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 AND THE WORKFORCE
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July 30, 2012

The Honorable Joe Main
 Assistant Secretary
 Mine Safety and Health Administration
 United States Department of Labor
 1100 Wilson Boulevard
 Arlington, VA 22209-3939

Dear Assistant Secretary Main:

On May 14, 2012, I wrote to express concerns about the alarmingly high injury and illness rate among Mine Safety and Health Administration (MSHA) personnel and seek information on MSHA's actions to better protect its employees.¹ On June 12, 2012, the Department of Labor (DOL) provided a response to this inquiry.² After reviewing the documents you provided, the Committee on Education and the Workforce respectfully requests additional information to undertake a full evaluation of MSHA's efforts to protect the safety and health of its personnel.

In response to the May 2012 letter, DOL referred to steps MSHA has taken to comply with goals set under the Protecting Our Workers and Ensuring Reemployment (POWER) Initiative, a two year old government-wide program designed to improve the health and safety of federal employees in the workplace. Under the POWER Initiative, agencies must meet or surpass seven health and safety goals for each fiscal year.³ During Fiscal Year (FY) 2011, MSHA met less than half of these goals.⁴ On March 8, 2012, a memorandum from DOL's Designated Agency

¹ Letter from the Honorable John Kline, Chairman, House Committee on Education and the Workforce, to the Honorable Joe Main, Assistant Secretary, Mine Safety and Health Administration. ("May 2012 letter") (May 14, 2012) <http://edworkforce.house.gov/UploadedFiles/05-14-12 - MSHA Injury and Illness Rate.pdf>

² Letter from the Honorable Brian V. Kennedy, Assistant Secretary of Congressional and Intergovernmental Affairs, U.S. Department of Labor, to the Honorable John Kline, Chairman, House Committee on Education and the Workforce. (June 12, 2012) (on file at the House Committee on Education and the Workforce).

³ Memorandum from the Honorable Hilda L. Solis, Secretary of Labor, to the Heads of Executive Branch Departments and Agencies, *The New Presidential POWER Initiative: Protecting Our Workers and Ensuring Reemployment*. (Sept. 21, 2010) <http://www.dol.gov/owcp/dfec/power/POWERMemofromSecretarySolis.pdf>

⁴ Memorandum from the Honorable T. Michael Kerr, Assistant Secretary of Administration and Management to the Honorable Joe Main, Assistant Secretary, Mine Safety and Health Administration. (Mar. 8, 2012) ("Kerr Memorandum") (on file at the House Committee on Education and the Workforce).

Safety and Health Official warned that MSHA was again failing to meet its goals for reducing its total case rate, lost time case rate, and lost production days rate.⁵ Subsequent data released at the close of FY 2012's Second Quarter projects that MSHA's total case rate could reach 6.14 injuries/illnesses per 100 employees in FY 2012.⁶ This outcome would fall short of a total case rate of 4.85 injuries/illnesses per 100 employees, MSHA's POWER goal for FY 2012.⁷

The materials provided in response to the May 2012 letter included a March 2012 memorandum from you outlining a corrective action plan to meet MSHA's POWER goals.⁸ This plan identifies seven corrective measures MSHA planned to develop and/or implement between April and late June 2012.⁹ It is troubling that MSHA only now appears to be developing measures to better ensure worker protection for this two year old initiative. It is also troubling that DOL's response to my May 2012 letter identifies hearing loss as a major factor in MSHA's injury and illness rate, yet your memorandum indicates that MSHA's commissioned 2010 Yale University School of Medicine study¹⁰ on this subject is just now being revisited.¹¹

To better evaluate MSHA's performance under the POWER Initiative, please provide the following to the Committee on Education and the Workforce **no later than August 13, 2012**:

1. All documents and communications concerning MSHA's health and safety performance under the POWER Initiative's predecessor program, the Safety, Health, and Return-to-Employment (SHARE) Initiative;
2. All documents and communications concerning MSHA's efforts to achieve its goals under the POWER Initiative;
3. A list of the dates and attendees of meetings with DOL and/or MSHA senior executives concerning the development of corrective action plans to achieve the FY 2012 POWER goals;
4. A list of each corrective action included in your March 2012 memorandum, the date upon which implementation began, and the date upon which actions were fully implemented;

⁵ *Id.*

⁶ U.S. Department of Labor, Office of Workers' Compensation Programs, *Mine Safety and Health Administration POWER Performance*. <http://www.dol.gov/owcp/dfec/power/getxls.htm?id=1580002> (Accessed July 19, 2012).

⁷ See Kerr memorandum, *supra* 4, at 1.

⁸ Memorandum from the Honorable Joe Main, Assistant Secretary, Mine Safety and Health Administration, to the Honorable T. Michael Kerr, Assistant Secretary of Administration and Management. ("March 2012 corrective action plan") (Mar. 2012) (on file at the House Committee on Education and the Workforce).

⁹ *Id.*

¹⁰ Yale University School of Medicine, Evaluation of MSHA's Hearing Conservation Program and Hearing Loss Among MSHA's Mine Inspectors (Dec. 15, 2010) ("Yale Hearing Loss Study")

¹¹ See March 2012 corrective action plan, *Supra* 7, at 2.

The Honorable Joe Main

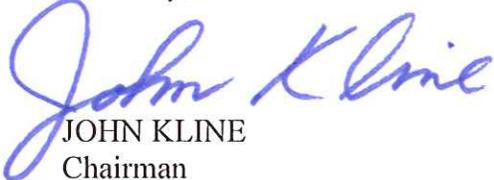
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5. All documents and communications concerning MSHA's evaluation of the Yale Hearing Loss Study and decision not to adopt its recommendations when it was released in 2010¹²; and,
6. All documents and communications concerning the standards used for health screenings related to MSHA's hiring process since FY 2004.

If you are unable to provide the requested information and materials by the date specified, please inform the committee in writing why you cannot meet the deadline, and the date by which you will provide the requested information. If you have additional questions or comments, please contact Joe Wheeler of the committee staff at (202) 225-7101.

Sincerely,



JOHN KLINE

Chairman

Committee on Education and the Workforce

Enclosure

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

¹² *Id.* “[MSHA] will revisit recommendations from the Yale hearing Loss Study to determine whether these recommendations should be adopted.”

Responding to Committee Document Requests

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i. e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one *CD*, hard drive, memory stick, thumb drive, box or folder is produced, each *CD*, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when they were requested.
8. When you produce documents, you should identify the paragraph in the Committee's request to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.

10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. The time period covered by this request is included in the attached request. To the extent a time period is not specified, produce relevant documents from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents should be delivered, one set to the Majority Staff in Room 2181 of the Rayburn House Office Building and one set to the Minority Staff in Room 2101 of the Rayburn House Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email, regular mail, telexes, releases, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.