



Health, Education and Human Services Division

B-261929

October 19, 1995

The Honorable Pete Hoekstra
Chairman, Subcommittee on Oversight
and Investigations
Committee on Economic and Educational
Opportunities
House of Representatives

The Honorable Cass Ballenger
Chairman, Subcommittee on Workforce
Protections
Committee on Economic and Educational
Opportunities
House of Representatives

This correspondence responds to your June 20, 1995, letter and subsequent discussions with your staffs requesting us to determine whether officials of the Mine Safety and Health Administration (MSHA) engaged in activities with mining industry executives to discredit proposed legislation affecting MSHA.¹ More specifically, you asked that we determine whether there was a factual basis for charges that the Deputy Assistant Secretary of MSHA and certain MSHA field personnel contacted other agency personnel and private mining industry executives to urge them to call congressional representatives to voice opposition to the legislation.²

¹On June 14, 1995, Representative Ballenger introduced H.R. 1834, which would, among other things, repeal the Federal Mine Safety and Health Act (30 U.S.C. 801 et seq.) and merge MSHA with the Occupational Safety and Health Administration (OSHA) at the Department of Labor. H.R. 1834, including its merger provision, is similar to draft "OSHA Reform" proposals that had circulated in occupational safety and health publications as early as April 1995.

²The Anti-Lobbying Act, 18 U.S.C. 1913, is a criminal statute that prohibits officers and employees of the Executive Branch from using appropriated funds to engage in activities intended to influence a Member of Congress to favor or oppose any legislation or appropriation. This has

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To respond to your request, we interviewed both MSHA officials who were alleged to have tried to influence the public to contact Members of Congress and those who were said to have been the targets of such efforts. Specifically, we talked to MSHA's Assistant Secretary James Davitt McAteer, Deputy Assistant Secretary Edward Hugler, and other agency administrators at MSHA's Washington headquarters in Arlington, Virginia, to discuss these allegations and their activities concerning H.R. 1834 in general. We also reviewed all pertinent information for the period April to July 1995 relating to the activities of the Deputy Assistant Secretary. This included both internal and external memoranda and information on conference and speaking engagements, personal calendars and records, and internal staff meetings. We interviewed (1) the mining industry executives that MSHA's Deputy Assistant Secretary identified as having communicated with him between April and July 1995; (2) a confidential source who alleged facts that, if true, might have constituted violations of the Anti-Lobbying Act; and (3) certain MSHA field and contract personnel in Colorado, Florida, Minnesota, and South Dakota.

We requested copies of agency telephone records for the period covering January 1 to June 30, 1995, for both the Assistant and Deputy Assistant Secretaries. As agreed with your staffs, we will provide the telephone records to you at a later date. Also, as agreed with your staffs, we have limited our review to a factual determination of whether MSHA headquarters employees and field staff or other agency officials urged anyone to convince Members of Congress to

been interpreted to prohibit so-called grass roots lobbying, which consists of appeals to members of the public suggesting that they contact elected representatives to indicate their support for or opposition to proposed legislation. The law does not, however, prohibit agency officials from publicly stating their positions on proposed legislation. In addition to 18 U.S.C. 1913, the Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriation Act of 1995 (P.L. 103-333) contains a provision restricting the use of appropriated funds, other than for normal and recognized executive-legislative relationships, ". . . for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or film presentation designed to support or defeat legislation pending before Congress, except in presentation to Congress itself."

oppose the proposed legislation. We conducted our review between June and September 1995 in accordance with generally accepted government auditing standards.

In summary, agency officials acknowledge that they actively opposed enactment of the legislation, but deny any improper activity. We found no evidence to contradict their statements. MSHA's Assistant Secretary and Deputy Assistant Secretary explained that MSHA is officially opposed to the proposed legislation and that they as agency representatives have publicly communicated this position. They said that, in doing so, they did not urge anyone to contact Members of Congress to oppose the proposed legislation. The interviews we conducted with MSHA personnel in headquarters and the field did not uncover any evidence contradicting these statements. The mining industry officials we interviewed all said that in their conversations with the Deputy Assistant Secretary he never urged them to contact Members of Congress to voice opposition to the proposed legislation. Similarly, our review of speeches given by the Deputy Assistant Secretary revealed no instances in which he urged the public to contact Members of Congress to oppose the proposed legislation.

A confidential source alleged that agency field staff urged the industry representatives to contact Members of Congress to oppose the proposed legislation during a May 1995 conference. The confidential source failed, however, to provide us with the name, address, or telephone number of the suspected MSHA field personnel. MSHA field staff that we did contact denied all allegations of urging the public to contact Members of Congress to oppose the proposed legislation. However, one employee reported that he did urge the public to contact Members of Congress to oppose the proposed legislation, but he did so in his capacity as a union representative.

THE ASSISTANT AND DEPUTY ASSISTANT SECRETARIES
DENY ALL ALLEGATIONS

Both the Assistant and Deputy Assistant Secretaries have denied urging either private citizens or agency employees to communicate opposition to their congressional representatives regarding H.R. 1834 or urging agency field personnel to take actions that would violate federal law governing the lobbying activities of federal employees. They also said that MSHA officially opposes H.R. 1834 and that the Assistant Secretary has gone on record opposing the legislation on numerous occasions. MSHA's Assistant

Secretary also reported using the news media, television, public hearings, and other open forums, including those within the mining industry, to publicly communicate the Administration's position on this legislation.

The agency's official position has also been communicated to all MSHA employees. For example, in May 1995, the Assistant Secretary of MSHA directed a memorandum to all agency employees that discussed issues concerning H.R. 1834, including an explanation of the Administration's opposition. (See enclosure 1.) Both officials believe that they were fulfilling the fundamental responsibilities of their positions to keep agency personnel, mining industry management and employees, as well as the general public well informed about issues that may have important consequences for working conditions and the economic health of the U.S. mining industry.

The Assistant and Deputy Assistant Secretaries of MSHA also believe that they have communicated the Administration's position to agency employees and the public in a manner that is consistent with existing federal statutes governing the lobbying of the Congress and that they have pledged cooperation with the Department of Justice and other agencies to assure that federal laws are not violated. For example, upon receiving official notification of our investigation, on June 22, 1995, the Assistant Secretary of MSHA directed another memorandum to all MSHA employees identifying activities that were prohibited under the Anti-Lobbying Act. (See enclosure 2.)

Interviews with other MSHA administrators who work with the Deputy Assistant Secretary at headquarters corroborate the statements of the Assistant and Deputy Assistant Secretaries. The administrators for Coal and Metal/Nonmetal Mine Safety and Health at MSHA's Washington headquarters denied conducting any efforts on their own initiative or efforts urged by MSHA's Assistant Secretary or Deputy Assistant Secretary to contact members of the mining industry to urge them to voice their opposition to the proposed legislation or to participate in lobbying campaigns against its passage. Our review of the 1994 and 1995 agendas of meetings held with MSHA's district directors found no indications of planned discussions

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involving appeals to the public urging them to contact Members of Congress to oppose the proposed legislation.³

INFORMATION FROM INTERVIEWED
INDUSTRY EXECUTIVES CONSISTENT
WITH AGENCY DENIALS OF ALL ALLEGATIONS

The Deputy Assistant Secretary of MSHA reported that he regularly communicates with both mining industry executives and union representatives and believes that this activity is part of his position's responsibility. Although he has had contact with many industry officials, the Deputy Assistant Secretary identified five mining industry executives with whom he said he had repeated telephone conversations since April 1995. He also stated that during many of these conversations, he discussed various provisions of H.R. 1834, but he denied urging them to contact Members of Congress to voice their opposition to the proposed legislation.

In our discussions with each of the executives, they reported that many of their conversations with the Deputy Assistant Secretary involved the exchange of information about the MSHA-related provisions of H.R. 1834. However, all of them said that the Deputy Assistant Secretary did not urge them to contact Members of Congress to oppose the proposed legislation. (See enclosure 3.) Although several of these industry executives reported that they held discussions with and wrote letters to members of their state and local legislatures and the Congress in opposition to H.R. 1834, they all denied that they had done so at the behest of the Deputy Assistant Secretary or any other MSHA employee.

The executives reported that in many instances the conversations with the Deputy Assistant Secretary were initiated by them. One industry executive, for example, told us that he initiated telephone calls with the Deputy Assistant Secretary and that the purpose of the calls was to obtain the agency's reports on mining accidents and injuries to use in directing letters to Members of the Congress and to the Georgia legislature. This executive noted that during these communications, the Deputy Assistant Secretary was reluctant to provide any opinions

³MSHA's headquarters officials reported that no written minutes are recorded of the district managers' semiannual meetings held with field staff.

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on the direction or action the company was taking regarding the provisions of H.R. 1834.

EXTERNAL AND INTERNAL MSHA COMMUNICATIONS
DO NOT SUPPORT ALLEGATIONS
OF GRASS ROOTS LOBBYING

We reviewed both internal and external information concerning the Deputy Assistant Secretary and found no evidence of appeals to the public urging them to contact Members of Congress to oppose the proposed legislation. This information included records of conference and speaking engagements, personal speeches, personal calendars and records, and internal staff meetings.

MSHA's Deputy Assistant Secretary reported that he attended and spoke at five conferences between April and June 1995, four of which were sponsored by mining industry-related associations or trade groups. (See enclosure 4.) Our review identified three speeches in which, within a small portion of each speech, the Deputy Assistant Secretary made statements on the potential limitations of H.R. 1834 and how the proposed merger of MSHA with OSHA might adversely affect safety and health in the mining industry. In those portions of his speeches he suggested that because of its important implications for the industry, interested parties should continue to get informed about the issues and to discuss and debate the provisions of the legislation. The Deputy Assistant Secretary acknowledges that during these events he provided information to industry executives on various provisions of H.R. 1834 and its drafts. The Deputy Assistant Secretary believes that it was his responsibility to do so because most of the industry executives were unaware that H.R. 1834 included a legislative provision to merge MSHA with OSHA. Furthermore, the Deputy Assistant Secretary believes that the issues raised by H.R. 1834 are so important and relevant to the industry as a whole that for its own self-interest the industry should take it upon itself to become knowledgeable about the bill and its implications.

The Deputy Assistant Secretary stated that at no time during these conferences in which he made those speeches did he suggest or urge that any industry executives contact their congressional representatives to oppose the proposed legislation. He also noted that he made no statements regarding the provisions of H.R. 1834 in his more recent speech (June 28, 1995) before the Holmes Safety Association in St. Paul, Minnesota. Our review of the text of this

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speech is consistent with the Deputy Assistant Secretary's assertion.

We also reviewed the personal calendar and records of the Assistant and Deputy Assistant Secretaries for the period April 1 to July 10, 1995. We found no information that would suggest that they urged other agency officials or executives of the mining industry to lobby their congressional representatives in opposition to the proposed legislation or that these executives or agency officials should urge others to do so. MSHA officials told us that the agency's Arlington, Virginia, headquarters is not equipped with voice-mail and that its electronic-mail capabilities are limited to identifying only the originating and terminating numbers, with no identification of the text of the conversations. Because of these limitations, we did not include these records as a part of our review.

MSHA'S FIELD EMPLOYEES DENY ALLEGATIONS

A confidential source reported that he observed lobbying activity by an MSHA field employee at a conference held in St. Louis, Missouri, on May 17, 1995, attended by mining industry and union representatives. He alleged that the employee urged other participants to contact their congressional representatives to voice opposition to a draft legislative proposal that would merge MSHA and OSHA. Although he could provide no supporting evidence, this source expressed a belief that this activity was occurring in response to instruction from the Assistant Secretary or the Deputy Assistant Secretary.⁴ Because our confidential source failed to identify the MSHA employee, we were unable to contact the agency employee for questioning regarding activity at this meeting.

We also investigated allegations referred to us by the Subcommittee regarding the actions of MSHA field staff at agency offices in Denver, Colorado; Rapid City, South Dakota; and Duluth, Minnesota. All the MSHA employees

⁴The source also provided us with written documentation, allegedly from union officials representing MSHA field employees, which illustrated the union's opposition to H.R. 1834. However, there was no indication that this material was prepared during work time or with agency resources, and the source acknowledges that he had no evidence that suggested any violation of federal law on this matter.

denied any involvement in urging industry executives, private sector employees, or other MSHA personnel to contact their representatives in opposition to H.R. 1834. One MSHA employee did report that he had urged opposition to the legislation but said that he had done so in his capacity as a federal employee union official and had done so during nongovernment time with nongovernment resources.

We also explored allegations against a Florida state employee who had contracted with MSHA to provide training to agency employees. The Florida state employee also denied any involvement in urging the public to contact Members of Congress to oppose the proposed legislation. The employee of the Florida state Environmental Protection Agency (EPA) with whom MSHA had contracted to manage a health and safety training program for agency employees said that in response to a question he had only described his involvement in a 1992 congressional lobbying campaign regarding proposed budget cuts in state training grants. The Florida EPA employee believes that his description, which he related during an MSHA field meeting held in Minnesota in May 1995, only served to inform members of the audience.

AGENCY COMMENTS AND OUR EVALUATION

We received comments from the Department of Labor's Office of the Solicitor on behalf of the Secretary of Labor regarding our investigation of MSHA headquarters and field staffs' alleged lobbying activities. (See enclosure 5.) Labor officials found no problems with our findings as reported and they interpreted them as not revealing any evidence of any violation of the Anti-Lobbying Act or improper activity of the MSHA headquarters and field staffs. Labor officials said that, to the contrary, our investigation of the allegations demonstrates that the behavior of the officials in question was proper, legal, and consistent with their duties in MSHA.

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As arranged with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this letter for 30 days. At that time, we will send copies to other congressional committees, the Secretary of Labor, the Assistant and Deputy Secretaries of MSHA, and the Attorney General of the United States, and will provide copies to others on request. If you have any questions, please feel free to contact me at (202) 512-7014. Major

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contributors include Charles Jeszeck, Assistant Director; Linda Stokes, Evaluator-in-Charge; Lori Rectanus, Senior Evaluator; and Daniel Schwimer, Senior Attorney.

Cornelia M. Blanchette

Cornelia M. Blanchette
Associate Director
Education and Employment Issues

Enclosures - 5

MAY 14, 1995.
MEMORANDUM FROM THE
ASSISTANT SECRETARY

U. S. Department of Labor

Mine Safety and Health Administration
 4015 Wilson Boulevard
 Arlington, Virginia 22203-1964



MAY 14 1995

MEMORANDUM FOR AGENCY EMPLOYEES

FROM: J. DAVITT McATEER *J. Davitt McAtteer*
 Assistant Secretary for
 Mine Safety and Health

SUBJECT: Recent Congressional Proposals to Reduce
 MSHA's Budget and Restructure the Agency

If you have read a newspaper or tuned in a news broadcast lately, you know that Congress is considering dramatic proposals to reduce Federal spending by eliminating some programs and by reducing many others. This memorandum briefly describes some of these proposals and their possible impact on the Mine Safety and Health Administration (MSHA).

Both the Senate and the House of Representatives are considering budget resolutions that call for substantial cuts in MSHA's budget and/or a merger of MSHA with the Occupational Safety and Health Administration. A proposal by Senator Domenici would cut MSHA's budget by more than 50 percent, beginning with Fiscal Year 1996. Majority members of the House Budget Committee have proposed an MSHA-OSHA merger, coupled with a 20 percent reduction in the combined agency's total budget.

Congressman Ballenger, meanwhile, has circulated draft legislation that would, among other things: repeal the Federal Mine Safety and Health Act of 1977, merge MSHA with OSHA, revise the Occupational Safety and Health Act, and eliminate the Federal Mine Safety and Health Review Commission. Under the Ballenger proposal, the new OSHA would maintain a separate (but reduced) staff of mine inspectors. Only one annual inspection of underground mines would be required. Most of the Mine Act's current enforcement tools would be eliminated.

The Clinton Administration opposes all of these Congressional proposals. They threaten the dramatic improvements in mine safety and health achieved over the past 25 years. There is reason, then, to be concerned. But I want to remind you that we are in the early stages of Congressional action. Much can--and likely will--happen in the next few months. As matters develop, and as better information becomes available, I will keep you informed.

Last December, in commemorating the passage of the Coal Act, President Clinton asked us to rededicate ourselves to the purpose of that law: protecting American miners, on whom the country depends for so much. MSHA's record is a proud one. We still have vital work to do. And I expect that we will continue to do it.

JUNE 22, 1995
MEMORANDUM FROM THE
ASSISTANT SECRETARY

U. S. Department of Labor

Mine Safety and Health Administration
4015 Wilson Boulevard
Arlington, Virginia 22203-1984



June 22, 1995

MEMORANDUM FOR

MSHA TOP STAFF

FROM:

J. DAVITT McATEER
Assistant Secretary for
Mine Safety and Health

A handwritten signature in dark ink, appearing to read "J. Davitt McAteer". The signature is written in a cursive style and is positioned over the typed name of the sender.

SUBJECT:

GAO Investigations of Allegations of
Violations of Anti-Lobbying Act by
MSHA Staff

I have attached a memorandum from the Solicitor of Labor, which relays a Congressional request to preserve certain records that may be relevant to a possible investigation of MSHA staff by the General Accounting Office.

Please read the Solicitor's memorandum carefully.

I direct you to take all necessary steps to comply with the request to preserve those records that come within the scope of the Congressional request, as relayed in the Solicitor's memorandum.

Attachment

INFORMATION ON KEY MINING INDUSTRY EXECUTIVES INVOLVED IN
CONVERSATIONS WITH MSHA'S DEPUTY ASSISTANT SECRETARY

Name	Title	Company name and location
Dave Lauriski	General Manager	Energy West Mining Company (Huntington, Utah)
Ron Wooten	Vice President	Consol, Incorporated (Pittsburgh, Pennsylvania)
Alex Cawthon	Executive Vice President	Theile Kaolin Company (Sandersville, Georgia)
Barry McGrath	President	Pittsburg and Midway Coal (Englewood, Colorado)
Pete Lilly	President and Chief Operating Officer	Peabody Holding Company (St. Louis, Missouri)

INFORMATION ON SPEECH ENGAGEMENTS OF MSHA'S DEPUTY ASSISTANT
SECRETARY--APRIL TO JUNE 1995

Date	Primary purpose of speech	Location of speech
April 19	Provide words of encouragement to students interested in the mining industry as a profession	University of Illinois (Carbondale, Illinois)
May 17	Discuss the agency's policy direction and congressional proposals for MSHA's budget, including H.R. 1834.	National Stone Foundation (Washington, D.C.)
June 5	Provide a forum for exchange of information and reports on mine ventilation, including legislative proposal H.R. 1834.	Seventh U.S. Mine Ventilation Symposium (Lexington, Kentucky)
June 12	Discuss congressional proposals and the various milestones in the mining industry, including H.R. 1834.	Eighty-Fifth Annual Convention of the Mine Inspectors' Institute of America (Davis, West Virginia)
June 28	Discuss the successes of the Holmes Safety Association	Holmes Safety Association (St. Paul, Minnesota)

COMMENTS FROM THE DEPARTMENT OF LABOR

U.S. Department of Labor

Secretary of Labor
Washington, D.C. 20210

SEP 25 1995

Linda G. Morra, Director
Education and Employment Issues
Health, Education and Human Services Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Ms. Morra:

Thank you for the opportunity to review the draft response to Chairmen Hoekstra and Ballenger regarding the General Accounting Office's investigation of allegations of violations of the Anti-Lobbying Act by high officials of the Mine Safety and Health Administration.

The report reveals no evidence of any violation of the Anti-Lobbying Act or other improper activity by these individuals. To the contrary, the investigation of the allegations demonstrates that the behavior of the officials in question was proper, legal, and consistent with their duties in the Mine Safety and Health Administration.

Sincerely,

A handwritten signature in cursive script that reads "Thomas S. Williamson, Jr.".

Thomas S. Williamson, Jr.

(205301)

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