



APR 22 2014

MEMORANDUM FOR PATRICIA W. SILVEY

Deputy Assistant Secretary for Operations
Mine Safety and Health Administration

THROUGH:

MARVIN LICHTENFELS [REDACTED]
Acting Administrator for [REDACTED]
Metal and Nonmetal Mine Safety and Health Administration

JAY P. MATTOS [REDACTED]
Director, Office of Assessments, Accountability,
Special Enforcement and Investigations

FROM:

ALFRED L. CLAYBORNE [REDACTED]
Deputy Director, Office of Accountability, Special Enforcement
and Investigations

SUBJECT:

MSHA Office of Accountability Audit, MNM Northeastern District,
Geneva, New York Field Office, and [REDACTED]
[REDACTED]

Introduction

This memorandum summarizes the Office of Accountability's audit of the subject district office, field office, and mine. The audit included MSHA field activities; level of enforcement; conditions and practices at the mine; Field Activity Reviews (FARs); Office Reviews (ORs); second level reviews; and MSHA supervisory and managerial oversight. The audit included evaluations to determine if there were any deficiencies in areas commonly identified during Agency internal reviews of MSHA's actions following past mine disasters.

Positive findings as well as issues requiring attention are included in this audit report.

Overview

This audit was conducted by Accountability Specialists Jerry Kissell and Mark Odum from [REDACTED], through [REDACTED], [REDACTED] accompanied the accountability specialists during this audit.

The audit team traveled with the inspection party to the [REDACTED] on a Regular (E-01) inspection on [REDACTED]. Areas and activities examined in the underground workings of the [REDACTED] included the check-in/check-out system (surface and underground boards), 4 Yard North working section, 5 Room conveyor travel way and construction area, personnel carrier buggies, under-cutter face equipment, scaler face equipment, 4 Yard North conveyor belt, stamler feeder and transfer points, powder truck and trailer, day box explosive storage, under-cutter operation in 4 Yard North, and ground support installation (rock bolting).

All areas inspected included observations of travel ways, guarding, general housekeeping, and electrical boxes and cables, bulletin board postings and mine maps where persons gather. (The escape and evacuation plans were posted in these same locations). The team observed work practices and safety talks given to individual miners as encountered.

Audit Results

The audit revealed positive findings in several areas, including the following:

1. Enforcement personnel conducted themselves in a professional and courteous manner at all times during the audit and during the inspection.
2. Inspection procedures observed during the audit were in compliance with MSHA policy and procedures.
3. Field Accompanied Reviews (FARs) and Office Reviews (ORs) for the Geneva Field Office were adequately documented.
4. Enforcement personnel used appropriate enforcement tools during the mine site visit.
5. Staff and safety meetings were consistently documented and showed updates and reviews of MSHA initiatives and policy memoranda.
6. The district established a SOP for every office to complete a tracking map for underground mine inspections to identify the areas inspected by travel dates for inspectors and the location of citation issuances.

This audit revealed one issue that requires a corrective action.

Citations were not being written and issued as soon as practical, or no later than the next business day for large mine operators when multiple day or multiple week inspections occurred.

Attachments

A. Internal Review Summary

B. Office of Accountability Checklist

C. Statistics

D. Citations/Orders issued during this audit

- | | | |
|----|------------|-----------|
| 1. | [REDACTED] | 57.9300a |
| 2. | [REDACTED] | 57.4104b1 |
| 3. | [REDACTED] | 47.44b |

E. Examples of Citations Issued During Previous E01 Inspections

(No issues were identified during this audit with previously issued actions)

F. Audit Checklist Items

G. District Corrective Action Plan

United States Department of Labor
 Mine Safety and Health Administration
 Office of Accountability

District Field Office Mine ID Date

Attachment A – Internal Review Summary

The table below lists the most common internal review findings following mine disasters. The Geneva, New York Field Office had one of the most commonly identified issues.

	Common Internal Review Findings	Examples of Deficiencies:
	Failure to identify deviations in approved plans.	Not identifying operator departures from requirements in any plan that requires approval, such as training plans, roof control plans, ventilation plans, emergency response plans, etc.
X	Incomplete or inadequate inspections.	Not following policy or procedures for conducting inspections. Failure to cite all violations. Not inspecting all areas and equipment.
	Failure to conduct 103(i) spot inspections according to policy.	Not conducting spot inspections in a timely manner and at irregular intervals.
	Supervisors did not provide adequate oversight.	No review/lax review of inspection reports. Inadequate review of PKW/SAR forms. Failure to conduct required Field Activity Reviews and Accompanied Activities.
	Improper evaluations of gravity, negligence and type of enforcement action.	Inadequate documentation to support citation and evaluation. Failure to consider and document aggravating or mitigating circumstances.
	Inadequate Peer Reviews	Inadequate district level Peer Reviews. Failure to adopt and follow corrective action plans. Failure to follow up or monitor effectiveness of corrective action plans.
	Weakness in the ACR Program	Not following ACR handbook. Inadequate management oversight. Failure to follow the Mine Act, MINER Act, 30 CFR and MSHA policy.
	MSHA data not used or reviewed.	Key Indicators, Mine Profile, Inspection completion reports not being used. Failure to keep MSIS data up to date and accurate.
	Lack of unwarrantable failure tracking system	No or inadequate unwarrantable failure sequence tracking system.
	Conflict of Interest	Inspecting prior employers, employment of relatives
	Failure to comply with Hazard Complaint Procedures.	Improper coding of inspections. Inadequate documentation of inspections/investigations.
	Investigations of multi-phase plans	Failure to conduct on-site evaluations of plans.
	Failure to observe retreat mining.	Inadequate periodic evaluations when retreat mining is conducted.
	Section 103(a) is violated when an operator gives advance notice of MSHA's presence on mine property	Citation not issued when advance notice of impending MSHA inspection.

United States Department of Labor
Mine Safety and Health Administration
Office of Accountability

District Field Office Mine ID Date

Tracking tool was needed to monitor personnel resources and those devoted to special investigations	Not monitoring resources devoted to special investigations.
---	---

Needed to improve tracking of retraining of supervisors, inspectors, and specialists	Some supervisors, inspectors, and specialists were not being retrained.
--	---

United States Department of Labor
Mine Safety and Health Administration
Office of Accountability

District Field Office Mine ID Date

Attachment B – Audit Checklist

1. Determine if complete and thorough E01 inspections are being conducted and /or if policy and procedures were properly followed.
Adequate Corrective Action Needed Comments Below

Policy and procedures were not being followed in that citations were not being written and issued as soon as practical or by the next business day and provided to mine operators when multiple day or multiple week inspections occurred. (See attachment F for details)

2. Determine if documentation for inspections is complete and thorough.
Adequate Corrective Action Needed Comments Below

3. Determine if citations and orders issued during previous inspections were properly evaluated for gravity, negligence, level of enforcement, number of persons affected, and supported by documentation.
Adequate Corrective Action Needed Comments Below

4. Evaluate inspector(s) examination of required records and postings for compliance with applicable standards.
Adequate Corrective Action Needed Comments Below

Previous inspection reports show record reviews are being completed.

5. Evaluate the inspector(s) physical examination of the active working areas of the mine and inspection of all mining cycles.
Adequate Corrective Action Needed Comments Below

No blasting took place during the mine visit.

6. Evaluate the inspector(s) on-site contaminant assessment and documentation.
Adequate Corrective Action Needed Comments Below

No health samples were taken during this spot inspection. A review of previous inspection reports shows health sampling was conducted February 2013.

United States Department of Labor
Mine Safety and Health Administration
Office of Accountability

District Field Office Mine ID Date

7. Evaluate inspector(s) examination of electrical equipment, transformer stations, and/or electrical circuits.

Adequate Corrective Action Needed Comments Below

8. Determine if adequate close-out conferences are being conducted at the end of each inspection.

Adequate Corrective Action Needed Comments Below

Field notes reviewed show daily and final close-outs are consistently conducted.

9. Determine if Possible Knowing/Willful (PKW) Forms are documented and processed according to agency policy and procedures.

Adequate Corrective Action Needed Comments Below

No PKWs were reviewed as part of this audit.

10. Evaluate 103(i) spot inspection (E02) reports for the office/district being audited for compliance with agency policies and procedures, including compliance with time frames and separating E02 inspections from other events.

Adequate Corrective Action Needed Comments Below

There are no 103(i) mines in this field office

11. Determine if Hazard Complaint inspections/investigations are being conducted according to policy and procedures.

Adequate Corrective Action Needed Comments Below

12. Determine if supervisors are monitoring inspector time and activity to ensure proper use of time, including off-shift and weekend work, by all inspectors.

Adequate Corrective Action Needed Comments Below

United States Department of Labor
Mine Safety and Health Administration
Office of Accountability

District Field Office Mine ID Date

13. Are required Office Reviews (ORs) and supervisory follow-up reviews being conducted and documented according to agency policy and procedures?

Adequate Corrective Action Needed Comments Below

14. Are Field Accompanied Reviews (FARs) and supervisory follow-up reviews being conducted and documented according to agency policy and procedures?

Adequate Corrective Action Needed Comments Below

15. Determine if a 104(d) tracking system is in place and being kept current at the office being audited.

Adequate Corrective Action Needed Comments Below

16. Determine if the Mine Files are legible, up to date, and reviewed by supervisors..

Adequate Corrective Action Needed Comments Below

17. Determine if supervisors are visiting active mines.

Adequate Corrective Action Needed Comments Below

18. Review documentation of staff meetings/safety meetings to determine their effectiveness and relevance to current issues and the Agency's mission.

Adequate Corrective Action Needed Comments Below

United States Department of Labor
Mine Safety and Health Administration
Office of Accountability

District Field Office Mine ID Date

19. Determine if Assistant District Manager is conducting the required second level reviews and holding supervisors accountable for oversight of Office Reviews and Field Accompanied Activity Reviews.

20. Determine if district management personnel are reviewing work products and reports for accuracy and completeness.
Adequate Corrective Action Needed Comments Below

21. Determine if District Manager is using discretion in granting conferences and monitoring the ACR program to ensure that all decisions (including upholding, modifying or vacating citations) are properly documented and justified by the CLR's.
Adequate Corrective Action Needed Comments Below
Not reviewed during this audit

22. Determine if District Manager is holding the Supervisory Special Investigator accountable for properly evaluating and initiating or denying potential cases.
Adequate Corrective Action Needed Comments Below
Not reviewed during this audit.

23. Determine if managers and supervisors are using required standardized reports to review critical data relevant to inspections and investigations.
Adequate Corrective Action Needed Comments Below

United States Department of Labor
Mine Safety and Health Administration
Office of Accountability

District Field Office Mine ID Date

24. Determine if Districts are conducting in-depth Peer Reviews in compliance with agency policy and procedures including follow-up to determine the effectiveness of corrective actions.

Adequate Corrective Action Needed Comments Below

A peer review was completed 2/25-28/2013 in the Hebron, OH field office.

25. Is information (mine status, methane liberation, number of employees, etc.) being entered into the MSHA Standardized Information System (MSIS) accurately and in a timely manner?

Adequate Corrective Action Needed Comments Below

26. Determine if inspectors have sufficient equipment and supplies to conduct thorough inspections.

Adequate Corrective Action Needed Comments Below

27. Evaluate the overall condition of the mine relative to the level of enforcement documented in previously completed inspections.

Adequate Corrective Action Needed Comments Below

28. Determine if inspectors have an understanding of when a violation of Section 103(a) for Advance Notice occurs and whether appropriate citations are issued for Advance Notice.

Adequate Corrective Action Needed Comments Below

29. Determine if the management resource tracking tool is being used to track resources regarding Special Investigations.

Adequate Corrective Action Needed Comments Below

United States Department of Labor
Mine Safety and Health Administration
Office of Accountability

District Field Office Mine ID Date

<p>30. Determine if retraining of supervisors, inspectors, and specialists is being tracked.</p> <p>Adequate <input checked="" type="checkbox"/> Corrective Action Needed <input type="checkbox"/> Comments Below <input checked="" type="checkbox"/></p> <p>FO and the district track all staff training and retraining activities.</p>
--

United States Department of Labor
 Mine Safety and Health Administration
 Office of Accountability

District Northeastern Field Office Geneva, NY Mine ID Date

Attachment C – Statistics

S&S Rate Comparison

Comparison of FY 2011 shows the Geneva, New York Field Office was the same as the Northeastern district but below the national average. During FY 2012, the S&S rate for the Geneva FO and the Northeastern district were below the national average. In FY 2013 the S&S rate for the Geneva FO and the Northeastern district were below the national average. Citations issued during the audit were appropriately issued and consistent with policy and procedures. (See attachment D)

Fiscal Year	Geneva Field Office	Northeastern District	National Average
2011	26%	26%	30%
2012	21%	24%	27%
2013	21%	23%	25%

Time and Activity Comparison

A comparison of FY 2012 and FY 2013 time distribution for the Geneva, New York Field Office at all mining operations show that time in the Other category has stayed about the same and is below the district average and national average. On-Site Enforcement Time has slightly decreased and is below the district average and national average.

Time Distribution (%) – E01 Inspections							
FY	Area/Office	Travel	*Other	**On-Site Enf. Time	Total Enf. Time	Non Enf. Time	Total
2011	FO	19%	12%	45%	76%	24%	100%
	District	20%	17%	43%	80%	20%	100%
	Nat'l Avg	21%	15%	42%	78%	22%	100%
2012	FO	17%	11%	40%	68%	32%	100%
	District	19%	17%	44%	80%	20%	100%
	Nat'l Avg	20%	15%	43%	78%	22%	100%
2013	FO	18%	11%	39%	68%	32%	100%
	District	21%	16%	44%	81%	19%	100%
	Nat'l Avg	21%	15%	42%	78%	22%	100%

* Other time includes off site citation/order writing, health equipment calibration, and mailing of samples

** Total On-Site time includes citations written on-site

United States Department of Labor
 Mine Safety and Health Administration
 Office of Accountability

District Northeastern Field Office Geneva, NY Mine ID [REDACTED] Date [REDACTED]

Attachment D- Citations issued during the Audit:

Mine Citation/Order U.S. Department of Labor
 Mine Safety and Health Administration

Section I--Violation Data		
1. Date Mo Da Yr [REDACTED]	2. Time (24 Hr. Clock) [REDACTED]	3. Citation/ Order Number [REDACTED]
4. Served To [REDACTED]		5. Operator [REDACTED]
6. Mine [REDACTED]		7. Mine ID [REDACTED] (Contractor)
8. Condition or Practice		8a. Written Notice (103g) <input type="checkbox"/>

No berm was provided for a distance of 50 feet along the right side of a ramp located along 5 room conveyor located in the main escape way. This area is accessed numerous times a day. This area is traveled by numerous pieces of equipment from a John Deere Gator, pickup truck to a Caterpillar LHD. Without a berm in place an equipment operator is exposed to a drop off hazard up to 6 feet. A John Deere Gator operator could be fatally injured if an over travel and overturn accident was to occur.

Photos taken.

See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>			
9. Violation	A. Health <input type="checkbox"/> Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 57.9300a

Section II--Inspector's Evaluation			
10. Gravity:			
A. Injury or Illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input checked="" type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>			
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input checked="" type="checkbox"/>			
C. Significant and Substantial: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>			D. Number of Persons Affected: 001
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input type="checkbox"/> D. High <input checked="" type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>			
12. Type of Action 104a		13. Type of Issuance (check one) Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>	
14. Initial Action		E. Citation/Order Number	
A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>		F. Dated Mo Da Yr	

15. Area or Equipment	
16. Termination Due	
A. Date Mo Da Yr [REDACTED]	B. Time (24 Hr. Clock) [REDACTED]

Section III--Termination Action	
17. Action to Terminate A berm was put into place along ramp. Photo taken.	

18. Terminate	
A. Date Mo Da Yr [REDACTED]	B. Time (24 Hr. Clock) [REDACTED]

Section IV--Automated System Data		
19. Type of Inspection (activity code) E01	20. Event Number [REDACTED]	21. Primary or Mill P
22. Signature [REDACTED]		23. AR Number [REDACTED]

MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.

United States Department of Labor
 Mine Safety and Health Administration
 Office of Accountability

District Northeastern Field Office Geneva, NY Mine ID [REDACTED] Date [REDACTED]

Mine Citation/Order

U.S. Department of Labor
 Mine Safety and Health Administration



Section I--Violation Data

1. Date <small>Mo Da Yr</small>	2. Time (24 Hr. Clock)	3. Citation/ Order Number
4. Served To	5. Operator	
6. Mine	7. Mine ID (Contractor)	
8. Condition or Practice		8a. Written Notice (103g) <input type="checkbox"/>

Combustible waste including greasy rags, paper, and other combustibles had accumulated in the uncovered metal trash container in the 4 Yard service area. The combustibles in the metal container create a fire hazard to employee working in the area. Serious injury can occur if a fire was to develop.

Photos taken.

Standard 57.4104b1 was cited [REDACTED]

See Continuation Form (MSHA Form 7000-3a)

9. Violation	A. Health <input type="checkbox"/> Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR
			57.4104b1

Section II--Inspector's Evaluation

10. Gravity:			
A. Injury or illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input checked="" type="checkbox"/> Reasonably Likely <input type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>			
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input checked="" type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input type="checkbox"/>			
C. Significant and Substantial: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			D. Number of Persons Affected: 001
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input checked="" type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>			
12. Type of Action 104a		13. Type of Issuance (check one) Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>	
14. Initial Action			
A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>		E. Citation/ Order Number	
		F. Dated Mo Da Yr	
15. Area or Equipment			

16. Termination Due	A. Date <small>Mo Da Yr</small>	B. Time (24 Hr. Clock)

Section III--Termination Action

17. Action to Terminate A metal lid was found and put into place on can. Photo taken.

18. Terminate	A. Date <small>Mo Da Yr</small>	B. Time (24 Hr. Clock)

Section IV--Automated System Data

19. Type of Inspection (activity code)	E01	20. Event Number	21. Primary or Mill
			P
22. Signature			23. AR Number

MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.

United States Department of Labor
 Mine Safety and Health Administration
 Office of Accountability

District Northeastern Field Office Geneva, NY Mine ID [REDACTED] Date [REDACTED]

Mine Citation/Order

U.S. Department of Labor
 Mine Safety and Health Administration



Section I--Violation Data

1. Date [REDACTED]	2. Time (24 Hr. Clock) [REDACTED]	3. Citation/Order Number [REDACTED]
4. Served To [REDACTED]		5. Operator [REDACTED]
6. Mine [REDACTED]		7. Mine ID [REDACTED] (Contractor) <input type="checkbox"/>
8. Condition of Practice		8a. Written Notice (103g) <input type="checkbox"/>

A 20 oz. Gatorade bottle with an unknown liquid was found next to the grease barrel in 4 Yard service area without being labeled with at least the common name of its contents. Miners access this area daily for parking of equipment or accessing the working faces. This exposes miners to lost work days or restricted duty type injuries in the event that proper first aid response cannot be retrieved from the MSDS.

Photos taken.

See Continuation Form (MSHA Form 7000-3a)

9. Violation	A. Health <input type="checkbox"/> Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 47.44b
--------------	---	-------------------	---

Section II--Inspector's Evaluation

10. Gravity:			
A. Injury or illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input checked="" type="checkbox"/> Reasonably Likely <input type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>			
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input checked="" type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input type="checkbox"/>			
C. Significant and Substantial: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			D. Number of Persons Affected: 001
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input checked="" type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>			
12. Type of Action 104a		13. Type of Issuance (check one) Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>	
14. Initial Action A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>			E. Citation/Order Number
			F. Dated Mo Da Yr
15. Area or Equipment			

16. Termination Due	A. Date Mo Da Yr [REDACTED]	B. Time (24 Hr. Clock) [REDACTED]
---------------------	---	---

Section III--Termination Action

17. Action to Terminate The container and its contents were properly disposed of. Photos taken.

18. Terminate	A. Date Mo Da Yr [REDACTED]	B. Time (24 Hr. Clock) [REDACTED]
---------------	---	---

Section IV--Automated System Data

19. Type of Inspection (activity code) E01	20. Event Number [REDACTED]	21. Primary or Mill P
22. Signature [REDACTED]		23. AR Number [REDACTED]

MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.

United States Department of Labor
Mine Safety and Health Administration
Office of Accountability

District Field Office Mine ID Date

Attachment E – Examples of Citations Issued During Previous E01 Inspections

(No issues were identified during this audit)

United States Department of Labor
Mine Safety and Health Administration
Office of Accountability

District Field Office Mine ID Date

Attachment F – Checklist items

Audit Checklist item # 1 – Policy and procedures were not properly followed.

1. At larger operations when inspections took multiple days or multiple weeks, inspectors were not typically issuing citations in writing to mine operators as soon as practical or no later than the next business day.

Example: Based on interviews with the supervisor and inspectors, inspectors were typically delivering the paper copies of citations to mine operators on Fridays or the last day of the inspection week. For example, if a violation was observed on Monday, the operator was verbally informed that a citation was going to be issued for the violation. The paper copies of the citations were not delivered to the operator until the weekly close-out conducted on Friday or the last inspection day of the same week.

Requirement:

- PH13-IV-1 Metal and Nonmetal General Inspection Procedures Handbook, Ch.4, Item Y, p. 25-26 – (underlining for emphasis)

Citations and orders of withdrawal shall be written and issued as soon as practical after violations are observed, but no later than the next business day. A best practice is for inspectors to issue citations and orders of withdrawal at mine sites. In most cases, inspectors should issue orders of withdrawal the day they are observed. Exceptions to this guidance should be discussed with the inspector's supervisor; other exceptions can be found in MSHA's Citation and Order Writing Handbook.

- PH13-I-1, Citation and Order Writing Handbook, Ch. 2, II A, p.3 – (underlining for emphasis)

If, upon inspection or investigation, an inspector believes that a mine operator subject to the Mine Act has violated this Act, or any mandatory health or safety standard, rule, order, or regulation promulgated pursuant to the Mine Act, he or she shall, with reasonable promptness, issue a citation to the mine operator. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the Mine Act, standard, rule, regulation, or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation. The requirement for the issuance of a citation with reasonable promptness shall not be a jurisdictional prerequisite to the enforcement of any provision of the Mine Act.

United States Department of Labor
Mine Safety and Health Administration
Office of Accountability

District Field Office Mine ID Date

- PH13-I-1, Citation and Order Writing Handbook, Ch. 7, II, p. 52 – (underlining for emphasis)

It is not mandatory to give mine operators the citation or order form at the time the violation is observed. The operator or his designee, however, shall be told that there is a violation and a thorough discussion will ensue as to exposure, negligence, severity, and time permitted for abatement. Citations and orders shall be issued to the mine operator or his or her agent with reasonable promptness.

Note: Some citations or orders, because of the time needed for analysis or for other reasons, might be cited and delivered to the mine operator at a time after the violation has occurred. Examples include, but are not limited to: certain Part 50 violations, certain health violations, violations cited as a result of accident investigations, and violations cited as a result of reviewing accident forms.

United States Department of Labor
Mine Safety and Health Administration
Office of Accountability

District Field Office Mine ID Date

Attachment G – District Corrective Action Plan

MEMORANDUM FOR TED SMITH

Supervisor, Office of Accountability
Mine Safety and Health Administration

FROM: DONALD J. FOSTER
District Manager,
Metal/Nonmetal Northeastern District

SUBJECT: Proposed Corrective Action Plan

This memo is a response to the audit conducted by your office from [REDACTED] at the Geneva, NY field office and the [REDACTED]. This memo addresses the proposed corrective action for one deficiency outlined in your Office of Accountability audit.

Deficiency No. 1:

Audit Checklist item # 1 – Policy and Procedures not being followed.

1. At larger operations where inspections took multiple days or multiple weeks, inspectors were not typically issuing citations in writing to mine operators as soon as practical or no later than the next business day.

Proposed Corrective Action:

Training was conducted on December 2, 2013, by Edward Knoll, Geneva, NY Field Office Supervisor. Knoll reinstructed his staff, addressing issuing citations/ orders with reasonable promptness as in accordance with Metal and Nonmetal General Inspection Procedures Handbook and the Citation and Order Writing Handbook. Additional training was provided to the Northeast District Field Office Supervisors by Victor Lescznske, SSI, Rodney Rice, Acting NED ADM, and Dennis Yesko, Acting NED District Manager, addressing this issue during the weeks of December 3rd and December 10th.

United States Department of Labor
Mine Safety and Health Administration
Office of Accountability

District Field Office Mine ID Date

ROOT CAUSE:

Training/Supervisor Oversight:

The inspectors did not follow MSHA Policy and Procedures. As a result, citations were not being written and issued as soon as practical, or no later than the next business day for large mine operators when multiple day or multiple week inspections occurred.

Citations and orders of withdrawal shall be written and issued as soon as practical after violations are observed, but no later than the next business day. A best practice is for inspectors to issue citations and orders of withdrawal at mine sites. In most cases, inspectors should issue orders of withdrawal the day they are observed. Exceptions to this guidance should be discussed with the inspector's supervisor; other exceptions can be found in MSHA's Citation and Order Writing Handbook.

As outlined in attachment F- Audit Checklist item # 1

OFFICE RESPONSIBLE FOR IMPLEMENTING:

Ed Knoll the Geneva, NY Field Office Supervisor will be responsible for providing the required training pertaining to issuing citation/orders according to MSHA policy and procedures provided in MSHA handbooks and PPM.

The Assistant District Manager for (Enforcement) will assure that Ed Knoll, Geneva NY Field Office Supervisor completes the above training and guidance to all inspectors and trainees described for Deficiency No. 1.

TIMEFRAME FOR COMPLETION:

The deficiencies shall be addressed and corrected by Ed Knoll, FO Supervisor, Geneva, NY by January 31, 2014.

METHOD FOR DETERMINING SUCCESS:

The Geneva FO Supervisor, Ed Knoll, will review and confirm dates that citations/orders were served to mine operators and contractors in accordance with MSHA policy, procedures and documentation provided to inspectors.