice(s) shall be conducted as soon as possible” (page 4 of the Handbook).

The delay of 5 days in the 4<sup>th</sup> case was due to 3 reasons: 1) the need for multiple inspectors to investigate the smoking allegation (smoking in and of itself is not an imminent danger. This mine was a relatively low methane liberator (11,300 cubic ft per 24 hour period) as compared to higher liberation ultra-gassy mines where several million cubic feet or more per 24 hour period are liberated.); 2) allegation of hazards occurring on the 3<sup>rd</sup> shift; and 3) a 2 day delay because of the weekend. This was in accordance with the MSHA Hazard Condition Complaint Handbook for “an on-site inspection of the area, equipment, or practice(s) shall be conducted as soon as possible” (page 4 of the Handbook). Again, it is important to understand that quality is as important as timeliness in a safety and health inspection. Responding to a complaint without the appropriate number of personnel or without personnel who possess the appropriate technical skills will no doubt get the box checked on timeliness by those who have that concern. But, these type responses do not serve the safety and health needs of the miners.

We do not concur with the OIG’s recommendation that MSHA needs to quantify an expectation for timeliness in specific terms (e.g. number of hours) for starting inspections of hazardous condition complaints. Congress already established the expectation for an immediate inspection – “upon receipt of such notification, a special inspection shall be made **as soon as possible** (emphasis added) to determine if such violation or danger exists in accordance with the provisions of this title.”

If the performance metric for inspection timeliness is too binding, it may force us to abandon our current approach on accepting hazardous condition complaints beyond the 103(g)s that are reduced to writing from parties outside the miners or miners representatives.

11. Inspector notes receive appropriate supervisory review.

MSHA Response:

We feel that the OIG's recommendation that inspector notes receive appropriate supervisory review is redundant based on current practice. Coal has multiple systems in place to assure that supervisors already review inspector notes. We do not feel that "CMS&H had limited assurance that hazardous condition inspections were thorough, consistent, and in compliance with CMS&H policy because a significant number of the inspector notes documenting inspection activities had no evidence of supervisory review" (draft OIG report, page 31). OIG further states "Inspector notes and other supporting documents showed that each of the allegations was addressed for the complaints included in our statistical samples. However, because supervisory reviews of inspector notes were not consistently documented, there was no verification of the quality of the work performed."

Much discussion was held on this topic between the OIG audit team and CMS&H staff on how supervisory review was notated, either through initialing the cover sheet and memo of the final inspection report, reviewing a representative number of inspection or investigation reports, or documenting their supervisory review on complaint tracking forms. The OIG "considered evidence of the field office supervisor's review as an indication that hazardous condition complaint inspections were sufficient, consistent, and in compliance with CMS&H policy" (draft OIG report, page 31). We agreed that signing or initialing each page of the inspector notes was not a feasible exercise, given all the other resource demands on the field office supervisor. CMS&H management accepts affirmation of the supervisor's review.

Additionally, the Inspection Tracking System requires inspectors and field office supervisors to complete a certification that acknowledges sufficient documentation, including inspector notes, has been completed and maintained as evidence that minimum inspection requirements have been completed. This certification process cannot be overridden and the supervisor reviews this documentation and accepts by policy. In this system, when a supervisor uploads the information into the system, this is a receipt that he/she has approved the inspection package. Controls are in place where a correction requires the intervention by IT personnel and an Assistant District Manager.

We believe that the more appropriate recommendation from the OIG is that "CMS&H management provides clear guidance on the requirements for supervisory review." The OIG concludes the section with this statement: "**Without proper and consistent documentation of supervisory review** (emphasis added), CMS&H had limited assurance that the quality of complaint inspections had been independently evaluated

for thoroughness; consistency; and compliance with CMS&H policy” (draft OIG report, page 32).

Table 7 on page 32 refers to inspector notes for total complaints. We believe that a footnote is appropriate to indicate that these complaints include 103(g) complaints and the other complaints, as mentioned on page 1 of this memo. Specifically, we suggest a footnote that reads “Data includes mandatory 103(g) investigations and any other complaint investigations conducted in accordance with CMS&H policy.”

**Objective 4 – Does MSHA management effectively use hazardous condition complaint process results to direct oversight and enforcement responsibilities?**

The OIG offers 2 recommendations in support of Objective 4.

12. Hazardous condition complaint data used to direct CMS&H oversight and enforcement are complete. This includes ensuring complaints made directly to the eleven coal districts are included in management reports.

MSHA Response:

As noted on page 36 of the OIG draft report, “CMS&H initiated corrective action during the audit to address some of the process weaknesses we identified. This action included:

- Issuing policy in July 2006 to incorporate hazardous condition complaints made directly to the districts in the *Digital Dashboard*, and
- Planning enhancements to the *Digital Dashboard* so that complaint process results can be used more effectively to direct oversight and enforcement responsibilities. These enhancements will include metrics for analyzing complaint data for timeliness, violation trends, and imminent danger complaints.”

It is true that during the period of the HCC audit, the *Digital Dashboard* had not yet contained the complaints made to both headquarters and the districts. On page 36, the OIG makes an erroneous conclusion that “the district complaint data were not included in the *Digital Dashboard* because CMS&H management had decided not to expend the resources needed to develop and maintain a process to include the district data.” During our discussions we assured the OIG team that it was our intention to include the district complaints once enhancements were made to the HCC system to enable these counts and statistics to be included in the *Digital Dashboard*. At the time of the issuance of the draft report, this shortcoming had already been remedied and the *Digital Dashboard* data now contains both headquarters and district complaints as well as the percentage of complaints that had one or more allegations with positive findings. Future HCC system enhancements will permit us to conduct trend analyses for oversight and enforcement purposes.

Table 8 on page 35 refers to hazardous conditions complaints excluded from the *Digital Dashboard*. We believe that a footnote is appropriate to indicate that these complaints include 103(g) complaints and the other complaints, as mentioned on page 1 of this memo. Specifically, we suggest a footnote that reads "Data includes mandatory 103(g) complaints and any other complaints evaluated and investigated in accordance with CMS&H policy."

13. Hazardous condition complaint data reported by MSHA to the public are complete.

MSHA Response:

The draft report contains a section titled "Hazardous Condition Complaints Reported on MSHA's Website Were Understated" (pages 36 & 37) and presents Table 9 which allegedly shows that the number of hazardous condition complaints reported for CY 2004 was understated by 41 percent. Again, we take issue with another misleading table without the appropriate notation and/or footnote.

As noted in your report, CMS&H management explained that due to concerns for complainant confidentiality, some hazardous condition complaint inspections were re-coded under MSIS as another type of inspection or rolled into part of another inspection activity. At this time, there is no mechanism, other than manual tracking, to distinguish these coded inspection activities as hazardous condition complaint inspections. MSHA's Program Evaluation and Information Resources (PEIR) is currently evaluating the utility of this report on MSHA's public website given the shortcomings in hazardous conditions complaint reporting. PEIR will also work with CMS&H to determine if there are enhancements to our HCC database which can facilitate more accurate reporting.

Exhibit B.

MSHA Response:

Exhibit B on page 43 lists the 10 longest delays in inspection starts to complaint receipt. We believe that a footnote to the table is appropriate to indicate that these complaints include 103(g) complaints and the other complaints, as mentioned on page 1 of this memo. Specifically, we suggest a footnote that reads "Data includes mandatory 103(g) investigations and any other complaint investigations conducted in accordance with CMS&H policy."