

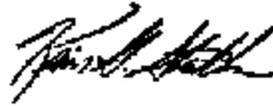
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PROCEDURE INSTRUCTION LETTER NO. I12-V-09

FROM:

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Administrator for
Coal Mine Safety and Health



SUBJECT:

Inspector Compliance with the Tracking Requirements of an
Emergency Response Plan

Scope

This Procedure Instruction Letter (PIL) is intended for Mine Safety and Health Administration (MSHA) enforcement personnel.

Purpose

This PIL provides guidance and instructions to MSHA personnel regarding circumstances under which the inspector is not required to comply with the electronic tracking provision of the Mine Improvement and New Emergency Response (MINER) Act of 2006.

Procedure Instructions

The District Manager (or his designee) may make the determination that: (1) electronic tracking of an MSHA inspector could provide advance notice of an inspection and (2) important inspection objectives could be undermined if the MSHA inspector was tracked. In those cases, the District Manager/ designee may allow the inspector to perform the portion of the inspection where the advance notice concern exists without the inspection party being tracked by the mine operator. In these situations, the inspector must provide the intended travel routes to an MSHA supervisor or to another MSHA representative who will be available at all times in the event of a mine emergency while the inspection party is underground. If the intended travel route changes, the MSHA inspector must notify the supervisor or the other MSHA representative. Inspectors should document in their notes the reason(s) why tracking devices were not worn. The notes should also reflect who was notified of the intended travel routes and any changes to these routes.

Background

Section 2 of the MINER Act provides that, as of June 15, 2009, an emergency response plan (ERP) must provide for an electronic tracking system permitting surface personnel to determine the location of any persons trapped underground." The term "any persons trapped underground" suggests that the requirement for electronic tracking applies to anyone underground, including MSHA personnel.

Section 103(a) of the Federal Mine Safety and Health Act of 1977 (Mine Act) provides that no advance notice of an inspection shall be provided to any person. In some cases, electronic tracking may provide advance notice of an area to be inspected, which the Mine Act prohibits. The new electronic tracking systems should minimize the advance notice problems associated with the dispatcher systems currently used for tracking persons. Specifically, electronic tracking conveys real-time current location information, including the historical direction of travel, but does not directly convey destination information.

However, in the event that electronic tracking of an MSHA inspector and persons traveling with the inspector (the "inspection party") could result in advance notice of an inspection, Section 2 of the MINER Act and Section 103(a) of the Mine Act may be in conflict. For example, this conflict may exist with respect to inspections to determine whether smoking materials are present or whether mining is performed by taking extended cuts, as well as inspections to take air quantity or quality measurements at a specific location. In cases like these, electronic tracking may permit an operator to convey information that undermines an inspector's ability to determine compliance with the Mine Act.

The Office of the Inspector General (OIG) recommended that MSHA issue a written policy or, if necessary, pursue legislation to establish the basis for and the circumstances under which MSHA inspectors are not required to comply with electronic tracking requirements in an operator's ERP during an inspection. This instruction letter clarifies these circumstances and provides guidance to MSHA enforcement personnel.

Authority

Sections 103(a) and 110(e) of the Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. 876.

Internet Availability

This PIL may be viewed on the internet by accessing MSHA's home page at (www.msha.gov), choosing "Compliance Info" and "Procedure Instruction Letters."

Issuing Office and Contact Persons

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