



**U.S. OFFICE OF SPECIAL COUNSEL**  
**1730 M Street, N.W., Suite 300**  
**Washington, D.C. 20036-4505**

**The Special Counsel**

April 3, 2024

The Honorable Julie A. Su  
Acting Secretary  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

Re: OSC File No. DI-24-000612  
Request for Investigation—5 U.S.C. § 1213(c)

Dear Acting Secretary Su:

I am referring to you for investigation a whistleblower disclosure alleging employees at the Department of Labor (DOL), Mine Safety and Health Administration (MSHA), Norton District in Wise, Virginia, engaged in conduct that may constitute a violation of law, rule, or regulation and a substantial and specific danger to public safety. A report of your investigation into these allegations and any related matters is due to the Office of Special Counsel (OSC) on June 3, 2024.

The whistleblower, who chose to remain confidential, alleged that on March 8, 2024, MSHA's Norton District Manager [REDACTED] approved an annual mine map for Cowpen Resurrection Mine 15-19196 (Cowpen Mine) that is not compliant with 30 C.F.R. § 75.372. The allegations to be investigated include:

- The improper approval of the 2024 Cowpen Mine map at the direction of the DOL's Office of the Deputy Assistant Secretary for Operations; and
- Any additional or related allegations of wrongdoing discovered during the investigation of the foregoing allegation.

Specifically, 30 C.F.R. § 75.372 requires mine operators to submit up-to-date mine maps at least every 12 months to the local District Manager. Subsection (b) describes the required information every mine map must contain, including the "overlays and underlays," meaning all known mine workings above and below the mine property and the distances between them. Section (a)(1) requires the map to be certified by a registered engineer or a registered surveyor prior to submission. On February 22, 2024, an agent of Cowpen Mine, [REDACTED], submitted the mine's annual map for approval to MSHA, but did not include the required overlays and underlays with the map. Even if the map's overlays and underlays had not changed since they were last submitted in 2023, the regulation requires that a certified map reflecting the same information be submitted at least every 12 months.<sup>1</sup>

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<sup>1</sup> Although 30 C.F.R. § 44 allows mining companies to submit petitions for modifications—i.e., exemptions—of otherwise mandatory safety standards (including the requirement to display overlays and underlays in every map submitted to MSHA for approval), a petition was not submitted in this case.

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Initially, MSHA told [REDACTED] that the map would not be approved without the overlays and underlays. In response, [REDACTED] told agency employees that he would contact headquarters to force the approval. Shortly thereafter, the Norton District Assistant District Manager [REDACTED] directed the approval of the Cowpen Mine map without the overlays and underlays at the request of DOL's Office of the Deputy Assistant Secretary for Operations. The map was subsequently sent up the MSHA chain for approval. It was initially approved by Ventilation Specialist [REDACTED], then by Supervisory Mine Safety and Health Specialist [REDACTED], then by Assistant District Manager [REDACTED] and finally by District Manager [REDACTED]. The map was officially stamped approved by [REDACTED] on March 8, 2024, without the overlays and underlays.

Pursuant to my authority under 5 U.S.C. § 1213(c), I have concluded that there is a substantial likelihood that the information provided to OSC discloses a violation of law, rule, or regulation, and a substantial and specific danger to public safety. Please note that specific allegations and references to specific violations of law, rule, or regulation are not intended to be exclusive. If, in the course of your investigation, you discover additional violations, please include your findings on these additional matters in the report to OSC. As previously noted, your agency must conduct an investigation of these matters and produce a report, which must be reviewed and signed by you. Per statutory requirements, I will review the report for sufficiency and reasonableness before sending copies of the agency report, along with the whistleblower's comments and any comments or recommendations I may have, to the President and congressional oversight committees and making these documents publicly available.

Additional important requirements and guidance on the agency report are included in the attached Appendix, which can also be accessed at <https://osc.gov/Pages/DOW.aspx>. If your investigators have questions regarding the statutory process or the report required under 5 U.S.C. § 1213, please contact Catherine A. McMullen, Chief, Disclosure Unit, at (202) 804-7088 or [cmcmullen@osc.gov](mailto:cmcmullen@osc.gov). I am also available for any questions you may have.

Sincerely,



Hampton Dellinger  
*Special Counsel*

Enclosure

cc: The Honorable Larry D. Turner, Inspector General

## **APPENDIX**

### **AGENCY REPORTS UNDER 5 U.S.C. § 1213**

#### GUIDANCE ON 1213 REPORT

- OSC requires that your investigators interview the whistleblower at the beginning of the agency investigation when the whistleblower consents to the disclosure of his or her name.
- Should the agency head delegate the authority to review and sign the report, the delegation must be specifically stated and include the authority to take the actions necessary under 5 U.S.C. § 1213(d)(5).
- OSC will consider extension requests in 60-day increments when an agency evidences that it is conducting a good faith investigation that will require more time to complete.
- Identify agency employees by position title in the report and attach a key identifying the employees by both name and position. The key identifying employees will be used by OSC in its review and evaluation of the report. OSC will place the report without the employee identification key in its public file.
- Do not include in the report personally identifiable information, such as social security numbers, home addresses and telephone numbers, personal e-mails, dates and places of birth, and personal financial information.
- Include information about actual or projected financial savings as a result of the investigation as well as any policy changes related to the financial savings.
- Reports previously provided to OSC may be reviewed through OSC's public file, which is available here: <https://osc.gov/Pages/Resources-PublicFiles.aspx>. Please refer to our file number in any correspondence on this matter.

#### RETALIATION AGAINST WHISTLEBLOWERS

In some cases, whistleblowers who have made disclosures to OSC that are referred for investigation pursuant to 5 U.S.C. § 1213 also allege retaliation for whistleblowing once the agency is on notice of their allegations. The Special Counsel strongly recommends the agency take all appropriate measures to protect individuals from retaliation and other prohibited personnel practices.

#### EXCEPTIONS TO PUBLIC FILE REQUIREMENT

OSC will place a copy of the agency report in its public file unless it is classified or prohibited from release by law or by Executive Order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs. 5 U.S.C. § 1219(a).

#### EVIDENCE OF CRIMINAL CONDUCT

If the agency discovers evidence of a criminal violation during the course of its investigation and refers the evidence to the Attorney General, the agency must notify the Office of Personnel Management and the Office of Management and Budget. 5 U.S.C. § 1213(f). In such cases, the agency must still submit its report to OSC, but OSC must not share the report with the whistleblower or make it publicly available. See 5 U.S.C. §§ 1213(f), 1219(a)(1).