

Appendix E

MSHA Response to Draft Report

U.S. Department of Labor


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



SEP 27 2013

MEMORANDUM FOR ELLIOT P. LEWIS  
Assistant Inspector General  
for Audit

FROM:

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

SUBJECT:

MSHA Response to OIG Draft Report – “MSHA Should Reassess and Make Improvements to Its Role in Mine Rescue Contests” No. 05-13-004-06-001

The Mine Safety and Health Administration (MSHA) reviewed the OIG Draft Report, *MSHA Should Reassess and Make Improvements to Its Role in Mine Rescue Contests* (05-13-004-06-001) and we appreciate the opportunity to provide our comments. MSHA concurs with the four recommendations, which are consistent with our ongoing efforts to reform this critical training tool for mine rescue and address the specific concerns MSHA first brought to your attention about past events.

For the benefit of both you and the public, our response includes background information on the critical role of training contests in preparing the miners, mine supervisors and civil servants that volunteer for one of the most dangerous types of rescue missions one can face. We have also included a brief synopsis of the historic role of the federal government in fostering and maintaining a competitive, national training tool for mine rescue.

As you know, MSHA and the industry have restructured the long-standing model for conducting national coal and metal nonmetal training contests. With MSHA support, industry sponsors held successful national mine rescue contests this year for both coal and metal and nonmetal teams at substantially lower cost to the government than in prior years.

We appreciate the work that the OIG has conducted on this audit and the opportunity to review the draft report. In the following attachment, MSHA has provided additional background on the mine rescue process and comment on specific areas of the report.

Attachment

Attachment

**MSHA RESPONSE TO OIG DRAFT 05-13-004-06-001**

**Background**

By law, MSHA is responsible for ensuring that each underground mine has a mine rescue capability available to respond rapidly and effectively to a mine disaster. MSHA implements and enforces standards related to mine rescue teams regarding their availability, training, and readiness to respond to mine emergencies. By judging a mine rescue team's performance during a mine rescue problem designed to simulate the real-life unexpected challenges and dangers a team would encounter, MSHA is able to evaluate the team's effectiveness and readiness, level of training, decision making skills, and the intangible but critical qualities of team cohesiveness under emergency conditions.

Also by law, mine operators are responsible for conducting mine rescue and recovery, operating under the oversight of MSHA. For this to work effectively, mine rescue requires MSHA/industry teamwork. The ability of MSHA and industry to work together is mission-critical when lives are at stake.

During rulemaking to implement the Mine Improvement and New Emergency Response Act of 2006 (MINER Act), the record developed included information on the critical role of mine rescue contests in preparing those who serve on mine rescue teams. "Mine rescue contests are designed to sharpen skills and test the knowledge of team members who would be called on to respond to a mine emergency. Historically, mine rescue contests have provided individuals with practical, hands-on experience and are one of the most effective forms of training." 73 Fed.Reg. 7636, 7641 (2008). Mine rescue workers are generally volunteers who are miners, mine supervisors, and state and federal personnel, including MSHA personnel.

Mine rescue training contests began and have continued to be the product of a successful partnership between the federal government and the mining industry. The federal government has been directly involved in mine rescue for over a century. The first national mine rescue demonstration was held at Forbes Field in Pittsburgh, Pennsylvania in October 1911. To mark the significance of this collaboration between industry and government to protect miners, the President of the United States, William H. Taft, was in attendance, as was the U.S. Bureau of Mines Director, Joseph A. Holmes.

During the 1970s, the mining industry began to scale back participation in and support for mine rescue teams and training. Much of the responsibility for mine rescue fell to contractors and state teams. By the 1980s, the number and capacity of company-based mine rescue teams had diminished significantly. To fill this void, MSHA

expanded its responsibility for training contests in order to maintain the training and capacity necessary for the industry to respond to mine emergencies.

The Sago mine disaster in 2006 brought attention to weaknesses in mine rescue team preparedness. One of the motivations of Congress in passing the MINER Act was to promote and improve mine safety nationwide by strengthening mine rescue team preparedness.

**Response to OIG Finding on MSHA Procurement Actions**

Finding 2, at page 13, states that as a result of the cancellation of the 2012 contest, the Peppermill Hotel “may be entitled to collect” all or a portion of a significant cancellation penalty fee. As we notified the OIG, the Hotel has indicated that it has waived the fee so the potential for any liability is moot.

**Response to Recommendations**

The OIG acknowledged that MSHA has responded to the following five recommendations in the OIG’s Interim Report:

- (1) Design and implement controls to ensure all conferences are properly planned and no commitment of resources is made prior to approval by required officials.
- (2) Partner with procurement team from the outset to ensure contracts contain all appropriate clauses and exclude impermissible clauses.
- (3) Determine contest fees and properly match fee amounts to expected costs to the Government.
- (4) Review and approve all expected costs before they are incurred.
- (5) Account for all funds, whether derived from Contest fees or MSHA funds, expended in connection with the Contests.

The OIG closed all of these recommendations on September 10, 2013. MSHA imposed greater internal controls and procedural improvements related to planning and implementing mine rescue training contests. Those steps, which primarily address Recommendations 1 and 2 in this draft report, included improvements in connection with planning, approvals, contracting, and disbursement procedures to comply with all applicable laws and policies.

In addition to the recommendations in the Interim Report, the OIG has made four additional recommendations in its draft report:

- (1) Issue guidance requiring that MSHA's contracting officials are involved in procurement actions from the outset and throughout the process.**
- (2) Further develop policies and controls that ensure the contests are operated in compliance with laws and regulations or relinquish MSHA's role as organizer and host of future contests.**
- (3) Ensure the \$326,308 balance in the coal fund is secured and none of the funds are spent until a decision has been made as to the appropriate disposition of those funds.**
- (4) Request a decision from the GAO as to (a) whether MSHA could legally charge and retain fees for its mine rescue contests pursuant to the Independent Offices Appropriations Act, or any other statute, and (b) the appropriate disposition of the existing coal fund balance.**

MSHA agrees with the above recommendations. As previously noted, the Agency has already taken significant steps to address recommendations 1 and 2 as a result of similar recommendations contained in the OIG's interim report. In regard to recommendations 3 and 4, MSHA will take appropriate steps in deciding how best to secure the funds and will seek an opinion from the GAO.