

# Legislative Audit Division

State of Montana



Report to the Legislature

December 1998

## Performance Audit

### Safety Bureau

Department of Labor and Industry  
Employment Relations Division

This report concludes there is a need for the bureau's system to ensure public employers and mines comply with occupational safety and health codes. The report also contains recommendations for improvements in Safety Bureau operations. The recommendations include:

- ▶ **Modifying information on the workers' compensation database so the highest risk employers can be identified and inspected.**
- ▶ **Developing a management information system so the bureau's effectiveness can be measured.**
- ▶ **Reviewing the organizational structure of the bureau to determine how its resources can be utilized more effectively.**

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Members of the performance audit staff hold degrees in disciplines appropriate to the audit process. Areas of expertise include business and public administration, statistics, economics, computer science, communications, and engineering.

Performance audits are performed at the request of the Legislative Audit Committee which is a bicameral and bipartisan standing committee of the Montana Legislature. The committee consists of six members of the Senate and six members of the House of Representatives.

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# LEGISLATIVE AUDIT DIVISION

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December 1998

The Legislative Audit Committee  
of the Montana State Legislature:

We conducted a performance audit of the Safety Bureau within the Department of Labor and Industry. This report concludes there is a need for the bureau's public safety and mine safety programs. It also contains recommendations to improve the effectiveness of bureau operations.

We wish to express our appreciation to the Department of Labor and Industry and to Safety Bureau management and staff for their cooperation and assistance.

Respectfully submitted,

**Signature on file**

Scott A. Seacat  
Legislative Auditor



# **Legislative Audit Division**

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## **Performance Audit**

### **Safety Bureau**

**Department of Labor and Industry  
Employment Relations Division**

Members of the audit staff involved in this audit were Susan Jensen, Joe Murray, and Jim Nelson.



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## **Appointed and Administrative Officials**

### **Department of Labor and Industry**

Pat Haffey, Commissioner

Jerry Keck, Acting Administrator, Employment Relations Division

John Maloney, Chief, Safety Bureau



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### **Introduction**

The Safety Bureau is part of the Employment Relations Division of the Department of Labor and Industry and is responsible for administering the state's occupational safety and health laws. Administration of the laws include ensuring Montana's public sector employers and mines comply with occupational safety and health codes. Responsibilities of the bureau include mandatory safety inspections of public sector employers (cities, counties, state governments, and schools), consultations with private sector employers, and inspections of coal mines and sand and gravel operations. The bureau's primary goal is to minimize employee injuries and illnesses and reduce workers' compensation premiums.

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### **Montana's Public Sector Injuries and Illnesses Common**

We found occupational injuries and illnesses are common in Montana's public sector. Based on information maintained by the department, the public sector represented approximately 10 percent of the state's employment during fiscal years 1995-96 and 1996-97. During fiscal year 1995-96 the public sector accounted for 10 percent of all occupational injuries and illnesses which ranked fourth among all industries. During 1996-97, this percentage increased to 11 percent which ranked third among all industries. The high number of injuries in the public sector cost Montana's workers' compensation system \$26 million in fiscal years 1995-96 through 1997-98.

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### **Montana's Mining Industry Safe but Injuries can be Costly**

According to the department's Research and Analysis Bureau, injuries in the mining industry rose from 6.1 injury and illness cases per 100 FTE in 1995 to 6.3 in 1996. However, the mining industry in Montana still had a lower injury rate than the state average for all industry and ranked as the state's second safest industry in 1996. Information regarding the cost of mining injuries and illnesses and the effects on Montana's workers' compensation system was not readily available. However, based upon information from the Bureau of Mines, the average mine injury costs \$18,000 and a fatality can cost over \$1 million.

## **Report Summary**

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### **Occupational Safety and Health Code Administration is Necessary**

We assessed the need for the bureau's mine and public safety programs. The Montana Legislature demonstrated the importance of workplace safety and health by creating public policy through the Montana Safety Act, the Occupational Health Act, the Safety Culture Act, and mine safety laws. All laws require a system exist to ensure employers provide employees with a safe and healthful work environment.

Overall, we found support for the bureau's programs. Public entities and mines believe bureau programs have helped reduce the number of injuries and their cost for workers' compensation insurance.

We believe Safety Bureau programs can help reduce occupational illnesses and injuries and help reduce costs to Montana's workers' compensation system. There is justification for the bureau's public safety and mine safety programs and a system to ensure employers comply with occupational safety and health codes.

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### **Field Staff Accountability and Communication**

Since the Safety Bureau operates under a decentralized system with most field staff working from their homes around the state, we reviewed the bureau's system to monitor field staff activities. We found information used to document staff activities was accurate. In addition, we confirmed the bureau has a process that helps ensure there is regular, on-going communication between bureau staff and management.

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### **Staff Training Should be Improved**

An evaluation of staff training noted significant differences in the amount of training received by safety inspectors and mine inspectors. Training records indicated safety inspectors averaged around 70 hours of training each year. Conversely, the mine inspectors received an average of 12 hours of training per year. Most of those hours were attributed to one inspector, the other two mine inspectors received no training. The bureau should develop a training plan for mine inspection staff.

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### **Inspections Should Focus More on Employers with High Rates of Injuries and Illnesses**

According to OSHA, the most effective method to ensure employers are complying with safety and health codes is to focus inspections on those employers with high rates of injuries or illnesses. We found staff do not use a consistent systematic approach when determining which entities they inspect. Some staff said they often select entities to increase their total number of inspections, even if the employer poses a low risk to employees. Other staff base inspection decisions on travel distance, “gut feel,” or handling the latest request on their desk. In addition, other staff said they try to inspect all public entities or mines in an area.

The bureau has five safety specialists responsible for over 2,700 public employers and one mine inspector responsible for approximately 200 sand and gravel operations. These limited resources should be used in the most efficient manner possible. However, we noted the bureau inspected a number of entities not generally considered high hazard employers such as public libraries and public office buildings.

Montana’s workers’ compensation database was established by the 1993 Legislature as a tool to help manage Montana’s workers’ compensation system. The database, maintained by the Employment Relations Division, tracks information such as the number of occupational injuries and illnesses, and claims filed. We found information from the database is not used to help set inspection priorities because the information is not in a useful form. For example, injuries reported by state agencies are grouped together in the database under the “State of Montana.” Injuries for other public sector employers, such as cities and counties, are reported in a similar way.

The Employment Relations Division should modify information on the workers’ compensation database so the highest risk public employers, sand and gravel operations and mining activities can be identified. The division should then provide data to the Safety Bureau so it can assess occupational injury and illness rates for public employers and mines. The assessment will help the Safety Bureau prioritize which entities and activities should be inspected.

## Report Summary

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### **Communication/Coordination with Workers' Compensation Insurers and Other Agencies**

There is minimal communication and coordination between the Safety Bureau and workers' compensation insurers. In some instances, the relationship is more adversarial than cooperative. Most insurers would like to have more input into areas where they believe the bureau needs to concentrate its efforts. Bureau staff and management would also like more direct contact with insurers because insurers would be a valuable source of information. Steps have not been taken to establish formal on-going lines of communication between the two.

The bureau could also improve its coordination with other state agencies. Bureau staff indicated it is often difficult to find mobile sand and gravel units, such as those on road construction sites. Bureau officials said a formal system does not exist to help track the location of these units so they inspect only those units they happen to find while traveling to other inspection sites. However, these mobile units must apply for air quality permits through the Department of Environmental Quality (DEQ). In addition, all planned road construction is identified by the Montana Department of Transportation (MDT).

The bureau should establish a formal process to communicate with workers' compensation insurers. The bureau should also coordinate with the DEQ and MDT to identify locations of mobile sand and gravel units operating in the state.

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### **Measuring Bureau Effectiveness**

According to Safety Bureau staff and management, measurement of bureau effectiveness is subjective because specific information is not available to make an accurate determination. Workers' compensation providers said one area of concern is the bureau's inability to accurately assess its accomplishments. Many bureau field staff had similar concerns and questioned the level of impact the bureau is having on improving employer safety.

Currently, the Safety Bureau does not compile information to help develop a comprehensive planning process for its inspection activities. The bureau does maintain information such as the number of inspections completed and number of people trained. However, this information counts activities as opposed to outcomes. The bureau needs to develop a comprehensive management information system which will

provide a means for improving its strategic planning process and measuring the effectiveness of its operations.

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### Review Bureau Organization and Operations

During the audit, we noted significant variances in workload of bureau staff. The following provides some examples:

- ▶ The five safety inspectors located around the state are each responsible for approximately 550 public entities.
- ▶ There is one sand and gravel inspector responsible for inspecting approximately 200 sand and gravel operations.
- ▶ There are two coal mine inspectors responsible for inspecting six coal mines.

We questioned whether the bureau is currently organized in a way which allows for the most effective use of its resources. We developed a number of issues which the department should evaluate to determine if changes need to be made. The following questions provides some examples:

- ▶ Does the bureau need two coal mine inspectors to meet its statutory mandate of quarterly inspections of coal mines?
- ▶ What duties will the sand and gravel inspector perform during winter months?
- ▶ Could the bureau better utilize its section supervisors in the field?
- ▶ Can a better system be developed to coordinate bureau resources such as using the industrial hygienists to perform more tests to identify potential occupational health hazards?

The Department of Labor and Industry should review the organizational structure and staff responsibilities of the Safety Bureau to determine how resources can be used more efficiently.

## **Report Summary**

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### **Safety and Health Laws**

Section 50-70-102, MCA, mandates employers provide employees a safe and healthy work environment and requires a system to enforce this requirement. We found Montana has a fragmented system in place for administering safety and health in the workplace. This fragmentation has led to inefficient and inconsistent enforcement of laws and has created confusion over who has authority for enforcement.

### **Occupational Health Act (OHA)**

The purpose of the OHA is to ensure employers provide a workplace which protects the health of its employees and requires a system to be in place which ensures employers comply with the act. State law delegates administration of the OHA to the Department of Environmental Quality (DEQ) and requires the Safety Bureau to refer any occupational health hazards to DEQ. The Safety Bureau, however, performs most enforcement activities related to the OHA and the OHA has never been a priority for DEQ. In addition, DEQ does not have the expertise or equipment to perform enforcement activities related to the OHA. The Department of Labor and Industry should seek legislation to obtain authority to administer the Occupational Health Act.

### **Safety Culture Act (SCA)**

The purpose of the SCA is to reduce the incidence of occupational illness and injury by promoting safety in the workplace and to control the costs of claims for workers' compensation insurance. This act requires employers to provide safety awareness training and education to employees. The Safety Bureau is unclear of its role in administering the SCA. There is disagreement among bureau staff on how much authority the bureau has to enforce the act. Statutes are not clear on who is actually responsible for enforcing the SCA. The Department of Labor and Industry should seek legislation to clarify the Safety Bureau's role in enforcing the requirements of the SCA.

# Chapter I - Introduction

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## Introduction

A performance audit of the Safety Bureau was requested by the Department of Labor and Industry and approved by the Legislative Audit Committee. The Safety Bureau is part of the Employment Relations Division and is responsible for ensuring Montana's public sector employers and mines comply with occupational safety and health codes. This is accomplished through a combination of inspections, consultations, and training activities.

## Audit Objectives

The audit examined the bureau's process to administer occupational safety and health codes. The objectives of the audit were to:

1. Determine the need for Safety Bureau programs to administer occupational safety and health codes.
2. Provide information to the Montana Legislature and the public on the role of the Safety Bureau.
3. Determine if the Occupational Health Act and the Montana Safety Culture Act should be administered by the bureau.
4. Evaluate management controls over bureau operations.
5. Determine if public sector and mine inspections could be conducted in a more efficient and effective manner.

## Audit Scope and Methodology

The audit was conducted in accordance with governmental auditing standards for performance audits. This audit provides information on the role and responsibilities of the Department of Labor and Industry's Safety Bureau. The Safety Bureau is responsible for ensuring public employers and mining operations in the state have proper safety devices and procedures in place to provide employees with a safe work environment.

Our audit focused on the Safety Bureau's process to administer occupational safety and health codes for public sector employers and mine operations in the state. We reviewed state laws, administrative rules, and federal regulations related to occupational health and safety. This provided information related to bureau authority and directives for administering occupational and safety codes. We obtained information from the bureau defining safety and health hazards in the workplace.

## **Chapter I - Introduction**

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We also gathered national and statewide statistics related to occupational injuries and illnesses and obtained information relating to their costs to Montana's workers' compensation system.

We evaluated management controls over bureau operations and the effectiveness of the bureau's process to administer its inspection programs. We reviewed bureau policies and procedures and interviewed all field staff and bureau management. We evaluated the level of training received by bureau staff who are responsible for determining whether employers are in compliance with safety and health codes. We interviewed field staff and reviewed staff training records for the last three years. We accompanied field staff during safety inspections of public employers, coal mines, and sand and gravel operations to observe and evaluate procedures followed during inspections.

The bureau's process to document and track field staff activities was evaluated. This was done to determine if a system existed which ensured accountability over field staff activities. We also reviewed the bureau's process to establish priorities for staff workload. Audit work included reviewing weekly activity reports, time summaries, inspection files, and management information related to staff activities. We evaluated workload information maintained by the bureau for the last three years. We also interviewed bureau staff and management to determine their specific responsibilities in administering occupational safety and health programs.

Interviews were conducted with other groups involved in workplace safety and health. This included interviews with workers' compensation insurance providers, the U.S. Department of Labor's Occupational Safety and Health Administration, and Mine Safety and Health Administration. We also interviewed officials from other state inspection programs to determine procedures they follow to administer their programs. Information obtained gave us a basis of comparison for bureau operations. Entities inspected by the bureau were contacted to obtain their opinion on the bureau's inspection programs. Entities contacted included officials from coal mines, sand and gravel operations, metal and nonmetal mines, and public sector employers. The bureau surveys entities it inspects to obtain their input on the

quality of bureau inspections. We reviewed these surveys to determine whether entities were satisfied with the inspection programs and to note where potential improvements could be made. We also contacted the Montana Mining Association to discuss the bureau's process to inspect metal and nonmetal mines and provide training to miners.

Statutes designate responsibilities for administering certain aspects of occupational safety and health to other state agencies. These statutes were evaluated to determine if it created an efficient system to administer these laws. We also reviewed changes made during the 1997 Legislative Session which eliminated Safety Bureau authority to inspect metal and nonmetal mines to determine the effect on bureau operations and mines.

We did not specifically evaluate the effectiveness of the bureau's private employer consultation or small miner training programs. These are federally funded programs and were recently evaluated by the Occupational Safety and Health Administration and the Mine Safety and Health Administration. We considered the impact these programs have on the bureau's workload.

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### Data Limitations

Government auditing standards require disclosure of any constraints imposed on the audit approach because of data limitations or scope constraints. During the audit, we wanted to assess the effectiveness of the bureau's inspection programs and determine potential changes which could streamline the process. However, a significant amount of management information was not available which limited the extent we could evaluate this area. The issue relating to management information is discussed in Chapter III of the report.

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### Compliance

We examined compliance with statutes and administrative rules relating to administration of occupational safety and health programs. We found the bureau is generally in compliance with applicable statutes and administrative rules.

## **Chapter I - Introduction**

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### **Management Memorandum**

During the audit, we issued a management memorandum to the department regarding its records retention policies. We noted the bureau had several files with information 10 to 20 years old. We suggested the bureau reacquaint staff with the requirements of the bureau's records retention schedule. We also suggested the bureau update its records retention schedule to more accurately reflect its current operations and ensure the schedule specifies approval is required from the State Records Committee before records are destroyed.

# Chapter II - Background

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## Introduction

This chapter provides an overview of occupational safety and health codes and administration of these codes. It includes descriptions of safety and health hazards, the process to control these hazards, and safety and health laws of Montana. We also describe the role of the Occupational Safety and Health Administration, Mine Safety and Health Administration, and the Department of Labor and Industry. Information relating to workplace injuries and their associated costs to Montana's workers' compensation system is also provided.

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## Health and Safety Hazards

There are two types of hazards which can exist within the work environment; safety hazards and health hazards. In general, safety hazards are conditions that can cause injuries and health hazards are conditions that can cause illness. Safety and health hazards can also combine to pose an increased danger to employees. For example, while noise is primarily a health hazard which could cause hearing loss, it can also contribute to injuries by making it hard for employees to hear warning signals.

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## What are Health and Safety Hazards?

A health hazard is any chemical or biological substance or physical agent which causes or aggravates illness in humans. Chemical health hazards occur in many different forms. They can be liquids, such as benzene; solids, such as silica dust; or gases, such as hydrogen sulfide. Illnesses caused by exposure to chemical health hazards can range from dizziness or nausea to lung or liver disease to cancer. Physical agents include hazards such as exposure to radiation, excessive noise or temperature. It is often difficult to determine the cause of an illness because the chemical substance which caused the disease may be odorless or invisible. Illnesses may also not become apparent until many years after exposure or the disease may be caused from a combination of chemicals or substances which makes the exact cause more difficult to identify. Health hazards also include ergonomic issues such as repetitive motion or awkward postures.

Safety hazards often provoke an acute response instead of chronic effects which are common with health hazards. They are also generally more noticeable in the workplace than health hazards. For example, unguarded drive belts and pulleys are highly visible, whereas gasoline or

## Chapter II - Background

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carbon dioxide vapors are nearly invisible. Consequently, it is generally easier to identify safety hazards than health hazards and determine what caused occupational injuries as opposed to occupational illnesses. Examples of common safety hazards include general “housekeeping” of the work area, openings in walls and floors, explosives, machine guarding, and flammable or combustible liquids.

There are three basic methods for controlling health and safety hazards. *Engineering controls* eliminate or reduce hazards by isolating the hazard to a specific area or ensuring proper ventilation exists. *Administrative controls* either reduce the number of workers who are exposed to hazards or distribute exposure among more people so each employee’s exposure is less. Examples of administrative controls include changing work schedules, implementing longer rest periods, or moving employees to a different work shift. *Protective equipment* reduces exposure to health hazards but is the least desirable protection because it may be uncomfortable, fit poorly, or be used improperly. The use of this equipment requires on-going employee training, monitoring, and can be expensive to the employer. Examples of protective equipment include respirators, safety glasses, gloves, and body suits.

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### Federal & State Agencies Conduct Occupational Safety & Health Inspections

In addition to the Safety Bureau, two federal agencies are involved in occupational safety and health in Montana: the Occupational Safety and Health Administration (OSHA), and the Mine Safety and Health Administration (MSHA). The following table illustrates the inspection responsibility delegated to federal and state agencies over different types of employers.

**Table 1**  
**Inspection Responsibility by Type of Entity**

<u>Entity</u>	<u>State</u>	<u>Federal</u>
Private Employers other than mines		OSHA
Metal/non metal Mines		MSHA
Sand & Gravel Operations	Safety Bureau	MSHA
Coal Mines	Safety Bureau	MSHA
Public Employers	Safety Bureau	

**Source: Compiled by the Legislative Audit Division.**

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**Occupational Safety and Health Administration**

In 1970, Congress established the Occupational Safety and Health Administration (OSHA). The Occupational Safety and Health Act of 1970 (public law 91-596) defines OSHA’s mission to “assure so far as possible every working man and woman in the nation safe and healthful working conditions.” OSHA is responsible for creating national occupational safety and health codes and ensuring private sector employers (excluding mines) comply with these codes. The OSHA Act does not include employees of public sector agencies such as federal, state, local governments, or schools. Consequently, OSHA has no authority over public sector employers in Montana.

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**Mine Safety and Health Administration**

The Federal Mine Safety and Health Act of 1977 created the Mine Safety and Health Administration (MSHA). MSHA’s mission is to enforce compliance with mine safety and health standards to eliminate mine fatalities, reduce the frequency of accidents, minimize health hazards, and promote better safety and health conditions in the nation’s mines. By rule, MSHA develops, promulgates, and revises mine safety and health standards for all metal and nonmetal mines, including coal. The MSHA Act provides that MSHA inspectors shall frequently inspect all mines. Their goal is to inspect every underground mine four times each year and all surface mines twice each year.

## **Chapter II - Background**

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### **Montana Safety and Health Laws**

State law sets forth Montana’s public policy regarding occupational health and safety and the Safety Bureau is responsible for administering these laws. This involves workplace safety inspections of public sector employers (city, county, state government, and schools), coal mines and sand and gravel operations. The bureau’s goal is to minimize employee illnesses and injuries through enforcement of safety and health laws. There are five major acts related to occupational health and safety. The following sections provide a brief discussion of each act.

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### **Montana Safety Act**

The Montana Safety Act (Title 50, chapter 71, MCA) is considered the “umbrella” safety act covering workplace safety. It requires all employers to furnish a place of employment which is safe for all employees. This act vests the Department of Labor and Industry with full power and jurisdiction to enforce and administer all laws and orders which require employers to provide a safe work environment. It also assigns responsibility to the Department of Labor and Industry to inspect hazardous workplaces and issue orders to employers requiring them to provide employees a safe work environment. While the department is not authorized to issue monetary fines to employers, it is authorized to order closure or cessation of work if the department determines the work environment poses immediate danger to life, safety, or health of employees.

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### **Montana Safety Culture Act**

The Montana Safety Culture Act (Title 39, chapter 71, part 15, MCA) was created by the 1993 Legislature with the purpose of reducing the incidence of occupational illness and injury by promoting safety in the workplace. It requires employers to provide safety training and education to employees and requires the department to promote safety awareness through the education of students for entrance into the labor market. The major goal behind establishment of the act was to help control the cost of workers’ compensation insurance claims.

## Chapter II - Background

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### Occupational Health Act

The purpose of the Occupational Health Act (Title 50, chapter 70, MCA) is to ensure employers provide a workplace which protects the health of its employees. The act delegates authority for administering the Occupational Health Act to the Department of Environmental Quality (DEQ). Duties of DEQ include developing plans to prevent and abate occupational diseases, conducting field studies and testing the degree of health hazards in the workplace, and disseminating information and conducting training programs on the prevention of occupational diseases. Employers who violate codes related to occupational health may also be subject to a \$1,000 fine for each day a violation remains unabated.

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### Safety in Coal Mines

The Montana Coal Mining Code (Title 50, chapter 73, MCA) requires the Department of Labor and Industry to ensure coal mines provide a safe work environment for miners. The code authorizes the department to inspect coal mines whenever it considers it necessary, but the department must inspect all coal mines at least four times per year. Upon identification of a safety or health violation, the department is authorized to issue a notice of violation. If a coal mine disregards a violation, the coal mining code authorizes the department to immediately stop the portion of the mine operation where dangerous conditions or code violations exist.

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### Safety in Mines Other Than Coal Mines

Safety in Mines other than Coal Mines (Title 50, chapter 72, MCA) originally applied to all metal and nonmetal mines, except for coal and lignite. It authorized the department to inspect all metal and nonmetal mines to ensure mines were in compliance with mine safety and health codes. This law was changed by the 1997 Legislature eliminating the department's authority to inspect metal and nonmetal mines, except for sand and gravel operations, as long as these mines were inspected by federal inspectors. This change took effect July 1, 1998.

## **Chapter II - Background**

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### **Department of Labor and Industry**

The Department of Labor and Industry is responsible for promoting the well-being of Montana's workers and employers and advocating the rights and responsibilities of both. The department provides oversight and regulation of Montana's workers' compensation system, enforces state and federal labor standards, provides adjudicative services in labor-management disputes, conducts research and collects employment statistics that enable strategic planning, and administers state and federal occupational safety and health codes.

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### **Employment Relations Division**

The Employment Relations Division (ERD) is the department's regulatory body for workers' compensation in Montana and ensures employer and insurer compliance with the Workers' Compensation Act. The division is responsible for performing a variety of activities related to Montana's workers' compensation system. Activities include resolving disputes related to the workers' compensation, setting fees which may be charged for medical services provided under the Workers' Compensation Act, and operating the state's safety programs. Our audit concentrated on the ERD's system to administer its safety programs. The division's Safety Bureau is charged with the responsibility to manage these safety programs.

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### **Safety Bureau**

The Safety Bureau is authorized a total of 16 FTE, including the bureau chief. Seven staff are located centrally (in Helena) and the remainder are assigned to geographic regions around the state. The bureau is responsible for administering the state's occupational safety and health laws. This involves mandatory workplace safety inspections of public sector employers (city, county, state governments, and schools), coal mines, and sand and gravel operations. The bureau's ultimate goal is to minimize employee injuries and illnesses and reduce workers' compensation premiums.

### **OSHA Code Adopted**

The federal OSHA Act of 1970 provides protection for private sector employees, but does not include political subdivisions of the State of Montana. The bureau believes public sector employees should be protected to the same extent as private sector employees and protected by the same safety and health standards. Since the OSHA Act does not include Montana's public sector, the bureau adopted OSHA safety and

health codes through administrative rule (section 24.30.102, ARM) which are binding to all public sector employers in Montana.

### Inspection Process

Field staff inspect workplaces within their assigned regions and issue orders to employers to comply with occupational safety and health codes. Before conducting inspections, inspectors meet with officials from the entity to be inspected and discuss inspection procedures. At this time, inspectors obtain a variety of information such as a description of the operation and equipment used, the number of employees, and the employer's workers' compensation provider. After the opening conference, inspectors enter the workplace to examine operations, observe employee work practices, interview employees and supervisors, and identify potential safety hazards. All potential occupational safety and health code violations and hazards are recorded in the inspectors field notes. When the inspection is finished, inspectors conduct a closing conference with the employer to discuss issues identified, hazard abatement dates, and any other changes needed to improve workplace safety. Formal written reports are issued to the employer shortly after inspections are completed. Reports formally communicate and document issues identified during inspections and recommend a course of action to employers to correct problems. Employers are given 30 days to abate hazards with extensions generally granted if employers are unable to meet this time frame.

In addition to workplace inspections, the bureau performs other activities to help accomplish its goal. These activities include:

- Developing cooperative training efforts between local safety focus organizations, local chambers of commerce, labor organizations, and employers.
- Updating the bureau's library of safety materials and making it available to the public.
- Supporting federally-funded OSHA voluntary programs in the private sector.

## **Chapter II - Background**

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Bureau operations are divided into two sections: a Safety Section and a Mine Section. The following provides a brief description of each section.

### **Safety Section**

The Safety Section consists of nine FTE which includes a section supervisor, an administrative aide, five safety specialists, and two industrial hygienists. The goal of the Safety Section is to provide assistance to employers in prevention of occupational accidents and illnesses and to provide safety and health consultation and training to employers requesting this service. Examples of objectives the section established to meet this goal include:

- Adopt and enforce safety and health codes for the prevention of accidents.
- Assist employers through regulatory and consultation programs to comply with applicable safety and health codes.
- Routinely inspect employers as determined by historical data or defined as being hazardous.
- Order employers closed when there is immediate danger to the life or safety of employees.

### **Staff Work with Private Sector through OSHA Grant**

Safety Section staff can only conduct safety and health consultations of private employers through OSHA's Consultation Service Program. This program is funded through an OSHA grant with the bureau providing a 10 percent match. This is a voluntary program and is designed to assist private employers in identifying and correcting safety and health hazards in their workplaces. The results of consultations completed by bureau staff are confidential from OSHA and employers who participate in the program may be excluded from an OSHA inspection for one year, if they qualify. Private employers can also elect to participate in the Safety and Health Achievement Recognition Program (SHARP). This is a long term program also funded through the OSHA grant which requires on-going inspections from Safety Section staff to help employers develop comprehensive safety programs. OSHA must approve employers for participation in this program.

### Mine Section

The Mine Section consists of six FTE which includes a section supervisor, an administrative aide, a miner training officer, two coal mine inspectors, and a sand and gravel inspector. The section is required by state law to inspect coal mines and sand and gravel operations to ensure they comply with mine safety codes. The mine section has adopted federal mine safety and health codes for coal mine operations and is in the process of adopting these codes for metal and nonmetal mine operations. The goal of the mine section is to assist mine operators in the prevention of accidents and injuries by enforcing mine safety and health codes and providing training and consultation to these operators and employees. Examples of major objectives of the section include:

- Inspect mines to ensure they are in compliance with applicable mine safety and health codes.
- Order mine operations to conform to mine safety and health codes when an unsafe condition is identified.
- Order any portion of a mine operation closed when there is immediate danger to the life and safety of employees.
- Investigate serious or fatal accidents to determine causes and unsafe conditions to reduce the likelihood of future accidents.

Prior to July 1, 1998, the Mine Section was authorized to inspect all mining operations in the state. However, bureau authority to inspect metal and nonmetal mines, except for sand and gravel operations, was terminated during the 1997 Legislative Session because they duplicated federal inspections.

MSHA provides the bureau with training grant funds to conduct training for employers and employees of small mining operations. In addition, the bureau provides mine operators assistance in developing acceptable training plans so their employees can recognize hazardous conditions in mining operations. This grant fully funds the section's miner training officer position.

## Chapter II - Background

### Bureau Field Activities

The bureau performs a number of tasks related to occupational health and safety. Activities include inspections of public employers, inspections of private employers through the OSHA grant program, mine inspections, and training sessions. The following chart depicts the number of field activities completed by bureau staff during the last two calendar years.

**Table 2**  
**Safety Bureau Activities**  
**CY 1996 and 1997**

<u>Safety Section</u>	<i>Public Sector</i>		<i>Private Sector</i>	
	<u>CY 1996</u>	<u>CY 1997</u>	<u>CY 1996</u>	<u>CY 1997</u>
Public Inspections	266	186	---	---
OSHA Consultations	---	---	84	157
Requests for Assistance	233	333	354	215
Training Sessions	34	45	31	64
Employees Trained	880	1,172	1,137	1,482
<u>Mine Section</u>	<i>Coal</i>		<i>Metal/Nonmetal</i>	
	<u>CY 1996</u>	<u>CY 1997</u>	<u>CY 1996</u>	<u>CY 1997</u>
Mine Inspections	79	80	215	195
Training Sessions*	17	13	87	98
Employees Trained*	339	495	1,087	1,321

\*Includes training provided through MSHA grant and coal mine foreman training.

**Source: Compiled by the Legislative Audit Division from bureau records.**

### Workers' Compensation Administrative Assessment

The Workers' Compensation Act requires the department to charge workers' compensation insurers an administrative assessment for the cost of administering laws related to workers' compensation and occupational safety and health. There are three different groups of workers' compensation insurers in Montana:

- Plan I - Self Insurers
- Plan II - Private Insurance Carriers
- Plan III - State Compensation Insurance Fund

## Chapter II - Background

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Section 39-71-201, MCA, provides the legal basis for levying an administrative assessment to the three compensation plans. The assessment is calculated using cost allocation procedures to derive the assessment rate which each type of insurer will be charged. Chapter 385, Laws of 1997, changed the method used to calculate the administrative assessment. The new method specifies the assessment for all insurers be based upon 2.6 percent of benefits paid rather than the current method which is based upon either premium, payroll, or cost depending upon the type of insurance plan. The new method takes effect beginning in fiscal year 2000.

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### Safety Bureau Funding

The bureau is funded mainly from the assessment on workers' compensation insurers. The bureau's share of the assessment is calculated based on the number of field hours staff worked within each workers' compensation plan. The bureau also receives some funding through federal grants from OSHA and MSHA. The following tables illustrate funding the bureau received from the workers' compensation assessment and from federal sources during fiscal years 1995-96 and 1996-97.

## Chapter II - Background

**Table 3**  
**Workers' Compensation Assessment Funding Safety Bureau**  
**Fiscal Years 1995-96 and 1996-97**

<b>FY 1995-96</b>				
<u>Insurance Plan Type</u>				
<u>Bureau Section</u>	<u>Plan I</u>	<u>Plan II</u>	<u>Plan III</u>	<u>Total</u>
Safety Section	\$164,416	\$ 3,709	\$ 90,384	\$258,509
Mine Section	36,955	39,343	144,398	220,696

<b>FY 1996-97</b>				
<u>Insurance Plan Type</u>				
<u>Bureau Section</u>	<u>Plan I</u>	<u>Plan II</u>	<u>Plan III</u>	<u>Total</u>
Safety Section	\$189,853	\$ 4,332	\$104,808	\$298,993
Mine Section	41,595	44,283	154,447	240,325

Source: Compiled by the Legislative Audit Division from department records.

**Table 4**  
**Federal Funding Safety Bureau**  
**Fiscal Years 1995-96 and 1996-97**

<u>Source</u>	<u>FY 1995-96</u>			<u>FY 1996-97</u>		
	<u>Grant</u>	<u>Match</u>	<u>Total</u>	<u>Grant</u>	<u>Match</u>	<u>Total</u>
OSHA	\$164,500	\$18,278	\$182,778	\$179,500	\$19,944	\$199,444
MSHA	80,297	20,071	100,368	81,809	20,452	102,261

Source: Compiled by the Legislative Audit Division from department records.

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### Workplace Injuries

According to the department's annual report on workers' compensation, there were a total of 63,204 reported injuries in Montana during fiscal years 1996 and 1997. The total workers' compensation benefits paid during this same time period exceeded \$281 million. Industries experiencing the highest rates of injuries include services, retail, manufacturing, and public administration.

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### Montana Public Sector Injuries and Illnesses Common

We found occupational injuries and illnesses are common in Montana's public sector. Based on information maintained by the department, the public sector represented approximately 10 percent of the state's employment during fiscal years 1995-96 and 1996-97. During fiscal year 1995-96 the public sector accounted for 10 percent of all occupational injuries and illnesses which ranked fourth among all industries. During 1996-97 this percentage increased to 11 percent which ranked third among all industries.

We obtained information from workers' compensation providers regarding the number of injuries which occurred in the public sector during the last three years. As the chart below indicates, a significant number of injuries occur in the public sector and have cost Montana's workers' compensation system several million dollars. Costs do not include indirect costs of occupational injuries and illnesses such as expenses to train new employees, lost productivity, or low employee morale.

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**Table 5**  
**Public Sector Claims & Workers' Compensation Payments**  
**Fiscal Years 1995-96 through 1997-98**

<u>Entity</u>	<u>FY 95-96</u>		<u>FY 96-97</u>		<u>FY 97-98*</u>	
	<u>Claims</u>	<u>Incurred Liability</u>	<u>Claims</u>	<u>Incurred Liability</u>	<u>Claims</u>	<u>Incurred Liability</u>
State of Montana	2,073	\$4,463,799	2,121	\$4,089,445	1,886	\$2,222,059
Cities	660	2,083,850	751	1,027,089	636	1,281,476
Counties**	784	1,857,671	779	1,611,937	596	696,272
Schools	<u>1,334</u>	<u>2,177,968</u>	<u>1,568</u>	<u>2,803,833</u>	<u>1,417</u>	<u>1,887,513</u>
Total	4,851	\$10,583,288	5,219	\$9,532,304	4,535	\$6,087,320

\* Insurers anticipate additional claims will be filed at later date for injuries incurred during FY 1997-98.

\*\* Federal fiscal year.

**Source: Compiled by the Legislative Audit Division from information provided by workers' compensation insurers.**

### **Mining Industry Safe but Injuries can be Costly**

According to the department's Research and Analysis Bureau, injuries in the mining industry rose from 6.1 injury and illness cases per 100 FTE in 1995 to 6.3 in 1996. However, the mining industry in Montana still had a lower injury rate than the state average for all industry and ranked as the state's second safest industry in 1996. Information regarding the cost of mining injuries and illnesses and the effects on Montana's workers' compensation system was not readily available. However, based on information from the Bureau of Mines, the average mine injury costs \$18,000 and a fatality can cost over \$1 million.

# Chapter III - Bureau Safety Programs

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## Introduction

This chapter discusses the Safety Bureau's process to administer its occupational safety and health programs. A number of areas are discussed where the bureau could improve its process to make its safety and health programs more efficient and effective. This chapter also includes conclusions on whether the bureau's programs are necessary and whether the bureau's process to ensure field staff accountability is working.

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## Occupational Safety and Health Code Administration is Necessary

We assessed the need for the bureau's mine and public safety programs. On the national level, we found Congress demonstrated the importance of safe and healthful working conditions through passage of the OSHA and MSHA Acts. At the state level, the Montana Legislature demonstrated the importance of workplace safety and health by creating public policy through the Montana Safety Act, Occupational Health Act, Safety Culture Act, and mine safety laws. All laws require a system exist to ensure employers provide employees with a safe and healthful work environment.

We also found programs to administer safety and health can play an important role in helping to reduce and control costs to Montana's workers' compensation system. The Montana Safety Act requires inspections focus on high hazard employers as defined in the Workers' Compensation Act. In addition, the Safety Culture Act states one of its major objectives is to reduce the number of occupational injuries and illnesses to decrease the cost of claims for workers' compensation insurance. Based on discussions with workers' compensation insurers, bureau officials, and information obtained from OSHA, we found inspection programs are an effective method to ensure employers comply with occupational health and safety codes which reduce injuries, illnesses, and costs to the workers' compensation system.

We interviewed entities which have been inspected by the bureau to obtain their opinion on the influence bureau safety programs have on their operations. Overall, we found support for the bureau's programs. Public entities and mines believe bureau programs have had a positive impact on their operations. For example, officials from the Research and Analysis Bureau and Montana mining operations indicated the

## **Chapter III - Bureau Safety Programs**

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reason for lower than average injury and illness rates in mine operations is because of the emphasis placed on safety by MSHA and the Safety Bureau. In 1995, nonmetal mines had an injury and illness incidence rate of 7.5 cases per 100 FTE. The lowest incidence rate was in coal mining with 3.6 injury and illness cases per 100 FTE. Coal mine officials told us they believe their operations have fewer injuries because the safety of their operations is continually evaluated by both federal and state inspectors. Coal mines are inspected by state inspectors four times each year and by federal inspectors twice a year. Coal mine officials believe continuous inspections help the coal mining industry maintain low injury rates. The bureau requests public entities it inspects to evaluate the quality of its inspections. Our review of evaluations found public entities supported the bureau's public safety program and believed bureau activities contributed to safer work environments within the public sector.

The OSHA Consultation Service Programs in which the bureau participates is an indication of the impact bureau inspections can have on occupational injuries and illnesses. According to workers' compensation insurers, reduction in injuries result in lower costs in workers' compensation claims and rates. The following are two examples of employers who participated in the program where the number of injuries and illnesses were reduced. The years shown in the table were when these companies participated in the program.

**Table 6**  
**OSHA Consultation Injury Reduction Examples**

<i>Montana Manufacturing Company - Smelter</i>				
<u>Year</u>	<u>Total Injury and Illness Rate per 100 Employees</u>	<u>Lost Workday Rate Per 100 Employees</u>	<u>State Average Injury and Illness Rate Per 100 Employees</u>	<u>State Average Lost Workday Rate per 100 Employees</u>
1992	20.0	6.6	9.7	3.9
1993	17.2	10.3	9.2	3.8
1994	17.2	6.8	9.0	3.2
1995	3.1	0.0	10.1	3.6
1996	0.0	0.0	8.9	3.3
<i>Montana Manufacturing Company - Helicopter Parts</i>				
<u>Year</u>	<u>Total Injury and Illness Rate per 100 Employees</u>	<u>Lost Workday Rate Per 100 Employees</u>	<u>State Average Injury and Illness Rate Per 100 Employees</u>	<u>State Average Lost Workday Rate per 100 Employees</u>
1995	15.4	0.0	10.1	3.6
1996	0.0	0.0	8.9	3.3

**Source: Compiled by the Legislative Audit Division from department records.**

**Summary**

We believe the bureau's programs help reduce occupational illnesses and injuries and, in turn, reduce costs to Montana's workers' compensation system. However, it is not possible to ascertain the actual extent of the bureau's impact in reducing injuries and illnesses or how much workers' compensation claims have been reduced because of a lack of management information. Specific issues and recommendations related to measuring the impact of bureau operations are discussed later in the report. However, based on discussions with OSHA officials, workers' compensation insurers, mines and other inspected entities, there appears to be broad support for the bureau's programs. Additionally, entities who have been inspected by the bureau believe these inspections have helped reduce the number of injuries and their cost for workers' compensation insurance.

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### Conclusion

*There is justification for the Safety Bureau's public safety and mine safety programs and a system to ensure employers comply with occupational safety and health codes.*

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### **Field Staff Accountability and Communication**

One area we reviewed was the bureau's system to monitor field staff activities. This included the process to document staff activities and the extent of communication which occurs between bureau management and field staff. To complete this evaluation we examined a variety of information maintained by the bureau. This information included:

- ▶ Time sheets which record the total number of hours field staff worked during a pay period.
- ▶ Weekly activity reports which document specific activities staff performed each week and the number of hours assigned to each activity.
- ▶ Inspection reports written by field staff to notify entities of safety concerns noted during an inspection.

We reviewed this information to ensure it was completed by staff and verified that staff reported the same activities on each document. Other audit work included interviews with bureau staff and management, observations of field staff activities, observations of quarterly staff meetings, and observations of management's general interaction with staff.

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### **Process Documents Staff Activities**

The information used to document staff activities was consistent. We found the number of hours documented on time sheets were the same as the hours documented on weekly activity reports. We also found documentation which confirmed activities reported by field staff. All field staff noted inspections on weekly activity reports and all inspections had detailed inspection reports which outlined safety issues identified during the inspection.

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### Management has Frequent Contact with Staff

The Safety Bureau operates under a decentralized system with most field staff working from their homes in different parts of the state. With a decentralized system, it is important a process exists which provides for on-going communication. Bureau management told us they had frequent contact with field staff. Our observations confirmed management has frequent conversations with field staff. In addition, management frequently communicated with staff via electronic mail. We also noted both the Safety and Mine Section supervisors made trips to the field to visit field staff and accompany them on inspections.

The bureau also maintains a flow of communication through quarterly staff meetings. Based on our observations, we found these meetings provided a forum for management and staff to discuss a variety of topics. Some staff did not believe the meetings always addressed issues which affected them. However, management provides staff with a draft agenda which gives staff the opportunity to include items for discussion. Field staff need to utilize this opportunity to inform management about issues they would like to discuss.

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### Database Improvements Should Continue

Management information related to field staff activities is important in a decentralized system so management can track staff accomplishments and note areas where improvements are needed. The bureau developed a database to compile management information so management can keep informed on staff activities. This system helps them track information related to field activities, such as the number of inspections or training seminars completed, and the number of hours spent in field activities.

We identified some problems with the database the bureau uses to compile information related to field staff activities. Many of the problems were due to staff not understanding which activity codes their activities should be recorded under or using codes which were no longer valid. We noted bureau management also had difficulty extracting certain data from the database because the current system requires management to write program code to extract data. If in writing the program code, one portion was missing or written incorrectly, then reports may leave out some information or incorrectly note staff activities or the number of hours spent in various activities. For

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example, in some reports we reviewed, several hundred hours were duplicated for field staff between public inspections and OSHA consultations because code to extract the data was written incorrectly.

The database currently used makes it difficult for bureau management to extract meaningful data. However, changes are currently underway which should improve the process to compile and extract information regarding field staff activities. Changes include implementing a new database and simplifying the codes staff use to report their activities. It appears these changes may help alleviate the reporting problems. Bureau management does have some concerns relating to obtaining information in a timely manner since it will have to be obtained through the Employment Relations Division data processing group. Once the database is completed, formal procedures should be established to ensure the bureau gets information in a timely manner.

***Conclusion:***

***The bureau has a process which helps ensure field staff accountability and provides for regular, on-going communication between bureau staff and management. In addition, implementation of the new database should improve the bureau's process to compile and extract information regarding field staff activities.***

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### **Staff Training Should be Improved**

During the audit, we evaluated training received by staff and noted significant differences in the amount of training received by safety inspectors and mine inspectors. We reviewed staff training records for fiscal years 1993-94 through 1996-97. During this time frame, the bureau's six safety inspectors and two industrial hygienists received an average of just under 70 hours of training each year. Conversely, the mine inspectors received an average of just over 12 hours of training per year. However, most of this was attributed to one inspector who received 41 hours of training. Two other mine inspectors received no training so there is also inconsistency in the amount of training individual mine inspectors received. Bureau policies require training needs for all staff "be assessed on a continuing basis..." The bureau developed a training plan for its safety inspection staff but not for its mine inspection staff. Consequently, safety inspectors received a sufficient amount of training but mine inspector training needs improvement.

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### **Training Improves Staff Proficiency**

Training is an important means of expanding knowledge and increasing proficiency of staff. It is one key element for a successful mine inspection program. According to the Mine Safety and Health Administration (MSHA), a full understanding of the conditions which can endanger the health and safety of miners is required to ensure an effective inspection program. MSHA also stated training ensures inspectors continue to have the ability to perform comprehensive inspections and consistent inspections between inspectors. This helps ensure inspectors remain knowledgeable in areas such as new or changing mine safety codes, new mining technology, and learn more efficient inspection techniques. The bureau currently relies mainly on inspectors to learn the process from other bureau inspectors through on-the-job training.

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### **Mine Inspectors Unable to Meet all Requirements**

Job descriptions for the mine inspectors require they maintain a current working knowledge of applicable safety codes and conduct certain tests and measurements to determine compliance with safety and health codes. Furthermore, state law requires the bureau employ qualified inspectors to inspect mining operations in the state. Based on discussions with mine inspectors, they do not believe they are able to meet all the requirements expected of them. Inspectors said there are several aspects of the inspection process for which they do not have sufficient training. Consequently, they said they “wing it” in these areas and simply do the best they can. Examples of areas inspectors said they do not have sufficient training include electrical hazards, accident investigation, and certain aspects of powered haulage. Inspectors’ major concern with this lack of training is not identifying a safety or health hazard which could seriously or fatally injure a mine employee. Inspectors told us current training does not formally instruct them in areas such as mine safety codes or how to investigate mine accidents.

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### **Training Plan Needed**

According to bureau officials, the bureau has never requested funds to provide training to its mine inspection staff. Training for the bureau’s safety inspectors is funded through a grant provided by the Occupational Safety and Health Administration (OSHA) as part of the on-site consultation program. To get the necessary funds, the bureau determines the training needs for each safety inspector and the amount of funding needed to provide the training. Mine inspection programs in

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other states assess the training needs for their inspectors and provide the necessary training to them. Training in other states includes mine safety and health training provided through MSHA's training academy located in Beckley, West Virginia.

The bureau should develop a training plan for its mine inspectors. One option for training is to use the MSHA training academy because the primary purpose of the academy is to design, develop, and conduct instructional programs which assist government and industry to reduce accidents and health hazards in the mining industries. The training academy also provides training in a variety of areas including those where bureau mine inspectors believed their skills were lacking. Information provided by MSHA indicated they cover at least a portion of the training costs.

### **Recommendation #1**

**We recommend the Safety Bureau develop a training plan for mine inspection staff.**

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### **Inspections Should Focus More on Employers with High Rates of Injuries and Illnesses**

According to information obtained from the Occupational Safety and Health Administration, the most effective method to inspect employers for compliance with safety and health codes is to focus on those with high rates of injuries or illnesses. This helps ensure resources are directed away from safer work sites and toward more hazardous ones. In addition, state law also recognizes the importance of focusing inspections on hazardous types of employers. Section 50-71-321, MCA, requires the bureau to inspect from time to time places of employment defined in the Montana Workers' Compensation Act as being hazardous. There is not an effective system in place which ensures the most hazardous types of employers are inspected. We found field staff do not use any formal criteria for deciding which employers will be inspected by the Safety Bureau. The risk of occupational injury or illnesses for particular public sector employers or mines is generally not used for setting inspection work schedules.

Staff are inconsistent in determining which entities they will inspect. For example, some staff said they often select entities for inspection just

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to increase inspection totals, even if they believe the employer poses a low risk to employees. Other inspectors based decisions on travel distance, “gut feel,” or handling the latest request which comes across their desk. Other inspectors said they try to inspect all public entities or mines in an area. The sand and gravel inspector, for example, generally visits the same operations at least once each year while seldom inspecting others. The inspector said decisions are generally based on travel and an attempt is made to inspect all operations in an area regardless of injury history of an operator.

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### Inspectors not Always Utilized Efficiently

The bureau has five safety specialists responsible for over 2,700 public employers and one mine inspector responsible for approximately 200 sand and gravel operations. It is important these limited resources be used in the most efficient manner possible. However, we noted the bureau inspected a number of entities which are not generally considered high hazard employers. For example, we noted a number of inspections completed on public libraries and public office buildings. Our discussions with workers’ compensation insurers found they did not believe these were the type of employers which should be regularly inspected by the bureau. Insurers told us the bureau should be focusing on employers who are experiencing the highest levels of occupational injuries and illnesses.

Mine inspectors we interviewed believed mine inspections need to be based on more concrete information to focus inspections on the highest risk operations. For example, the sand and gravel inspector believes inspections should be directed towards the highest risk operations based on the number of employees who are injured. Coal mine inspectors said their inspections would be more efficient if they concentrated on specific mining activities within each coal mine which pose the highest risk to employees. For example, according to information provided by MSHA, 68 percent of mine fatalities nationwide are related to operating mobile equipment such as trucks, vehicles, and drag lines. The bureau could do additional research to determine if there are particular problem areas in Montana mines. Inspectors said making these kinds of decisions is not possible unless the bureau improves its management information to track injury data related to Montana mining operations. Inspectors said good management information on injuries and accidents would provide a

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system for them to concentrate their inspections on the highest risk activities instead of following the same inspection procedures for every coal mine or trying to inspect every sand and gravel operation.

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### Other Safety Programs Base Inspections on Risk

Other states we contacted established public inspection programs based upon injury and illness data and focus on areas where there is greater risk. Oregon, for example, is an OSHA “state plan” state so it is responsible for inspecting both public and private employers. Oregon uses information from the state’s workers’ compensation database to establish priorities for its inspections. This creates a system to focus inspections on those public and private employers who are experiencing higher levels of injuries or illnesses.

OSHA has begun to implement a similar program. Officials indicated they used to treat all employers the same regardless of safety records. However, because some employers were safer than others they began “targeting” specific employers for inspection based on workers’ compensation data. OSHA officials said their “hit and miss” inspection approach was an ineffective means of inspecting employers and they are now focusing resources on employers who ignore safety and health rules. OSHA officials said much of the information used to target specific employers comes from state workers’ compensation agencies.

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### Workers’ Compensation Database could be Source of Information

Montana Department of Labor and Industry’s Employment Relations Division maintains a workers’ compensation database which tracks information such as the number of occupational injuries and illnesses and workers’ compensation claims filed. When the database was established by the 1993 Legislature, it was developed as a tool to help manage Montana’s workers’ compensation system. Even though state law specifies one of the bureau’s major goals is to reduce workers’ compensation claims, we found the bureau does not use database information to help set priorities. According to bureau officials, consideration has not been given to using the database to determine which mines should be inspected. Information could be used to assess which sand and gravel operations or what aspect of coal mine operations are experiencing the most injuries.

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Information from the database has not been used to determine which public employers the bureau should inspect because information is not in a useful form. Injuries reported for all state agencies are grouped together under the “State of Montana.” Injuries for other public sector employers, such as cities and counties, are reported in a similar way. Consequently, information from the database can not be used to determine specific types of public employers who have the highest injury rates.

Officials for the Employment Relations Division said providing this information was considered when the database was created, but it was not done. They also said it would be possible to modify the database if it was determined a need existed to do so. Both the Montana Safety Act and the Safety Culture Act tie the bureau inspection programs to the workers’ compensation system. For example, the Montana Safety Act requires the bureau to inspect employers defined as hazardous in the Workers’ Compensation Act. The main goal of the Safety Culture Act is to reduce the cost of workers’ compensation claims. Therefore, we believe the divisions workers’ compensation database should be modified so the bureau can use its information to help establish priorities for inspections of both public employers and mines which will help meet the requirements of these laws.

### **Recommendation #2**

#### **We recommend the Employment Relations Division:**

- A. Modify information on the workers’ compensation database so the highest risk public employers, sand and gravel operations, and mining activities can be identified.**
- B. Provide data to the Safety Bureau so it can assess occupational injury and illness rates for public employers and mines to help prioritize which entities and activities should be inspected.**

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### **Communication/ Coordination with Workers' Compensation Insurers and Other Agencies**

During the audit, we noted there is minimal communication and coordination between the Safety Bureau and workers' compensation insurers. In some instances, we noted the relationship is more adversarial than cooperative. Current coordination and communication is generally limited to sending copies of reports to insurers and occasional phone calls or meetings. Based on discussions with workers' compensation insurers and bureau staff and management, there is more of an atmosphere of competition instead of cooperation even though both want to lower costs and improve employer safety.

We noted most workers' compensation insurers respect the work of the Safety Bureau and believe their safety programs have improved over the last several years. However, most insurers would like to have more input into areas where they believe the bureau needs to concentrate its efforts. For example, direct communication with workers' compensation insurers could be a valuable source of information to help the bureau direct inspection activity to the highest risk public sector employers. Even though the bureau has made some efforts to coordinate with insurers, such as an annual invitation to bureau meetings, insurers do not believe it occurs often enough to allow them to have much input. We also found bureau staff and management would like to have more direct contact with insurers and believe they would be valuable sources of information. However, steps have not been taken to establish on-going lines of communication between the two.

The bureau could also improve its coordination with other state agencies to help enhance its operations. During the audit, bureau staff indicated it is often difficult to find mobile sand and gravel units, such as those used on road construction sites. This is because these units are often moving to new construction sites around the state. These units are of particular concern to the bureau because of the quick nature in which they are assembled. Bureau staff indicated safety measures are often not a priority for these units. However, bureau officials said they do not have a formal system to help track the location of these units so they generally inspect only those units they happen to find as inspectors are traveling to other inspection sites. The bureau could improve its process to identify these units by formally coordinating with the Department of Environmental Quality (DEQ) and the Montana Department of

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Transportation (MDT). For example, all mobile units must apply for an air quality permit through DEQ before resuming operations at a new construction site. The bureau could get a periodic list from DEQ showing where the units may be operating. In addition, the bureau could obtain a list of all planned road construction from MDT which would help determine where the construction sites are located.

### **Recommendation #3**

**We recommend the Safety Bureau:**

- A. Establish a formal process to communicate with workers' compensation insurers on an on-going basis.**
- B. Coordinate with the DEQ and MDT to help identify the location of mobile sand and gravel units operating in the state.**

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### **Measuring Bureau Effectiveness**

Planning is an important aspect of program operations because it helps define program purpose, directions, and impact. During the audit, we noted the Safety Bureau has not fully incorporated a planning process for its safety consultation and mine inspection programs. While goals have been established for the bureau's programs, a process has not been developed to direct activities to meet those goals or to assess the impact of program operations.

The Montana Safety Act and the Safety Culture Act seek a reduction in employee injuries and illnesses and in the cost of workers' compensation claims. It is not possible to determine specifically what impact bureau inspection programs have had on either of these areas. According to bureau staff and management, measurement of bureau effectiveness is subjective because specific information is not available to make an accurate determination. Workers' compensation providers said one area of concern with bureau operations is the bureau's inability to accurately assess its accomplishments. Many of the bureau's field staff had similar concerns and questioned the level of impact the bureau is having on improving employer safety.

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The bureau has the capability to measure the impact its programs had for participants in programs such as the OSHA funded Safety and Health Achievement Recognition Program (SHARP). Information gathered shows the positive impact the bureau had on private sector employers who have participated in this program. For example, data maintained shows one employer reduced its total injury and illness rate from twenty employees per 100 in 1992 to zero in 1996.

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### **Additional Management Information Should be Maintained**

Currently, information is not compiled to help the bureau develop a comprehensive planning process for its inspection activities. The bureau does maintain information such as the number of inspections completed and the number of people the bureau trained. However, this information counts activities as opposed to outcomes. For example, increases in inspection totals do not necessarily correspond to more efficient operations. The bureau needs to develop information which allows it to assess the effectiveness of its operations. The following provides some examples of areas where information could be compiled to help the bureau determine the effectiveness of its programs:

Information tracking which public sector employers and mines have been inspected and the frequency each entity has been inspected.

Overall statistics on the number and types of hazards identified during inspections of public employers and mines.

Statistics tracking the hazards which have been abated by mines and public sector employers.

The number of public sector employers or mines which have incorporated effective safety and health programs and what effect these programs have had on occupational injuries and illness.

Statistics relating to the decrease in work related injuries and illnesses at specific entities inspected by the bureau.

Data relating to cost savings to the workers' compensations system based on the decrease in work related illnesses and injuries.

We found other inspection agencies are more active in maintaining program information and developing specific inspection strategies. For

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example, OSHA has developed a strategic planning process which specifies how much it wants to reduce certain types of occupational injuries and illnesses. The Department of Environmental Quality has developed specific objectives on inspecting the highest risk sand and gravel operations. These objectives were developed through compiling information about department inspection activities.

### **Recommendation #4**

**We recommend the bureau develop a comprehensive management information system which will provide a means for improving its strategic planning process and measuring the effectiveness of its operations.**

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### **Evaluate Bureau Operations**

Over the years several changes have occurred within the bureau and with safety statutes. For example, the 1997 Legislature reduced the bureau's authority over metal and nonmetal mine inspections. In addition, certain programs have been eliminated from the bureau such as the logging and boiler inspection programs. At the same time, the bureau has also become more active in areas such as safety training and OSHA on-site consultations.

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### **Several Areas Exist Where Changes Could Potentially be Made**

During the audit, we noted significant variances in workload of bureau staff. The following provides some examples:

- ▶ The five safety inspectors located around the state are each responsible for approximately 550 public entities.
- ▶ There is one sand and gravel inspector responsible for inspecting approximately 200 sand and gravel operations.
- ▶ There are two coal mine inspectors responsible for inspecting six coal mines.

Interviews with bureau staff and management found they have concerns with the discrepancies in staff workload. Coal mine inspectors told us their current responsibilities and duties result in a lighter workload than the other inspectors. Safety inspectors indicated their heavy workload

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makes it difficult to balance their time to effectively perform all the duties expected of them.

Bureau management recognizes there is a difference in the workload requirements of bureau staff and believe some changes are necessary. We questioned whether the bureau is currently organized in a way which allows for the most effective use of its resources. We developed a number of issues which the department should evaluate to determine if changes need to be made. The following provides some options:

- Does the bureau need two coal mine inspectors to meet its statutory mandate of quarterly inspections of coal mines? Based on our audit work, it appears one inspector most likely could achieve this requirement. The bureau could use the other position for other bureau responsibilities such as sand and gravel inspections, safety inspections of public sector employees, or on-site consultations.
- What duties will the sand and gravel inspector perform during winter months? Because sand and gravel operations operate sporadically during cold weather months, the role of the sand and gravel inspector could be adjusted.
- Could the bureau better utilize its section supervisors in the field? For example, the mine supervisor has a wealth of knowledge regarding mine safety codes and inspections. These talents may be better utilized in the field as a lead inspector or performing more frequent mine inspections than are currently being done.
- Can a better system be developed to coordinate bureau resources to make for more efficient and comprehensive inspections? For example, inspection staff could better use the industrial hygienists to perform more tests to identify potential occupational health hazards. Mine inspections, for example, currently do not focus very heavily on potential health concerns. Mine inspectors could establish a set schedule for this type of testing to occur and coordinate these tests with the bureau's industrial hygienists.

Many aspects of bureau operations have continued to operate the same way even though many changes in the inspection environment have occurred over the years. However, the department has never formally reviewed the organizational structure and staff responsibilities of the

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bureau to determine if resources could be better utilized or if additional resources are needed.

### **Recommendation #5**

**We recommend the Department of Labor and Industry review the organizational structure and staff responsibilities of the Safety Bureau to determine how resources can be used more efficiently.**



# Chapter IV - Safety and Health Laws

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## Introduction

In this chapter, we address issues related to the level of involvement the Safety Bureau has in administering certain statutes related to occupational safety and health and mine safety and health. We found the level of involvement the bureau has in each of these areas needs to be changed.

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## Safety Bureau has no Authority for Administering Occupational Health Act

Section 50-70-102, MCA, sets forth Montana's public policy pertaining to human health and safety in the workplace. This statute mandates employers provide employees a safe and healthy work environment and requires a system be in place to enforce this requirement. There are three major acts which relate to safety and health in the workplace:

- ▶ Montana Safety Act
- ▶ Occupational Health Act
- ▶ Montana Safety Culture Act

In addition to these acts, there are also specific laws related to mine safety.

The Montana Safety Act (MSA) is generally considered the "umbrella" safety act which covers workplace safety in general. This act assigns responsibility to the Department of Labor and Industry's Safety Bureau to inspect workplaces and issue orders to provide a safe work environment. During the audit, we found Montana has a fragmented system in place for administering workplace safety and health. Specifically, we noted while the MSA delegates responsibility for enforcing workplace safety to the Safety Bureau, responsibility to administer the Occupational Health Act (OHA) and the Safety Culture Act (SCA) has been delegated elsewhere. We found this fragmentation has led to inefficient and inconsistent enforcement of these laws and has created confusion over who has authority for enforcing them. The following sections discuss the issues we identified in this area.

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### **Occupational Health Act Administration is Fragmented**

The purpose of the Occupational Health Act is to ensure employers provide a workplace which protects the health of its employees and requires a system to be in place which ensures employers comply with the act. Section 50-70-102, MCA, requires a coordinated statewide program of abatement and control to ensure Montana's policy for a safe and healthy work environment is enforced. However, two different agencies with two different missions are responsible for enforcing occupational safety and occupational health laws. State law delegates administration of the OHA to the Department of Environmental Quality (DEQ) and requires the Safety Bureau to refer any occupational health hazards they identify to DEQ.

The delegation of these laws has created a fragmented system for enforcing laws related to occupational safety and occupational health. We found it is difficult to separate health and safety issues and the enforcement of these issues because they are often interrelated in the workplace. For example, employees working within confined spaces are often exposed to both occupational safety and occupational health hazards. An example of this would be an employee working in a city sewer system. These systems generally require employees to work in conditions where they run the risk of electrocution or drowning (safety hazards) and low oxygen levels or exposure to methane gas (health hazards). The federal Occupational Safety and Health Act of 1970 requires private sector employers provide employees with a safe and healthy work environment and places enforcement within one agency - the Occupational Safety and Health Administration.

### **Current System to Administer and Coordinate the OHA is not Effective**

The Safety Bureau and DEQ attempted to create a system which outlines each agency's role in enforcing the OHA. A Memorandum of Understanding (MOU) was drafted in January 1994 describing what the responsibilities for each agency were in regards to the private sector, the public sector, and the mining industry. It also outlined a process to exchange information on a quarterly basis in regards to all occupational health inspections which had been conducted. The MOU was designed to minimize duplication of effort between the agencies. However, it was never finalized or signed by either agency due to DEQ's re-organization. Even if it were, officials from both departments do not believe it would have created a very effective enforcement system.

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The Safety Bureau performs most of the enforcement activity related to the OHA because the bureau employs two certified industrial hygienists who have the expertise to conduct inspections, field sampling and testing, and make recommendations on how occupational health hazards should be eliminated. DEQ said the department has one FTE designated to perform responsibilities related to the OHA which is currently vacant. DEQ officials also indicated the OHA has never been a priority for the department and staff responsible for enforcing the OHA have never had the expertise or equipment to effectively perform necessary duties. This is why DEQ referred most enforcement activity to the Safety Bureau.

It is more appropriate for enforcement of the OHA to be the responsibility of the Safety Bureau especially since they have the expertise to do so. In addition, the MSA delegates the bureau the responsibility to ensure employers provide employees a safe and healthy work environment. Placing the responsibility with the bureau would create a more coordinated system statewide for identifying and eliminating occupational health issues. DEQ and the Department of Labor and Industry officials agree administration of the act should be part of the Safety Bureau's responsibility. Since statute currently places the responsibility with DEQ the statute would need to be amended to give the DLI this authority. DEQ and DLI officials said transfer of responsibility would also include transferring DEQ's one FTE to the Safety Bureau.

### **Recommendation #6**

**We recommend the Department of Labor and Industry seek legislation to obtain authority to administer the Occupational Health Act.**

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### **The Safety Culture Act**

The Safety Culture Act (SCA) was created by the 1993 Montana Legislature. The purpose of this act was to reduce the incidence of occupational illness and injury by promoting safety in the workplace and to control the costs of claims for workers' compensation insurance. The act requires employers to provide safety awareness training and education to their employees. Examples of safety awareness training employers are required to provide include:

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- Furnish new employees with general safety orientation appropriate to business operations.
- Provide job specific safety training to employees before they perform their jobs.
- Offer continuing regular refresher safety training, which could include periodic safety meetings.
- Conduct periodic self inspections of work sites.
- Maintain documentation of performance of safety-related activities.

In addition to the programs listed above, all employers with more than five employees are required to form safety committees which must include representatives of the employer and employees. The purpose of the safety committee is to help the employer develop effective safety programs within the work environment.

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### **Bureau Role in Administering SCA not Clear**

The bureau was not clear what its role is in administering the SCA. Bureau staff have different ideas as to the extent of the review necessary to determine public employer compliance with the act. Some believe the bureau has authority to review employer compliance while others view the bureau as having a limited role. These differences were evident in the amount of detail safety inspectors included in their inspection reports. Some inspectors included a discussion on the extent employers were in compliance while other inspectors did not. We also found the bureau plays a limited role in providing assistance to public employers to help them comply with the SCA. The bureau refers employers to their workers' compensation provider for this assistance.

Bureau policy requires inspectors to include a section in their reports which discusses employer compliance, but then states it is not the bureau's task to ensure employers comply nor to provide assistance to employers. However, policy also allows the bureau to consider assistance if the workers' compensation insurer can not provide it. Lack of clear direction in this area has lead to staff making their own interpretations on the amount of authority the bureau has in

## Chapter IV - Safety and Health Laws

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administering the SCA and has caused differences in the extent compliance is evaluated.

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### **SCA Should be Clarified**

The reason the bureau takes a limited role in administering the SCA is because the bureau believes statutes delegate the responsibility to workers' compensation insurers. Insurers also believe the SCA delegates the responsibility to administer the act since it charges them with the duty of providing safety consultation assistance to employers. Section 39-71-1503, MCA, defines safety consultation as assistance rendered by an insurer to advise and aid an insured employer in identifying, evaluating, and controlling existing and potential occupational safety and health problems. While the SCA defines who is responsible for providing employers with assistance to develop programs required by the act, the statutes are not clear on who is responsible for enforcing the act. The SCA statutes should be clarified as to whether the Safety Bureau has responsibility to enforce SCA requirements as part of its inspection duties.

#### **Recommendation #7**

**We recommend the Department of Labor and Industry seek legislation to clarify the Safety Bureau's role in enforcing the requirements of the Safety Culture Act.**



# **Agency Response**

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# DEPARTMENT OF LABOR AND INDUSTRY

## COMMISSIONER'S OFFICE

MARC RACICOT, GOVERNOR

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HELENA, MONTANA 59624-1728

October 27, 1998

Mr. Joe Murray  
Senior Performance Auditor  
PO Box 201705  
Helena, MT 59620-1705

Dear Mr. Murray:

Attached you will find the response of the Department of Labor and Industry to the performance audit performed by your office on the Safety Bureau.

We appreciate you and the other members of the staff for the time you spent at the department and in the field with those members of the Safety Bureau who are not stationed in Helena. I know they welcomed the opportunity to visit with you regarding some concerns they had about issues within the department.

Please don't hesitate to call if you have questions concerning our response. I can be reached at extension 3299 and Jerry Keck or John Maloney, can be reached at 444-1605. We welcome your comments or suggestions.

Sincerely,

A handwritten signature in cursive script that reads "Pat Haffey".

Pat Haffey  
COMMISSIONER

Attachment

## **Department of Labor and Industry's Reponse to Safety Bureau Audit**

### ***Recommendation #1***

***We recommend the Safety Bureau develop a training plan for the mine inspection staff.***

### **Response**

#### **We concur.**

The bureau will develop a training plan for the mine inspectors. We will pursue the recommendations proposed by the audit staff to seek financial assistance from MSHA to fund a training program for all the mine inspection staff. The bureau will actively apply for whatever grant money available from MSHA to fund training costs. In developing the mine training program, the bureau will assess the feasibility of sending inspectors to the National Mine Health and Safety Academy in Beckley, WV.

### ***Recommendation #2***

***We recommend the Employment Relations Division:***

- A. Modify information on the workers' compensation database so the highest risk public employers, sand and gravel operations, and mining activities can be identified.***
- B. Provide data to the Safety Bureau so it can assess occupational injury and illness rates for public employers and mines to help prioritize which entities and activities should be inspected.***

### **Response**

#### **A. We concur.**

The Employment Relations Division will form a team consisting of staff from the Information Technology unit, the Workers' Comp Claims Assistance Bureau and the Safety Bureau to analyze what modifications can be made to the workers' comp data base to provide meaningful data on the highest risk public employers, sand and gravel operations and mining activities.

#### **B. We concur.**

The same division team will analyze how to provide data to the Safety Bureau to prioritize inspections in mines, sand and gravel operations and public employers.

### ***Recommendation #3***

***We recommend the Safety Bureau:***

- A. Establish a formal process to communicate with workers' compensation insurers on an on-going basis.***
- B. Coordinate with the DEQ and MDT to help identify the location of mobile sand and gravel units operating in the state.***

#### **Response**

**A. We concur**

The Bureau will actively seek to establish a quarterly or bi-annual meeting with appropriate representatives of the workers' compensation insurers to discuss issues of common concern and to identify high risk employers. In addition, a safety item will be included on the agenda for the ERD/State Fund regular meetings when appropriate.

**B. We concur.**

The Bureau will contact DEQ and MDT to seek their assistance in locating the mobile sand and gravel operations which should be inspected every time they are moved from one location to another. With the limited resources we have to inspect sand and gravel operations in Montana, this assistance will be beneficial and time saving. The Bureau will pursue a formal agreement with both agencies.

### ***Recommendation #4***

***We recommend the bureau develop a comprehensive management information system which will provide a means for improving its strategic planning process and measuring the effectiveness of its operations.***

#### **Response**

**We concur.**

A new data base is currently being developed that will include the specific recommendations made by the audit staff. Numbers of hazards will be recorded for each inspection as well as the type of hazard identified. In addition a detailed table has been added to log the number of employees, the number of instances of lost injury, medical

injury, lost illness and medical illness for each calendar year. The total lost time cases will be available, from which we will be able to calculate, by hand, a lost time incidence rate. By reviewing the statistics we can identify the employers most needing our services and can determine if our presence has had an effect on their incident rates. This information will provide a basis for developing a comprehensive inspection plan and measuring the effectiveness of our programs.

***Recommendation #5***

***We recommend the Department of Labor and Industry review the organizational structure and staff responsibilities of the Safety Bureau to determine how resources can be used more efficiently.***

**Response**

**We concur.**

After analyzing the audit report numbers and discussing the recommendation within the bureau, we agree that resources can be better utilized. The management team will review the organizational structure, with input from staff, and take this opportunity to reorganize the bureau staffing patterns. There currently exists a vacancy in the coal mine inspection staff which gives us the opportunity to modify our assignments, as suggested, so that our workload is distributed more evenly.

***Recommendation #6***

***We recommend Department of Labor and Industry seek legislation to obtain authority to administer the Occupational Health Act.***

**Response**

**We concur.**

We have submitted, as part of DLI's 1999 legislative package, a request for authority to transfer responsibility for the Occupational Health Act from DEQ to DLI. DEQ has agreed to transfer the authority, the position and sufficient funding for the position.

***Recommendation #7***

***We recommend the Department of Labor and Industry seek legislation to clarify the Safety Bureau's role in enforcing the requirements of the Safety Culture Act.***

**Response**

**We concur.**

This was also a recommendation of the Workers' Compensation Advisory Council which was appointed by Governor Rechecked. The Department will seek to clarify the Safety Bureau's role in enforcing the Safety Culture Act through the administrative rules process if a change in the statute is not possible in the 1999 legislative session.