

MEMORANDUM OF AGREEMENT

FATAL MINE ACCIDENT INVESTIGATIONS

This Memorandum of Agreement is made this 3rd day of January, 2003, by and between the **United States Department of Labor, Mine Safety and Health Administration** (herein **MSHA**) by its District 5 Manager (herein "District Manager") and the Commonwealth of Virginia's (herein "Commonwealth") **Department of Mines, Minerals, and Energy, Division of Mines** (herein **DM**).

**Whereas**, MSHA is the regulatory authority of the United States Department of Labor for administering the Federal Mine Safety and Health Act of 1977 and the regulations promulgated thereunder, (collectively "Federal Mine Safety Act") and amendments thereto, as the same may be or become effective any time or from time to time, for the purpose of providing for the health and safety of coal miners.

**Whereas**, DM is the regulatory authority of the Commonwealth responsible for administering the State Mine Safety Act, Virginia Code §§ 45.1-161.7 et. seq., and 45.1-161.105 et seq. Through 45.1-161.304 et seq., the rules and regulations promulgated thereunder, (herein "State Mine Safety Act") for the purpose of providing for the safety and health of coal miners in the Commonwealth.

**Whereas**, each agency is mandated pursuant to their respective Mine Safety Act to perform investigations of accidents occurring at coal mines operating within the Commonwealth thus leading to the potential for overlapping of accident investigation activities between MSHA and DM.

**Whereas**, to efficiently and effectively utilize resources and better administer the provisions of the Federal Mine Safety Act and the State Mine Safety Act, MSHA and DM desire to enter into this Memorandum of Agreement to provide for cooperation and coordination in the administration of their duties under their respective Mine Safety Act with respect to the investigation of coal mine accidents within the Commonwealth.

**Now, Therefore**, in consideration of the mutual covenants and promises contained herein, the parties agree as follows:

1. This agreement shall not be construed as a delegation of authority from the District Manager to the Chief, nor from the Chief to the District Manager and nothing herein contained shall be construed to hinder, prevent, or impede the District Manager or Chief from performing any duty or serving any function permitted or required by the Federal Mine Safety Act or by the State Mine Safety Act, respectively.
2. The District Manager and the Chief shall serve as liaisons between MSHA and DM and facilitate communication and cooperation between MSHA and DM under this Memorandum of Agreement.
3. Whenever either MSHA or DM is notified of a coal mine fatality or an injury to an individual at a mine which has a reasonable potential to cause death, the agency receiving such notice will immediately contact the other agency to confirm the reported occurrence. To facilitate such notification, a periodically updated directory for each agency's investigative personnel will be made available to the other agency's officials and investigators. These directories will include both office and home telephone numbers of each agency's officials and investigators.
4. Upon arrival at the mine site and prior to beginning the accident investigation, the designated MSHA Official and DM Accident Investigation Coordinator will communicate to jointly coordinate the respective roles and duties of the MSHA and DM accident investigation team members, institute measures to make the accident scene safe, and to review and initiate general procedures for the conduct of the examination of the accident scene. Each agency will designate its accident investigation team leader (herein "Principal Investigator").
5. The MSHA and DM Accident Investigation Coordinators or other designated Agency Official will identify the respective agency Principal Investigators and will meet with the mine operator or agent(s) and representatives of the miners to review procedures for conducting the accident scene investigation. A copy of this memorandum of agreement will be provided to interested parties. The Accident Investigation Coordinators will arrange with the mine operator for access and transportation to the scene. Also, any resources needed to conduct the investigation safely and effectively will be identified and provided to the investigation team.

6. All participants in the investigation, including MSHA and DM accident investigation team members, the mine operator and representatives of miners, will be given ample opportunity to examine and observe the accident scene, as hereinafter provided. However, the DM and MSHA Principal Investigators will perform the initial inspection of the scene. Each Principal Investigator may designate one other team member to accompany them during this initial inspection as an eyewitness to observe the events that take place. When this initial examination is complete, necessary evidence at the scene will be secured or safeguarded in the manner directed by the Principal Investigators to ensure that it will not be disturbed during subsequent inspections.

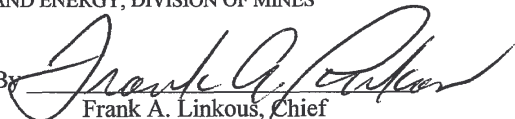
Once the Principal Investigators have completed their initial inspection, then other members of the investigation team may examine the scene. However, the number of persons at the scene at any one time will be controlled by the Principal Investigators to provide for the safety of the team members. Upon satisfactory completion of the scene examinations, those persons designated by the Principal Investigators for taking measurements and photographs will remain at the scene to perform assigned duties. All other persons will be requested to leave the scene.

7. The MSHA Designated Official and DM Accident Investigation Coordinator will meet and determine those personnel to be interviewed as part of the investigation. An effort will be made to include only those personnel for interview who have relevant knowledge or information beneficial to the investigation. In scheduling miners and officials for interview, consideration will be given to minimize waiting times by assigning an approximate time for each interview.
8. MSHA and/or DM mine closure control orders issued during the investigation will not be terminated until the interview sessions are finalized. However, modification of closure orders under certain circumstances will be permitted. Designated officials from the DM and MSHA will communicate planned modification prior to issuance.
9. The joint interview sessions will be conducted in facilities designated by the Accident Investigation Coordinators which when possible will afford some degree of privacy. This location can be on mine property, at MSHA or DM Offices, or other mutually agreed upon locations. In choosing the site, due consideration, when practical, shall be given to the witnesses convenience.
10. Prior to the commencement of any interview session, the mine operator and representatives of miners will be informed of the procedures which will be utilized by DM and MSHA in the jointly conducted interviews.
11. Prior to their interview session, witnesses will be sequestered to the extent practical, and will be informed as to the procedures that will be followed during interviewing. After each witness has testified, he or she will be requested to leave the room where their interview was held.
12. Interviews will be documented through the use of an audio recording device in order to compliment the note-keeping process. This will enable the investigators and the person being interviewed to maintain clear thoughts during questioning and focus on the facts concerning the accident. A court reporter may be used during investigations when deemed necessary. If a witness objects to having his testimony recorded, the Principal Investigators will explain to the witness that the audio record of the interview is being made to facilitate the writing of DM and MSHA's respective accident investigation reports. These proceedings are not part of a criminal investigation. If a criminal investigation is instituted, it would be conducted at a separate time and place by persons other than those conducting the accident interview sessions. However, any information obtained in the accident investigation could be used in the criminal investigation. If the objection persists, the Principal Investigators may agree to take the witness' response to questions and record statements by note-keeping. The witness will be informed that he has the option of excluding all participants, other than DM and MSHA personnel, from the interview session. This option, as well as the option to give a written statement, will only be extended to the witness testifying.

13. All interviews will be conducted in an efficient and effective manner with questions carefully selected to be relevant and appropriate for the investigation. Due consideration and respect will be extended to each witness at all times during the interview process, recognizing the emotional and physical strain which may have occurred. Therefore, only a designated representative from MSHA and from DM will be permitted to ask direct questions of witnesses. The mine operator and representatives of miners are an essential part of the investigation and will be afforded the opportunity to participate by submitting questions in writing to the agencies' representatives conducting the interviews. The questions submitted must be consistent with the purpose and intent of the investigation as determined by the agencies' interview representatives in order to be asked of the witnesses.
14. At the conclusion of the taking of witness' testimony, the session will be suspended in order for DM and MSHA personnel to confer and evaluate their findings. If possible, a preliminary determination will be jointly reached by MSHA and DM as to the cause of the accident. The session will then be reconvened to inform all participants of the agencies' preliminary findings. The session may then be opened to all those present for discussion to further aid MSHA and DM in finalizing facts and conclusions of cause as well as for formulating recommendations for the prevention of future similar occurrences.
15. Upon completion of the investigation, MSHA and DM accident investigation team members will meet to jointly review, and discuss their respective findings, for each to reach conclusions, and for each to determine appropriate enforcement actions, if any, to be taken.
16. In most accidents, an appropriate action plan by the operator will be required for approval by MSHA and DM. This action plan must effectively address necessary corrections and preventive measures for reoccurrence of a similar accident. Implementation of this action plan will be required prior to abatement of controlling orders issued by the agencies and return of the mine to normal operational status.
17. Representatives from MSHA and DM will contact the victim's family as soon as possible after completion of the investigation offering to schedule a meeting with the victim's family to review and discuss the preliminary findings of the investigation.
18. Once each agency has drafted its accident report, the Accident Investigation Coordinators of DM and MSHA will meet and jointly review the drafts in an attempt to resolve any factual inconsistencies which may exist between the two reports.
19. When the respective MSHA and DM accident reports are completed and approved for distribution, the designated officials from each Agency will, when possible, jointly deliver copies of the report to the victim's family and to the mine operator. If requested, MSHA and DM will mail their respective reports to the victim's family and to the mine operator. The delivering or mailing of the respective reports will be done prior to public release.
20. The Accident Investigation Coordinators from MSHA and the DM will monitor the accident investigation throughout the process to assure the provisions of this MOU are followed to the extent possible.

**IN WITNESS WHEREOF**, this agreement has been executed by the parties hereto in manner and form sufficient to bind them as of the day and year first written.

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF MINES, MINERALS,  
AND ENERGY, DIVISION OF MINES

By   
Frank A. Linkous, Chief

UNITED STATES DEPARTMENT OF LABOR  
MINE SAFETY AND HEALTH ADMINISTRATION

By   
Edward Morgan, District Manager