



May 29, 2012

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 April 27, 2012, letter to Assistant Secretary Joe Main regarding the Mine Safety and Health Administration's (MSHA) efforts to stop advance notice of mine inspections. Advance notice of mine inspections is a serious problem that poses grave risks to our nation's miners.¹

Since April 1, 2010, MSHA has issued 41 citations to coal and metal/nonmetal mines for violations of the Mine Act's prohibition against giving advance notice of a mine inspection. With this letter, I am enclosing a list of all citations and orders issued for advance notice violations from April 1, 2010 through May 15, 2012.² This list includes the status of the citation, whether the citation has been contested and the status of contested citations before the Federal Mine Safety and Health Review Commission. In many instances, MSHA District personnel have conducted special investigations in response to advance notice findings. These special investigations have led the Department to seek injunctive relief in three civil actions involving five mines, each successfully. I am enclosing the district court's order in each of these three cases.³ Other cases have been referred to the Department of Justice (DOJ) for criminal prosecution.⁴

¹ See, for example, MSHA, News Release: Advance notification of federal mine inspectors still a serious problem (Mar. 28, 2012), available online at <<http://s.dol.gov/RP>> (visited May 29, 2012).

² DOL E&W MSHA ADV NOTICE 001-02.

³ DOL E&W MSHA ADV NOTICE 003-19. For one case, I am also enclosing the memorandum in support of the motion for a preliminary injunction filed by the Office of the Solicitor to provide background not provided in the corresponding order.

⁴ The Department's Office of the Solicitor does not handle the prosecution of criminal actions. The Committee should contact DOJ directly for the status of any criminal cases or investigations.

Over the last few years, MSHA has proactively sought to prevent advance notice of mine inspections. For example, during impact inspections, MSHA personnel often monitor mine phones during inspections so that notice of an inspector's arrival cannot be communicated underground. MSHA has also been diligent in informing MSHA personnel, mine operators, and the public about the Mine Act's prohibition against advance notice. For example, on August 26, 2010, MSHA published a Program Information Bulletin (PIB) to remind mine operators, miners' representatives, and MSHA personnel that under the Mine Act it is illegal to give advance notice of MSHA inspections.⁵ The PIB also highlights the potential consequences of providing advance notice of an inspection.

In addition, MSHA provides instruction on the law, regulations and policy related to advance notice in its training programs for entry-level mine inspectors, inspector refresher training, and special investigators. This training covers the relevant portion of MSHA's Program Policy Manual.⁶ In addition to including instruction in these routine trainings, during March and April of this year MSHA conducted an eight-day Special Investigations Recertification Training for special investigators. Advance notice was covered as one of the subjects of this comprehensive training. MSHA also issues written materials to its inspectors regarding advance notice. For example, last month MSHA issued a Procedure Instruction Letter (PIL) to inspectors to provide guidance as to how inspectors should handle safety tracking systems to avoid those systems providing operators with advance information about the area of a mine an inspector plans to inspect.⁷

MSHA does not believe that inspector-provided improper advance notice of inspections is a widespread problem. MSHA's review of its records revealed an instance in 2010 in which an inspector improperly gave an operator advance notice of an upcoming inspection.⁸ MSHA terminated the inspector in July 2010 on a number of grounds, including providing advance notice. Earlier this year, an arbitrator affirmed this personnel action. I am enclosing the arbitrator's decision in which the arbitrator recounted the relevant background and MSHA's subsequent action, redacted to protect personal privacy information.⁹

⁵ MSHA, PIB: Prohibition of Advance Notice of § 103(a) Inspections (No. P.10-15), available online at <<http://s.dol.gov/RM>> (visited May 29, 2012); *see also* MSHA, News Release: MSHA stresses illegality of advance notification (Aug. 26, 2012), available online at <<http://s.dol.gov/SB>> (visited May 29, 2012).

⁶ MSHA, 103(a) Advance Notice, *Program Policy Manual* (rel. I-13) (Feb. 2003), available online at <<http://s.dol.gov/RQ>> (visited May 29, 2012).

⁷ MSHA, PIL: Inspector Compliance with the Tracking Requirements of an Emergency Response Plan (No. I12-V-09) (Apr. 19, 2012), available online at <<http://s.dol.gov/RN>> (visited May 29, 2012).

⁸ It is possible that other instances were reported or investigated by the Department's Office of Inspector General (OIG) of which MSHA is unaware. Per the customary practice, the Committee should contact the OIG directly to discuss any of the OIG's work.

⁹ DOL E&W MSHA ADV NOTICE 020-35.

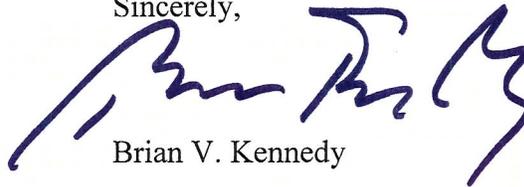
The Honorable John Kline

May 29, 2012

Page 3

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". The signature is stylized and cursive.

Brian V. Kennedy

Enclosure: One disc containing documents Bates stamped DOL E&W MSHA ADV NOTICE 001-35 in PDF.

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