

MSHA's Response to Draft Report

U.S. Department of Labor

Mine Safety and Health Administration
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MEMORANDUM FOR ELLIOT P. LEWIS
Assistant Inspector General for Audit

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

A handwritten signature in black ink, appearing to read "Joseph A. Main", written over the typed name and title.

SUBJECT: MSHA Response to OIG Draft Report "MSHA Can Improve
Its Section 110 Special Investigations Process"
No. 05-13-008-06-001

Thank you for the opportunity to review the OIG Draft Report titled, "MSHA Can Improve Its Section 110 Special Investigations Process." The Mine Safety and Health Administration (MSHA) acknowledges the OIG's recommendations for improving MSHA's Special Investigations (SI) process.

At the OIG entrance conference, MSHA staff briefed your staff on MSHA's SI Program to help the OIG refine its audit objectives. We outlined the significant changes MSHA had made to improve the program, the reorganization of the Office of Assessments to better manage and support our special enforcement programs, including the 110 program; enhanced section 105(c) discrimination work; coordination with the FBI to provide training for SI staff and accident investigators; and training of additional field investigators and hiring of additional staff in headquarters.

MSHA informed the OIG that the management of the 110 program is hindered by the lack of a comprehensive tracking and monitoring system. MSHA provided the OIG information demonstrating the agency's plans to develop this system prior to 2013; however, limited Information Technology (IT) funding prevented MSHA from achieving this goal.

We appreciate the work that the OIG has conducted on this audit and the opportunity to review the draft report. Attached are MSHA's specific comments on the OIG's findings and recommendations.

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Special Investigations Program Background:

The SI Program oversees section 110 special investigations of knowing or willful violations by mine operators and section 105(c) discrimination complaint investigations of complaints made by miners or applicants for employment. When decisions must be made about the allocation of limited resources, statutory responsibilities, such as meeting the timeframes in the Mine Act for 105(c) cases, take precedence over 110 special investigations which have no statutory timeframes. Under Section 110, MSHA has the authority to propose civil penalties against individuals, agents or employees of mine operators, who knowingly fail or refuse to comply with any citation or order MSHA issues or who violate mandatory health or safety standards. These cases may also lead to criminal prosecution.

Due to DOL's increased focus on providing workers a voice in the workplace, discrimination complaints that miners filed with MSHA increased, as did the number of temporary reinstatement requests and complaints that MSHA filed with the Federal Mine Safety and Health Review Commission on miners' behalf. In 2012, MSHA filed more 105 (c) complaints and more reinstatement requests on behalf of miners than in any other year. As a result, MSHA shifted its SI resources to address discrimination complaints since they have mandatory timelines.

Impact of Upper Big Branch disaster on the Special Investigations Program:

Following the Upper Big Branch disaster in April 2010, the worst coal mine tragedy in 40 years, MSHA began more aggressive enforcement of, and education about, the anti-discrimination provisions of the Mine Act. Miners and families had testified to Congress about how workers at the Upper Big Branch mine feared reprisals if they reported unsafe conditions at the mine, and this testimony was confirmed by subsequent investigations into the tragedy. MSHA also confirmed that, despite the conditions identified by the various investigations, in the four years prior to the disaster, the Agency had not received a single hazard complaint from the mine.

General Comments:

MSHA's approach has made a difference in accomplishing the Agency's mission. In 2011, and again in 2012, mining deaths and injuries were reduced to the lowest rates ever. The number of chronic violator mines, identified by our Pattern of Violations screenings, has substantially decreased. The actions taken by MSHA have improved the health and safety of the nation's miners. However, mandatory activities have taken precedence, resulting in MSHA not always meeting the 110 program timeframes.

Findings and Recommendations:

OIG Finding 1 – MSHA Did Not Always Meet 110 Timeframe Goals

MSHA Districts did not always initiate and submit §110 special investigation cases to Technical Compliance and Investigations Office (TCIO) and TCIO did not always submit cases to SOL within its timeframe “goals.”

OIG Recommendation 1

Review goal monitoring activities and assess the validity of established §110 special investigations goals and implement either revised activities or goals to ensure MSHA initiates and submits cases on a more timely basis.

MSHA Response

MSHA disagrees with this finding and recommendation. Although this finding is factually accurate, MSHA does not believe that the timeframes in the SI Handbook need to be changed.

The timeframes are general management goals – not statutory or regulatory requirements. The primary causes for not meeting the timeframes for Section 110 investigations are the need to conduct thorough investigations and the need to prioritize the work of special investigators whose work assignments includes statutorily mandated inspections of all mines, discrimination investigations (which have statutory timeframes), accident investigations, internal reviews, and litigation support for contested citations. Balancing these demands and prioritizing special investigator work assignments impact the timeframes within which special investigations can be completed. MSHA believes the Agency needs flexibility to redirect scarce SI resources, as necessary, to accomplish statutorily mandated activities.

OIG Finding 2 – MSHA’s 110 Case File Documentation was Inconsistent

Although in general we found that MSHA properly included necessary materials in its case files, we found some instances in which it did not include all documentation required or document the rationale for not conducting an investigation on PKWs. Without complete information, MSHA cannot ensure the investigations adequately supported conclusions they reached or that all investigations warranted were initiated.

OIG Recommendation 2

Review and assess the documentation requirements in the current Handbook, revise it as appropriate, and provide documentation training for Special Investigators and TCIO personnel.

MSHA Response

MSHA agrees that it would be beneficial to review and assess the documentation requirements in the current handbook.

As the OIG is aware, MSHA is updating the SI Procedures Handbook and will revise, as appropriate, documentation requirements. Upon completion of the handbook, MSHA will provide appropriate documentation training for special investigators and TCIO personnel.

OIG Finding 3 – MSHA Did Not Maintain Adequate 110 Data Systems

MSIS does not allow TCIO to compile or track all data related to investigations. To compensate, TCIO maintains some data related to the events and cases in an ad hoc database. However, this ad hoc system made it cumbersome to manage all aspects of the investigation process.

MSHA did not maintain an adequate system to track the credentials. TCIO failed to record in its system credential issuance and expiration dates for 18 of the 80 investigators in our sample cases.

OIG Recommendation 3

Pending planned enhancements to MSIS, take steps to consolidate information from various systems (ad hoc and MSIS) into a single source to facilitate the management of all aspects of investigations.

MSHA Response

MSHA agrees that the MSIS system needs to be enhanced to manage all aspects of investigations.

MSHA disagrees with the statement in the report, “Without implemented SOPs and complete information in its database, MSHA may not be able to ensure all Special Investigators were credentialed, expired credentials were renewed, or credentials that were no longer needed due to departure or retirement were properly disposed of in accordance with Department of Labor requirements.” The OIG found no instances of investigations being conducted by investigators without the proper credentials or any cases of lost, unaccounted for, or expired credentials, or personnel who inappropriately possess credentials. MSHA has tracked and can account for all special investigator credentials the Department has issued. Although the OIG found a few instances where credential issuance and expiration dates were not updated in the database, all of this information was maintained and accessible by TCIO staff.