

U.S. Department of Labor

Mine Safety and Health Administration
1100 Wilson Boulevard
Arlington, Virginia 22209-3939



JUL 18 2014

Senator Tom Udall
United States Senate
Washington, DC 20510

Dear Senator Udall:

Thank you for your letter regarding the Mine Safety and Health Administration's (MSHA) inspection activities at the U.S. Department of Energy's (DOE) Waste Isolation Pilot Plant (WIPP) in Carlsbad, New Mexico. Since you wrote, MSHA has conducted a briefing with your staff on WIPP; this response is a follow up to those discussions.

The WIPP Land Withdrawal Act (WIPP Act) requires MSHA to "inspect WIPP not less than four times each year and in the same manner as it evaluates mine sites under the Federal Mine Safety and Health Act of 1977." The statute also mandates that MSHA provide the results of these inspections to the Secretary of Energy, who is then required to make the results publicly available.

The 1987 Memorandum of Understanding (MOU) between MSHA and DOE referenced in your letter was executed prior to the passage of the WIPP Act. The MOU requires that MSHA conduct "periodic" inspections of WIPP operations and provide the results to the WIPP project office. Our review of MSHA records found that after the passage of the WIPP Act in 1992, the parties began negotiations to revise the MOU to conform to the requirements of the new law. During those discussions, issues arose concerning the scope of MSHA's inspection authority. Those issues were never resolved and the parties did not execute an updated MOU. It appears that work on a revised MOU ended in the mid-1990s.

The 1987 agreement is the only signed agreement MSHA has on record. MSHA does not have records on inspections at the WIPP facility prior to FY1995, but since FY1995, MSHA has conducted "periodic" inspections at WIPP, including some years (FY2005--2007) in which MSHA conducted four inspections. MSHA is now conducting inspections at the WIPP facility four times a year as required by the WIPP Act.

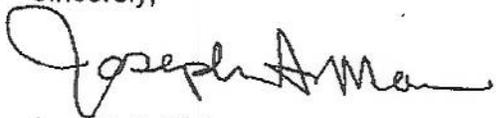
During inspections of the facility, if MSHA finds a violation of a mandatory safety or health standard, it issues a Compliance Assistance Visit (CAV) notice. According to MSHA's records from 1995 through January, 2014, agency inspectors have conducted 42 inspections at the WIPP facility and issued over 200 CAV notices. From June 10, 2014 through June 19, 2014, MSHA conducted a quarterly inspection at WIPP and issued 52 CAV notices. The agency is working with DOE officials at the mine to ensure the deficiencies found by the MSHA inspector are being resolved.

Since the accident in February, MSHA has also been providing technical and other assistance to DOE. MSHA will continue to be available through the recovery process to assist DOE in ensuring the safety of the investigation, remediation and future reopening of WIPP. It is my understanding that some areas of the WIPP facility are now open.

I have met with DOE officials on two occasions regarding MSHA's activities at the WIPP facility. Additionally, my staff is working closely with DOE to develop an updated MOU that will solidify MSHA's and DOE's obligations under the WIPP Act.

I hope this information is useful. If you have further questions, please contact Mr. Tony Zaffirini, at DOL's Office of Intergovernmental Affairs, at 202-693-4600.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph A. Main". The signature is fluid and cursive, with the first name "Joseph" being the most prominent part.

Joseph A. Main
Assistant Secretary of Labor for
Mine Safety and Health

cc: Senator Martin Heinrich
