U.S. Department of Labor

Office of the Solicitor
Washington, DC 20210

March 24, 2025

[redacted]
Attorney Advisor
Disclosure Unit
U.S. Office of Special Counsel

Via Electronic Mail: [redacted]

RE: OSC File Nos. DI-24-000838 and DI-24-000870
DOL's Response to OSC's January 23, 2025, Questions

Good afternoon:

As authorized in 5 U.S.C. § 1212(b)(5)(A), I am responding on behalf of the U.S. Department of Labor (DOL) to the U.S. Office of Special Counsel's (OSC) January 23, 2025, questions regarding the above captioned investigations. DOL is cooperating with OSC and is responding to OSC's questions.

While DOL is statutorily precluded from claiming common law privileges, such as attorney-client privilege, *see* 5 U.S.C. § 1212(b)(5)(C)(i), it submits these responses subject to, without intending to waive, and expressly preserving any objection on the grounds of attorney work product, hearing preparation material, and/or communications protected by the attorney-client or any other applicable privilege.

DOL has taken action to comply with OSC's investigations. Nevertheless, DOL does not view its release to OSC as one that could be considered a public disclosure under the Freedom of Information Act. *See* 5 U.S.C. § 552. Rather, this is a limited disclosure. *See U.S. v. Napper*, 694 F. Supp. 897, 900 (N.D. Ga. 1988). In the event that a request is made by an outside party for information contained in this limited disclosure, DOL asks that OSC decline to make the disclosure and refer the requestor to DOL, instead, as the records remain under control of DOL. Pursuant to 5 U.S.C. § 1212(b)(5)(C)(ii), DOL maintains the "submission of material…by an agency to the Special Counsel may not be deemed to waive any assertion of privilege by the agency against a non-Federal entity or against an individual in any other proceeding." Moreover, DOL reserves the right to supplement or amend these responses if additional facts or information become available.

OSC's Questions:

1. Given that the investigation was not able to determine the how the fire started within the battery pack of the continuous personal dust monitor (CPDM), please provide additional information regarding the scope of the investigation into the ignition source. Namely:
    a. Did MSHA's Quality Assurance Division conduct a defect assessment on the CPDM? If not, why?
    b. Why weren't the miners who witnessed the fire (or any other Warrior Met #7 mine personnel) interviewed?
2. Does DOL still consider the CPDM "intrinsically safe" under 30 C.F.R. Part 18? If so, why?
3. Please provide an update on DOL's review of potential improprieties related to [redacted] stock ownership.
4. If the Office of the Solicitor is required to maintain 6 years of the OGE forms (as stated in footnote 6 of the report), then why did the investigators only review forms from 2020-2023?
    a. Did the investigators seek other methods of reviewing the reports dating back to when [redacted] originally acquired the stock?

DOL's Responses:

1. **Detailed answers provided below.**
    a. **The Office of the Solicitor (SOL) gathered information from [redacted] and [redacted], within the Mine Safety & Health Administration (MSHA).**
        i. **Answer from [redacted]: No. There was no indication of a defect, the circumstances of the fire itself were unknown, and there was no chain of custody of the CPDM. [redacted] may provide additional information.**
        ii. **Answer from [redacted]: No. The Electrical Safety Division (ESD) examined the CPDM, reviewed the data downloaded from the device, performed testing on an exemplar unit, and compared the unit to the design approved by MSHA (drawings, photos, circuit board schematics). The fire started in the battery compartment, but we don't know why or how the fire started. Being unable to determine the cause of a fire is not unusual, because fire damage itself can alter or destroy evidence of causal factors. In this case, the housing of the CPDM was damaged by the fire, so any signs of abuse by the mine operator or operator personnel that may have been present were destroyed. The data download showed no alarms or indicators of a malfunction leading up to the fire, and the testing and comparison to approval drawings showed no irregularities. In addition, there was no history of fires for the CPDM. ESD's examination and testing of the CPDM found there was no indication that the approval holder failed to manufacture the device according to the approved design, or that the mine operator**

failed to maintain and operate it in accordance with the manufacturer's recommendations. Given these factors, there was no cause to open a QA field complaint and conduct a defect assessment.

b. SOL gathered information from MSHA's [redacted] and [redacted].

i. Answer from [redacted]: This incident was not a reportable accident. The operator self-reported to MSHA even though they did not have to. [redacted] (MSHA enforcement) may have talked to the miners or other operator personnel, but [redacted] accepted the DRP and is not available. [redacted] may provide additional information.

ii. Answer from [redacted]: The fire did not meet the definition of an "accident" as defined in 30 CFR 50.2(h), and the mine operator reported the incident to MSHA even though it didn't have to. Ordinarily, I would not interview anyone at the mine, that is typically an enforcement function. However, I did talk to the safety director about a question I had regarding the fire extinguisher used to extinguish the fire. [redacted] (MSHA enforcement) may have talked to the miners or other mine operator personnel.

2. SOL gathered information from [redacted] and [redacted].

a. Answer from [redacted]: Yes. The CPDM has passed all tests under Part 18 and has not shown any indication of unreliability. [redacted] may provide additional information.

b. Answer from [redacted]: Yes, it is still MSHA approved. As stated in response 1 a, there is nothing to indicate that the CPDM approval should be revoked for cause.

3. To date, DOL's Office of the Assistant Secretary for Administration and Management (OASAM), Office of Human Resources (OHR), Division of Employee, Labor, and Management Relations (DELMR), Employee Relations Branch has coordinated with OIG to gather the reports and underlying evidence relating to the various OSC referrals in which [redacted] was or may have been involved, including the referral relating to [redacted] stock ownership. Prior to leaving DOL, [redacted] delegated authority to [redacted] to review this information [redacted]

4. The Office of the Solicitor (SOL) does not have knowledge on the specific investigative techniques of the OIG. Reports from 2018-2024 were provided to OIG, as well as copies of some related ethics guidance.

a. **The Office of the Solicitor has no knowledge of OIG's investigative techniques. However, we note that many of the ethics staff who would have provided advice to [redacted] left the Department prior to or during this investigation. Accessing email records from 2018 to the 2023, for example, would require additional measures be taken by SOL or the OIG in conjunction with the Office of the Chief Information Officer.**

DOL hopes this information will satisfactorily answer OSC's questions. If you have any questions about the above, please contact me at [redacted].

[redacted]

[redacted]

Management and Administrative Legal Services Division
Office of the Solicitor
U.S. Department of Labor