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Please see the attached letter and disregard our previous letter of June 15, 2012.

Page 4, Paragraphs 1 and 2 should read:

Energy, Inc. and Middle Fork Mining. If necessary, please explain discrepancies between your assessments and those calculated by MSHA for violations at operations conducted under these names.

- 1) Please explain your plan of action to remit the overdue fines at K and D Mining, Inc., Kentucky Darby, LLC, Mill Branch Mining, NECO Energy, Inc. and Middle Fork Mining.*

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June 15, 2012

SENT VIA FEDEX—RETURN RECEIPT REQUESTED

Jack Ealy, President
Ralph Napier, Vice President
John D. North, Jackrock, LLC
K and D Mining Inc.
159 Quarry Road
Speedwell, TN 37870

Dear Messrs. Ealy, Napier, and North:

As part of our legislative and oversight responsibilities, we are writing to you, as the controllers of K and D Mining, out of grave concern about alleged unsafe and non compliant mining conditions at K and D's Mine No. 17 in Harlan County, Kentucky. According to the Mine Safety and Health Administration (MSHA), last month its inspectors issued 43 safety-related citations and orders resulting in K and D closing this mine for 9 days to abate the conditions. The conditions MSHA inspectors identified in May include:

- Disabled ventilation controls at the face where a continuous miner was operating, along with visible respirable dust in mine atmosphere creating a black lung and fire hazard.
- Inadequate water pressure and non-working water sprays on the continuous miner, creating a dust and ignition hazard.
- Extensive electrical hazards on the continuous miner which rendered it "non permissible" and posed an ignition hazard.
- No methane checks every 20 minutes when the continuous miner was operating.
- Inoperable fire suppression system on the continuous miner.
- A defective methane warning device on the continuous miner (warning light not working when 1% methane detected).
- Accumulated coal, coal dust and float coal dust from paper thin to 9 inches deep along the length of three conveyor belts, creating a fire and explosion hazard.
- Belts were rubbing on frames and structures in multiple locations and a slip switch was not operable, creating a frictional fire hazard.
- Bottom rollers on belts are revolving in compacted coal dust, creating a fire hazard.
- Multiple damaged rollers, including some with bearings completely out, creating an ignition hazard.
- Inadequate water pressure necessary for firefighting; emergency response plan not being followed; employee not trained on underground communications; miner provided with a

broken self-rescuer; and missing lifeline cones (indicating direction to evacuate or find rescue chambers), all creating risks to miners in the event of an emergency.

- Non-compliance with the roof control plan, and failure to rock dust mine roof.

Over the past two years, this mine has been cited 11 times for ventilation plan violations, 34 times for coal accumulation violations and 15 times for roof control plan violations. According to MSHA records, the non-fatal lost time injury rate during the first quarter of 2012--the rate which reflects the percentage of employees who are injured on an annualized basis--is 17.3, which is more than five times the industry average of 3.2 for similar types of mines.

MSHA has conducted three impact inspections in the past two years, in addition to regular quarterly inspections. During the first impact inspection in August 2010, MSHA issued 14 citations and 6 orders. During the impact inspection in January 2012, MSHA inspectors issued 21 citations and 7 orders. In January, inspectors observed 8 conditions resulting from unwarrantable failures:

- Six orders were issued for the failure to maintain the conveyer belts in safe operating condition and allowing the accumulation of combustible materials along the belt lines. Two belt lines were found to have missing or stuck rollers, causing friction and creating the potential for an ignition. Accumulations of combustible material were found along three belt lines, which are required to be examined at each shift and the conditions are required to be corrected promptly. These are exactly the same conditions found in the most recent impact inspection in May.
- Two orders were issued for the mine operator's failure to conduct an adequate exam of the section power center, which was found to be improperly maintained. Inspectors found evidence of severe arcing between receptacles on the power center and on the male plugs of electrical equipment, creating an ignition hazard.
- MSHA also found a "hill seam" and stress cracks that extended approximately 115 feet, but additional support had not been installed as required by the roof control plan.

Despite repeated MSHA inspections and findings of serious safety violations at each inspection, MSHA data does not indicate that the mine's pattern of non-compliance has been reversed. Based on the increasing number of high-negligence violations, the safety conditions at Mine No. 17 are deteriorating. Already this year, there have been 26 unwarrantable failure orders—known as "D" orders—compared with only 7 in the previous two years. That reflects a 271 percent increase.

The kinds of hazards found at Mine No. 17 can cause fires and explosions. Given the fact that there were repeated violations of a similar type prior to the tragedy at Upper Big Branch—such

as coal dust accumulations and inadequate ventilation--we are troubled by the parallels found by MSHA at Mine No. 17. Our concerns are amplified when considering that two of the operators of K and D had run the Kentucky Darby #1 mine when an explosion killed five miners there in 2006.

In addition, we understand that, collectively you owe \$1,568,000 in final orders for fines that are more than 180 days overdue, as of March 31, 2012, for the various mining operations you have controlled, according to MSHA. For example:

- As controllers of K and D mining, you have not paid any of the approximately \$600,000 in penalties assessed at Mine No. 17 since you began operation in February 2010. Of this amount, \$463,000 is more than 180 days overdue.
- Mr. Ealy and Mr. Napier, as controllers of Kentucky Darby, LLC, have not complied with a January 2010 federal district court order to pay over \$600,000 for overdue penalties assessed in 2005 and 2006 at the Kentucky Darby #1 mine (including interest).¹
- Mr. Napier and Mr. North, as controllers of Orion Resources, owe approximately \$422,000 in long overdue fines.
- Mr. Ealy, as the controller, owes approximately \$144,000 in overdue fines for violations at NECO Energy, Inc., and/or Mill Creek Mining.

The impunity with which some operators fail to pay overdue fines has been an ongoing oversight and legislative concern of ours. It would appear that current law does not provide sufficient incentives for operators to pay overdue fines, and that despite numerous and sometimes significant penalty assessments, operators may lack sufficient economic incentives to improve safety.

Given the imperative to permanently rectify safety conditions and remit overdue fines, we respectfully request that you provide the following information to the Committee on Education and the Workforce by Monday, June 25, 2012:

- 1) Provide details regarding your specific plan of action and additional resources are you committing, if any, to keep this mine in full compliance with federal mine safety laws.
- 2) Please confirm the amounts owed individually or collectively for overdue MSHA penalties at K and D Mining, Inc., Kentucky Darby, LLC, Mill Branch Mining, NECO

¹ Final Judgment, *United States v Kentucky Darby, LLC* (Civil 09-32-GFVT), January 20, 2010

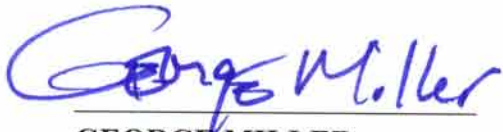
Messrs. Ealy, Napier, and North
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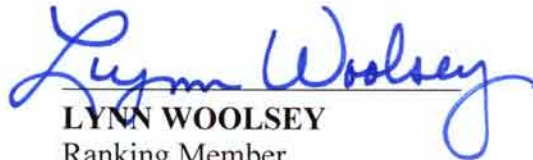
- 3) Please explain your plan of action to remit the overdue fines at K and D Mining, Inc., Kentucky Darby, LLC, Mill Branch Mining, NECO Energy, Inc. and Middle Fork Mining.

We appreciate your prompt attention to our request and concerns. Please contact us or direct your staff to coordinate with Richard Miller who can be reached at (202) 225-3725.

Sincerely,



GEORGE MILLER
Senior Democratic Member
Committee on Education and the Workforce



LYNN WOOLSEY
Ranking Member
Subcommittee on Workforce Protections

cc: The Honorable John Kline, Chairman, Committee on Education and the Workforce