

U.S. Department of Labor

Mine Safety and Health Administration
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OCT 08 2015

MEMORANDUM FOR ELLIOT P. LEWIS
Assistant Inspector General for Audit

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

SUBJECT: MSHA's Interim Response to OIG's Alert Memorandum:
Incorrect Telephone Numbers in Mine Emergency Response
Plans, Report No. 05-16-001-06-001

Thank you for the opportunity to respond to your alert memorandum of October 7, 2015, Incorrect Telephone Numbers in Mine Emergency Response Plans.

We have reviewed the memorandum and are providing MSHA's interim response to your request. Although we appreciate your finding that some of the telephone numbers in the call lists in the Emergency Response Plans (ERPs) for underground coal mines are inaccurate, the call lists that mine operators would use in the case of a mine emergency are separately required to be maintained at the mine and mandated to be updated by specific regulations. Please see the attached List of Controlling Regulations previously forwarded to your Office on October 6, 2015. These regulatory standards long pre-date the Mine Improvement and New Emergency Response Act of 2006 (MINER Act) and ERPs. Mine operators have historically relied upon and followed these requirements. These standards provide appropriate protections in the event of an underground mine emergency. For these reasons, MSHA does not agree that the incorrect telephone numbers you identified put miners at "further risk" or rise to the level of an alert memorandum requiring immediate attention. However, the Agency recognizes that there are issues that need to be resolved. Furthermore, as we have previously highlighted for you, we believe there are inaccuracies in the OIG's analysis and results.

Immediately upon receipt of the OIG's list of incorrect numbers, Coal Enforcement began contacting all the operators identified, and those operators are in the process of updating their ERP call lists. MSHA also did further review of the OIG sample, and found that 17 of the 43, or 40%, of the mines on your list are not active. Specifically, 3 of the 17 are abandoned or sealed; 1 is temporarily idled; 1 is a facility previously attached to an underground mine that is currently sealed; and 12 are in non-producing status - not mining coal. MSHA does not dispute that mines listed as nonproducing/active are required to have an ERP if there are miners working underground as intended by the MINER Act. There are no miners at abandoned/sealed or temporarily idled mines and a minimal presence of miners at non-producing mines. Additionally, 25% of the numbers the OIG identified as incorrect or disconnected are working numbers. Further, a large number of mines in this country are located in rural or remote areas. The 98 fire departments and ambulance numbers that the OIG identified as "incorrect" include volunteer fire

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and ambulance departments/services that may not have permanent staff serving on a 24/7 basis. MSHA is evaluating changes in the ERP process to address the rural/remote fire department issue. Additionally, in the case of any emergency, MSHA is evaluating whether the Agency should require that operators use “911” (consistent with the national practice for any emergency) as a default in the event any emergency number is not reached.

I also directed MSHA district personnel to conduct inspections at the mines and verify that mine operators are in compliance with the requirements for having up-to-date contact numbers for emergency purposes. Those requirements are contained in 30 C.F.R. § 75.1713-1, § 75.1713-2 and other standards. Section 75.1713-1(e) includes the contact list requirements relied upon during mine emergencies. Under this more stringent standard, an operator must immediately post any changes or updates to the emergency contact information at the mine, unlike the ERP call list which is reviewed every six months. The ERP call list does not supersede the regulatory requirements on maintaining up-to-date lists posted at the mine. MSHA will be taking appropriate enforcement actions in cases where it finds noncompliance with § 75.1713-1(e) - the controlling regulation for having up-to-date lists of emergency contacts -and continue to ensure there is no real risk to miners.

As background, it is important to understand that the Federal Mine Safety and Health Act of 1977 (Mine Act), as amended by the MINER Act and its implementing regulations and policies, include redundant protections designed to assure that emergency personnel are available to respond in the event of an emergency at an underground coal mine. These protections do not rely on the contact information mine operators submit to MSHA in their ERPs. In fact, the MINER Act does not specifically dictate that ERPs include specific emergency numbers or information on suppliers and rescue equipment. That was additional general policy guidance. Operators must update their ERPs with any substantive changes in mine operations, advances in technology or other similar considerations as they occur. The review of ERPs occurs every six months. However, MSHA has specific regulatory provisions that require a list of emergency numbers, that the numbers be kept up-to-date and that the numbers be posted at the mine site.

Under Section 2 of the MINER Act, operators are required to have “procedures for coordination and communication between the operator, mine rescue teams, and local emergency response personnel and make provisions for familiarizing local rescue personnel with surface functions that may be required in the course of mine rescue work.” Under MSHA’s Program Policy Letter No. P13-V-01, operators ensure ERPs “include procedures for notifying key personnel, such as a call list for mine rescue teams, local emergency responders, mine personnel, state and federal officials, and other parties that may be needed in an emergency.” However, this is guidance, and was not intended and did not replace the requirements of 30 C.F.R. § 75.1713 or other applicable regulations relating to communication in the event of an emergency at an underground coal mine.

Under Federal standards, the required postings described below would be used by persons responsible for communicating in the event of a mine emergency, and by miners as well.

(1) Arrangements for Emergency Medical Assistance and Transportation – Under § 75.1713-1(a) and (e), Arrangements for Emergency Medical Assistance and Transportation for Injured

Persons; Agreements; Reporting Requirements; Posting Requirements, each operator of an underground coal mine is required to make arrangements with a licensed physician, medical service, medical clinic or hospital to provide 24-hour emergency medical assistance for any person injured at the mine. Each operator is also required to post at appropriate places at the mine the names, titles, addresses and phone numbers of all persons or services currently available under such arrangements to provide medical assistance and transportation at the mine.

(2) Emergency Communications – Under §75.1713-2, Emergency Communications; Requirements, each operator of an underground coal mine is required to establish and maintain a communication system from the mine to the nearest point of medical assistance for use in an emergency. The emergency communication system required to be maintained under paragraph (a) of this § 75.1713-2 may be established by telephone or radio transmission or by any other means of prompt communication to any facility (for example, the local sheriff, the State highway patrol or local hospital), which has available the means of communication with the person or persons providing emergency medical assistance or transportation in accordance with the provisions of § 75.1713-1.

(3) Availability of Mine Rescue Teams – Under § 49.12, Availability of Mine Rescue Teams, every operator of an underground mine (except where alternative compliance is permitted for small and remote mines) is required to establish at least two mine rescue teams, which are available at all times when miners are underground; or enter into an arrangement for mine rescue services, which assures that at least two mine rescue teams are available at all times when miners are underground.

Under § 49.19, Mine Emergency Notification Plan, each underground mine is required to have a mine rescue notification plan outlining the procedures to follow in notifying the mine rescue teams when there is an emergency that requires their services. A copy of the mine rescue notification plan is required to be posted at the mine.

(4) Designation of Responsible Person – As you noted in your memorandum, regulations require mines to have a responsible person in attendance, designated to take charge during mine emergencies. Specifically, under § 75.1501, Emergency Evacuations, operators are required to designate a responsible person to take charge during mine emergencies involving a fire, explosion, or gas or water inundation for each shift that miners work underground. While the responsible person is required to have current knowledge of the mine's ERP, in the event of an emergency, the responsible person would use the emergency contact lists posted at the mine per regulatory requirement.

Under § 75.1600-1, Communication Facilities; Main Portals; Installation Requirements, at least one of the communication facilities (telephone or equivalent two-way) is required to be at a location where a responsible person who is always on duty when men are underground can hear the facility and respond immediately in the event of an emergency.

(5) Availability of MSHA's Toll-Free Phone Number – In addition to the standards discussed above, MSHA has additional checks and balances. Per § 50.10, operators are required to contact

MSHA at once without delay and within 15 minutes at a toll-free number once the operator knows or should know that an accident has occurred involving (a) a death of an individual at the mine; (b) an injury of an individual at the mine, which has a reasonable potential to cause death; (c) an entrapment which has a reasonable potential to cause death, or (d) any other accident. The toll-free emergency reporting number, which is posted at the mine site can be used to contact MSHA officials and deploy mine rescue teams.

As noted above, MSHA informed the OIG that the Agency found inaccuracies in the OIG's analysis and results. MSHA is in the process of investigating these inaccuracies further and will provide more detailed information of its findings in the Agency's 15-day response.

Again, we appreciate the information the OIG has provided during the course of this audit, which will help the Agency continue to improve miners' safety and health. If you have any questions or need further information, please contact Patricia W. Silvey, Deputy Assistant Secretary for Operations at (202) 693-9414.

Attachment

List of Controlling Regulations

Emergency Contact Information

I. Arrangements for Emergency Medical Assistance and Transportation

§ 75.1713-1, *Arrangements for emergency medical assistance and transportation for injured persons; agreements; reporting requirements; posting requirements*

(a) Each operator of an underground coal mine shall make arrangements with a licensed physician, medical service, medical clinic, or hospital to provide 24-hour emergency medical assistance for any person injured at the mine.

(b) Each operator of an underground coal mine shall make arrangements with an ambulance service, or otherwise provide, for 24-hour emergency transportation for any person injured at the mine.

(c) Each operator shall, on or before December 30, 1970, report to the District Manager for the district in which the mine is located the name, title and address of the physician, medical service, medical clinic, hospital or ambulance service with whom arrangements have been made, or otherwise provided, in accordance with the provisions of paragraphs (a) and (b) of this § 75.1713-1.

(d) Each operator shall, within 10 days after any change of the arrangements required to be reported under the provisions of this § 75.1713-1, report such changes to the District Manager. If such changes involve a substitution of persons, the operator shall provide the name, title, and address of the person substituted together with the name and address of the medical service, medical clinic, hospital, or ambulance service with which such person or persons are associated.

(e) Each operator shall, immediately after making an arrangement required under the provisions of paragraphs (a) and (b) of this § 75.1713-1, or immediately after any change of such arrangement, post at appropriate places at the mine the names, titles, addresses, and telephone numbers of all persons or services currently available under such arrangements to provide medical assistance and transportation at the mine.

§ 75.1713-2, *Emergency communications; requirements*

(a) Each operator of an underground coal mine shall establish and maintain a communication system from the mine to the nearest point of medical assistance for use in an emergency.

(b) The emergency communication system required to be maintained under paragraph (a) of this § 75.1713-2 may be established by telephone or radio transmission or by any other means of prompt communication to any facility (for example, the local sheriff, the State highway patrol, or local hospital) which has available the means of communication with the person or persons providing emergency medical assistance or transportation in accordance with the provisions of § 75.1713-1.

II. Availability of Mine Rescue Teams

§ 49.12, *Availability of mine rescue teams*

- (a) Except where alternative compliance is permitted for small and remote mines (§ 49.13), every operator of an underground mine shall: (1) Establish at least two mine rescue teams which are available at all times when miners are underground; or (2) Enter into an arrangement for mine rescue services which assures that at least two mine rescue teams are available at all times when miners are underground.
- (b) Each mine rescue team shall consist of five members and one alternate who are fully qualified, trained, and equipped for providing emergency mine rescue service. Mine rescue teams for anthracite coal mines, which have no electrical equipment at the face or working section, shall consist of at least three members per team and one alternate that may be shared between both teams.
- (c) To be considered for membership on a mine rescue team, each person must have been employed in an underground mine for a minimum of 1 year within the past 5 years, except that members of contract mine rescue teams shall have a minimum of 3 years underground coal mine experience that shall have occurred within the 10-year period preceding their employment on the contract mine rescue team. For the purpose of mine rescue work only, miners who are employed on the surface but work regularly underground shall meet the experience requirement. The underground experience requirement is waived for those miners on a mine rescue team on February 8, 2008.
- (d) Each operator shall arrange, in advance, ground transportation for rescue teams and equipment to the mine or mines served.
- (e) The required rescue capability shall be present at all existing underground mines, upon initial excavation of a new underground mine entrance, or the re-opening of an existing underground mine.
- (f) No mine served by a mine rescue team shall be located more than 1 hour ground travel time from the mine rescue station with which the rescue team is associated.
- (g) As used in this subpart, mine rescue teams shall be considered available where teams are capable of presenting themselves at the mine site(s) within a reasonable time after notification of an occurrence which might require their services. Rescue team members will be considered available even though performing regular work duties or in an off-duty capacity. The requirement that mine rescue teams be available shall not apply when teams are participating in mine rescue contests or providing services to another mine.
- (h) Each operator of an underground mine who provides rescue teams under this section shall send the District Manager a statement describing the mine's method of compliance with this subpart. The statement shall disclose whether the operator has independently provided mine rescue teams or entered into an agreement for the services of mine rescue teams. The name of the provider and the location of the services shall be included in the statement. A copy of the statement shall be posted at the mine for the miners' information. Where a miners' representative has been designated, the operator shall also provide the representative with a copy of the statement.

§ 49.19, *Mine emergency notification plan*

(a) Each underground mine shall have a mine rescue notification plan outlining the procedures to follow in notifying the mine rescue teams when there is an emergency that requires their services.

(b) A copy of the mine rescue notification plan shall be posted at the mine for the miners' information. Where a miners' representative has been designated, the operator shall also provide the representative with a copy of the plan.

III. Designation of Responsible Person

§ 75.1501, *Emergency evacuations*

(a) For each shift that miners work underground, there shall be in attendance a responsible person designated by the mine operator to take charge during mine emergencies involving a fire, explosion, or gas or water inundation.

(1) The responsible person shall have current knowledge of the assigned location and expected movements of miners underground, the operation of the mine ventilation system, the locations of the mine escapeways and refuge alternatives, the mine communications system, any mine monitoring system if used, locations of firefighting equipment, the mine's Emergency Response Plan, the Mine Rescue Notification Plan, and the Mine Emergency Evacuation and Firefighting Program of Instruction.

(2) The responsible person shall be trained annually in a course of instruction in mine emergency response, as prescribed by MSHA's Office of Educational Policy and Development. The course will include topics such as the following:

- (i) Organizing a command center;
- (ii) Coordinating firefighting personnel;
- (iii) Deploying firefighting equipment;
- (iv) Coordinating mine rescue personnel;
- (v) Establishing fresh air base;
- (vi) Deploying mine rescue teams;
- (vii) Providing for mine gas sampling and analysis;
- (viii) Establishing security;
- (ix) Initiating an emergency mine evacuation;
- (x) Contacting emergency personnel; and
- (xi) Communicating appropriate information related to the emergency.

(3) The operator shall certify by signature and date after each responsible person has completed the training and keep the certification at the mine for 1 year.

(b) The responsible person shall initiate and conduct an immediate mine evacuation when there is a mine emergency which presents an imminent danger to miners due to fire or explosion or gas or water inundation. Only properly trained and equipped persons essential to respond to the mine emergency may remain underground.

(c) The mine operator shall instruct all miners of the identity of the responsible person designated by the operator for their workshift. The mine operator shall instruct miners of any change in the identity of the responsible person before the start of their workshift.

(d) Nothing in this section shall be construed to restrict the ability of other persons in the mine to warn of an imminent danger which warrants evacuation.

§ 75.1600-1, *Communication facilities; main portals; installation requirements*

A telephone or equivalent two-way communication facility shall be located on the surface within 500 feet of all main portals, and shall be installed either in a building or in a box-like structure designed to protect the facilities from damage by inclement weather. At least one of these communication facilities shall be at a location where a responsible person who is always on duty when men are underground can hear the facility and respond immediately in the event of an emergency.

§ 75.351, *Atmospheric monitoring systems*

(a) AMS operation. Whenever personnel are underground and an AMS is used to fulfill the requirements of §§ 75.323(d)(1)(ii), 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), 75.350(d), or 75.362(f), the AMS must be operating and a designated AMS operator must be on duty at a location on the surface of the mine where audible and visual signals from the AMS must be seen or heard and the AMS operator can promptly respond to these signals.

(b) Designated surface location and AMS operator. When an AMS is used to comply with §§ 75.323(d)(1)(ii), 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), 75.350(d), or 75.362(f), the following requirements apply:

(1) The mine operator must designate a surface location at the mine where signals from the AMS will be received and two-way voice communication is maintained with each working section, with areas where mechanized mining equipment is being installed or removed, and with other areas designated in the approved emergency evacuation and firefighting program of instruction (§ 75.1502).

(2) The mine operator must designate an AMS operator to monitor and promptly respond to all AMS signals. The AMS operator must have as a primary duty the responsibility to monitor the malfunction, alert and alarm signals of the AMS, and to notify appropriate personnel of these signals. In the event of an emergency, the sole responsibility of the AMS operator shall be to respond to the emergency.

(3) A map or schematic must be provided at the designated surface location that shows the locations and type of AMS sensor at each location, and the intended air flow direction at these locations. This map or schematic must be updated within 24 hours of any change in this information.