



September 29, 2006

MEMORANDUM FOR: DAVID G. DYE
Acting Assistant Secretary
for Mine Safety and Health

FROM: 
ELLIOT P. LEWIS
Assistant Inspector General
for Audit

SUBJECT: MSHA Accountability Program
Coal Mine Safety and Health
Management Letter No. 05-06-007-06-001

This memorandum discusses the initial results of our performance audit of the Mine Safety and Health Administration (MSHA), Coal Mine Safety and Health (CMS&H) Accountability Program. Normally, a Management Letter is provided to be read in conjunction with an accompanying audit report. However, with CMS&H preparing to initiate Headquarters (HQ) Reviews of Districts in five districts during the coming months, we are issuing this Management Letter as an interim reporting mechanism to aid in those reviews. These results are based on our work to date and were discussed at a meeting with CMS&H officials on September 7, 2006. Fieldwork is continuing and we will report further in a separate report when our work is completed.

We have identified five potential issues. Improvement in these areas will increase the validity and management oversight benefits of this process. As currently defined, the Accountability Program does not require:

- 1) a standard process for selecting mines to be reviewed during District Peer Reviews and HQ Reviews of Districts;
- 2) that a review team member visit those mines selected for review during District Peer Reviews and HQ Reviews of Districts;
- 3) that a review team member interview appropriate district and/or field office personnel during District Peer Reviews and HQ Reviews of Districts;

- 4) a standard format for District Peer Review reports and corrective action plans; and
- 5) a centralized system for HQ to record and track the deficiencies and corrective actions identified during District Peer Reviews and HQ Reviews of Districts.

Based on our ongoing assessment of MSHA's safety and health programs and responsibilities, we initiated an audit of MSHA's Accountability Program within CMS&H. The Accountability Program was established to evaluate the quality of MSHA enforcement activities by conducting peer reviews of District activities, and to provide reasonable assurance that policies and procedures are being complied with consistently throughout Coal Mine Safety and Health, and Metal/Nonmetal Mine Safety and Health. We focused on the Accountability Program within CMS&H in part, because of the increase in coal mining accidents during FY 2006. As of July 30, 2006, there were 37 fatalities in the coal mining sector, as opposed to 28 and 22 coal mining fatalities reported for 2004 and 2005, respectively.

The Accountability Program is implemented through the policy and guidelines established by the Accountability Program Handbook (AH04-III-10). Prior to March 2004, the Accountability Program was an administrative evaluation that identified problems but had no clear mechanism to correct the root cause of those problems. It also lacked follow-up measures. The program was revised as a result of recommendations from MSHA's Internal Review of the Jim Walters Resources Company, Mine No. 5. The new program is intended to streamline the process so that corrective actions, prompted by reviews, will be made quickly and efficiently. The new program focuses on high risk areas, such as enforcement activities, instead of low risk administrative issues.

The Accountability Program has two levels of review, HQ Reviews of Districts and District Peer Reviews of field offices. The HQ Reviews of Districts are comprehensive and include in-depth reviews of the enforcement activities for a selected operation(s). HQ conducts a review of each District Office once every 2 years. These reviews ensure that significant issues that were identified during previous District Peer Reviews and/or HQ Reviews of Districts have been corrected. District Peer Reviews focus on MSHA's enforcement systems to identify deficiencies in the level and consistency of enforcement, concentrating on those activities that most directly affect the safety and health of miners. Each District conducts Peer Reviews of selected field offices annually. Results of the District Peer Reviews are used by HQ personnel to ensure enforcement consistency nationwide. District Peer Reviews are also used to identify systemic weaknesses and trends, as well as potential best practices within MSHA's inspection programs.

We have identified the following issues from our audit work to date that we believe will enhance CMS&H officials' ability to derive the most benefit from their District Peer Reviews and HQ Reviews of Districts.

1. The Accountability Program Handbook does not define or require a standard process for selecting a mine(s) to be reviewed during the District Peer Reviews and HQ Reviews of Districts. As a result, in both District Peer Reviews and HQ Reviews of Districts, only underground coal mines are considered for review, excluding surface mines and facilities from possible selection. This limits the value of the reviews by preventing procedural deficiencies or improprieties related to the oversight of surface mines and facilities from being detected and corrected. In addition, in District Peer Reviews, each District Manager uses varying criteria (e.g., size, accident rates, enforcement history, etc.) to select a mine(s) for review. This creates a risk that an individual could manipulate the selection to reduce the effort required to complete the review or to avoid detection of deficiencies or improprieties. While there may be acceptable reasons to weight the probability of selection based on various factors, the validity of the accountability process would be improved by assuring that all entities (underground, surface, and facility) have a possibility of selection and that the selection is not within the control of any individual (i.e., random).

Recommendation: MSHA should develop and require a standard process for the selection of a mine(s) to be reviewed during both District Peer Reviews and HQ Reviews of Districts. The process should assure that (a) any entity could be selected and (b) the selection is not within the control of any individual. In addition to the mine(s) selected through this process, MSHA could, if desired, select an additional mine(s) for review based on criteria of its choosing (e.g., fatalities, accidents, enforcement history, size, etc.).

2. The Accountability Program Handbook does not require review team members to visit the mine(s) selected for review. District Peer Reviews and HQ Reviews of Districts should not be based solely on an examination of various records. A review solely based on records increases the risk that errors (unintentional) or misrepresentations (intentional) in the documentation would not be detected. A physical tour of selected portions of the mine would provide a basis of comparison against events and conditions depicted in the mine's plans and inspection records.

Recommendation: MSHA should require that one or more review team members observe selected portions of the mine(s) chosen for review. The scope of these observations should be sufficient to form an overall perspective of the mine's condition and operation in comparison to that reflected by the related mine plans and records (e.g., inspector notes, citations, etc.).

3. The Accountability Program Handbook does not require review team members to conduct any interviews in completing District Peer Reviews and HQ Reviews of Districts. Omitting interviews of individuals involved in or knowledgeable of district or field office activities (e.g., MSHA personnel, mine operators, union officials) limits the scope of information used to assess those offices' operations. This increases the risk that operational deficiencies will not be detected. Interviews of appropriate individuals during District Peer Reviews and HQ Reviews of Districts would provide an opportunity to corroborate and expand on information about operational issues identified through other review sources (i.e., document review and mine visits).

Recommendation: MSHA should require that review team members interview appropriate individuals during District Peer Reviews and HQ Reviews of Districts. The scope of these interviews should address overall office operations as well as the information contained in any specific records (e.g., inspector notes, citations, etc.) reviewed.

4. The Accountability Program Handbook does not require a standard format for District Peer Review reports and corrective action plans. As a result, the Summary Accountability Reports that District Managers submitted to CMS&H officials during the period January 1, 2005 – June 30, 2006, presented peer review information in a variety of formats and levels of detail. This makes it more difficult for CMS&H HQ officials to determine that all appropriate (a) review work was performed, (b) results were reported, and (c) corrective actions were identified. It also makes it more difficult to analyze comparable information across districts to identify trends and systemic issues. A standard format for District Peer Review reports would facilitate the ability of CMS&H officials to carry out their oversight review and analysis.

Recommendation: MSHA should require the use of a standard report format, in both presentation and content, for District Peer Review Reports and corrective action plans. This would help MSHA to assess the consistent application of policies and procedures nationwide as well as facilitate the identification of systemic weaknesses and the implementation of potential best practices.

5. The Accountability Program Handbook does not require that CMS&H maintain a tracking system of deficiencies and corrective actions. Without an effective method to track the results, there is an increased risk that corrective actions will not be timely completed and that systemic deficiencies will not be identified. A tracking system would facilitate CMS&H officials' ability to assure the timely completion of planned corrective actions and enhance their ability to review and analyze systemic weaknesses and trends.

Recommendation: MSHA should develop a system to record and track the results of District Peer Reviews and HQ Reviews of Districts, e.g., identified deficiencies, planned corrective actions, potential best practices, etc. This tracking system will facilitate review and analysis of systemic weaknesses and trends, help to ensure that corrective actions are completed in a timely manner, and that potential best practices are shared nationwide.

Agency Response

In response to the draft Management Letter, MSHA stated that CMS&H management has seriously considered our suggestions and concurs that the enhancements will not only create a more uniform and standardized approach to Headquarters and District Peer review processes, but also assist CMS&H in strengthening this very important oversight program. MSHA specifically agreed that the Accountability Handbook does not require a number of processes related to the selection of mines, mine visits, interviews, standardized format for District Peer Review reports and corrective actions, and a centralized tracking system for deficiencies and corrective actions identified during HQ and District Peer Reviews. MSHA's response outlines corrective actions that CMS&H will take to address each recommendation. The Acting Assistant Secretary's response is included in its entirety as an attachment.

OIG Conclusion

Based on MSHA's response, we consider recommendations 1, 3, 4 and 5 resolved. These recommendations will be closed upon receipt and review of the results of MSHA's corrective actions. With regard to recommendation 2, MSHA stated that it would include visits to a percentage of mine(s) selected for District Peer Reviews. We recognize that visiting all mines selected for District Peer Reviews presents a resource issue; therefore, we will take into consideration MSHA's proposed action as we continue our ongoing audit of the Accountability Program.

This final Management Letter is submitted for appropriate action. We request a response within 60 days describing actions taken in response to the recommendations. If you have any questions regarding this Management Letter, please contact Charles Allberry, Regional Inspector General for Audit in Chicago, at 312-353-2416.

Attachment

cc: John Langton
Acting Administrator for CMS&H

Melinda Pon
Special Assistant to the Administrator for CMS&H

Kenneth Bullock

Director, Office of Program Policy Evaluation

Brent Carpenter
MSHA Audit Liaison



SEP 28 2006

MEMORANDUM FOR ELLIOT P. LEWIS

Assistant Inspector General for Audit

FROM:

DAVID G. DYE

Acting Assistant Secretary for
Mine Safety and Health

SUBJECT:

Full Response to Draft OIG "MSHA Accountability Program
Coal Mine Safety and Health Management Letter No. 05-06-007-
06-001"

We appreciate the opportunity to comment on the Department of Labor's Office of the Inspector General (OIG) Management Letter on MSHA's Accountability Program Coal Mine Safety and Health [No. 05-06-007-06-001]. The OIG provided Coal Mine Safety and Health (CMS&H) with a list of improvements that "will increase the validity and management oversight benefits of this (Accountability) process." As you will note in our responses to each of the OIG's 5 recommendations below, CMS&H management has seriously considered your suggestions and concur that the enhancements will not only create a more uniform and standardized approach to Headquarters and District Peer Review processes, but also assist CMS&H in strengthening this very important oversight program.

During Phase 1 of the OIG's Accountability Audit, the Accountability Audit team correctly noted that MSHA's Accountability Handbook does not require a number of processes related to the selection of mines, mine visits, interviews, standardized format for District Peer Reviews reports and corrective actions, and a centralized tracking system for deficiencies and corrective actions identified during Headquarters (HQ) and District Peer Reviews. Even before the OIG audit, CMS&H Headquarters and some districts went above and beyond the Handbook requirements and implemented some of these processes in their reviews. Since receipt of the draft management letter, CMS&H management initiated discussions with our District Managers and District Peer Review Coordinators on each of the 5 recommendations and is currently addressing the OIG's concerns.

The following are MSHA's specific responses to the OIG recommendations.

Recommendation No. 1: MSHA should develop and require a standard process for the selection of a mine(s) to be reviewed during both District Peer Reviews and HQ Reviews of Districts. The process should assure that (a) any entity could be selected and (b) the selection is not within the control of any individual. In addition to the mine(s) selected through this process, MSHA, could, if desired, select an additional mine(s) for review based on criteria of its choosing (e.g., fatalities, accidents, enforcement history, size, etc.)

MSHA Response:

On pages 2 and 3 of the draft Management Letter, the OIG noted that “The Accountability Program Handbook does not define or require a standard process for selecting a mine(s) to be reviewed during the District Peer Reviews and HQ reviews of Districts. As a result, in both District Peer Reviews and HQ Reviews of Districts, only underground coal mines are considered for review, excluding surface mines and facilities from possible selection. This limits the value of the reviews by preventing procedural deficiencies or improprieties related to oversight of surface mines and facilities from being detected and corrected.”

To date, all Headquarters Reviews have focused on problematic, high-risk underground mines because of the inherent risks and exposures to the health and safety of miners. Some, but not all, districts have included surface operations and facilities in their district peer reviews in addition to underground mines. Knowledgeable CMS&H personnel did in fact consider all possible mines, and based on expert knowledge of empirical and historical performance experience in the districts, selected those mines that presented the highest risk.

Since the implementation of the Accountability Program Handbook, Headquarters and the Districts have attempted to standardize the mine selection process and a team of individuals work on the mine selection process; this has been an iterative process. CMS&H evaluates a number of screening criteria for the mine(s) selected for review. These include mine profiles for small, medium and large mines, enforcement and accident histories, as well as any specific conditions and/or management-labor relations issues at the mine.

To address the OIG’s recommendation, CMS&H is working with MSHA’s statisticians to derive a method or random (or random selection based on weighting criteria) process to “assure that all entities (underground, surface and facility) have a possibility of selection and that the selection is not within the control of any individual (i.e. random).” Once we are confident with the process, we will attempt to pilot this approach during the remainder of CY 2006 and evaluate its utility prior to the start of the CY 2007 Accountability Reviews. As an interim measure, we will be adding a surface mine or

surface facility to one of the upcoming HQ Accountability Reviews in addition to a high-risk underground mine.

Recommendation No. 2: MSHA should require that one or more review team members observe selected portions of the mine(s) chosen for review. The scope of these observations should be sufficient to form an overall perspective of the mine's condition and operation in comparison to that reflected by the related mine plans and records (e.g., inspector notes, citations, etc.)

MSHA Response:

On page 3 of the draft Management letter, the OIG states that "The Accountability Program Handbook does not require review team members to visit the mine(s) selected for review...A review solely based on records increases the risk that errors (unintentional) or misrepresentations (intentional) in the documentation would not be detected..."

This is an accurate statement; however, CMS&H HQ and some District Peer Reviews go above and beyond the requirements of the Accountability Program Handbook. HQ and some districts have included mine visits as part of the review process. Some other districts have not included mine visits; however, review team members are made up of members who have visited the mines being reviewed in the previous six months in their capacity as supervisors.

To address the OIG's concerns, CMS&H is drafting a policy memo to require that mine visits are included in all HQ Reviews and that District Peer Reviews include visits to a percentage of mine(s) selected for review. Limiting mine visit(s) to a percentage (to be determined) at the District Peer Review level will enable the districts to continue with the depth and breadth of the mines reviewed and will not create an undue burden on district resources.

Recommendation No. 3: MSHA should require that review team members interview appropriate individuals during District Peer Reviews and HQ Reviews of Districts. The scope of these interviews should address overall office operations as well as the information contained in any specific records (e.g., inspector notes, citations, etc.) reviewed.

MSHA Response:

On page 4 of the draft Management Letter, the OIG states: "The Accountability Program Handbook does not require review team members to conduct any interviews in completing District Peer Reviews and HQ reviews of Districts...Omitting interviews of individuals involved in or knowledgeable of district or field office activities (e.g.,

MSHA personnel, mine operators, union officials) limits the scope of information used to assess those offices' operations. This increases the risk that operational deficiencies will not be detected."

This is an accurate statement; however, CMS&H HQ and districts go above and beyond the requirements of the Handbook. As a part of the HQ and District Peer Review processes, interviews of district management personnel are in fact conducted. This practice is consistent with the OIG's belief that these interviews "would provide an opportunity to corroborate and expand on information about operational issues identified through other review sources (i.e. document review and mine visits)."

To address the OIG's concerns, CMS&H is drafting a policy memo to require that interviews of district management personnel be included in all HQ and District Peer Reviews.

Recommendation 4: MSHA should require the use of a standard report format, in both presentation and content, for District Peer Review Reports and corrective actions plans. This would help MSHA to assess the consistent application of policies and procedures nationwide as well as facilitate the identification of systemic weaknesses and the implementation of potential best practices.

On page 4 of the draft Management Letter, the OIG states "The Accountability Program Handbook does not require a standard format for District Peer Review reports and corrective action plans...Summary Accountability Reports that District Managers submitted to CMS&Hpresented peer review information in a variety of formats and levels of detail. This makes it more difficult for CMS&H HQ officials to determine all appropriate (a) review work was performed, (b) results were reported, and (c) corrective actions were identified. It also makes it more difficult to analyze comparable information across districts to identify trends and systemic issues."

CMS&H concurs with this recommendation and will require mandatory use of the standardized report template for District Peer Review reports and corrective actions. To date, the use of this template has been optional. This requirement will also be incorporated in CMS&H's policy memo that will address OIG's Recommendations 2 and 3. Guidance will also be provided to the districts on the level of detail required to facilitate HQ oversight review and analyses.

Recommendation 5: MSHA should develop a system to record and track the results of District Peer Reviews and HQ Reviews of Districts, e.g., identified deficiencies, planned corrective actions, potential best practices, etc. This tracking system will facilitate review and analysis of systemic weaknesses and trends, help to ensure that corrective actions are completed in a timely manner, and that potential best practices are shared nationwide.

MSHA Response:

CMS&H concurs with this recommendation and work is currently underway to develop and implement this centralized system to record and track the deficiencies identified during District Peer Reviews and HQ Reviews of Districts and to ensure that the corrective actions are implemented and completed in a timely manner.