

**U.S. Department of Labor**

Assistant Secretary for  
Congressional and Intergovernmental Affairs  
Washington, D.C. 20210



December 23, 2011

The Honorable John Kline  
Chairman  
Committee on Education and the Workforce  
U.S. House of Representatives  
2181 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Kline:

I am writing in response to your December 16, 2011, letter to Secretary Hilda L. Solis regarding the departure of Mr. Jack Kuzar from the Internal Review Team that is reviewing MSHA's enforcement actions at the Upper Big Branch Mine-South (UBB) in Montcoal, West Virginia, prior to the massive coal dust explosion that killed 29 miners and injured two others on April 5, 2010. The team is also examining the mine rescue and recovery efforts at UBB in the days following the tragedy.

Under MSHA policy, the Agency is required to conduct an internal review of its enforcement activities after each mining accident that results in three or more fatalities. MSHA policy also directs the Office of Program Policy Evaluation and Information Resources (PEIR) to lead and conduct the internal review. Mr. George Fesak, in his capacity as the Director of PEIR, has had responsibility for the overall direction of the UBB Internal Review Team since the team was commissioned. He is responsible for the organization of the Internal Review Team and for ensuring that the review is thorough and is completed in a timely manner. Mr. Fesak is a senior career MSHA leader who has been responsible for nine internal reviews dating back to 1989.

Mr. Kuzar, who had served as the technical leader of the Internal Review Team,<sup>1</sup> retired from MSHA on September 1, 2011, after 36 years of service with the Agency. I understand that he left MSHA because he was ready to retire from service. He was a valued employee and made significant contributions to both the Internal Review Team and to MSHA as a whole.

At the time of Mr. Kuzar's retirement, the Internal Review Team had been working together for about 18 months. To facilitate completion of the internal review, Mr. William J. Francart, who was already part of the Internal Review Team, was made the technical team leader succeeding Mr. Kuzar. Mr. Francart, is a mining engineer in the Ventilation Division of the Pittsburgh

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<sup>1</sup> Though a May 5, 2010, MSHA news release stated that the then-newly constituted Internal Review Team would be headed by Mr. Kuzar, Mr. Kuzar served as the technical team leader, subject to the overall direction of Mr. Fesak.

The Honorable John Kline

December 23, 2011

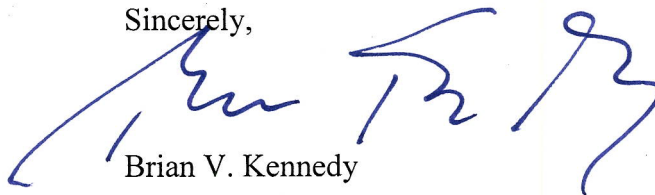
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Safety and Health Technology Center. He has been an MSHA employee for more than 30 years and has extensive experience in mining, including ventilation, mine emergency operations, and accident investigations. He also participated in the accident investigation of the fatal fire at the Aracoma Alma Mine No. 1 in 2006. With this response, I am enclosing the September 27, 2011, memorandum from Mr. Fesak notifying Assistant Secretary Main of Mr. Francart's appointment.<sup>2</sup> I am also enclosing a description of the duties of the Internal Review Team Leader (the technical team leader) for the UBB internal review.

The Internal Review Team's work has continued unabated despite this change in personnel, and the release of the team's report has not been delayed as a result of the change. Reports from internal review teams historically are published two to three months after the release of the accident investigation report. The team does not anticipate that this report will be an exception to that schedule.

If you or your staff has any questions about this response, please contact Patrick Findlay in the Department's Office of Congressional and Intergovernmental Affairs. He may be reached at (202) 693-4600.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brian V. Kennedy", is written over the typed name.

Brian V. Kennedy

Enclosures

cc: The Honorable George Miller  
Senior Democratic Member, Committee on Education and the Workforce

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<sup>2</sup> This memo states that Mr. Kuzar retired effective September 3, 2011. A review of Mr. Kuzar's MSHA personnel records reveals, however, that his official retirement date was September 1, 2011.

U.S. Department of Labor

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



September 27, 2011

MEMORANDUM FOR JOSEPH A. MAIN  
Assistant Secretary for  
Mine Safety and Health

FROM: GEORGE M. FESAK *George M. Fesak*  
Director, Program Evaluation and  
Information Resources

SUBJECT: Appointment of UBB Internal Review  
Technical Leader

The internal review of the MSHA's actions at the Upper Big Branch Mine-South in connection with the April 5, 2010 fatal explosion is scheduled to continue through the end of the year. However the technical team leader, Jack Kuzar, officially retired effective September 3, 2011.

To facilitate completion of the review, I have selected William J. Francart, Mining Engineer, Pittsburgh Safety and Health Technology Center, to serve as technical leader of the Internal Review team.

I will continue to periodically advise you of the progress of the internal review.

cc: G. Wagner  
L. Zeiler  
W. Francart  
K. Stricklin  
H. Strassler  
N. Page



### **Unclassified Duties of Internal Review Team Leader (John A. Kuzar)**

The employee serves as technical leader of the team that has been assigned to conduct an internal review of MSHA's enforcement activities at the Upper Big Branch Mine prior to the April 5, 2010, explosion that resulted in 29 fatalities.

The employee is responsible for supervising and managing the internal review team and leading team members in completing the following tasks:

- Thoroughly and objectively evaluating the quality of MSHA's enforcement activities at the Upper Big Branch Mine-South by comparing actual Agency performance to the requirements and standards established by the Mine Act, implementing regulations, and MSHA policies and procedures
- Reviewing inspection reports, inspector notes, and mine plans; analyzing enforcement data; and interviewing MSHA personnel who have knowledge of events leading up to the April 5, 2010, explosion
- Correlating inspection reports and enforcement actions with other evidence including mine plans, mine records, and other physical evidence to determine if MSHA's enforcement and plan approval activities were consistent with the requirements and standards established by the Mine Act, implementing regulations, and MSHA policies and procedures
- Identifying any weaknesses in MSHA's enforcement performance at the mine
- Developing appropriate recommendations for addressing those weaknesses
- Preparing the final internal review report
- Participating in briefings on internal review findings, conclusions, and recommendations for MSHA managers and employees, members of Congress, families of the deceased miners, and other interested parties

The team leader also coordinates the activities of the internal review team with the activities of the accident investigation team and conducts briefings on internal review findings, conclusions, and recommendations for MSHA managers and employees, members of Congress, families of the deceased miners, the NIOSH oversight panel, and other interested parties. Finally, the team leader establishes performance standards for team members and appraises their performance.