

MSHA'S RESPONSE

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:

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SUBJECT:

Response to OIG's Draft Audit Report, *MSHA Needs To Provide Better Oversight of Emergency Response Plans*
(Draft Report No. 05-17-002-06-001)

MSHA appreciates the work the OIG has done to assist in evaluating our enforcement of Emergency Response Plan (ERP) requirements of the Mine Improvement and New Emergency Response Act of 2006 (MINER Act). Like the framers of the MINER Act, MSHA's goal is one of optimizing safety and survivability of miners in underground coal mines, but doing so in a practical and sensible manner. This OIG audit has helped with the development of new guidance, Program Policy Letter (PPL) P16-V-01, *Implementation of Section 2 of the Mine Improvement and New Emergency Response Act of 2006* (April 21, 2016). This PPL addressed some of the OIG's concerns by clarifying that ERPs must be approved before miners start work underground and by advising that calling 911 is the best way to alert local emergency responders.

An ERP is one of many protections in place in the event of a mine emergency. 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 to assure that emergency personnel are available to respond in the event of an emergency at an underground coal mine. The MINER Act, which was passed on June 15, 2006, in response to a series of underground coal mine disasters earlier that year, requires underground coal mine operators to develop and adopt an ERP and submit it to the appropriate MSHA District Manager for approval. The MINER Act also requires that an ERP address both the evacuation of miners endangered by an emergency and the maintenance of miners trapped underground. To be approved, mine operators must develop ERPs that include six elements. These elements are: 1) post-accident communications, 2) post-accident tracking, 3) post-accident breathable air, 4) post-accident lifelines, 5) training, and 6) local coordination.

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When Congress passed the MINER Act, it explicitly recognized that each mine is different and might have different needs in the event of an emergency. As such, Congress established an “individual plan approach” creating minimum requirements so that operators would have flexibility in formulating plans to meet their unique circumstances. As the Senate Committee on Health, Education, Labor and Pensions stated in its Report (no. 109-365, p. 4) on the legislation:

The committee recognizes that each underground coal environment is unique and that what works effectively in one setting may not be optimal in the next. Accordingly, the committee believes an approach that sets minimum standards but also enables operators to achieve safety goals with some degree of latitude will best effectuate the purposes of the act. The goals of optimizing safety and survivability must be unchanging, but the manner for doing so must be practical and sensible.

This same approach is also extended to those who review and approve the ERPs:

The individual plan model contemplates that safety solutions and risk-management plans will be designed and reviewed by those who are “on the ground”, and therefore most familiar with the unique circumstances and most practical approaches. This envisions that operators, in formulating their plans and MSHA field personnel, in reviewing and approving them, think creatively and practically.

Subsequent to the passage of the MINER Act, MSHA promulgated a number of standards, such as its Emergency Mine Evacuation, Refuge Alternatives for Underground Coal Mines, and Mine Rescue Teams standards that addressed many of the elements required in an ERP much more comprehensively than the MINER Act did. MSHA agrees that a good written plan is important for long-term continuity and planning; however, the Agency believes that the protections required by the MINER Act, which include the seven regulations referenced in MSHA’s response to the OIG’s Alert Memorandum (October 8, 2015), are more specific and critical to reducing miners’ risk. MSHA evaluates emergency preparedness and response through physical inspections of mines. If a physical inspection validates that elements of an ERP are in place, no increased risk to miners exists even if these elements are not referenced in the ERP.

MSHA agrees with the spirit of many, but not all, of the OIG’s findings, conclusions, and recommendations. The OIG found that 100 percent of the ERPs it examined were out of compliance because the plans failed to include a provision for translation services. However, there has never been a requirement that ERPs contain provisions for translation services. The OIG cites CMS&H Memo No. HQ-08-125-A, dated October 31, 2008, as the source of the provision for translation services. However, this memorandum simply served as documentation of corrective action taken to address translation service recommendations in the independent review report of MSHA’s actions at the Crandall Canyon Mine. The family members of three of the victims of the Crandall Canyon Mine accident required translation services at family briefings. While this corrective action was intended to address the specific issue in Crandall Canyon, which had to do with communicating with family members after an accident, MSHA did not intend for CMS&H memos to establish Agency policy for all underground coal mines. Nor did MSHA intend for translation services to be a required part of emergency preparedness. In addition, MSHA believes

that mine operators should not include translation services in their communications plans if an operator has no miners with family members who would need these services. MSHA does not believe that the OIG's report provides evidence that translation services were necessary at any of the mines for which the OIG reviewed ERPs.

OIG Recommendation No. 1: *Reissue PPL P16-V-01 to clarify the mine operators' responsibility for local coordination under the MINER Act. The revision should:*

- a. Inform mine operators to insert language in their ERP referencing the call lists posted at the mine if the ERP does not include them.*
- b. Clarify how a mine operator establishes procedures for coordination and communication between the operator, mine rescue teams, and local emergency response personnel and makes provisions for familiarizing local rescue personnel with surface functions that may be required in the course of mine rescue work.*

While MSHA agrees with the importance of mine operators' responsibility for local coordination under the MINER Act, MSHA notes that there is no requirement that ERPs contain call lists or incorporate them by reference. As previously mentioned, PPL P16-V-01 clarified that local emergency response coordination would normally include alerting 911 and appropriate Federal and State officials. The PPL states: "Calling 911, a universally accepted practice for notifying emergency responders in the United States, will alert local emergency responders (i.e. ambulance, police, and fire fighters), and place hospitals and doctors on alert as appropriate." It is MSHA's position that this policy meets the local coordination requirements of the MINER Act.

OIG Recommendation No. 2: *Maintain an ERP review checklist on MSHA's website that is updated when requirements change.*

While MSHA agrees with the spirit of this recommendation, the Agency believes that the intent of the MINER Act was to allow for operator flexibility in the design and formulation of ERPs, rather than using an MSHA-prescribed checklist.

As outlined in PPL P16-V-01, operators must develop and follow an ERP approved by the District Manager. Under the MINER Act, an ERP must be reviewed periodically, but at least every six months, by MSHA. As noted previously, MSHA approves ERPs based on requirements under the MINER Act that ERPs contain six elements related to communications, tracking, breathable air, lifelines, training and local coordination. Under the MINER Act, MSHA is also required to consider all comments submitted by miners or miners' representatives. When considering these comments, MSHA follows the process outlined for ventilation plans in 30 C.F.R. § 75.370.

MSHA does not believe that ERPs should be uniform among mines. MSHA District Managers should be allowed to approve ERPs based on specific mining conditions and mining systems at the mine. MSHA believes that the Agency's approval procedures provide this flexibility at no increased risk to miners.

OIG Recommendation No. 3: *Standardize the ERP review and approval processes and tools across MSHA districts. At minimum, the procedures should specify the:*

- a. Type of reviews (specialist and/or inspector) the districts should be completing and the frequency for each type of review.*
- b. Steps the reviewer should take for a specialist review versus an inspector review and the tools (e.g., standardized review checklist) to use during each review.*
- c. Dates (e.g., Date Received and Decision Date) to enter into the tracking system and instructions on where to obtain each date.*

As previously noted, under the MINER Act, an ERP must be reviewed periodically, but at least every six months, by MSHA and comments from miners and their representatives must be considered. As previously stated, PPL P16-V-01 outlines MSHA's approval procedure. The guidance specifies that: 1) an approved ERP must be suitable for conditions and mining systems at the mine; 2) proposed plans and any revision to the plan must be submitted in writing to the District Manager; 3) proposed plans or any revision to the plan can only be implemented after the District Manager has approved; and, 4) training on the ERP or revisions should be completed within 30 days of approval and before the ERP is implemented. In addition, an ERP must be designed to safely and expediently evacuate miners in the event of an emergency or, if evacuation is not possible, provide refuge alternatives that are capable of sustaining trapped miners for at least 96 hours, or for 48 hours if advanced arrangements are made.

MSHA believes that the Agency's approval procedures support Congress' vision to allow field personnel to "think creatively and practically" in consideration of "the unique circumstances and most practical approaches" regarding a mine when reviewing and approving its ERP.

The Agency believes its current approval process is consistent with the plan concept as contemplated by Congress in the MINER Act. Further, MSHA believes that the Agency's approach enables operators to meet the goals of "optimizing safety and survivability" in a manner that is "practical and sensible" as Congress intended.

OIG Recommendation No. 4: *Issue additional guidance and provide refresher training on how to enter ERP data into the tracking system and use the tracking system to provide oversight.*

MSHA agrees with the spirit of this recommendation. We will explore whether additional guidance is necessary and provide plan reviewers (including inspectors) and their supervisors with periodic refresher training on the use of the ERP tracking system.

OIG Recommendation No. 5: *Implement a process for headquarters and district personnel to manage the ERP program more effectively by periodically (e.g., quarterly or semi-annually) reviewing reports from the tracking system.*

MSHA agrees with the spirit of this recommendation. While MSHA does not believe that a new written process is necessary, the Agency will provide training for district personnel to periodically review reports from the existing tracking system.

OIG Recommendation No. 6: *Complete periodic internal reviews to verify the accuracy and use of the tracking system.*

MSHA agrees to periodically review the ERP tracking system to verify the accuracy of the data.

OIG Recommendation No. 7: *Issue additional guidance and provide refresher training on how to sufficiently document completion of inspection results in the inspection report and how to sufficiently review the inspection report and certify an inspection.*

MSHA agrees with the spirit of this recommendation. While MSHA does not believe additional written guidance is necessary, the Agency will provide refresher training on how to sufficiently document completion of inspection results in the inspection report and how to sufficiently review the inspection report and certify an inspection.

OIG Recommendation No. 8: *Complete periodic internal reviews to verify the accuracy and completeness of inspection reports and first line supervisor certifications and ensure MSHA is meeting the requirement in the MINER Act to review ERPs every six months.*

MSHA agrees with the spirit of this recommendation. MSHA will conduct periodic reviews to verify the accuracy and completeness of the data and first line supervisor certifications and ensure ERPs are being reviewed every six months. MSHA intends to add ERP plans to the plan review form for supervisor certifications. This form currently includes supervisor certifications for roof control and ventilation plans.

OIG Recommendation No. 9: *Issue regulations or guidance to make mine operators aware of tools currently available on MSHA's website they can use when developing their ERPs and clarify when mine operators should submit an ERP and whether mine operators can exclude certain information from the ERP.*

MSHA agrees with the spirit of this recommendation but does not believe the issuance of regulations or additional guidance is necessary to address this recommendation. As previously mentioned, PPL P16-V-01 has already addressed some of the OIG's concerns by clarifying that ERPs must be approved before miners start work underground. This PPL allows operators the flexibility to design a local coordination plan that fits the unique conditions and circumstances surrounding the mine and highlights which ERP provisions are covered under other MSHA standards and, to avoid unnecessary duplication, do not need to be repeated in the ERP.

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 should have any questions or need further information, please contact Sheila McConnell, Director, Office of Standards, Regulations, and Variances, at (202) 693-9463.