



Evaluation of MSHA's Pre-Assessment Safety and Health Conferencing Pilot

November 28, 2011

Evaluation of MSHA's Pre-Assessment Safety and Health Conferencing Pilot Summary

WHY WE CONDUCTED THE EVALUATION

In testimony before Congress on February 23, 2010, Assistant Secretary Joseph Main articulated a plan to reduce the backlog of violations before the Commission. Part of that plan included establishment of pre-assessment conferences. MSHA conducted a Pilot of pre-assessment safety and health conferences (Pilot) in Coal District 2, Coal District 6, and Metal/Nonmetal Southeast District from August 31, 2010, through November 30, 2010. The purpose of the Pilot was to create a process that provides early resolution of concerns to prevent the need to contest citations and orders; and, to increase accuracy and consistency in citation and order writing by creating a feedback loop so that all parties could learn from the process.

MSHA's Office of Program Evaluation and Information Resources (PEIR) was asked by Assistant Secretary Main to evaluate the Pilot.

Our overall objective was to evaluate the effect of the pre-assessment Pilot program on contested violations. We looked at: 1) the number of conferences requested and timeliness of MSHA's response; 2) conference outcomes; 3) staff resources used to conduct the conferences; and 4) the feedback from the mining community concerning the Pilot conferences, including recommendations for improvement.

WHAT WE DID

We analyzed data for all violations that were issued in the Pilot districts between August 31, 2010, and November 30, 2010, including all conferences from those violations that were completed through April 29, 2011.

The data was obtained from two sources: 1) MSHA's MSIS database and 2) Information from the Pilot districts, including survey results from mine operators that requested and held conferences. To conduct our evaluation, we used a variety of quantitative and qualitative analytical methods including data review and analysis, and structured and informal discussions. In addition, we examined documents and materials relating to the Pilot program.

WHAT WE FOUND

Overall, we found that both the external stakeholders and the MSHA district staff support MSHA's Pre-Assessment Safety and Health Conferencing Pilot Program. All parties that we spoke with believe that pre-assessment conferences improve communication between MSHA and the operators. The program also improves communication among supervisors, inspectors, and Conference and Litigation Representatives (CLRs) resulting in the issuance of violations that are well-documented and can be supported in a judicial review.

The majority of the violations that were issued during the Pilot were neither discussed in a conference nor contested, and most of the remaining violations were contested without a conference. Most of the violations that went to conference (67%) were settled and the remaining 33% filed a contest with the Commission. We found that 90% of the violations that were contested by mine operators during the Pilot did not use the conferencing process.

KEY FINDINGS

- Most contested violations (90%) did not use the conference process.
- Most violations that went to conference (67%) were settled without a contest being filed.
- Pilot conferences may have reduced contests by up to 17%.
- Ten controlling companies accounted for over half of the contested violations.
- Operators were more likely to request conferences or contest violations that were S&S, high gravity or high dollar penalties.
- Most mine operators surveyed as a part of the Pilot process stated that they felt comfortable in communicating concerns and were satisfied with the conferencing procedures.
- Additional resources will be needed to implement an Agency-wide conferencing program.

WHY WE CONDUCTED THE EVALUATION

The number of contested proposed civil penalties increased dramatically between 2007 and 2010, creating a backlog of more than 89,000 violations in August 2010, awaiting adjudication by the Federal Mine Safety and Health Review Commission (Commission) at the start of the Pilot program. A number of reasons have been cited for the increase in contested violations including: the increase in penalty amounts under Part 100, the increase in the overall number of violations issued, potential Pattern of Violations (PPOV) designations, and the replacement of the pre-assessment conferences with post-assessment enhanced conferences.

In testimony before Congress on February 23, 2010, Assistant Secretary Joseph Main articulated a plan to reduce the backlog of violations before the Commission. Part of that plan included establishment of pre-assessment conferences.¹ MSHA conducted a Pilot of pre-assessment safety and health conferences (Pilot) in Coal District 2, Coal District 6, and Metal/Nonmetal Southeast District from August 31, 2010, through November 30, 2010. The purpose of the Pilot was to create a process that provides early resolution of concerns to prevent the need to contest citations and orders that would add to the backlog; and, to increase accuracy and consistency in citation and order writing by creating a feedback loop so that all parties could learn from the process.

Under the current system, conferencing takes place after MSHA proposes a penalty assessment and the operator files a timely contest. The 90-day Pilot offered all mine operators in three districts the option of pre-assessment conferences. The Pilot allowed the mine operator and the miners' representative to hear MSHA's interpretation of regulations and discuss and resolve issues relating to violations prior to the civil penalty assessment and litigation.² It is important to note that mine operators have multiple opportunities to discuss violations cited by MSHA inspectors. One opportunity available to mine operators, miners, and mine representatives is during travel with the inspectors in the mine. Another opportunity available is during the inspection close-out conferences, which are conducted at the completion of each inspection. The close-out conferences are intended to be used to obtain interpretations of regulations and discuss violations. Mine operators can also request a safety and health conference to discuss violations with district management. In addition, mine operators have a right to use the judicial process (file a contest) as an independent legal appeals process.

¹ MSHA's existing conferencing system (in place since 3/27/2009) calls for conferences to take place only after civil penalties are proposed and contested timely (post-assessment). Previously, MSHA allowed a conference following the issuance of the violation or order but before a civil penalty was assessed (pre-assessment).

² During the close-out conference, inspectors should make certain that all citations are explained and that the operator or operator's agent is aware of his/her right to request a safety and health conference with the district manager.

The Pilot districts contacted stakeholders and mine operators in August 2010 to inform them that they could schedule pre-assessment conferences on violations issued during the Pilot period.³ District managers in the Pilot districts conducted an outreach campaign; when questioned, they expressed confidence that mine operators in their districts were aware of the Pilot program. The Pilot districts used email as the primary method to provide notification of the safety and health conferencing Pilot. The Pilot districts notified some operators by telephone and postal mailings, as well as through the distribution of district newsletters and also provided mine operators with copies of the Pilot Press Release. Some mine inspectors informed operators of the Pilot during inspections.

At the conclusion of each conference, MSHA staff asked mine operators four questions related to pre-assessment conferences:

1. Did you feel comfortable in communicating your concerns?
2. Were you satisfied with the conferencing procedures?
3. Do you have suggestions to improve the conferences?
4. Do you intend to proceed further in litigation on the issues discussed at the conference?

All three districts entered data from the conferences into the MSHA Standardized Information System (MSIS) and also submitted monthly reports to the Deputy Assistant Secretary for Operations that included results from the conferences and surveys.

MSHA held a meeting on February 16, 2011⁴ at MSHA HQ to solicit stakeholder input on the Pre-Assessment Conferencing Pilot. Approximately twenty stakeholders were present for the meeting including representatives from Alliance Resource Partners, L.P., Alpha Natural Resources, Arch Coal, Inc., Bituminous Coal Operators' Association, Inc., Consol Energy Inc., International Coal Group, Inc., Industrial Minerals Association – North America, Joy Mining Machinery, National Mining Association, National Stone, Sand & Gravel, Peabody Energy, and United Mine Workers of America. During the meeting, Assistant Secretary Main discussed MSHA's desire to implement a conferencing system that was fair and that would allow inspectors and mine operators to discuss and potentially resolve legitimate differences.

MSHA's Office of Program Evaluation and Information Resources (PEIR) was asked by Assistant Secretary Main to evaluate the Pilot. Our overall objective was to evaluate the effect of the pre-assessment Pilot program on contested violations. We looked at: 1) the

³ Operators could request pre-contest conferences for any violation issued during the 90-day Pilot. Districts began holding conferences on August 31, 2010 and the last conference was held on March 23, 2011.

⁴ Hereinafter referred to as Stakeholder Meeting.

number of conferences requested and timeliness of MSHA's response; 2) conference outcomes; 3) staff resources used to conduct the conferences; and 4) the feedback from the mining community concerning the Pilot conferences, including recommendations for improvement. Given the short timeframe of the Pilot and the fact that 14 of MSHA's 17 districts did not participate, the conclusions in this evaluation are limited only to the Pilot districts.⁵ This report provides MSHA management quantitative and qualitative information on the results of the pre-assessment conferencing Pilot to inform decision-making about extending the program nationwide. However, caution should be exercised in generalizing from limited data.

⁵ We did contact the other (non-Pilot) districts regarding their estimated resource requirements and this information is detailed in the "Additional Resources Will Be Needed" section of this report.

WHAT WE DID

We analyzed data for all violations that were issued in the Pilot districts between August 31, 2010, and November 30, 2010, including all conferences completed and contests filed through April 29, 2011.

The data was obtained from two sources: 1) MSHA's MSIS database and 2) Pilot district data, which included the survey results from mine operators that requested and held conferences. (We did not independently verify the validity of the data provided by Pilot districts.)

To conduct our evaluation, we used a variety of quantitative and qualitative analytical methods described below.

Data Review and Analysis

We reviewed and analyzed Pre-Assessment Conferencing Pilot data and files provided by both Coal and MNM including the following:

- Timeframes for scheduling, conducting and delivering results of Pilot conferences;
- Number of conferences cancelled, deferred or denied;
- Number and type of modifications and vacates of violations as well as justifications; and
- Survey Questionnaire Summary Results.

Structured and Informal Discussions

- Met with the Director of the Office of Assessments to obtain an understanding of the timing of violation assessments, contests, and final order dates.
- Held discussions with staff in both Coal and MNM to get an understanding of Conference and Litigation Representative (CLR) staffing levels.
- Conducted interviews with individuals with key responsibilities for executing, administering, or overseeing aspects of the Pilot, including Coal and MNM District Managers and CLRs.
- Participated in MSHA's Stakeholder Meeting held at MSHA HQ on February 16, 2011, to solicit input on the Pre-Assessment Conferencing Pilot.
- Solicited feedback on MSHA's website from the mining community regarding the Pilot.

Document Review

We examined a wide range of documentation and materials relating to the Pilot program including the following:

- MSHA memo "Part 100 Pilot Safety and Health Conferences" dated 8/19/2010;

- Bruce Watzman’s testimony before the Committee on Education and Labor of the United States House of Representative dated 2/23/2010;
- MSHA website (www.msha.gov);
- Eastern Research Group (ERG) draft report titled, “Evaluation of MSHA’s Alternative Case Resolution Process” dated 1/13/2011;
- MSHA’s Alternative Case Resolution Handbook: Chapter 5 - Initiation of Litigation; and
- MSHA’s current listing of CLRs.

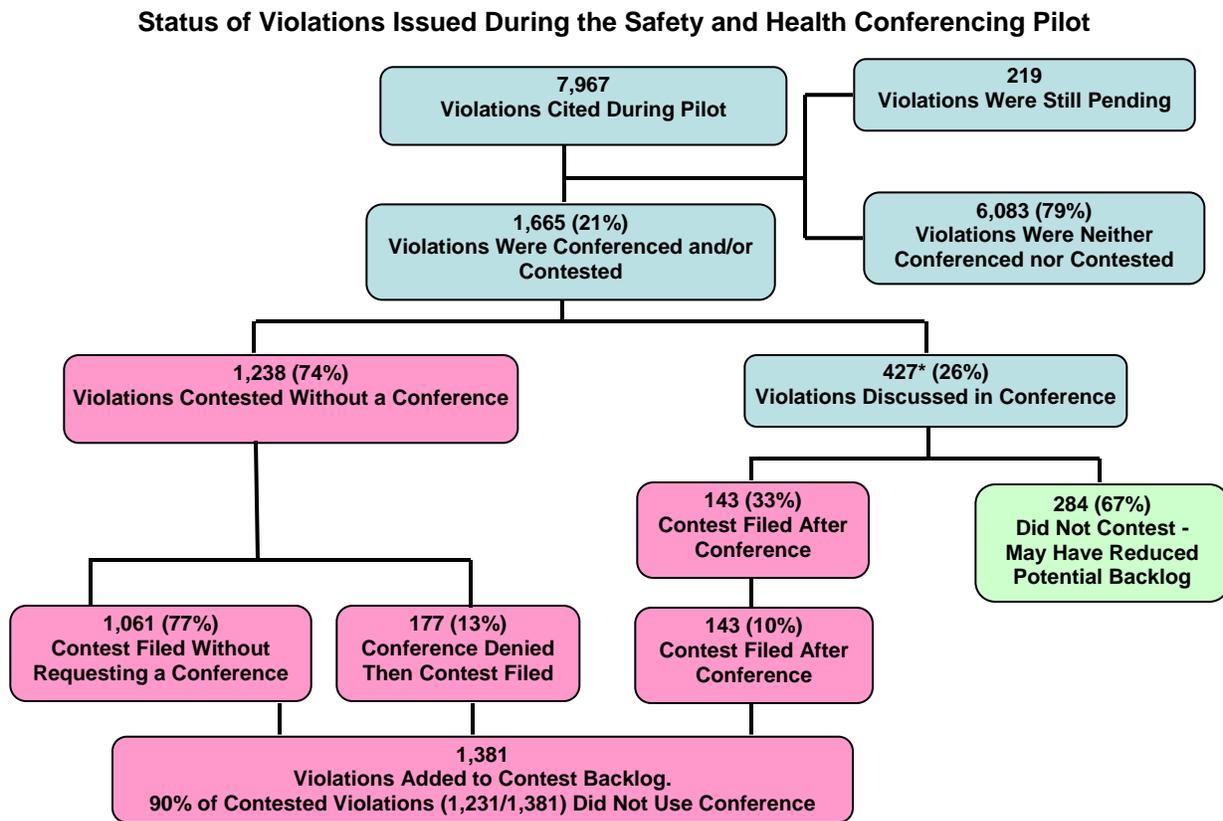
WHAT WE FOUND

Results of Data Analysis

Between August 31, 2010 and November 30, 2010, the Pilot districts issued 7,967 violations. Of that total, 7,748 have completed the process of a conference, a contest filing, or no conference/no contest; the remaining 219 violations were in a pending⁶ status as of April 29, 2011 (see Appendix A for more details).

In reviewing the results of the Pre-Assessment Conferencing Pilot, we found that 79% of the violations that had completed the process (6,083/7,748) were neither discussed in a conference nor contested. Of the 1,381 violations that were contested during the Pilot, we found that 90% (1,238/1,381) did not use the conferencing process that was available to operators.

Below is a diagram showing the status of the violations:



*A total of 438 conferences had been completed at the time of this report. However, only 427 of these conferenced violations had completed the period where they were eligible to file a contest (see Appendix D).

⁶ Pending status includes violations that have not yet reached the final date to file a contest.

Most Contested Violations Did Not Go Through the Conference Process. In reviewing the results of the Pre-Assessment Conferencing Pilot, we found that 77% of contested violations (1,061/1,381) did not request a conference; 13% of contested cases (177/1,381) were filed after a conference had been cancelled, denied, or deferred; and the remaining 10% of the contested violations were filed (143/1,381) after a conference had been completed.⁷ A total of 90% of the contested violations that had completed the process (1,238/1,381) did not use the conference process. Few mine operators provided information concerning their choice not to request a conference. Some did state they chose not to use the Pilot conferencing program if they had conferenced violations in the past and were not satisfied with the results. Others contested violations automatically without a conference if they knew that the violation would be assessed above a certain penalty amount.

Most Violations That Went to a Conference Were Settled Without a Contest Being Filed. Of the 427 violations that were conferenced, 67% (284/427) were settled and the remaining 33% (143/427) filed a contest with the Commission.

Most Violations Were Upheld in Conference. The MSHA conference representatives⁸ upheld 65% of the violations as issued; modified 29%; and vacated 6% (*see Appendix D*).

Ten Controlling Companies Accounted for Over Half of the Contested Violations. A total of 524 controlling companies were assessed violations during the Pilot. However, 10 controlling companies accounted for over half (53%) of all contested violations in the Pilot districts (*see Appendix B*).

Operators Requested Conferences and Filed Contests More Frequently for High Penalty Violations. We looked at the types of violations issued to see if certain types of violations were conferenced or contested more often than others. We looked at: S&S rates, Likelihood, Negligence, Gravity, and Number Affected (*see Appendix E*). We also looked at the dollar amounts of the assessed violations (*see Appendix F*). We found that operators were 3 to 8 times more likely to request a conference or file a contest for those violations that were marked S&S, higher gravity/negligence, or were high dollar violations (over \$2,000). This was consistent with what stakeholders told us in the interviews.

⁷ Coal District 2 placed some violations in a “deferred” status. These were violations under CFR 75.380(d)(7) (Lifelines). Similar violations are pending before the Commission regarding whether or not they can be considered as S&S. Some operators who received these types of violations during the pilot filed for a conference as a way to stay an assessment, pending the Commission’s decision on the other cases. MNM Southeast District “cancelled” conferences if the operator could not identify mitigating circumstances to warrant a conference, or if the operator had established a pattern of routinely contesting violations.

⁸ For the Pilot, both Field Office Supervisors (FOS) and Conference Litigation Representatives conducted the Pre-Assessment Safety and Health Conferences, which is discussed in the “Conference Staffing” section of this report.

We compared the 2010 Pilot data with the same period in 2005 and 2009. The year 2005 was chosen for the following reasons: the pre-assessment conferences were still in place Agency-wide, the Sago/ Aracoma/Darby disasters had not yet occurred, and the Miner Act had not yet been implemented. The year 2009 was chosen because enhanced (post-assessment) conferences had been instituted Agency-wide, and the Miner Act was fully implemented resulting in higher assessments. Conferences resulted in a reduction of up to 35% of contested citations in the Pilot districts in 2005 and 3% in 2009 (see Appendix G).

The Pilot Conferences May Have Reduced Contests by Up to 17%. We reviewed the violations issued during the Pilot (and which were not in a pending status), and divided them into four groups. Below is a summary of each group.

Effect of the Pilot Conferences on the Contest Backlog

Group	Number of Violations	Conferenced?	Filed a Contest?	Potential Contest Backlog?	Did Conference Possibly Help Reduce Contest Backlog?
Group A	6,083	NO	NO	NO	NO
Group B	1,238	NO	YES	YES	NO
Group C	143	YES	YES	YES	NO
Group D	284	YES	NO	YES	YES
	7,748				

The violations in Group A were neither conferenced nor contested; therefore the conference program had no effect on these violations and the violations did not add to the contest backlog. Groups B and C were contested and therefore added to the contest backlog. Group D consisted of 284 violations that were conferenced but were not contested. The Pilot conference program may have been a factor in reducing anywhere from 0 to 284 potential contests. Groups B, C, and D (1,665 violations) represent the potential backlog. These are the groups that either did contest (Groups B and C) or did not contest following a conference (Group D). The maximum effect that the conferences had (or may have had) on reducing the backlog is 17% or 284/1,665 (see Appendix A).

Timeliness of Conferences. District 6 and Southeast District were able to conduct the majority of their conferences within 60 days of the request. District 2 had more staffing challenges and, as a result, most of their conferences took more than 60 days to schedule and conduct (see Appendix C).

Stakeholder Input

In addition to analyzing the data, we gathered input from operators, associations, union representatives, and MSHA staff through a combination of meetings, surveys, interviews, and outreach through the MSHA website. Below is a summary of the opinions expressed by the stakeholders.

External Stakeholders. MSHA's Assistant Secretary held a meeting with Coal and Metal/Nonmetal associations, mine operators, and union representatives on February 16, 2011, to discuss lessons learned from the Pilot. All of the stakeholders who spoke felt that conferences were useful. They believed that conferences would decrease the number of violations contested and thought that the program should be expanded Agency-wide. The stakeholders envisioned that the conference process could be used as a tool to modify or vacate violations that were poorly written or inadequately supported.

A number of stakeholders emphasized the importance of ensuring that effective close-out conferences be conducted as another method of reducing conference and contest requests.⁹ Some industry representatives expressed concern that the quality and duration of close-out conferences had diminished over the last few years.

Interviews with Pilot District Managers. We also spoke with the district managers from the Pilot districts to get their perspectives. All of the Pilot districts considered the conferences beneficial to both MSHA and the mine operators because they felt the conferences improved communication not only between MSHA and the operators, but also among supervisors, CLRs, and inspectors. The Pilot districts stated that the conferencing process helped ensure that the rationale and documentation behind each violation was thoroughly reviewed and supported by the evidence.

Pilot District Conference Questionnaire. At the conclusion of each conference, MSHA staff asked mine operators four questions related to the effectiveness of pre-assessment conferences. Some operators offered suggestions on how MSHA could improve the conferencing process. The three Pilot districts forwarded copies of those responses to OPPE and we reviewed and tabulated the results. Below are the questions and summary of the mine operator feedback.

1. Did you feel comfortable in communicating your concerns?
2. Were you satisfied with the conferencing procedures?
3. Do you have suggestions to improve the conferences?
4. Do you intend to proceed further in litigation on the issues discussed at the conference?

⁹ Information based on recent statements by stakeholders as well as input from some of the associations that attended the stakeholder meeting.

Pilot District Questionnaire Results from D2, D6 & SE

	Pilot Districts ¹⁰
Percent That Felt Comfortable in Communicating Concerns	95%
Percent That Were Satisfied with Conferencing Procedures	83%
Percent That Had Suggestions to Improve the Conferences	39%
Percent That Stated They Intended to Proceed with Litigation	21%

As shown in the chart above, the majority of the mine operators surveyed stated that they felt comfortable communicating their concerns related to the conferenced violations and indicated that they were satisfied with the conferencing procedures. Thirty-nine percent provided specific suggestions on improving the conference process (see Appendix I).¹¹ Some operators stated that they felt that the person conducting the conferences should be independent from district management and allowed to make decisions at the conference in order to speed up the conferencing process. Other mine operators stated that the conferences should be held as face to face meetings, not teleconferences. Some mine operators stated that the mine inspectors should attend the conferences. The majority of respondents in the Pilot districts stated they did not intend to proceed further in litigation on issues discussed.

Email and Website Input. To obtain further stakeholder input on the Pilot, we conducted an email survey of selected stakeholders: *Bituminous Coal Operators' Association, Inc. (BCOA)*, *Industrial Minerals Association - North America (IMA-NA)*, *National Stone, Sand & Gravel Association (NSSGA)*, *United Mine Workers of America (UMWA)*. To date, we have received feedback from two stakeholders.

We also developed a feedback mechanism on the MSHA website to solicit ideas; comments, suggestions, and any additional information that might improve MSHA's Pilot Pre-Assessment Safety and Health Conference Program (see Appendix H for screenshot). The Pilot feedback mechanism was featured on the first page of MSHA's website for one month. To date, we have received one response from the MSHA website.

¹⁰ Percentages shown are averages across all three pilot districts.

¹¹ The questionnaire results were based on data obtained during Pilot conferences held. MSHA staff noted that in most instances the conference participants were not the mine operator final decisions makers – so despite questionnaire responses violations could be/were later contested.

PEIR Pilot Evaluation Survey Results. We solicited input from mine operators and miner representatives in the Pilot districts. We contacted small, medium, and large operators. Some of the operators we contacted chose to conference violations and others contested violations without participating in conferences. The mine operators that we contacted had the following feedback, which is grouped by five major themes.

1. **The Conference Process Should Continue.** Almost all the operators we spoke with said that the conference program was a good idea and should continue, stating that the conferences helped to improve communication between MSHA and the operators.
2. **CLRs Conducting the Conferences Should Be Independent.** All the operators we spoke with thought that the CLR should be authorized to make decisions independently of the district and field office staff, with many stating that they believed CLRs would always accede to the wishes of the district manager even when operators' opinions differed. It is important to note that MSHA's safety and health conferences do not replace and are not intended to replace mine operators' right to use the judicial process, as such mine operators have an independent legal appeals process.
3. **Operators Often Contested Severity Levels.** The majority of the operators we spoke with said that the underlying violations that inspectors wrote were usually valid. However, they believed that the designations of S&S, gravity, and negligence were often arbitrary and overly severe. The operators said they were apt to contest any violation where they believed the severity level was unwarranted.
4. **For Some Operators, POV Has Played a Role in Decisions to Contest.** A few of the larger operators said that POV played a role in their decision to contest. However, POV did not play a role for the smaller companies that we spoke with; the smaller operators were more concerned with the size of the assessed penalties.
5. **Violation Process Has Changed Over The Last Few Years.** A number of operators indicated that they first saw a distinct change in the way MSHA wrote violations in the wake of the Sago, Aracoma, and Crandall Canyon disasters and the passage of the MINER Act. Some operators believed that inspectors were under direct orders to issue more citations and to increase the level of severity of the citations that they wrote.

Stakeholders Support the Pre-Assessment Conference Program. Both internal and external stakeholders generally expressed support for the pre-assessment conference program and thought that the program should be expanded across MSHA. MSHA

district managers, however, indicated that they could not reinstitute the program on a permanent basis without additional staff resources, which we discuss below.

Conference Staffing

Based on interviews, we found that two of the districts staffed the Pilot program with Field Office Supervisors and the other district used CLR's. We also found that the districts had differing opinions on how to staff the conferences moving forward.

Some of the Pilot district staff felt that the FOS should conduct the pre-assessment conferences. District staff found that using the FOS to conduct the conference improved the communication between the inspectors and supervisors. The conferences gave the FOS a better understanding of the individual strengths and weaknesses of each inspector, which would allow for the identification of additional training needed.

However, some district staff felt that a separation of duties was needed among the FOS staff. Staff stated that district management should ensure that the FOS responsible for initially reviewing a violation is not the same person responsible for conducting the conference on that same violation. A few district managers expressed the concern that there would not be adequate separation of duties if CLR's handled the same violations during both the conference and contest processes.

Other Pilot district staff felt that CLR's were best equipped to conduct the pre-assessment conferences. Staff stated that CLR's are trained to conduct negotiations and conferences and a FOS is not. In addition, CLR's are well versed in using Westlaw as a resource to prepare for conferences. These district staff emphasized that workload responsibilities of most field office and specialist supervisors are already overwhelming. Moreover, they felt that the added responsibility of conducting the conferences would interfere with their availability to monitor and address inspection or mine related issues.

We also asked the non-Pilot districts their preference for staffing the conferences - FOS or CLR. Most MSHA staff stated that a FOS would be as qualified as a CLR to conduct a conference, but they could not see how a FOS would ever have time to conduct the conferences based on current workloads.

Number of Staff Needed. In order to get a feel for the resources used in conferencing, we asked the Pilot districts to estimate the average amount of time they spent to conference each violation. District managers told us that the actual conference usually takes no more than 15-20 minutes per violation. The majority of the time involved in conferences takes place in the preparation work and the documentation needed after the conference. The preparation work involved in conferencing includes reviewing inspector notes, reviewing case law, and discussing violation with inspectors (as

needed). In addition, after violations are revised due to conferencing, those violations must be modified in IPAL. Depending on the specifics, a CLR or FOS can spend 1-2 hours in preparation for a conference that involves a complicated violation. This factor will need to be considered when determining resources needed for conferencing.

We contacted all 17 districts to determine their potential conferencing resource needs. We inquired how many additional staff would be needed, if any, if conferences were re-instituted in all districts. A few districts indicated that their CLRs could handle the conferencing caseload if they didn't have to deal with the contest backlog. But most districts that we spoke with indicated that they would each need 1-2 additional full time conference staff and some districts would need additional clerical support if the conference program were reinstated. MSHA staff also expressed concerns regarding where the additional staff would come from. They stated that based on current inspector staffing levels, if new staff were pulled from MSHA's current inspectorate pool, the districts might not be able to complete the inspections mandated by the Mine Act based on the volume of contested cases.

Current volume of contested violations creating new backlog. The majority of the district managers that we spoke with said that a new backlog of contested cases is being created. Some MSHA staff stated that less than six months after contested cases were given to the Department's Office of the Solicitor (SOL) to process, the districts had more new violations than were handed-off to SOL originally. MSHA staff stated that the districts would be negatively affected if the conferences were re-instituted without additional resources because the CLRs are already spending their time on handling the contested violations. MSHA staff felt that the current number of staff trained and available to handle contested violations can not handle the amount of new contested violations being generated on a monthly basis and that a new backlog is being created.

Additional Resources Will Be Needed. The number of staff needed to reinstitute the pre-assessment conference program Agency-wide is directly dependent on the number of conferences that will be requested and accepted. The current backlog of contested violations has placed strains on CLR and FOS resources throughout MSHA, including the Pilot districts. If there were no backlog, some districts could reinstitute the conference program with current staff. Given the substantial backlog of contested cases, the resources required for conferencing will need to be considered in tandem with resources needed to address the backlog.

Conclusion

Overall, we found that both the external stakeholders and the MSHA district staff support MSHA's Pre-Assessment Safety and Health Conferencing Pilot Program. All parties that we spoke with believe that pre-assessment conferences improve communication between MSHA and the operators. The program also improves communication among supervisors, inspectors, and CLR's resulting in the issuance of violations which are well-documented and can be supported in a judicial review. MSHA district management stated that additional resources will be needed to re-institute the pre-assessment conference program Agency-wide, especially due to the backlog of contested cases.

The majority of the violations that were issued during the Pilot were neither discussed in a conference nor contested; most of the remaining violations were contested without a conference. Most of the violations that went to conference (67%) were settled and the remaining 33% filed a contest with the Commission. We found that 90% (1238/1381) of the violations that were contested by mine operators during the Pilot did not use the conferencing process. We also found that operators were more likely to request conferences or contests for violations that were S&S, high gravity, or high dollar penalties. We found that Pilot conferences may have reduced contests by up to 17%. Ten controlling companies accounted for over half of the contested violations.

Most mine operators who we spoke with in the Pilot districts stated that the conference program was a good idea and should continue, but they would like the CLR's conducting the conferences to be independent from district management.¹² Mine operators also stated that they were more apt to contest violations where they believed the severity level was unwarranted and those violations that would potentially lead to a Pattern of Violation designation. Operators and stakeholders had several opportunities to provide input but provided few specific suggestions on improving the conference process.

¹² It is important to note that MSHA's safety and health conferences do not replace mine operators' right to use the judicial process; as such mine operators have an independent legal appeals process.

General Information

	D2	D6	SE	Totals
# Violations Issued	1,092	3,846	3,029	7,967
# Conferences Requested	314	114	196	624
% Requesting Conference	29%	3%	6%	8%
Status of Conferences Requested				
# Conferences Completed	167	114	157	438
# Conferences Pending	0	0	0	0
# Conferences Cancelled/Deferred	147	0	39	186
% Conferences Requested/Completed	53%	100%	80%	70%
Number Vacated Prior to Contest Filing Date	23	12	49	84
Vacated Due to Conference	14	2	14	30
Vacated Not as a Result of Conferences	9	10	35	54
Number That Could Have Contested (& Completed Process)	1,075	3,730	2,943	7,748
Percent That Have Completed Process	98%	97%	97%	97%
Number That Could Have Contested (& Completed Process)	1,075	3,730	2,943	7,748
Number That Didn't Contest and Didn't Conference	763	2,915	2,405	6,083
% That Didn't Conference and Didn't Contest	71%	78%	82%	79%
Number That Contested and/or Conferenced	312	815	538	1,665
% That Contested and/or Conferenced	29%	22%	18%	21%
Details on Violations Which Have Completed the Conference and Contest Process				
Number That Filed for a Contest	170	758	453	1,381
Contested Without a Conference	145	708	385	1,238
Contested After a Conference	25	50	68	143
% That Contested Without a Conference	85%	93%	85%	90%
Number That Conferenced	167	107	153	427
Conferenced and Did Not Contest	142	57	85	284
Conferenced AND Contested	25	50	68	143
% That Conferenced AND Did Not Contest	85%	53%	56%	67%
Potential Backlog	312	815	538	1,665
% of Potential Backlog Reduced by Conferences	46%	7%	16%	17%

Controllers Who Filed Contests

Controlling Company	# of Mines	Viols. Issued	Confer. Req'sted	Conf. Compl'd	Contests Filed	Conf. Held & Contested	% of Viols. Conf. Then Contested	Contests as % of Viols. Issued	Contests as % of All Contests Filed
Massey Energy Company	18	596	24	24	201	20	83.3%	33.7%	14.6%
Metinvest B V	5	293	10	10	108	6	60.0%	36.9%	7.8%
J Clifford Forrest III	25	283	92	28	77	13	14.1%	27.2%	5.6%
James H Booth	14	169	0	0	72	0	N/A	42.6%	5.2%
Dennis Creg Yonts	1	167	0	0	52	0	N/A	31.1%	3.8%
Jimmie Leon Hess	1	80	10	10	51	0	0.0%	63.8%	3.7%
James River Coal Company	9	205	3	3	49	1	33.3%	23.9%	3.5%
Cemex S A	17	166	12	12	48	10	83.3%	28.9%	3.5%
Rodney Bentley; Ted Thornsberry	1	38	0	0	35	0	N/A	92.1%	2.5%
Jody D Puckett	2	73	0	0	33	0	N/A	45.2%	2.4%
Alpha Natural Resources LLC	10	230	64	37	28	1	1.6%	12.2%	2.0%
Marvin R Walker; Marvin R Walker Jr	1	32	27	0	27	0	0.0%	84.4%	2.0%
Harold E Akers; Jim D Akers	6	142	14	14	26	5	35.7%	18.3%	1.9%
Vulcan Materials Company	53	145	10	10	26	9	90.0%	17.9%	1.9%
CRH PLC	19	103	6	2	25	0	0.0%	24.3%	1.8%
S C R-Sibelco Nv	10	60	7	6	24	4	57.1%	40.0%	1.7%
Vicat S A	1	44	0	0	22	0	N/A	50.0%	1.6%
Jeffery A Hoops	2	33	0	0	21	0	N/A	63.6%	1.5%
Thomas A Potter; John M Potter	2	35	1	1	19	1	100.0%	54.3%	1.4%
GenPower Holdings LP; James L Laurita Jr	2	58	18	0	18	0	0.0%	31.0%	1.3%
James C Justice II	3	97	1	1	18	0	0.0%	18.6%	1.3%
MFM Delaware	1	18	0	0	18	0	N/A	100.0%	1.3%
CONSOL Energy Inc	4	146	25	13	16	2	8.0%	11.0%	1.2%
Rogers Group Inc	20	93	19	19	14	11	57.9%	15.1%	1.0%
Tommy Owens	1	16	0	0	14	0	N/A	87.5%	1.0%
Gary W Meier	1	13	0	0	12	0	N/A	92.3%	0.9%
Bill R Ramsey	1	17	0	0	11	0	N/A	64.7%	0.8%
Everett D Hampton	1	84	0	0	11	0	N/A	13.1%	0.8%
Alliance Resource Partners LP	4	314	20	20	10	6	30.0%	3.2%	0.7%
John C Albright	1	10	0	0	10	0	N/A	100.0%	0.7%
Frances H Johnson	2	13	9	9	9	9	100.0%	69.2%	0.7%
Fred M. Webb	1	9	0	0	9	0	N/A	100.0%	0.7%

Controllers Who Filed Contests (page 2 of 4)

Controlling Company	# of Mines	Viols. Issued	Confer. Req'sted	Conf. Compl'd	Contests Filed	Conf. Held & Contested	% of Viols. Conf. Then Contested	Contests as % of Viols. Issued	Contests as % of All Contests Filed
Salem Stone Corp; Cliftondale Ready Mix LLC	1	9	0	0	9	0	N/A	100.0%	0.7%
Cox Enterprises; L C Management	1	8	0	0	8	0	N/A	100.0%	0.6%
Darrell G Spencer	1	8	8	0	8	0	0.0%	100.0%	0.6%
Harvey Youngquist; Tim G Youngquist	1	8	0	0	8	0	N/A	100.0%	0.6%
Lhoist Group	7	141	11	11	8	6	54.5%	5.7%	0.6%
Rhino Resource Partners LP	8	164	3	3	8	0	0.0%	4.9%	0.6%
Babcock Florida Company	1	8	7	0	7	0	0.0%	87.5%	0.5%
Oil Dri Corporation Of America	1	9	0	0	7	0	N/A	77.8%	0.5%
Samuel (Alex) Boone	1	15	0	0	7	0	N/A	46.7%	0.5%
Citicorp Venture Capital Ltd	6	155	39	38	6	5	12.8%	3.9%	0.4%
James T Tinin	1	7	0	0	6	0	N/A	85.7%	0.4%
L Baylis Carnes III	5	19	0	0	6	0	N/A	31.6%	0.4%
N S C Corp; Sibco Services Inc	2	9	0	0	6	0	N/A	66.7%	0.4%
Ricardo Cardona; Victor S Maldonado	1	8	0	0	6	0	N/A	75.0%	0.4%
U S Coal Acquisition Corporation	3	21	0	0	6	0	N/A	28.6%	0.4%
William B Spence	2	12	6	0	6	0	0.0%	50.0%	0.4%
C E Boone	1	6	0	0	5	0	N/A	83.3%	0.4%
Clatus K Junkin	2	13	6	6	5	3	50.0%	38.5%	0.4%
Heidelberg Cement AG	14	55	6	6	5	3	50.0%	9.1%	0.4%
John Harris	1	9	4	4	5	4	100.0%	55.6%	0.4%
Newpark Resources Inc	1	5	0	0	5	0	N/A	100.0%	0.4%
Thomas R Hamilton	1	5	0	0	5	0	N/A	100.0%	0.4%
Todd Harris	1	14	0	0	5	0	N/A	35.7%	0.4%
International Coal Group Inc (ICG)	8	214	8	8	4	3	37.5%	1.9%	0.3%
James R Boyd	1	4	0	0	4	0	N/A	100.0%	0.3%
Kenneth W Hart	1	5	0	0	4	0	N/A	80.0%	0.3%
Massoud Besharat	1	12	0	0	4	0	N/A	33.3%	0.3%
Max R Boyd; David R Boyd	1	4	0	0	4	0	N/A	100.0%	0.3%
Robin A Wade Jr	1	11	0	0	4	0	N/A	36.4%	0.3%
TECO Energy Inc	7	57	4	4	4	2	50.0%	7.0%	0.3%
Titan Cement Company S A	4	54	2	2	4	2	100.0%	7.4%	0.3%
Ardmore Fuels Inc; Green Valley Coal Inc	1	9	3	0	3	0	0.0%	33.3%	0.2%

Controllers Who Filed Contests (page 3 of 4)

Controlling Company	# of Mines	Viols. Issued	Confer. Req'sted	Conf. Compl'd	Contests Filed	Conf. Held & Contested	% of Viols. Conf. Then Contested	Contests as % of Viols. Issued	Contests as % of All Contests Filed
Charles R Smith	1	7	1	1	3	0	0.0%	42.9%	0.2%
F D Justice II; Greg Henzman	3	16	0	0	3	0	N/A	18.8%	0.2%
James W Cooper	1	5	5	5	3	3	60.0%	60.0%	0.2%
Jim Coleman	2	5	0	0	3	0	N/A	60.0%	0.2%
John A Lindsay	1	3	0	0	3	0	N/A	100.0%	0.2%
Martin Marietta Materials Inc	26	81	6	6	3	1	16.7%	3.7%	0.2%
Maymead Inc	1	8	0	0	3	0	N/A	37.5%	0.2%
Mosaic Global Holdings	3	34	11	11	3	3	27.3%	8.8%	0.2%
Ned Gumble	2	31	5	5	3	3	60.0%	9.7%	0.2%
Rodney D Terry; H M Nowlin; Neal A Holland	1	6	6	6	3	3	50.0%	50.0%	0.2%
Ted H Thieman	1	5	0	0	3	0	N/A	60.0%	0.2%
Adam Q Gabbard	1	2	0	0	2	0	N/A	100.0%	0.1%
Boxley Materials Co	5	9	2	2	2	1	50.0%	22.2%	0.1%
Cementos Portland Valderrivas S A	1	8	0	0	2	0	N/A	25.0%	0.1%
Frank J Colitz	3	6	0	0	2	0	N/A	33.3%	0.1%
Gary (Tim) Bizzell	2	9	0	0	2	0	N/A	22.2%	0.1%
Henry Chaney Jr	2	56	2	2	2	2	100.0%	3.6%	0.1%
James R Tharpe	1	4	0	0	2	0	N/A	50.0%	0.1%
Joseph H Anderson	2	3	0	0	2	0	N/A	66.7%	0.1%
Michael T McCullough	1	2	2	0	2	0	0.0%	100.0%	0.1%
Orlando Rodriguez	1	2	0	0	2	0	N/A	100.0%	0.1%
Potash Corp Of Saskatchewan	2	22	0	0	2	0	N/A	9.1%	0.1%
Quartz Corporation	1	11	0	0	2	0	N/A	18.2%	0.1%
Rafael Casanova	1	2	0	0	2	0	N/A	100.0%	0.1%
Robert W Watkins	1	5	0	0	2	0	N/A	40.0%	0.1%
Ron Jackson	1	3	0	0	2	0	N/A	66.7%	0.1%
S & B Industrial Minerals S A; S & B Industrial Minerals S A	1	4	0	0	2	0	N/A	50.0%	0.1%
Terry Lee Adams	1	5	0	0	2	0	N/A	40.0%	0.1%
Bennett Quillen	1	1	0	0	1	0	N/A	100.0%	0.1%
Blaine E Forbes	1	9	0	0	1	0	N/A	11.1%	0.1%
Charles S Luck IV; Charles S Luck III	5	15	2	2	1	0	0.0%	6.7%	0.1%
Colas S A	1	3	0	0	1	0	N/A	33.3%	0.1%
Dale T Willis	1	1	0	0	1	0	N/A	100.0%	0.1%
Debra L Back; Daniel R Back	1	4	0	0	1	0	N/A	25.0%	0.1%
Dixie County-FL	1	2	0	0	1	0	N/A	50.0%	0.1%
Edgar P Duncan	1	4	0	0	1	0	N/A	25.0%	0.1%
Gary Luna; James Ward	1	3	0	0	1	0	N/A	33.3%	0.1%
Imerys S A	6	39	0	0	1	0	N/A	2.6%	0.1%

Controllers Who Filed Contests (page 4 of 4)

Controlling Company	# of Mines	Viols. Issued	Confer. Req'sted	Conf. Compl'd	Contests Filed	Conf. Held & Contested	% of Viols. Conf. Then Contested	Contests as % of Viols. Issued	Contests as % of All Contests Filed
James Botbyl	1	1	0	0	1	0	N/A	100.0%	0.1%
James B Spencer	1	10	0	0	1	0	N/A	10.0%	0.1%
Jimmy D Tackett	1	26	0	0	1	0	N/A	3.8%	0.1%
John A Blaschak	1	8	4	4	1	1	25.0%	12.5%	0.1%
John M Lee	2	4	1	0	1	0	0.0%	25.0%	0.1%
Kenneth W Woodring	6	78	0	0	1	0	N/A	1.3%	0.1%
Thomas P Dunne	1	6	0	0	1	0	N/A	16.7%	0.1%
William Swift	1	14	0	0	1	0	N/A	7.1%	0.1%
Total for 110 Controlling Companies Who Filed Contests	429	5,442	526	345	1,381	143	27.2%		
Total for 414 Controlling Companies Who Did Not Contest	519	2,525	98	93	0	0	0.0%		
Total for All Controlling Companies	948	7,967	624	438	1,381	143	22.9%		100%

Timeliness of Scheduling Conferences

(from date of request)	D2	D6	SE	All Mines in Pilot Districts
14 days or less	0	13	33	46
15-30 days	6	38	82	126
31-60 days	38	58	36	132
> 2 months	123	5	6	134
Totals	167	114	157	438

Results of Conferences

	D2	D6	SE	All Mines in Pilot Districts ¹³	Percent
Modified	82	21	24	127	29%
Vacated	14	2	10	26	6%
Upheld	71	91	121	283	65%
Withdrawn			2	2	0%
Totals	167	114	157	438	100%

¹³ A total of 438 conferences had been completed at the time of this report. However, only 427 of these conferenced violations had completed the period where they were eligible to file a contest (see Pg. 5).

APPENDIX E

Types of Violations Issued

	All Violations	Conference Requested	Contest Filed	% Conference Requested	% Contest Filed
<u>S&S</u>					
S&S	2,699	353	850	13%	31%
Non-S&S	5,268	271	531	5%	10%
Totals	7,967	624	1,381	8%	17%
<u>Likelihood</u>					
Occurred	17	5	9	29%	53%
Highly	67	11	27	16%	40%
Reasonably	2,621	338	816	13%	31%
Unlikely	4,899	258	502	5%	10%
No Likelihood	363	12	27	3%	7%
Totals	7,967	624	1,381	8%	17%
<u>Injury and Illness</u>					
Fatal	1,386	182	318	13%	23%
Permanent	1,203	150	266	12%	22%
Lost Days	4,654	264	729	6%	16%
No Lost Days	724	28	68	4%	9%
Totals	7,967	624	1,381	8%	17%
<u>Number Affected</u>					
Zero Persons	255	9	24	4%	9%
One Person	6,648	476	1,090	7%	16%
Two Persons	376	62	65	16%	17%
More Than Two Persons	688	77	202	11%	29%
Totals	7,967	624	1,381	8%	17%
<u>Negligence</u>					
Reckless Disregard	21	5	8	24%	38%
High	891	113	322	13%	36%
Moderate	6,152	384	984	6%	16%
Low	882	120	66	14%	7%
No Negligence	21	2	1	10%	5%
Totals	7,967	624	1,381	8%	17%
<u>Type of Issuance</u>					
104(a)	7,701	567	1,279	7%	17%
104(d)(1)	108	32	59	30%	55%
104(d)(2)	73	15	35	21%	48%
104(g)(1)	85	10	8	12%	9%
Totals	7,967	624	1,381	8%	17%

Dollar Amounts of Violations Issued

	All Violations	Conference Requested	Contest Filed	% Conference Requested	% Contest Filed
Dollar Amounts					
\$200 or less	4,824	239	385	5%	8%
\$201-\$500	1,262	111	286	9%	23%
\$501-2,000	1,140	157	474	14%	42%
Over \$2,000	396	66	236	17%	60%
Not Yet Assessed (or Vacated)	345	51	0	15%	0%
Totals	7,967	624	1,381	8%	17%

Comparative Data for Previous Years in Pilot Districts*

	2005	2009	2010
# Violations Issued	7,028	7,910	7,967
# Conferences Requested	395	140	438
% Requesting Conference	6%	2%	5%
# Contest dates past	7,028	7,910	7,748
# Contests Requested	433	2,119	1,381
% Contested	6%	27%	18%
Size of Potential Backlog	668	2,181	1,665
# of Conferenced Citations That Were Not Contested	235	62	284
# of Conferenced Citations Not Contested as % of Potential Backlog	35%	3%	17%

* Violations issued between 8/31 - 11/30 for each year.

Requested Feedback Through MSHA Website

The screenshot shows a Microsoft Internet Explorer browser window displaying the MSHA website. The address bar shows the URL: <http://www.msha.gov/preassess/preassessmentscreening.asp>. The browser's menu bar includes File, Edit, View, Favorites, Tools, and Help. The page title is "MSHA - Share your Ideas - Preassessment Conference".

The website header features the United States Department of Labor logo and the text "UNITED STATES DEPARTMENT OF LABOR". Navigation links include "Subscribe to E-mail Updates", "Advanced Search", "Find It In MSHA", "A-Z Index", "Site Map", "FAQs", "MSHA Forms", "About MSHA", "Contact Us", and "Español". The Mine Safety and Health Administration logo and name are also present, along with the tagline "MSHA - Protecting Miners' Safety and Health Since 1978" and a "Print This Page" button.

The main content area is titled "MSHA's Pilot Pre-Assessment Conference Program". It includes the following text:

Give us your ideas on MSHA's Pilot Pre-Assessment Conference Program.

MSHA wants to hear from you!

MSHA conducted a pilot program of pre-assessment safety and health conferences (Pilot) in Coal District 2, Coal District 6, and Metal/Nonmetal Southeast District from August 31, 2010 through November 30, 2010.

The 90-day pilot offered mine operators in three districts the option of pre-assessment conferences. The pilot program allowed the mine operator and the miners' representative to hear MSHA's interpretation of regulations and discuss and resolve issues relating to violations prior to the civil penalty assessment and litigation.

We're looking to the mining community and other interested parties to give us your feedback on the pre-assessment conference program.

Please tell us:

- How you think the program worked, and
- How we can make it more effective!

[Submit Your Ideas](#)

An illustration of a glowing lightbulb with the text "Share your ideas!" is positioned to the right of the text. Below the lightbulb are three hot air balloons.

The footer of the page contains links for "FAQs", "Freedom of Information Act", "Privacy & Security Statement", "Disclaimers", "Customer Survey", "Online Filing Help Desk", and "Contact Us". The browser's status bar shows "Done" and "Internet" with a zoom level of 85%.

Summary of Pilot Questionnaire Results

Mine Operator Suggestions	Number of times suggested in each of the Pilot districts			
	District Two	District Six	SE District	TOTAL
Did not respond to questionnaire or there was no documentation from questionnaire.	82	13	48	95
CLRs should be independent from the District/DMs and/or allowed to make decisions at or after conference.	-	23	-	23
Continue the conferencing program nationwide.	9	-	2	11
Conferences should be held in a timelier manner.	2	-	1	3
Inspector should be present at the conference.	-	1	2	3
Unbiased third party with technical background needed.	-	-	2	2
Would like more modifications without bias.	-	1	-	1
Conferences should be held at a higher level, e.g., at the District or HQ level.	-	-	1	1
Should be a meeting on a one-on-one basis; the process should be more formal.	-	-	1	1
Meetings should be face to face.	-	-	1	1
MSHA needs a better call-in system.	-	-	1	1
Operators should be able to discuss the negligence and gravity on each citation.	-	-	1	1
MSHA should take more time to evaluate citations.	-	-	1	1
All personnel involved should attend telephone conference.	-	-	1	1