

February 22, 2018

The Honorable David G. Zatezalo
Assistant Secretary for Mine Safety and Health
Department of Labor
200 Constitution Avenue NW
Washington, D.C. 20210

Dear Mr. Zatezalo,

Congratulations on your confirmation as Assistant Secretary for Mine Safety and Health. During your confirmation process before the United States Senate, you made several representations about the resources and policies of the Mine Safety and Health Administration (MSHA). I write to you today to follow up on those representations in light of recently uncovered information about the role Bob Murray, Chief Executive Officer of Murray Energy, is playing in the Trump administration.

When you were nominated to be Administrator, you reportedly told the *Charleston Gazette-Mail* that Bob Murray was “one of the people whose opinion I value and who I talked to about it after the idea came up.”¹ Over the last several months, the public has learned that Murray has been working behind the scenes actively to promote policies that would benefit his company. He told the PBS show *Frontline* that he had given the President “an action plan, very early, about three and a half pages about what he needed to do in his administration.”² A version of that action plan recommended new regulations by the Federal Energy Regulatory Commission (FERC) to support the coal industry. Bob Murray lobbied Energy Secretary Rick Perry to propose that rule, which would have provided Murray Energy a “windfall.”³ Despite initially claiming he had nothing to do with Perry’s proposal to FERC, Murray’s in-person meeting with Perry to discuss it was well documented.⁴

Bob Murray’s action plan includes three proposals for MSHA.

OVERHAUL THE BLOATED AND POLITICALIZED MINE SAFETY AND HEALTH ADMINISTRATION OF THE U.S. DEPARTMENT OF LABOR

This Federal agency, over the past eight (8) years, has not been focused on the coal miner safety, but on politics, bureaucracy, waste, and violation quotas. While coal mine employment has been cut in half, the Federal Mine Safety and Health Administration has continued to hire inspectors every year. But, the government has nowhere to put them. Murray Energy Corporation received an average of 532 Federal

¹ Ken Ward Jr., “Bob Murray encouraged Zatezalo to seek mine safety post,” *Charleston Gazette-Mail*, Sept. 5, 2017.

² *Frontline*, “War on the EPA,” available at <https://www.pbs.org/wgbh/frontline/film/war-on-the-epa/>.

³ Darius Dixon and Eric Wolff, “Trump coal backer wins big under Perry’s power plan,” *Politico*, Nov. 6, 2017.

⁴ Kate Aronoff, “Exclusive Photos Contradict Murray Energy CEO’s Claim He Had ‘Nothing To Do with’ Rick Perry’s Coal Bailout,” *In These Times*, Dec. 6, 2017.

inspectors per month in 2016. We must send a Company manager with every one of these inspectors, taking us away from our employee safety inspections and safety training.

REVISE THE ARBITRARY COAL MINE DUST REGULATION OF THE MINE SAFETY AND HEALTH ADMINISTRATION OF THE DEPARTMENT OF LABOR

This regulation provides no health benefit to our coal miners, and threatens the destruction of thousands of coal mining jobs.

OVERTURN THE MINE SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR, PATTERN OF VIOLATIONS RULE

This rule is a punitive action of the Mine Safety and Health Administration under its Director for the past eight (8) years, the former Safety Director of a labor union.

During your confirmation hearing before the Senate's Health, Education, Labor, and Pensions (HELP) Committee and in written responses to questions for the record, you took positions that were at odds with Murray's action plan. In response to a question from Senator Bob Casey about MSHA inspectors during your October 4, 2017 hearing, you said:

“The number of inspectors is pretty good today... inspections in mines in the United States are a necessity, and they have to continue.”⁵

On the so-called “coal dust” rule, your view was:

“Enforcement is ongoing today, and would have to continue. I would not propose any reduction in the enforcement in that, that's very prescribed in the laws as prescribed by Congress, and I would not see that diminished or anything.”

Ranking Member Patty Murray and I asked you questions for the record about the coal dust rule, which Bob Murray wants MSHA to “revise,” and the pattern of violation rule, which Bob Murray would like MSHA to “overturn.”

In response to Senator Murray's questions, you indicated that under your leadership MSHA would continue to meet its statutory inspection requirements and that you had “no present reason to disturb” either of the rules Bob Murray wants to weaken.

⁵ Senate Committee on Health, Education, Labor & Pensions Hearing on Department of Labor and National Labor Relations Board Nominations, available at: <https://www.help.senate.gov/hearings/departments-of-labor-and-national-labor-relations-board-nominations> (at 1 hour 21 minutes).

Q. MSHA completes health and safety compliance inspections on underground mines in the U.S. four times annually and on surface mines twice annually. During the Obama Administration, MSHA completely satisfied this requirement. Do you commit to ensuring this statutory requirement is met?

A. Yes.

Q. Do you intend to propose altering or revisiting the 2013 final Pattern of Violations rule?

A. The President has directed a review of all rules and to make determinations if any rules should be revised. Though I have no present reason to disturb this rule, if confirmed I will have an obligation to comply with the President's directive.

Q. Between 1968 and 2015, 76,000 miners died from black lung disease, and miners continue to suffer and die from this devastating disease. MSHA finalized the Respirable Dust Rule in 2014 to help prevent black lung disease in miners. Do you intend to propose altering or revisiting the final 2014 Respirable Dust Rule?

A. The President has directed a review of all rules and to make determinations if any rules should be revised. Though I have no present reason to disturb this rule, if confirmed I will have an obligation to comply with the President's directive.

In response to my questions, you disagreed with factual assertions made by industry in its litigation to block MSHA's pattern of violations rule.

Q. In litigation over MSHA's 2013 POV rule, the Ohio Coal Association and Kentucky Coal Association and other industry groups have argued in court that between 27% and 33% of all "serious and substantial" citations issued by MSHA inspectors are later vacated or modified. In your staff interview you said that you believe the error rate is more along the lines of 10%—is this still your view?

A. Yes.

Q. In the same suit, industry groups claim that because the rule allows MSHA to use citations instead of final orders as the basis for a pattern of violations mine owners are deprived of their due process rights. Citations are frequently challenged by owners in administrative proceedings that can take over a year to complete. If MSHA had to wait until citations were fully litigated to use them as a basis for its POV enforcement authority, dangerous conditions could linger for months without a corrective action plan. In your staff interview you indicated that you believe it is appropriate for MSHA to use citations to determine whether a mine should be subject to corrective action under the rule—is this still your view?

A. Yes.

Q. The prior rule required MSHA to give mine owners a warning, or “potential pattern of violation” notice, a procedural hurdle not required by law that in many cases would delay effective remediation of a mine. In your staff interview you disagreed with the argument that the 2013 rule, which eliminates the potential pattern of violation notice, would undermine incentives for mine owners to address safety concerns—is this still your view?

A. Yes.

On January 10, 2018, I wrote to Labor Secretary Alex Acosta asking for information about Murray’s efforts to influence policymaking in his department. On January 31, I received a response from the Department indicating that my request had been forwarded to MSHA and the Occupational and Health Safety Administration (OSHA). OSHA has already responded that it had no responsive documents. I have yet to receive a response from MSHA, so please accept this letter as a request to you directly for a prompt and thorough response to my January 10 letter. The Murray action plan also raises new questions that I would appreciate you addressing:

1. Have you spoken with Bob Murray or any representatives of Murray Energy since your confirmation hearing on October 4, 2017? If so, please identify each communication and include the date, time, participants, and topics discussed.
2. Have you made commitments to Bob Murray or any representative of Murray Energy at any time about actions you may take related to MSHA staffing, or MSHA’s coal dust or pattern of violations rules?
3. If you have changed your opinion on any of the three industry assertions in the POV rule litigation about which I asked you, please state your new opinion and identify all materials, briefings, or conversations you have had on the topic that caused your opinion to change.
4. If you have changed your position that you “would not propose any reduction in the enforcement,” please state your new opinion and identify all materials, briefings, or conversations you have had on the topic that caused your opinion to change.
5. If you have changed your position that you have “no present reason to disturb” either the coal dust or POV rules, please state your new opinion and identify all materials, briefings, or conversations you have had on the topic that caused your opinion to change.
6. You have been a board member and chairman of the Ohio Coal Association and Kentucky Coal Association. Both entities sued the Department of Labor over its pattern of violations rule. What guidance have you received from the Department’s ethics officials concerning your participation in decisions related to this litigation in light of your professional association with these litigants?

Thank you for your attention to this matter. I would appreciate a response no later than March 15, 2018. If you or members of your staff have any questions, please do not hesitate to contact [my staff].

Sincerely,

Sheldon Whitehouse
United States Senator

Cc: Alexander Acosta, U.S. Secretary of Labor
The Honorable Lamar Alexander, Chairman, Senate Committee on Health, Education, Labor
& Pensions
The Honorable Patty Murray, Ranking Member, Senate Committee on Health, Education,
Labor & Pensions