

U.S. Department of Labor

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**MINE SAFETY AND HEALTH
ADMINISTRATION**



ALLEGATIONS OF UNFAIR ENFORCEMENT IN MSHA'S DISTRICT 1

Date Issued: March 31, 2006
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U.S. Department of Labor
Office of Inspector General
Office of Audit

BRIEFLY...

Highlights of Report Number: 05-06-003-06-001, to the Acting Assistant Secretary for Mine Safety and Health Administration (MSHA).

WHY READ THE REPORT

This report addresses allegations from anthracite mine operators in the Mine Safety and Health Administration's (MSHA) District 1. Specifically, they alleged that:

- Enforcement activity directed by the current District Manager was excessive or unjustified,
- Mine operators who were publicly critical of MSHA were harassed through increased enforcement, and
- Current MSHA regulations contain safety and health requirements that are not appropriate for anthracite coal mines.

The Mine Safety and Health Act of 1977 makes MSHA responsible for assuring compliance with Federal safety and health standards throughout the mining industry. In FY 2004, there were about 23 operating anthracite (hard) coal mines, all located in MSHA District 1 (northeastern Pennsylvania), and employing about 100 miners. During the same year, there were almost 2,000 operating bituminous (soft) coal mines in 27 states, employing more than 100,000 miners. The process of mining anthracite coal is still done largely by hand, while bituminous coal mining is generally highly mechanized.

WHY OIG DID THE AUDIT

We performed an audit to determine the validity of the allegations by anthracite mine operators.

READ THE FULL REPORT

To view the report, including the scope, methodology, and full agency response, go to:

<http://www.oig.dol.gov/public/reports/oa/2006/05-06-003-06-001.pdf>

March 2006

ALLEGATIONS OF UNFAIR ENFORCEMENT IN MSHA'S DISTRICT 1

WHAT OIG FOUND

We found no indications or corroborating evidence to support allegations that enforcement in District 1 was excessive or unjustified. Our analysis of data for inspections performed, citations and withdrawal orders issued, and citations and withdrawal orders overturned did not indicate that activity in District 1 varied from levels in other districts or the national trend in a manner or to an extent that suggested the possibility of inappropriate actions.

Also, our analysis did not indicate that mine operators who were publicly critical of MSHA had been harassed through increased enforcement activity. MSHA data showed an unusually high level of enforcement activity for only one mine operator in District 1 who had been a frequent critic of MSHA policies and practices in recent years. However, MSHA records showed that this activity was the result of regulatory requirements triggered by an especially hazardous condition at the mine.

Our analysis did indicate that MSHA has not resolved a long-standing question of whether existing regulations establish requirements that are not relevant to anthracite mining operations. Since FY 1995, the number of Petitions for Modification filed in District 1 has consistently exceeded those in all other districts combined. Most of the petitions filed in District 1 relate to issues unique to anthracite mining. Also MSHA's efforts have not fully resolved whether its petition process is the most efficient means of dealing with regulatory differences.

WHAT OIG RECOMMENDED

We recommended that the MSHA evaluate whether the petition process provides an efficient means of addressing the applicability of regulations to varying mining techniques or whether any regulations require revision for anthracite mining methods.

MSHA responded that it will (a) review the work of an earlier internal group charged with examining the impact of regulations on anthracite mine operators; (b) review regulations in Pennsylvania related to anthracite coal mining; and (c) continue to take action, when appropriate, to eliminate the need for mine operators to file petitions for regulatory relief. Based on MSHA's responses, we consider the recommendation resolved.

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Executive Summary

We completed an audit in response to allegations by several underground anthracite coal mine operators that they were treated unfairly by the current District Manager of the Mine Safety and Health Administration's (MSHA) District 1 Office. Specifically, they alleged that (a) enforcement activities directed by the current District 1 Manager were excessive and unjustified and (b) mine operators who were publicly critical of MSHA were harassed through increased enforcement. They further alleged that (c) some MSHA regulations should not apply to anthracite coal mining. Our audit objective was to determine if there was evidence to indicate that these allegations were valid.

The Mine Safety and Health Act of 1977 assigns MSHA the responsibility to assure compliance with Federal safety and health standards throughout the mining industry. MSHA's Office of Coal Mine Safety and Health administers 11 districts. District 1 is located in northeastern Pennsylvania and consists solely of anthracite (hard) coal mining operations. In September 2001, MSHA appointed a new District 1 Manager.

The mine operators provided limited evidence to support their verbal allegations. While interviews with some MSHA inspectors supported the mine operators' allegations, others did not. Assertions by MSHA officials often conflicted with the mine operators' allegations. Therefore, we conducted analytical procedures to determine if there were indicators that District 1's current overall enforcement activity was excessive or unjustified. We interviewed key personnel, performed various analyses of MSHA's enforcement data, and reviewed relevant documents in an effort to find indicators of unfair enforcement activity. Specifically, we compared the quantity and trends of various enforcement activities for Fiscal Years (FY) 1995 through 2004. We analyzed FY 2005 data separately because changes in the way MSHA coded the data for FY 2005 prevented its direct comparison to prior years.

Results

We found no indications or corroborating evidence to support allegations that District 1's enforcement activity was excessive, unjustified, or used to harass mine operators who were critical of MSHA. We believe, however, that MSHA has not fully addressed the possibility that current regulations do not adequately reflect operating methods and conditions unique to anthracite mining.

Specifically, for FYs 1995 through 2004:

- District 1 consistently performed a higher number of inspections per mine than most other districts did for comparably sized mines. In its highest year, District 1 averaged about one inspection per mine per month.

- District 1 consistently issued citations below the frequency for all districts.
- District 1 consistently issued withdrawal orders (closure or partial closure of a mine) at or below the frequency for all districts.

Further, 95 percent of the citations and withdrawal orders issued during the current District Manager's tenure were either not appealed or were upheld on appeal.

Also, our analysis of enforcement activity at individual mines in District 1 did not indicate that mine operators who were publicly critical of MSHA had been harassed through increased enforcement activity. Of the three mine operators in District 1 who have been frequent critics of MSHA policies and practices in recent years, MSHA data showed an unusually high level of enforcement activity for only one. However, MSHA records demonstrated that the high activity was due to a regulatory requirement for frequent spot inspections triggered by an especially hazardous condition.

While we did not substantiate the allegations of unfair treatment, our analysis did indicate that MSHA has not resolved a long-standing question of whether existing MSHA regulations establish requirements that are not relevant to anthracite mining operations. Since FY 1995, the number of Petitions for Modification filed by mine owners in District 1 (anthracite) has consistently exceeded those from all other districts (bituminous) combined. Most of the petitions filed in District 1 relate to issues unique to anthracite mining (e.g., methods of fire protection and construction of seals). For FYs 1995 through 2004, 81 percent of the petitions filed in District 1 were approved. Past and ongoing efforts by MSHA to consider the need for regulations specific to anthracite mining have not fully resolved whether its Petition for Modification process is the most efficient means of dealing with potential regulatory differences or whether current regulations place inappropriate requirements on anthracite mine operators.

Recommendations

We recommend that the Acting Assistant Secretary for Mine Safety and Health evaluate whether the existing Petitions for Modification process provides an efficient method of addressing the applicability of existing regulations to varying mining techniques or whether any existing regulations require revision in light of anthracite mining methods.

Agency Response

In a written response to a draft of this report, the Acting Assistant Secretary stated that MSHA does not anticipate an increase in petitions in the near future since the anthracite coal mining industry is declining. However, they agreed that there is merit in reviewing and evaluating the work product developed by an earlier internal workgroup that examined existing regulations and their impact on anthracite mine operators. This initiative will include an evaluation of current anthracite coal regulations in the Commonwealth of Pennsylvania.

The response further stated that MSHA currently has a regulatory review protocol that evaluates the number of petitions for a particular standard and that this process has formed the basis for the promulgation of new or revised regulations. As an example, the response states that MSHA is currently considering a proposed direct final rule that would eliminate the need to file petitions to use fire extinguishers at temporary electrical installations in lieu of rock dust. MSHA will continue to review the issuance of petitions, and when warranted, take the appropriate action to eliminate the need to file petitions. MSHA's response is included in its entirety in Appendix D.

OIG Conclusion

We agree with MSHA's commitment to review and evaluate (a) the results produced by the internal work group that it formed in 1995 to examine the potential impact of regulations on anthracite mine operators and (b) the anthracite coal regulations in place in the Commonwealth of Pennsylvania. This initiative, in conjunction with MSHA's commitment to continue reviewing issued petitions in an effort to eliminate the need to file petitions for regulatory relief, is sufficient to resolve the OIG recommendation. The recommendation will be closed when MSHA provides the OIG with evidence that these actions have been completed.

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U.S. Department of Labor

Office of Inspector General
Washington, DC 20210



Assistant Inspector General's Report

Mr. David Dye
Acting Assistant Secretary
for Mine Safety and Health Administration

The Office of Inspector General (OIG) completed an audit in response to allegations received from mine operators in the Mine Safety and Health Administration's (MSHA) District 1 that they were treated unfairly through MSHA's enforcement program. Specifically, the allegations were that:

1. Enforcement activities¹ directed by the current District 1 Manager were excessive or unjustified; and
2. Mine operators who were publicly critical of MSHA were harassed through increased enforcement.

Mine operators further alleged that:

3. MSHA regulations contain safety and health requirements that are not appropriate for anthracite mines.

We found no indications or corroborating evidence that District 1's enforcement activity was excessive, unjustified, or used to harass mine operators who were critical of MSHA. We believe, however, that MSHA has not fully addressed the possibility that current regulations do not adequately reflect operating methods and conditions unique to anthracite mining.

The Mine Safety and Health Act of 1977 (Mine Act) assigns MSHA the responsibility to assure compliance with Federal safety and health standards throughout the mining industry, including conducting a complete inspection of every underground mine at least four times a year. MSHA's Office of Coal Mine Safety and Health administers 11 districts. District 1 is located in northeastern Pennsylvania and consists solely of

¹ For purposes of this report, "enforcement activities" are defined as inspections performed and citations or withdrawal orders issued.

anthracite (hard) coal mining operations. All other MSHA coal districts are made up of bituminous (soft) coal mining operations. In September 2001, MSHA appointed a new District Manager in District 1. In April 2005, mine operators in District 1 provided the OIG with several complaints regarding MSHA's enforcement activities in District 1. See Appendix A for additional background information.

In examining the mine operators' complaints, we interviewed MSHA and Commonwealth of Pennsylvania officials, as well as 21 District 1 MSHA employees and 13 current and former mine operators. We compared the quantity and trends of various enforcement activities for Fiscal Years (FYs) 1995 through 2004. We analyzed FY 2005 data separately because changes in the way MSHA coded the data for FY 2005 prevented its direct comparison to prior years. We also reviewed other pertinent enforcement files and documents. See Appendix B for a detailed discussion of our scope, methodology, and criteria.

We conducted the audit in accordance with Government Auditing Standards.

Objective 1: Were enforcement activities directed by the current District 1 Manager excessive or unjustified?

Results

We found no indicators or corroborating evidence to support allegations that enforcement activities directed by the current District 1 Manager were excessive or unjustified.

Several mine operators alleged that they were being treated unfairly by mine inspectors under the direction of the current District Manager. Specifically, they claimed that District 1 personnel conducted an excessive number of inspections and issued unjustified citations and withdrawal orders. Examples of unjustified actions included issuing citations for violations that did not exist or issuing citations that were prepared prior to conducting an inspection. These allegations were based on the mine operators' verbal testimony and involved past events that could not be corroborated through current observations. Statements from some District 1 inspectors supported the mine operators' allegations, while statements from other District 1 inspectors did not. District 1 officials denied any improper actions. In an effort to find indicators or other evidence to corroborate the verbal allegations, we analyzed MSHA's historical enforcement data. We attempted to find quantifiable indicators that District 1's enforcement activities differed from the enforcement activities in other MSHA coal districts or from national trends in a way that could suggest possible unfair treatment. If our analysis showed that any of these indicators occurred, additional work would be required to determine whether they were caused by inappropriate actions or were explained by other factors and events.

To establish trends and to examine District 1 activity both before and after the appointment of the current District Manager (September 2001), we analyzed MSHA

enforcement data for FYs 1995 through FY 2004. Specifically, we analyzed the quantity of (a) inspections conducted, (b) citations issued, (c) withdrawal orders issued, and (d) citations and withdrawal orders overturned on appeal (i.e., vacated). We also examined MSHA procedures to determine when, if ever, it was appropriate to create a citation without actually visiting a mine site. Because mines in District 1 were small operations, we limited our analyses to mines with 11 or fewer employees throughout the nation. And because the number of these small mining operations differed from district to district, we based our analyses on the “average number” of various enforcement activities per small mine in each district.

Inspections Conducted (Exhibit A)

MSHA inspections can range from an examination of a specific area or aspect of a mine to an examination of an entire mine. Our analysis of inspections conducted included events within this complete range, including all events in MSHA's database categorized as mandatory inspections, policy inspections, and auxiliary inspections. Mandatory inspections are based on statutory requirements. Policy inspections result from internal MSHA directives. Auxiliary inspections are conducted at the discretion of the District Manager.

We found that, both before and after the arrival of the current District Manager at the end of FY 2001, District 1 consistently performed a higher average number of inspections per small mine each year than most other coal districts, generally ranking first, second, or third out of 11 districts for average number of inspections per mine. Beginning in FY 2001, before the arrival of the current Manager, District 1's annual average of inspections per small mine began to increase. The rate continued to increase after the District 1 Manager came on-board. In its highest year (2003), District 1 averaged about one inspection per month per mine. During FYs 2002 through 2004, 62 percent of the inspections in District 1 were mandatory or policy inspections; 38 percent were at the District Manager's discretion.

Our analysis of MSHA's data for inspections performed did not indicate that activity levels in District 1 varied from the levels in other districts or from national trends in a way or to an extent that would suggest the possibility of inappropriate actions by the District Manager.

Citations Issued (Exhibit B)

Mine operators receive citations when MSHA inspectors establish a violation of a standard, regulation, or section of the Mine Safety and Health Act of 1977. A citation is classified as “Significant and Substantial” when the inspector has determined that based on the facts surrounding the violation, there exists a reasonable likelihood the hazard contributed to or would result in an injury or illness of a serious nature. Our analysis of citations issued included all citations issued as a result of mandatory, policy, or auxiliary inspections. We found that:

- Both before and after the arrival of the current District Manager, District 1 had consistently issued fewer citations per small mine each year than the average for all coal districts. For FYs 1995 through 2004, District 1's average citations per mine per year ranged from 2.9 to 9.3. Nationally, the annual citation frequency for comparably sized mines ranged from 13.4 to 24.6 during the same period.
- For FYs 1995 through 2004, District 1 ranked seventh or lower out of 11 districts for the average number of citations issued per small mine.
- In its highest year (2004), District 1 issued, on average, 9.3 citations per mine during the year.
- Before the current District Manager (FYs 1995 – 2001), the number of citations issued per small mine in District 1 trailed the national average for all districts by 9.4 to 15.2 citations per mine annually.
- Under the current District Manager (FYs 2002 through 2004), the number of citations issued per small mine in District 1 trailed the national average for all districts by a slightly larger margin, ranging from 11.1 to 15.3 citations per mine annually.
- During FYs 2002 through 2004, 30 percent of the citations issued in District 1 were categorized as "Significant and Substantial" compared to the national average of 41 percent.

Our analysis of MSHA's data for citations issued did not indicate that activity levels in District 1 varied from the levels in other districts or from national trends in a way or to an extent that would suggest the possibility of inappropriate actions by the District Manager.

Withdrawal Orders Issued (Exhibit C)

Withdrawal orders are issued to mine operators when an inspector determines that (a) a violation presents an immediate threat of serious injury or illness or (b) a violation noted in a prior citation has not been timely corrected. Our analysis of withdrawal orders issued included all withdrawal orders issued as a result of mandatory, policy, or auxiliary inspections. We found that:

- Both before and after the arrival of the current District Manager (except for FYs 1999 and 2004), District 1 had consistently issued fewer withdrawal orders per small mine each year than the average for all coal districts.
- For FYs 1995 through 2004, District 1 generally ranked third through sixth out of 11 districts for the average number of withdrawal orders issued per small mine.
- In its highest year (FY 2004), District 1 issued, on average, 1.7 withdrawal orders per mine during the year.
- Before the current District Manager (FYs 1995 through 2001), the number of withdrawal orders issued per small mine in District 1 equaled or trailed the national average for all districts in 6 of 7 years. In FY 1999, it exceeded the national average by an average of just 0.1 withdrawal orders per mine annually.

- Under the current District Manager (FYs 2002 through 2004), the number of withdrawal orders issued per small mine in District 1 slightly trailed the national average for all districts in two years (-0.1 withdrawal orders in FY 2002 and -0.2 withdrawal orders in FY 2003) and slightly exceeded the national average in another (+0.3 in FY 2004).

Our analysis of MSHA's data for withdrawal orders issued did not indicate that the activity levels in District 1 varied from the levels in other districts or from national trends in a way or to an extent that would suggest the possibility of inappropriate actions by the District Manager.

Overtured (Vacated) Citations and Withdrawal Orders

After MSHA issues a citation or withdrawal order, a mine operator can appeal the citation either directly to MSHA or through the judicial system. Our analysis of citations and withdrawal orders included those appealed through both procedures. We found that:

- For FYs 2002 through 2005, on average 95 percent of citations and withdrawal orders issued in District 1 were either not appealed or were upheld on appeal.
- For FYs 2002 through 2005, on average more than 98 percent of citations and withdrawal orders issued nationally to small mines were either not appealed or upheld on appeal.

Our analysis of MSHA's data for overtured citations and withdrawal orders did not indicate that activity levels in District 1 varied from national levels in a way or to an extent that would suggest the possibility of inappropriate actions by the District Manager.

Pre-written Citations

Generally, citations are issued for violations of safety and health standards that an inspector has observed. However, citations can be issued for violations that do not require an inspector's presence at or observation of the actual mine. For example, mine operators are required to submit various documents (mine maps, ventilation plans, etc.) to MSHA at prescribed times. If MSHA does not receive the required documents on time or if the documents received are inadequate, a citation can be generated and delivered to the mine operator. Citations can also be issued without an inspector's presence when laboratory results are needed to assess compliance. For example, if laboratory testing determines that coal dust samples violate air quality standards, a citation would be created and delivered to the mine operator. Therefore, it is possible for an inspector to arrive onsite at a mine with a citation already written. Mine operators did not provide us with specific evidence to support their allegation that inspectors were inappropriately issuing "pre-written" citations before conducting an inspection.

We did not find evidence that the overall enforcement activity in District 1 was unfair to mine operators. Our comparison of enforcement activity levels in District 1's to other districts and national trends did not indicate variances that could suggest inappropriate actions by the District Manager. Therefore, we did not attempt to determine the reasons for any variances.

Objective 2: Were mine operators who were publicly critical of MSHA harassed through increased enforcement?

Results

We found no indicators that enforcement activities increased for mine operators as a result of their public criticism of MSHA.

Some mine operators in District 1 alleged that after they had been publicly critical of MSHA, the District Manager harassed them by subjecting their mines to additional inspections and citations.

We compiled and reviewed (a) numerous printed stories from newspapers and magazines, (b) televised reports, and (c) copies of letters to MSHA and various members of Congress in which District 1 mine operators were critical of the District 1 Manager and/or MSHA. We analyzed MSHA's historical enforcement data in an effort to find quantifiable indicators that District 1's enforcement activities were greater for mines whose owners were publicly critical of MSHA. Enforcement activity levels above the District 1 norm for a mine whose owner was critical of MSHA could indicate a possibility of harassment. Finding such indicators would require additional work to determine whether they were caused by inappropriate actions or were explained by other factors and events.

Specifically, we first determined which mine operators had been frequently critical of District 1's Manager and/or MSHA. We then ranked (from highest to lowest) individual mines in District 1 based on total number of MSHA visits during the year, total inspection hours for the year, and total citations and withdrawal orders issued during the year.

We determined that the operators of three individual mines -- Primrose Slope, Chestnut Coal, and RS&W -- had been frequent public critics of the District Manager and/or MSHA. Of these, only one -- Primrose Slope -- showed significantly higher levels of enforcement activity than other mines in the district. We found that:

- In FY 2003, Primrose Slope received 43 total visits from MSHA personnel. This was the highest total of any mine in District 1 and 14 more visits than the second ranked mine in the district.
- In FY 2004, Primrose Slope received 71 total visits from MSHA personnel. This was the highest total of any mine in District 1 and 45 more visits than the second ranked mine in the district.

- In FY 2004, MSHA personnel spent 419 hours at Primrose Slope. This was the second highest total of any mine in District 1 - 145 hours less than the first ranked mine, but 236 hours more than the third ranked mine.
- In FY 2004, MSHA issued a total of 90 citations and withdrawal orders to Primrose Slope. This was the highest total of any mine in District 1 and 60 more than the second ranked mine in the district.

As a result of the level of enforcement activities at this mine, we examined a sample of the records related to these visits, citations, and withdrawal orders. District 1 records show evidence that prior to February 13, 2003; an inspector determined that a combination of conditions existed at Primrose Slope that comprised an especially hazardous environment. These conditions were:

- accumulated water;
- a problem with recirculating air; and
- a roof collapse in the secondary escape route that left only one escape route.

The Mine Act states that spot inspections:

. . . should be conducted, every 5, 10 or 15 working days, when:

- 1) a mine liberates excessive quantities of methane or other explosive gases; or
- 2) a methane or other explosive gas explosion occurred resulting in death or serious injury during the previous 5 years; or
- 3) **there exists some other especially hazardous condition in a mine.** [Emphasis added].

On this basis, District 1 inspectors conducted weekly spot inspections of the Primrose Slope Mine through November 27, 2004. Therefore, although enforcement data indicates that Primrose Slope received high levels of enforcement activity, MSHA records provide justification for these increased levels based on safety and health concerns. Accordingly, we did not find evidence that mine operators were harassed through increased enforcement activity because of their public criticisms of the District 1 Manager and/or MSHA.

Objective 3: Do MSHA regulations contain health and safety requirements that are not appropriate to anthracite mine operations?

Results

We found indicators that current MSHA regulations may contain health and safety requirements that are not appropriate to anthracite mine operations.

We identified several areas where current regulations appear to be inconsistent with the conditions or operating methods in anthracite mining. Although MSHA has a process that allows mine operators to request relief from or modification of any existing regulation, the process requires an investment of time and resources by both MSHA and the mine operators. MSHA should determine whether its current process for regulatory relief is the most efficient means of addressing operational differences between anthracite and bituminous coal mining or whether regulations should be revised to address these differences.

There are three major differences between anthracite and bituminous coal mining:

- Anthracite coal is hard in texture and bituminous is soft;
- Anthracite coal veins run primarily vertically down from the surface of the earth and bituminous coal veins run primarily horizontal to and below the surface of the earth; and
- Anthracite coal mining is generally done manually and bituminous coal mining is generally mechanized.

District 1 mine operators alleged that current MSHA regulations are based on bituminous coal mining conditions and methods. According to the mine operators, conditions and methods used in anthracite coal mining are significantly different. As a result, they believe that current regulations contain safety and health requirements that should not apply to their mines. In fact, they claim that following current regulations, in some instances, creates increased hazards or risk of injury. To support their position, mine operators pointed out that the Commonwealth of Pennsylvania established separate regulations for anthracite mining many years ago. Both current and former anthracite coal mine operators stated that the lack of differentiation in Federal regulations caused them financial hardship due to the cost of filing for regulatory modifications, lost production, and penalties for noncompliance.

We interviewed Pennsylvania officials about operational and regulatory differences between anthracite and bituminous mines. We also analyzed the requests for regulatory relief or modification received and approved by MSHA for FYs 1995 through 2004. Finally, we reviewed past and current MSHA efforts to address this issue.

Commonwealth of Pennsylvania Regulations

The Commonwealth of Pennsylvania enacted a separate law governing anthracite mining many years ago. The most recent revisions were part of the Coal Mine Act passed in November 1965. According to the Chief of the Pennsylvania Department of Environmental Protection's Anthracite and Industrial Minerals Mine Safety Division, MSHA's regulations are generally written for bituminous coal mining which, in his opinion, is generally more dangerous than anthracite coal mining. Therefore, MSHA regulations, in most cases, are more stringent than the Pennsylvania anthracite law. He specifically identified ventilation, roof control, haulage requirements, and advance test drilling as areas in which current MSHA regulations may not apply to anthracite mines. This official stated that requiring anthracite mine operators to comply with the stricter MSHA regulations or requiring them to seek modification of the requirements on a mine-by-mine basis creates an unnecessary cost to those operators.

Petitions for Modification (Exhibits D, E, and F)

MSHA officials believe that any differences between anthracite and bituminous coal mining that are not reflected in current regulations are addressed through their Petition for Modification (PFM) process. As documented in law (the Mine Act, Section 101(c)), regulation (CFR Part 44), and MSHA guidance (PH89-L-1, *Petitions for Modification*), mine operators may request relief from and propose an alternative method for achieving the same level of safety and health as an existing standard through MSHA's PFM process. We found that:

- For FYs 1995 through 2004, mine operators in District 1 consistently filed more PFMs (375) than mine operators in all other districts combined (121).
- For FYs 1995 through 2004, MSHA consistently approved more PFMs for District 1 mines (304) than for mines in all other districts combined (58).
- Most of the PFMs approved for mines in District 1 related to differences between anthracite and bituminous coal mining (215 PFMs related to issues associated with anthracite mining methods and conditions versus 89 PFMs filed for other reasons).

Our analysis of MSHA's data on PFMs indicates that the activity level in District 1 has been significantly greater than in other districts and that a majority of petitions relate to issues that are unique to anthracite mine conditions and methods. This demonstrates a potential need to assess the appropriateness of existing regulations as they relate to anthracite mining.

Past and Current MSHA Efforts

MSHA has been aware of the perceived conflict between its regulations and anthracite mining as well as the cost involved with its PFM process since at least 1995. On November 28, 1995, MSHA published a notice in the *Federal Register* titled "Safety Standard Revisions for Underground Anthracite Mines." In the notice, MSHA

acknowledged that the mining methods used and hazards encountered in underground anthracite mines are “significantly different from underground bituminous coal mines.” The notice stated that because of these differences, “some mine operators find it difficult to comply with existing safety standards at their underground anthracite mines.” Further, acknowledging that it had received 250 variance requests from underground anthracite mine operators during the prior 2 years and that the variance process “costs time and money,” MSHA stated its intention to issue a proposed rule to modify several existing safety standards to address more appropriately the specific conditions of the underground anthracite mining industry.” To accomplish this objective, MSHA formed an internal workgroup to examine potential revisions in the existing regulations. However, in a *Federal Register* notice dated December 3, 2001, MSHA stated that it was “withdrawing this entry from the agenda in light of resource constraints and changing safety and health regulatory priorities.” No regulatory revisions were proposed or made.

In October 2005, as a result of a large number of PFMs filed by underground anthracite mine operators, MSHA began considering the possibility of publishing a Notice of Proposed Rule Making to revise one specific regulation as it relates to anthracite mining. According to a MSHA official, no other regulatory revisions related to anthracite mining are currently under consideration within MSHA.

The segregation of safety and health standards for underground anthracite mines within the Commonwealth of Pennsylvania's regulations, the large number of PFMs submitted by and approved for underground anthracite mines, and MSHA's prior and current efforts related to this issue indicate that the concerns expressed by District 1 mine operators regarding the current regulatory approach may be valid and should be resolved.

Recommendation

We recommend that the Acting Assistant Secretary for Mine Safety and Health evaluate whether the Petitions for Modification process provides an efficient method of addressing the applicability of existing regulations to varying mining techniques or whether any existing regulations require revision in light of anthracite mining methods.

Agency Response

In a written response to a draft of this report, the Acting Assistant Secretary stated that MSHA does not anticipate an increase in petitions in the near future since the anthracite coal mining industry is declining. However, they agreed that there is merit in reviewing and evaluating the work product developed by an earlier internal workgroup that examined existing regulations and their impact on anthracite mine operators. This initiative will include an evaluation of current anthracite coal regulations in the Commonwealth of Pennsylvania.

The response further stated that MSHA currently has a regulatory review protocol that evaluates the number of petitions for a particular standard and that this process has

formed the basis for the promulgation of new or revised regulations. As an example, the response states that MSHA is currently considering a proposed direct final rule that would eliminate the need to file petitions to use fire extinguishers at temporary electrical installations in lieu of rock dust. MSHA will continue to review the issuance of petitions, and when warranted, take the appropriate action to eliminate the need to file petitions.

See Appendix D for a complete copy of the Agency response.

OIG Conclusion

We agree with MSHA's commitment to review and evaluate (a) the results produced by the internal work group that it formed in 1995 to examine the potential impact of regulations on anthracite mine operators and (b) the anthracite coal regulations in place in the Commonwealth of Pennsylvania. This initiative, in conjunction with MSHA's commitment to continue reviewing issued petitions in an effort to eliminate the need to file petitions for regulatory relief, is sufficient to resolve the OIG recommendation. The recommendation will be closed when MSHA provides the OIG with evidence that these actions have been completed.



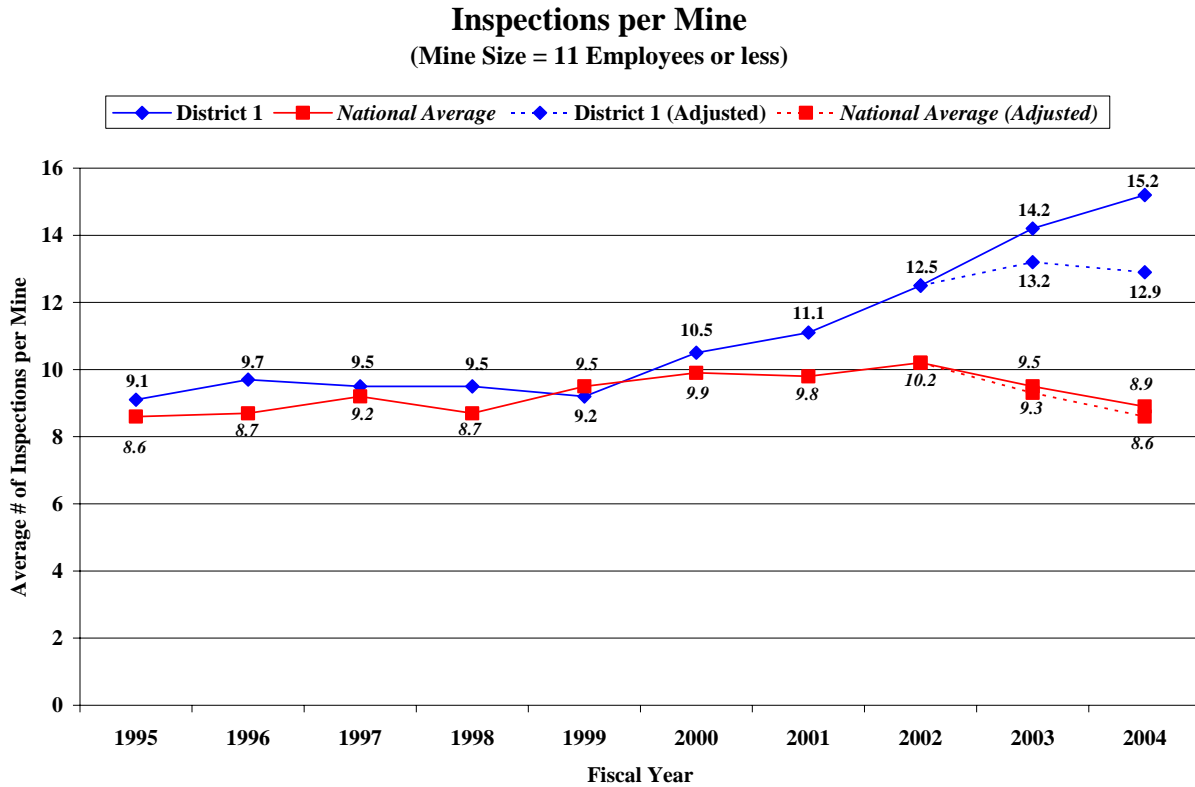
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Exhibits

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Exhibit A

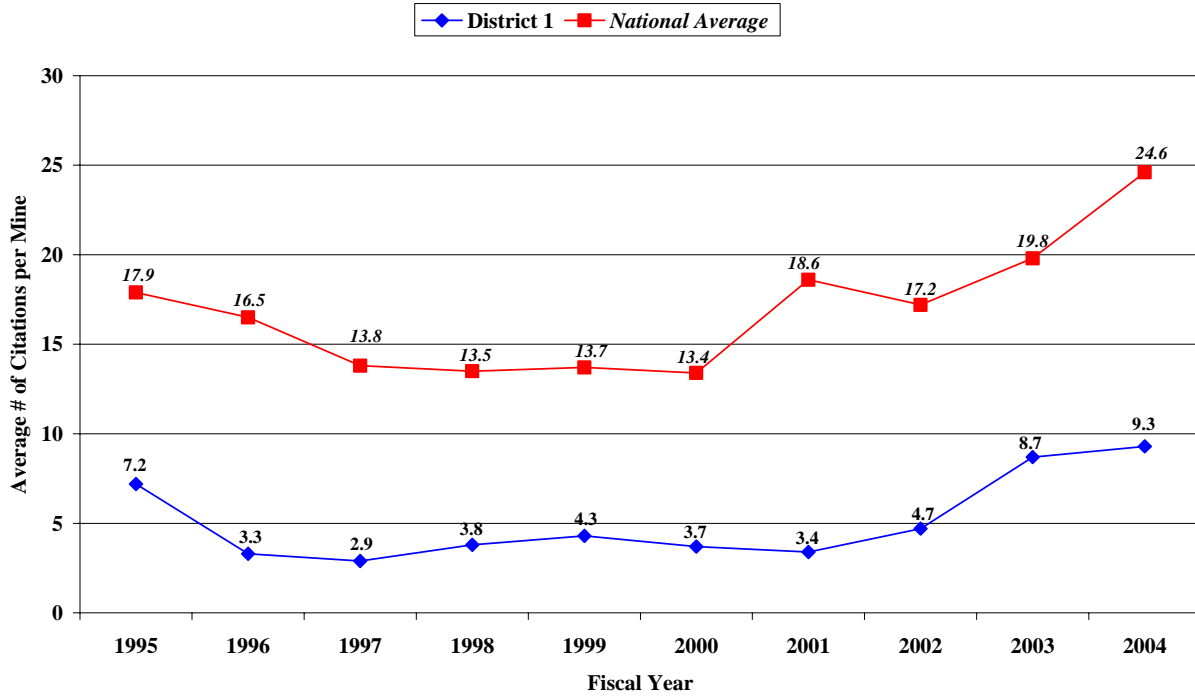


This graph shows the average number of inspections performed per mine each year in MSHA's District 1 as compared to the average number of inspections performed per mine each year in all coal districts for comparably sized mines. In FYs 2003 and 2004 a significant number of all inspections in District 1 related to a single mine (see p. 13 for a further discussion of the unusual circumstances at this mine). To avoid skewing the district's average, we adjusted the computation by removing all inspections related to this mine.

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EXHIBIT B

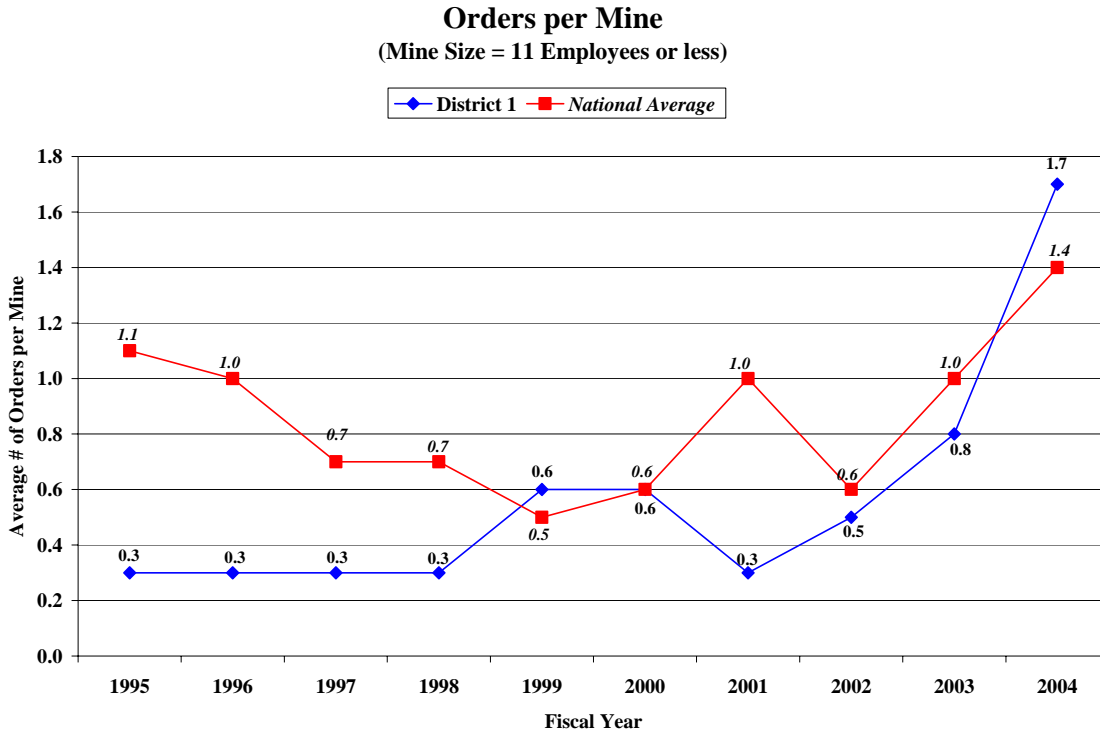
Citations per Mine
(Mine Size = 11 Employees or less)



This graph shows the average number of citations issued per mine each year in MSHA's District 1 as compared to the average number of citations issued per mine each year in all coal districts for comparably sized mines.

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EXHIBIT C

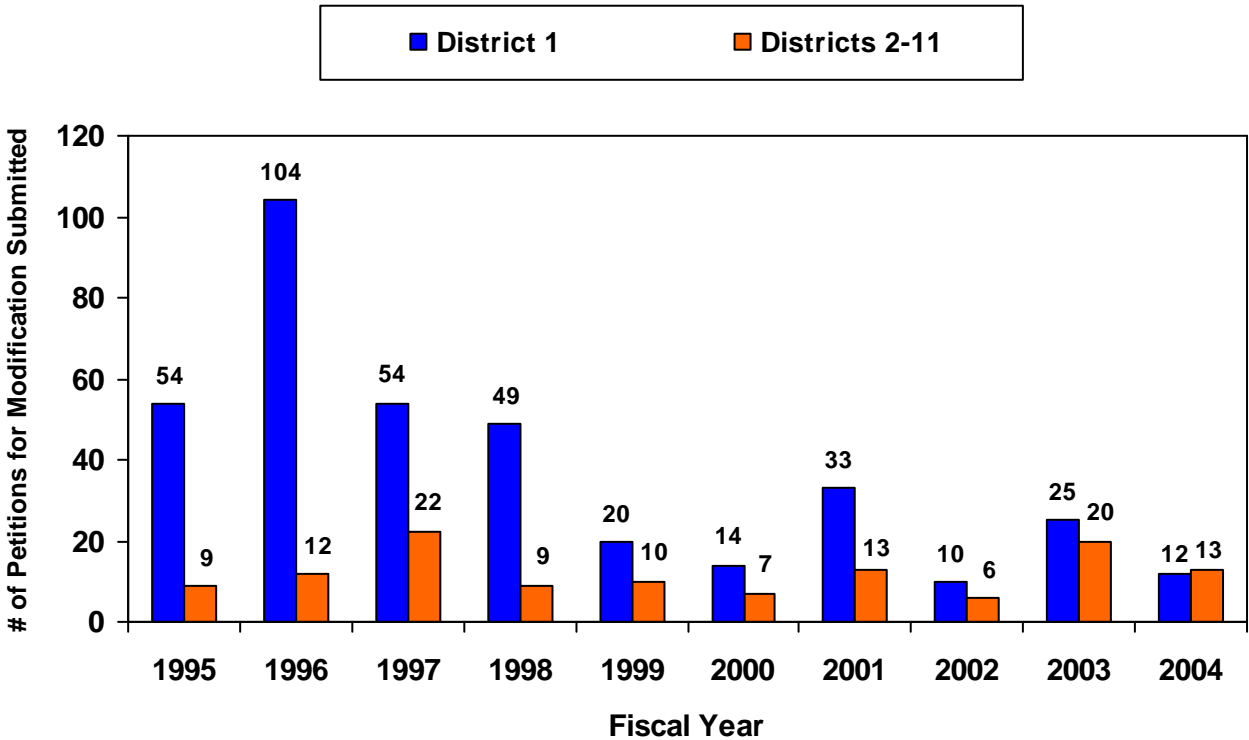


This graph shows the average number of withdrawal orders issued per mine each year in MSHA's District 1 as compared to the average number of withdrawal orders issued per mine each year in all coal districts for comparably sized mines.

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EXHIBIT D

**Petitions for Modification Submitted
(Mine Size = 11 Employees or less)**

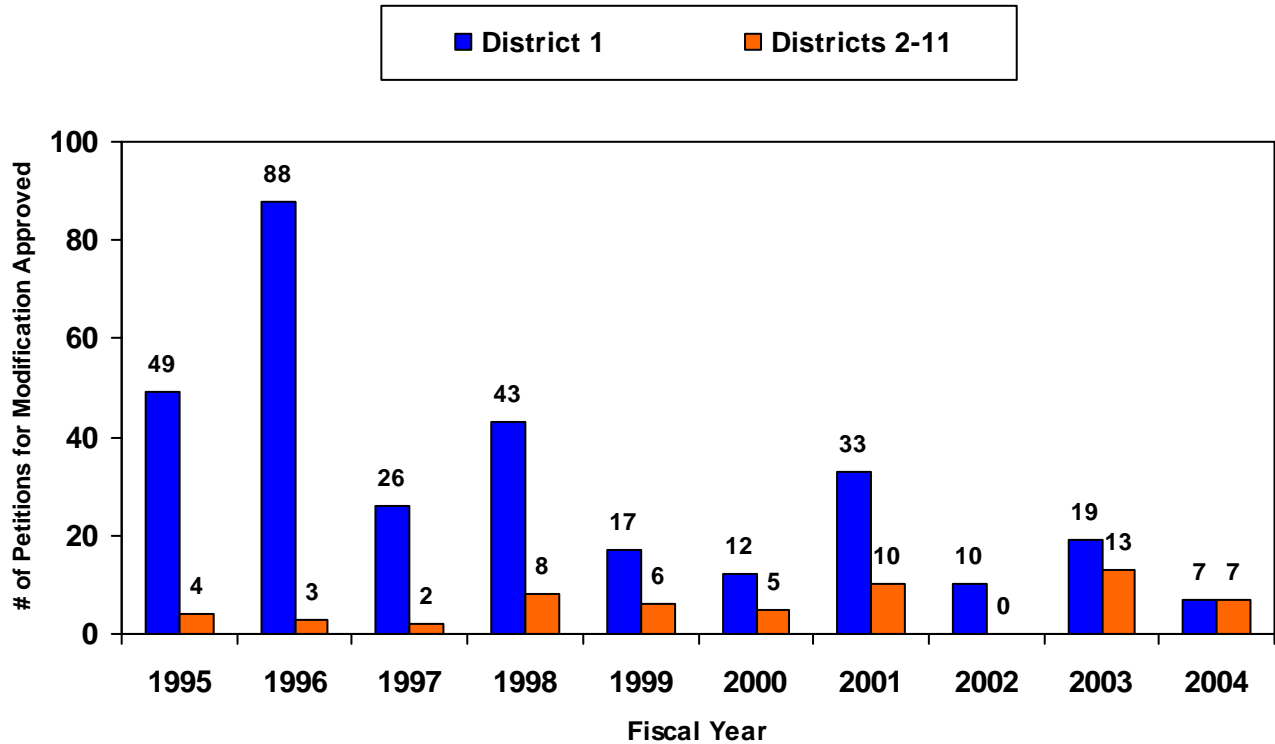


This graph shows, for each year, the number of Petitions for Modification submitted to MSHA by mine operators in District 1 compared to the number of Petitions for Modification submitted to MSHA by mine operators in all other coal districts combined.

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EXHIBIT E

Petitions for Modification Approved
(Mine Size = 11 Employees or less)



This graph shows, for each year, the number of Petitions for Modification approved by MSHA in District 1 compared to the number of Petitions for Modification approved by MSHA in all other coal districts combined.

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EXHIBIT F

**Most Common Petitions for Modification Granted in District 1
FYs 1995 – 2004
(Mine Size = 11 Employees or less)**

	CFR Section	Count	Explanation of CFR Section	Relates to Anthracite Mining? ¹
1	75.1202	50	Mine maps shall be revised and supplemented at intervals of not more than 6 months.	No
2	75.1200	50	Mine Map requirements	Yes
3	75.1100	48	Fire Protection	Yes
4	75.335	44	Construction of seals	Yes
5	49.2	26	Size and training of mine rescue teams	No
6	75.360	25	Pre-shift examination at fixed intervals	Yes
7	75.1400	22	Hoisting and equipment; general	Yes
8	75.1002	13	Installation of electric equipment and conductors; permissibility.	Yes
9	75.364	13	Weekly examinations – Hazardous Conditions	Yes
10	75.1405	6	Automatic Couplers	No

Note 1: This column indicates whether the reason for the Petition for Modification is the result of a difference between anthracite and bituminous mining methods and conditions.

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Appendices

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APPENDIX A

BACKGROUND

In March 2005, a mine operator and an official from a mining industry association made allegations to the OIG regarding MSHA and its District 1 Manager. Subsequently, in April 2005, several other mine operators in MSHA's District 1 met with the OIG to express their concerns. In general, the mine operators complained that they were being treated unfairly by the current District 1 Manager. More specifically, they alleged:

- District 1's enforcement activities directed by the current District 1 Manager were excessive and unjustified; and
- Mine operators who were publicly critical of MSHA were harassed through increased enforcement.

In addition, the mine operators complained about MSHA's current coal mining regulations. Specifically, they alleged that:

- MSHA regulations contain safety and health requirements that are not appropriate for anthracite mines.

Coal Mining

There are approximately 2,100 coal mines located in 27 states. Coal is used to generate residential and commercial heating, to produce coke used in the steel industry, and as a raw material in the chemical industry. The coal industry produces two commodities: anthracite (hard) and bituminous (soft) coal. Anthracite mines are relatively few in number and are small operations. During FY 2004, there were approximately 23 operating anthracite mines. Each of these mines employed 11 or fewer miners, or about 100 miners in total. The process of mining anthracite coal has changed little over the past century. It is still done largely by hand using simple hand tools and equipment.

By comparison, in FY 2004 there were almost 2,000 bituminous coal mines, employing more than 100,000 miners. The United States is the second largest producer of bituminous coal in the world. Bituminous coal fuels most of the coal-fired power plants in the country. Bituminous coal mining operations are generally highly mechanized.

MSHA

The Federal Mine Safety and Health Act of 1977 (Mine Act) assigns MSHA the responsibility for (a) developing mandatory safety and health standards; (b) assuring compliance with these standards through periodic inspections; (c) assessing and collecting civil penalties for violations of mine safety and health standards; (d) expanding education and training programs for miners, operators, and agents; (e) investigating mine accidents and complaints of hazardous conditions; (f) reviewing and approving operators' mining plans; and (g) approving and certifying the design of

certain types of mining products. The Mine Act covers every mine, mine facility, mine operator, and miner throughout the country.

MSHA is organized into two main program areas: Coal Mine Safety and Health and Metal and Nonmetal Safety and Health. The Office of Coal Mine Safety and Health is responsible for enforcing the Mine Act at all coal mines. It administers 11 districts with a total of 45 field offices throughout coal mining regions. Each district is headed by a District Manager who reports to the Administrator for Coal Mine Safety and Health. District 1 is located in northeast Pennsylvania. It is comprised solely of anthracite coal mines and is the only area in the country in which anthracite coal is mined. The current District 1 Manager was appointed in September 2001. He had previously served as District Manager in District 9 (Denver, Colorado).

In 2003, MSHA established the Office of Small Mines, which maintains a presence in various Coal and Metal/Non-Metal District and Field Offices. Its mission is to assist small mines in reducing injuries and illnesses through partnerships, compliance assistance, education, training, and outreach.

Inspections

Section 103(a) of the Mine Act requires MSHA personnel to inspect coal mines each year for the purpose of determining their compliance with the mandatory health and safety standards and to assure a safe and healthy working environment for miners. Underground coal mines must be inspected in their entirety at least four times per year. Above ground mines must receive complete inspections twice a year.

Citations and Withdrawal Orders

During an inspection, if the inspector believes that a mine operator has committed a violation of a mandatory health and or safety standard, a citation or withdrawal order is issued to the mine operator. Each citation or withdrawal order must be in writing and describe the nature of the violation, including references to the provision of the Mine Act, standard, rule, or regulation alleged to have been violated.

Citations are classified as "Significant and Substantial" or "Not Significant and Substantial" based on the inspector's judgment of the likelihood "the hazard contributed to or will result in an injury or illness of a reasonably serious nature." A citation does not require immediate withdrawal of workers; however, the violation must be corrected within a reasonable and specified time frame as established by the coal mine inspector.

A withdrawal order requires the operator to remove all workers from the area affected by the cited violation. A withdrawal order can be issued as a result of any of the following types of conditions:

- Identification of an imminent danger situation;
- Citation(s) that have not been abated by the correction due date;

- Unwarrantable failure to comply with mandatory safety and health standards;
- Pattern of violation(s); or
- Employed miner who did not receive the mandatory safety and training class.

Assessment of Civil Penalties

MSHA's Office of Assessments (OA) manages the assessment of civil penalties for violations of safety and health standards. The OA is responsible for notifying the mine operator by certified mail of the civil monetary penalty assessed for any violation cited. The operator has 30 days from receipt of the notification to: (1) pay the proposed assessment; or (2) notify OA of the intent to contest the citation/withdrawal order issued or proposed assessment with the Federal Mine Safety and Health Review Commission. If the operator does not notify OA of its intent to contest the citation/withdrawal order or the proposed assessment of penalty, it is deemed final.

The mine operator or any person adversely affected by the order of the Commission has 30 days to file for review of the order in the United States Court of Appeals and, if necessary, to the United States Supreme Court.

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APPENDIX B

OBJECTIVE, SCOPE, METHODOLOGY, AND CRITERIA

Objective

Our audit objective was to determine if there was evidence to indicate that the following allegations were valid:

1. Enforcement activities directed by the current District 1 Manager were excessive or unjustified;
2. Mine operators who were publicly critical of MSHA were harassed through increased enforcement; and
3. MSHA regulations contain safety and health requirements that are not appropriate for anthracite mines.

Scope

We analyzed MSHA enforcement data for FYs 1995 through 2004. This 10-year interval allowed us to examine trends over a period of time. It also allowed us to examine activity in District 1 both before and after the arrival of the current District Manager in September 2001. We analyzed FY 2005 data separately because changes in the way MSHA coded the data for FY 2005 prevented its direct comparison to prior years.

District 1 is comprised of underground mines, generally with 11 or fewer employees. Therefore, to more accurately reflect the types of mines in District 1, we focused our comparative analyses on data related to underground mines with 11 or fewer employees in all the other districts.

Audit fieldwork began in March 2005 and concluded February 6, 2006. During this time, we visited the MSHA National Headquarters; MSHA District 1 Headquarters in Wilkes-Barre, PA; MSHA District 1 field office in Pottsville, PA; Pennsylvania's Department of Environmental Protection, and the U.S. Department of Labor Solicitor's Office in Philadelphia, PA.

Methodology

We conducted interviews with MSHA officials at Headquarters and in District 1, officials with the Pennsylvania Department of Environmental Protection (DEP), and numerous current and former District 1 mine operators as follows:

- ▶ Thirteen (13) current and former mine owners/operators in District 1
- ▶ Twenty-one (21) MSHA employees in District 1, including:

- 9 Mine Inspectors
 - 3 Administrative Staff
 - District Manager
 - Field Office Supervisor
 - 2 Investigators
 - 4 Safety and Health Specialists
 - Assistant District Manager
- ▶ MSHA Headquarters officials, including
- Acting Assistant Secretary
 - Deputy Administrator, Coal Mine Safety & Health Program
 - Director, Office of Assessments
 - Compliance Assistant, Small Mine Office
 - Administrator, Coal Mine Safety & Health Program
 - Chief, Safety Division, Coal Mine Safety & Health Program
 - Manager, Office of Small Mines
 - Attorneys in the Office of the Solicitor – Philadelphia
- ▶ Ten (10) officials from Pennsylvania's DEP
- Chief, PA DEP, Anthracite and Industrial Minerals Safety Division
 - 1 Mine Engineer
 - 7 Mine Inspectors
 - 1 Information Technology Generalist

Since the assertions made by mine operators, MSHA inspectors, and MSHA officials during our interviews often conflicted, we attempted to corroborate the testimonial evidence through analytical methods.

We analyzed historical enforcement data provided by MSHA in an electronic format. Using Audit Control Language software, we summarized selected data by Fiscal Year and district. Since the mines in District 1 are small operations, we limited our analyses to mines with 11 or fewer employees. And because the number of small mines varied in each district, we used the summarized data to compute averages per mine for mine inspections performed and citations and withdrawal orders issued and vacated. We also summarized MSHA's data on Petitions for Modification submitted and approved by district and Fiscal Year.

We compared activity levels among MSHA coal districts within each Fiscal Year. We also examined the trends for enforcement activity levels from FYs 1995 through 2004 for District 1 and all coal districts combined. We also reviewed numerous media articles related to mining enforcement activities in District 1.

We did not evaluate or test internal controls of the MSHA inspection process or perform a complete audit of the MSHA program. We only performed the necessary fieldwork and tested controls to address the allegations. We did not perform in-depth data

reliability testing; however, we noted that MSHA management has implemented controls to ensure the accuracy of the MSHA data base.

Criteria

We used the following criteria in performing this audit:

- Federal Mine Safety & Health Act of 1977
- MSHA Title 30, Code of Federal Regulations, Parts 1 - 104
- MSHA Program Policy Manual
- MSHA Coal General Inspection Procedures
- MSHA Citation and Order Writing Handbook for Coal/Metal and Nonmetal Mines
- MSHA Coal Mine Safety and Health Safety and Health Supervisor's Handbook
- Pennsylvania Laws for Anthracite Coal for Underground Mines "Act 346"

Auditing Standards

We conducted our audit in accordance with Government Auditing Standards issued by the Comptroller General of the United States.

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APPENDIX C

ACRONYMS AND ABBREVIATIONS

CFR	Code of Federal Regulations
DEP	Commonwealth of Pennsylvania, Departmental of Environmental Protection
FY	Fiscal Year
Mine Act	Federal Mine Safety and Health Act of 1977
MSHA	Mine Safety and Health Administration
OA	Office of Assessment
OIG	Office of Inspector General
PFM	Petition for Modification

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APPENDIX D
AGENCY RESPONSE TO DRAFT REPORT

U.S. Department of Labor

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



MAR 27 2006

MEMORANDUM FOR ELLIOT P. LEWIS
Assistant Inspector General
for Audit

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

SUBJECT: Draft Report No. 05-06-003-06-001

Thank you for the opportunity to respond to your draft report entitled "Allegations of Unfair Enforcement in MSHA's District 1."

Recommendation:

We recommend that the Acting Assistant Secretary for Mine Safety and Health evaluate whether the existing Petitions for Modification process provides an efficient method of addressing the applicability of existing regulations to varying mining techniques or whether any existing regulations require revision in light of anthracite mining methods.

MSHA Response:

As indicated in Exhibit E of your report, Petitions for Modification to mandatory regulations in District 1 have declined significantly since their peak in 1996. We also do not anticipate an increase in Petitions in the foreseeable future since the anthracite coal mining industry is contracting severely. However, we agree that there is merit in reviewing and evaluating the work product developed by an earlier internal workgroup charged with the responsibility of examining existing regulations and their impact on anthracite mine operators. As part of this initiative, the Agency will also review and evaluate the state of Pennsylvania's current anthracite coal regulations.

MSHA does have in place a regulatory review protocol that evaluates the number of petitions vis-à-vis a particular standard. When warranted, this has resulted in the requirements stated in those petitions forming the bases for the promulgation of a new or revised standard. In fact, the Agency has proposed a direct final rule, currently under review at the Department, that eliminates the need to file petitions to use fire

extinguishers at temporary electrical installations in lieu of rock dust. MSHA will continue to review the issuance of petitions and, when warranted, take the appropriate action to eliminate the need to file petitions for regulatory relief. As indicated in your report, this could result in a more efficient and effective use of both operator and Agency resources.

cc: Ray McKinney
John Langton
Melinda Pon
Ken Bullock