

APPENDIX B: AGENCY'S RESPONSE TO THE REPORT

U.S. Department of Labor

Mine Safety and Health Administration
201 12th Street South, Suite 401
Arlington, Virginia 22202-5452



AUG - 7 2019

MEMORANDUM FOR: ELLIOT P. LEWIS
Assistant Inspector General for Audit

FROM: DAVID G. ZATEZALO
Assistant Secretary of Labor for
Mine Safety and Health

SUBJECT: Response to the Office of the Inspector General's (OIG)
Draft Audit Report, *MSHA Did Not Evaluate Whether Civil
Monetary Penalties Effectively Deterred Unsafe Mine
Operations*

The Mine Safety and Health Administration (MSHA) appreciates the opportunity to comment on the work the OIG did evaluating MSHA's Civil Monetary Penalties (CMP) program. MSHA offers the following comments in response to the OIG recommendations.

Recommendation 1: "MSHA should develop metrics for the CMP program that will allow review and measurement of its effect on changing operator behavior to deter unsafe mine operations."

MSHA will explore options to address this recommendation. MSHA will attempt to "Develop metrics for the CMP program that will allow review and measurement of its effect on changing operator behavior to deter unsafe mining operations". However, it is important to note the difficulty in isolating CMP's effect on changing operator behavior because it is only one of many variables within MSHA's comprehensive compliance strategy. MSHA may need to discuss with the OIG its approach as the Agency moves forward with exploring options related to this recommendation.

Recommendation 2: "MSHA should implement controls to ensure good standing of operators with regard to safety record and delinquency status prior to assigning a legal mine identification number or changing the legal ownership structure of a mine."

Due to MSHA's authority under the Federal Mine Safety and Health Act of 1977 (Mine Act), MSHA cannot implement this recommendation. Mine identification numbers assist MSHA administratively by allowing it to efficiently perform inspections, issue citations, propose assessments, and track mine ownership history. Mine identification numbers are assigned to new mines and do not change thereafter regardless of changes in

ownership. Under 30 CFR Part 41, MSHA processes legal identity reports submitted by the operator within 30 days of any new mine opening or changes in ownership or operation. MSHA's authority under the Mine Act does not extend to the ownership, transfer or operational structure of a mine. MSHA has no authority under the Mine Act to issue regulations or implement controls that would turn its mine identification or legal identification processes into licenses or permits to acquire, transfer, or operate mines. Finally, as a practical matter, because MSHA is notified after a mine is opened or transferred, MSHA generally would not have an opportunity to vet safety records and delinquency status prior to opening or transfer.

We appreciate the opportunity to comment on the report. If you have any questions or need further information, please contact Patricia W. Silvey, Deputy Assistant Secretary for Mine Safety and Health.