FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

PERFORMANCE AND ACCOUNTABILITY REPORT

FISCAL YEAR 2010

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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF THE CHAIRMAN

November 15, 2010

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

I am pleased on behalf of the Federal Mine Safety and Health Review Commission ("Commission") to submit our Fiscal Year 2010 Performance and Accountability Report (PAR). The PAR provides performance information in keeping with the requirements of the Government Performance and Results Act as well as audited financial statements and accompanying documentation mandated by the Accountability of Tax Dollars Act of 2002.

The Commission is an independent adjudicative agency that provides administrative trial and appellate review of legal disputes arising under the Federal Mine Safety and Health Amendments Act of 1977 (Mine Act). Such disputes include those between the Department of Labor's Mine Safety and Health Administration (MSHA) and all coal and hardrock mine operators in the United States and cases alleging discrimination against miners in retaliation for the exercise of their safety rights under the Mine Act.

The Commission has seen a significant increase in its caseload over the past several years. We are aggressively exploring methods of meeting the challenges of this increasing caseload while assuring fair and rational disposition of the disputes that come before us.

If you need any further information, please have a member of your staff contact me or the Commission's Executive Director, Lisa Boyd at (202) 434-9905.

Respectfully,

Mary Lu Jordan
Chairman

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Management Discussion and Analysis

Overview

The Federal Mine Safety and Health Review Commission (FMSHRC, or "Commission") is an independent adjudicatory agency charged with resolving disputes arising from the enforcement of occupational safety and health standards in the nation's mines. Under its enabling statute, the Federal Mine Safety and Health Act of 1977 ("Mine Act"), as amended, the Commission does not regulate the mining industry, nor does it enforce the Mine Act; those functions are delegated to the Secretary of Labor acting through the Mine Safety and Health Administration (MSHA).

Mission and Organization Structure

The Commission's mission is to provide just, speedy, and articulate adjudication of proceedings authorized under the Mine Act, thereby enhancing compliance with the Act and contributing to the improved health and safety of the nation's miners.

The Commission carries out its responsibilities through trial-level adjudication by the Commission's Office of Administrative Law Judges (ALJs) and appellate review of ALJ decisions by a five-member Commission appointed by the President and confirmed by the Senate. Most cases involve civil penalties assessed against mine operators by MSHA and address whether the alleged safety and health violations occurred, and, if so, the appropriate sanctions to be imposed. Other types of cases involve mine operators' contests of mine closure orders, miners' complaints of safety or health related discrimination, miners' applications for compensation after a mine is idled by a closure order, and review of disputes between MSHA and underground coal mine operators relating to those operators' mine emergency plans.

Once a case is filed with the Commission, it is given a docket number and referred to the Chief Administrative Law Judge (Chief ALJ). Thereafter, litigants in the case must submit additional filings before the case is assigned to an ALJ. To expedite the decisional process, the Chief ALJ may rule on certain motions and, where appropriate, issue orders of settlement, dismissal, or default. Otherwise, once a case is assigned to an individual judge, that judge is responsible for the case and rules upon motions and settlement proposals, schedules the case for hearing, holds the hearing, and issues a decision based upon the record. An ALJ's decision that is not reviewed becomes a final, non-precedential order of the Commission.

The 5-member Commission provides administrative appellate review based on the record. It may, in its discretion, review decisions issued by ALJ's when requested by a litigant, or it may, on its own initiative, direct cases for review. The Commission's decisions are precedential and appeals from the Commission's decisions are to the federal circuit courts of appeals.

Key Challenges

Since FY 2006, the number of new cases filed with the Commission has steadily increased. From FY 2000 through FY 2005, the average number of cases filed was 192 per month, or 2,307 per year. However, in FY 2008 and FY 2009, 8,961 and 9,230 new cases were filed, respectively. In FY 2010, 11,087 new cases were filed. As of September 30, 2010, the Commission had a backlog of 18,167 – nearly eight times the normal caseload from FY 1995 through FY 2005. In contrast, the average backlog from FY 2000 through FY 2004 was only 1,379.

H.R. 4899, the "Supplemental Appropriations Act, 2010, (P.L. 111-212), was enacted on July 29, 2010. Pursuant to that law, the Commission received $3,800,000, available for one year from the date of enactment for the purpose of reducing the backlog. Supported by the regular FY 2010 appropriation as well as this supplemental appropriation, the Commission took a number of steps during the fiscal year to dispose of cases more efficiently and reduce the backlog. Most importantly, the Commission hired additional personnel, including six new full time equivalent judges and the staff to support their work. In addition, the Commission is exploring information technology upgrades that would speed the processing of cases.

FMSHRC has also engaged in two rulemaking efforts aimed at streamlining the adjudicatory process. The first, a Notice of Proposed Rulemaking regarding simplified proceedings, was published in the Federal Register on May 20, 2010. See 75 Fed. Reg. 28223. FMSHRC anticipates that the simplified proceedings proposed by this rule would reduce the amount of time between docketing and dispositions of certain civil penalty proceedings. The second, an Interim Rule published on April 27, 2010, streamlines penalty settlement procedures. *See* Fed. Reg. 21987.

Performance Goals and Results

In view of the recent and continuing upsurge in its caseload, the Commission must continually reassess its strategic goals in light of changing circumstances. Therefore, the Commission has established benchmarks as part of its overall strategic plan, but it will also revisit and evaluate those benchmarks as part of its annual performance and budget planning activity.

The annual performance plan will clearly explain the role of each Commission activity as set forth in the Commission's budget. The plan's specific objectives, adjusted to reflect policy determinations and resource allocations in the annual budget process, will serve as intermediate steps in the Commission's overall efforts to successfully accomplish the goals of this strategic plan.

Accordingly, in order to achieve its mission, the Commission has set forth the following strategic goals: 1) to ensure expeditious, fair and legally sound adjudication of cases at the trial and appellate levels, and 2) to manage the Commission's human resources, operations, facilities, and systems to ensure a continually improving, effective and efficient organization.

Commission Review Function

The responsibility for the review of ALJ decisions is set forth in section 113(d)(1) of the Mine Act. The Act states that an ALJ's decision shall become final 40 days after its issuance, unless within that period any two Commissioners direct that the decision be reviewed.

Most cases come before the Commission when two or more Commissioners vote to grant a petition for discretionary review filed by a party adversely affected or aggrieved by the ALJ's decision. Petitioners may include miners, miners' representatives, mine operators or the Secretary of Labor. The Commission is also charged with the responsibility of reviewing disputes arising over the emergency response plans of underground coal operators pursuant to the Mine Improvement and New Emergency Response Act of 2006 (MINER Act), which amended the Mine Act.

Two or more Commissioners may also direct any case for review *sua sponte* (on the Commission's own motion, without the parties filing a petition). *Sua sponte* review is limited to ALJ decisions that are contrary to law or Commission policy, or that present a novel question of policy. By law, a quorum of three Commissioners is required to consider and decide cases appealed from the Commission's ALJs. Many of the Commission's cases present issues of first impression under the Mine Act. That is, the cases raise issues that have not been resolved by prior decisions of the Commission or the courts or the cases involve the interpretation of safety and health standards and regulations newly promulgated by MSHA.

The Commission began FY 2010 with an inventory of 95 undecided cases and received 213 new cases during the year. One hundred eighty-nine dispositions were made during FY 2010, resulting in 119 undecided cases remaining at the end of the fiscal year. In FY 2011, the Commission began the year with an inventory of 119 undecided cases, and 230 new cases are anticipated for the year.

Of the 189 cases decided in FY 2010, 7 were substantive decisions, 169 were procedural orders in default cases, and 13 were denials of petitions for review. The average age of the 92 default cases pending on the Commission's docket as of September 1, 2010 was 5.8 months, and the average age of the 7 substantive decisions issued in FY 2010 was 6.6 months.

During FY 2010, the number of default cases handled by the Commission continued to be a major challenge, particularly for the Commission's Office of General Counsel (OGC). The number of default cases received by the Commission increased dramatically from 68 in FY 2007 to 170 in FY 2010 - a 250 percent increase. The increase in default orders has greatly increased the demands on OGC's attorneys, who must analyze each case and prepare a draft order for the Commissioners. Default cases typically involve situations where a mine operator has allegedly failed to challenge civil penalties proposed by the MSHA within the prescribed 30-day period for contesting such proposed penalties. Under the Mine Act, proposed penalties that are not contested in a timely manner automatically become final Commission orders. Operators may file written requests with the Commission seeking to establish "good cause" to re-open the final orders. The Commission has determined that operators may file requests seeking to establish good cause to re-open final orders utilizing principles adopted by the Federal Courts.

The following table provides the performance goals and results for the Commission Review function for FYs 2007 - 2010.

COMMISSION REVIEW APPELLATE CASES						
ISSUE OPINION IN A TIMELY MANNER					GOAL	
PERFORMANCE GOALS	FY 2007	FY 2008	FY 2009	FY 2010	MET	NOT MET
Decide all cases within 18 months of receipt. (undecided cases over 18 months of age)	1	0	0	2		√
Assign all cases before briefing is completed. (cases briefed but unassigned)	0	0	0	6		√
Maintain average age of substantive decisions at 12 months of less. (average age of substantive decisions)	5.1	8.9	9.6	6.6	√	

Administrative Law Judge Function

The Commission employs Administrative Law Judges to hear and decide contested cases at the trial level, as initiated by the Secretary of Labor, mine operators, and miners or their representatives. The judges are also responsible for evaluating and approving or denying settlement agreements under the Mine Act.

Administrative Law Judges travel to hearing sites located at or near the mine involved in order to afford mine operators, miners and their representatives full opportunity to participate in the hearing process.

The Commission believes that the number of new case filings will not decrease in the coming years, as operators continue to elect to contest higher civil penalties proposed by MSHA and as MSHA increases its utilization of its "pattern of significant and substantial violations" sanctions.

The following table provides the performance goals and results for the Administrative Law Judge function for FYs 2007 – 2010.

OFFICE OF ADMINISTRATIVE LAW JUDGES						
Ensure Timely Issuance of Decisions					GOAL	
PERFORMANCE GOALS	FY 2007	FY 2008	FY 2009	FY 2010	MET	NOT MET
Issue 65 percent of decisions within 180 days of receipt of the post-hearing briefs.	69%	60%	86%	82%	✓	
Issue 65 percent of settlement decisions within 60 days of receipt of settlement motions.	80%	73%	61%	57%		✓
Decide 70 percent of cases within 12 months of assignment.	97%	79%	92%	92%	✓	
Undecided cases over 365 days of age.	71	687	3,738	7,845		✓

Office of the Executive Director Function

The Office of the Executive Director (OED) provides administrative services to support the Commission in fulfilling its mission.

OED provides strategic planning and operational management for the organization. OED also includes administrative services, financial, human resources, procurement, technology management, and computer and information security. The day-to-day tasks performed under the direction of the Executive Director include:

- Providing support agency-wide in the areas of human resources, procurement, budget, finance, equal opportunity, and general administrative services;
- Providing personnel, payroll, benefits, hearing coordination, and travel coordination to agency employees;
- Procuring goods and services, maintenance and needed repairs of equipment, training, reference materials, and supplies and office space;
- Supporting the implementation and development of effective and efficient case management and administrative systems through information technology hardware and software;
- Maintaining and enhancing a website to provide the public with user friendly access to Commission information; and
- Enhancing telecommunications and improving technology efficiency and effectiveness.

Analysis of Financial Statements

The Accountability of Tax Dollars Act of 2002 requires that the Commission's financial statements be audited annually. In accordance with this law, the Commission began annual audits in FY 2003. The Commission has received an "unqualified" opinion for each annual review conducted by an independent auditor.

The Commission has contracted with the Bureau of Public Debt's Administrative Resource Center for accounting services since 1998. The Administrative Resource Center prepared the Commission's FY 2010 financial statements, which include comparative data for FY 2009. The principal financial statements include the Balance Sheet, Statement of Net Cost, Statement of Changes in Net Position, and Statement of Budgetary Resources.

Analysis of the Balance Sheet

The Commission's assets in fiscal year 2010 were $6,960,427 as of September 30, 2010. The Fund Balance with Treasury of $6,898,231 represents the Commission's largest asset as of September 30, 2010. This is an increase of approximately 128 percent from fiscal year 2009 and represents approximately 99 percent of the agency's total assets. Property, Equipment, and Software accounts for approximately 1 percent of the Commission's total assets as of September 30, 2010. The net fixed asset value of $62,196 equals the cost less accumulated depreciation and represents the current book value of those assets.

The Commission's liabilities in fiscal year 2010 totaled $948,754 as of September 30, 2010. This is an increase of $299,316 from the fiscal year 2009 balance of $649,438. Accounts payable balance at September 30, 2010, was $131,162, an increase of $49,961 from September 30, 2009. Accrued payroll liabilities, payroll taxes payable, and unemployment insurance increased $133,506 in 2010. Unfunded annual leave increased $96,977 in 2010 from 2009. Unfunded annual leave represents approximately 39 percent of total agency liabilities.

Net position is the difference between total assets and total liabilities. The total net position for fiscal year 2010 increased by $3,530,451 from fiscal year 2009.

Analysis of Statement of Net Cost

The statement of Net Cost shows the net cost of operations for the agency, and it is broken out between the Commissions two major programs, Administrative Law Judge and Commission. The total net cost of operations in 2010 was $10,416,388, an increase of $1,523,340, or 17 percent, over the 2009 net cost of operations of 8,893,048.

Analysis of the Statement of Changes in Net Position

The Statement of Changes in Net Position reports the change in the agency's net position during the reporting period. The net position consists of two components, the unexpended appropriations and the cumulative results of operations. The Net Position increased $3,530,451 in 2010 from 2009, a change of approximately 142 percent.

Analysis of the Statement of Budgetary Resources

The Statement of Budgetary Resources presents how the budgetary resources were made available and the status of the budgetary resources at the end of the reporting period. For fiscal year 2010, the Commission had total budgetary resources of $15,492,670, which is $4,798,460 more than in 2009.

Management Assurances

Systems, Controls, and Legal Compliance

Financial Data and Accounting: The Commission is responsible for establishing and maintaining effective internal control over financial reporting which includes safeguarding assets and complying with applicable laws and regulations. As a small independent agency, the Commission must rely heavily on the systems and controls provided by servicing agencies to meet the OMB's guidelines and the requirements of law with respect to financial management, accounting systems, and financial reporting. These services are supplemented by internal control procedures within the Commission sufficient to assure that the performance and financial data included in this audit report are complete and reliable.

All financial data reported was obtained from the FY 2010 accounting reports prepared by the Bureau of Public Debt, the Commission's accounting servicing provider, and the performance data on case intake and dispositions has been verified by Commission managers. There are no material inadequacies or non-conformance in either the completeness or reliability of the data reported.

Commission managers are pleased to certify, with reasonable assurance, that the Commission's systems of internal controls and the systems of accounting used by the Bureau of Public Debt are in compliance with the Federal Managers Financial Integrity Act.

Equal Employment Opportunity Program: The EEO Office of the Commission directs and manages a comprehensive EEO program assuring compliance with all Federal anti-discrimination laws and regulations. It provides policy and legal guidance to the Chairman and other senior level managers, ensuring that the agency is kept abreast of all critical developments in the law. The EEO office oversees the EEO counseling, alternative dispute resolution ("ADR") and complaint procedures. It develops, manages and implements the agency's EEO policies and procedures. The office coordinates and conducts the required EEO agency-wide trainings for all personnel. The EEO office prepares and submits agency reports in compliance with the statutory and Equal Employment Opportunity Commission ("EEOC") reporting requirements (e.g., the Congressional submission under the No FEAR Act, EEOC Management Directive 715, and the Annual Federal EEO Statistical Report of Discrimination Complaints). It works with senior managers to promote equal opportunity in recruitment, training, benefits, and promotion.

During FY 2010, the EEO Office incurred a number of expenses as part of its mission. It purchased on-line training for all supervisors to review the requirements of Preventing Harassment in the Workplace. In order to comply with No FEAR Act training requirements for new employees within 90 days of hire and for current employees every two years, the Commission purchased additional No FEAR Act training. The EEO Director and staff also attend conferences and training, in order to stay current with developments in EEO law and requirements. The EEO Office anticipates the need for additional training and compliance activities as not only did the Commission's staff increase considerably in FY 2010, but the Commission is also opening field offices and has expanded its staff.

<u>Ethics:</u> During FY 2010, Commission employees received ethics training on-line at a website managed by the BPD. In creating the training, the Commission identified various subjects relating to ethics that are relevant to Commission employees. For each subject, the Commission's ethics officials drafted background material and questions and answers that specifically relate to issues likely to be faced by Commission employees. Employees read the material, answered the questions, and read further information provided in the answers. An automatic certificate of completion is then generated for record-keeping purposes. More specifically, Commission employees have been receiving ethics training in the areas of misuse of position, seeking new employment, and post-employment restrictions.

In addition, during FY 2010, the Commission's ethics officials provided initial ethics orientation to the agency's new employees in a slightly different format. Previously, the Commission's ethics officials provided new employees with written ethics materials and information required by 5 C.F.R. § 2638.703. During FY 2010, in addition to providing such materials and information, the Commission's ethics officials provided a general overview of ethics regulations through videotape and a verbal summary.

<u>Freedom of Information Act (FOIA):</u> During the 2010 fiscal year, the Commission received 92 FOIA requests. This was double the number of requests the agency received and processed in the 2009 fiscal year. The majority of these requests were for case-related materials. A significant number of requests were related to the tragic mine explosion in April 2010 involving the Upper Big Branch mine operated by a Massey Energy subsidiary. These requests were large in scale and complicated in nature, involving significant staff time. Where the Commission was in possession of documents and information that was responsive to the FOIA request, the Commission granted the request and provided the information within the 20-day statutory time period, except in three instances. In two of these requests, the information was not available until beyond the 20-day period. The third request involved information related to the Upper Big Branch mine and was an extremely broad request involving a significant number of agency records. The documents were provided to the requester in stages as the request was processed and was ultimately completed just beyond the 20-day period. For nine requests, the Commission did not possess records responsive to the requests made. Two requests were withdrawn by the requesters. No requests were denied in part or in whole. The Commission collected $826.05 in fees.

The Commission has a Chief FOIA Officer and a FOIA Public Liaison who administer its FOIA program. In August 2010, the Commission designated an additional staff member to serve as Assistant FOIA Officer to aid in the increased volume of FOIA requests. During FY 2010, the Chief FOIA Officer expended on average a total of 12.5% of her work time administering the Commission's FOIA program. Other agency employees participated in responding to certain FOIA requests on an as-needed basis. Overall, in FY 2010, the FOIA program involved approximately 2% of the Commission's overall work load and cost approximately $26,665 in expenses, including personnel time.

Security of Information Technology Systems: The Commission continues to devote a major portion of its information technology efforts to network security. The Commission has implemented proactive measures to protect the network's core infrastructure as well as end user computers. Symantec End Point Protection Suite and deployment of the Symantec Mail Security module for exchange have added additional security from internal and external threats against the core infrastructure and end users.

Performance Data Verification

The adjudicative and managerial goals and objectives set forth above can be achieved through an integrated set of strategies that build on current Commission programs and initiatives. Working from the premise that fair and expeditious decision-making and efficient agency management go hand in hand, the Commission adopts the following strategies to implement the strategic goals and objectives: 1) prioritize the decisional process; 2) maintain and enhance an information technology program; 3) improve human resources management; and 4) promote employee accountability.

The Commission will evaluate its progress towards accomplishing its strategic goals, through analysis of the results of its performance measures and through a continual reassessment of its workload and the needs of the parties that it serves. Program strengths and weakness will be assessed to determine alternative courses of action. The Commission will use the results of these evaluations to develop the annual performance goals and objectives which will focus the Commission's activities for the year.

Limitations of the Financial Statements

The principal financial statements have been prepared to report the financial position and results of operations of the Federal Mine Safety and Health Review Commission, pursuant to the requirements of 31 U.S.C. § 3515(b).

The statements have been prepared from the books and records of the Commission in accordance with GAAP for Federal entities and the formats prescribed by OMB. The statements are in addition to the financial reports used to monitor and control budgetary resources, which are prepared from the same books and records.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

November 15, 2010

BROWN & COMPANY CPAs, PLLC
1101 Mercantile Lane, Suite 122
Largo, MD 20774

We are providing this letter in connection with your audit of the Federal Mine Safety and Health Review Commission's ("the Commission") Principal Statements (also referred to as "financial statements") as of September 30, 2010 and 2009. The purpose of your audit is to: (1) provide an opinion as to whether the Principal Statements are presented fairly, in all material respects, in conformity with accounting principles generally accepted in the United States of America; (2) report on the entity's internal control over financial reporting and compliance with laws and regulations as of September 30, 2010; (3) report whether the entity's financial management systems substantially comply with federal financial management systems requirements, applicable federal accounting standards, and the U.S. Government Standard General Ledger at the transaction level as of September 30, 2010; and (4) test for compliance with applicable laws and regulations. In addition, you have performed certain audit procedures with respect to the entity's 2010 Management's Discussion and Analysis (MD&A) and other supplementary information, which were included as part of our 2010 financial statements.

Certain representations in this letter are described as being limited to matters that are material. For purpose of this letter, matters are considered material if they involve $37,000 or more. Items also are considered material, regardless of size, if they involve an omission or misstatement of accounting information that, in the light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would be changed or influenced by the omission or misstatement.

We confirm, to the best of our knowledge and belief, the following representations made to you during the audits. These representations pertain to both years' financial statements, and update the representation we provided in the prior year:

1. We are responsible for the fair presentation of the financial statements in conformity with accounting principles generally accepted in the United States of America. We are also responsible for the preparation of the MD&A.

2. The financial statements are fairly presented in conformity with accounting principles generally accepted in the United States of America. The MD&A is fairly presented and is consistent with the financial statements.

3. We have made the following materials available to you:

    a. Financial records and related data,

    b. Any communications from the Office of Management and Budget (OMB) concerning noncompliance with or deficiencies in financial reporting practices.

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4. There are no material transactions that have not been properly recorded in the accounting records underlying the financial statements or disclosed in the notes to the financial statements.

5. There are no uncorrected financial statement misstatements as we have adjusted the financial statement for all known and likely misstatements of which you have informed us.

6. The Commission has satisfactory title to all owned assets, including stewardship property, plant, and equipment; such assets have no liens or encumbrances, nor have any assets been pledged.

7. We have no plans or intentions that may materially affect the carrying value or classification of assets and liabilities or that we are required to disclose in the financial statements.

8. There are no guarantees under which the Commission is contingently liable that require reporting or disclosure in the financial statements.

9. Related party transactions including related receivables or payables, revenue, expenditures, loans, transfers, leasing arrangements, assessments, and guarantees have been properly recorded and disclosed in the financial statements.

10. No material events or transactions have occurred subsequent to September 30, 2010, that have not been properly recorded in the financial statements or disclosed in the notes.

11. All intra-entity transactions and activities have been appropriately identified for financial reporting purposes, unless otherwise noted. All intra-governmental transactions and balances have been appropriately identified, recorded, and disclosed in the financial statements. We have reconciled material intra-governmental transactions and balances with the federal entity providing the goods or services.

12. We are responsible for establishing and maintaining a system of internal control.

13. There have been no changes to internal control subsequent to September 30, 2010, or other factors that might significantly affect the effectiveness of internal control.

14. We acknowledge our responsibility for the design and implementation of programs and controls to prevent and detect fraud (intentional misstatements or omissions of amounts or disclosures in financial statements and misappropriation of assets that could have a material effect on the financial statements).

15. We have no knowledge of any fraud or suspected fraud affecting the Commission involving:
    a. management;
    b. employees who have significant roles in internal control; or
    c. others where the fraud could have a material effect on the financial statements.

16. We are responsible for implementing and maintaining financial management systems that substantially comply with federal financial management systems requirements, federal accounting standards (U.S. generally accepted accounting principles), and the U.S. Government Standard General Ledger at the transaction level.

17. We have assessed the financial management systems to determine whether they substantially comply with those federal financial management systems requirements. Our assessment was based on guidance issued by OMB.

18. The financial management systems substantially complied with federal financial management systems requirements, federal accounting standards, and the U.S. Government Standard General Ledger at the transaction level as of September 30, 2010.

19. We are responsible for the entity's compliance with applicable laws and regulations.

20. We have identified and disclosed to you all laws and regulations that have a direct and material effect on the determination of financial statement amounts.

21. There are no:

    a. violations or possible violations of laws or regulations whose effects we should evaluate for disclosure in the financial statements or as a basis for recording a loss contingency;

    b. material liabilities or gain or loss contingencies that are required to be accrued or disclosed that have not been accrued or disclosed; or

    c. unasserted claims or assessments that are probable of assertion and must be disclosed.

22. We have complied with all aspects of contractual agreements that would have a material effect on the financial statements in the event of noncompliance.

23. We are not aware of any violations of the Antideficiency Act that we must report to the Congress and the President (and provide a copy of the report to the Comptroller General) for the year ended September 30, 2010, (or, we have reported all known violations of the Antideficiency Act) and through the date of this letter.

24. The information presented in the Commission's Statement *of Budgetary Resources* agrees with information submitted in its year-end *Reports on Budget Execution and Budgetary Resources* (SF-133s). The information will be used as input for fiscal year 2010 actual column of the *Program and Financing Schedules* reported in the fiscal year *Budget of the U.S Government*. This information is supported by the related financial records and data.

Mary Lu Jordan

Mary Lu Jordan
Chairman

Lisa M. Boyd

Lisa M. Boyd
Executive Director

BROWN & COMPANY CPAs, PLLC
CERTIFIED PUBLIC ACCOUNTANTS AND MANAGEMENT CONSULTANTS

INDEPENDENT AUDITOR'S REPORT ON THE FINANCIAL STATEMENTS

Federal Mine Safety and Health Review Commission
Washington, D.C.

We have audited the accompanying balance sheet of the Federal Mine Safety and Health Review Commission (FMSHRC) as of September 30, 2010 and 2009, and the related statements of net cost, changes in net position, and budgetary resources, for the years then ended (collectively referred to as the financial statements). These financial statements are the responsibility of FMSHRC's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *U.S. Government Auditing Standards,* issued by the Comptroller General of the United States; and, Office of Management and Budget (OMB) Bulletin No. 07-04 as amended, *Audit Requirements for Federal Financial Statements.* Those standards and OMB Bulletin No. 07-04 as amended, require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the FMSHRC as of September 30, 2010 and 2009 and its net costs, changes in net position, and budgetary resources for the years then ended in conformity with accounting principles generally accepted in the United States of America.

In accordance with *U.S. Government Auditing Standards* and OMB Bulletin No. 07-04 as amended, we have also issued reports dated November 15, 2010 on our consideration of the FMSHRC internal control over financial reporting and its compliance with provisions of laws and regulations. Those reports are an integral part of an audit performed in accordance with *U.S. Government Auditing Standards* and should be read in conjunction with this report in considering the results of our audit.

The FMSHRC's Management's Discussion & Analysis contains a wide range of information, some of which is not directly related to the financial statements. We do not express an opinion on this information. However, we compared this information for consistency with the financial statements and discussed the methods of measurement and presentation with FMSHRC officials. Based on this limited work, we found no material inconsistencies with the financial statements, U.S. generally accepted accounting principles, or OMB guidance.

This report is intended solely for the information and use of the management of the FMSHRC, OMB and Congress, and is not intended to be and should not be used by anyone other than these specified parties.

Brown & Company

Largo, Maryland
November 15, 2010

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CERTIFIED PUBLIC ACCOUNTANTS AND MANAGEMENT CONSULTANTS

INDEPENDENT AUDITOR'S REPORT
ON INTERNAL CONTROL OVER FINANCIAL REPORTING

Federal Mine Safety and Health Review Commission
Washington, D.C.

We have audited the financial statements of the Federal Mine Safety and Health Review Commission (FMSHRC) as of and for the year ended September 30, 2010 and have issued our report thereon dated November 15, 2010. We conducted our audit in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *U.S. Government Auditing Standards*, issued by the Comptroller General of the United States; and Office of Management and Budget (OMB) Bulletin No. 07-04 as amended, *Audit Requirements for Federal Financial Statements*.

In planning and performing our audit, we considered the FMSHRC's internal control over financial reporting by obtaining an understanding of the FMSHRC's internal control, determined whether internal controls had been placed in operation, assessed control risk, and performed tests of controls in order to determine our auditing procedures for the purpose of expressing our opinion on the financial statements. We limited our internal control testing to those controls necessary to achieve the objectives described in OMB Bulletin No. 07-04 as amended. The objective of our audit was not to provide an opinion on internal control and therefore, we do not express an opinion on internal control.

Our consideration of the internal control over financial reporting would not necessarily disclose all matters in the internal control over financial reporting that might be a material weakness or significant deficiencies. Under standards issued by the American Institute of Certified Public Accountants and OMB Bulletin No. 07-04 as amended, a material weakness is a deficiency, or combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis. A significant deficiency is a deficiency in internal control, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance. Because of inherent limitations in internal controls, misstatements, losses, or non-compliance may nevertheless occur and not be detected. However, we noted no matters involving the internal control and its operation that we considered to be a material weakness as defined above.

This report is intended solely for the information and use of the management of the FMSHRC, OMB and Congress, and is not intended to be and should not be used by anyone other than these specified parties.

Brown & Company
Largo, Maryland
November 15, 2010

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BROWN & COMPANY CPAs, PLLC
CERTIFIED PUBLIC ACCOUNTANTS AND MANAGEMENT CONSULTANTS

INDEPENDENT AUDITOR'S REPORT ON COMPLIANCE WITH LAWS AND REGULATIONS

Federal Mine Safety and Health Review Commission
Washington, D.C.

We have audited the financial statements of the Federal Mine Safety and Health Review Commission (FMSHRC) as of and for the year ended September 30, 2010, and have issued our report thereon dated November 15, 2010. We conducted our audit in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *U.S. Government Auditing Standards*, issued by the Comptroller General of the United States; and Office of Management and Budget (OMB) Bulletin No. 07-04 as amended, *Audit Requirements for Federal Financial Statements.*

The management of the FMSHRC is responsible for complying with laws and regulations applicable to the FMSHRC. As part of obtaining reasonable assurance about whether the FMSHRC's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws and regulations, noncompliance with which could have a direct and material effect on the determination of financial statement amounts, and certain other laws and regulations specified in OMB Bulletin No. 07-04 as amended. We limited our tests of compliance to these provisions and we did not test compliance with all laws and regulations applicable to the FMSHRC.

The results of our tests of compliance disclosed no reportable instances of noncompliance with laws and regulations discussed in the preceding paragraph that are required to be reported under *U.S. Government Auditing Standards* or OMB Bulletin No. 07-04 as amended.

Providing an opinion on compliance with certain provisions of laws and regulations was not an objective of our audit, and, accordingly, we do not express such an opinion. However, we noted no noncompliance with laws and regulations, which could have a direct and material effect on the determination of financial statement amounts.

This report is intended solely for the information and use of the management of the FMSHRC, OMB and Congress, and is not intended to be and should not be used by anyone other than these specified parties.

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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
BALANCE SHEET
AS OF SEPTEMBER 30, 2010 AND 2009
(In Dollars)

		2010		2009
Assets:				
Intragovernmental				
Fund Balance With Treasury (Note 2)	$	6,898,231	$	3,019,141
Total Intragovernmental		6,898,231		3,019,141
Accounts Receivable, Net (Note 3)		-		340
Property, Equipment, and Software, Net (Note 4)		62,196		111,179
Total Assets	$	6,960,427	$	3,130,660
Liabilities:				
Intragovernmental				
Accounts Payable	$	3,176	$	-
Other (Note 6)		66,065		47,193
Total Intragovernmental		69,241		47,193
Accounts Payable		127,986		81,201
Other (Note 6)		751,527		521,044
Total Liabilities	$	948,754	$	649,438
Net Position:				
Unexpended Appropriations - Other Funds	$	6,319,787	$	2,645,321
Cumulative Results of Operations - Other Funds		(308,114)		(164,099)
Total Net Position	$	6,011,673	$	2,481,222
Total Liabilities and Net Position	$	6,960,427	$	3,130,660

The accompanying notes are an integral part of these financial statements.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
STATEMENT OF NET COST
FOR THE YEARS ENDED SEPTEMBER 30, 2010 AND 2009
(In Dollars)

	2010	2009
Program Costs:		
Commission Review:		
Gross Costs (Note 8)	$ 4,777,479	$ 4,733,967
Net Program Costs	$ 4,777,479	$ 4,733,967
Administrative Law Judge Determinations:		
Gross Costs (Note 8)	$ 5,638,909	$ 4,159,081
Net Program Costs	$ 5,638,909	$ 4,159,081
Net Cost of Operations	$ 10,416,388	$ 8,893,048

The accompanying notes are an integral part of these financial statements.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
STATEMENT OF CHANGES IN NET POSITION
FOR THE YEARS ENDED SEPTEMBER 30, 2010 AND 2009
(In Dollars)

		2010		2009
Cumulative Results of Operations:				
Beginning Balances	$	(164,099)	$	(218,642)
Budgetary Financing Sources:				
Appropriations Used		9,710,896		8,495,515
Other Financing Sources (Non-Exchange):				
Imputed Financing Sources (Note 9)		561,477		452,076
Total Financing Sources		10,272,373		8,947,591
Net Cost of Operations		(10,416,388)		(8,893,048)
Net Change		(144,015)		54,543
Cumulative Results of Operations	$	(308,114)	$	(164,099)
Unexpended Appropriations:				
Beginning Balances	$	2,645,321	$	3,392,425
Budgetary Financing Sources:				
Appropriations Received		14,158,000		8,653,000
Other Adjustments		(772,638)		(904,589)
Appropriations Used		(9,710,896)		(8,495,515)
Total Budgetary Financing Sources		3,674,466		(747,104)
Total Unexpended Appropriations	$	6,319,787	$	2,645,321
Net Position	$	6,011,673	$	2,481,222

The accompanying notes are an integral part of these financial statements.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
STATEMENT OF BUDGETARY RESOURCES
FOR THE YEARS ENDED SEPTEMBER 30, 2010 AND 2009
(In Dollars)

		2010		2009
Budgetary Resources:				
Unobligated Balance:				
Unobligated Balance Brought Forward, October 1	$	1,934,246	$	2,921,486
Recoveries of Prior Year Unpaid Obligations		173,062		24,313
Budget Authority				
Appropriation		14,158,000		8,653,000
Permanently Not Available		(772,638)		(904,589)
Total Budgetary Resources	$	15,492,670	$	10,694,210
Status of Budgetary Resources:				
Obligations Incurred (Note 11)				
Direct	$	10,385,674	$	8,759,964
Unobligated Balance				
Apportioned		1,957,414		25,615
Unobligated Balance Not Available		3,149,582		1,908,631
Total Status of Budgetary Resources	$	15,492,670	$	10,694,210
Change in Obligated Balance:				
Obligated Balance, Net				
Unpaid Obligations, Brought Forward, October 1	$	1,084,895	$	876,773
Obligations Incurred Net		10,385,674		8,759,964
Gross Outlays		(9,506,272)		(8,527,529)
Recoveries of Prior Year Unpaid				
Obligations, Actual		(173,062)		(24,313)
Total, Unpaid Obligated Balance, Net, End of Period	$	1,791,235	$	1,084,895
Net Outlays:				
Gross Outlays	$	9,506,272	$	8,527,529
Net Outlays	$	9,506,272	$	8,527,529

The accompanying notes are an integral part of these financial statements.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
NOTES TO THE FINANCIAL STATEMENTS

NOTE 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

A. Reporting Entity

The Federal Mine Safety and Health Review Commission (MSC) is an independent Federal agency with the mission of providing administrative trial and appellate review of legal disputes arising under the Federal Mine Safety and Health Amendments Act of 1977, Public Law 91-173, amended by Public Law 95-164. The MSC reporting entity is comprised of General Funds and General Miscellaneous Receipts.

General Funds are accounts used to record financial transactions arising under congressional appropriations or other authorizations to spend general revenues.

General Fund Miscellaneous Receipts are accounts established for receipts of non-recurring activity, such as fines, penalties, fees and other miscellaneous receipts for services and benefits.

MSC has rights and ownership of all assets reported in these financial statements. MSC does not possess any non-entity assets.

B. Basis of Presentation

The financial statements have been prepared to report the financial position, net cost of operations, changes in net position, and the status and availability of budgetary resources of MSC. The statements are a requirement of the Chief Financial Officers Act of 1990, the Government Management Reform Act of 1994 and the Accountability of Tax Dollars Act of 2002. They have been prepared from, and are fully supported by, the books and records of MSC in accordance with the hierarchy of accounting principles generally accepted in the United States of America, standards approved by the Federal Accounting Standards Advisory Board (FASAB), OMB Circular A-136, *Financial Reporting Requirements* and MSC accounting policies which are summarized in this note. These statements, with the exception of the Statement of Budgetary Resources, are different from financial management reports, which are also prepared pursuant to OMB directives that are used to monitor and control MSC's use of budgetary resources. The financial statements and associated notes are presented on a comparative basis. Unless specified otherwise, all amounts are presented in dollars.

C. Budgets and Budgetary Accounting

Congress usually enacts appropriations to permit MSC to incur obligations for specified purposes. In fiscal years 2010 and 2009, MSC was accountable for General Fund appropriations. MSC recognizes budgetary resources as assets when cash (funds held by the U.S. Treasury) is made available through the Department of Treasury General Fund warrants.

D. Basis of Accounting

Transactions are recorded on both an accrual accounting basis and a budgetary basis. Under the accrual method, revenues are recognized when earned, and expenses are recognized when a liability is incurred, without regard to receipt or payment of cash. Budgetary accounting facilitates compliance with legal requirements on the use of federal funds.

E. Revenues & Other Financing Sources

Congress enacts annual appropriations to be used, within statutory limits, for operating and capital expenditures. Appropriations are recognized as a financing source when expended.

MSC recognizes as an imputed financing source the amount of accrued pension and post-retirement benefit expenses for current employees paid on MSC's behalf by the Office of Personnel Management (OPM).

F. Taxes

MSC, as a Federal entity, is not subject to Federal, State, or local income taxes, and, accordingly, no provision for income taxes has been recorded in the accompanying financial statements.

G. Fund Balance with Treasury

The U.S. Treasury processes cash receipts and disbursements. Funds held at the Treasury are available to pay agency liabilities. MSC does not maintain cash in commercial bank accounts or foreign currency balances. Foreign currency payments are made either by Treasury or the Department of State and are reported by MSC in the U.S. dollar equivalents.

H. Accounts Receivable

Accounts receivable consists of amounts owed to MSC by other Federal agencies and the general public. Amounts due from Federal agencies are considered fully collectible. Accounts receivable from the public include reimbursements from employees. An allowance for uncollectible accounts receivable from the public is established when, based upon a review of outstanding accounts and the failure of all collection efforts, management determines that collection is unlikely to occur considering the debtor’s ability to pay.

I. Property, Equipment, and Software

Property, equipment and software represent furniture, fixtures, equipment, and information technology hardware and software which are recorded at original acquisition cost and are depreciated or amortized using the straight-line method over their estimated useful lives. Major alterations and renovations are capitalized, while maintenance and repair costs are expensed as incurred. MSC's capitalization threshold is $50,000 for individual purchases and $500,000 for bulk purchases. Applicable standard governmental guidelines regulate the disposal and convertibility of agency property, equipment, and software. The useful life classifications for capitalized assets are as follows: Leasehold Improvements is the period of the lease, and Furniture & Equipment is 5 years.

J. Advances and Prepaid Charges

Advance payments are generally prohibited by law. There are some exceptions, such as reimbursable agreements, subscriptions and payments to contractors and employees. Payments made in advance of the receipt of goods and services are recorded as advances or prepaid charges at the time of prepayment and recognized as expenses when the related goods and services are received.

K. Liabilities

Liabilities represent the amount of monies or other resources likely to be paid by MSC as a result of transactions or events that have already occurred. No liability can be paid, however, absent an appropriation or other funding. Liabilities for which an appropriation has not been enacted or other funds received are, therefore, classified as not covered by budgetary resources. There is no certainty that the appropriation will be enacted. Additionally, the Government, acting in its sovereign capacity, can abrogate liabilities.

L. Accounts Payable

Accounts payable consists primarily of amounts owed to other Federal agencies and the public for contracts for goods or services, such as leases, utilities, telecommunications and consulting and support services.

M. Annual, Sick, and Other Leave

Annual leave is accrued as it is earned, and the accrual is reduced as leave is taken. The balance in the accrued leave account is adjusted to reflect current pay rates. Liabilities associated with other types of vested leave, including compensatory, restored leave, and sick leave in certain circumstances, are accrued at year-end, based on latest pay rates and unused hours of leave. Funding will be obtained from future financing sources to the extent that current or prior year appropriations are not available to fund annual and other types of vested leave earned but not taken. Nonvested leave is expensed when used. Any liability for sick leave that is accrued but not taken by a Civil Service Retirement System (CSRS)-covered employee is transferred to OPM upon the retirement of that individual. Credit is given for sick leave balances in the computation of annuities upon the retirement of Federal Employees Retirement System (FERS)-covered employees effective at 50% beginning FY2010 and 100% in 2014.

N. Retirement Plans

MSC employees participate in either the CSRS or the FERS. The employees who participate in CSRS are beneficiaries of MSC matching contribution, equal to seven percent of pay, distributed to their annuity account in the Civil Service Retirement and Disability Fund.

Prior to December 31, 1983, all employees were covered under the CSRS program. From January 1, 1984 through December 31, 1986, employees had the option of remaining under CSRS or joining FERS and Social Security. Employees hired as of January 1, 1987 are automatically covered by the FERS program. FERS offers a savings plan to which MSC automatically contributes one percent of pay and matches any employee contribution up to an additional four percent of pay. For FERS participants, MSC also contributes the employer's matching share of Social Security.

FERS employees and certain CSRS reinstatement employees are eligible to participate in the Social Security program after retirement. In these instances, MSC remits the employer's share of the required contribution.

MSC recognizes the imputed cost of pension and other retirement benefits during the employees' active years of service. OPM actuaries determine pension cost factors by calculating the value of pension benefits expected to be paid in the future and communicate these factors to MSC for current period expense reporting. OPM also provides information regarding the full cost of health and life insurance benefits. MSC recognized the offsetting revenue as imputed financing sources to the extent these expenses will be paid by OPM.

MSC does not report on its financial statements information pertaining to the retirement plans covering its employees. Reporting amounts such as plan assets, accumulated plan benefits, and related unfunded liabilities, if any, is the responsibility of the OPM.

O. Other Post-Employment Benefits

MSC employees eligible to participate in the Federal Employees' Health Benefits Plan (FEHBP) and the Federal Employees' Group Life Insurance Program (FEGLIP) may continue to participate in these programs after their retirement. The OPM has provided MSC with certain cost factors that estimate the true cost of providing the post-retirement benefit to current employees. MSC recognizes a current cost for these and Other Retirement Benefits (ORB) at the time the employee's services are rendered. The ORB expense is financed by OPM, and offset by MSC through the recognition of an imputed financing source.

P. Use of Estimates

The preparation of the accompanying financial statements in accordance with generally accepted accounting principles requires management to make certain estimates and assumptions that affect the reported amounts of assets, liabilities, revenues, and expenses. Actual results could differ from those estimates.

Q. Imputed Costs/Financing Sources

Federal Government entities often receive goods and services from other Federal Government entities without reimbursing the providing entity for all the related costs. In addition, Federal Government entities also incur costs that are paid in total or in part by other entities. An imputed financing source is recognized by the receiving entity for costs that are paid by other entities. MSC recognized imputed costs and financing sources in fiscal years 2010 and 2009 to the extent directed by OMB.

R. Expired Accounts and Cancelled Authority

Unless otherwise specified by law, annual authority expires for incurring new obligations at the beginning of the subsequent fiscal year. The account in which the annual authority is placed is called the expired account. For five fiscal years, the expired account is available for expenditure to liquidate valid obligations incurred during the unexpired period. Adjustments are allowed to increase or decrease valid obligations incurred during the unexpired period but not previously reported. At the end of the fifth expired year, the expired account is cancelled.

NOTE 2. FUND BALANCE WITH TREASURY

Fund balance with Treasury account balances as of September 30, 2010 and 2009, were as follows:

		2010		2009
Fund Balances:				
Appropriated Funds	$	6,898,231	$	3,019,141
Total	$	6,898,231	$	3,019,141
Status of Fund Balance with Treasury:				
Unobligated Balance				
Available	$	1,957,414	$	25,615
Unavailable		3,149,582		1,908,631
Obligated Balance Not Yet Disbursed		1,791,235		1,084,895
Total	$	6,898,231	$	3,019,141

NOTE 3. ACCOUNTS RECEIVABLE

Accounts receivable balances as of September 30, 2010 and 2009, were as follows:

		2010		2009
With the Public				
Accounts Receivable - Employee	$	-	$	340
Total Accounts Receivable	$	-	$	340

Historical experience has indicated that the majority of the receivables are collectible. There are no material uncollectible accounts as of September 30, 2010 and 2009.

NOTE 4. PROPERTY, EQUIPMENT, AND SOFTWARE

Schedule of Property, Equipment, and Software as of September 30, 2010

Major Class		Acquisition Cost		Accumulated Amortization/ Depreciation		Net Book Value
Leasehold Improvements	$	120,123	$	57,927	$	62,196
Furniture & Equipment		99,597		99,597		-
Total	$	219,720	$	157,524	$	62,196

Schedule of Property, Equipment, and Software as of September 30, 2009

Major Class		Acquisition Cost		Accumulated Amortization/ Depreciation		Net Book Value
Leasehold Improvements	$	120,123	$	26,829	$	93,294
Furniture & Equipment		99,597		81,712		17,885
Total	$	219,720	$	108,541	$	111,179

NOTE 5. LIABILITIES NOT COVERED BY BUDGETARY RESOURCES

The liabilities for MSC as of September 30, 2010 and 2009, include liabilities not covered by budgetary resources. Congressional action is needed before budgetary resources can be provided. Although future appropriations to fund these liabilities are likely and anticipated, it is not certain that appropriations will be enacted to fund these liabilities.

	2010	2009
Intragovernmental – Unemployment Insurance	$ (2,286)	$ -
Unfunded Leave	372,595	275,618
Total Liabilities Not Covered by Budgetary Resources	$ 370,309	$ 275,618
Total Liabilities Covered by Budgetary Resources	578,445	373,820
Total Liabilities	$ 948,754	$ 649,438

Unemployment Insurance liability represents the unfunded liability for actual unemployment benefits paid on MSC's behalf and payable to the Department of Labor (DOL). Unfunded leave represents a liability for earned leave and is reduced when leave is taken. The balance in the accrued annual leave account is reviewed quarterly and adjusted as needed to accurately reflect the liability at current pay rates and leave balances. Accrued annual leave is paid from future funding sources and, accordingly, is reflected as a liability not covered by budgetary resources. Sick and other leave is expensed as taken.

NOTE 6. OTHER LIABILITIES

All other liabilities are considered current liabilities.

	2010	2009
Intragovernmental Liabilities		
Unemployment Insurance	$ (2,286)	$ -
Payroll Taxes Payable	68,351	47,193
Total Intragovernmental Liabilities	$ 66,065	$ 47,193
With the Public		
Payroll Taxes Payable	$ 12,950	$ 12,547
Accrued Funded Payroll and Leave	365,982	232,879
Unfunded Leave	372,595	275,618
Total Public Liabilities	$ 751,527	$ 521,044

NOTE 7. LEASES

Operating Leases

MSC occupies office space under a lease agreement that is accounted for as an operating lease. The lease term begins on October 1, 2002 and expires on October 1, 2012. Lease payments are increased annually based on the adjustments for operating cost and real estate tax escalations. The total operating lease expense year to date for Fiscal Years 2010 and 2009 were $1,345,462 and $1,262,434, respectively. Below is a schedule of future payments for the term of the lease:

Fiscal Year		Building
2011	$	1,337,542
2012		1,364,040
Total Future Payments	$	2,701,582

The operating lease amount does not include estimated payments for leases with annual renewal options.

NOTE 8. INTRAGOVERNMENTAL COSTS AND EXCHANGE REVENUE

Intragovernmental costs and intragovernmental exchange revenue represent goods and services exchange transactions made between two reporting entities within the Federal government, and are in contrast to those with non-federal entities (the public). Such costs and revenue are summarized as follows:

		2010		2009
Commission Review				
Intragovernmental Costs	$	1,608,341	$	1,787,463
Public Costs		3,169,138		2,946,504
Net Program Costs	$	4,777,479	$	4,733,967
Administrative Law Judge Determinations				
Intragovernmental Costs	$	1,928,036	$	1,560,562
Public Costs		3,710,873		2,598,519
Net Program Costs	$	5,638,909	$	4,159,081
Total Intragovernmental costs	$	3,536,377	$	3,348,025
Total Public costs		6,880,011		5,545,023
Total Net Cost	$	10,416,388	$	8,893,048

NOTE 9. IMPUTED FINANCING SOURCES

MSC recognizes as imputed financing the amount of accrued pension and post-retirement benefit expenses for current employees. The assets and liabilities associated with such benefits are the responsibility of the administering agency, OPM. For the fiscal years ended September 30, 2010 and 2009, respectively, imputed financing was as follows:

		2010		2009
Office of Personnel Management	$	561,477	$	452,076
Total Imputed Financing Sources	$	561,477	$	452,076

NOTE 10. BUDGETARY RESOURCE COMPARISONS TO THE BUDGET OF THE UNITED STATES GOVERNMENT

The President's Budget that will include FY10 actual budgetary execution information has not yet been published. The President's Budget is scheduled for publication in February 2011 and can be found at the OMB Web site: *http://www.whitehouse.gov/omb/*. The 2011 Budget of the United States Government, with the "Actual" column completed for 2009, has been reconciled to the Statement of Budgetary Resources and there were no material differences.

NOTE 11. APPORTIONMENT CATEGORIES OF OBLIGATIONS INCURRED

Obligations incurred and reported in the Statement of Budgetary Resources in 2010 and 2009 consisted of the following:

	2010	2009
Direct Obligations, Category A	$ 10,385,674	$ 8,759,964
Total Obligations Incurred	$ 10,385,674	$ 8,759,964

Category A apportionments distribute budgetary resources by fiscal quarters.

NOTE 12. UNDELIVERED ORDERS AT THE END OF THE PERIOD

Statement of Federal Financial Accounting Standards No. 7, Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting, states that the amount of budgetary resources obligated for undelivered orders at the end of the period should be disclosed. For the fiscal years ended September 30, 2010 and 2009, undelivered orders amounted to $1,212,790 and $711,074 respectively.

NOTE 13. CUSTODIAL ACTIVITY

MSC's custodial collection primarily consists of Freedom of Information Act requests. While these collections are considered custodial, they are neither primary to the mission of MSC nor material to the overall financial statements. MSC's total custodial collections are $89 and $115 for the fiscal years ended September 30, 2010, and 2009, respectively.

NOTE 14. RECONCILIATION OF NET COST OF OPERATIONS TO BUDGET

MSC has reconciled its budgetary obligations and non-budgetary resources available to its net cost of operations.

	2010	2009
Resources Used to Finance Activities:		
Budgetary Resources Obligated		
Obligations Incurred	$ 10,385,674	$ 8,759,964
Spending Authority From Offsetting Collections and Recoveries	(173,062)	(24,313)
Net Obligations	10,212,612	8,735,651
Other Resources		
Imputed Financing From Costs Absorbed By Others	561,477	452,076
Net Other Resources Used to Finance Activities	561,477	452,076
Total Resources Used to Finance Activities	10,774,089	9,187,727
Resources Used to Finance Items Not Part of the Net Cost of Operations:	(503,661)	(330,199)
Total Resources Used to Finance the Net Cost of Operations	10,270,428	8,857,528
Components of the Net Cost of Operations That Will Not Require or Generate Resources in the Current Period:	145,960	35,520
Net Cost of Operations	$ 10,416,388	$ 8,893,048