

MSHA's Response to the Draft Report

U.S. Department of Labor

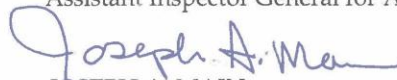
Mine Safety and Health Administration
1100 Wilson Boulevard
Arlington, Virginia 22209-3939



SEP 28 2012

MEMORANDUM FOR ELLIOT P. LEWIS
Assistant Inspector General for Audit

FROM:


JOSEPH A. MAIN
Assistant Secretary of Labor for
Mine Safety and Health

SUBJECT: Response to OIG Draft Audit Report No. 05-12-002-06-001

Thank you for the opportunity to review your draft audit report on the Mine Safety and Health Administration's (MSHA) Accountability Program. Your report contains findings and recommendations that will help our Agency as we continue our ongoing efforts to improve the Agency's comprehensive accountability review activities. Your report identified that MSHA has already made changes and improvements in the Agency accountability program. Exhibit 5, "Recurring Deficiencies by Category," contained in the report, validated that substantial improvements were made from the beginning of the audit period in fiscal year (FY) 2009 through FY 2011. MSHA has undertaken many actions over the last 3 years that further put the audit findings in the proper context.

As your report noted, MSHA did face challenges. Those included an Agency that had been under-resourced from budget constraints and had suffered a loss of experience due to a high turnover rate from retirements. As soon as I took the job as Assistant Secretary nearly 3 years ago, we began taking action. We are continuing to implement initiatives to improve the Agency's implementation of the Mine Act to make mines safer.

One of the first programs initiated was the nationwide training program for all MSHA field office supervisors. Those are our front line supervisors that directly oversee the Agency inspection program. That program was, among other things, aimed at the very issues addressed by your accountability audit. The goal of the supervisory training program was to improve MSHA's application of policy and procedures, and to address deficiencies identified in the accountability audits. That training program was implemented in May of 2009, and both the Coal and Metal and Non Metal (MNM) enforcement programs have completed the training. MNM has completed a third round of training since this training began.

You can now file your MSHA forms online at www.MSHA.gov. It's easy, it's fast, and it saves you money!

As reflected in the improvements over time that you report in your audit, this program and other actions produced significant improvements. Other actions implemented in 2010 include our impact inspection and revised Pattern of Violations (POV) programs; targeted rulemaking on the maintenance of rock dust and examinations in underground mines; and our fatality prevention initiative, “Rules to Live By.” The agency’s various initiatives have not only improved Agency performance in adhering to policies and procedures, as your report reflects, but more importantly have made miners safer.

As you are aware, MSHA’s primary mission is to implement the Mine Act in order to promote safe and healthful workplaces for the nation’s miners. Our success in that regard is measured in terms of deaths and injury rates. By those measures, MSHA’s best performance in mining was last year. Recent data shows that MSHA ended the year with the lowest fatal and injury rates ever recorded in the history of the U.S. mining industry.

I believe that the data are a clear indication of the improvements that MSHA has made over the last several years. I also believe that credit for these tremendous improvements is attributable not only to MSHA, but to our partners in mine safety -- labor, industry, the states, our federal partners, and all those who play a role in helping the Agency assure that every miner goes home to his or her family, at the end of every shift, safe and healthy.

In addition, as noted in your report, we are making other changes. As a result of recommendations from the internal review of MSHA’s actions at Upper Big Branch, we are changing how we do business. We have initiated major changes, including a comprehensive review of Agency directives and guidance, and an overhaul of our policy directive system and our coal mine inspectors’ handbook. We are improving Agency oversight and increasing training for our staff. We are also addressing shortcomings repeatedly identified in several past internal reviews to prevent a recurrence of those in the future.

In that same vein, I took steps early in 2012 to establish within a single office the management, support, and coordination of both routine and special assessments, the Agency’s accountability functions, and special enforcement strategies. These include the impact inspections and POV programs noted previously, the use of flagrant violations and injunctive authority, and the investigation of retaliation claims and possible criminal violations. While this reorganization has improved the oversight and coordination of these functions, it has specifically provided better management, administrative and analytical support for the accountability program.

Our goal is to carry out our mission under the Mine Act to protect the nation’s miners. I believe the Agency’s efforts are moving mine safety and health in the right direction.

Going forward, the work that your audit team conducted will be helpful in our continuing efforts to enhance the Agency's accountability activities and improve consistency in our enforcement actions.

While we will provide a more detailed response to the audit in our final 60-day response, we would like to take this opportunity to respond to two statements in your findings. The OIG report states that "As a result of inadequate management oversight of enforcement activities, MSHA headquarters was not aware of these [lack of monthly status reports on high-risk deficiencies] problems until informed by the OIG." The OIG report further states, "By not providing adequate oversight of enforcement activities, MSHA potentially increases the risk that unsafe working conditions in mines will not be detected." While there appears to be some confusion over the issue of how District 8 communicated with headquarters regarding high risk deficiencies, MSHA does not agree that there was a lack of headquarters or management oversight regarding these deficiencies. MSHA had a monitoring system in place for accountability reports to monitor the status of corrective actions.

In addition, we must stress that management oversight of accountability review activities, while very important, must be viewed within the context of the requirements in the Mine Act. It is important to note that Congress gave mine operators the primary responsibility to prevent unsafe conditions and practices in mines. MSHA is concerned that your description of the Agency's oversight of enforcement activities obscures the statutory and regulatory responsibility that mine operators have to address unsafe working conditions in mines.

MSHA cannot be in every mine, every day, on every shift. That is why miners are safest when employers take responsibility for anticipating, recognizing, and eliminating or controlling hazards. Operators cannot simply wait to correct hazards until after MSHA cites them for violations of safety and health standards and regulations. Operators' failure to identify and eliminate or control hazards – whether MSHA cites them or not -- is what puts miners at risk. MSHA's responsibility is to enforce the law as effectively as possible by using all the enforcement tools at the Agency's disposal, in order to promote safe and healthful working conditions for the nation's miners.

OIG Recommendation No. 1: Develop a robust oversight function that includes risk-based contingency planning for resource management when it is necessary to temporarily assign enforcement personnel to conduct major accident investigations and internal reviews.

MSHA agrees with the spirit of with this recommendation that provides for contingency planning for resource management. However, this recommendation is so broad that we will need to work with the OIG audit staff to address it.

OIG Recommendation No. 2: Provide management oversight of enforcement activities that will ensure compliance with MSHA policies and procedures.

MSHA agrees with this recommendation. The Assistant Secretary has already committed to accomplish that objective and has implemented a number of initiatives to do so as part of the UBB corrective actions, including improved access to MSHA directives and policies, elimination of outdated directives, and updating the General Coal Mine Inspection Procedures and Inspection Tracking System Handbook.

OIG Recommendation No. 3: Develop and implement a comprehensive root cause analysis training program for those who will be part of an accountability review team.

MSHA agrees with this recommendation. MSHA will develop and implement a comprehensive root cause analysis training program for those who will be part of an accountability review team.

OIG Recommendation No. 4: Require district managers and supervisors to document the implementation of corrective actions.

MSHA concurs with the intent of this recommendation. MSHA/OAASEI will require district managers or supervisors to document the implementation of corrective actions before any corrective action is considered resolved.

Further, the tracking system will be used to facilitate the review and dissemination of accountability review findings, resolutions, and best practices across the Districts.

I look forward to providing more specific details on the actions MSHA will take in response to each of the OIG recommendations. If you have any questions concerning this response, please contact me.