



SEP 28 2006

MEMORANDUM FOR ELLIOT P. LEWIS

Assistant Inspector General for Audit

FROM:

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Mine Safety and Health

SUBJECT:

Full Response to Draft OIG "MSHA Accountability Program
Coal Mine Safety and Health Management Letter No. 05-06-007-
06-001"

We appreciate the opportunity to comment on the Department of Labor's Office of the Inspector General (OIG) Management Letter on MSHA's Accountability Program Coal Mine Safety and Health [No. 05-06-007-06-001]. The OIG provided Coal Mine Safety and Health (CMS&H) with a list of improvements that "will increase the validity and management oversight benefits of this (Accountability) process." As you will note in our responses to each of the OIG's 5 recommendations below, CMS&H management has seriously considered your suggestions and concur that the enhancements will not only create a more uniform and standardized approach to Headquarters and District Peer Review processes, but also assist CMS&H in strengthening this very important oversight program.

During Phase 1 of the OIG's Accountability Audit, the Accountability Audit team correctly noted that MSHA's Accountability Handbook does not require a number of processes related to the selection of mines, mine visits, interviews, standardized format for District Peer Reviews reports and corrective actions, and a centralized tracking system for deficiencies and corrective actions identified during Headquarters (HQ) and District Peer Reviews. Even before the OIG audit, CMS&H Headquarters and some districts went above and beyond the Handbook requirements and implemented some of these processes in their reviews. Since receipt of the draft management letter, CMS&H management initiated discussions with our District Managers and District Peer Review Coordinators on each of the 5 recommendations and is currently addressing the OIG's concerns.

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

Recommendation No. 1: MSHA should develop and require a standard process for the selection of a mine(s) to be reviewed during both District Peer Reviews and HQ Reviews of Districts. The process should assure that (a) any entity could be selected and (b) the selection is not within the control of any individual. In addition to the mine(s) selected through this process, MSHA, could, if desired, select an additional mine(s) for review based on criteria of its choosing (e.g., fatalities, accidents, enforcement history, size, etc.)

MSHA Response:

On pages 2 and 3 of the draft Management Letter, the OIG noted that “The Accountability Program Handbook does not define or require a standard process for selecting a mine(s) to be reviewed during the District Peer Reviews and HQ reviews of Districts. As a result, in both District Peer Reviews and HQ Reviews of Districts, only underground coal mines are considered for review, excluding surface mines and facilities from possible selection. This limits the value of the reviews by preventing procedural deficiencies or improprieties related to oversight of surface mines and facilities from being detected and corrected.”

To date, all Headquarters Reviews have focused on problematic, high-risk underground mines because of the inherent risks and exposures to the health and safety of miners. Some, but not all, districts have included surface operations and facilities in their district peer reviews in addition to underground mines. Knowledgeable CMS&H personnel did in fact consider all possible mines, and based on expert knowledge of empirical and historical performance experience in the districts, selected those mines that presented the highest risk.

Since the implementation of the Accountability Program Handbook, Headquarters and the Districts have attempted to standardize the mine selection process and a team of individuals work on the mine selection process; this has been an iterative process. CMS&H evaluates a number of screening criteria for the mine(s) selected for review. These include mine profiles for small, medium and large mines, enforcement and accident histories, as well as any specific conditions and/or management-labor relations issues at the mine.

To address the OIG’s recommendation, CMS&H is working with MSHA’s statisticians to derive a method or random (or random selection based on weighting criteria) process to “assure that all entities (underground, surface and facility) have a possibility of selection and that the selection is not within the control of any individual (i.e. random).” Once we are confident with the process, we will attempt to pilot this approach during the remainder of CY 2006 and evaluate its utility prior to the start of the CY 2007 Accountability Reviews. As an interim measure, we will be adding a surface mine or

surface facility to one of the upcoming HQ Accountability Reviews in addition to a high-risk underground mine.

Recommendation No. 2: MSHA should require that one or more review team members observe selected portions of the mine(s) chosen for review. The scope of these observations should be sufficient to form an overall perspective of the mine's condition and operation in comparison to that reflected by the related mine plans and records (e.g., inspector notes, citations, etc.)

MSHA Response:

On page 3 of the draft Management letter, the OIG states that "The Accountability Program Handbook does not require review team members to visit the mine(s) selected for review...A review solely based on records increases the risk that errors (unintentional) or misrepresentations (intentional) in the documentation would not be detected..."

This is an accurate statement; however, CMS&H HQ and some District Peer Reviews go above and beyond the requirements of the Accountability Program Handbook. HQ and some districts have included mine visits as part of the review process. Some other districts have not included mine visits; however, review team members are made up of members who have visited the mines being reviewed in the previous six months in their capacity as supervisors.

To address the OIG's concerns, CMS&H is drafting a policy memo to require that mine visits are included in all HQ Reviews and that District Peer Reviews include visits to a percentage of mine(s) selected for review. Limiting mine visit(s) to a percentage (to be determined) at the District Peer Review level will enable the districts to continue with the depth and breadth of the mines reviewed and will not create an undue burden on district resources.

Recommendation No. 3: MSHA should require that review team members interview appropriate individuals during District Peer Reviews and HQ Reviews of Districts. The scope of these interviews should address overall office operations as well as the information contained in any specific records (e.g., inspector notes, citations, etc.) reviewed.

MSHA Response:

On page 4 of the draft Management Letter, the OIG states: "The Accountability Program Handbook does not require review team members to conduct any interviews in completing District Peer Reviews and HQ reviews of Districts...Omitting interviews of individuals involved in or knowledgeable of district or field office activities (e.g.,

MSHA personnel, mine operators, union officials) limits the scope of information used to assess those offices' operations. This increases the risk that operational deficiencies will not be detected."

This is an accurate statement; however, CMS&H HQ and districts go above and beyond the requirements of the Handbook. As a part of the HQ and District Peer Review processes, interviews of district management personnel are in fact conducted. This practice is consistent with the OIG's belief that these interviews "would provide an opportunity to corroborate and expand on information about operational issues identified through other review sources (i.e. document review and mine visits)."

To address the OIG's concerns, CMS&H is drafting a policy memo to require that interviews of district management personnel be included in all HQ and District Peer Reviews.

Recommendation 4: MSHA should require the use of a standard report format, in both presentation and content, for District Peer Review Reports and corrective actions plans. This would help MSHA to assess the consistent application of policies and procedures nationwide as well as facilitate the identification of systemic weaknesses and the implementation of potential best practices.

On page 4 of the draft Management Letter, the OIG states "The Accountability Program Handbook does not require a standard format for District Peer Review reports and corrective action plans...Summary Accountability Reports that District Managers submitted to CMS&Hpresented peer review information in a variety of formats and levels of detail. This makes it more difficult for CMS&H HQ officials to determine all appropriate (a) review work was performed, (b) results were reported, and (c) corrective actions were identified. It also makes it more difficult to analyze comparable information across districts to identify trends and systemic issues."

CMS&H concurs with this recommendation and will require mandatory use of the standardized report template for District Peer Review reports and corrective actions. To date, the use of this template has been optional. This requirement will also be incorporated in CMS&H's policy memo that will address OIG's Recommendations 2 and 3. Guidance will also be provided to the districts on the level of detail required to facilitate HQ oversight review and analyses.

Recommendation 5: MSHA should develop a system to record and track the results of District Peer Reviews and HQ Reviews of Districts, e.g., identified deficiencies, planned corrective actions, potential best practices, etc. This tracking system will facilitate review and analysis of systemic weaknesses and trends, help to ensure that corrective actions are completed in a timely manner, and that potential best practices are shared nationwide.

MSHA Response:

CMS&H concurs with this recommendation and work is currently underway to develop and implement this centralized system to record and track the deficiencies identified during District Peer Reviews and HQ Reviews of Districts and to ensure that the corrective actions are implemented and completed in a timely manner.