

Congress of the United States

Washington, DC 20515

August 31, 2015

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Administrator McCarthy:

On August 5, 2015, the Environmental Protection Agency caused the spill of mine waste from a site in San Juan County, Colorado, into the regional river system.¹ According to media reports, EPA's operation of heavy equipment on the site led to the spill.² The plume of mine waste, which measured as long as 80 miles at one point, eventually spread as far as the San Juan River in Utah, which forms the border between San Juan County and the Navajo Nation.³ The media identified several hazardous contaminants in the plume, including arsenic, lead, and cadmium.⁴

The House Committee on Oversight and Government Reform (OGR) and the House Committee on Natural Resources (HCNR) are conducting oversight into this toxic spill. Internal EPA documents show that that the agency, and a contractor it retained for the mine project, knew in June 2014 that conditions at the site could "cause a release of large volumes of contaminated mine waters and sediment from inside the mine, which contain concentrated heavy metals."⁵

Despite knowing that the spill of mine waste was an imminent possibility for more than one year, EPA has struggled to respond to the disaster. For example, EPA initially announced that one million gallons of waste were spilled into the water. Days later, EPA raised that the amount of toxic water spilled was in fact three million gallons—three times more than previously stated.⁶ There have also been press reports that described tribal and state officials in the affected regions experiencing difficulty with respect to getting timely information from EPA.⁷ One affected state environmental department official stated that EPA did not take proper action to alert residents to possible dangers and failed to notify the state when the incident occurred.⁸

¹ Gold King Mine Release Incident, Env'tl. Protection Agency, Region 8, available at http://epaossc.org/site/site_profile.aspx?site_id=11082 (last visited Aug. 25, 2015).

² Jesse Paul and Bruce Finley, *Animas River Fouled By 1 Million Gallons Of Contaminated Mine Water*, THE DENVER POST, Aug. 6, 2015.

³ *Gold Mine's Toxic Plume Extends to Utah*, THE DAILY TIMES, Aug. 11, 2015.

⁴ *Id.*

⁵ Gold King task Order Statement of Work, Env'tl. Protection Agency, available at <http://www2.epa.gov/goldkingmine/gold-king-task-order-statement-work> (last visited Aug. 24, 2015).

⁶ Steve Garrison and Joshua Kellogg, *EPA: Pollution From Mine Spill Much Worse Than Feared*, THE DAILY TIMES, Aug. 10, 2015.

⁷ *Residents Demand Health Answers As Mine Spill Fouls Rivers*, ASSOC. PRESS, Aug. 10, 2015.

⁸ Mariano Castillo, *Pollution Flowing Faster Than Facts In EPA Spill*, CNN, Aug. 10, 2015.

Furthermore, at some point after the spill, EPA chose the Department of the Interior to conduct an “independent review” of the disaster. The decision to assign that job to another Executive Branch agency raises concerns that the reviewers are not sufficiently independent or comprehensive in their scope of review, and therefore susceptible to political influence and other considerations.⁹

The Committees are reviewing how EPA responded to and handled the incident, the subsequent cleanup, and the threat of another waste spill in the area. In order for the Committees to better understand the circumstances relating to the toxic spill from the Gold King Mine; please provide the following documents and information:

1. All documents and communications referring or relating to EPA’s decision to perform the work at the Gold King Mine, including, but not limited to, any studies, plans, feedback, opinions, and communications with any entity or person, including citizens, states, tribal organizations, or local/community leaders regarding the mine, its condition prior to work, and the need for the work.
2. All documents and communications referring or relating to the retention of any contractors and subcontractors, including Environmental Restoration, LLC, to work at the Gold King Mine, including, but not limited to, bids, vetting, contracts, proposals, estimates, permits, certifications, and plans for the work.
3. All documents and communications referring or relating to actions EPA took to ensure that contractors and subcontractors retained to work at the Gold King Mine were qualified and prepared to do the work, including, but not limited to, any certifications, licenses, permits, pollution prevention plans, and representations made by the contractors/subcontractors regarding safety, hazard/disaster preparedness, pollution prevention, compliance with law/regulations, and fitness to properly perform the work.
4. All documents and communications referring or relating to EPA’s monitoring, reviewing, decision-making, participation in, and oversight of, the work at the Gold King Mine, Red and Bonita Mine, and/or Sunnyside Mine, including, but not limited to, any information relating to the retention of, consultation with, and opinions of any experts, federal/state/local or tribal government officials, specialists, contractors, non-governmental organizations and citizens during the work.
5. All documents and communications referring or relating to the response and cleanup, including information exchanged between EPA, its employees, and any outside groups or entities, plans/proposals, estimates and bids for the remediation, and opinions regarding the cleanup and damages, and all information relating to notifying the public and state/local/community/tribal leaders of the spill and its effects and potential impacts.

⁹ Env’tl. Protection Agency Press Release, “EPA Announces U.S. Department of the Interior to Lead Independent Review of Gold King Mine Release” (Aug. 18, 2015), *available at* <http://www2.epa.gov/goldkingmine/epa-announces-us-department-interior-lead-independent-review-gold-king-mine-release> (last visited Aug. 25, 2015).

6. All documents and communications between EPA, its employees and any other federal agencies including the Department of Interior or any of its sub-agencies or bureaus, the Forest Service (USFS), the Federal Emergency Management Agency (FEMA), the Agency for Toxic Substances and Disease Registry (ASTDR) that regard notification about the incident of the spill or refer or relate to the spill, the spill response and cleanup or effects of the spill.
7. All documents and communications that address any violations or possible violations of federal or state environmental laws or regulations including the Clean Water Act, the Comprehensive Environmental Response, Compensation, and Liability Act, the National Environmental Policy Act and the Endangered Species Act as a result of EPA's actions and the spill and subsequent efforts to control, contain, remediate or to make appropriate notifications regarding the spill.
8. All documents, photographs, video, or other media that may show any activities or work at the Gold King Mine, the breach on August 5, 2015, the spill, the damages, and/or the areas affected by the spill.
9. All documents and communications referring or relating to the possible designation of the Gold King Mine or other mines adjacent to the Animas River as a "superfund" or CERCLA site.
10. All documents and communications referring or relating to the possible construction of a waste treatment plant to treat discharge from the Gold King mine or other mines adjacent to the Animas River.
11. All documents and communications referring or relating to any investigation undertaken by EPA or any other agency or outside entity of the Gold King Mine activities or work and spill.

Please provide the requested information as soon as possible, but no later than 5:00 p.m. on September 14, 2015. An attachment to this letter provides additional information about responding to the Committees' request. When producing documents to the Committees, please deliver production sets to the OGR Majority staff in Room 2157 of the Rayburn House Office Building and the OGR Minority staff in Room 2471 of the Rayburn House Office Building. Please deliver production sets for the HCNR Majority staff to 1327 in the Longworth House Office Building and for the Minority staff to room 1329 in the Longworth House Office Building. The Committees prefer, if possible, to receive all documents in electronic format.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. The House Committee on Natural Resources has broad jurisdiction with regard to the Department of the Interior and regarding relations of the United States with Native Americans and Native American tribes, public lands generally, fisheries and wildlife, mining interests generally and irrigation and reclamation as well.

The Honorable Gina McCarthy

August 31, 2015

Page 4

Please contact William McGrath or Ryan Hambleton of the OGR Committee staff at (202) 225-5074 or Rob Gordon or Jessica Conrad of the HCNR staff at (202) 225-2761 with any questions about this request. Thank you for your prompt attention to this important matter.

Sincerely,



Jason Chaffetz
Chairman
Committee on Oversight and
Government Reform



Rob Bishop
Chairman
Committee on
Natural Resources



Cynthia M. Lummis
Chairman
Subcommittee on the Interior
Committee on Oversight and
Government Reform

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member
Committee on Oversight and Government Reform

The Honorable Brenda Lawrence, Ranking Member
Subcommittee on the Interior
Committee on Oversight and Government Reform

The Honorable Raul Grijalva, Ranking Member
Committee on Natural Resources

Responding to Committee Document Requests

1. In complying with this request, you are required to 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.
 - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,
SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,
CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE,
DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,
INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.
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 the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule 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 by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
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 are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is 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 shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 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 (desktop or mobile device), text message, instant message, MMS or SMS message, 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.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.