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MEMORANDUM FOR ELLIOT P. LEWIS

Assistant Inspector General for Audit

FROM:

RICHARD E. STICKLER
Assistant Secretary for
Mine Safety and Health

SUBJECT:

Response to OIG Draft Audit Report No. 05-08-001-06-00
"Coal Mine Inspection Mandate Not Fulfilled Due to
Resource Limitations and Lack of Management
Emphasis"

Thank you for the opportunity to comment on your draft audit report. Attached are MSHA's comments regarding your audit findings and recommendations. In this regard, we offer suggestions to improve the accuracy of the report, and provide important context to your readers. In particular:

- Your final report fails to acknowledge that the majority (70 percent) of incomplete mandatory inspections determined during your audit period were at mines that were either non-producing, inactive, intermittent, or abandoned during the inspection period. For inspections not completed at inactive or abandoned mines, miners were not placed at risk to hazardous conditions.
- The draft report identifies deficiencies in the failure to document "critical inspection elements." The failure to document does not demonstrate MSHA's failure to inspect certain activities, equipment, or records because not all elements require documentation.
- MSHA's main priority during regular health and safety inspections is determining compliance with existing standards, rules, and regulations. Valuable and limited enforcement time by our inspectors should be placed primarily on identifying and abating hazards as a result of inspections rather than documentation and paperwork.

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We appreciate the open dialogue with your auditors. This afforded MSHA with the opportunity to initiate corrective actions prior to the issuance of your draft report. Going forward, we will continue to work with your office to implement viable recommendations that will improve the safety and health of miners. If you have any questions, please contact Melinda Pon (202) 693-9516 or Brent Carpenter (202) 693-9782.

Attachment

OIG Recommendation No 1: Inspection resources are commensurate with the mining activity in the coal districts. This includes evaluating the impact of the additional inspectors hired since July 2006 and the “100 Percent Plan” and if necessary, implementing additional steps to complete all mandatory inspections.

MSHA Response: As referenced in the recommendation, MSHA has instituted the “100 Percent Plan” to ensure that MSHA has the necessary resources to fully enforce the inspections mandated in the Mine Act. In 2006, Congress appropriated funding for MSHA to hire an additional 170 enforcement personnel. The “supplemental hiring” took place between July 2006 and September 30, 2007. In order to account for backfilling enforcement positions due to attrition, 273 enforcement personnel were hired during that timeframe. As of September 30, 2007, there were 257 trainees on board. Until these trainees complete their formal training and receive authorization from the Secretary of Labor, they are unable to independently inspect coal mines or issue enforcement actions.

However, in order to bridge this gap, inspectors are being rotated into understaffed districts for two (2) week intervals to assist in completing all mandated inspections. Furthermore, overtime and all other alternative schedules have been approved to facilitate the districts in completion of all mandated inspections.

It is important that the OIG acknowledge and incorporate into the final report that the majority of the incomplete, mandatory inspections reviewed during the time period covered by the audit were at mines that were inactive for the inspection period, intermittently active during the inspection period, or abandoned during the inspection period. For inspections not completed at inactive or abandoned mines, there was no diminution of health and safety to the miners for failure to complete inspections at these mines. Further, it should be recognized that there are logistical problems and resource issues involved in completing inspections at intermittently active mines. Finally, there were incomplete inspections noted in your report for mines that had already received four (4) mandatory complete inspections.

OIG Recommendation No 2: Inspection completions are effectively monitored. This includes enforcing the district quarterly Inspection Completion Rates report content requirements (Memo No. HQ-030-034) and developing the report to include additional information, such as cumulative year-to-date completion rates and the related number of completed and required inspections. An internal control should be developed to ensure deficiencies noted in the reports are addressed.

MSHA Response: MSHA will revise and reissue the current instructions in Memo No. HQ-030-034 to strengthen the requirements of the District's reports to headquarters regarding the status of their regular inspection completions. This will include an explanation of missed regular inspections by mine and the corrective action taken to achieve completion. These reports will be used in conjunction with the detailed reports generated from MSHA's computer system which includes cumulative year-to-date completion rates and the related number of completed and required inspections. In addition, MSHA has established a new Office of Accountability whose purpose is to increase oversight of MSHA's accountability and enforcement programs to ensure that necessary management controls are fully implemented and monitored. This includes reviews to ensure inspections are completed according to MSHA policy.

OIG Recommendation No 3: Policies and procedures are developed for calculating the regular safety and health inspection completion rate and ensuring the inspection data used is correct.

MSHA Response: MSHA will issue policies and procedures for documenting regular inspections that are closed before being completed and those that occur where the mine is abandoned prior to any meaningful inspection activity. Policies and procedures will also be developed to document the process of calculating the regular safety and health inspection completion rate.¹

OIG Recommendation No 4: Procedures for documenting all critical inspection activities are included in the MSHA General Inspection Handbook and Inspection Tracking System (ITS).

MSHA Response: Unfortunately, MSHA's efforts to correct the critical inspection list compiled by your auditors during the audit were unsuccessful. Thus, your analyses of critical inspection activities continues to suffer from fundamental flaws. For example, critical inspection elements relative to the "working place" and references to workplace procedures are incorrect. Further, you maintain a view that an inspection cannot be complete unless exact wording, such as "ventilation facilities" rather than other words describing ventilation systems such as "intake", are included in inspection notes and documentation. This position is unnecessarily restrictive and results from a lack of understanding of mining terminology.

¹ "Key indicator" reports are already in use or under development to assist oversight in a wide variety of areas, including inspection data and completion rates.

Therefore, in keeping with Section 103(a) of the Mine Act, MSHA will define the salient portions of a complete safety and health inspection. We are in the process of revising and reissuing the Coal Mine Inspection Procedures Handbook, and anticipate having a draft for review and comment during the first calendar quarter of 2008. Prior to release of this handbook, MSHA will ensure that language is included in the handbook to require documentation of all salient portions of a complete inspection. MSHA will also incorporate any necessary changes into the ITS.

OIG Recommendation No 5: All critical inspection activities are documented as performed or not applicable at the mines being inspected.

MSHA Response: The inspection tracking system has been streamlined to include only the critical items and elements of a complete inspection on an individualized basis. MSHA feels it is redundant to require documentation of inspection activities that do not apply to the mine being inspected.² For example, MSHA suggests that a disclaimer be added to the ITS report stating that, "Systems, equipment, or processes not addressed in this report were not in use at this mine during this inspection activity."

Currently, MSHA has accepted general statement(s) when an area is inspected as documentation that all processes or systems in the area are hazard-free. Statements such as, "*Traveled the haulage entry - No hazards observed*" would be considered complete documentation for examining the haulage way and the high voltage cable (if the high voltage cable was located in the haulage entry).

Finally, MSHA points out that the OIG should reconsider their statements regarding full-shift respirable dust sampling. Past and current law, regulation, and policy mandate portal-to-portal respirable dust sampling for the full shift or for eight (8) hours, **whichever is less**.

OIG Recommendation No 6: Field Office supervisors certify inspections are thorough before being counted as complete.

MSHA Response: MSHA is currently in the process of revising and reissuing the Coal Supervisors Handbook. MSHA anticipates having a draft for review and comment during the first calendar quarter of 2008. Prior to release of this handbook, MSHA will ensure that language is included in the handbook to

² Your report, for example, references an inspector's failure to document inspection of the track and trolley system at a mine where track and trolley did not exist.

require the review of documentation of all salient portions of a complete inspection. MSHA feels that documentation of this review is adequately demonstrated by supervisory date and initials on the cover page of the inspectors' daily cover sheet(s) and on all other enforcement actions.

Much of the OIG report hinged on a misdated form found in one of the Crandall Canyon mine inspection reports. The OIG's findings regarding this form **may** not be indicative of either the quality of the inspection or the inspection report when considered in its entirety. The information required to complete the misdated form may have been well documented in the inspection notes.

OIG Recommendation No 7: Inspection activity documentation and supervisory oversight are reviewed as part of MSHA's Accountability Program.

MSHA Response: MSHA's Accountability Program and associated Handbook are currently being revised based on several factors, including your prior audit and the results of our own internal reviews. We will consider recommendation No. 7 as well when making our revisions. MSHA's Office of Accountability will also address inspection documentation and supervisory oversight.